

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
operating as NORWOOD FAMILY DENTISTRY
AND RENE EMIL BOLJKOVAC

Respondents

MOTION RECORD OF THE RECEIVER

(Returnable June 21, 2024)

June 12, 2024

HARRISON PENZA LLP

Barristers & Solicitors

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Solicitors for the Receiver,
Albert Gelman Inc.

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Counsel for the Toronto-Dominion Bank

AND

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c/o Department of Justice
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AND
TO:

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

As represented by the Ministry of Finance
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AND
TO:

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AND
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Counsel for the Mary Ann Majic Dentistry Professional Corporation

AND
TO:

BARAN GROUP INC.

c/o Luxor Management Inc.
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Sudbury, ON P3C 1X3

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Landlord

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
operating as NORWOOD FAMILY DENTISTRY
AND RENE EMIL BOLJKOVAC

Respondents

**NOTICE OF MOTION
(Returnable June 21, 2024)**

Albert Gelman Inc. (“**AGI**”), in its capacity as Court-appointed receiver (the “**Receiver**”) of all the assets, properties and undertakings (collectively, the “**Property**”) of Dr. R. Boljkovac Dentistry Professional Corporation operating as Norwood Family Dentistry (the “**Debtor**”) pursuant to the Order of the Honourable Justice Richard dated May 31, 2024 (the “**Appointment Order**”), will make a Motion to a Judge.

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

- In writing under subrule 37.12.1 (1) because it is on consent;
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

On June 21, 2024 at 10:00 a.m., or as soon after that time as the Motion can be heard by judicial teleconference via Zoom at Sudbury, Ontario.

THE MOTION IS FOR:

1. An Approval and Vesting Order, substantially in the form attached hereto at Schedule “A”, *inter alia*, approving the transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale between Mary Ann Majic Dentistry Professional Corporation (the “**Proposed Purchaser**”) and the Receiver, as vendor, dated June 11, 2024, a redacted version of which is appended to the Receiver’s First Report (as defined herein) as Appendix “C” and included in the Confidential Appendices (as defined below) (the “**Sale Agreement**”) for the sale of all assets of the Debtor and vesting all of the right, title and interest in and to the Purchased Assets (as defined herein) of the Debtor absolutely in the Proposed Purchaser free and clear from any security, charge or other encumbrance;
2. An Order, substantially in the form attached hereto at Schedule “B”, *inter alia*:
 - a. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and dispensing with further service and confirmation thereof;
 - b. Approving the First Report of the Receiver dated June 12, 2024 (the “**First Report**”), and the activities and conduct of the Receiver set out therein and 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 the approval of the First Report; and
 - c. Sealing the Confidential Appendices to the First Report (the “**Confidential Appendices**”) until the Closing (as defined in the Sale Agreement) of the Transaction, or until a further order of this Court;
3. The costs of this motion on a substantial indemnity basis, if opposed; and
4. Such further and other relief as counsel may request and this honourable court may permit.

THE GROUNDS FOR THE MOTION ARE:

The Debtor and the Appointment of the Receiver

1. The Debtor is a company incorporated pursuant to the laws of the Province of Ontario. It was primarily engaged in the business of a dentistry practice from leased premises located at 1984 Regent St., Unit 102, Sudbury, ON (the “**Leased Premises**”) pursuant to a lease dated December 30, 2014 and amended by Amending Agreement dated September 14, 2023 (collectively, the “**Lease**”).
2. The Applicant, the Toronto-Dominion Bank (the “**Bank**”), is the senior secured creditor of the Debtor, and provided certain credit facilities to the Debtor. The Debtor was indebted to the Bank in the sum of \$2,088,631.02 as at May 7, 2024.
3. The landlord of the Leased Premises is Baran Group Inc. (“**Baran**”). The Debtor also leases a unit located at 1984 Regent St., Unit 125A, Sudbury, ON from Baran.
4. The Bank is the only registrant under the Personal Property Registration System against the Debtor and holds a first in time general security interest in the Property.
5. On May 31, 2024, the Bank moved for appointment of the Receiver. On the same day, the Honourable Madam Justice Richards of the Ontario Superior Court of Justice granted the Appointment Order appointing AGI as Receiver.

The Sales Process and Transaction

6. Prior to the appointment of the Receiver, the Debtor canvassed the market for the purpose of identifying a buyer of the Debtor’s assets. The Debtor discussed certain potential sale transactions with multiple parties. However, a transaction did not materialize.
7. Prior to its appointment as Receiver, AGI became aware that the Proposed Purchaser, which shares the Leased Premises and co-owns certain machinery/equipment with the Debtor, was a party that may have interest in purchasing certain assets of the Debtor.
8. The Proposed Purchaser submitted a letter of intent to AGI dated May 8, 2024 (the “**Letter of Intent**”).

9. In order to assess the Letter of Intent, AGI retained Dr. Sean Robertson of Practice Advocate (“**Practice Advocate**”), a Chartered Business Valuator and appraiser of Canadian dental practices. Practice Advocate provided a letter of opinion dated May 13, 2024 (the “**Letter of Opinion**”).
10. Included in the Confidential Appendices, in relation to which the Receiver seeks a Sealing Order, is a copy of the Letter of Opinion.
11. After reviewing the Letter of Opinion and the Letter of Intent, the Receiver, in consultation with the Bank, determined that pursuing and Closing the Transaction was in the best interest of the Debtor’s estate.
12. The details of the Sale Agreement and a redacted copy thereof are provided in the First Report. An unredacted copy of the Sale Agreement is included in the Confidential Appendices. The Receiver recommends the approval and completion of the Sale Agreement for the following reasons:
 - a. It is an offer for certain of the Property, while also providing the opportunity to realize on other Property not subject to the Sale Agreement;
 - b. It provides certainty as to realizations, subject to the terms of the Sale Agreement;
 - c. The sale price is supported by the Letter of Opinion commissioned by the Receiver;
 - d. Despite the Debtor’s prior sale efforts, a transaction did not materialize;
 - e. Additional time marketing the Property subject to the Sale Agreement will, in the Receiver’s view, not result in superior recoveries given the costs of realization, including professional fees; and
 - f. The Sale Agreement is supported by the Bank and Baran.
13. The Sale Agreement represents a commercially reasonable transaction which, in the Receiver’s view, will maximize the recovery from the sale of the Property subject to the Sale Agreement and is in the best interests of all stakeholders.

Sealing Order

14. Until such time as the Transaction is complete, or until further order of this Court, the Receiver is of the view that the information and documentation contained in the Confidential Appendices should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained therein would have.
15. The Receiver states that its actions, as outlined in the First Report, should be approved by this Honourable Court.
16. Section 243 of the *BIA*.
17. Sections 100 and 137(2) of the *Courts of Justice Act*.
18. Rules 2, 3, 37, 38, and 60.10 of the *Rules of Civil Procedure*.
19. The grounds as detailed in the First Report.
20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Appointment Order;
2. The First Report of the Receiver dated June 12, 2024, and the Appendices thereto; and
3. Such materials as counsel may advise and this Honourable Court may permit.

June 12, 2024

HARRISON PENZA LLP
Barristers & Solicitors
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Timothy C. Hogan (LSO #36553S)

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Solicitors for the Receiver,
Albert Gelman Inc.

SCHEDULE "A" - Approval and Vesting Order

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE 21ST
JUSTICE) DAY OF JUNE, 2024

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

**DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION operating as
NORWOOD FAMILY DENTISTRY AND RENE EMIL BOLJKOVAC**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Albert Gelman Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Dr. R. Boljkovac Dentistry Professional Corporation (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Mary Ann Majic Dentistry Professional Corporation (the "Purchaser") dated June 11, 2024 and appended to the Report of the Receiver dated June 12, 2024 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") and referenced in Schedule "B" hereto, was heard this day by judicial videoconference via Zoom at 155 Elm Street, Sudbury, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Isabelle Stacey sworn June 12, 2024 filed:

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

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor'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 Order of the Honourable Justice Richards dated May 31, 2024; (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 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.

3. 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 Receiver'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.

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

5. 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 Purchaser 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.

6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Justice, Ontario Superior Court of Justice

Schedule A – Form of Receiver’s Certificate

Court File No. CV-24-00011930-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

**DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION operating as
NORWOOD FAMILY DENTISTRY AND RENE EMIL BOLJKOVAC Respondents**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Richards of the Ontario Superior Court of Justice (the "Court") dated May 31, 2024, Albert Gelman Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Dr. R. Boljkovac Dentistry Professional Corporation operating as Norwood Family Dentistry (the "Debtor").

B. Pursuant to an Order of the Court dated June 21, 2024, the Court approved the agreement of purchase and sale made as of June 11, 2024 (the "Sale Agreement") between the Receiver and Mary Ann Majic Dentistry Professional Corporation (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 payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser 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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; 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].

**Albert Gelman Inc., in its capacity as
Receiver of the undertaking, property and
assets of Dr. R. Boljkovac Dentistry
Professional Corporation operating as
Norwood Family Dentistry, and not in its
personal capacity**

Per: _____
Name:
Title:

Schedule B – Purchased Assets

The Debtor's interest in all Purchased Assets, as such Purchased Assets are described and defined in the Sale Agreement.

THE TORONTO-DOMINION BANK

v.

D R. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
operating as NORWOOD FAMILY DENTISTRY AND RENE EMIL
BOLJKOVAC

Applicant

Respondents

Court File No. CV-24-00011930-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
SUDBURY, ONTARIO

APPROVAL AND VESTING ORDER

HARRISON PENZA LLP

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Solicitors for the Receiver,
Albert Gelman Inc.

