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IN THE SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

INVISION CAPITAL MANAGEMENT, LLC, an Arizona limited liability company, Plaintiff, vs. AMERICAN RESIDENTIAL PROPERTIES, INC., a Maryland corporation; AMERICAN RESIDENTIAL LEASING COMPANY, LLC, a Delaware limited liability company, Defendants.	No. CV2013-017109 **RULE 26.1 INITIAL DISCLOSURE STATEMENT**
AMERICAN RESIDENTIAL LEASING COMPANY, LLC, Counterclaimant, vs. INVISION CAPITAL MANAGEMENT, LLC, Counterdefendant.	

Plaintiff, Invision Capital Management, LLC ("ICM" or "Plaintiff"), makes the following disclosures pursuant to Ariz. R. Civ. P. 26.1. ICM reserves the right to seasonably supplement this disclosure statement as additional relevant information becomes available.

I. FACTUAL BASIS OF CLAIMS AND DEFENSES

Defendant American Residential Properties, Inc. ("ARP") is an internally managed real estate company organized as a real estate investment trust, or REIT, that acquires, owns, and manages single-family homes as rental properties through various operating partnerships and subsidiary entities, including but not limited to Defendant American Residential Leasing Company, LLC ("ARL"). ARP's business model prior to the events alleged in this Complaint did not generally involve acquiring, owning, and managing undervalued lower-end or entry-level residential properties.

ICM is a closely held private real estate brokerage specializing in brokering real estate transactions and managing rental properties. ICM's business model generally involves acquiring undervalued lower-end or entry-level residential properties.

In or around early 2012, Jeff Petersen ("Petersen") of ICM and Stephen Schmitz ("Schmitz"), the Chairman and Chief Executive Officer of ARP, discussed embarking on a joint business venture involving the acquisition, rehabilitation, long-term leasing, and eventual sale of undervalued lower-end or entry level residential properties in geographic markets where ICM had either an existing presence or contacts, or both, initially in the Phoenix, Las Vegas, and Indianapolis markets (the "venture"). ARP wished to expand its real estate portfolio into these markets and that particular "class" of homes, and ICM was already strongly positioned in Phoenix and had contacts in Indianapolis. In furtherance of this venture, ICM was to identify tranches of properties for acquisition, broker their purchase, and manage their rental and general maintenance. ARP would approve the tranches and provide the necessary funding to acquire the properties and the capital costs to stabilize the properties into lease-ready conditions. ICM and ARP then would share the net gain after the eventual sale of each property.

During the preliminary communications and at numerous times after entering into their agreement regarding the terms of the venture (the "Agreement"), ARP assured ICM that it would invest $40,000,000 in the venture in order to acquire and rehabilitate the properties.

Specifically, but without limitation, Mike Kettell of ICM had a meeting with ARP employees Josh Kellner ("Kellner"), Andy Kent ("Kent"), and Judy Romero ("Romero") in or about March or April 2012 at which the ARP representatives promised ICM that ARP would fund $40,000,000 for the acquisition and rehabilitation of the properties. This promise was repeated at numerous meetings ICM had with Schmitz, Kent, and Kellner both prior and subsequent to ICM's purchase of any tranches in the Phoenix and Las Vegas markets. ARP was aware that ICM relied upon these assurances in entering into the venture.

ICM followed up most, if not all, of its meetings and telephone calls with representatives of ARP with emails confirming ARP's commitment to fund $40,000,000. This was a material term of the Parties' Agreement and a material inducement to ICM entering into the Agreement, because without sufficient funding, the venture would be flawed. ICM budgeted for a $40,000,000 commitment, including but not limited to its overhead and property acquisitions in Phoenix, Las Vegas, and Indianapolis. The Parties were aware that a material shortfall in the agreed-upon $40,000,000 funding would render the venture unable to achieve the economies of scale necessary for ICM to manage the acquired assets in a profitable manner.

ARP also agreed that, in addition to any ordinary, ongoing maintenance, many of the properties would need capital improvements within the first ninety to one hundred twenty days of acquisition. Because such initial capital improvements generally increased the value of a property and ICM did not own the properties, ARP and ICM agreed that ARP would pay for all capital improvements and the costs would be added to the basis of the properties. Logically, this made sense because ICM did not own the properties and its role was to manage the rental of rent-ready properties owned by ARP. Also, capital improvements benefit the properties, run with the owner of the properties and are accounted for as additions to the owner's cost-basis of the properties. It is illogical and it goes against the inherent benefit bestowed upon the owner of properties, as well as against normal and customary business practices and accounting principles, that ICM would fund and not get reimbursed the capital improvements on ARP's behalf when ARP is the owner of the properties in question.

The Parties mutually understood that the venture could not succeed unless ARP was responsible for the property stabilization expenses, as ICM is a much smaller, privately funded business and not financially equipped to do so. Throughout the events giving rise to ICM's claims stated herein, ARP has never disputed this obligation or the fact that it was and is a material and necessary aspect of the Agreement. In fact, ARP has acknowledged this duty expressly and through its course of conduct.

ARP has generally described this relationship with ICM and similar local operators in other markets as its "preferred operator program" (the "Program"). Upon information and belief, ARP's Program grew out of the preliminary discussions between ARP and ICM. Through its Program and by its design, ARP has been able to expand its holdings into new target markets and a new class of properties using the strategic relationships belonging to ICM and other local operators.

Upon information and belief, ARP modeled its Program in large part on its venture with ICM in Phoenix. Under the Program, ARP has entered into similar agreements with five or six operators in other geographic markets and ARP gained access to those markets using the strategic relationships belonging to those operators.

The Agreement between ARP and ICM that became part of ARP's self-conceived Program was a multi-faceted agreement that involved the selection, acquisition, and funding of the portfolios, stabilizing the properties, managing and leasing the properties, and eventually selling the properties. Most of the terms of the Agreement were never reduced to writing. ARP did not have any standard written agreements to cover its venture with ICM.

ARP and ICM launched what formally became known as ARP's Program on or about October 24, 2012 with the acquisition of the first tranche of nine properties in Phoenix. Both

Parties were actively involved in the selection and acquisition of these properties, with ICM identifying and ARP agreeing to the specific properties to be included in the tranche.

Pursuant to the Agreement between ARP and ICM, ICM was to identify lower-end or entry-level residential properties that ARP would purchase and then lease back to ICM. ICM was to submit the properties to ARP for approval. ARP would fund the rehabilitation necessary to stabilize the properties and get them to lease-ready condition, and then ICM would find qualified tenants, manage the properties, and handle routine maintenance. ICM would pay ARP a "bulk" rent pursuant to a specified formula based generally on ICM's gross revenues and would receive 15% of the net gain for each property that ARP later sells. ARP would also be entitled to receive fees based on a percentage of the rents ICM collected from tenants.

ICM has just a small fraction of the financial backing of ARP, which did an initial public offering last year. Upon information and belief, ARP's initial public offering raised more than $287,000,000. Based on public information ARP is a $600M+ REIT with several hundreds of millions in credit facilities. Therefore, ARP had ample resources to fulfill its obligations. ICM reasonably and in good faith relied upon ARP's substantial financial resources in entering into the Agreement and in ICM's expectation that ARP would fund the $40,000,000.

To address one facet of the Agreement ARP proposed written lease agreements for the Phoenix and Las Vegas markets and later the Indianapolis market. Such written leases were necessary for this component of the venture because the properties would be owned by ARP but managed and leased by ICM. ARP acknowledged, prior to execution of the Phoenix/Las Vegas lease as well as through its subsequent course of conduct, that the lease agreements were not all-inclusive. At ARP's suggestion, the Parties utilized a form commercial lease that executives of ARP had drafted in connection with a lease that was utilized by GE Capital for leasing owner occupied commercial property to various fast food franchises. These unrelated leases were and are not suitable for acquiring single-family residential homes and were never intended to capture, and did not capture, the entire agreement between the parties.

On or about October 24, 2012, ARL and ICM entered into a master lease for properties located in Phoenix and Las Vegas to be acquired by ARP with ICM as the broker (the "PHX/LAS Lease"). The PHX/LAS Lease initially expires on October 31, 2022 but has two optional five-year extensions. Fully extended, the PHX/LAS Lease would not expire until October 31, 2032.

The PHX/LAS Lease does not, and never was intended by the Parties to, represent the entire Agreement between ARP and ICM. This is evidenced by, among other things, communications between the Parties both before and after the PHX/LAS Lease was executed as well as the parties' course of conduct. At the time they entered into the Agreement, including when they executed the PHX/LAS Lease, the Parties understood that the form and content of the PHX/LAS Lease were not entirely consistent with the Parties' mutual intentions in entering into the venture and did not address all of the necessary agreements of the Parties, let alone all of the material terms of the Parties' relationship relative to the venture.

For example, the PHX/LAS Lease does not expressly include ARP's obligation to invest $40,000,000, even though the Parties' communications prior to and after executing the PHX/LAS Lease demonstrate that this investment was, and is, a fundamental and mandatory aspect of the Agreement. ARP never disputed this obligation until this litigation. In fact, it affirmed its promises and obligation to make this investment pursuant to the terms of the Agreement.

In negotiations leading up to the execution of the PHX/LAS Lease, the Parties further agreed that ARP would be responsible for all capital improvement costs of rehabilitating the properties (also referred to herein as "property stabilization expenses"). Notwithstanding any inconsistent provision(s) in the PHX/LAS Lease, the Parties mutually understood that the venture, as contemplated by their entire Agreement, could not succeed unless ARP was responsible for the property stabilization expenses, as ICM is a much smaller, privately funded business and not financially equipped to do so and never intended to do so. Throughout the events giving rise to ICM's claims stated herein, ARP has never disputed this obligation or the fact that it was and is a material and necessary aspect of the Agreement. On the contrary, ARP has acknowledged this duty expressly and through its course of conduct. There is a clear and unambiguous difference between maintenance expenses and capital improvements made to assets/properties and conventional accounting practices should and will apply to capital improvement expenditures.

Although the PHX/LAS Lease includes an integration clause stating that it contains the Parties' entire Agreement, the Parties mutually understood at the time they executed the PHX/LAS Lease that the Lease did *not* in fact represent all the terms of their Agreement and, therefore, the integration clause, which was drafted in connection with an unrelated transaction, was irrelevant and not consistent with the Parties' intentions and actions.

As of April 1, 2013, ICM identified, and ARP approved, 176 properties in Phoenix and Las Vegas for acquisition under the Agreement. These properties were purchased in fifteen separate tranches between October 24, 2012 and April 1, 2013. The properties being proposed for acquisition were submitted to ARP on tranche lists.

With respect to ARP's agreement to fund capital improvements of the properties, ARP requested that ICM submit a proposed rehabilitation budget to ARP for each tranche list for ARP's review and approval. ICM submitted a preliminary rehabilitation budget of $201,250 for the Phoenix and Las Vegas properties. Consistent with the Agreement, ARP paid this amount toward the total cost of rehabilitation of the Phoenix and Las Vegas properties without issue.

ARP has repeatedly acknowledged its obligation to pay these rehabilitation costs. In a telephone call that took place in May 2013, for example, Kent, Kellner, and Bruce Nichols ("Nichols") confirmed ARP's obligation to "true up" and wanted to insure that ICM's estimates were not high and that ICM was not utilizing the rehabilitation dollars ARP was funding as a profit center. In a subsequent meeting between Schmitz, on behalf of ARP, and ICM, Schmitz acknowledged that ARP needed to reimburse ICM for rehabilitation expenses.

The actual cost of rehabilitating the Phoenix and Las Vegas properties was $654,377.00. ICM fronted the $453,000 difference between the initial budget and actual cost of these capital improvements to restore the homes to rent-ready condition in a timely fashion. ICM is not contractually obligated to pay these expenses and did so solely based on ARP's repeated promises and assurances to reimburse ICM and in the interest of getting the homes rented and generating revenue as quickly as possible in furtherance of the Agreement.

Although ICM has lined up several additional homes for ARP to purchase in Phoenix, Las Vegas, and Indianapolis, ARP has refused to provide further funding and has told ICM that it does not intend to close on these properties because ARP is "going in another direction." This message was not delivered by senior executives that ICM had been dealing with but rather a lower-level associate and in an untimely fashion. Notwithstanding ARP's failure to provide further funding, the properties that ICM selected in Phoenix have increased significantly in value since their initial acquisitions.

On or about January 28, 2013, the Parties agreed to expand their joint venture to include the Indianapolis market and executed a master lease using the same form as the PHX/LAS Lease (the "IND Lease"). The IND Lease initially expires on January 31, 2022 but has two optional extensions of five years each. Fully extended, the IND Lease does not expire until January 31, 2032.

As with the PHX/LAS Lease, the Parties understood when they entered into the IND Lease that its form and content were not entirely consistent with their mutual intentions in expanding the scope of their Agreement. The IND Lease does not contain all of the terms of the Parties' Agreement regarding their joint operations there, which are in all material respects identical to the terms governing the Phoenix and Las Vegas markets.

For example, the Parties agreed that ARP's pre-existing obligation to invest $40,000,000 pursuant to the Agreement was incorporated in the IND Lease and that some of that investment would go towards the acquisition and rehabilitation of homes there. Although ARP's investment obligation is not expressly included in the IND Lease, the Parties' communications prior to executing IND Lease as well as their communications and course of conduct afterwards demonstrate that the $40,000,000 was and is a fundamental and mandatory aspect of the Parties' expansion into Indianapolis.

Notwithstanding any inconsistent provision(s) in the IND Lease, the Parties mutually understood that, like their venture in Phoenix and Las Vegas, the Indianapolis venture could not succeed unless ARP was responsible for the cost of stabilizing the homes for leasing. ICM is a much smaller, privately funded business and not financially equipped to pay these expenses. Throughout the events giving rise to ICM's claims stated herein, ARP has never disputed this obligation or the fact that it was and is a material and necessary aspect of the entire venture in all markets. In fact, ICM has acknowledged and admitted this duty under the Parties' Agreement and elsewhere.

Although, like the PHX/LAS Lease, the IND Lease includes an integration clause stating that it contains the Parties' entire Agreement, the Parties mutually understood at the time they executed the Lease that the Lease did *not* in fact represent all the terms of their Agreement and, therefore, the integration clause, which was drafted in connection with an unrelated transaction, was irrelevant and not consistent with the parties' intentions and actions.

ARP ceased making payments of rehabilitation costs for the Indianapolis properties shortly after the Parties began acquiring properties there. Although ARP initially agreed to fund 90 homes in Indianapolis with a budget for rehabilitation, it ultimately funded the properties without a rehabilitation budget.

ARP has acknowledged its obligations to pay the initial rehabilitation costs in documents filed with the U.S. Securities and Exchange Commission. On page 9 of its Form 10-Q for the quarterly period ending September 30, 2013 (the "10-Q"), ARP described the Program as follows:

> We sometimes acquire portfolios of leased properties from established local operators through our "preferred operator" program. In this program, we acquire portfolios of leased properties for which the operator retains day-to-day management responsibilities pursuant to a longer-term lease. In these arrangements, the operator is responsible for all property-related expenses and we receive payments from the operator that escalate over the term of the lease.

The 10-Q describes "property-related expenses" as ongoing expenses incurred *after* a property is acquired and restored, such as "HOA fees (when applicable), taxes, insurance, ongoing costs to market and maintain the property and expenses associated with tenant turnover." According to its 10-Q, and consistent with the Agreement, however, such expenses do *not* include the capital costs of stabilizing and restoring the properties.

