

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND
926749 ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**Motion Record
(Returnable January 19, 2024)**

January 15, 2024

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Counsel for the Receiver, Deloitte Restructuring Inc. in its
capacity as Court-appointed Receiver

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

BETWEEN:

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**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

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(Returnable January 19, 2024)**

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TAB 1

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

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

**NOTICE OF MOTION
(MOTION RETURNABLE JANUARY 19, 2024 AT 11:00 A.M.)**

DELOITTE RESTRUCTURING INC. (“**Deloitte**”), in its capacity as court-appointed receiver (the “**Receiver**”) of Velocity Asset and Credit Corporation (“**Velocity**”) and 926749 Ontario Ltd. o/a Clonsilla Auto Sales and Leasing (the “**Dealer**” and, together with Velocity, the “**Debtors**”) will make a motion to a Judge presiding over the Commercial List on January 19, 2024, at 11:00 a.m. or as soon after that time as the motion can be heard at the Courthouse located at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard by video conference, the details of which will be provided by the Court and circulated to the Service List prior to the Motion.

THE MOTION IS FOR:

1. An Order substantially in the form of order attached at Tab 3 to the Motion Record (the “**Vesting Order**”), (a) vesting title in certain vehicles sold by the Receiver at public auction in the respective purchaser of the vehicles free and clear of any encumbrances; (b) transferring any security interest in the sold vehicles to the proceeds of sale; and (c) authorizing the Receiver to discharge any registrations against the sold vehicles without further order of the Court.
2. An Order substantially in the form of order attached at Tab 4 to the Motion Record that, among other things, (i) approves the Second Report of the Receiver dated January 15, 2024 (the “**Second Report**”) and the activities described therein, and (ii) approves a form of vesting order substantively similar to the Vesting Order to permit the completion of sale transactions in respect of vehicles that may be sold by the Receiver from time to time.
3. Granting such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Background

4. On October 26, 2023, pursuant to an order (the “**Receivership Order**”) of the Court, the Receiver was appointed over all the property, assets, and undertakings of Velocity and over certain property of the Dealer.

5. On December 8, 2023, pursuant to an order (the “**A&R Receivership Order**”) of the Court, the Receiver was appointed over all the property, assets and undertakings of Velocity and of the Dealer (together, the “**Property**”).
6. The Dealer operated a used car dealership (the “**Dealership**”) located at 809 Clonsilla Avenue, Peterborough, Ontario.
7. The Dealership’s primary business activity is leasing used vehicles to customers with sub-prime credit ratings.

Lease Servicing

8. The Receiver has been servicing the lease portfolio of the Dealership since its appointment. In order to promote the efficient servicing of this portfolio, the Receiver has been engaged in discussions with potential third-party servicers who have experience servicing distressed lease portfolios.
9. The Receiver approached six potential lease servicers, of which five entered into non-disclosure agreements and reviewed available data on the lease portfolio. Of those five servicers, three submitted lease servicing proposals.
10. After reviewing the proposals submitted, the Receiver determined that the proposal (the “**Northlake Proposal**”) submitted by Northlake was the most attractive for the following reasons:
 - (a) the Northlake Proposal included servicing costs that were significantly lower than those set out in the other two proposals;

- (b) Northlake has no relationship with the Debtors or any other stakeholder that presents a potential conflict of interest;
 - (c) Northlake has experience servicing distressed lease portfolios in similar circumstances;
 - (d) Northlake is able to quickly assume its obligations under the Northlake Proposal, which will minimize professional fees associated with ongoing lease servicing efforts by the Receiver; and
 - (e) the Northlake Proposal provides for the greatest recovery available in the circumstances.
11. Under the Northlake Proposal, Northlake will provide, among other things, the following services:
- (a) responding timely to inquiries, demands or complaints of lessees and governmental authorities regarding the lease receivables (the “**Receivables**”);
 - (b) investigating delinquencies and making reasonable efforts to collect any past due payments;
 - (c) performing activities commonly referred to as “skip tracing” for lessees that cannot be contacted;
 - (d) maintaining a log of communications with lessees in default and maintaining a history of payments made and documentary evidence of

Northlake's efforts to affect a cure of any delinquency or default and to collect the Receivables;

- (e) providing information to the Receiver and assisting the Receiver in administering and enforcing all rights and responsibilities of the Receiver in the Receivables;
- (f) providing accounting and oversight information to the Receiver; and
- (g) keeping, storing and maintaining access to books, records and documents pertaining to the Receivables, including collection efforts, and making periodic reports to the Receiver.