SCHEDULE "B" – Ancillary Order

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 21ST
JUSTICE) DAY OF JUNE, 2024

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

**DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
operating as NORWOOD FAMILY DENTISTRY
AND RENE EMIL BOLJKOVAC**

Respondents

**ORDER
(ANCILLARY)**

THIS MOTION, made by Albert Gelman Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Dr. R. Boljkovac Dentistry Professional Corporation operating as Norwood Family Dentistry (the "Debtor"), for an order:

1. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof;
2. Approving the activities and conduct of the Receiver as set out in the First Report of the Receiver dated June 12, 2024 (the "First Report") and 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 the approval of the First Report; and

3. Sealing the Confidential Appendices to the First Report (the “Confidential Appendices”) until the completion of the Transaction (as defined in the First Report), or until further Order of this Court;

was heard this day by way of judicial teleconference via Zoom at the Court House, 155 Elm Street, Sudbury, Ontario.

ON READING the Receiver’s Notice of Motion dated June 12, 2024, the First Report, and on hearing the submissions of counsel for the Receiver, and anyone one else appearing for any other person on the service list, as properly served as evidenced by the Affidavit of Service of Isabelle Stacey sworn June 12, 2024, filed;

1. THIS COURT ORDERS that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof.

2. THIS COURT ORDERS that the activities of the Receiver, as set out in the First Report are hereby approved and 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 the approval of the First Report, as detailed herein.

3. THIS COURT ORDERS that the Confidential Appendices be and are sealed until the completion of the Transaction, or until further Order of this Court.

Justice, Ontario Superior Court of Justice

THE TORONTO-DOMINION BANK

v.

D R. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
operating as NORWOOD FAMILY DENTISTRY AND RENE EMIL
BOLJKOVAC

Applicant

Respondents

Court File No. CV-24-00011930-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
SUDBURY, ONTARIO

ANCILLARY ORDER

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Solicitors for the Receiver,
Albert Gelman Inc.

THE TORONTO-DOMINION BANK

v.

D R. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
operating as NORWOOD FAMILY DENTISTRY AND RENE EMIL
BOLJKOVAC

Applicant

Respondents

Court File No. CV-24-00011930-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
SUDBURY, ONTARIO

NOTICE OF MOTION

HARRISON PENZA LLP

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Solicitors for the Receiver,
Albert Gelman Inc.

Tab 2

**FIRST REPORT OF
ALBERT GELMAN INC.
IN ITS CAPACITY AS RECEIVER OF
DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION**

JUNE 12, 2024

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
OPERATING AS NORWOOD FAMILY DENTISTRY
AND RENE BOLJKOVAC ALSO KNOWN AS RENE EMIL BOLJKOVAC**

Respondent

**FIRST REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS RECEIVER**

JUNE 12, 2024

I. INTRODUCTION

1. This report (the “**First Report**”) is filed by Albert Gelman Inc. (“**AGI**”) in its capacity as receiver (in such capacity, the “**Receiver**”) of the property, assets and undertakings (collectively, the “**Property**”) of Dr. R. Boljkovac Dentistry Professional Corporation o/a Norwood Family Dentistry (the “**Company**”) appointed pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (the “**Court**”) made on May 31, 2024 (the “**Filing Date**”). A copy of the Receivership Order is provided at **Appendix “A”**.
2. The application to appoint AGI as Receiver (the “**Receivership Application**”) was made by The Toronto-Dominion Bank (“**TD**”), the Company’s senior secured creditor. As of May 7, 2024, the Company owed TD approximately \$2.1 million, with interest and costs continuing to accrue.
3. The primary purpose of the receivership proceedings is to maximize value for the Company’s stakeholders by (i) completing a transaction (the “**Transaction**”) for substantially all of the Company’s machinery and equipment assets pursuant to an asset purchase agreement dated June 11, 2024 (the “**APA**”) between the Receiver, as vendor, and Mary Ann Majic Dentistry Professional Corporation, as purchaser (the “**Proposed Purchaser**”), and (ii) realizing, if possible and/or economical, on any of the remaining Property not subject to the APA, including, but not limited to, the Company’s patient charts (the “**Charts**”).
4. AGI was previously retained by TD in March 2024 to act as its consultant for the purpose of reviewing and assessing the assets, financial position, business and operations of the Company and advising TD in connection with the Company’s indebtedness to TD.
5. Court and other materials filed in this proceeding can be found on the Receiver’s website at: <https://www.albertgelman.com/corporate-solutions/other-engagements/> (the “**Case Website**”).

II. PURPOSES OF THE FIRST REPORT

6. The purposes of this First Report are to provide the Court with information pertaining to:
 - a. relevant background of the Company, including the events leading to these receivership proceedings;
 - b. the Transaction, including the terms of the APA;
 - c. the Receiver’s activities prior to and since its appointment; and
 - d. the Receiver’s recommendation regarding its request that the Court issue the following orders:
 - i. an Approval and Vesting Order (the “**AVO**”) consisting of the following substantive relief:
 - (1) approving the Transaction and the APA; and

- (2) vesting the Purchased Assets (as defined in the AVO) in the Proposed Purchaser, free and clear of all encumbrances, upon execution and delivery of a certificate by the Receiver confirming completion of the Transaction; and
- ii. an Ancillary Order (the “**Ancillary Order**”):
 - (1) sealing the confidential appendices to this First Report (the “**Confidential Appendices**”); and
 - (2) approving the First Report and the Receiver’s actions and activities set out in this First Report.

III. SCOPE AND TERMS OF REFERENCE

7. In preparing this First Report, the Receiver has relied upon certain unaudited financial information, the Company’s books and records, discussions with Dr. R. Boljkovac (“**Dr. Boljkovac**”) and other individuals with knowledge of the Company’s circumstances, as well as TD and its legal counsel, Fogler Rubinoff LLP (“**Fogler**”).
8. While the Receiver has reviewed various documents and other information provided to it by the Company, TD and other parties, such review does not constitute an audit or verification of such documents/information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises (“**ASPE**”) or International Financial Reporting Standards (“**IFRS**”) or otherwise. Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to ASPE or IFRS or otherwise with respect to such documents/information.
9. This First Report has been prepared for the use of this Court and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.
10. Unless otherwise noted, all monetary amounts referenced are in Canadian dollars.
11. Capitalized terms not otherwise defined have the meanings given to them in the APA.

IV. BACKGROUND

12. In support of the Receivership Application, TD filed the affidavit of Rukshana Belliappa sworn May 13, 2024 (the “**Belliappa Affidavit**”). This First Report should be read in conjunction with the Belliappa Affidavit, as certain information contained in the Belliappa Affidavit has not been included herein to avoid duplication. A copy of the Belliappa Affidavit, without exhibits, is attached hereto as **Appendix “B”**.

General Background

13. The Company is a private professional corporation incorporated pursuant to the laws of Ontario. It operated as a dentistry practice from leased premises located at 1984 Regent St., Unit 102, Sudbury, Ontario (the "**Clinic**"). The Company also leases another unit located in Unit 125A of the same address (the "**Other Unit**"). Baran Group Inc. (the "**Landlord**") is the landlord for both the Clinic and the Other Unit pursuant to the following leases:
 - a. in respect of the Clinic, a lease dated December 30, 2014, as amended pursuant to a lease extension agreement dated November 25, 2019 and a lease amending agreement dated September 14, 2023 (collectively, the "**Lease**"). The Company and the Proposed Purchaser are both tenants under the Lease and share the Lease obligations equally. The Receiver also understands that the Company and the Proposed Purchaser co-own certain equipment and machinery used in their respective dental practices; and
 - b. in respect of the Other Unit, a lease dated November 1, 2023. Prior to the Filing Date, the Landlord commenced distraint proceedings in respect of the Other Unit as a result of non-payment of rent. The Receiver has corresponded with the Landlord regarding these receivership proceedings and the Landlord has confirmed to the Receiver that all distraint proceedings have been stopped. The Receiver understands that the Property located in the Other Unit primarily includes office furniture and computer equipment. The Receiver intends to engage an appraiser to provide an indication of value of the Property in the Other Unit prior to taking steps to realize on same.
14. Dr. Boljkovac is the principal, sole officer and director of the Company.

Secured Creditors

15. Pursuant to a credit facilities agreement dated August 15, 2023 between the Company, as borrower, and TD, as lender, as amended by an amending agreement dated September 19, 2023, TD established a \$300,000 operating loan (the "**Operating Loan**"), a \$1,700,000 committed reducing term facility (the "**Term Facility**") and a \$50,000 Visa facility (the "**Visa Facility**") and collectively with the Operating Loan and the Term Facility, the "**Credit Facility**") in favour of the Company. As noted above, as at May 7, 2024, the balance owing under the Credit Facility was approximately \$2.1 million, with interest and costs continuing to accrue.
16. As security for advances made under the Credit Facility, the Company granted, in favour of TD, a general security agreement (the "**TD Security**") signed by the Company on September 7, 2023.
17. In addition, Dr. Boljkovac provided TD with an unlimited personal guarantee dated September 7, 2023 (the "**Guarantee**") to also secure the Company's obligations under the Credit Facility.

18. Pursuant to the results of a Personal Property Registration System (the “**PPSA**”) search with currency to March 5, 2024, a copy of which is included in the Belliappa Affidavit, TD is the only registrant under the PPSA against the Company.

Unsecured Creditors

19. The Receiver is still in the process of accessing and reviewing the Company’s books and records as it relates to the Company’s unsecured creditors. At this time, the Receiver is not in a position to confirm the composition of or amounts owing to the Company’s unsecured creditors. The Receiver intends to provide an update to the Court in this regard in a subsequent report.

Events Leading to these Receivership Proceedings

20. The Receiver understands that in September 2023, Dr. Boljkovac purchased the dental clinic Sudbury Smiles Dentistry (the “**Sudbury Smiles Clinic**”), which was previously operated from the Clinic, from Dr. Alan Kwong Hing/A. Kwong Hing Dentistry Professional Corporation (the “**Prior Operator**”). In connection with the purchase of the Sudbury Smiles Clinic, a valuation of the practice was completed by Meridian Sales & Appraisals Inc. (“**Meridian Appraisals**”) as at January 14, 2023 (the “**Meridian Valuation**”).
21. The Receiver further understands that the purchase of the Sudbury Smiles Clinic was intended to include a transitional period with the Prior Operator practicing as an associate dentist at the Clinic for Dr. Boljkovac for a period of time. However, the Receiver is advised that the Prior Operator did not complete the transition period, nor did it follow through on supporting the transfer of goodwill of the patients and team members to Dr. Boljkovac. The Receiver has been advised that, given the foregoing, Dr. Boljkovac’s practice faced various transitional issues, resulting in the practice being in a recent state of decline. The Receiver has been further advised that the practice was virtually non-operational during the several weeks leading up to the Filing Date.
22. In light of the challenges experienced by the Company noted above, the Company’s results and liquidity suffered. In the circumstances, the Receiver understands that Dr. Boljkovac considered strategic options, including, in or around early-2024, canvassing the market for the purpose of identifying a buyer of the Company. As it relates to Dr. Boljkovac’s efforts to identify a buyer, the Receiver understands from discussions with Dr. Boljkovac that:
 - a. three parties expressed interest in a transaction(s);
 - b. one LOI was submitted, which contemplated the acquisition of the Charts only;
 - c. a second LOI was sent by Dr. Boljkovac’s lawyer to a prospective buyer for the acquisition of the Company’s machinery and equipment assets, but it was never executed; and
 - d. ultimately, a transaction did not materialize.

23. In addition, and as provided for in the Belliappa Affidavit, in February 2024, in the face of a liquidity crisis such that the Company was without the funds to cover its payroll obligations, the Company requested from TD a temporary accommodation to increase the credit limit under the Operating Loan from \$300,000 to \$330,000 (the “**Bulge**”). TD granted the Bulge in late-February 2024 on the basis that, among things, it be repaid by March 20, 2024 (the “**Initial Repayment Date**”).
24. As further provided for in the Belliappa Affidavit, the Company was unable to repay the Bulge by the Initial Repayment Date and requested a further extension. TD agreed to a further extension provided the Company and Dr. Boljkovac enter into a forbearance agreement, the terms of which were to include, among other things, (i) mortgage security granted in favour of TD and (ii) Dr. Boljkovac’s acknowledgment and agreement to the appointment of AGI as consultant to TD. Dr. Boljkovac provided such acknowledgement/agreement on March 27, 2024. However, as detailed in the Belliappa Affidavit, despite various correspondence during the ensuing weeks among TD and its advisors, Dr. Boljkovac and Gurminder Singh, Dr. Boljkovac’s previous lawyer, a forbearance agreement was never entered into and the Bulge was never repaid.
25. On April 17, 2024, TD issued a payment demand and notice under section 244 (the “**244 Notice**”) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) to the Company, and a payment demand to Dr. Boljkovac in respect of the Guarantee. Copies of the payment demands and 244 Notice are included in the Belliappa Affidavit.
26. Following the statutory 10-day expiry period under the BIA in respect of the 244 Notice, and there being no satisfactory indication of the Company’s ability to repay its indebtedness owing to TD, TD proceeded with the Receivership Application.

V. THE TRANSACTION AND APA

27. During AGI’s consulting mandate, it became aware that the Proposed Purchaser, which shares the Lease and co-owns certain machinery/equipment with the Company, may be a party with interest in a transaction for the Company’s assets. As such, after consulting with TD and its counsel, AGI (prior to its appointment as Receiver) met and engaged in discussions with the Proposed Purchaser and its counsel, Alesia Sostarich of Sostarich Law (“**Sostarich**”) to gauge the Proposed Purchaser’s interest and discuss preliminary terms, including with respect to the desired assets and transaction value. Following further discussions/correspondence, Sostarich, on behalf of the Proposed Purchaser, submitted a letter of intent via email to AGI on May 8, 2024 (the “**Proposed Purchaser LOI**”), setting out the terms for a transaction for the purchase of substantially all the Company’s assets, excluding the Charts, which the Proposed Purchaser advised it has no interest in.
28. As part of AGI’s review and assessment of the Proposed Purchaser LOI, AGI retained Dr. Sean Robertson of Practice Advocate, a Chartered Business Valuator and experienced appraiser of Canadian dental practices, to provide, by way of a letter of opinion, an indication of value of the

Property. A copy of the letter of opinion dated May 13, 2024 prepared by Practice Advocate (the “**Letter of Opinion**”) is attached hereto as **Confidential Appendix “1”**. As discussed below, the Receiver recommends that the Letter of Opinion be sealed pending closing of the Transaction.

29. Following receipt of the Letter of Opinion, and with the support of TD, AGI, in consultation with its counsel, Harrison Pensa LLP (“**Harrison Pensa**”), prepared a draft asset purchase agreement, which was sent to Sostarich on May 23, 2024. Following additional negotiations on transaction terms, including prior to and after the appointment of AGI as Receiver, the Receiver and the Proposed Purchaser entered into the APA on June 11, 2024.
30. A summary of the key terms and conditions of the APA is as follows:
 - a. **Purchaser:** the Proposed Purchaser, Mary Ann Majic Dentistry Professional Corporation.
 - b. **Purchase Price:** The Receiver recommends that the Purchase Price be sealed pending closing.
 - c. **Deposit:** The APA provides for a deposit of \$100,000, to be paid to the Receiver, in trust, with the submission of the APA by the Proposed Purchaser, and is to be held by the Receiver until the Closing Time.
 - d. **Purchased Assets:** All of the Receiver’s and the Company’s right, title and interest in substantially all the assets of the Company, including, but not limited to, Fixed Assets, Intellectual Property, the Lease and Inventory, but specifically excluding the Charts.
 - e. **Closing Date:** Ten (10) Business Days following the date of the issuance of the AVO, or such other date as may be agreed to in writing between the Receiver and the Proposed Purchaser.
 - f. **Termination:** The APA may be terminated if any condition set forth in Article 4 of the APA is not satisfied at the Closing Time by the party entitled to the benefit of such condition.
 - g. **Material Conditions:** The only material condition precedent to the Transaction is the granting of the AVO.
 - h. **Other:** The APA is consistent with standard insolvency transactions, i.e., to be completed on an “as is, where is” basis, without any material representations or warranties.
31. As it relates to the assignment of the Lease, the Receiver has been corresponding with the Landlord and has requested that the Landlord provide a consent to the assignment of the Lease to the Proposed Purchaser. The Receiver is hopeful that such consent will be provided, as the Receiver, the Landlord and the Proposed Purchaser are, as of the date of this First Report, finalizing the terms of such consent; however, if the Landlord does not respond and/or agree to the Lease assignment, then the Receiver intends to seek a Court order in respect of such assignment in order to facilitate the closing of the Transaction.

32. As noted above, the Proposed Purchaser is not interested in nor does the APA contemplate the acquisition of the Charts. It is the Receiver's intention to work with the Royal College of Dental Surgeons of Ontario (the "**College**") with respect to the custodianship of the Charts and to determine if the Charts can be sold.
33. A copy of the APA is provided as **Confidential Appendix "2"**. A redacted copy of the APA is attached hereto as **Appendix "C"**. The only redactions are the amount of the Purchase Price and the Purchase Price Allocation.

Sealing Order

34. In the event that the APA is breached or terminated for any reason, another sale process to realize on the Company's assets may be required. If the Letter of Opinion and the Purchase Price in the APA are not sealed until the Transaction closes, future bidders would have access to (i) commercially sensitive information that could prejudice any future marketing efforts and (ii) the amount that was accepted by the Receiver. The Receiver proposes that the Letter of Opinion and the terms of the Transaction could be made publicly available following Closing.
35. No party will be prejudiced if the information is sealed at this time. Accordingly, the Receiver believes the proposed sealing order is appropriate in the circumstances.
36. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so in the circumstances. The Receiver is of the view that the sealing of the Confidential Appendices is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendices is appropriate in the circumstances.

Transaction Recommendation

37. The Receiver respectfully recommends that this Court approve the Transaction and the APA for the following reasons:
 - a. Dr. Boljkovac canvassed the market to identify a buyer for the Company in advance of these proceedings. While there were expressions of interest from multiple parties, a transaction did not materialize;
 - b. the Receiver is of the view that additional time marketing the Property subject to the Transaction will not result in a superior transaction and would impair value given the professional costs associated with further marketing such Property;
 - c. the Transaction provides for the sale of the Property (excluding the Charts and any Property located in the Other Unit) while limiting costs of realization – as the Proposed Purchaser already operates from the Clinic, there is no need to expend funds on asset removal or auctioning the Property, which could erode value;

- d. subject to discussion with the College, as the Purchased Assets excludes the Charts and the Property in the Other Unit, there may be opportunity for additional recoveries outside of the Transaction for the benefit of the Company's stakeholders;
- e. the Receiver believes that the commercial terms of the APA, including the Purchase Price, are reasonable, which is supported by, among other things, the values attributed to the Purchased Assets in the Letter of Opinion; and
- f. TD supports the Transaction, including the terms of the APA.

