

COURT/ESTATE FILE NUMBER 2301- 15230

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c. B-3, AS AMENDED

AND

IN THE MATTER OF THE RECEIVERSHIP OF WABI SABI BRANDS LTD.



NB C111352

DOCUMENT Originating **APPLICATION**
(Sale Approval and Vesting Order, Distribution and Sealing)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
DLA PIPER (CANADA) LLP
1000, 250 – 2 Street SW
Calgary, Alberta T2P 0C1
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Phone Number: (403) 698 8782
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Email address: carole.hunter@ca.dlapiper.com
File No. 113585-00001

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the judge.
To do so, you must be in Court when the application is heard as shown below:

Date: Tuesday, November 21, 2023
Time: 11:00 a.m.
Where: Calgary Courts Centre (Via Webex)
Before Whom: The Honourable Justice B. B. Johnston

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

Remedy claimed or sought:

1. The Applicant, Harris & Partners Advisory Inc., in its capacity as receiver (the "**Receiver**") of Wabi Sabi Brands Ltd. (the "**Debtor**") respectfully seeks an Order substantially in the form attached hereto as Schedule "A":

- (a) abridging the time for service of this Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient;
- (b) approving the sale agreement between the Receiver and Bloomex Inc. (the “**Purchaser**”) dated November 13, 2023 (the “**Sale Agreement**”);
- (c) approving a distribution to Gregory George Turnbull and Catherine Marea Samuel (together, “**Secured Creditors**”) of the net proceeds available for distribution following payment of any priority claims and the professional fees;
- (d) sealing the Confidential Appendices to the First Report of the Receiver dated November [], 2023; and
- (e) such further and other relief as counsel may request and this Honourable Court may deem appropriate in the circumstances,

Grounds for making this Application

2. On September 7, 2023, the Debtor filed a Notice of Intention to Make a Proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act* and Harris & Partners Inc. (“**HPI**”) was appointed as proposal trustee.

3. On September 18, 2023, the Debtor was deemed to have filed an assignment in bankruptcy and HPI was appointed the licensed insolvency trustee of the bankrupt estate.

4. On September 22, 2023, Harris & Partners Advisory Inc. was appointed as the Receiver of the assets, property and undertaking of the Debtor pursuant to an appointment by the Secured Creditors in accordance with the terms of their security agreements with the Debtor.

5. The Debtor was in the business of producing and distributing cannabis-infused chocolates. The operations of the Debtor ceased upon bankruptcy. The property of the Debtor includes property, equipment and supplies necessary for the production of cannabis-infused edible chocolates.

6. The Receiver initiated a marketing process on October 3, 2022 with a bid deadline of October 27, 2023. The Receiver disseminated the marketing materials to a broad but focused group of 46 strategic investors. Of those parties, eight prospective purchasers signed confidentiality agreements and gained access to the virtual data room. Two binding offers were submitted by the bid deadline.

7. The offer from the Purchaser represents the highest and best offer for the property and assets of the Debtor on an “as is, where is”, can be completed within an acceptable timeframe, is not conditional on financing and only requires the approval of this Honourable Court.

8. As of the date of the bankruptcy, the Secured Creditors were owed the approximate principal amount of \$60,000 plus interest and costs, by the Debtor pursuant to secured promissory notes. The Debtor granted each of the Secured Creditors a general security agreement. The Receiver is not aware of any

amounts owing to Canada Revenue Agency (“CRA”) for payroll source deductions or goods and services taxes, however, CRA has not completed its audit of the Debtor’s payroll account.

9. The information in the Sale Agreement and the other documentation appended to the Confidential First Report contain sensitive financial information regarding the assets of the Debtor. The temporary sealing of this information is necessary because, in the event that the transaction contemplated in the Sale Agreement does not close, efforts to re-market the assets could be impaired due to the disclosure of the financial information which would have a detrimental impact on the Debtor’s stakeholders. The salutary effects of temporarily sealing this information outweigh any deleterious effects.

Material or evidence to be relied on:

10. The pleadings and proceedings had and taken in this Action;
11. The First Report of the Receiver dated November 14, 2023, to be filed; and
12. Such further or other material or evidence as counsel may advise and this Court may permit.

Applicable Acts and Regulations:

13. Part XI of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended; and
14. Such further and other Acts and Regulations as counsel may advise and this Court may permit.

Any irregularity complained of or objection relied on:

15. None.

How the application is proposed to be heard or considered:

16. By Webex before the Honourable Justice B. B. Johnston

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"
DRAFT SALE APPROVAL AND VESTING ORDER

COURT/ESTATE FILE NUMBER	2301-	Clerk's Stamp:
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT	<p>IN THE MATTER OF THE <i>BANKRUPTCY AND INSOLVENCY</i> <i>ACT</i>, RSC 1985, c. B-3, AS AMENDED</p> <p>AND</p> <p>IN THE MATTER OF THE RECEIVERSHIP OF WABI SABI BRANDS LTD.</p>	
DOCUMENT	<p>ORDER (Sale Approval and Vesting Order and Discharge of Proceeds)</p>	

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

DLA PIPER (CANADA) LLP
1000, 250 – 2 Street SW
Calgary, Alberta T2P 0C1

Lawyer: Carole J. Hunter

Phone Number: (403) 698 8782
Fax Number: (403) 697 6600
Email address: carole.hunter@ca.dlapiper.com

File No. 113585-00001

DATE ON WHICH ORDER WAS PRONOUNCED:	November 21, 2023
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER:	The Honourable Justice B.B. Johnston

UPON THE APPLICATION of Harris & Partners Advisory Inc., in its capacity as receiver (the "**Receiver**") of the property, assets and undertaking of Wabi Sabi Brands Ltd. (the "**Debtor**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase

and sale between the Receiver and Bloomex Inc. (the “**Purchaser**”) dated November 13, 2023 (the “**Sale Agreement**”) and vesting in (i) the Purchaser all of the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”).

AND UPON HAVING READ the Application, the First Report of Receiver dated November [], 2023 (the “**First Report**”), including Confidential Appendix 1 and Confidential Appendix 2 attached thereto (together, the “**Confidential Appendices**”); **AND UPON** hearing the submissions of counsel for the Receiver and the other parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of the Notice of Application for this Order is hereby validated and deemed good and sufficient, this application is properly returnable today.

APPROVAL OF THE TRANSACTION

2. The Transaction is hereby approved and 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 Purchased Assets to the Purchaser (or its nominee).

VESTING OF PROPERTY

3. Upon delivery of a Receiver’s certificate to the Purchaser and its Nominee substantially in the form set out in Schedule “A” hereto (the “**Receiver’s Closing Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets (excluding the Lands) shall vest absolutely in the name of the Purchaser, 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 of 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, “**Claims**”) including, without limiting the generality of the foregoing:
 - (a) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;
 - (b) any liens or claims of lien under the *Builders’ Lien Act* (Alberta); and
 - (c) those Claims listed in Schedule “B” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in Schedule “C” (collectively, “**Permitted Encumbrances**”).

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

4. Upon delivery of the Receiver's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Receiver's Closing 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 Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:
 - (a) 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 Debtor in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
5. 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 Sale Agreement. Presentment of this Order and the Receiver's Closing 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 Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement.
7. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing 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 Purchased Assets and may be asserted against 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. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from the sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.

8. 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 Debtor.
9. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased 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 Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
10. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by, through or against the Debtor.
11. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
12. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

DISTRIBUTION OF PROCEEDS

13. The security interest granted by the Debtor to Gregory George Turnbull and Catherine Marea Samuel (together, the "**Secured Creditors**") over the Purchased Assets is valid and enforceable. Following payment of the fees and disbursements of the Receiver and its legal counsel and subject to any reserves established by the Receiver for priority claims and funds the Receiver deems necessary to complete the administration of the receivership proceedings, the Receiver is hereby

authorized and directed to distribute the net proceeds in the receivership estate to the Secured Creditors up to owing to them by the Debtor under the Secured Promissory Notes (as such term is defined in the First Report).

SEALING ORDER

15. The Clerk of the Court is hereby directed to seal the Confidential Appendices to the First Report, pursuant to paragraph 16 of this Order.
16. The Confidential Appendices to the First Report, shall be sealed on the Court file, notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court* until the filing of the Receiver's Closing Certificate confirming that the sale of the Purchased Assets has been completed. The Clerk of this Honourable Court shall file the Confidential Second First in a sealed envelope that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL APPENDICES TO THE FIRST REPORT OF HARRIS & PARTNERS ADVISORY INC., IN ITS CAPACITY AS RECEIVER OF WABI SABI BRANDS LTD DATED NOVEMBER [], 2023.

THE CONFIDENTIAL APPENDICES TO THE FIRST REPORT ARE SEALED PURSUANT TO AN ORDER ISSUED BY THE HONOURABLE JUSTICE B. B. JOHNSTON ON NOVEMBER 21, 2023, UNTIL THE FILING OF RECEIVER'S CERTIFICATE CONFIRMING THAT THE SALE OF THE PROPERTY, ASSETS AND UNDERTAKING OF THE DEBTOR HAS BEEN COMPLETED.

17. Any interested party may apply to this Court to vary or amend the provisions relating to the sealing of the Confidential Appendices to the First Report 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, as this Court may order.

MISCELLANEOUS MATTERS

18. 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 Debtor, and any bankruptcy order issued pursuant to any such applications;
 - c) any assignment in bankruptcy made in respect of the Debtor; and
 - d) the provisions of any federal or provincial statute,

the vesting of the Purchased 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 Debtor and shall

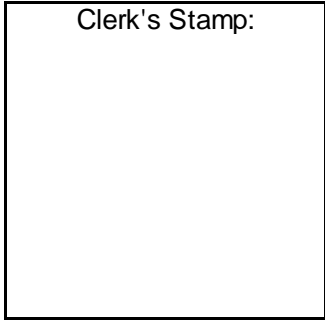
not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

19. 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.
20. 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.
21. Service of this Order shall be deemed good and sufficient by:
 - a) serving the same on the persons listed on the service list created in these proceedings, any other person served with notice of the application for this Order, any other parties attending or represented at the application for this Order, the Purchaser or the Purchaser's solicitors; and
 - b) posting a copy of this Order on the Receiver's website at:
<https://harrispartnersadvisory.ca/wabisabi>
 - c) and service on any other person is hereby dispensed with.
22. 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.

J.C.K.B.A.

SCHEDULE "A"

COURT/ESTATE FILE NUMBER 2301-
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANT IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c. B-3, AS AMENDED
AND
IN THE MATTER OF THE RECEIVERSHIP OF WABI SABI BRANDS LTD.

DOCUMENT **RECEIVER'S CERTIFICATE**

DLA PIPER (CANADA) LLP
1000, 250 – 2 Street SW
Calgary, Alberta T2P 0C1

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Lawyer: Carole J. Hunter
Phone Number: (403) 698 8782
Fax Number: (403) 697 6600
Email address: carole.hunter@ca.dlapiper.com
File No. 113585-00001

RECITALS

- A. On September 22, 2023, Harris & Partners Advisory Inc. was appointed as the receiver (the "Receiver") of the property, assets and undertaking of Wabi Sabi Brands Ltd. (the "Debtor").
- B. Pursuant to an Order of the Court of King's Bench of Alberta (the "Court") dated November 21, 2023, the Court approved the agreement of purchase and sale made as of November 13, 2023 (the "Sale Agreement") between the Receiver and Bloomex Inc. and provided for the vesting in (i) the Purchaser of the Debtor'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 Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser (or its nominee) of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 3

of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 3 of the Sale Agreement 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]**.

HARRIS & PARTNERS ADVISORY INC., in its capacity as Receiver of the property, assets and undertaking of Wabi Sabi Brands Ltd., and not in its personal capacity.

Per; _____
Name:
Title:

SCHEDULE "B"
ENCUMBRANCES

Personal Property

Secured Party	Registration No.	Registration Date / Expiry Date	Registration Type	Collateral
Bank of Montreal	21020314893	February 3, 2021 February 3, 2026	Security Agreement	LF269 Collateral described as BMO Term Investment #00062585875 in the principal amount of \$20,000.00 Proceeds: All present and after-acquired property
Gregory George Turnbull	22052609608	May 26, 2022 May 26, 2029	Security Agreement	All of the present and after-acquired personal property of the Debtors
Catherine Marea Samuel	22052611588	May 26, 2022 May 26, 2029	Security Agreement	All of the present and after-acquired personal property of the Debtors
Meridian OneCap Credit Corp.	23020711548	February 7, 2023 February 7, 2029	Security Agreement	Scale filler(s), sealer system(s) together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto and all proceeds in any form derived directly or indirectly from any sale and/or dealings with the collateral and a right to an insurance payment or other payment that indemnifies or compensates for loss or damage to the collateral or proceeds of the collateral

**SCHEDULE "C"
PERMITTED ENCUMBRANCES**

None.