12. The Receiver and Northlake are negotiating the terms of a servicing agreement, which the Receiver expects will be executed in the near term.

Vesting Order

13. The Receiver delivered 40 vehicles to North Toronto Auto Auctions (“**NTAA**”) to be sold by public auction pursuant to section 4(k) of the A&R Receivership Order.
14. NTAA carried out a public auction on November 25, 2023, at which 39 of the 40 vehicles were sold for gross proceeds of \$183,850 (the “**Auction Proceeds**”). NTAA subsequently advised the Receiver that 11 of the vehicles were encumbered by registrations (the “**PPSA Registrations**”) in favour of Nextgear Capital Corporation (“**Nextgear**”), Kawartha Credit Union (“**KCU**”) and Automotive Finance Canada (“**AFC**” and, together, the “**PPSA Registrants**”).

15. NTAA has advised the Receiver that it will not release the Auction Proceeds until the PPSA Registrations have been discharged. NTAA has also advised the Receiver that it will not include any further Property in its auctions until the PPSA Registrations have been discharged. The Receiver has approximately 22 vehicles at NTAA pending an auction on January 27, 2023, and expects to deliver at least another seven cars to NTAA before that date (together with additional vehicles that may be sold by the Receiver from time to time, the “**Unsold Vehicles**”). In addition to Nextgear and AFC, there are PPSA registrations in favour of Go To Loans Inc. and Jaqstan Consulting Inc. o/a Autoloans 4 You in respect of the Unsold Vehicles.
16. The Receiver has contacted each of the PPSA Registrants to request authorization to discharge their registrations on the basis that any claims against the Property held by the PPSA Registrants must be dealt with in the context of the receivership proceedings.
17. Nextgear and AFC have responded by providing security documentation to the Receiver, which the Receiver is in the process of reviewing. KCU has not responded to the Receiver’s request to discharge its registration.
18. The Receiver is empowered by the A&R Receivership Order to realize on the Property and to seek a vesting order to convey the Property to any purchasers thereof, free and clear of any encumbrances on the Property. In order to allow the Receiver to realize on the Property efficiently, and to preserve the rights and interests of secured creditors, the Receiver is requesting that the Court issue the Vesting Order, (a) vesting title in certain vehicles sold by the Receiver at public auction in the respective purchaser of the vehicles free and clear of any encumbrances; (b) transferring any security interest in the sold vehicles to the

proceeds of sale; and (c) authorizing the Receiver to discharge any registrations against the sold vehicles without further order of the Court.

19. With respect to the Unsold Vehicles, the Receiver seeks the approval of a form of vesting order identical to the form of the Vesting Order, save and except that the description of the vehicles are in blank and remain to be completed.
20. The Receiver seeks the authority for TGF to complete such vesting orders upon the sale of the Unsold Vehicles in order to effect the transfer of the vehicles. The Receiver intends for such vesting orders to be presented to the Registrar for issuance without a further motion to the Court, subject to any material deviations from the draft form of vesting order.
21. The Receiver seeks the aforementioned relief with respect to the Unsold Vehicles in order to avert the cost and complexity of further Court appearances.

Other Grounds for Relief:

1. Sections 100, 101 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
2. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37, 38, 39 of the Rules of Civil Procedure (Ontario), R.R.O. 1990, Reg. 194.
3. 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. Second Report of the Receiver dated January 15, 2024.

