

Clerk's Stamp

COURT FILE NUMBER	1401-12431
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	ACCESS MORTGAGE CORPORATION (2004) LIMITED
RESPONDENT	ARRES CAPITAL INC.
DOCUMENT	<u>APPLICATION</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCARTHY TÉTRAULT LLP 4000, 421 – 7 th Avenue SW Calgary, AB T2P 4K9 Attention: Walker W. MacLeod / Pantelis Kyriakakis Telephone: 403-260-3710 / 3536 Facsimile: 403-260-3501 Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

NOTICE TO RESPONDENT:

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	September 1, 2020
Time:	10:00 a.m.
Where:	Calgary Courts Centre
Before Whom:	The Honourable Justice B.E.C. Romaine

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought: Alvarez & Marsal Canada Inc. (the “**Receiver**”), in its capacity as the court-appointed receiver of Arres Capital Inc. (the “**Debtor**”), pursuant to the order issued by the Honourable Madam Justice Strekaf under the *Civil Enforcement Act* (Alberta) (the “**CEA**”) on February 13, 2015, as subsequently amended and restated pursuant to the Order issued by the Honourable Madam Justice B.E.C. Romaine on October 23, 2017 (the “**Receivership Order**”),

of all property identified in Schedule A of the Receivership Order (the “**Exigible Property**”), in the proceedings under Court File Number 1401-12431 (the “**Receivership Proceedings**”), applies for an Order, substantially in the form attached as Schedule “**A**” hereto:

Service

1. Declaring that this application (the “**Application**”) is properly returnable on September 1, 2020, service of this Application and the Fifth Report of the Receiver, dated August 26, 2020 (the “**Fifth Receiver’s Report**”) is validated and declared to be good and sufficient, that service of the Application and Fifth Receiver’s Report on the persons listed on the service list is validated, good, and sufficient, and that no persons, other than those listed on the service list, are entitled to service of the Application or the Fifth Receiver’s Report.
2. Approving the Fifth Receiver’s Report and the activities of the Receiver described therein and in all of its other reports filed in these Receivership Proceedings.
3. Approving the Receiver’s Final Statement of Receipts and Disbursements
4. Approving the final accounts of the Receiver and its legal counsel in respect of the Debtor (General) for the period July 1, 2019 to date, as summarized in the Fifth Receiver’s Report.
5. Declaring that, based on the evidence that is currently before the Court:
 - (a) the actions and conduct of the Receiver are approved and the Receiver has satisfied all of its duties and obligations as receiver and manager of the Debtor and the Exigible Property;
 - (b) the Receiver shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Receiver’s duties as receiver and manager of the Debtor and the Exigible Property, save and except for any liability arising out of fraud, gross negligence, or wilful misconduct on the part of the Receiver; and,
 - (c) any and all claims against the Receiver arising from, relating to, or in connection with the performance of the Receiver’s duties and obligations as receiver and manager of the Debtor and the Exigible Property, save and except for claims

based on fraud, gross negligence, or wilful misconduct, on the part of the Receiver, shall be forever barred and extinguished.

6. Ordering that, upon the filing of an appropriate certificate from the Receiver, the Receiver shall be discharged as receiver and manager of the Debtor and the Exigible Property and relieved of all further duties and obligations in respect of the Debtor and the Exigible Property.

7. Declaring that, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to perform any act necessary or incidental to the conclusion of the receivership of the Debtor and the Exigible Property.

8. Declaring that no action or proceeding arising from, relating to, or in connection with the performance of the Receiver's duties and obligations as receiver and manager of the Debtor and the Exigible Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver and on such terms as this Honourable Court may direct.

9. Such further and other relief as counsel for the Receiver may advise and this Honourable Court considers to be just and appropriate in the circumstances.

Grounds for making this application: The grounds for the Application are as follows:

10. Any and all capitalized terms used herein and not otherwise defined are hereby given the meaning that such terms have under and pursuant to the Fifth Receiver's Report, the Receivership Order or the Claims Process Order (as defined below), as applicable.

11. The Receiver was appointed as receiver and manager of the Exigible Property of the Debtor pursuant to the Receivership Order.

