

THE KING'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC HOLDING CO. LTD.

(the "**Applicants**")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

NOTICE OF MOTION
(APPROVAL AND VESTING AND OTHER RELIEF)
DATE OF HEARING: TUESDAY, OCTOBER 31, 2023 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE CHARTIER

McDougall Gauley LLP
500 616 Main Street
Saskatoon SK S7J 0H6

IAN A. SUTHERLAND, K.C. / CRAIG FRITH
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CLIENT FILE NO. 568954.1

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**NOTICE OF MOTION
(APPROVAL AND VESTING AND OTHER RELIEF)**

Alveraz & Marsal Canada Inc. (the "**Monitor**"), the court appointed monitor of Manitoba Clinic Medical Corporation ("**Medco**") and The Manitoba Clinic Holding Co. Ltd. ("**Realco**") (collectively, the "**Applicants**"), will make a motion before the Honourable Mr. Justice Chartier on Tuesday, the 31st day of October, 2023 at 10:00 o'clock in the forenoon or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1. An Order in substantially the form attached hereto as Schedule "A" to this Notice of Motion ("**AVO**");

- (a) abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on October 31, 2023 at 10:00 a.m., and dispensing with further service thereof;
- (b) approving the the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated October 20, 2023 (the "**Sale Agreement**") between the Monitor, in its capacity as court-appointed monitor for and on behalf of Realco and not in its personal or corporate capacity, and Gamma-Dynacare Central Medical Laboratory Limited Partnership, by its general partner, Gamma-Dynacare Central Medical

Laboratories GP Inc. (the "**Purchaser**"), a copy of which is appended to the Fifth Report of the Monitor (the "**Fifth Report**");

- (c) authorizing and directing the Monitor to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of Realco's 2,000,000 Class "B" units (the "**Purchased Assets**") in Gamma-Dynacare Central Medical Laboratory Limited Partnership (the "**Partnership**") to the Purchaser;
 - (d) declaring that, upon the delivery of the Monitor's Certificate (as that term is defined in the AVO) to the Purchaser, all of the Applicants' right, title, and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser free and clear of and from any and all Claims and Encumbrances (as those terms are defined in the AVO); and
 - (e) such further and other relief as counsel may advise and this Honourable Court may permit.
2. An Order in substantially attached hereto as Schedule "B" to this Notice of Motion:
- (a) sealing the Confidential Supplement to the Fifth Report of the Monitor (the "**Confidential Supplement**") until the these restructuring proceedings have been completed or further order of the Court;
 - (b) approving the Fifth Report and the Monitor's activities, actions, and conduct as described therein;
 - (c) approving the professional fees and disbursements of the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel, as set out in the Fifth Report; and
 - (d) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

3. For the purposes of this application, the Monitor relies on:
- (a) sections 11 and 36 of the CCAA; and
 - (b) Rules 1.04, 3.02(1), 16.04(1), and 16.08 of the *King's Bench Rules*.

SERVICE

4. The Monitor's Notice of Motion, Brief of Law, and the Fifth Report were served by email and facsimile, as required, on the members of the service list established in these proceedings, as contemplated by paragraph 47 of the Amended and Restated Initial Order of the Honourable Mr. Justice Kroft dated December 1, 2022.

SALE APPROVAL

5. As outlined in the Fifth Report and Confidential Supplement:
- (a) the Purchased Assets are a minority interest in a limited partnership, making them difficult to publicly market;
 - (b) there is limited documentation and information available to the Monitor, making it difficult to independently verify the percentage of Realco's interest in the Purchased Assets;
 - (c) the purchase price falls within the high range of the Monitor's assessment of the Purchased Assets' value;
 - (d) the revenue derived from the Purchased Assets is based upon an agreement between the Partnership and the Government of Manitoba that is scheduled to expire on March 31, 2024, which affects the potential value of the same;
 - (e) Canadian Imperial Bank of Commerce, the senior secured creditor and creditor who will be most economically affected by the proposed Transaction, was extensively consulted throughout the negotiations and is supportive of the Sale Agreement; and
 - (f) the Monitor is therefore of the view that the Transaction and the consideration to be received for the Purchased Assets is more beneficial to the creditors than a sale under a bankruptcy and reasonable and fair in the circumstances.

SEALING ORDER

6. The amount of the Transaction's purchase price and other commercially sensitive particulars have been redacted from the copy of the Sale Agreement appended to the

Second Report. The Confidential Supplement contains the unredacted version of this document.

7. The sealing of the Confidential Supplement is being sought so as to avoid prejudicing any future efforts to sell the Purchased Assets if, for example, the Court does not approve the Transaction or the same does not close after Court approval is granted.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. the Amended and Restated Initial Order signed December 2, 2022.
2. the Affidavit of Keith McConnell sworn November 28, 2022.
3. the Pre-Filing Report of Alvarez & Marsal Canada Inc. dated November 29, 2022.
4. the First Report of the Monitor dated January 20, 2023.
5. the Second Report dated April 18, 2023;
6. the Third Report of the Monitor dated July 31, 2023;
7. the Fourth Report of the Monitor dated September 22, 2023;
8. the Fifth Report of the Monitor dated October 27, 2023;
9. the Affidavit of Service, to be filed;
10. the Monitor's Brief of Law; and
11. Such further and other documentation as counsel may advise and this Honourable Court may permit.

October 27, 2023

McDOUGALL GAULEY LLP
500 616 Main Street, Saskatoon SK S7J 0H6
Ian A. Sutherland, K.C. / Craig Frith
PHONE: (306) 665-5417 / (306) 665-5432
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TO: SERVICE LIST

SCHEDULE "A"

File No. CI 22-01-38613

THE KING'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC HOLDING CO. LTD.

(the "**Applicants**")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

APPROVAL AND VESTING ORDER
DATE OF HEARING: TUESDAY, OCTOBER 31, 2023 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE CHARTIER

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(the "**Applicants**")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as the court-appointed monitor (the "**Monitor**") of Manitoba Clinic Medical Corporation ("**Medco**") and The Manitoba Clinic Holding Co. Ltd. ("**Realco**") (collectively, the "**Applicants**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Monitor, in its capacity as court-appointed monitor for and on behalf of Realco and not in its personal or corporate capacity, and Gamma-Dynacare Central Medical Laboratory Limited Partnership, by its general partner, Gamma-Dynacare Central Medical Laboratories GP Inc. (the "**Purchaser**"), a copy of which is appended to the Fifth Report of the Monitor dated October 27, 2023 (the "**Fifth Report**"), and vesting in the Purchaser Realco's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the Fifth Report and the Confidential Supplement thereto (the "**Confidential Supplement**") and on hearing the submissions of counsel for the Monitor, the Applicants, Canadian Imperial Bank of Commerce, and the Purchaser, no one else

appearing for any other person on the service list, although properly served as appears from the affidavit of Shelby Braun sworn October ____, 2023; all filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE TRANSACTION

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Monitor is hereby authorized and approved, with such minor amendments as the Monitor and the Purchaser may deem necessary. The Monitor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the *Companies' Creditors Arrangement Act* (Canada) or any applicable legislation.

VESTING OF THE PROPERTY

4. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of Realco's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or

otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, 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: (i) any encumbrances or charges created by the Amended and Restated Initial Order of the Honourable Mr. Justice Kroft dated December 1, 2022; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", but which term shall not include the permitted encumbrances listed at Schedule B herein) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased 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.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Applicants;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct or action other than in good faith pursuant to any applicable federal or provincial legislation.

MISCELLANEOUS MATTERS

8. 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 Applicants, the Monitor and their 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 Applicants or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

October ____, 2023

CHARTIER, J.

Schedule A – Form of Monitor’s Certificate

File No. CI 22-01-38613

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MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Kroft of the Manitoba Court of King's Bench (the "**Court**") dated December 1, 2022, Alvarez & Marsal Canada Inc. was appointed as the Monitor (the "**Monitor**") of Manitoba Clinic Medical Corporation ("**Medco**") and The Manitoba Clinic Holding Co. Ltd. ("**Realco**") (collectively, the "**Applicants**").

B. Pursuant to an Order of the Court dated October 31, 2023, the Court approved the agreement of purchase and sale made as of October 20, 2023 (the "**Sale Agreement**") between the Monitor, in its capacity as court-appointed monitor for and on behalf of Realco and not in its personal or corporate capacity, and Gamma-Dynacare Central Medical Laboratory Limited Partnership, by its general partner, Gamma-Dynacare Central Medical Laboratories GP Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of Realco's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the

Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing have been satisfied or waived by the Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Monitor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

Alvarez & Marsal Canada Inc., in its capacity as Monitor of the undertaking, property and assets of the Applicants, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Permitted Encumbrances

Nil

SCHEDULE "B"

File No. CI 22-01-38613

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ORDER
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ORDER
(SEALING AND OTHER RELIEF)

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as the court-appointed monitor (the "**Monitor**") of Manitoba Clinic Medical Corporation and The Manitoba Clinic Holding Co. Ltd. (collectively, the "**Applicants**") for an order sealing the Confidential Supplement (the "**Confidential Supplement**") to the Fifth Report of the Monitor dated October 27, 2023 (the "**Fifth Report**"), and approving the Fifth Report, the Confidential Supplement, and the professional fees and disbursements of the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel, as set out in the Fifth Report, was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the Fifth Report and the Confidential Supplement, and on hearing the submissions of counsel for the Monitor, the Applicants, Canadian Imperial Bank of Commerce, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of Shelby Braun sworn October ___, 2023; all filed:

SEALING OF THE CONFIDENTIAL SUPPLEMENT

1. THIS COURT ORDERS that the Confidential Supplement and the appendices thereto be filed under seal, kept confidential, and not form part of the public record. The Confidential Supplement shall be kept separate and apart from the other contents of the Court file in a sealed envelope which sets out the style of cause of these proceedings and a statement that the contents thereof are subject to a Sealing Order, and shall not be opened except by the Registrar of this Court and the Honourable Mr. Justice Chartier (or another Justice of the Court of King's Bench).

2. The Confidential Supplement shall only be made available or form part of the public record after these restructuring proceedings have been completed or further Order of this Court.

APPROVALS

3. THIS COURT ORDERS that the Fifth Report, the Confidential Supplement, and the activities, actions, and conduct of the Monitor described therein are hereby approved.

4. THIS COURT ORDERS that the fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP, and the Applicants' legal counsel, Taylor McCaffrey LLP, as set out in the Fifth Report are hereby approved.

MISCELLANEOUS MATTERS

5. 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 Applicants, the Monitor and their 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 Applicants or the Monitor, as an officer of this Court, as may be necessary or

desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

October ____, 2023

CHARTIER, J.