2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 15, 2024

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IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

ENLIGHTENED FUNDING CORPORATION

and

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD.**

Applicant

Respondents

Court File No.: CV-23-00707330-00CL

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

Proceedings commenced in Toronto

NOTICE OF MOTION

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Lawyers for the Receiver

TAB 2

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

BETWEEN:

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**SECOND REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF VELOCITY ASSET AND
CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING
DATED JANUARY 15, 2024**

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- APPENDIX “B”** Receivership Order dated October 26, 2023
- APPENDIX “C”** A&R Receivership Order dated December 8, 2023
- APPENDIX “D”** First Report of the Receiver dated December 4, 2023

INTRODUCTION AND PURPOSE OF THIS REPORT

1. On October 13, 2023, Enlightened Funding Corporation (“**Enlightened**”) made an application (the “**Application**”) to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver of the property, assets, and undertakings of Velocity Asset and Credit Corporation (“**Velocity**”) and certain property (the “**Dealer Property**”) of 926749 Ontario Ltd. o/a Clonsilla Auto Sales and Leasing (the “**Dealer**” and, together with Velocity, the “**Debtors**”).
2. The Application was adjourned to October 26, 2023, to provide the Debtors with an opportunity to respond to the Application. A copy of the endorsement of the Honourable Justice Steele is attached hereto as **Appendix “A”**.
3. On October 26, 2023 (the “**Date of Appointment**”), pursuant to an order of the Court (the “**Receivership Order**”), Deloitte was appointed as receiver (the “**Receiver**”) of the property, assets, and undertakings of Velocity and of the Dealer Property. A copy of the Receivership Order is attached hereto as **Appendix “B”**.
4. On December 8, 2023, pursuant to an order (the “**A&R Receivership Order**”) of the Court, Deloitte was appointed over all the property, assets, and undertakings of Velocity and of the Dealer (together, the “**Property**”). A copy of the A&R Receivership Order is attached hereto as **Appendix “C”**.
5. The purpose of this second report of the Receiver (the “**Second Report**”) is to provide information to the Court with respect to:

- a) the activities of the Receiver since the First Report of the Receiver dated December 4, 2023 (the “**First Report**”);
- b) the basis for a vesting order in respect of vehicles sold at public auction (the “**Vesting Order**”); and
- c) the basis for an order that, among other things, (i) approves the Second Report and the activities described herein and, (ii) approves a form of vesting order substantively similar to the Vesting Order to permit the completion of sale transactions in respect of vehicles that may be sold by the Receiver from time to time.

TERMS OF REFERENCE

- 6. In preparing this Second Report, Deloitte has been provided with, and has relied upon unaudited, draft, and/or internal financial information, the Debtors’ books and records, discussions with the Debtors’ management, shareholders, and employees, and information from third-party sources (collectively, the “**Information**”). Except as otherwise described in this Second Report:
 - a) Deloitte has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.

- b) Deloitte has filed this Second Report solely for the purpose of providing information to this Court. Parties using the Second Report other than for the purposes outlined herein are cautioned it may not be appropriate for their purposes.
7. Unless otherwise stated, all dollar amounts contained in this Second Report are expressed in Canadian dollars.

BACKGROUND

8. Velocity was incorporated on August 21, 2019, under the *Ontario Business Corporations Act*. The directors and officers of Velocity are Hollinsworth Auguste (“**Auguste**”) and Hugh Waddell (“**Waddell**”).
9. The Dealer was incorporated on June 4, 1991, and was revived on July 12, 1996, under the *Ontario Business Corporations Act*. The Dealer operates a used car dealership (the “**Dealership**”) located at 809 Clonsilla Avenue, Peterborough, Ontario (the “**Premises**”). The directors and officers of the Dealer are Waddell and Meggan M. E. Waddell.
10. The Dealership’s primary business activity is leasing used vehicles to customers with sub-prime credit ratings. The financial and operational relationship between Velocity and the Dealer is set out in greater detail in the First Report.
11. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Report, a copy of which is attached as **Appendix “D”**.

