

COURT FILE NUMBER 2201-03735
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF THE BANK OF MONTREAL
DEFENDANTS THE INSTITUTE OF WELLNESS AND ADVANCED
AESTHETICS LTD., WANDA LEE, THE ESTATE OF JONATHAN
PATRICK LEE, 1608309 ALBERTA LTD., and MOUNT ROYAL
SURGICAL CENTRE INC.

Clerk's Stamp

DOCUMENT **ORDER (Sale Approval and Vesting Order)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Walker W. MacLeod
Tel: 403-260-3710
Fax: 403-260-3501
Email: wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: July 7, 2022
LOCATION OF HEARING OR TRIAL: Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER: Honourable Justice B.E.C. Romaine

UPON the application (the “**Application**”) of Alvarez & Marsal Canada Inc. (the “**Receiver**”), in its capacity as the court-appointed receiver and manager of The Institute of Wellness and Advanced Aesthetics Ltd., 1608309 Alberta Ltd., and Mount Royal Surgical Centre Inc. (collectively, the “**Debtors**”) pursuant to the Receivership Order granted on April 1, 2022 (the “**Receivership Order**”), in the within proceedings (the “**Proceedings**”), for an order approving the sale transaction (collectively, the “**Transaction**”) contemplated by the Asset Purchase Agreement, dated June 24, 2022 (the “**APA**”), between the Debtors by and through the Receiver in its capacity as court appointed receiver and manager of the assets, properties and undertaking and not in its personal or corporate capacity, as vendor, and 2440656 Alberta Corporation (the “**Purchaser**”), as purchaser, attached as Confidential Appendixes “1” to “3” to the Second Report of the Receiver dated June 27, 2022 (the “**Confidential Appendices**” and the “**Second Receiver’s Report**”, respectively) (a copy of the APA with the purchase price redacted is attached as Appendix “B” to the Second Receiver’s Report), and the vesting in the Purchaser, all of the Debtors’ right, title, and interest in and to the assets described in the APA (collectively, the “**Assets**”);

AND UPON HAVING READ the Receivership Order dated April 1, 2022 (the “**Receivership Order**”), the Second Receiver’s Report, the Affidavit of Service of Katie Doran, sworn on July 5, 2022 (the “**Service Affidavit**”), the First Supplement to the Second Report of the Receiver, dated July 7, 2022 (the “**Supplemental Second Receiver’s Report**”), and the Brief of Law and Argument of the Receiver, dated July 7, 2022, all filed; **AND UPON** having read the Confidential Appendices , unfiled; **AND UPON** hearing counsel for the Receiver and for any other parties who may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application, the Second Receiver’s Report, and the Supplemental Second Receiver’s Report is abridged, the Application is properly returnable today, service of the Application, the Second Receiver’s Report, and the Supplemental Second Receiver’s Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the “**Service List**”) attached as an exhibit to the Service Affidavit, are entitled to service of the Application, the Second Receiver’s Report, or the Supplemental Second Receiver’s Report.

DEFINED TERMS

2. Capitalized terms used in this Order and not otherwise defined shall have the meaning ascribed to them in the APA.

APPROVAL OF THE TRANSACTION

3. The Transaction is hereby approved and execution of the APA is hereby authorized, and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Assets to the Purchaser (or its nominee).

VESTING OF THE ASSETS

4. Upon the delivery of a Receiver’s certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule “**A**” hereto (the “**Receiver’s Certificate**”), all of the Debtors’ right, title, and interest in and to the Assets, as described in the APA, shall vest absolutely,

exclusively, and entirely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights or pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary, or otherwise, whether or not they have attached or been perfected, registered, or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and
- (c) any liens or claims of lien under the *Builders’ Lien Act* (Alberta);

and for greater certainty, this Court orders that all Claims and Encumbrances, other than Permitted Encumbrances, affecting or relating to the Assets are hereby expunged, discharged and terminated as against the Assets.

5. Upon delivery of the Receiver’s Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested, and directed to accept delivery of such Receiver’s Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Assets subject only to Permitted Encumbrances. Without limiting the foregoing, the Registrar of the Alberta Personal Property Registry (the “**PPR Registrar**”) shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtors in any of the Assets which are of a kind prescribed by applicable regulations as serial-number goods.

6. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and the Receiver's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
7. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Assets is required for the due execution, delivery and performance by the Debtors of the APA.
8. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets from and after delivery of the Receiver's Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber, or otherwise form a charge, security interest, lien, or other Claim against the Assets and may be asserted against the net proceeds from sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
9. Except as expressly provided for in the Sale Agreement or by section 5 of the Alberta *Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtors.
10. Upon completion of the Transaction, the Debtors and all persons who claim by, through or under the Debtors in respect of the Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Assets, or any artifacts,

certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by, through or against the Debtors.
12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
13. The Receiver is directed to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof to the Purchaser (or its nominee).
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use (of such information) to which the Debtors were entitled.