VI. RECEIVER'S ACTIVITIES

38. The Receiver's activities prior to and since the Filing Date have included, among other things, the following:
- a. corresponding, both prior to and after AGI's appointment as Receiver, with TD, Fogler and Harrison Pensa regarding various matters related to the Company, the Transaction and these receivership proceedings;
 - b. corresponding, both prior to and after AGI's appointment as Receiver, with Dr. Boljkovac regarding various matters related to the Company and these receivership proceedings;
 - c. corresponding with Meridian Appraisals regarding, among other things, the Meridian Valuation and a prior sale process it conducted for the sale of the Sudbury Smiles Clinic to the Company;
 - d. attending at the Proposed Purchaser's office on May 6, 2024 to meet with and discuss the prospect and terms of a transaction for the Property;
 - e. retaining Practice Advocate to prepare the Letter of Opinion, including corresponding with Practice Advocate regarding same;
 - f. negotiating the Transaction, including meeting and corresponding with the Proposed Purchaser and Sostarich regarding same and reviewing drafts of the APA in consultation with Harrison Pensa;
 - g. attending at the Clinic on June 3, 2024 to take pictures, videos and an inventory of the Property located at the Clinic;
 - h. corresponding with the Landlord regarding the Lease, the Transaction as it relates to the assignment of the Lease, and the Other Unit;
 - i. corresponding with an appraiser to appraise the Property located in the Other Unit;
 - j. corresponding with the Proposed Purchaser regarding a shared cost arrangement during the period from the Filing Date to the Closing Time, for any costs that were previously shared between the Proposed Purchaser and the Company before these receivership proceedings;

- k. corresponding with Stack Systems Solutions Inc., the Company's former IT service provider, and Dental Tax, the Company's accountant, regarding the Company's books and records and obtaining access to and preserving same;
- l. establishing and maintaining the Case Website;
- m. preparing a Notice and Statement of the Receiver pursuant to Subsections 245(1) and 246(1) of the BIA;
- n. reviewing court and other materials in connection with the Receivership Application and the within motion; and
- o. preparing this First Report;

VII. CONCLUSION AND RECOMMENDATION

39. Based on all of the foregoing, the Receiver respectfully recommends that this Honourable Court make the order granting the relief set out in paragraph 6(d) of this First Report.

All of which is respectfully submitted this 12th day of June 2024

**ALBERT GELMAN INC., solely in its capacity as
Court-appointed Receiver of
Dr. R. Boljkovac Dentistry Professional Corporation o/a Norwood Family Dentistry
and not its personal or any other capacity**



Per:

Adam Zeldin, CPA, CA, CIRP, LIT

APPENDIX “A”



Court File No. CV-24-00011930-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM)
)
JUSTICE RICHARD)
)
FRIDAY, THE 31st
DAY OF MAY, 2024

THE TORONTO-DOMINION BANK

Applicant

- and -

**DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
operating as NORWOOD FAMILY DENTISTRY
AND RENE EMIL BOLJKOVAC**

Respondents

**ORDER
(Appointing Receiver)**

THIS MOTION made by the Applicant, for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Albert Gelman Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Dr. R. Boljkovac Dentistry Professional Corporation operating as Norwood Family Dentistry (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 155 Elm Street, Sudbury, Ontario.

ON READING the Notice of Application, the Affidavits of Rukshana Belliappa sworn May 13, 2024 and May 29, 2024 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, and counsel for the Respondents, no one else appearing although duly served as appears from the affidavit of service of Hayley

Morgan sworn May 13, 2024, and on reading the consent of Albert Gelman Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Albert Gelman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or

applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share

information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such

Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any client records and medical, and prescription information ("**Client Records**"), books, documents, securities, contracts, orders, billing privileges, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors (or any one of them), and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall, subject to Paragraph 6A herein, provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6A. **THIS COURT ORDERS** that with respect to the Client Records, the Receiver shall: (i) take all steps reasonably necessary to maintain the integrity of the confidential aspects of the Client Records; (ii) if necessary, appoint a licensed medical doctor and qualified to practice in the Province of Ontario to act as custodian (the “**Custodian**”) for the Client Records; (iii) not allow anyone other than the Receiver or the Custodian to have access to the Client Records; and (iv) allow the Debtors (or any one of them) supervised access to the Client Records for any purposes required pursuant to the Regulated Health Professions Act, 1991 or any other governing Ontario or Canadian statute that requires the Debtors (or any one of them), from time to time, to perform certain obligations.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the

premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract,

agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or

other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <https://www.albertgelman.com/corporate-solutions/other-engagements/>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day

following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. **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.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT SUDBURY, ONTARIO
May 31, 2024

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Albert Gelman Inc. the receiver (the "**Receiver**") of the assets, undertakings and properties Dr. R. Boljkovac Professional Corporation operating as Norwood Family Dentistry acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 2024 (the "**Order**") made in an action having Court file number CV-24-00011930-0000 has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2024.

ALBERT GELMAN INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

THE TORONTO-DOMINION BANK

-and- DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION operating as NORWOOD FAMILY DENTISTRY et al.
Respondents

Applicant

Court File No. CV-24-00011930-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT SUDBURY

ORDER
(Appointing Receiver)

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Lawyers for the Applicant, The Toronto-Dominion Bank

APPENDIX “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

**DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION
operating as NORWOOD FAMILY DENTISTRY
AND RENE EMIL BOLJKOVAC**

Respondents

AFFIDAVIT OF RUKSHANA BELLIAPPA
(Sworn May 13, 2024)

I, RUKSHANA BELLIAPPA, of the City of Mississauga, of the Regional Municipality of Peel, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an Account Manager with the Financial Restructuring Group of the Applicant, The Toronto-Dominion Bank ("**TD**"), with carriage of the TD accounts of the respondent, Dr. R. Boljkovac Dentistry Professional Corporation operating as Norwood Family Dentistry (the "**Company**"). As such, I have knowledge of the matters to which I hereinafter depose.

2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief and do verily believe it to be true.

3. To the extent that any of the information set out in this affidavit is based on my review of TD's documents, I verily believe the information in such documents to be true.

Background

4. I am swearing this affidavit in support of an application by TD seeking to appoint Albert Gelman Inc. as receiver of the assets, undertakings and properties of the Company pursuant to section 243 of the *Bankruptcy and Insolvency Act* ("**BIA**") and section 101 of the *Courts of Justice Act*.

5. On April 17, 2024, TD issued to the Company a Notice of Intention to Enforce Security pursuant to s. 244 of the BIA (the "**Section 244 Notice**"), together with payment demands. TD also made demand on Dr. Rene Emil Boljkovac as guarantor.

6. Payment demands and the Section 244 Notice have expired and the indebtedness remains outstanding.

The Parties

7. TD is a chartered bank with offices in Toronto, Ontario.

8. The Company was incorporated pursuant to the laws of Ontario, with its registered head office address at 1984 Regent St., Unit 102, Sudbury, Ontario ("**Cedar Point Strip Mall**"). The Company is a dentistry practice run by Dr. Boljkovac. Attached as **Exhibit "A"** is a copy of the Ontario Corporate Profile Report for the Company dated March 6, 2024.

9. The Ontario Corporate Profile Report indicates Dr. Boljkovac as the sole officer and director of the Company.

10. A dental clinic named "Sudbury Smiles" is located at Cedar Point Strip Mall. Attached as **Exhibit "B"** is a copy of the webpage located at <https://www.sudburysmiles.ca/contact-us/> retrieved on May 1, 2024.

11. Dr. Boljkovac was the subject of previous receivership and bankruptcy proceedings as indicated in Government of Canada Bankruptcy and Insolvency Records Search ("**BIA Searches**") in connection with BIA Estate Numbers 31-1716365 and 31-457683. Attached as **Exhibit "C"** are copies of the BIA Searches and the receivership order.

12. Dr. Boljkovac guaranteed the debts of the Company to TD pursuant to an unlimited personal guarantee dated September 7, 2023.

Credit Agreement and Security

13. Pursuant to a credit facilities agreement dated August 15, 2023, together with Schedule "A" – Standard Terms and Conditions, accepted by the Company on

August 15, 2023, as amended by amending agreements dated September 19, 2023 and February 23, 2024 (collectively the "**Credit Agreement**"), TD established a \$300,000.00 operating loan ("**Operating Loan**")¹, a \$1,700,000.00 committed reducing term facility ("**Term Facility**") and a \$50,000.00 Visa facility ("**Visa Facility**") in favour of the Company. Attached as **Exhibit "D"** is a copy of the Credit Agreement.

13. The Operating Loan and the Visa Facility are repayable on demand.

14. Pursuant to the "Availability of Operating Loan" section of the Credit Agreement, the Company covenanted and agreed:

"The Operating Loan is uncommitted, made available at the Bank's discretion, and is not automatically available upon satisfaction of the terms and conditions, conditions precedent, or financial tests set out herein.

The occurrence of an Event of Default is not a precondition to the Bank's right to accelerate repayment and cancel the availability of the Operating Loan."

15. Pursuant to "7. Standard Positive Covenants" of Schedule "A" – Standard Terms and Conditions in the Credit Agreement, the Company covenanted and agreed:

"So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will, and will ensure that its subsidiaries and each of the Guarantors will:

(g) Provide the Bank with information and financial data as it may request from time to time, including, without limitation, such updated information and/or additional supporting information as the Bank may require with respect to any or all of the matters in the Borrower's representation and warranty in Section 6(i).

¹ Details regarding the temporary increase of the credit limit from \$300,000 to \$330,000 are set out further below in the "Transfer to FRG and Forbearance Negotiations" section.

(j) Provide such additional security and documentation as may be required from time to time by the Bank or its solicitors.

(m) Permit the Bank or its authorized representatives full and reasonable access to its premises, business, financial and computer records and allow the duplication or extraction of pertinent information therefrom.

16. Pursuant to "8. Standard Negative Covenants" of Schedule "A" – Standard

Terms and Conditions in the Credit Agreement, the Company covenanted and agreed:

"So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will, and will ensure that its subsidiaries and each of the Guarantors will not:

(f) Cease to carry on the business currently being carried on by each of the Borrower, its subsidiaries, and the Guarantors at the date hereof."

17. The "Events of Default" section of the Credit Agreement provides:

"The Bank may accelerate the payment of principal and interest under any committed credit facility hereunder and cancel any undrawn portion of any committed credit facility hereunder, at any time after the occurrence of any one of the Standard Events of Default contained in Schedule "A" attached hereto."

18. Subsection (d) of "10. Standard Events of Default" of Schedule "A" –

Standard Terms and Conditions in the Credit Agreement further provides:

"The Bank may accelerate payment of principal and interest under any committed credit facility hereunder and cancel any undrawn portion of any committed credit facility hereunder, at any time after the occurrence of any one of the following Events of Default:

(d) If there is a breach or non-performance or non-observance of any term or condition of this Agreement or the Bank Security and, if such default is capable of being remedied, the default continues unremedied for 5 Business Days after the occurrence."

19. As security for the credit facilities, the Company granted TD a General Security Agreement signed by the Company on September 7, 2023 (the "**GSA**"),

registration in respect of which was duly made pursuant to the Personal Property Security Act (Ontario) (the "**PPSA**"). Attached as **Exhibit "E"** is a copy of the GSA.

20. Section 11, "Events of Default", of the GSA provides:

"Obligations not payable on demand shall, at the option of the Bank, become immediately due and payable upon the occurrence of one or more of the following events (each, an "event of default"):

- a) The Grantor fails to pay when due, whether by acceleration of otherwise, any of the Obligations;
- b) The Grantor fails to perform any provision of this Agreement or of any other agreement to which the Grantor and the Bank are parties;"

21. Pursuant to section 12(a)(xii) "Remedies" section of the GSA, upon the occurrence of an event of default that has not been cured or waived, TD is entitled to appoint a receiver.

22. Dr. Boljkovac, as Guarantor, provided TD with an unlimited personal guarantee dated September 7, 2023 (the "**Guarantee**"). Attached as **Exhibit "F"** is a copy of the guarantee.

23. Pursuant to section 5 "Continuing Guarantee" of the Guarantee, the obligations of the Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due to TD and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to TD.

Secured Creditors

24. Attached as **Exhibit “G”** is a copy of the certified PPSA search result for the Company with currency to May 5, 2024, indicating TD as the only registrant against the Company.

Transfer to FRG and Forbearance Negotiations

25. On or around February 23, 2024, the Company requested from TD a temporary accommodation ("**TAR**") to increase the credit limit of the Operating Loan from \$300,000.00 to \$330,000.00 in order to cover payroll obligations.

26. The request for the TAR was made to the Midtown Commercial Banking Centre of TD where the Company's accounts were managed prior to the transfer to TD's Financial Restructuring Group ("**FRG**") in March, 2024. TD granted the TAR as set out in the amending agreement dated February 23, 2024 and accepted by the Borrower on February 27, 2024 ("**TAR Amending Agreement**"):

"CREDIT LIMIT

1) CAD \$300,000 provided that between February 23, 2024 to March 20, 2024, a \$30,000 excess of the Credit Limit will be permitted."

Attached as **Exhibit “H”** is a copy of the TAR Amending Agreement.

27. In early March, 2024, the accounts of the Company were transferred to FRG due to TD's concerns about the financial strength of the Company, including excesses on the Operating Loan.

28. I had an introductory call with Dr. Boljkovac on March 4, 2024 to advise him that the accounts of the Company were now transferred to FRG. During our call, Dr. Boljkovac asked that TD maintain the TAR beyond the repayment date of March 20, 2024. After reviewing the extension request internally, I subsequently advised Dr. Boljkovac that TD will not extend the TAR beyond March 20, 2024. Attached as **Exhibit "I"** is a copy of my email dated March 4, 2024.

29. Accordingly, the TAR was to be repaid by the Company by March 20, 2024.

30. The Company was unable to repay the TAR by March 20, 2024 and again asked for an extension.

31. TD agreed to grant the extension provided the Company and Dr. Boljkovac entered into a forbearance agreement, on terms satisfactory to TD. As part of the forbearance, Dr. Bojkovac offered to i) provide mortgage security to TD and ii) signed an engagement letter acknowledging and agreeing to the appointment of Albert Gelman Inc. as consultant (the "**Consultant**") to TD for the purposes of, among other things, reviewing and assessing the assets, financial position, and business operations of the Company. Attached as **Exhibit "J"** are the emails sent on March 21, April 10, April 11 2024, together with the fully executed engagement letter.

32. Between March and April, 2024, TD was advised by the Company's accountant, Adam Tenaschuk of Dental Tax and by the Company's lawyers, Gurminder Singh of GGFI Law LLP, that efforts were being made to enter into a letter of intent with a purchaser for the dental practice in order to repay the indebtedness owing to TD.

33. I am advised by Bryan Gelman, a representative of the Consultant, and believe that on or about April 2, 2024, he visited the dental practice and met personally with Dr. Boljkovac and his wife, Marion Boljkovac in Sudbury, Ontario. I am further advised by Mr. Gelman and believe that Tom McElroy, a representative of the Consultant, participated by phone during the meeting between Mr. Gelman, Dr. Boljkovac and Mrs. Boljkovac.

34. Prior to the site visit meeting in Sudbury, referred to above, I am advised by Mr. McElroy and believe that on March 28, 2024, he sent an information request to Dr. Boljkovac for certain preliminary documents and financial information required for the Consultant's review ("**March 27 Information Request**").

35. I am advised by Mr. McElroy and believe that a follow-up email was sent to Dr. Boljkovac on April 4, 2024 ("**April 4 Information Request**"). Attached as **Exhibit "K"** are copies of the March 27 Information Request and the April 4 Information Request.

36. I am advised by Mr. Gelman and Mr. McElroy that the March 27 Information Request and the April 4 Information Request remain outstanding.

37. I am advised by Rachel Moses, a partner with Fogler Rubinoff LLP, and believe that, on April 2, 2024, she sent Mr. Singh a copy of the draft forbearance agreement with a sign back deadline of April 5, 2024. Attached as **Exhibit "L"** is a copy of Ms. Moses' email dated April 2, 2024 enclosing the draft forbearance agreement.

38. I am advised by Ms. Moses, and believe that, on April 5, 2024, Mr. Singh confirmed to Ms. Moses during a videoconference call that a fully executed letter of intent ("**LOI**") will be delivered soon.

39. I am advised by Ms. Moses and believe that on April 11, 2024 she provided an updated forbearance agreement to Mr. Singh and advised "... the Bank has allowed the authorized limit of the Operating Loan to remain at \$330,000 but only under a signed forbearance agreement. Based on our discussions this week, we have made the changes to the forbearance agreement as set out herein (and modified the dates for other deliverables). Please note the sign back deadline is Tuesday, April 16, 2024." Attached as **Exhibit "M"** is a copy of Ms. Moses' email dated April 11, 2024.

40. I am advised by Ms. Moses and believe that, on April 12, 2024, she sent a further follow-up email to Mr. Singh to report on the status of the new mortgage security documents and to ask when the fully executed LOI will be sent. Ms. Moses sent a further follow up email to Mr. Singh on April 15, 2024. Attached as **Exhibit "N"** is a copy of Ms. Moses' emails dated April 12, 2024 and April 15, 2024.

41. On April 16, 2024, Mr. Singh advised Ms. Moses that he no longer represents Dr. Boljkovac and that all communications should be directed to Dr. Boljkovac's attention. After receiving Mr. Singh's email, Ms. Moses sent an email to Dr. Boljkovac advising him that the sign back deadline for the forbearance agreement expires on April 16, 2024. I am advised by Ms. Moses and believe that she did not

receive any response from Dr. Boljkovac to her email. Attached as **Exhibit “O”** is Mr. Singh and Ms. Moses' email sent April 16, 2024.

Demands and Default

42. On April 17, 2024, TD issued a payment demand and Section 244 Notice to the Company for repayment of the indebtedness. TD also issued a payment demand to Dr. Boljkovac under his unlimited guarantee. Copies of the payment demands and Section 244 Notice are attached as **Exhibit “P”**.

43. Payment demands and the Section 244 Notice expired on April 29, 2024. All indebtedness remains outstanding.

44. Following expiry of the payment demands and the Section 244 Notice:

- a) TD returned payroll due to insufficient funds in the Company's account on or about April 30, 2024;
- b) By email sent on April 30, 2024, Ms. Moses advised Dr. Boljkovac, among other things, that payment demands and the Section 244 Notice have expired with no repayment plan, the information requests sent by the Consultant have not been complied with, and as result, TD is proceeding with an application to appoint a receiver returnable in mid-May, 2024. Attached as **Exhibit “Q”** is a copy of Ms. Moses' email sent April 30, 2024;
- c) I am advised by Mr. Gelman and believe that, on April 30, 2024, he phoned the office of Dr. Mary Ann Majic, a dentist practicing in the same unit at Cedar Point

Strip Mall under an office/equipment sharing arrangement with the Company and was advised by Dr. Majic's receptionist that Dr. Boljkovac's practice has been closed for two weeks. Attached as **Exhibit "R"** is a copy of Mr. Gelman's email sent April 30, 2024;

d) By email sent on May 2, 2024, I advised Dr. Boljkovac that the Company's accounts were in overdraft. Attached as **Exhibit "S"** is a copy of my email sent May 2, 2024;

e) By email sent on May 6, 2024, Ms. Moses advised Dr. Boljkovac that TD intends to bring an application to appoint a receiver returnable on May 17, 2024. Attached as **Exhibit "T"** is a copy of Ms. Moses' email sent May 6, 2024; and

f) By email sent on May 8, 2024, Adam Zeldin, a representative of the Consultant, reported on his site visit of the dental practice in Sudbury on May 6, 2024. Attached as **Exhibit "U"** is a copy of Mr. Zeldin's email sent May 8, 2024.

45. As at May 7, 2024, the amounts owing by the Company with respect to the credit facilities are:

Operating Loan	\$315,950.07
Term Facility	\$1,714,890.14
Visa Facility	\$57,790.81

<u>TOTAL:</u>	<u>\$2,088,631.02</u>
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Appointment of Receiver

46. TD's security provides for the appointment of a receiver upon default. Specifically, section 12(xii) of the GSA entitles TD, upon default, to appoint a receiver.

47. TD has lost confidence in the Company as i) it has failed to present a repayment plan to TD; ii) it has failed and/or refused to sign a forbearance agreement; iii) it has failed and/or refused to answer to the satisfaction of TD the April 4 Information Request; iv) payment demands have expired; and v) it appears that the dental practice is no longer operating.

48. TD is in a position to appoint a receiver over the assets of the Company as secured by TD's security, pursuant to section 243 of the BIA.

49. TD is entitled to take any and all steps necessary to enforce its security and realize on same.

50. TD considers it reasonable and prudent for it to begin enforcement of its security in an effort to recover the outstanding indebtedness.

51. This affidavit is sworn in support of TD's motion for an Order to Albert Gelman Inc. as receiver over the Company, and for no other or improper purpose.

SWORN by Rukshana Belliappa of the City of Mississauga, before me at the City of Toronto, in the Province of Ontario, on May 13, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



RUKSHANA BELLIAPPA

APPENDIX “C”

ASSET PURCHASE AGREEMENT

DR. R. BOLJKOVAC DENTISTRY PROFESSIONAL CORPORATION

THIS AGREEMENT is made as of the 11th day of June, 2024.

BETWEEN:

ALBERT GELMAN INC., solely in its capacity as court-appointed Receiver of all of the property and assets of Dr. R. Boljkovac Dentistry Professional Corporation (the “**Company**”) and not in any other capacity and with no personal or corporate liability (hereinafter called the “**Vendor**”)

OF THE FIRST PART

- and -

MARY ANN MAJIC DENTISTRY PROFESSIONAL CORPORATION, a corporation incorporated pursuant to the laws of the Province of Ontario (hereinafter called the “**Purchaser**”)

OF THE SECOND PART

RECITALS:

Whereas:

- A. Pursuant to the Order of the Honourable Justice Madame Justice Richard of the Ontario Superior Court of Justice in Court File No. CV-24-00011930-0000 (the “**Proceedings**”), dated May 31, 2024 (the “**Appointment Order**”), the Vendor was appointed as Receiver of all the assets, property and undertaking (the “**Assets**”) of the Company.
- B. Pursuant to the Appointment Order, the Vendor is authorized to sell the Assets and apply for an order of the Court approving the sale of the Assets and vesting title to the Assets in the Purchaser.
- C. Subject to an order being issued by the Court approving the sale of the Purchased Assets (defined herein) and pursuant to the terms of this Agreement, the Purchaser has offered to purchase the Purchased Assets and the Vendor has accepted such an offer on the terms and conditions contained herein.

NOW THEREFORE IN CONSIDERATION of the premises and the mutual agreements in this Agreement, and for other consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties agree as follows.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

“Agreement” means this asset purchase agreement and all Schedules attached hereto and the terms “hereof” and “hereto” refer to this Agreement as a whole and references to “Section” and “subsection” mean the relevant section or subsection of this Agreement unless the context specifically indicates otherwise;

“Applicable Law” means any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, restriction, regulatory policy or guideline, by-law (zoning or otherwise), or Order, or any consent, exemption, approval or License of any Governmental Authority, that applies in whole or in part to the Transaction, the Vendor, the Purchaser, the Company, the Business, the manner in which the Business is carried on or to any of the Purchased Assets;

“Appointment Order” means the order issued in the Receivership Proceeding, appointing the Vendor as Receiver of all of the assets, property and undertaking of the Company, including the Purchased Assets, pursuant to section 243 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.C43, as amended (the **“CJA”**);

“Approval Order” means an order or orders of the Court in a form substantially in accordance with Schedule A authorizing and approving the Transaction contemplated under this Agreement (and which Order may, at the option of the Vendor, be combined, in one Order, with the Vesting Order);

“Assets” has the meaning given in recital A;

“BIA” means the *Bankruptcy and Insolvency Act* of Canada as the same may be amended from time to time;

“Business” means the dental practice carried on by the Company at the Premises;

“Business Day” means a day other than a Saturday or Sunday, on which Canadian chartered banks are open for the transaction of domestic business in Toronto, Ontario;

“Claims” shall have the meaning ascribed thereto in the Vesting Order;

“Closing” means the completion of the sale to, and purchase by the Purchaser of, the Purchased Assets in accordance with the terms of this Agreement;

“Closing Date” means ten (10) Business Days after the Court grants the Approval Order and the Vesting Order or such other date as the parties hereto agree to in writing;

“Closing Document” means any document delivered at or subsequent to the Closing Time as provided in or pursuant to this Agreement;

“College” means the Royal College of Dental Surgeons of Ontario;

“Company” has the meaning given in the listing of the Parties of the First Part;

“Contracts” means the full benefit and advantage of all contracts, agreements and entitlements of the Company relating to the Business;

“Closing Time” means 10:00 am Toronto time on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing shall take place;

“Court” means the Ontario Superior Court of Justice;

“Deposit” has the meaning set out in Section 2.3;

“Encumbrances” shall have the meaning ascribed to thereto in the Vesting Order;

“Excluded Assets” means (i) any Assets not specifically included as part of the Purchased Assets, and (ii) for greater certainty, includes patient records and charts, bank accounts of the Company, cash on hand or cash equivalents at Closing;

“Fixed Assets” means all of the fixed assets, tenant leaseholds machinery, equipment, computers, furniture, furnishings and vehicles owned by the Company together with all operating manuals, maintenance logs, and equipment drawings and specifications in the possession of the Vendor;

“Goodwill” means the goodwill of the Company included in the Purchased Assets, including the right to carry on its Business as successor thereto and the use of all telephone numbers and facsimile numbers used in its Business, trade name and supplier lists;

“Governmental Authority” means any domestic or foreign government whether federal, provincial, state or municipal and any governmental agency, governmental authority, governmental tribunal or governmental commission of any kind whatever;

“including” means **“including without limitation”** and the term **“including”** shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;

“Intellectual Property” means all of the patents, trade names, trademarks and other intellectual property and the Goodwill appurtenant thereto to the extent same comprises property of the Company included in the Purchased Assets as of the Closing Date, any and all other patents, trade names, trademarks and other intellectual property and the Goodwill

appurtenant thereto together with all documents, drawings, and technical data in the possession of the Vendor;

“Inventory” means all inventories of every kind and nature and wheresoever situated of our relating to the Business;

“Lease” means the lease between the Vendor and the landlord of the Premises, which is occupied by the Company pursuant to the lease to which the Purchaser is also a party;

“License” means any license, permit, approval, right, privilege, concession or franchise in respect of the Business;

“Order” means any order (draft or otherwise), judgment, injunction, decree, award or writ of any court, tribunal, arbitrator, Governmental Authority, or other Person;

“Parties” means the Purchaser and the Vendor collectively, and **“Party”** means any one of them;

“Person” or **“person”** shall be broadly interpreted and includes an individual, body corporate, partnership, joint venture, trust, association, unincorporated organization, the Crown, any Governmental Authority or any other entity recognized by law;

“Premises” means the premises as listed in Schedule B;

“Purchase Price” means the purchase price payable for the Purchased Assets pursuant to Section 2.2 ;

“Purchased Assets” means, subject to the terms hereof, all of the interest of the Company in the Business, including but not limited to Fixed Assets, Intellectual Property, the Lease, and Inventory, the telephone and fax numbers, but not including any Excluded Assets;

“Related Person” has the meaning in the *Bankruptcy and Insolvency Act*, 1985, c. B-3, as amended;

“Records” means all of the records relating exclusively to the Business consisting of operating data, files, books and records, correspondence, materials and contract documents but does not include patient records and charts, financial data, financial documents or any financial information of the Company;

“Transaction” mans the transaction of purchase and sale contemplated pursuant to this Agreement; and

“Vesting Order” means an order or orders of the Court in a form substantially in accordance with Schedule A ordering that the right, title and interest of the Company in the Purchased Assets be vested in the Purchaser free and clear of any right, title or interest of pharmacy and Encumbrances.

1.2 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended or to any restated or successor legislation of comparable effect.

1.3 Headings

The division of this Agreement into articles, Sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Number and Gender

In this Agreement, words in the singular include the plural and vice-versa and words in one gender include all genders.

1.5 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of or between the Parties.

1.6 Amendment

This Agreement may only be amended, modified or supplemented by a written agreement signed by each Party.

1.7 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.8 Schedules

The following Schedules form part of this Agreement:

- Schedule A - Form of Approval and Vesting Order
- Schedule B - Address of Premises
- Schedule C - Purchase Price Allocation

1.9 Applicable Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in Ontario (excluding any conflict of laws, rule or principle which might refer such interpretation to the laws of another jurisdiction). Each Party irrevocably submits to the exclusive jurisdiction of the Court with respect to any matter arising hereunder or related hereto.

1.10 Currency

Unless specified otherwise, all statements of or references to dollar amounts in this Agreement are to Canadian dollars.

1.11 Third Party Beneficiaries

Nothing in this Agreement or in any Closing Document is intended expressly or by implication to, or shall, confer upon any Person other than the Parties, any rights or remedies of any kind.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets

- (a) The Vendor shall sell, assign and transfer to the Purchaser and the Purchaser shall purchase the Purchased Assets on the Closing Date pursuant to the Vesting Order and the Purchaser shall pay the Purchase Price on the Closing Date, subject to the terms and conditions contained in this Agreement.

- (b) The Purchaser hereby acknowledges to and in favour of the Vendor that the Purchaser has conducted its own investigations and inspections of the Purchased Assets and that the Purchaser is responsible to conduct its own inspections and investigations of all matters and things connected with or in any way related to the Purchased Assets, that the Purchaser has satisfied itself with respect to the Purchased Assets and all matters and things connected with or in any way related to the Purchased Assets, that the Purchaser has relied entirely upon its own investigation and inspections in entering into this Agreement, that the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis as at the Closing Date, that the Purchaser will accept the Purchased Assets in their state, condition and location on Closing and that the Purchaser hereby acknowledges that the Vendor has made no representations, warranties, statements or promises, including as to the compliance with any Applicable Laws affecting the Transaction, save and except as are expressly contained in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties and representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) do not apply to the sale of the

Purchased Assets and have been waived by the Purchaser. Except as expressly set out in this Agreement, no adjustment shall be allowed to the Purchaser for any changes in condition, quality or quantity of the Purchased Assets to and including the Closing Date. Except as specifically contemplated and provided for in this Agreement, the Purchaser acknowledges that the Vendor is not required to inspect or count, or provide any inspection or counting, of the Purchased Assets or any parts thereof and the Purchaser shall be deemed, at its own expense, to have relied entirely upon its own inspection and investigation of the Purchased Assets. Nothing contained herein shall require the Vendor, following Closing, to take possession of, protect, preserve, or otherwise safeguard any Purchased Assets.

- (c) The Purchaser acknowledges and agrees that any and all information relating to the Purchased Assets (including any environmental report(s), if any, or any information memorandum given by the Vendor, the Company, or any other person to the Purchaser) was delivered to the Purchaser solely for the Purchaser's convenience and there is no representation or warranty of any kind whatsoever made by the Vendor nor the Company or any other person with respect to the accuracy or completeness of any such information.

The descriptions of any of the Purchased Assets contained on the Schedules appended hereto are for the purposes of identification only and the Vendor is not liable for any error or omission in such Schedules.

- (d) The Purchaser acknowledges that it shall be the Purchaser's sole responsibility to obtain, at its own expense, and the Purchaser shall use its best efforts to obtain, any consents, approvals or any further documentation or assurances which may be required to be obtained by Purchaser (but not the Company or Vendor) to carry out the terms of this Agreement. Notwithstanding the foregoing, the Vendor agrees to do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of such acts and will cause the execution of such further documents as are within its power and as the Purchaser may reasonably request be done and or executed, in order to carry out the terms of this Agreement, but in so doing, shall not be required to incur any expense or liability (except as the Vendor in its absolute discretion sees fit).
- (e) The Purchaser shall assume, at its own cost, complete responsibility for compliance with all Applicable Laws in connection with the Purchased Assets, or the use thereof by the Purchaser, after the Closing Date.
- (f) The Purchaser shall be responsible for making all necessary arrangements for continued occupation of the Premises as assignee pursuant to the Lease.

2.2 Purchase Price & Purchased Assets

The Purchase Price for the Purchased Assets as apportioned by the Purchaser on Appendix C (not including all applicable taxes, for which the Purchaser shall also be liable in accordance with Section 2.5) shall be CDN [REDACTED]

2.3 Payment of Purchase Price

The Purchaser shall pay the Purchase Price to the Vendor as follows:

- (a) the sum of CDN \$100,000 shall be paid by wire transfer, delivery of certified funds or bank draft payable to the Vendor “in Trust”, with the submission of this Agreement by the Purchaser to the Vendor and held by the Vendor as a deposit (the “**Deposit**”) which shall be dealt with in accordance with Section 2.4; and
- (b) the balance of the Purchase Price shall be delivered to the Vendor at Closing payable in cash, by delivery of a certified cheque or bank draft or by wire transfer.

2.4 Deposit

- (a) The Deposit shall be paid and held in escrow by the Vendor, until the Closing Time, at which time the Deposit shall be applied on account of the Purchase Price or as otherwise provided for in this Agreement.
- (b) If this Agreement:
 - (i) is terminated or the Closing otherwise fails to occur for any reason other than a breach by the Purchaser of its obligations under this Agreement, then the Purchaser shall be entitled to the return of the Deposit without interest within five (5) Business Days and the Purchaser shall have no recourse against the Receiver and this Agreement shall become null and void;
 - (ii) is terminated or the Closing otherwise fails to occur as a result of the breach of the Purchaser of its obligations under this Agreement, then the Vendor shall be entitled to retain the Deposit as liquidated damages, and shall be entitled to pursue all of its other rights and remedies against the Purchaser.

2.5 Taxes

The Purchaser shall be liable for and shall pay, in addition to the Purchase Price, all federal and provincial sales taxes and any other taxes or duties payable in connection with the conveyance and transfer of the right, title and interest, if any, of the Vendor in and to the Purchased Assets (collectively, the “**Taxes**”) to the Purchaser and the Purchaser undertakes and agrees to pay all such Taxes on Closing – provided that the Vendor and the Purchaser agree that the appropriate elections with respect to the payment of Taxes may be made. By executing this Agreement, the Purchaser indemnifies and holds the Vendor harmless from and against any and all costs, expenses, liabilities and damages incurred or suffered by the Vendor as a result of the failure of the Purchaser to pay any of the Taxes exigible in connection with the Transaction which indemnity shall survive closing.

2.6 Time and Place of Closing

The Closing shall take place on the Closing Date at the offices of the solicitors for the Vendor or as may otherwise be agreed between the Parties in writing.

2.7 The Closing

2.7.1 Vendor's Deliveries

At Closing, the Vendor shall:

- (a) upon the delivery of all of the Purchaser's Deliveries as set out in Article 2.7.2, execute and deliver to the Purchaser the Receiver's Certificate in the form appended as Schedule "A" to the Vesting Order;
- (b) deliver to the Purchaser the Approval Order and the Vesting Order;
- (c) deliver to the Purchaser a certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (d) execute and deliver to the Purchaser a bill of sale in respect of the Purchased Assets on the terms contained herein, if requested; and
- (e) execute and deliver or cause to be executed and delivered such other documents, instruments or certificates as contemplated by this Agreement.

2.7.2 Purchaser's Deliveries

At Closing, the Purchaser shall:

- (a) deliver payment of the balance of the Purchase Price in accordance with Article 2;
- (b) execute and deliver or cause to be executed and delivered such other documents, instruments or certificates as the Vendor may reasonably request.
- (c) deliver to the Vendor an acknowledgement dated as of the Closing Date, that each of the conditions precedent in this Agreement in favour of the Purchaser have been fulfilled, performed or waived by the Purchaser as of the Closing Date;
- (d) execute and deliver or cause to be executed and delivered such other documents, instruments or certificates as contemplated by this Agreement.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Vendor

The Vendor represents and warrants to the Purchaser as follows and acknowledges that the Purchaser is relying upon such representations and warranties in entering into this Agreement:

- (a) The Vendor has been appointed Receiver of the Company pursuant to the Appointment Order.
- (b) The Vendor has done no act to dispose of or encumber any of the Purchased Assets.

3.2 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Vendor as follows and acknowledges that the Vendor is relying upon such representations and warranties in entering into this Agreement:

- (a) The Purchaser is a corporation duly incorporated, organized, and validly existing under the laws of its jurisdiction of incorporation. No proceedings have been taken or authorized by the Purchaser or, to the best of the Purchaser's knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of the Purchaser.
- (b) The Purchaser has all necessary power and capacity to execute and deliver, and to observe and perform its covenants and obligations under, this Agreement and the Closing Documents to which it is a party. The Purchaser has taken all corporate action necessary to authorize the execution and delivery of, and the observance and performance of, its covenants and obligations under this Agreement and the Closing Documents to which it is or shall be a party.
- (c) This Agreement has been, and each Closing Document to which the Purchaser is a party will on Closing be, duly executed and delivered by the Purchaser, and this Agreement constitutes, and each Closing Document to which the Purchaser is a party will, on Closing, constitute, a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.
- (d) The Purchaser is in good standing with the College.
- (e) The Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act* (Canada).
- (f)

3.3 Interpretation

Each representation and warranty made by a Party in this Agreement shall be treated as a separate representation and warranty in respect of each statement made and the interpretation of any statement made shall not be restricted by reference to, or inference from, any other statement made in a representation and warranty of such Party.

3.4 Commission

Each Party represents and warrants to each other Party that no other Party will be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated hereby because of any action taken by, or agreement or understanding reached by, that Party.

3.5 Survival of Representations and Warranties

All representations, warranties, statements, covenants, and agreements made by the Purchaser in this Agreement, or any Closing Document, shall survive the Closing indefinitely.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions of Closing

Either the Purchaser or the Vendor shall be obliged to complete the Closing only if each of the conditions' precedent, set out below in Sections 4.1.1 through 4.1.8 inclusive, has been satisfied in full at or before the Closing Time.

4.1.1 Accuracy of Representations and Performance of Covenants

At the Closing Time, all of the representations and warranties of each of the Purchaser and the Vendor made in or pursuant to this Agreement shall be true and correct as if made at and as of the Closing Time (regardless of the date as of which the information in this Agreement or in any schedule or other document made pursuant hereto is given) except as such representations or warranties may be affected by the appeal of any court order referred to herein. At the Closing Time, each of the Purchaser and the Vendor shall have observed or performed in all respects all of the obligations, covenants and agreements which it must perform at or before the Closing Time. Each of the Purchaser and the Vendor shall have received immediately prior to the Closing Time a certificate from the other certifying, to the best of its knowledge, information and belief (after due enquiry) that the conditions in this Section 4.1.1 to be satisfied by it have been satisfied.

4.1.2 Litigation

No Order shall have been entered that prohibits or restricts the Closing. Neither of the Parties, nor any of their respective directors, officers, employees, or agents, shall

be a defendant or third party to or threatened with any litigation or proceedings, before any court or Governmental Authority which, in the opinion of either the Purchaser or the Vendor, acting reasonably, could prevent or restrict that Party from performing any of its obligations in this Agreement or any Closing Document, including the appeal or any threatened appeal of the Vesting Order or the Approval Order.

4.1.4 Receipt of Closing Documentation

All documentation relating to the sale and purchase of the Purchased Assets and such other Closing Documents relating to the due authorization and completion of the sale and purchase and all actions and proceedings taken on or prior to the Closing in connection with the performance by the Purchaser and the Vendor of their obligations under this Agreement shall be satisfactory to each of the Purchaser, the Vendor and their respective counsel, as applicable. Each of the Purchaser and the Vendor shall have received copies of the Closing Documents and all such documentation or other evidence as it may reasonably request in order to establish the consummation of the transactions contemplated hereby and the taking of all corporate proceedings in connection therewith in form (as to certification and otherwise) and substance satisfactory to each of the Purchaser, the Vendor and their respective counsel.

4.1.5 Orders

The Vendor shall have obtained the Vesting Order and the Approval Order. The Vendor shall not have received notice of appeal in respect to of the Approval Order and the Vesting Order and the Approval Order and the Vesting Order shall not have been stayed, varied or vacated and shall be in full force and effect and no Order restraining or prohibiting Closing shall have been made by the Court.

4.1.6 No Removal of Purchased Assets

The Fixed Assets or any material portion thereof, shall not have been removed from the control of the Vendor since the date of the Appointment Order, by any means or process and no party shall have taken any action to redeem any of the Fixed Assets.

4.1.7 Cancellation of Insurance

Except as expressly contemplated herein, all insurance maintained by the Vendor on behalf of the Company shall be cancelled by the Vendor on the Closing Date and the Purchaser shall be responsible for placing its own insurance with respect to the Business from and after the Closing Date.

4.1.8 Assignment of the Lease

If consent to assignment by the Vendor is required under the Lease the Purchaser shall make all necessary arrangements for such assignment.

4.2 Waiver

Any Party may waive, by notice to the other Parties, any condition set forth in this Article 4 which is for its benefit. No waiver by a Party or any condition, in whole or in part, shall operate as a waiver of any other condition.

4.3 Failure to Satisfy Conditions

If any condition set forth in Article 4 is not satisfied at the Closing Time, the Party entitled to the benefit of such condition (the “**First Party**”) may terminate this Agreement by notice in writing to the other Party and in such event the Parties shall be released from all obligations hereunder.

ARTICLE 5

5.1 Non-Disclosure of Transaction

The Purchaser agrees that it will not and will cause its officers, directors, employees, representatives and advisors not to, disclose or permit to be disclosed to any Person, any information relating to the Purchase Price or any of the other terms of this Agreement until after closing.

5.2 Risk of Loss

Up to the time of the Closing, the Purchased Assets shall be and remain at the risk of the Vendor. If, prior to the time of the Closing, all or any material part of the Purchased Assets are substantially destroyed or damaged by fire or any other casualty or shall be expropriated, the Purchaser shall have the option, exercisable by notice in writing given within two (2) Business Days of the Purchaser receiving notice in writing from the Vendor of such destruction, damage or expropriation:

- (a) to complete the purchase without reduction of the Purchase Price and all proceeds of insurance or compensation for expropriation shall be payable to the Purchaser and all right and claim of the Vendor to any such amounts not paid by the time of the Closing shall be assigned by the Vendor to the Purchaser; or
- (b) of terminating this Agreement and not completing the purchase, in which case all obligations of the Purchaser and the Vendor hereunder, other than those pursuant to Section 5.1, shall terminate and the Deposit shall be returned to the Purchaser.

For greater certainty, where any damage is not substantial, the Purchaser shall be obliged to complete this Agreement, without deduction, and shall be entitled to the proceeds of insurance, if any, in connection with such damage.

5.3 Records

The Purchaser agrees to maintain the Records for a period of at least seven (7) years following the Closing and shall provide access to the Vendor to such records, as the Vendor may reasonably require to complete its administration of the receivership of the Company.

ARTICLE 6 GENERAL

6.1 Expenses

Each Party shall pay all expenses it incurs in authorizing, preparing, executing and performing any aspect of the Transaction contemplated by this Agreement, whether or not the Closing occurs, including all fees and expenses of its legal counsel, bankers, investment bankers, brokers, accountants or other representatives or consultants.

6.2 Time

Time is of the essence of each provision of this Agreement.

6.3 Notices

Any notice, demand or other communication (in this Section, a “notice”) required or permitted to be given or made hereunder shall be given in writing and addressed as follows:

(a) In the case of a notice to the Vendor, addressed to it at:

ALBERT GELMAN INC., in its capacity as
court-appointed Receiver of all the
property and assets of Dr. R. Boljkovac
Dentistry Professional Corporation

250 Ferrand Drive, Suite 403
Toronto, ON M3C 3G8

Attention: Adam Zeldin
Tel: (416) 504-1650 ext. 129
Email: azeldin@albertgelman.com

And with a further copy to its counsel at:

Harrison Pensa LLP
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Attention: Timothy C. Hogan
Tel: (519) 679-9660
Email: thogan@harrisonpensa.com

(b) In the case of a notice to the Purchaser, addressed to it at:

Mary Ann Majic Dentistry Professional Corporation
1984 Regent Street, Unit 102
Sudbury, ON P3E 5S1

Attention: Mary Ann Majic
Tel: (705) 523-0330
Email: majicdentistry@gmail.com

And with a further copy to its counsel at:

Sostarich Law
125 Durham Street
Sudbury, ON P3E 3M9

Attention: Alesia Sostarich
Tel: (705) 222-1626
Email: alesia@sostarichlaw.ca

Any such notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the Business Day of such delivery and if sent by telecopier or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was received.

6.4 Public Announcements / Confidentiality of Agreement

Before the Closing Date, the Purchaser shall make no public statement or issue any press release concerning the transactions contemplated by this Agreement except as may be necessary to comply with the requirements of all Applicable Law. If any such public statement or release is so required, the Purchaser shall consult with the other Parties prior to making such statement or release, and the Parties shall use all reasonable efforts, acting in good faith, to agree upon a text for such statement or release which is satisfactory to all Parties. The Parties expressly acknowledge and agree that this Agreement shall not become public until after Closing.

6.5 Assignment

(a) The Purchaser may not assign any or all rights or benefits under this Agreement to any Person without the Vendor's written consent which consent shall be in the Vendor's sole discretion. If the Purchaser wishes to assign this agreement after the grant of the Vesting Order and the Vendor consents in its sole discretion, the Purchaser shall pay all of the costs incurred by the Vendor on a solicitor and its own client scale in connection with all proceedings to amend the Approval and Vesting Order or otherwise provide for vesting in the assignee.

- (b) Except as provided in Section 6.5(a), no assignment of benefits or arrangement for substituted performance by one Party shall be of any effect.
- (c) This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation or statutory arrangement of any Party) and permitted assigns.

6.6 Further Assurances

Each Party shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of such acts and will cause the execution of such further documents as are within its power as any other Party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of this Agreement and each Closing Document.

6.7 Remedies Cumulative

The rights and remedies of the Parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any Party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such Party may be lawfully entitled for the same default or breach.

6.8 Sale by Receiver

The Purchaser acknowledges and agrees that the Vendor is acting solely in its capacity as the Court-appointed receiver of the Company and without personal or corporate liability.

6.9 Counterparts

This Agreement may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.

[Signature page to follow]

[Signature page to Asset Purchase Agreement]

IN WITNESS WHEREOF this Agreement has been executed by the Purchaser as of the date first indicated.

**MARY ANN MAJIC DENTISTRY
PROFESSIONAL CORPORATION**

Per: Mary Ann Majic
Mary Anne Majic, President
I have authority to bind the corporation.

IN WITNESS WHEREOF this Agreement has been executed by the Purchaser as of the date first indicated.

ALBERT GELMAN INC., solely in its capacity
as the court-appointed Receiver of Dr. R.
Boljkovac Dentistry Professional
Corporation and not in any other capacity
and with no personal or corporate liability

Per: Bryan A. Gelman
Bryan A. Gelman, CIRP, LIT
Managing Director
I have authority to bind the corporation.

SCHEDULE A

Approval and Vesting Order

SCHEDULE B

Addresses of Premises

1984 Regent Street, Unit 102,
Sudbury, ON P3E 5S1

SCHEDULE C

PURCHASE PRICE ALLOCATION

Equipment	[REDACTED]
Tenant Leaseholds	[REDACTED]

THE TORONTO-DOMINION BANK
CORPORATION

v.

D R. R. BOLJKOVAC DENTISTRY PROFESSIONAL

operating as NORWOOD FAMILY DENTISTRY AND RENE EMIL
BOLJKOVAC

Applicant

Respondents

Court File No. CV-24-00011930-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
SUDBURY, ONTARIO

FIRST REPORT OF THE RECEIVER

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MOTION RECORD

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