12. Pursuant to the Receivership Order, the Receiver is authorized:

- (a) to sell, convey, transfer, lease or assign the Exigible Property or any part of parts thereof out of the ordinary course of business: (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and (ii) with the approval of this Court in respect of any transaction in which the

purchase price or the aggregate purchase price exceeds the application amount set out in the preceding clause, and in each case notice under subsection 60(8) of the *Personal Exigible Property Security Act*, R.S.A. 2000, c. P-7 shall not be required;

- (b) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor; and
- (c) to settle, extend or compromise any indebtedness owing to or by the Debtor.

Graybrair Claims Process Order

13. Pursuant to the order issued by this Honourable Court in these Receivership Proceedings on June 4, 2018 (the “**Claims Process Order**”), the Receiver instituted a claims process to identify and resolve claims against the Debtor in respect of the Graybriar Funds. .

14. Certain Persons who were non-arm’s length from the Debtor (the “**Related Parties**”) advanced a claim (the “**Related Parties’ Claim**”) to the Graybriar Funds in the Claims Process. The Receiver disallowed this Related Parties’ Claim and, in September 2018, a hearing was held before the Honourable Justice C.M. Jones. On December 21, 2018, the Honourable Justice C.M. Jones issued reasons which, *inter alia*, upheld the disallowance of the Related Parties’ Claim.

15. Terrapin Mortgage Investment Corporation (“**Terrapin**”) advanced a claim (the “**Terrapin Claim**”) to the Graybriar Funds in the Claims Process. The Receiver disallowed the Terrapin Claim and, in September 2018, a hearing was held before the Honourable Justice C.M. Jones in respect to the Terrapin Claim. On December 21, 2018, the Honourable Justice C.M. Jones issued reasons which, *inter alia*, upheld the disallowance of the Terrapin Claim.

Distribution of Graybriar Funds

16. On August 13, 2019, this Honourable Court granted an Order (Distribution of Graybriar Funds), which authorized the Receiver to make distributions from the Graybriar Funds to the Trust Creditors up to the amount of each Trust Creditors’ Proven Claim. The Receiver was further authorized and empowered to holdback amounts on account of amounts due, accruing

due or estimated to accrue due to the Receiver's Charge or the Receiver's Borrowing Charge. All matters relating to the Claims Process Order, including distributions, have been completed

All Assets Have Been Dealt With and Claims Resolved

17. All Exigible Property that has value has been distributed or otherwise dealt with. The Receiver believes that any remaining Exigible Property does not have material value and the Receiver does not have funding in place to pursue Exigible Property that consists of litigation claims. As such, the administration of the estate of the Debtor is complete and it is appropriate for the Receiver to be discharged.

18. Such further and other grounds as counsel for the Receiver may advise.

Material or evidence to be relied on:

19. The Fifth Report of the Receiver, dated August 26, 2020.

20. Such further and other material as counsel for the Receiver may advise and this Honourable Court may permit.

Applicable rules:

21. Rule 6.3, 6.9, and 11.27 of the Alberta Rules Of Court, Alta. Reg. 124/2010.

22. Such further and other rules as counsel for the Receiver may advise and this Honourable Court may permit.

Applicable acts and regulations:

23. The Bankruptcy and Insolvency Act, RSC 1985, c B-3.

24. Such further and other acts and regulations as counsel for the Receiver may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

25. There are no irregularities complained of or objections relied on.

How the application is proposed to be heard or considered:

26. The Receiver proposes that the Application be heard in person with one, some or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"
FORM OF ORDER

Clerk's Stamp

COURT FILE NUMBER	1401-12431
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	ACCESS MORTGAGE CORPORATION (2004) LIMITED
RESPONDENT	ARRES CAPITAL INC.
DOCUMENT	<u>ORDER (Discharge)</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCARTHY TÉTRAULT LLP 4000, 421 – 7 th Avenue SW Calgary, AB T2P 4K9 Attention: Walker W. MacLeod / Pantelis Kyriakakis Telephone: 403-260-3710 / 3536 Facsimile: 403-260-3501 Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:	September 1, 2020
LOCATION OF HEARING:	Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER:	Justice B.E.C. Romaine