ASSIGNMENT OF THE LEASE

15. Upon the delivery of the Receiver's Certificate by the Receiver to the Purchaser and Certus Developments Inc. (the "**Landlord**"), all of the rights and obligations of the Debtors under the Lease shall be assigned, conveyed and transferred to, and assumed by, the Purchaser.
16. The assignment of the Lease is hereby declared valid and binding upon the Debtors, as assignees, the Purchaser, as assignor, and the Landlord notwithstanding any restriction, condition or prohibition contained in the Lease relating to the assignment thereof, including any provision requiring the consent of the Landlord.
17. No Person (including, without limitation, the Landlord) shall make or pursue any demand, claim, action or suit or exercise any right or remedy against the Purchaser relating to:

- (a) the insolvency of the Debtors; or
- (b) any failure by the Debtors to perform a non-monetary obligation under the Lease;

and all such Persons shall be forever barred and estopped from taking such action. For greater certainty:

- (c) nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the Closing under the Lease other than in respect of items (a) to (b), above; and
- (d) any Permitted Encumbrances shall continue to have the priority and entitlement attaching thereto notwithstanding this Order.

18. The Receiver, for and on behalf of the Debtors, shall pay the sum of \$64,409 (the “**Cure Costs**”) to the Landlord within three (3) Business Days of the delivery of the Receiver’s Certificate to the Landlord.

MEDICAL RECORDS

19. In the event that the Purchaser comes into the possession or control of any medical records as part of the transfer of the Assets to the Purchaser, including any medical records for which Dr. Farrah Yau or Dr. Jevon Brown are custodians, the Purchaser shall abide by all applicable health and privacy legislation in respect of such medical records.

MISCELLANEOUS MATTERS

20. Notwithstanding:
- (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the “BIA”), in respect of the Debtors, and any bankruptcy order issued pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of the Debtors; and
 - (d) the provisions of any federal or provincial statute:

the vesting of the Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

21. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
22. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, 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 order and to provide such assistance to the Receiver, as an officer of the 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.
23. Service of this Order shall be deemed good and sufficient by:
 - (a) Serving same on:
 - (i) the persons listed on the Service List created in these proceedings;
 - (ii) any other person served with notice of the Application for this Order;
 - (iii) any other parties attending or represented at the Application for this Order;
and
 - (b) posting a copy of this Order on the Receiver's website at <https://www.alvarezandmarsal.com/IWAAL>

and service on any other person is hereby dispensed with.

24. Service of this Order may be effected by facsimile, electronic mail, personal delivery, or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A" TO THE ORDER (SALE APPROVAL AND VESTING ORDER)
RECEIVER'S CERTIFICATE**

Clerk's Stamp

COURT FILE NUMBER	2201-03735
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	BANK OF MONTREAL
DEFENDANTS	THE INSTITUTE OF WELLNESS AND ADVANCED AESTHETICS LTD., WANDA LEE, THE ESTATE OF JONATHAN PATRICK LEE, 1608309 ALBERTA LTD., and MOUNT ROYAL SURGICAL CENTRE INC.

DOCUMENT	RECEIVER'S CERTIFICATE
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ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, Alberta T2P 4K9 Attention: Walker W. MacLeod Tel: 403-260-3710 Fax: 403-260-3501 Email: wmacleod@mccarthy.ca
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RECITALS

- A. Pursuant to an Order of the Honourable Justice J.T. Neilson of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), dated April 9, 2022, Alvarez & Marsal Canada Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertakings, property, and assets of The Institute of Wellness and Advanced Aesthetics Ltd., 1608309 Alberta Ltd., and Mount Royal Surgical Centre Inc. (collectively, the "**Debtors**").
- B. Pursuant to an Order of the Court dated July 7, 2022 (the "**Sale Approval and Vesting Order**"), the Court approved the Asset Purchase Agreement, dated June 24, 2022 (the "**APA**"), between the Debtors by and through the Receiver in its capacity as court appointed receiver and manager of the assets, properties and undertaking and not in its personal or corporate capacity, as vendor, and 2440656 Alberta Corporation (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Assets, which vesting is to be effective with respect to the Assets

upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in Article 6 of the APA have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Assets payable on the Closing Date pursuant to the APA;
2. The conditions to Closing as set out in Article 6 of the APA have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

Alvarez & Marsal Canada Inc., in its capacity as court appointed receiver and manager of the assets, properties and undertaking of **The Institute of Wellness and Advanced Aesthetics Ltd., 1608309 Alberta Ltd. and Mount Royal Surgical Centre Inc.**, and not in its personal or corporate capacity.

Per: _____
Name:
Title: