

COURT OF APPEAL ALBERTA



COURT OF APPEAL FILE NO. 2101-0117AC

TRIAL COURT FILE NUMBER 1401-12431

REGISTRY OFFICE CALGARY

APPLICANT ACCESS MORTGAGE INVESTMENT CORPORATION (2004) LIMITED

STATUS ON APPEAL NOT A PARTY TO THE APPEAL
STATUS ON APPLICATION NOT A PARTY TO THE APPLICANT

RESPONDENT ARRES CAPITAL INC.

STATUS ON APPEAL RESPONDENT
STATUS ON APPLICATION APPLICANT

NON-PARTY APPLICANTS KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY, SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

STATUS ON APPEAL APPELLANTS
STATUS ON APPLICATION RESPONDENTS

DOCUMENT **SIXTH REPORT OF THE RECEIVER**
JULY 29, 2021

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **RECEIVER**
ALVAREZ & MARSAL CANADA INC.
Bow Valley Square IV
Suite 1110, 250 – 6th Avenue SW
Calgary, Alberta T2P 3H7
Attention: Orest Konowalchuk / Bryan Krol
Telephone: (403) 538-4736 / (403) 538- 7523
Email: okonowalchuk@alvarezandmarsal.com / bkrol@alvarezandmarsal.com

COUNSEL
MCCARTHY TETRAULT LLP
Suite 4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Walker W. MacLeod / Pantelis Kyriakakis
Phone: (403) 260-3710 / 3613
Fax: (403) 260-3501
Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

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INTRODUCTION

1. On July 26, 2017, the Court of Queen’s Bench of Alberta (the “**Court**”) entered an Order (the “**Receivership Order**”) whereby Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed receiver (the “**Receiver**”) of Arres Capital Inc. (“**Arres**”, the “**Company**” or the “**Debtor**”) pursuant to Part 9 of *Civil Enforcement Act* (“**CEA**”), R.S.A. 2000, c. C-15. The effective date of the Receivership Order (date of pronouncement) was February 13, 2015 (the “**Receivership Proceedings**”).
2. On October 23, 2017, the Receiver sought advice and direction from this Honourable Court to amend the Receivership Order. The Receiver informed the Court that it did not believe it could properly administer the estate of the Debtor on the current terms of the Receivership Order. As a result, an amended and restated order to the Receivership Order (the “**Amended Receivership Order**”) was granted by Madame Justice B.E.C Romaine that, amongst other things, amended the existing Receivership Order to that of the Alberta Model Order.
3. On June 4, 2018, an order granted by Madame Justice B.E.C. Romaine (the “**Romaine Order**”) directed for the Clerk of the Court and Bishop & McKenzie LLP to pay out to the Receiver all funds and all interest accrued (collectively, the “**Graybriar Funds**”) held in court from various action numbers. In addition, the court ordered the Clerk of the Court is authorized and directed to payout to the Receiver of approximately \$235,000 and all accumulated interest thereon (the “**Court Funds**”) that was held under Court File Number 1201-16440 and paid into Court on February 14, 2014, pursuant to and in accordance with the order of the Honourable Justice Wilkins issued on February 11, 2014.
4. On August 13, 2019, an order was granted by Justice K.M. Eidsvik (the “**Eidsvik Order**”), which approved the professional fees incurred by the Receiver and its legal counsel, the cost allocation proposed by the Receiver and the conduct of the Receiver and its legal counsel.

5. On August 13, 2019, an order was granted by Justice K.M. Eidsvik (the “**Graybriar Distribution Order**”), which authorized the Receiver to make distribution of the Graybriar Funds to certain identified Persons.
6. On April 19, 2021, two orders were granted by Madame Justice B.E.C. Romaine which: (i) discharged the Receiver (the “**Discharge Order**”); and (ii) dismissed an application brought by the persons who are the Appellants in the within Appeal (the “**Dismissal Order**”). The Receiver has not completed its discharge due to the Appeal that has been filed by the Appellants.

PURPOSE

7. The purpose of the sixth report of the Receiver (the “**Sixth Report**” or “**this Report**”) is to provide the Court of Appeal with information in respect of the current cash position and the estimated priority obligations of the Debtor.
8. Capitalized words or terms not defined or ascribed a meaning in the Sixth Report are as defined or ascribed a meaning in the Amended Receivership Order and/or the other filed reports of the Receiver in the Receivership Proceedings.
9. All references to dollars are in Canadian currency unless otherwise noted.

TERMS OF REFERENCE

10. In preparing this Sixth Report, the Receiver has relied primarily upon stakeholders involved in various Arres’ projects, as well as certain financial unaudited financial information contained in Arres’ books and records. As discussed in prior reports, the Receiver has encountered various difficulties in its review of financial information due to the incomplete nature of the Arres’ books and records.
11. The Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of Arres’ financial information that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under

CASs in respect of the financial information. Future oriented financial information relied upon in this Report is based on the Receiver's assumptions regarding future events and actual results achieved will vary from this information and the variations may be materials.

THE COURT ORDERS

The Amended Receivership Order

12. The Amended Receivership Order was largely based on the Alberta Template Receivership Order and included standard language that the Exigible Property was subject to both the Receiver's Charge and the Receiver's Borrowing Charge. Both the Receiver's Charge and the Receiver's Borrowing Charge rank in priority to all "*...security interests, trusts, liens and encumbrances.*"
13. The Amended Receivership Order has not been appealed and is attached as Appendix A to this Report.

The Romaine Order

14. The Romaine Order:
 - a) authorized the release of the Court Funds to the Receiver and confirmed that, irrespective of whether the Court Funds were or were not Exigible Property, each of the Receiver's Charge and the Receiver's Borrowing Charge formed first charge on the Court Funds in priority to all "*...security interests, trusts, liens and encumbrances*";
 - b) approved the fees and disbursements of the Receiver and its counsel up to and including April 30, 2018; and
 - c) approved the actions and conduct of the Receiver up until May 29, 2018.
15. The Romaine Order has not been appealed and is attached as Appendix B to this Report.

The Eidsvik Order

16. The Eidsvik Order:
- a) approved a cost allocation professional fees between the Graybriar matters and general matters for the period July 26, 2017 to June 30, 2019;
 - b) approved the fees and disbursements of the Receiver and its counsel up to and including June 30, 2019; and
 - c) approved the actions and conduct of the Receiver up to and including August 8, 2019.
17. The Eidsvik Order has not been appealed and is attached as Appendix C to this Report.

The Graybriar Distribution Order

18. The Graybriar Distribution Order authorized the Receiver to make distribution of approximately \$1,025,057 of the Graybriar Funds. The Receiver has completed the distribution of the Graybriar Funds and currently holds approximately \$3,500 related to Graybriar matters.
19. The Graybriar Distribution Order has not been appealed and is attached as Appendix D to this Report.

THE CURRENT CASH POSITION

August 2, 2019 Cash Position

20. As of the date of the Eidsvik Orders and as detailed in the Receiver's Fourth Report, the Receiver reported ending cash position of \$252,900 as at August 2, 2019.
21. The ending cash position as at August 2, 2019, comprise as follows:

- a) Total cash receipts collected in the Receiver's general bank account totalled \$505,352, which primarily relate to:
 - i. the Court Funds of approximately \$241,800;
 - ii. principal advances of \$132,444 made by Access through Receiver's Borrowings (pursuant to a Receiver's Certificate) that are a priority obligation;
 - iii. \$65,000 with respect to a settlement agreement between Arres and another party prior to the Receivership Proceedings and \$65,156 relating to certain funds held in court in British Columbia that were released to the Receiver with respect to one of Arres' projects;
- b) Disbursements paid by the Receiver was \$253,343, which included payments of \$238,459 towards professional fees and costs of the Receiver and its counsel and approximately \$14,884 relating to general administration, GST and other costs.

Priority Obligations

- 22. The cost allocation that was approved by the Eidsvik Order was \$310,708 relating to professional fee and costs incurred to general matters.
- 23. Following the issuance of the Eidsvik Order:
 - a) there were \$72,249 in approved but unpaid professional fees, which constitute a priority obligation under the Amended Receivership Order; and
 - b) there were \$135,058 in Receiver's Borrowings, which constitute a priority obligation under the Amended Receivership Order.

24. Accordingly, at this time there was approximately \$45,000 of cash available, subject to the Receiver's Charge and Receiver's Borrowing Charge, to carry out the remaining administration of the estate as shown in the chart below:

Cash balance, 08.03.19	252,009
Less:	
Remaining unpaid Cost Allocation	(72,249)
Receiver's Borrowings	(135,058)
Cash remaining, 08.04.19	44,702

Cash Position (August 4, 2019 to July 26, 2021)

25. Since the Eidsvik Order, the Receiver incurred additional fees and costs which were approved in the Discharge Order granted by Romaine on April 19, 2021, along with forecast fees and costs. The actual receipts and disbursements since August 3, 2019 to July 27, 2021 (as reported in the Receiver's Fifth Report), which includes estimated forecast fees and costs, are as follows:

	5th Report (8/03/19 - 08/21/20)	08/22/20 - 07/27/21
Opening cash balance	252,009	209,999
Receipts		
Interest	5,395	-
Disbursements		
General Admin	(5,301)	-
Trustee	-	(25,000)
Professional fees	(42,104)	(72,249)
Professional Fees (forecast costs approved)		(39,699)
Ending cash	209,999	73,051
Remaining Court approved Forecast Costs		
Professional Fees (remaining forecast costs approved)		(10,301)
Contingency fees		(7,500)
Cash balance, 07.27.21		55,250
Estimated professional fees to address appeal		(55,250)
Receiver's Borrowings (Access) (principle + accrued interest)		(157,045)
Estimated shortfall to Access		(157,045)

26. The result of the priority charges created by the Amended Receivership Order, the Romaine Order, the cost allocation approved by the Eidsvik Order, and the forecast fees and costs to address the appeal, there will be no distributions will be made to the Appellants in the receivership proceedings. The priority payment to Access with respect to the Receiver's Borrowings will not be paid, should the Receiver and its counsel prepare for appeal and incur the estimated \$55,000 as noted in the above chart.

CONCLUSION

27. The Receiver files this Report in support of its application to have the Appeal dismissed on the basis of mootness.

All of which is respectfully submitted this 29th day of July, 2021.

**ALVAREZ & MARSAL CANADA INC.,
in its capacity as Receiver of Arres Capital Inc. and not in
its personal or corporate capacity**



Orest Konowalchuk, CPA, CA, CIRP, LIT
Senior Vice-President

Appendix A
Amended Receivership 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.
DOCUMENT **AMENDED AND RESTATED RECEIVERSHIP ORDER**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCarthy Tétrault LLP
Suite 4000, 421 7th Avenue SW
Calgary AB T2P 4K9
Attention: Sean F. Collins / Walker W. MacLeod / Amelia Tritter
Telephone: 403-260-3531 / 3710 / 3613
Facsimile: 403-260-3501
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / atritter@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: October 23, 2017
LOCATION OF HEARING: Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER: Justice B.E.C. Romaine

UPON the application of Alvarez & Marsal Canada Inc. (the "Receiver") in respect of the order issued in the within proceedings on February 13, 2015 and entered on July 26, 2017; **AND UPON** having read the Application, the first report of the Receiver, dated October 11, 2017 (the "First Receiver's Report"), and the Affidavit of Service of Katie Doran, filed; **AND UPON** hearing counsel for the Plaintiff, counsel for the Defendant and counsel for any other persons present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this Order and the First Receiver's Report is hereby abridged and service thereof is deemed good and sufficient.

I hereby certify this to be a true copy of the original Order
Dated this 23 day of Oct, 2017

for Clerk of the Court

APPOINTMENT

2. Pursuant to Part 9 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15, Alvarez & Marsal Canada Inc. is hereby appointed receiver, without security, of all of the property identified in Schedule "A" to this Order (the "**Exigible Property**").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Exigible Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Exigible Property and any and all proceeds, receipts and disbursements arising out of or from the Exigible Property;
 - (b) to receive, preserve and protect the Exigible Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Exigible Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part other business, or cease to perform any contracts of the Debtor;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
 - (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

- (f) 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;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Exigible Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Exigible Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Exigible Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court.
- (k) to market any or all the Exigible Property, including advertising and soliciting offers in respect of the Exigible Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- (l) to sell, convey, transfer, lease or assign the Exigible Property or any part or 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 applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Exigible Property Security Act*, R.S.A. 2000, c. P-7 shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Exigible Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Exigible Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Exigible Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Exigible Property against title to any of the Exigible Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its

instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Exigible Property in such Person's possession or control, shall grant immediate and continued access to the Exigible Property to the Receiver, and shall deliver all such Exigible Property (excluding Exigible Property subject to liens the validity of which is dependant on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all

access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Exigible Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Exigible Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "Regulatory Body" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Exigible Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA")) and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any

registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and this Court directs that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Exigible Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net

of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

13. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 ("**WEPPA**").
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Exigible Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Exigible Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Exigible Property shall be entitled to continue to use the personal information provided to it, and related to the Exigible Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or

- (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph 15(a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Exigible Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

- 16. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Exigible Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

- 17. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Exigible Property, as security for such fees and disbursements, incurred both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Exigible Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
- 18. The Receiver and its legal counsel shall pass their accounts from time to time.
- 19. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

- 20. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or

desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Exigible Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

21. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
22. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
23. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
24. In the event that the Exigible Property, or any proceeds, receipts and disbursements arising out of or from the Exigible Property, are insufficient to pay the Receiver's Charge or the accounts rendered by the Receiver from time to time relating to the performances of its duties and obligations pursuant to this Order, then and only then shall the Applicant and its successors and assigns be liable for payment of such funds to the Receiver.
25. The Applicant and the Receiver are granted leave of this Court to enter into whatever payment arrangements and/or engagement terms are jointly agreeable to each of them in respect of paragraph 24, above, but such payment arrangement or engagement terms shall be producible on the request of any of the parties to this Order.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Exigible Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

BANKRUPTCY PROCEEDINGS

33. The Debtor is and remains authorized and empowered to pursue an appeal of the order issued on July 26, 2017 in Court File Number 25-094212 that adjudged the Debtor to be bankrupt (the "**Bankruptcy Order**").

FILING

34. The Receiver shall establish and maintain a website in respect of these proceedings at <https://www.alvarezandmarsal.com/arrescapital> and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publically available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.



Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

EXIGIBLE PROPERTY

All of Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including any assets, undertakings and properties acquired by the Debtor after the date of this Order and all proceeds thereof. For greater certainty, and without limitation, the Exigible Property includes the Debtor's interest in (a) debts due to the Debtor either now or in the future and (b) causes of action.

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO.

AMOUNT

\$

1. THIS IS TO CERTIFY THAT ALVAREZ & MARSAL CANADA INC., THE INTERIM RECEIVER AND RECEIVER (the "Receiver") of all of the assets, undertakings and properties of ARRES CAPITAL INC. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the 23rd day of October, 2017 (the "Order") made in action number 1401-12431, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded daily on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Exigible Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Exigible Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at ●.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Exigible Property) as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

ALVAREZ & MARSAL CANADA INC., solely
in its capacity as Receiver of the Exigible
Property (as defined in the Order), and not in
its personal capacity

Per: _____

Name:

Title:

Appendix B
Romaine 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.

- and -

COURT FILE NUMBER 0903-17684 and 0903-17685
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

RESPONDENT (PLAINTIFF) ARRES CAPITAL INC.

NON-PARTICIPANTS (DEFENDANTS) GRAYBRIAR LAND COMPANY LTD. and GRAYBRIAR GREENS INC.

RESPONDENTS (NON-PARTIES) RICHCROOKS ENTERPRISES (2000) LTD., RICHCROOKS HOLDINGS LTD., 515476 ALBERTA LTD., DEMEL FINANCIAL CORP., GREENMAR HOLDINGS INC., ACCESS MORTGAGE INVESTMENT CORPORATION (2004) LIMITED, 4-A PROFESSIONAL SERVICES LTD., TEMPEST MANAGEMENT INC., HUDSON PRINCIPLE INVESTMENTS LTD., SWARTZ BROS. LIMITED, CHRISTOPHER SCHULTZ CONSULTING INC., CURLEW FINANCE, PAUL KORNLYO, MAX FELDMAN, SONYA SMITH, NORMAN MARTIN, BERNICE MARTIN, R. BRUCE CARSON, DELORES CARSON, LEELA KRISHNOMOURTHY, MARGUERITE MCRITCHIE, PRITI GAUR, MADHU GAUR, WENDY MCKENNA, JANET LORRAINE WATSON, JIM WATT, GASTON RAJAKARUNA, SHIRLEY RAJAKARUNA, GARY DREFS, ROBERT ARMSTRONG, MICHAEL KURTZ, MARLENE KURTZ, KEVEN R. PEDERSEN, SUSAN FINE, CAROL KIMIYO SEKIYA, HOLLY SEKIYA and STEVEN OGG

RESPONDENT (INTERVENOR) TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT (INTERESTED PARTY) 1798583 ALBERTA LTD.

- and -

COURT FILE NUMBER 1201-16440

I hereby certify this to be a true copy of the original
Dated this 05 day of June 2018
for Clerk of the Court

COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK,
THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE,
LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S.
IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA,
MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA
SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN
REILLY, SWARTS BROS LIMITED and CLARA MAE
WOROSCHUK
DEFENDANTS ARRES CAPITAL INC. and WESLEY SERRA
THIRD PARTY DEFENDANTS Y-K PROJECTS LTD., ALLEN BECK and SHELLY BECK
DOCUMENT **ORDER (Directing Release of the Graybriar Funds and the
Court Funds and Confirming the Receivership Charges)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCARTHY TÉTRAULT LLP
4000, 421 – 7th 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: June 4, 2018
LOCATION OF HEARING: Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER: Justice B.E.C. Romaine

UPON 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 Streckaf 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 Second Report of the Receiver, dated May 29, 2018 (the "**Second Receiver's Report**"), and the

Affidavit of Service of Katie Doran, sworn on June 1, 2018, all 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 the Application and the Second Receiver's Report in the manner described in the Service Affidavit is good and sufficient and no persons other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit are entitled to receive notice of the Application or service of the Second Receiver's Report.
2. 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 Receivership Order.

RELEASE OF GRAYBRIAR FUNDS

3. The Clerk of the Court is hereby directed to pay out to the Receiver all funds and all interest accrued thereon (collectively, the "**Graybriar Court Funds**") held under Court File Numbers 0903-17684 and 0903-17685 (the "**Graybriar Actions**"), derived from the sale of the units (individually, a "**Unit**", collectively, the "**Units**") under Condominium Plan 0827766 (the "**Condo Plan**"), which Graybriar Court Funds are comprised of:
 - (a) all funds held by this Court and derived from the sale of Unit 48 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master K. Laycock granted on February 1, 2016;
 - (b) all funds held by this Court and derived from the sale of Unit 63 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on March 10, 2016;
 - (c) all funds held by this Court and derived from the sale of Unit 65 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master J. Farrington granted on June 14, 2016;
 - (d) all funds held by this Court and derived from the sale of Unit 69 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on August 25, 2017;

- (e) all funds held by this Court and derived from the sale of Unit 67 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on November 1, 2017 and subsequently amended pursuant to an Amended Order of Master J.L. Mason granted on December 15, 2017; and,
- (f) all funds held by this Court and derived from the sale of Unit 68 and paid into Court, under the Graybriar Actions, pursuant to the Consent Order of Master J.L. Mason granted on December 15, 2017,

(collectively, the "**Graybriar Sale Approval Orders**").

- 4. Bishop & McKenzie LLP is hereby directed to pay to the Receiver all funds and all interest accrued thereon derived from the sale of Unit 55 of the Condo Plan (collectively, along with the Graybriar Court Funds, referred to as, the "**Graybriar Funds**").

RELEASE OF COURT FUNDS

- 5. The Clerk of the Court is hereby authorized, empowered, and directed to pay out to the Receiver the \$235,000 and all accumulated interest thereon (the "**Court Funds**") currently held under Court File Number 1201-16440 and paid into Court on February 14, 2014, pursuant to and in accordance with the Order of the Honourable Justice Wilkins issued on February 11, 2014.

CONFIRMATION OF RECEIVERSHIP CHARGES

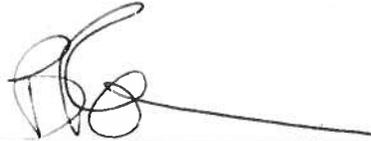
- 6. The Graybriar Funds and the Court Funds (collectively, the "**Funds**") are subject to each of the Receiver's Charge and the Receiver's Borrowings Charge. Each of the Receiver's Charge and the Receiver's Borrowing Charge shall form a first charge on the Funds in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the *Bankruptcy and Insolvency Act* (Canada), and the Receiver is authorized and empowered to apply the Funds against current or future indebtedness owing on either the Receiver's Charge or the Receiver's Borrowing Charge, as applicable.

APPROVAL OF CONDUCT, FEES AND DISBURSEMENTS

7. The actions and conduct of the Receiver, as of the date of the Second Receiver's Report and based upon the evidence contained in the Second Receiver's Report, be and are hereby approved.
8. The interim accounts of the Receiver and its legal counsel, as summarized at paragraphs 65 and 66 of the Second Receiver's Report, be and are hereby approved.

GENERAL

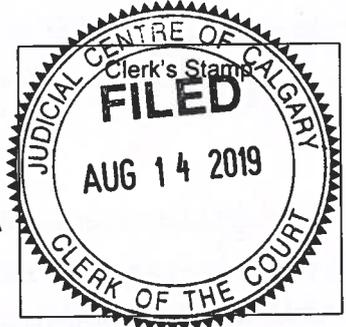
9. Service of this Order on the persons comprising the Service List shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons, other than those on the Service List, are entitled to be served with a copy of this Order.



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

Appendix C
Eidsvik 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.
 DOCUMENT **ORDER (Fee and Conduct Approval)**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 McCARTHY TÉTRAULT LLP
 4000, 421 – 7th 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: August 13, 2019
 LOCATION OF HEARING: Calgary, Alberta
 NAME OF JUDGE WHO MADE THIS ORDER: Justice Eidsvik

I hereby certify this to be a true copy of the original Order
 Dated this 14 day of Aug 2019
 S. Macleod
 for Clerk of the Court

UPON 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 Strekof 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 Fourth Report of the Receiver, dated August 8, 2018 (the "Fourth Receiver's Report"), and the Affidavit of Service of Katie Doran, sworn on August 12, 2019, all 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 the Application and the Fourth Receiver's Report in the manner described in the Service Affidavit is good and sufficient and no persons other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit are entitled to receive notice of the Application or service of the Fourth Receiver's Report.

APPROVAL OF RECEIVER'S ACTIONS

2. The actions and conduct of the Receiver, as reported in the Fourth Receiver's Report are hereby approved and ratified as of and up to the date of the Fourth Receiver's Report.

FEE APPROVAL (GENERAL)

1. The Receiver's interim accounts for fees and disbursements in respect of the Debtor (General) in the period May 1, 2018 to June 30, 2019 (in the amount of \$18,445) are hereby approved without the necessity of a formal passing of accounts.

2. The interim accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (General) in the period May 1, 2018 to June 30, 2019 (in the amount of \$24,231) are hereby approved without the necessity of a formal assessment of its accounts.

FEE APPROVAL (GRAYBRIAR - INCURRED)

3. The Receiver's interim accounts for fees and disbursements in respect of the Debtor (Graybriar - Incurred) in the period May 1, 2018 to June 30, 2019 (in the amount of \$135,915) are hereby approved without the necessity of a formal passing of accounts.

4. The interim accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (Graybriar - Incurred) in the period May 1, 2018 to June 30, 2019 (in the amount of \$159,697) are hereby approved without the necessity of a formal assessment of its accounts.

FEE APPROVAL (GRAYBRIAR - COMPLETION)

5. The Receiver's estimated accounts for fees and disbursements in respect of the Debtor (Graybriar – Completion) in the period July 1, 2019 to completion (in the estimated amount of \$40,000) are hereby approved without the necessity of a formal passing of accounts.

6. The estimated accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (Graybriar – Completion) in the period July 1, 2019 to completion (in the estimated amount of \$40,000) are hereby approved without the necessity of a formal assessment of its accounts.

7. The Receiver be and is hereby granted leave to apply to amend or vary paragraphs 7 and 8 of this Order in the event that the estimated fees for completion exceed the amounts provided for herein.

COST ALLOCATION APPROVAL

8. The allocation of accounts issued by the Receiver and its legal counsel, McCarthy Tétrault LLP, for their fees and disbursements in respect of the Debtor in the period July 26, 2017, to June 30, 2019 (in the total amount of \$606,320) are hereby approved as follows:

- (a) General matters: \$310,708;
- (b) Graybriar Funds matters: \$295,612.

MISCELLANEOUS MATTERS

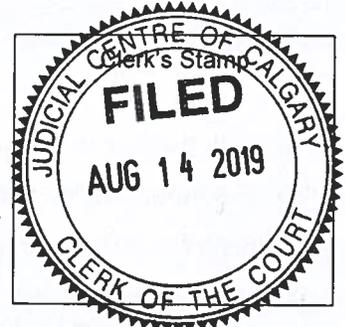
9. Service of this Order on the Persons in attendance at the application for this Order shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons are entitled to be served with a copy of this Order.

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



Appendix D
Graybriar Distribution 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.
 DOCUMENT **ORDER (Distribution of Graybriar Funds)**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

McCARTHY TÉTRAULT LLP
 4000, 421 – 7th 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: August 13, 2019
 LOCATION OF HEARING: Calgary, Alberta
 NAME OF JUDGE WHO MADE THIS ORDER: Justice Eidsvik

I hereby certify this to be a true copy of the original Order
 Dated this 14 day of August 2019
[Signature]
 for Clerk of the Court

UPON 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 Streckaf 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 Fourth Report of the Receiver, dated August 8, 2019 (the "**Fourth Receiver's Report**"), and the Affidavit of Service of Katie Doran, sworn on August 12, 2019, all filed (the "**Service Affidavit**"); **AND UPON** having read the Order (Graybriar Funds Claims Process Order) (the "**Graybriar Funds Claims Process Order**"), granted on June 4, 2018 by the Honourable Justice B.E.C. Romaine; **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 the Application and the Fourth Receiver's Report in the manner described in the Service Affidavit is good and sufficient and no persons other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit are entitled to receive notice of the Application or service of the Fourth Receiver's Report.
2. 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 Fourth Receiver's Report or the Graybriar Funds Claims Process Order, as applicable.