UPON the application (the "**Application**") of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of Arres Capital Inc. (the "**Debtor**"), pursuant to the order issued by the Honourable Madam Justice Strekaf under the *Civil Enforcement Act* (Alberta) (the "**CEA**") on February 13, 2015, as subsequently amended and restated pursuant to the Order issued by the Honourable Madam Justice B.E.C. Romaine on October 23, 2017 (the "**Receivership Order**"), in the proceedings under Court File Number 1401-12431 (the "**Receivership Proceedings**"); **AND UPON** having read the Application, the Fifth Report of the Receiver, dated August 26, 2020 (the "**Fifth Receiver's Report**"); all filed; **AND UPON** having read to Affidavit of Service of Katie Doran, to be filed (the "**Service Affidavit**"); **AND UPON** hearing counsel for the Receiver and counsel for any other persons present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. The Receiver's final accounts for fees and disbursements in respect of the Debtor (General), in the amount of \$●, as set out in the Receiver's Report are hereby approved without the necessity of a formal passing of its accounts.
3. The final accounts of the Receiver's legal counsel McCarty Tetrault LLP, for its fees and disbursements in respect of the Debtor (General), in the amount of \$● as set out in the Receiver's Report are hereby approved without the necessity of a formal assessment of its accounts.
4. The Receiver's activities as set out in the Receiver's Report and in all of its other reports filed herein, and the Statement of Receipts and Disbursements as attached to the Receiver's Report, are hereby ratified and approved.
5. The Receiver is authorized and directed to make the following distributions:
 - (a) the amount of \$● to satisfy the fees and disbursements of the Receiver and its legal counsel, as approved by this Order;
 - (b) the amount of \$● to satisfy the final fees and disbursements of Alvarez & Marsal Canada Inc., in its capacity as trustee in bankruptcy of the Debtor; and
 - (c) the balance to the beneficiary of the Receiver's Borrowing Charge.
6. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the

foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

7. Upon the Receiver filing with the Clerk of the Court a certificate, substantially in the form attached as Appendix “A” hereto, confirming that all distributions authorized by this Order have been completed then the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge herein:

- (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and
- (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

8. The Receiver’s activities as set out in the Fifth Receiver’s Report and in all of its other reports filed herein, are hereby ratified and approved.

9. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

10. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.C.Q.B.A.

APPENDIX "A" TO THE DISCHARGE ORDER

COURT FILE NUMBER 1401-12431

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ACCESS MORTGAGE CORPORATION (2004) LIMITED

RESPONDENT ARRES CAPITAL INC.

Clerk's Stamp

DOCUMENT **RECEIVER'S DISCHARGE CERTIFICATE**

ADDRESS FOR SERVICE McCARTHY TÉTRAULT LLP
AND CONTACT 4000, 421 – 7th Avenue SW
INFORMATION OF PARTY Calgary, AB T2P 4K9
FILING THIS DOCUMENT Attention: Walker W. MacLeod / Pantelis Kyriakakis
Telephone: 403-260-3710 / 3536
Facsimile: 403-260-3501
Email: wmacleod@mccarthy.ca /
 pkyriakakis@mccarthy.ca

RECEIVER'S DISCHARGE CERTIFICATE

1. All capitalized terms used in this Receiver's Discharge Certificate and not otherwise defined shall have the meaning ascribed to them in the Order issued by The Honourable Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta, in the within proceedings, granted on September 1, 2020 (the "**Discharge Order**").
2. Pursuant to the Discharge Order, the Court provided for the discharge of the Receiver, upon the filing of this certificate, by the Receiver, confirming that all remaining and residual funds have been distributed.

THE RECEIVER HEREBY CONFIRMS AND CERTIFIES THE FOLLOWING:

1. All remaining and residual funds have been distributed.

DATED THIS _____ DAY OF _____, 2020.

ALVAREZ & MARSAL CANADA INC., in its capacity as the court appointed receiver and manager of the assets, properties, and undertaking of **ARRES CAPITAL INC.** and not in its personal or corporate capacity

Per: _____
Name:
Title: