

Court File No.: CV-23-00699238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

ORTHO STUDIO EXPRESS, INC.

Applicant

-and-

DIGITAL ORTHODONTIC CARE INC.

Respondent

MOTION RECORD

August 9, 2023

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TO: THE SERVICE LIST

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TAB 1

Court File No.: CV-23-00699238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

ORTHO STUDIO EXPRESS, INC.

Applicant

-and-

DIGITAL ORTHODONTIC CARE INC.

Respondent

**NOTICE OF MOTION
(RE: STALKING HORSE SALE PROCEDURES)**

Richter Inc., (the “**Richter**”) in its capacity as receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties (the “**Property**”) of Digital Orthodontic Care Inc. (the “**Company**”) will make a motion to a Judge presiding over the Commercial List on August 17, 2023 at 11:00 am, or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1 (1) because it is on consent, unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;

By video conference.

At the following location:

Video conference details to be uploaded to Caselines.

THE MOTION IS FOR:

1. An Order (the “**Order**”), substantially in the form attached hereto as Tab 2 to the Motion Record, for the following relief, *inter alia*:
 - a) abridging the time for service of the Motion Record so that this Motion is properly returnable on August 17, 2023, and dispensing with further service thereof;
 - b) approving a Liquidation Agreement as between the Receiver and Infinity Asset Solutions (the “**Liquidator**”);
 - c) approving a sale and solicitation process (the “**Sale Procedures**”) for materially all of the property of the Company that is not subject to the Liquidation Agreement (the “**Sale Process Property**”);
 - d) approving the Stalking Horse Purchase Agreement between the Receiver and Ortho Studios Express, Inc. (the “**Lender**” or the “**Stalking Horse Bidder**”), dated August 10, 2023 (the “**Stalking Horse Bid**”) pursuant to which the Stalking Horse Bidder will act as a stalking horse purchaser in respect to the Sale Process Property;
 - e) authorizing and directing the Receiver to do all things reasonably necessary to conduct and give full effect to the Sale Procedures, subject to any amendments or modifications

to the Sale Procedures that the Receiver considers to be appropriate and necessary to carry out its obligations set out therein;

- f) in the event that the Stalking Horse Transaction is determined by the Receiver to be the Successful Bid pursuant to and in accordance with the Sale Procedures, approving the Stalking Horse Transaction (as defined below) and vesting the Sale Process Property to the Stalking Horse Purchaser upon the occurrence of:
- (i) the Receiver serving a report to the Court and on the service list designating the Stalking Horse Transaction as the Successful Bid; and
 - (ii) the Receiver receiving no written objection from any person as to the selection by the Receiver of the Stalking Horse Transaction as the Successful Bid within 10 days of serving such report;
- g) allowing the Receiver to repudiate the lease of the Premises (as defined below) by providing to the landlord not less than seven (7) days' prior notice in writing of its intention to do so;
- h) approving the First Report to the Court of Richter, in its capacity as Receiver, dated August 10, 2023 (the "**First Report**") and the activities of the Receiver as described therein; and
- i) such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

2. Pursuant to an application by the Lender under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, the Receiver was appointed pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) on July 4, 2023 (the “**Appointment Order**”).
3. The Company was established in 2017 and operated under the business name ‘SureCure Orthodontic Aligners’. The Company is a privately owned corporation organized under the *Business Corporations Act*, RSO 1990 c B.16. The Company operated from a leased premises located at 8400 Lawson Road, Units 2-4, in Milton, Ontario (the “**Premises**”).
4. The Company manufactures customized orthodontic supplies, primarily clear aligners used to straighten teeth and related accessories.
5. Pursuant to a Line of Credit Grid Promissory Note dated March 20, 2020 as between the Company and the Lender, the Lender advanced the principal amount of US\$5,000,000, (the “**Promissory Note**”) which obligations were registered in the Ontario Personal Property Security Registry. The Company failed to make principal and interest payments owing under the Promissory Note.
6. As of May 8, 2023, the Company was indebted to the Lender in the amount of US\$5,055,000, together with additional accrued and unpaid interest and fees, costs and expenses (the “**Secured Indebtedness**”).

7. The primary objective of the Company's receivership proceedings is to create a stabilized environment to allow the Receiver to realize on the Property for the benefit of all stakeholders.
8. Pursuant to the Appointment Order, the Receiver is authorized to market any or all of the Property.

The Liquidation Plan

9. A portion of the Property of the Company comprises of tools, equipment, vehicle and furniture (the "**Liquidation Property**"). The Stalking Horse Bidder has elected not to purchase the Liquidation Property.
10. Accordingly, the Receiver has solicited liquidation proposals from five liquidators in respect to the Liquidation Property. Four liquidators each submitted multiple offers including outright purchases, net minimum guarantee offers, and strictly commission-based arrangements.
11. After consultation with the Lender (also the Stalking Horse Bidder), the Receiver is seeking the Court's authorization to engage the Liquidator to conduct a liquidation process for the Liquidation Property under a net minimum guarantee arrangement (the "**Liquidation Agreement**").
12. Under the Liquidation Agreement, the Liquidator will pay the Receiver a guaranteed minimum amount of \$515,000 for the Liquidation Property (the "**NMG Amount**"). Further details on the planned liquidation is set out in the First Report.

13. The terms in the Liquidation Agreement, including the Liquidator’s NMG Amount is consistent with standard insolvency transactions, to be completed on an “as-is, where is” basis, without any material representations or warranties. All sales of Liquidation Property are to be on the same terms.

The Sale Procedures

14. The Sale Procedures govern the sale solicitation process intended to be conducted by the Receiver for the balance of the Company’s assets, including, *inter alia*: minority investments in other businesses, intellectual property and other credits, refunds and rebates.
15. The Sale Procedures include the approval of a “stalking horse bid”, as advanced by the Lender pursuant to an Stalking Horse Purchase Agreement dated August 9, 2023 (the “**Stalking Horse Transaction**”).
16. The Stalking Horse Bid is intended to set the floor price for other bidders in the sale process. It is anticipated that the Stalking Horse Bid will add competitive tension, thereby increasing the maximization of value to be derived with respect to the Sale Process Property.
17. The Sale Procedures also sets out key milestones in terms of receiving bids and ultimately the process of selecting the Successful Bid (subject to the approval of this Court):

Milestone	Deadline
Commencement of Sale Procedures	Promptly following the granting of the Sale Procedures Order
Bid Deadline	September 29, 2023
Auction Date (if required)	October 6, 2023
Approval Hearing Date	October 13, 2023

Outside Date	October 27, 2023
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18. The proposed Sale Procedures represent a reasonable and commercially efficient process which allows a sufficient opportunity to secure the best possible purchase price for the Sale Procedure Property for the benefit of all stakeholders. The proposed Sale Procedures are open and transparent and will be conducted to maximize value for all stakeholders.
19. The Receiver believes that it is in the best interests of the Company's stakeholders to promptly proceed with the Sale Procedures.

The Stalking Horse Transaction

20. The Sale Procedures contemplates that the Lender submit the Stalking Horse Bid, which provides that the Lender will submit a credit bid and satisfy, in cash, all amounts which by operation of law are in priority to the security interest of the Stalking Horse Purchaser in respect of the Secured Indebtedness.
21. In the Receiver's view, the terms of the Stalking Horse Bid and the Sale Procedures provide an expedient and efficient means of soliciting superior offers to that provided under the Stalking Horse Bid.
22. If, upon conclusion of the Sale Procedures, there is no bid determined by the Receiver to be superior to the Stalking Horse Bid, the Receiver is seeking approval of the Stalking Horse Transaction.
23. Pursuant to the requested Order, if the Stalking Horse Bid is determined to be the Successful Bid, the Receiver intends to serve upon the Service List and file a Report with the Court (the

“**Stalking Horse Approval Report**”) advising of its intention to proceed with the Stalking Horse Transaction.

24. Should the Receiver receive no written objection from any person in respect to the Stalking Horse Transaction being designated as the Successful Bid within ten days of the service of the Stalking Horse Approval Report, the requested Order provides that the Stalking Horse Transaction shall be deemed to be approved and the Receiver shall be authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Stalking Horse Transaction and for the conveyance to the Stalking Horse Bidder of the Sale Procedure Property.
25. The Receiver submits that approving the Stalking Horse Transaction to close without further Court intervention if no superior offers are received within the Sale Procedures, is efficient and expedient, will avoid the delay and costs associated with an additional appearance, and will allow the immediate implementation of the Stalking Horse Transaction in the absence of any superior offers or if the Stalking Horse Bidder is the Successful Bidder.

Repudiation of the Lease

26. Pursuant to the Appointment Order, the Receiver is empowered to cease to carry on all or any part of the business, or cease to perform any contracts of the Company.
27. The Receiver is seeking for approval to repudiate the lease of the Premises by providing to the landlord not less than seven (7) days' prior notice in writing of its intention to do so, which notice shall set out the effective date of the repudiation and which may be sent by

electronic transmission to the email address of the landlord and/or to the email address of their counsel.

28. The Receiver submits that the repudiation of the lease will benefit all creditors and preserving the estate's funds. The Receiver, with the approval of the Court, intends to conduct a liquidation of the Liquidation Property, which includes the tools, equipment, vehicles and furniture of the Company situated on the Premises. Rent will continue to accrue on the Premises, which will be vacant following the liquidation process, spending funds from the Company's estate.

Approval of Activities

29. The First Report sets out a description of the activities which have been undertaken by the Receiver since the granting of the Appointment Order. All actions and activities of the Receiver have been undertaken in accordance with the Appointment Order and in the best interest of the Company's estate.
30. The Receiver respectfully requests that this Honourable Court approve its activities, actions, and conduct, all as described in the First Report.

General

31. Rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194;
32. Section 106 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
33. Such further and other grounds as counsel may advise and this Honorable Court may permit.

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

34. The First Report and the appendices attached thereto;
35. Such further and other evidence as counsel may advise and this Honourable Court may permit.

August 9, 2023

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TO: **THE SERVICE LIST**

ORTHO STUDIO EXPRESS, INC.**and****DIGITAL ORTHODONTIC CARE INC.**

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for the Receiver

TAB 2

Court File No.: CV-23-00699238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) THURSDAY, THE 17TH
)
JUSTICE ●)
)
) DAY OF AUGUST, 2023
)

B E T W E E N:

ORTHO STUDIO EXPRESS, INC.

Applicant

-and-

DIGITAL ORTHODONTIC CARE INC.

Respondent

ORDER

THIS MOTION, made by Richter Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Digital Orthodontic Care Inc. (the “**Debtor**”) for an order, among other things,

- (i) approving a Liquidation Agreement (as defined herein),
- (ii) approving sale procedures for the sale of the assets and property of the Debtor, which are not otherwise disposed of pursuant to the Liquidation Agreement,
- (iii) approving a stalking horse purchase agreement (the “**Stalking Horse Agreement**”) between the Receiver and Ortho Studio Express, Inc. (the “**Stalking Horse Bidder**”) dated August 9, 2023, and

- (iv) conditionally vesting in favour of the Stalking Horse Bidder the Debtor's right, title and interest in and to the assets described in the Stalking Horse Agreement (the "**Purchased Assets**") in the event that the Receiver identifies the Stalking Horse Agreement as the Successful Bid in accordance with the sales procedures,

was heard this day by judicial videoconference via Zoom at Toronto, Ontario.

ON READING the Motion Record of the Receiver dated August 9, 2023, including the First Report of the Receiver dated August ●, 2023 (the "**First Report**"), and on hearing the submissions of counsel for the Receiver and for the Applicant, and no one appearing for any other parties, although duly served as appears from the affidavit of Shaun Parsons dated August ●, 2023,

1. **THIS COURT ORDERS** that time for service of the Notice of Motion, the Motion Record of the Receiver and the First Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

LIQUIDATION AGREEMENT

2. **THIS COURT ORDERS** that the Liquidation Agreement between the Receiver and Infinity Asset Solutions (the "**Liquidator**") attached as Schedule ● to the First Report (the "**Liquidation Agreement**") is hereby approved.

3. **THIS COURT ORDERS** that the Receiver and the Liquidator are hereby authorized and directed to perform their obligations under the Liquidation Agreement and to take any and all steps that are reasonably necessary or desirable to carry out the Liquidation Agreement.

SALE PROCEDURES

4. **THIS COURT ORDERS** that the Sale Procedures attached as Schedule “A” to this Order (the “**Sale Procedures**”) are hereby approved.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to carry out the Sale Procedures and to take any and all steps that are reasonably necessary or desirable to carry out the Sale Procedures.

STALKING HORSE AGREEMENT

6. **THIS COURT ORDERS** that the execution by the Receiver of the Stalking Horse Agreement attached as Schedule ● to the First Report is hereby authorized, *nunc pro tunc*.

7. **THIS COURT ORDERS** that, if required, the obligation to pay the Break Fee (as defined in the Stalking Horse Agreement) in the amount of \$85,000 pursuant to Section 5.05 of the Stalking Horse Agreement is hereby approved.

STALKING HORSE VESTING ORDER IF NO OTHER BIDS

8. **THIS COURT ORDERS** that in accordance with the Sale Procedures, where either (i) no Qualified Bids (other than the Stalking Horse Agreement) are received by the Receiver, or (ii) the Stalking Horse Agreement is declared by the Receiver as the Successful Bid (as defined in the Sale Procedures), the Receiver shall serve upon the Service List and file a Report with the Court (the “**Stalking Horse Approval Report**”) advising of its intention to proceed with the sale transaction contemplated by the Stalking Horse Agreement (the “**Stalking Horse Transaction**”).

9. **THIS COURT ORDERS** that upon (i) serving the Stalking Horse Approval Report on the Service List; and (ii) provided that, within 10 days of serving the Stalking Horse Approval Report, the Receiver receives no written objection from any person in respect to the Stalking Horse Transaction being designated as the Successful Bid (paragraph 9(i) and 9(ii) herein together, the “**Approval Conditions**”), then the Stalking Horse Transaction shall be deemed to be hereby approved and the Receiver shall be authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Stalking Horse Transaction and for the conveyance to the Stalking Horse Bidder of the Purchased Assets.