LEASE SERVICING

12. As set out in the First Report, the Receiver approached six potential lease servicers, of which five entered into non-disclosure agreements and reviewed available data on the lease portfolio. Of those five servicers, three submitted lease servicing proposals to the Receiver.
13. After reviewing the proposals submitted, the Receiver determined that the proposal (the “**Northlake Proposal**”) submitted by Northlake was the most attractive for the following reasons:
 - a) The Northlake Proposal included servicing costs that were significantly lower than those set out in the other two proposals;
 - b) To the Receiver’s knowledge, Northlake has no relationship with the Debtors or any other stakeholder that presents a potential conflict of interest;
 - c) Northlake has experience servicing distressed lease portfolios in similar circumstances;
 - d) Northlake is able to quickly assume its obligations under the Northlake Proposal, which will minimize professional fees associated with ongoing lease servicing efforts by the Receiver; and
 - e) The Northlake Proposal provides for the greatest recovery available in the circumstances.
14. Under the Northlake Proposal, Northlake will provide, among other things, the following services:

- a) responding timely to inquiries, demands or complaints of lessees and governmental authorities regarding the lease receivables (the “**Receivables**”);
 - b) investigating delinquencies and making reasonable efforts to collect any past due payments;
 - c) performing activities commonly referred to as “skip tracing” for lessees that cannot be contacted;
 - d) maintaining a log of communications with lessees in default and maintaining a history of payments made and documentary evidence of Northlake’s efforts to affect a cure of any delinquency or default and to collect the Receivables;
 - e) providing information to the Receiver and assisting the Receiver in administering and enforcing all rights and responsibilities of the Receiver in the Receivables;
 - f) providing accounting and oversight information to the Receiver; and
 - g) keeping, storing and maintaining access to books, records and documents pertaining to the Receivables, including collection efforts, and making periodic reports to the Receiver.
15. The Receiver and Northlake are negotiating the terms of a servicing agreement, which the Receiver expects will be executed in the near term.

SALE OF VEHICLES

16. As set out in the First Report, the Receiver delivered 40 vehicles to North Toronto Auto Auctions (“**NTAA**”) to be sold by public auction pursuant to section 4(k) of the Receivership Order.
17. NTAA carried out a public auction on November 25, 2023, at which 39 of the 40 vehicles were sold for gross proceeds of \$183,850 (the “**Auction Proceeds**”). NTAA subsequently

advised the Receiver that 11 of the vehicles were encumbered by registrations (the “**PPSA Registrations**”) in favour Nextgear Capital Corporation (“**Nextgear**”), Kawartha Credit Union (“**KCU**”) and Automotive Finance Canada (“**AFC**” and, together, the “**PPSA Registrants**”).

18. The Receiver has contacted each of Nextgear, KCU and AFC to request authorization to discharge their registrations on the basis that any claims against the Property held by the PPSA Registrants must be dealt with in the context of the receivership proceedings.
19. The Receiver wrote to Nextgear on December 14, 2023, and provided details of vehicles sold at auction that were subject to registrations in favour of Nextgear and requested that the registrations be discharged. On January 9, 2024, counsel to Nextgear provided the Receiver with copies of its security documentation and advised that it is prepared to discharge the PPSA Registrations in favour of Nextgear if the Receiver confirmed that it would continue to hold the Auction Proceeds and would not distribute or utilize the funds pending the outcome of the claims of the PPSA Registrants and without Nextgear’s prior consent. The Receiver requires the Auction Proceeds to fund the Receivership and was not prepared to confirm it would not utilize the funds.
20. To date, KCU has not responded to the Receiver’s request to discharge its registration.
21. AFC advised the Receiver on December 13, 2023, that it would not discharge its registrations and requested the return of the vehicles. Following conversations between the Receiver and AFC in early January 2024, and in response to a request from the Receiver for particulars of AFC’s security, AFC provided statements of amounts owing on the vehicles subject to its registrations and a copy of a demand promissory note and security

agreement. The Receiver wrote to AFC on January 2, 2024, to request additional documentation of the individual registrations and on January 10, 2024, AFC provided additional security documentation.

22. The Receiver is in the process of reviewing the security documentation received from the PPSA Registrants.
23. NTAA has advised the Receiver that it will not release the Auction Proceeds until the PPSA Registrations have been discharged. NTAA has also advised the Receiver that it will not include any further Property in its auctions until the PPSA Registrations have been discharged. The Receiver has approximately 22 vehicles at NTAA pending an auction on January 27, 2024, and expects to deliver at least another seven cars to NTAA before that date (together with additional vehicles that may be sold by the Receiver from time to time, the “**Unsold Vehicles**”).
24. In addition to Nextgear and AFC, there are PPSA registrations in favour of Go To Loans Inc. and Jaqstan Consulting Inc. o/a Autoloans 4 You in respect of the Unsold Vehicles.
25. The Receiver is empowered by the A&R Receivership Order to realize on the Property and to seek a vesting order to convey the Property to any purchasers thereof, free and clear of any encumbrances. In order to allow the Receiver to realize on the Property efficiently, and to preserve the rights and interests of secured creditors, the Receiver is requesting that the Court issue an order (a) vesting title in certain vehicles sold by the Receiver at public auction in the respective purchaser of the vehicles free and clear of any encumbrances; (b) transferring any security interest in the sold vehicles to the proceeds of sale; and (c)

authorizing the Receiver to discharge any registrations against the sold vehicles without further order of the Court.

26. With respect to the Unsold Vehicles, the Receiver seeks the approval of a form of vesting order identical to the form of the Vesting Order sought in this motion, save and except that the description of the vehicles are in blank and remain to be completed.
27. The Receiver seeks the authority for its counsel, Thornton Grout Finnigan LLP (“**TGF**”), to complete such vesting orders upon the sale of the Unsold Vehicles in order to permit the completion of the transfer of these vehicles. Such vesting orders would be presented by TGF to the Registrar of the Ontario Superior Court of Justice (Commercial List) for issuance without a further motion to the Court, subject to any material deviations from the draft form of vesting order. If there were any material deviations being proposed, the Receiver intends to return to Court.
28. This relief is appropriate in the circumstances because it would avoid the cost and complexity of further Court appearances, which would minimize the recovery available for the Debtors’ stakeholders.

CONCLUSION AND RECOMMENDATION

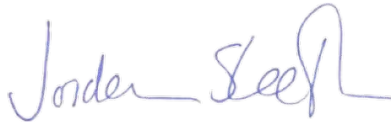
29. In order to minimize the ongoing cost of servicing the lease portfolio and facilitate the Receiver’s ability to realize on the Property, the Receiver recommends that the Court issue:
 - a) the Vesting Order; and

- b) an order approving the Second Report and the activities described herein and the form of vesting order substantively similar to the Vesting Order and authorizing TGF to complete and deliver same to the Registrar for issuance as the Unsold Vehicles are sold from time to time.

All of which is respectfully submitted at Toronto, Ontario this 15th day of January, 2024.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-Appointed
Receiver of Velocity Asset and Credit
Corporation and 926749 Ontario Ltd.
and without personal or corporate liability

Per:



Jorden Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President

Appendix "A"



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707330-00CL

DATE: 13 October 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: ENLIGHTENED FUNDING CORPORATION v.
VELOCITY ASSET AND CREDIT CORPORATION ET AL.
BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Aiden Nelms	Enlightened Funding Corporation	nelmsa@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Josh Suttner	Velocity Asset and Credit Corporation; 926749 Ontario Ltd. o/a Clonsilla Auto Sales and Leasing	jsuttner@airdberlis.com
Thomas Gertner Katherine Yurkovich	Peoples Trust Company of Canada	thomas.gertner@gowlingwlg.com kate.yurkovich@gowlingwlg.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Derek Harland Rebecca Kennedy	Deloitte Restructuring Inc.	dkharland@tgf.ca rkennedy@tgf.ca

ENDORSEMENT OF JUSTICE STEELE:

- [1] The applicant, Enlightened Funding Corp., brings an application to appoint Deloitte as the receiver and manager of all assets of Velocity, among other things.
- [2] The respondents requested a short adjournment, which was not agreed to by the applicant.
- [3] I agreed to grant the adjournment because the application materials were not served until late in the day on Friday October 6, 2023 (prior to the long Thanksgiving weekend), the respondents' counsel were not consulted on the scheduling of today's appearance and the respondents' lead lawyer is in court on another matter, and Hugh Waddell's spouse is extremely ill and in the hospital. The respondents wish to file a response and ought to be given the opportunity to do so.
- [4] Matter adjourned to October 26, 2023 at 11 am (2 hours). The respondents shall deliver their responding materials on or prior to October 20, 2023.

A handwritten signature in blue ink, appearing to be "J. Steele", is located in the lower right quadrant of the page.

Appendix "B"

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

THE HONOURABLE) THURSDAY, THE 26th
)
JUSTICE CONWAY) DAY OF OCTOBER, 2023

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

RECEIVERSHIP ORDER

THIS APPLICATION made by the Applicant for an Order pursuant to subsection 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 Deloitte Restructuring Inc. ("**Deloitte**") as receiver (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Velocity Asset and Credit Corporation ("**Velocity**") acquired for, or used in relation to a business carried on by Velocity, including all proceeds thereof, and of the Dealer Property (as defined in the affidavit of Eamonn Glavey sworn October 6, 2023 and the Exhibits thereto (the "**Glavey Affidavit**")) of 926749 Ontario Ltd. (the "**Dealer**" and together with Velocity, the "**Debtors**"), including all proceeds thereof, was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Glavey Affidavit, the Responding Record dated October 20, 2023 and the Affidavit of Eamonn Glavey sworn October 24, 2023, and on hearing the submissions of counsel for the Applicant, the proposed Receiver and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service sworn and filed, and on reading the consent of Deloitte to act as the Receiver,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Glavey Affidavit.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the present and future assets, undertakings and real and personal property of Velocity acquired for, or used in relation to, a business carried on by Velocity, including all proceeds thereof, and of the Dealer Property of the Dealer, including all proceeds thereof (collectively, the "**Property**").

RECEIVER'S POWERS

4. **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 the 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 Debtors, or any of them, in connection with the Property, including the powers to enter into any agreements or incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business of the Debtors in connection with the Property, or any of them, or cease to perform or disclaim any contracts of any of the Debtors in respect of the Property;
- (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 Debtors, or any of them, in connection with the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors in connection with the Property;
- (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 Debtors, 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 Debtors (as such proceedings relate to the Property or any portion thereof), 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 \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$2,500,000; 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*, shall not be required;
- (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 the Property or any part or parts thereof;
- (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 either of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors,
- (t) 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, including either of the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that: (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on their 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 of the Property in each 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.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, patents, patent applications, documents, securities, contracts, orders, corporate and accounting records, bank account information and any other papers, records and information of any kind related to the business or affairs of the Debtors or the Property, 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 6 or in paragraph 7 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.

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 DEBTORS OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors 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 Debtors 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 Debtors, 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 Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the

environment to which the Debtors are subject, (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 Debtors, 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 Debtors 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 Debtors 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 Debtors' 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 Debtors 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 any and all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 subsection 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 subsections 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 Debtors, 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 of 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 subsections 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 subsections 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 their 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, with the prior written consent of Peoples Trust Company of Canada ("**PTC**"), to borrow by way of: (a) advances from the Applicant irrevocably directed to the Receiver pursuant to the terms of the Enlightened Credit Agreement; or (b) advances from PTC, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$470,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest provided for in the Enlightened Credit Agreement (with respect to advances from the Applicant) or at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange (with respect to advances from PTC), for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures (the "**Receiver's Borrowings**"). 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 Receiver's Borrowings, 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 subsections 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 the Receiver's Borrowings pursuant to this Order.

25. **THIS COURT ORDERS** that the Receiver's Borrowings borrowed 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 Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial>) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.insolvencies.deloitte.ca/en-ca/pages/search-insolvencies.aspx>.

27. **THIS COURT ORDERS** that the Debtors, the Receiver, the Applicant and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by

forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide 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, facsimile or email transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by e-mail transmission shall be deemed to be received on the same business day as transmission, or if sent 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

29. **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.

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

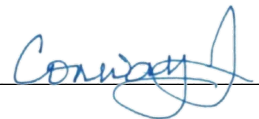
31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or Europe to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, 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.