ARP further explains that it incurs these ongoing property-related expenses with respect to its self-managed properties. As such, ARP treats rehabilitation as capital improvements that adds basis to the assets/properties pursuant to GAAP. However, "[f]or properties leased to preferred operators, [ARP] ha[s] no day-to-day operating responsibilities or property-related expenses, because such responsibilities and expenses are obligations of the operators pursuant to the terms of the leases."

Under the heading "Investing Activities," the 10-Q states that ARP incurs costs "to prepare [its] acquired properties to be rented. These costs . . . are capitalized and allocated to building costs. Costs related to the restoration or improvement of our properties . . . that improve and extend their useful lives are also capitalized and allocated to building costs."

The 10-Q states more than once that, unlike property-related expenses, ARP pays the costs of stabilizing its properties. It does not distinguish between properties ARP acquires in connection with the Program and properties it acquires through other channels. The prospectus ARP prepared in connection with its initial public offering (the "Prospectus") also omits any such distinction in its explanation of its need to fund capital improvements to restore its properties.

Despite admitting its responsibility to reimburse ICM for the $453,127.00 ICM spent on capital improvements for the Phoenix and Las Vegas properties and to fund capital improvements for the Indianapolis properties, ARP has refused to reimburse ICM and repudiated its obligation to fund capital improvements for the Indianapolis properties. ARP previously acknowledged its liability for the rehabilitation expenses and assured ICM that it will provide those funds. As of May 24, 2013, ARP had authorized ICM to close on the pending purchases of several homes in Indianapolis. ARP further promised to put the funds necessary to rehabilitate those homes in escrow and "true-up" the additional amounts owed to ICM under the Parties' Agreement.

ARP has not invested $40,000,000 in the venture. To date, ARP has only invested approximately $30,000,000. As the direct result of ARP's failure to invest the full $40,000,000 and fund the rehabilitation necessary to bring the all of the homes to "rent-ready" condition, the percentage of homes ICM is able to lease has declined and continues to decline. Specifically, but without limitation, ARP has failed or refused to provide sufficient funds to purchase a sufficient number of properties in Las Vegas, Phoenix, and Indianapolis consistent with the Agreement.

The City of Indianapolis has issued numerous citations for housing code violations on the Indianapolis properties. The notices are often sent to ARP, but ARP consistently fails to forward them to ICM in a timely manner. As a result, ICM has had to spend additional funds of its own to remedy violations that would not exist but for ARP's failure to fund the rehabilitation of those homes and provide notices to ICM in a timely manner.

As the direct result of ARP's failure to invest the full $40,000,000 or fund the rehabilitation necessary to complete capital improvements to the Indianapolis homes necessary to restore them to "rent-ready" condition, a growing number of homes currently sit vacant in Indianapolis because they are not suitable for tenancy.

The decline in tenant occupancy in both Phoenix and Indianapolis due to ARP's failure to pay for necessary capital improvements impacts ICM's ability to pay rent to ARP pursuant to the Parties' Agreement, as ICM's rent payments are directly tied to ARP's invested dollars in the portfolio and not the percentage of homes that are leased. Thus, ICM pays the same amount of base rent to ARP whether or not ICM is collecting rent from tenants.

Since in or around July 2013, ICM has attempted to resolve these funding issues. However, ARP has been largely unresponsive or has simply responded to ICM's concerns with more questions. Each time ARP has requested information from ICM allegedly to help ARP fulfill its contractual obligations, ICM has provided the requested information. Yet, ARP still has not performed.

ICM has cautioned ARP numerous times that ARP's failure to fulfill its funding obligations negatively impacts ICM itself as well as the Parties' venture as a whole and has told ARP exactly what it must do to get the business back on track. ARP has ignored ICM's multiple repeated warnings.

In a 3-hour meeting that occurred on July 18, 2013, Schmitz acknowledged that ARP is obligated to reimburse ICM for rehabilitation costs. During that meeting, ICM presented nine agenda items, none of which had been addressed as of the filing of the Complaint, further degrading the portfolios and damaging ICM.

In an email to Schmitz dated July 19, 2013, Kettell listed several of the items the two had discussed the previous day and identified as "priorities for us to collectively handle." That list included, among other things, payment by ARP to ICM of $3,000 for each of the 53 unrentable homes in Indianapolis to allow ICM "to rehab and stabilize the balance of the Indy portfolio"; closing out nine properties in Indianapolis worth approximately $450,000 that ARP previously agreed to purchase; and "[r]econcil[ing] rehab budget and true up actual costs." There was no follow up email from Schmitz refuting ARP's obligations that were discussed on July 18, 2013.

Several weeks went by with no response, so Kettell sent a follow-up email to Schmitz on August 7, 2013 stating, in part:

> [W]e have 53 properties in Indianapolis that are sitting dormant as a result of no rehab budget allocated to these assets. These were closed over two months ago and as a result of the lack of rehab funds these assets cannot be stabilized. This is costing Invision over $35K a month in rents that cannot be collected. By the time these assets are stabilized we will have lost over $100K. Ultimately this could impact our ability to pay our rent to ARP pursuant to our agreement.

In the same email, Kettell also stated that ICM "completed the accounting for all of the rehab to date" and "would like to true up on these expenses as well as amend the master lease to account for the capital improvements made to your assets."