10. **THIS COURT ORDERS AND DECLARES** that upon satisfaction of the Approval Conditions as well as the delivery of a Receiver’s certificate to the Stalking Horse Bidder substantially in the form attached as Schedule “B” hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title, benefit, and interest in and to the Purchased Assets as described in the Stalking Horse Agreement shall vest absolutely in the Stalking Horse Bidder, 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 Order of the Honourable Justice Osborne dated July 4, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**” 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.

11. **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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Stalking Horse Bidder 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 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 pursuant to any applicable federal or provincial legislation.

12. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof in connection with the Stalking Horse Transaction.

13. **THIS COURT ORDERS** that the Receiver and the Liquidator shall incur no liability or obligation as a result of carrying out of the Sale Procedures, the Liquidation Agreement, or the

provisions of this Order, save and except for any gross negligence or wilful misconduct on their respective parts.

14. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder or under the Sale Procedures.

APPROVAL OF RECEIVER'S FIRST REPORT

15. The First Report and the activities of the Receiver described therein are hereby approved provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

REPUDIATION OF LEASE

16. **THIS COURT ORDERS** that the Receiver shall be permitted to repudiate a lease by providing to the landlord not less than seven (7) days' prior notice in writing of its intention to do so, which notice shall set out the effective date of the repudiation and which may be sent by electronic transmission to the email address of the landlord and/or to the email address of their counsel.

17. **THIS COURT ORDERS** that the Receiver shall 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.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any other Canadian and foreign court, tribunal, regulatory or administrative body ("**Judicial Body**") to give effect to this

Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All Judicial 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its respective agents in carrying out the terms of this Order.

**Schedule A – Sale Procedures
For The Sale Of Property Of Digital Orthodontic Care Inc.**

SALE PROCEDURES

FOR THE SALE OF PROPERTY OF DIGITAL ORTHODONTIC CARE INC.

1. On July 4, 2023, Richter Inc. was appointed as receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of Digital Orthodontic Care Inc. (the “**Company**”) pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
2. On August 17, 2023, the Court granted an order (the “**Sale Procedures Order**”) approving the procedures set forth herein (the “**Sale Procedures**”) for soliciting and selecting bids for one or more sale transactions (each, a “**Transaction**”) in respect of certain of the property and assets of the Company (the “**Property**”) and authorizing and directing the Receiver to carry out these Sale Procedures.

Defined Terms

3. Capitalized terms used and not otherwise defined in the body of these Sale Procedures shall have the meanings given to them in **Appendix “A”**.

Solicitation Process and Timeline

4. The Company has received a Transaction bid from Ortho Studios Express, Inc. (the “**Stalking Horse Bidder**”) pursuant to an asset purchase agreement in substantially the form attached to the Report of the Receiver dated August 9, 2023 (the “**Stalking Horse Agreement**”) which constitutes a qualified bid for all purposes and at all times under these Sale Procedures (the “**Stalking Horse Bid**”). The Stalking Horse Bid shall serve as the “stalking horse” bid for the purposes of the sale process governed by these Sale Procedures (the “**Sale Process**”).
5. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids for a Transaction pursuant to these Sale Procedures.
6. These Sale Procedures describe the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Company, its Property, and its businesses and operations, the manner in which a bid becomes a Qualified Bid, the receipt and review of bids received, the ultimate selection of a Successful Bid and the approval thereof by the Court.
7. In the event that there is disagreement as to the interpretation or application of these Sale Procedures, the Court will have jurisdiction to hear and resolve any such dispute.
8. The following table sets out the deadlines under the Sale Process, each of which can be extended by up to seven (7) days by the Receiver in its discretion, or for a longer period with the consent of the Stalking Horse Bidder or by Court order:

Milestone	Deadline
Commencement of Sale Process	Promptly following the granting of the Sale Procedures Order
Bid Deadline	September 29, 2023
Auction Date (if required)	October 6, 2023
Approval Hearing Date	October 13, 2023
Outside Date	October 27, 2023

Solicitation of Interest

9. As soon as reasonably practicable following the granting of the Sales Procedure Order, the Receiver shall: (a) prepare a list of potential bidders (each, a “**Potential Bidder**”) who may be interested in pursuing a Transaction; (b) prepare an initial offering summary describing the Company, the Property and the opportunity to participate in the Sale Process (the “**Teaser Letter**”); and (c) establish a data room (the “**Data Room**”) of due diligence materials, including the Teaser Letter (the “**Diligence Materials**”) that the Receiver believes may be useful for Potential Bidders.

10. As soon as reasonably practicable following the granting of the Sale Procedure Order, the Receiver shall contact Potential Bidders to introduce the opportunity and shall provide the Teaser Letter to each Potential Bidder that executes a Confidentiality Agreement. The Receiver shall post a copy of the Sale Procedures on the website maintained by the Receiver and shall post a notice of the Sale Process, substantially in the form attached as **Appendix “B”** hereto, to be published in such newspaper(s) or journal(s) as the Receiver considers appropriate.

Participation Requirements

11. Unless otherwise provided for herein, ordered by the Court or agreed by the Receiver, in order to participate in the Sale Process and be granted access to the Diligence Materials, a Potential Bidder must deliver to the Receiver, at the address specified in **Appendix “C”** hereto (including by email), (a) an executed confidentiality agreement in form and substance satisfactory to the Receiver (the “**Confidentiality Agreement**”), which shall inure to the benefit of any Successful Bidder that completes a Transaction contemplated by the Successful Bid, and (b) such other information as the Receiver may request to ascertain the identity of the Potential Bidder, including its direct and indirect owners.

12. Potential Bidders shall be provided with access to the Data Room. The Receiver makes no representations or warranties as to the accuracy or completeness of the information contained in the Data Room, the Diligence Materials or any other information provided by the Receiver or its agents in respect of the business or Property of the Company, except to the extent expressly

provided in any definitive sale agreement executed by the Potential Bidder (a “**Definitive Agreement**”) that is executed by the Receiver and returned to the Potential Bidder.

13. The Receiver reserves the right to withhold or delay the disclosure of any Diligence Materials that it determines are business sensitive or otherwise not appropriate for disclosure to a Potential Bidder who is a strategic buyer, competitor, supplier or other person with a business relationship with the Company until such time as the Receiver determines, in its discretion, that the disclosure of any Diligence Materials to such a Potential Bidder does not impair the efficacy of the Sales Procedure and that such Potential Bidder has (a) a *bona fide* intent to submit a Bid (as defined below), and (b) the financial capability to consummate a Transaction.

14. Potential Bidders shall direct information requests with respect to the Sale Process to the Receiver or such other individuals as the Receiver may authorize. Potential Bidders shall provide the Receiver with advance notice, and obtain the prior consent of the Receiver, before commencing or continuing any communications or discussions with any director, officer, agent, employee, former employee, supplier, customer, creditor or shareholder of the Company concerning the Company or its business, Property, financial condition, or prospects, and the Receiver shall have the option to oversee or participate in any such communications or discussions.

Bids

15. A Potential Bidder, other than the Stalking Horse Bidder, that wishes to deliver a bid shall deliver a written binding offer for a Transaction (a “**Bid**”) to the Receiver at the addresses specified in **Appendix “C”** hereto (including by email) so as to be received by the Receiver no later than 5:00 p.m. (Eastern Time) on the Bid Deadline.

16. A Bid will be deemed to be a “**Qualified Bid**” only if the Bid complies with all of the following:

- (a) it includes an executed Definitive Agreement, including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted by the Receiver in Word format in the Data Room), describing the terms and conditions of the proposed Transaction, including any liabilities proposed to be assumed, the purchase price (the “**Purchase Price**”), and the structure and financing of the proposed Transaction;
- (b) the Transaction shall, on closing, provide cash proceeds, in immediately available funds, sufficient to pay in full in cash: (i) the aggregate of the Priority Claims attributable to the Property being purchased, (ii) the portion of the Receiver’s Borrowing Obligations attributable to Property being purchased, (iii) a minimum incremental amount of \$10,000 in excess of the aggregate purchase price contemplated by the Stalking Horse Agreement; and (iv) a break fee in the amount of \$85,000;
- (c) it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid and the complete terms of any such participation;

- (d) it includes an acknowledgement and representation of the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith;
- (e) it does not include any request of the Potential Bidder for an entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (f) it includes an acknowledgment that the offer is irrevocable until the earlier of (i) the approval of the Successful Bid by the Court (or, in the case of the Stalking Horse Bid, the delivery of the Receiver's Certificate to the Stalking Horse Bidder and the filing of the Receiver's Certificate in Court), and (ii) thirty (30) calendar days following the Bid Deadline (the "**Irrevocable Bid Date**"), provided that if such Potential Bidder's Bid is selected as a Successful Bid, its bid shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;
- (g) it includes or is accompanied by evidence satisfactory to the Receiver of the financial ability of the Potential Bidder to consummate the Transaction contemplated by the Bid;
- (h) it is not conditioned on the outcome of unperformed due diligence or obtaining financing;
- (i) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer to a bank account specified by the Receiver, payable to the order of the Receiver, in trust, in an amount equal to 10% of the Purchase Price in the Bid, which Deposit is to be held by the Receiver and dealt with in accordance with these Sale Procedures;
- (j) it includes a commitment to close the Transaction contemplated by the Bid by no later than the Outside Date;
- (k) it contains such other information as may reasonably be requested by the Receiver; and
- (l) it is received prior to the Bid Deadline.

