

I hereby certify this to be a true copy of

the original ORDER FIAT

Dated this 26 day of July 2017

JC
for Clerk of the Court



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 **RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Let the within FIAT Order be filed despite non-compliance with the following Rules/Practice Directions:
Alberta Rules of Court, Rule 9.5(2)
"K.M. Eidsvik"
 Justice/Deputy Registrar
 Dated: July 26 2017

Attention: Jeffrey Oliver

DATE ON WHICH ORDER WAS PRONOUNCED: FEBRUARY 13, 2015
 NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice Strekaf
 LOCATION OF HEARING: Calgary, Alberta

UPON the application of Access Mortgage Corporation (2004) Limited in respect of Arres Capital Inc. (the "**Debtor**"); **AND UPON** having read the Application, the Affidavits of David Murphy and Wes Serra, filed, and the Affidavit of Service of Richard Comstock, filed; **AND UPON** reading the consent of Alvarez & Marsal Canada Inc. to act as receiver ("**Receiver**") of the Debtor, filed; **AND UPON** hearing counsel for the Applicant and counsel for the Respondent; **IT IS HEREBY ORDERED AND DECLARED THAT:**

APPOINTMENT

- 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 Debtor's current and future Exigible Property, as defined in this Order, wherever situate, including all proceeds thereof.
- For the purposes of this Order, "**Debtor's Property**" shall mean all of the property of the Debtor, of every nature or kind whatsoever, including without limitation, real property and personal property, interests in mortgages, debt instruments, security agreements, negotiable instruments,

accounts receivable, and cash, whether held legally by or beneficially for the Debtor and whether or not such property has been assigned or purported to have been assigned by the Debtor to any third party since May 1, 2009, however;

- (a) Subject to the Receiver's determinations in paragraph 4 of this Order, the Debtor shall have sole authority to operate and conduct its business including the administration of trust agreements and mortgage administration agreements that may currently be in force and to prosecute actions as a plaintiff or defend actions brought against the Debtor. In the event of a disagreement as to whether or not a trust agreement or mortgage administration agreement may currently be in force, the Receiver shall be at liberty to apply to the Court for advice and directions.
3. For the purposes of this Order, "**Exigible Property**" shall mean any of the Debtor's Property that the Receiver has determined is not exempt from writ proceedings or distress proceedings.
4. In exercising its powers pursuant to this Order but not necessarily prior to such exercise of its powers, the Receiver shall first determine and calculate which of the Debtor's Property is Exigible Property. For the purpose of making such determination, the Receiver shall make inquiries regarding the following having regard to the relevant time period commencing May 1, 2009 and ending on the date of such determination:
 - (a) which property is owned by the Debtor and/or in which property the Debtor has an interest;
 - (b) the extent to which any property owned by the Debtor or in which property the Debtor has an interest has been assigned to any third party (the "**Assigned Property**");
 - (c) the validity and priority of the assignment of any Assigned Property;
 - (d) if any property, including cash, was transferred by the Debtor to any third party out of the ordinary course of business;
 - (e) the validity of any accounts receivable of the Debtor including, without limitation, those items described in Schedule A to the Statutory Declaration-Financial Statement of Debtor (Corporate Debtor) sworn by Wes Serra on behalf of the Debtor on October 20, 2014; and
 - (f) the practicality of enforcing on the valid accounts receivable of the Debtor;

DEBTOR NOT TO DISPOSE OF DEBTOR'S PROPERTY AND THE RECEIVER TO HOLD THE DEBTOR'S PROPERTY

5. The Debtor is hereby enjoined and restrained from disposing of the Debtor's Property until such time as the Receiver determines that such Debtor's Property, or portion thereof, is not included in the Exigible Property or there is a further Court Order respecting such Debtor's Property.
6. Notwithstanding any of the terms of this Order, particularly paragraphs 2 through 5, nothing in this Order shall be interpreted or applied to prevent, enjoin or restrain the Debtor or its counsel from complying with, or assisting in compliance with, Court Orders granted prior to the date of this Order or from providing or executing on directions, instructions, or processes which are set out in the terms of Court Orders granted prior to the date of this Order and the Receiver shall not act or take steps contrary to any such prior Court Orders, where applicable, without further Court Order.
7. 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, 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 only in accordance with the terms of this Order or any further order of this Court.
8. Should either the Court or the Receiver determine that any of the Debtor's Property held by the Receiver is not Exigible Property, then the Receiver shall release such property to the owner of the property either to such person directly or by way of their legal counsel, if applicable within a reasonable period of time.