The number of properties in Indianapolis that are not rentable has increased due to the lack of funding by ARP and the lack of resources that need to be expended on the properties. The lack of appropriate funding has a compounding effect on a residential real estate portfolio and at some point expense will exceed revenue leading to the demise of the portfolio.

On August 14, 2013, Kettell summed up the state of affairs as follows: "[W]e have a $30M portfolio that needs these issues addressed as we move into management mode. We are handcuffed by [ARP's] lack of response and the delay in allocating normal and customary resources for these assets—which negatively impacts us both."

On September 5, 2013, Kettell again informed ARP that the Indianapolis vacancies are costing ICM $35,000 a month "for assets that we pay rent to ARP on but have no ability to generate revenue for Invision as these homes are currently uninhabitable. Our pre-funding of the Phoenix assets on ARP's behalf has left us with insufficient resources to operate effectively or to front additional rehab dollars for ARP in order to stabilize the Indy portfolio."

ARP is and was well aware of the impact its failure to fund the rehabilitation of the properties would have on ICM's side of the venture. ARP also knows that the funding of the rehabilitation is a matter that needs to be dealt with on a timely basis. ARP has not performed in a timely manner. This is evidenced by, among other things, the section of ARP's Prospectus detailing the risks related to its business in which ARP explained the result as follows:

> [I]t may cause [ARP's] properties to suffer from a greater risk of obsolescence or a decline in value, or a greater risk of decreased cash flow as a result of fewer potential tenants being attracted to the property or existing tenants not renewing their leases. If [ARP] do[es] not have access to sufficient funding in the future, [ARP] may not be able to make necessary capital improvements to [its] properties, and [its] properties' ability to generate revenue may be significantly impaired.

ICM materially relied on ARP's promise to invest a total of $40,000,000 in pursuit of the Parties' ventures in Phoenix, Las Vegas, and Indianapolis. ICM would not have entered into the Agreement or signed either the PHX/LAS or the IND Lease in the absence of this promise. ICM further materially relied on ARP's promise to pay the cost of rehabilitating and stabilizing the homes acquired in connection with the Parties' Agreement. Again, ICM would not have entered into the Agreement or signed the PHX/LAS or the IND Lease in the absence of this promise, as ICM is not financially capable of paying these expenses.

Upon information and belief, at the time it entered into the Agreement with ICM, ARP did not intend to fulfill its obligations thereunder for the entire term of the PHX/LAS Lease or the IND Lease. Instead, ARP intended to use ICM to break into new markets and then seek opportunities in those markets for its own exclusive financial benefit and to the detriment of ICM. Once it established itself in ICM's markets, it ceased to provide funding to purchase new homes and began to actively compete with ICM in the same geographic markets and among the same asset class.

ARP has failed to provide adequate funding to purchase properties in Las Vegas even though ICM's agreement with ARP requires ICM to maintain an active presence in Las Vegas. With only 14 properties acquired in the Las Vegas market there is simply not enough scale to cost effectively manage this portfolio.

A material term of the Agreement, and ARP's Program generally, is exclusivity for the local operator within a particular market. If ICM is forced to compete with ARP or other local operators to purchase properties, such competition increases the cost of the properties. Yet, ICM has learned that ARP engaged a company, Heritage, to buy homes in Indianapolis under a similar structure to ICM at or about the same time ARP ceased funding the acquisition of properties it previously had agreed to purchase. As a result of ARP's actions, ICM has been forced to compete with another ARP operator. This, in turn, creates a conflict in collecting rents and causes delays and problems due to city liens and notices in light of multiple operators functioning in the same market and in the same asset class. ARP did not disclose to ICM that it was using a competitor in the Indianapolis market. To the contrary, Schmitz assured ICM that ICM would be the sole operator in the Indianapolis market and, therefore, ICM needed to "Go Big" in that market.

Upon information and belief, ARP has undertaken a similar pattern and practice with other local operators under its Program whereby ARP initially would enter into an exclusive arrangement with an operator in a particular market until ARP believed it had a sufficient presence and assets in the market to assume operations for itself in that market. ARP would then fabricate a reason for terminating its agreement with the operator.

In ARP's third quarter earnings call on November 12, 2013, Schmitz acknowledged to several investment analysts that this is indeed one of the goals of the Program:

> It's important to note . . . why we started th[e] [Program] to begin with because a year and a half ago when we formed the [REIT] and we began our national expansion, so [sic] preferred operator program was really a way to enter markets quickly with large chunks of capital where we had not yet built up the property management expertise but our experience with third party property managers was not good and so we devised this arrangement where the preferred operator was generally aligned with us. We did it with the full intention of expanding our self-manage[d] portfolio which you've seen from the numbers . . .

In response to a Morgan Stanley analyst's question regarding whether ARP has changed its view regarding "using the preferred operator partnerships going forward," Shant Koumriqian, ARP's Chief Financial Officer and Treasurer, stated that "we . . . don't really need the preferred operator structure like we did a year ago. So, I wouldn't anticipate that we would be bringing on any additional [ones] clearly not under that structure."

II. LEGAL THEORY SUPPORTING CLAIMS AND DEFENSES

A. Fraudulent Inducement

A showing of fraud requires a concurrence of the following nine elements: (i) that the Defendants made a representation; (ii) the representation was false; (iii) the representation was material, which means that it was sufficiently important to influence a reasonable person's actions; (iv) that the Defendants' knew the representation was false; (v) the Defendants intended that Plaintiffs would act upon the representation in the manner reasonably contemplated by the Defendants; (vi) Plaintiffs did not know the representation was false; (vii) Plaintiffs relied on the truth of the representation; (viii) Plaintiffs' reliance was reasonable and justified under the circumstances; and (ix) Plaintiffs suffered damages. *Echols v. Beauty Built Homes, Inc.*, 132 Ariz. 498, 647 P.2d 629 (1982); *Staheli v. Kauffman*, 122 Ariz. 380, 595 P.2d 172 (1979).

By their actions described above and in the Complaint, Defendants fraudulently induced Plaintiff to enter into the contracts at issue.

B. Breach of Contract.

In order to prove a breach of contract claim, a plaintiff is required to prove the existence of the contract, breach, and damages resulting from the breach. *Coleman v. Watts,* 87 F. Supp. 2d 944, 955 (D. Ariz. 1998) (citing *Clark v. Compania Ganadera de Cananea, S.A.,* 95 Ariz. 90, 387 P.2d 235, 237 (1963)). The plaintiff must also establish with sufficient specificity the obligations involved in the contract. *Id.*

At all times relevant to the Complaint, at least two express written contracts existed between the Parties as well as numerous other agreements that the Parties intended to, and were, incorporated in the written agreements. Defendants have breached numerous contractual obligations owed to Plaintiff, as alleged in the Complaint and the foregoing paragraphs. Plaintiff is entitled to incidental and consequential damages as a direct and proximate result of

Defendants' breaches of contract in an amount to be proven at trial. Plaintiff is also entitled to its attorneys' fees pursuant to A.R.S. § 12-341.01 and the governing documents.

C. Breach of Implied Covenant of Good Faith and Fair Dealing.

The contracts between the Parties include an implied covenant of good faith and fair dealing. Defendants' actions, as alleged in the foregoing paragraphs, constitute a breach of the implied covenants of good faith and fair dealing. Plaintiff has been damaged as a direct and proximate result of Defendants' breach of the covenant of good faith and fair dealing with respect to all relevant agreements.

D. Negligent Misrepresentation.

A negligent misrepresentation claim requires proof of many of the same elements as fraud except that the plaintiff need only show the defendant's failure to exercise reasonable care in communicating false information to the plaintiff. *McAlister v. Citibank*, 171 Ariz. 207, 829 P.2d 1253 (Ct. App. 1992).

By their actions described above and in the Complaint, Defendants made numerous negligent misrepresentations to Plaintiff upon which Plaintiff reasonably relied in entering into its agreements with Defendants.

E. Unjust Enrichment.

"Unjust enrichment occurs whenever a person has and retains money or benefits which in justice and equity belong to another." *City of Sierra Vista v. Cochise Enterprises, Inc.*, 144 Ariz. 375, 381, 697 P.2d 1125, 1131 (1984). A plaintiff may recover under an unjust enrichment theory by establishing five elements: "(1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) absence of justification for the enrichment and the impoverishment and (5) an absence of a remedy provided by law." *Id.*

By failing to fulfill their obligations to Plaintiff, Defendants have been unjustly enriched.

F. Declaratory Judgment.

An actual controversy has arisen and now exists between Plaintiff and Defendants. Plaintiff is entitled to a judicial determination of its rights. Plaintiff is entitled to a declaratory judgment.

G. Breach of Fiduciary Duty.

ARP and ICM formed a partnership. As ICM's partner, ARP owed ICM a fiduciary duty that includes a duty of loyalty and a duty of care. A.R.S. § 29-1034. By its actions described herein and in the Complaint, ARP breached its fiduciary duty to ICM.

H. Constructive Trust.

Pursuant to the Parties' Agreement, ICM is entitled to a portion of the sales proceeds of all properties purchased in connection with the Parties' business venture. ARP breached the Agreement and, upon information and belief, intends to breach this provision as well. ARP also breached its fiduciary duty to ICM. Accordingly, the Court should impose a constructive trust on all such properties in order to prevent ARP's continued unjust enrichment at ICM's expense. *See Turley v. Ethington*, 213 Ariz. 640, 146 P.3d 1282 (Ct. App. 2006).

III. WITNESSES EXPECTED TO TESTIFY AT TRIAL

Plaintiff anticipates calling the following individuals as trial witnesses to testify consistent with the pleadings, disclosure statements and any facts obtained during discovery:

1. **Mike Kettell**
   c/o Dessaules Law Group
   5353 North 16th Street, Suite 110
   Phoenix, Arizona 85016

Mr. Kettell is a member of ICM. He is expected to testify regarding, among other things, the parties' business dealings and communications prior to and after entering into the Agreements at issue in this case, including but not limited to the parties' communications regarding the joint venture, the Parties' course of conduct under the Agreements, and the events giving rise to this dispute. Mr. Kettell is also expected to testify as to Plaintiff's damages. Specifically, but without limitation Mr. Kettell is expected to testify consistent with Plaintiff's pleadings in this matter, this disclosure statement and all supplemental disclosure statements, and Plaintiff's responses to any discovery responses. Mr. Kettell was the main liaison with Defendants and was primarily responsible with handling the submittals, financials, and reporting. He is expected to testify regarding those matters.

2. **Jeff Petersen**
c/o Dessaules Law Group
5353 North 16th Street, Suite 110
Phoenix, Arizona 85016

Mr. Petersen is a member of ICM. He is expected to testify regarding, among other things, the Parties' business dealings and communications both before and after entering into the Agreements at issue in this case, including but not limited to the Parties' communications regarding the joint venture, the Parties' course of conduct under the Agreements, and the events giving rise to this dispute. Mr. Petersen is also expected to testify as to Plaintiff's damages. Specifically, but without limitation Mr. Petersen is expected to testify consistent with Plaintiff's pleadings in this matter, this disclosure statement and all supplemental disclosure statements, and Plaintiff's responses to any discovery responses. Mr. Petersen was primarily responsible for handling the acquisitions, the estimate and calculation of rehabilitation expenses, and is expected to testify concerning all actions he took regarding the same.

3. **Michael Juel**
c/o Dessaules Law Group
5353 North 16th Street, Suite 110
Phoenix, Arizona 85016

Mr. Juel is expected to testify regarding construction and rehabilitation of properties purchased, the scope of work relating to same, and all actions taken regarding same.

4. **Tony Bagneschi**
c/o Dessaules Law Group
5353 North 16th Street, Suite 110
Phoenix, Arizona 85016

Mr. Juel is expected to testify regarding construction and rehabilitation of properties purchased, the scope of work relating to same, and all actions taken regarding same. Mr. Bagneschi is also expected to testify regarding

5. **Andrew Kent**
c/o Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253

Mr. Kent is and/or was at all times relevant to the Complaint the Senior Vice President and General Counsel to Defendant ARL. He is expected to testify regarding, among other things, the Parties' Agreements and Defendants' conduct in relation thereto. He is further expected to testify regarding communications between the parties, Defendants' internal communications relating to Plaintiff, Defendants' other preferred operators, the preferred operator programs generally, and Defendants' termination of those programs.

6. **Stephen Schmitz**
c/o Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253

Mr. Schmitz is and/or was at all times relevant to the Complaint the Chairman and CEO of ARP and involved in communications with Plaintiff regarding and operation of the parties' business venture, the preferred operating program, and all preferred operators. He is expected to testify regarding, among other things, the parties' Agreements, the parties' conduct, communications and course of performance both before and after entering into the Agreements, and ARP's conduct in relation thereto. He is further expected to testify regarding negotiations and communications with Plaintiff prior and subsequent to entering into the relationship and agreements that are at issue in this case.

7. **Josh Kellner**
c/o Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253

Mr. Kellner is and/or was at all relevant times an employee of ARP and involved in the communications regarding the operation of the parties' business venture. He is expected to testify regarding, among other things, the parties' Agreements, the parties' conduct, communications and course of performance both before and entering into the Agreements, and ARP's conduct in relation thereto. Mr. Kellner is further expected to testify that the Phoenix portfolio that Plaintiff selected was a performing portfolio, what it was expected to yield, and that it was performing significantly better than Defendants anticipated.

8. **Bruce Nichols**
c/o Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253

Mr. Nichols is and/or was at all times relevant to the Complaint an employee of ARP and involved in the communications regarding the relationship between the parties. He is expected to testify regarding, among other things, the parties' agreements, the conduct, communications and course of performance both before and entering into the Agreements, and ARP's conduct in relation thereto. Specifically, but without limitation, it is expected that Mr. Nichols will testify regarding Defendants' understanding and admissions that they owed Plaintiff for expenses incurred to rehab properties, that Defendants had repeatedly assured Plaintiff they would true up at some point, and the operations and alleged defaults of other preferred operators.

9. **Gary Miller**
Landsmith
Address to Be Determined

Mr. Miller is expected to testify as to Landsmith's preferred operator relationship with Defendants, Defendants' wrongful termination of that relationship, and Defendants' plan to utilize preferred operators to gain entry into new markets but then terminate those preferred operators on baseless grounds once Defendants have gained entry into those markets.

10. **Michelle Stewart**
c/o Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253

Ms. Stewart is expected to testify regarding, among other things, approval sent to process with the acquisition of various traunches and communications between the parties.

11. **Kristin Paxon**
c/o Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253

Ms. Paxon is expected to testify regarding, among other things, approval sent to process with the acquisition of various traunches, lease amendments for traunches, and communications between the parties.

12. **Shant Koumriqian**
c/o Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253

Mr. Koumriqian is expected to testify concerning communications with Plaintiff regarding the Phoenix and Indianapolis markets, his communications with Plaintiff, and his knowledge and involvement in the preferred operator program generally and with Plaintiff specifically.

13. **Sarah Aber**
c/o Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253

Ms. Aber is expected to testify regarding communications with Plaintiff, including but not limited to invoices sent to Plaintiff.

14. **Heritage**
Address to be Determined

Representatives of Heritage are expected to testify as to its preferred operator relationship with Defendants, Defendants' wrongful termination of that relationship, and Defendants' plan to utilize preferred operators to gain entry into new markets but then terminate those preferred operators on baseless grounds once Defendants have gained entry into those markets.

15. Without waiving any objection thereto, any witness or knowledgeable person identified by any party to this litigation.

Plaintiff will seasonably supplement this disclosure when additional witnesses are identified and when further details regarding the anticipated testimony of the identified witnesses is discovered.

IV. OTHER PERSONS WITH PERTINENT KNOWLEDGE

In addition to the witnesses listed in Section III, above, the individuals listed in Defendants' disclosure statements may have pertinent knowledge. Plaintiff will seasonably supplement this disclosure when additional individuals, if any, are located that it believes may have knowledge or information relevant to the events, transactions or occurrences that gave rise to this action.

V. PERSONS WHO HAVE GIVEN STATEMENTS

Plaintiff is unaware of anyone who has given a written or recorded statement pertaining to this matter.

VI. EXPERT WITNESSES

Plaintiff has not yet retained any testifying expert witnesses but reserves the right to do so at a later time.

VII. COMPUTATION AND MEASURE OF DAMAGES

As a result of Defendants' actions, Plaintiff has suffered damages as follows:

1. Unreimbursed rehab expenses (Phoenix) $453,000.

Plaintiff advanced $453,000 in rehabilitation expenditures for capital improvements to assets in the Phoenix/Las Vegas portfolio.

2. Loss of equity interest Min. $540,000.00

Plaintiff was entitled to 15% interest in the profit on the sale of the properties in the Phoenix/Las Vegas and Indianapolis portfolios. At current market values, it is estimated that Phx/Las Vegas portfolio's profit is $20,000-$30,000 profit per door which equates to a minimum of $3,000 per property for the 180 properties.

3. Amounts advanced on rehabilitated assets Min. $75,000.00

Plaintiff paid preferred rent at 9% on assets that Defendants refused to pay to stabilize in Indianapolis. Plaintiff reasonably expected that Defendants would stabilize the purchases. At an average of $45,000 per asset and 56 properties in the last traunch, Plaintiff sustained damages in the amount of $19,000 the first month. However, these damages increased in subsequent months due to turn over. Plaintiffs paid the entire 9%, but could not get the properties rent ready sufficient to generate rents

4. Lost commissions $800,000.00

Defendants repeatedly assured Plaintiff, as indicated in the LOI, that they would fund up to $40,000,000 to purchase properties but only funded approximately $28,000,000 when it wrongly terminated the agreement. Plaintiff would have been entitled to commissions of $3,000 per property additional properties. Assuming an average purchase price of $45,000 per property, Plaintiff would have earned approximately $800,000.00 on the additional 267 properties that should have been purchased.

5. Lost future net rents To Be Determined

If Defendants had stabilized the Indianapolis market rather than terminate Plaintiff's contracts, Plaintiff stood to receive approximately 2% of future rents on the $40,000,000 that Defendants agreed to invest.

6. Attorneys' Fees To Be Determined

7. Costs To Be Determined

8. Pre-judgment and post-judgment interest To Be Determined

Exact damage calculations will be supplemented as discovery progresses.

VIII. POTENTIAL TRIAL EXHIBITS

Plaintiff expects to use the following at trial:

1. Various United States Securities and Exchange Commission reports and exhibits for American Residential Properties, Inc. [Invision 00001-01121]

2. Master Lease Agreement dated October 24, 2012 between American Residential Leasing Company, LLC and Invision Capital Management and Confirmatory Lease Amendment for Added Property Nos. 1 through 13 regarding Phoenix – Las Vegas properties [Invision 01122-01236]

3. Master Lease Agreement dated January 18, 2013 between American Residential Leasing Company, LLC and Invision Capital Management and Confirmatory Lease Amendment for Added Property Nos. 1 through 5 regarding Indiana properties [Invision 01237-01320]

4. Invision – ARP Phoenix Master Tranche List as of August 16, 2013 through Amendment 13 & Tranche 14b [Invision 01321-01323]

5. Invision – ARP Indianapolis Master Tranche List as of August 23, 2013 through Amendment 5 & Tranche 6a-6c [Invision 01324-01330]

6. Various email communications between the Parties [Invision 01331-01433]

7. Various letter communications between J. Parker and American Residential Properties, Inc. and its counsel [Invision 01434-01443]

8. Any or all documents produced by any party or witness during the course of discovery of this litigation, including but not limited to, all documents disclosed, all responses to written discovery, deposition transcripts and exhibits thereto, additional exhibits that become known during discovery, and any exhibits listed in initial or supplemental disclosure statements. Plaintiff reserves the right to supplement this section as discovery progresses.

IX. OTHER POSSIBLY RELEVANT DOCUMENTS

Plaintiff is disclosing herewith documents Bates-labeled 00001-01443. Plaintiff believes that there are also documents in Defendants' possession, custody or control that may contain information relevant to the subject matter of this action or that may be reasonably calculated to lead to the discovery of admissible evidence.

Plaintiff is continuing to gather and review documents in her possession, custody or control that may contain information relevant to the subject matter of this action or that may be reasonably calculated to lead to the discovery of admissible evidence, and will disclose any such documents as they become available.

DATED this 8 day of May 2014.

DESSAULES LAW GROUP

By:
Jonathan A. Dessaules
Rachel W. Maron
Attorneys for Plaintiff/Counterdefendant

ORIGINAL of the foregoing mailed and
COPY e-mailed this 8 day of May, 2014 to:

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