DISTRIBUTION

3. Each of the Persons listed in Schedule "A" hereto (collectively, the "**Trust Creditors**") be are hereby declared to have a Proven Claim to the Graybriar Funds in the amount identified in Schedule "A" hereto. The Receiver be and is hereby expressly authorized and empowered, immediately and from time to time hereafter as the Receiver determines appropriate, to make *pro rata* distributions from the Graybriar Funds to the Trust Creditors up to the amount of each Trust Creditors Proven Claim. In making such distributions, the Receiver is further authorized and empowered to holdback amounts on account of amounts due, accruing due or estimated to accrue due the Receiver's Charge or the Receiver's Borrowing Charge.

MISCELLANEOUS MATTERS

4. The Receiver and any other interested Person shall be at liberty to apply for further advice, assistance, and directions, as may be necessary, in order to give full force and effect to the terms of this Order.
5. Service of this Order on the Persons in attendance at the application for this Order shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons are entitled to be served with a copy of this Order.



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

**SCHEDULE "A" TO THE FORM OF ORDER (DISTRIBUTION OF GRAYRBRIAR FUNDS)
LIST OF PROVEN CLAIMS**

Arres Capital Inc. - In Receivership	
Graybriar Claims Process	
Distribution Analysis - Sugimoto Priority	
Investors with Filed POCs	
TOTAL CLAIMS	\$ 20,841,148.35
Estimated Total Available for Distribution	\$ 1,025,057.00
Sugimoto Legal Fees	\$ 221,623.20
Estimated Total Available for Distribution after Priority Payment	\$ 803,433.80
	Total Revised Claim
1025571 Alberta Ltd.	\$ 58,750.00
515476 Alberta Ltd.	\$ -
Access Mortgage Corporation (2004) Limited	\$ -
Access Mortgage Corporation (2004) Limited	\$ -
Carpenter, Pao-Lien	\$ 235,000.00
CME Holdings Ltd.	\$ -
CUMIS Inc. (c/o Stan Smith)	\$ -
Carpenter, Fred	\$ -
Carson, Delores	\$ -
Carson, Bruce	\$ -
Curlew Finance	\$ -
Demel Financial Corp.	\$ -
Drefs, Gary	\$ -
Foy, Barb	\$ 117,500.00
Felzel Management, Inc.	\$ 893,000.00
Garden Valley Construction Ltd.	\$ -
Graham Pye Management Ltd.	\$ 117,500.00
Gaur, Satish	\$ 741,000.00
Greenmar Holdings Inc.	\$ -
Hornby, Robin	\$ 23,500.00
Hudson Principle Investment Ltd.	\$ -
Jalali, Ali	\$ 470,000.00
Krishnamoorthy, Leela	\$ -
Kurtz, Michael	\$ -
Liwanag, Mike	\$ 35,250.00
Leroy, Connie	\$ -
McKenna Investments	\$ -
McRitchie, Marguerite	\$ -
Middleton Energy Management Ltd.	\$ 552,250.00
Ogg, Steven	\$ -
Pedersen, Kevin R.	\$ -
Pimlico Capital Corporation Inc.	\$ 470,000.00
Rajakaruna, Gaston	\$ -
Rajpal (Gaur), Priti	\$ -
Sicherman, Harold	\$ -
Schulman, Mayer	\$ 129,250.00
Siemens, Leslie	\$ 58,750.00
Siemens, Annette & Shane	\$ 152,750.00
Scott, Carey	\$ 329,000.00
Sewers, Greg & Cindy	\$ 70,500.00
Sugimoto & Company	\$ 14,860,148.35
Schulman Family Trust	\$ 70,500.00
Sharma, Mona Preeti	\$ 282,000.00
Thompson, Nick	\$ 235,000.00
Thompson, Gwen & Dave	\$ 235,000.00
Thakur, Mona	\$ 235,000.00
Universal Rebar Detailing Ltd.	\$ 187,500.00
Veiner, Doran	\$ 235,000.00
Yee, Jeffrey	\$ 47,000.00
Zivea Ltd.	\$ -
TOTAL	\$ 20,841,148.35