RECEIVER'S POWERS

9. The Receiver shall prepare a report to the Court with respect to the findings of the Receiver with respect to the matters set forth in paragraph 4, above.
10. 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 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;
- (d) to receive and collect all monies and accounts owed or hereafter owing to the Debtor, regardless of whether such monies and accounts are Debtor's Property or Exigible Property, subject to the terms of this Order;
- (e) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Debtor's Property, the Exigible Property, the receivership and to share information, all subject to such terms as to confidentiality as the Receiver deems advisable;
- (f) to enter into agreements with any trustee in bankruptcy appointed in respect of the Exigible Property, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (g) to register a copy of this Order and any other Orders in respect of the Exigible Property against title to any of the Debtor's Property pending a determination as to the Exigible Property as set out in this Order; and,
- (h) 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

11. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, financial institutions, 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 Debtor's Property in such Person's possession or control, shall grant immediate and continued access to and control of the Debtor's Property to the Receiver, and shall deliver all such Debtor's Property (excluding Debtor's Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request, with such request to only

be made by the Receiver in strict compliance with the terms of this Order and without transferring legal title to any such Debtor's Property to the Receiver until and unless such Debtor's Property is determined to be Exigible Property, unless otherwise ordered by the Court.

12. 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 12 or in paragraph 13 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 communications or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure. For greater certainty, the Receiver shall be entitled to receive access from the Debtor's legal representatives and from the Debtor to all statements of account for legal services rendered and trust statements and trust account records for the Debtor since May 1, 2009, but the Receiver shall keep all such statements of account and trust statements strictly confidential except as is necessary to comply with this Order. In the event that the Receiver requires access from the Debtor's legal representatives and/or from the Debtor to all statements of account for legal services rendered and trust statements and trust account records for any party related to, associated or affiliated with the Debtor since May 1, 2009, the Receiver shall be at liberty to apply to the Court for advice and directions.
13. 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

14. 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 EXERCISE OF RIGHTS OR REMEDIES

15. All rights and remedies (including, without limitation, set-off rights) against the Receiver are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however 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

16. No Person 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.

NOTICE OF ACTIONS TO BE PROVIDED TO RECEIVER

17. The Receiver shall be entitled to receive from any and all Persons having notice of this Order formal written notice of any and all future applications, appeals, actions or proceedings in which the Debtor is a party or sought to be added as a party (the “**Actions**”), including any Actions which have been scheduled for hearing but have not yet been heard, as required pursuant to the applicable Rules of Court relating to such Actions and such notice shall be properly served upon the Receiver or the solicitor for the Receiver.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. (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 (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 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.

THE STAYED ACTIONS

19. The following actions (the “**Stayed Actions**”) are hereby stayed pending further Order of the Court or the consent of all of the parties to such Stayed Actions, respectively:

- (a) ABQB Action No. 1401-14106;
- (b) ABQB Action No. 1501-01106;
- (c) ABQB Action No. 1401-03476

LIMITATION ON THE RECEIVER'S LIABILITY

20. 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.

RECEIVER'S ACCOUNTS

21. 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.
22. The Receiver and its legal counsel shall pass their accounts from time to time.
23. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the Exigible Property 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.
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 amongst the various assets, if any, 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. The Receiver shall complete and submit to the Court and the parties to this action a Receiver's report respecting the matters set forth in paragraphs 4 and 9 of this Order by no later than 120 days from the date this Order is filed with this Honourable Court or such other time as may be agreed by the parties or as directed by this Honourable Court.
31. 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.
32. 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.

33. The costs of this Application are hereby reserved and shall be determined at a later date by this Honourable Court.
34. 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.

EFFECT OF ORDER

35. If an order is granted adjudging Arres bankrupt, in either of Court File Nos. ABQB 25-094212 or 094786 (the "**Bankruptcy Order**"), then this order shall be stayed upon the later of the expiry of the time for appeal from the Bankruptcy Order, or if Arres appeals the Bankruptcy Order, then the dismissal of Arres' appeal.

FILING

36. This Order is issued and shall be filed in Court of Queen's Bench Action No. 1401-12431 and in the Stayed Actions and in any other action which the Receiver deems appropriate in its discretion.

" K. M. Eidsvik "
Justice of the Court of Queen's Bench of Alberta

For J. Streckaf