17. Notwithstanding the foregoing, a Qualified Bid may not be withdrawn, modified or amended without the written consent of the Receiver prior to the Successful Bid being determined. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the Successful Bid being determined shall result in the forfeiture of such Qualified Bidder's Deposit as liquidated damages and not as a penalty.

Review of Bid(s)

18. Following the Bid Deadline, the Receiver shall assess any Bids received and determine whether such bids constitute Qualified Bids. The Receiver may waive compliance with any one or more of the requirements specified herein and deem any non-compliant Bid to be a Qualified Bid.

19. Following the receipt of any Bid, the Receiver may seek clarification with respect to any of the terms or conditions of such Bid and/or request one or more amendments to such Bid prior to determining if such Bid should be considered a Qualified Bid. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding the Qualified Bidder or the Qualified Bid. Failure of a Qualified Bidder to comply with such requests for additional information will be a basis for the Receiver to reject a Qualified Bid.

20. In the event that the Receiver determines that there are no Qualified Bids, the Receiver shall promptly proceed to declare the Stalking Horse Bid as the Successful Bid and proceed to complete the Transaction contemplated by the Stalking Horse Agreement, in accordance with Stalking Horse Sale Approval Order (as defined below).

Selection of Successful Bid

21. The Stalking Horse Bid and each Qualified Bid will be considered and reviewed by the Receiver based upon several factors including, without limitation, items such as the Purchase Price and the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, any related transaction costs, the likelihood and timing of consummating such transactions, and such other matters as the Receiver may determine.

22. The Receiver shall identify the highest or otherwise best Bid(s) (each, a “**Successful Bid**”, and the Stalking Horse Bidder or the Potential Bidder(s) making such Successful Bid(s), a “**Successful Bidder**”) pursuant to these Sale Procedures. Any Successful Bid shall be subject to approval by the Court.

23. If the Receiver receives one or more Qualified Bids which are superior to the Stalking Horse Bid, it may proceed with an auction to select the Successful Bid (an “**Auction**”) on notice to the Stalking Horse Bidder and each Potential Bidder that submitted a Qualified Bid with a higher Purchase Price or deemed by the Receiver to be superior to the Stalking Horse Bid who will be invited to attend the Auction by the Receiver having regard to the terms of its Qualified Bid (each, an “**Auction Bidder**”). There shall be no more than five (5) Auction Bidders, including the Stalking Horse Bidder. For greater certainty, the Stalking Horse Bidder shall constitute an Auction Bidder in all circumstances in which an Auction is conducted.

24. If an Auction is conducted, it shall be conducted in accordance with the following procedures:

- (a) The Auction shall be conducted at a time to be designated by the Receiver on the Auction Date at the Toronto offices of the Receiver or by electronic communication means (including videoconference, teleconference or such other reasonable means

as the Receiver deems appropriate) and shall continue thereafter until completed, subject to such adjournments as the Receiver may consider appropriate;

- (b) The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
- (c) Except as otherwise permitted in the Receiver's discretion, only the Receiver and the Auction Bidders, and in each case their respective professional advisors, shall be entitled to attend the Auction. Each Auction Bidder shall appear at the Auction through a duly authorized representative that shall be designated by the Auction Bidder as its spokesperson;
- (d) Except as otherwise set forth herein, the Receiver may waive and/or employ and announce at the Auction additional procedures that the Receiver deems reasonable under the circumstances for conducting the Auction, provided that such procedures are (i) not inconsistent with these Sale Procedures, the Stalking Horse Agreement or any order of the Court granted in the within proceedings, (ii) disclosed to each Auction Bidder, and (iii) designed, in the Receiver's judgement, to result in the solicitation of the highest and best offer;
- (e) Not less than two (2) Business Days prior to the Auction, the Receiver shall: (i) identify the highest or otherwise best Qualified Bid or Stalking Horse Bid received, which shall constitute the opening bid for purposes of the Auction (the "**Opening Bid**"), and (ii) provide the Definitive Agreement in respect of the Opening Bid to all Auction Bidders, on a confidential basis. Subsequent bidding at the Auction will continue in minimum increments in an amount to be determined by the Receiver prior to, and announced at, the Auction. Each Auction Bidder shall, if requested by the Receiver, provide evidence of its financial wherewithal and ability to consummate the Transaction at the increased consideration bid at the Auction;
- (f) All Auction Bidders shall have the right, at any time during the Auction, to request that the Receiver announce, subject to any potential new bids, the then-current highest or otherwise best bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any questions such Auction Bidder may have on the then-current highest or otherwise best bid;
- (g) Each Auction Bidder shall be given a reasonable opportunity to submit an overbid at the Auction to any then-existing overbids;
- (h) The Auction shall continue until the bidding has concluded and there is one remaining Auction Bidder that the Receiver has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction shall be closed and the Auction Bidder that submitted the highest or otherwise best bid shall be designated as the Successful Bidder; and
- (i) Upon selection of a Successful Bidder, the Successful Bidder shall, as soon as practicable, execute and deliver a Definitive Agreement that reflects the Successful Bidder's bid and any modifications submitted and agreed to during the Auction.

25. For all purposes of the Sale Process, the Stalking Horse Bidder shall be entitled to credit bid all or any portion of the Senior Secured Obligations, at the face value of such obligations in the full principal amount of US\$5,070,000 (plus interest). In the event that the Receiver designates a Qualified Bid, the Stalking Horse Bidder shall have the right, as part of an Auction, to supplement its Stalking Horse Bid with additional cash or other consideration such that the revised Stalking Horse Bid includes aggregate consideration in excess of the amount of the Senior Secured Obligations and the Priority Claims.

Court Approval

26. Contemporaneously with the granting of the Sale Procedure Order, the Receiver obtained an order of the Court approving the Stalking Horse Agreement and vesting in the Stalking Horse Bidder (or its authorized assignee) all right, title interest in and to the Property described in the Stalking Horse Bid, conditional on, among other things, the selection of the Stalking Horse Bid as the Successful Bid by the Receiver (the “**Stalking Horse Sale Approval Order**”). If the Stalking Horse Bid is selected by the Receiver as the Successful Bid, the Receiver shall proceed to complete the Transaction contemplated by the Stalking Horse Agreement, in accordance with Stalking Horse Sale Approval Order.

27. If a Qualifying Bid other than the Stalking Horse Bid is selected by the Receiver as a Successful Bid, the Receiver shall apply to the Court (the “**Approval Motion**”) for an order approving such Successful Bid, which Approval Motion, subject to Court availability, shall be held on or prior to the Approval Hearing Date.

28. In either case, the Receiver shall implement the Successful Bid by no later than the Outside Date.

Deposits

29. All Deposits shall be retained by the Receiver and deposited in a trust account.

30. The Deposit paid by the Successful Bidder whose bid is approved at the Approval Motion shall be applied (without interest) to the Purchase Price to be paid by the Successful Bidder upon closing of the Transaction. After selection of the Bid as the Successful Bid, the Deposit will be non-refundable.

31. The Deposits of Qualified Bidders not selected as the Successful Bidder shall be returned, without interest, within two (2) Business Days of the Irrevocable Bid Date.

32. The Stalking Horse Bidder shall not be required to provide a Deposit.

Approvals

33. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required at law in order to implement or complete a Successful Bid.

No Amendment

34. Except as expressly set forth herein, there shall be no amendments or modifications to these Sale Procedures without the consent of the Receiver and the Stalking Horse Bidder or further Order of the Court.

“As Is, Where Is”

35. Any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description except to the extent expressly provided under a Definitive Agreement with a Successful Bidder executed and delivered by the Receiver.

Further Orders

36. At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

Reservation of Rights

37. These Sale Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Receiver and any other party, other than as specifically set forth in definitive agreements that may be executed.

38. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the Appointment Order or any other statute or as otherwise required at law in order to implement a Successful Bid.

Appendix “A” Definitions

For purposes of the Sale Procedures, the following terms shall have the following meanings:

“**Business Day**” means a day, other than a Saturday, Sunday, or a day on which banks in Toronto, Ontario are authorized or obligated by applicable law to close or otherwise are generally closed.

“**Priority Claims**” mean all claims other than the Receiver’s Borrowings Obligations ranking in priority to the Promissory Note Obligations and includes, for greater certainty, the post-closing fees of the Receiver and its counsel;

“**Promissory Note Obligations**” means, collectively, all present and future obligations of any kind or nature owing by the Company to Ortho Studios Express, Inc. including, without limitation, all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to, or in connection with the Line of Credit Grid Promissory Note dated March 20, 2020 in the principal amount of US\$5,000,000 issued by the Company to Ortho Studios Express, Inc. and secured by that certain General Security Agreement dated as of March 20, 2020 granted by the Company in favour of Ortho Studios Express, Inc., in each case as amended, supplemented, amended and restated, replaced, or otherwise modified from time to time.

“**Receiver’s Borrowings Obligations**” means all obligations of any kind or nature owing by the Receiver to Ortho Studios Express, Inc. that are secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), including all principal, interest, fees, payments, costs, expenses and disbursements.

“**Receiver’s Certificate**” means the Receiver’s Certificate, in the form appended to the Stalking Horse Approval Order, signed and delivered by the Receiver to the Stalking Horse Bidder.

“**Senior Secured Obligations**” means, collectively, the Receiver’s Borrowings Obligations and the Promissory Note Obligations.

**Appendix “B” Form of Notice
Acquisition Opportunity**

[Attached]

**CERTAIN ASSETS OF DIGITAL ORTHODONTIC
CARE INC. / INVESTORS SOUGHT**

Richter Inc. (“**Richter**”), in its capacity as receiver (the “**Receiver**”) of the assets, undertakings, and properties of Digital Orthodontic Care Inc. (the “**Company**”) and pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 17, 2023, which, *inter alia*, authorized the Receiver to undertake a sale solicitation process (the “**Sale Process**”) for the sale of certain of the Company’s business and/or assets, including, (i) intellectual property (ii) other intangible assets, (iii) rights to tax refunds, credits, rebates or similar benefits, (iv) reimbursement claims and (v) the books and records related to the purchased assets (collectively, the “**Assets**”).

The Company operated under the business name SureCure Orthodontic Aligners and manufactured orthodontic aligners for straightening teeth. Its business premises is located in Milton, Ontario. In order to obtain detailed information on the Company’s Assets, interested parties will be required to sign a non-disclosure agreement.

For further information regarding the Sale Process, please refer to the Receiver’s website at:
<https://www.richter.ca/insolvencycase/digital-orthodontic-care-inc/>

For additional information regarding Digital Orthodontic Care Inc. and the Sale Process, please contact Shane Connolly (647-921-3902 or SConnolly@richter.ca) of the Receiver’s office. The deadline for submission of a qualifying offer is 5:00 p.m. (Toronto time) on September 29, 2023, and the outside closing date of the Sale Process is contemplated to be October 27, 2023.

RICHTER

Richter Inc.

Receiver of Digital Orthodontics Care Inc.
181 Bay Street, Suite 3510
Bay Wellington Tower
Toronto, Ontario M5J 2T3
Telephone: 461-488-2345
Fax: 514-934-8603

Appendix “C” Receiver Address for Notices

If to the Receiver:

Richter Inc.
181 Bay St. #3510
Bay Wellington Tower
Toronto, ON M5J 2T3

Attention: Jonathan Joffe
Email: JJoffe@Richter.ca

With a copy to:

Reconstruct LLP
200 Bay Street, Suite 2305
Toronto, ON M5J 2J3

Attention: Caitlin Fell
Email: cfell@reconllp.com
Tel.: 416 613-8282

Schedule B – Form of Receiver’s Certificate

Court File No.: CV-23-00699238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ORTHO STUDIO EXPRESS, INC.

Applicant

-and-

DIGITAL ORTHODONTIC CARE INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the “**Court**”) dated July 4, 2023, Richter Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Digital Orthodontic Care Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Honourable Justice ● dated August 17, 2023, the Court approved certain sale procedures in respect of certain of the Debtor’s assets (the “**Sale Procedures**”).

C. Pursuant to an Order of the Honourable Justice ● dated August 17, 2023, the Court approved the Agreement of Purchase and Sale made as of August 9, 2023 (the “**Stalking Horse Agreement**”) between the Receiver and Ortho Studio Express, Inc. (the “**Purchaser**”) and provided for the vesting in 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 Receiver has selected or declared the Purchaser’s Stalking Horse Bid as the Successful Bid (ii) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (iii) that the conditions to Closing as set out in Article 5 of the Stalking Horse Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iv) the Transaction has been completed to the satisfaction of the Receiver.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Stalking Horse Agreement.

THE RECEIVER CERTIFIES the following:

- 1. The Purchaser’s Stalking Horse Bid is the Successful Bid pursuant to the Sale Procedures;
- 2. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Stalking Horse Agreement;
- 3. The conditions to Closing as set out in Article 5 of the Stalking Horse Agreement have been satisfied or waived by the Receiver and the Purchaser; and
- 4. The Transaction has been completed to the satisfaction of the Receiver.
- 5. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

Richter Inc. in its capacity as Receiver of the undertaking, property and assets of Digital Orthodontic Care Inc., and not in its personal capacity

Per: _____

Name:

Title:

ORTHO STUDIO EXPRESS, INC.

and

DIGITAL ORTHODONTIC CARE INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

ORDER

RECONSTRUCT LLP

Royal Bank Plaza, South Tower
200 Bay Street
Suite 2305, P.O. Box 120
Toronto, ON M5J 2J3

Caitlin Fell LSO No. 60091H

cfell@reconllp.com
Tel: 416.613.8282

Fax: 416.613.8290

Lawyers for the Receiver

ORTHO STUDIO EXPRESS, INC.

and

DIGITAL ORTHODONTIC CARE INC.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD

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