32. **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 foreign representative in respect of the Debtors and the within proceedings for the purpose of having the within proceedings and this or any other Orders made in the within proceedings recognized in a jurisdiction outside Canada.

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

34. **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.

35. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is written above a horizontal line.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Deloitte Restructuring Inc., the receiver (in such capacity, the "**Receiver**"), without security, of all of the present and future assets, undertakings and real and personal property of Velocity Asset and Credit Corporation ("**Velocity**") acquired for, or used in relation to a business carried on by Velocity, including all proceeds thereof, and of the Dealer Property (as defined in the affidavit of Eamonn Glavey sworn October 6, 2023) of 926749 Ontario Ltd., including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 26th day of October, 2023 (the "**Order**") made in an action having Court file number CV-23-00707330-00CL, 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 _____, 2023.

Deloitte Restructuring Inc., solely in its capacity as Receiver of the Property, and not in its personal or corporate capacity

Per: _____
Name:
Title:

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

ENLIGHTENED FUNDING CORPORATION

and

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD.**

Applicant

Respondents

Court File No.: CV-23-00707330-00CL

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

Proceedings commenced in Toronto

RECEIVERSHIP ORDER

BENNETT JONES LLP

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Milan Singh-Cheema (LSO#: 88258Q)

Tel: (416) 777-5521

Email: singhcheemam@bennettjones.com

Lawyers for the Applicant

Appendix “C”



Court File No.: CV-23-00707330-00CL

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

THE HONOURABLE)
JUSTICE CONWAY)
FRIDAY, THE 8th
DAY OF DECEMBER, 2023

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

AMENDED AND RESTATED RECEIVERSHIP ORDER

THIS APPLICATION made by the Applicant for an Order pursuant to subsection 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 Deloitte Restructuring Inc. ("**Deloitte**") as receiver (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Velocity Asset and Credit Corporation ("**Velocity**") and of 926749 Ontario Ltd. (the "**Dealer**" and together with Velocity, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof, was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Eamonn Glavey sworn October 6, 2023 (the “**Glavey Affidavit**”), the Responding Record dated October 20, 2023 the Affidavit of Eamonn Glavey sworn October 24, 2023 and the First Report of the Receiver dated December 4, 2023, and on hearing the submissions of counsel for the Applicant, the proposed Receiver and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service sworn and filed, and on reading the consent of Deloitte to act as the Receiver,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Glavey Affidavit.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the present and future assets, undertakings and real and personal property of the Debtors acquired for, or used in relation to, a business carried on by the Debtors, including all proceeds thereof (collectively, the “**Property**”).

RECEIVER'S POWERS

4. **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 the 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 Debtors, or any of them, in connection with the Property, including the powers to enter into any agreements or incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business of the Debtors in connection with the Property, or any of them, or cease to perform or disclaim any contracts of any of the Debtors in respect of the Property;
- (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 Debtors, or any of them, in connection with the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors in connection with the Property;
- (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 Debtors, 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 Debtors (as such proceedings relate to the Property or any portion thereof), 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 \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$2,500,000; 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*, shall not be required;
- (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 the Property or any part or parts thereof;
- (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 either of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors; and
- (t) 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, including either of the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that: (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on their 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 of the Property in each 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.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, patents, patent applications, documents, securities, contracts, orders, corporate and accounting records, bank account information and any other papers, records and information of any kind related to the business or affairs of the Debtors or the Property, 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 6 or in paragraph 7 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.

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.

INVESTIGATIVE POWERS

9. **THIS COURT ORDERS** that the Receiver is hereby authorized to exercise all available investigative and other rights and remedies that are available to a trustee in bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B- 3, as amended.

10. **THIS COURT ORDERS** that the Receiver is hereby authorized to examine under oath any Person, including but not limited to representatives of the Debtors, that the Receiver reasonably considers to have knowledge of the affairs or Property of the Debtors.

NO PROCEEDINGS AGAINST THE RECEIVER

11. **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 DEBTORS OR THE PROPERTY

12. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

13. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment to which the Debtors are subject, (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

14. **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 Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

15. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

16. **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

17. **THIS COURT ORDERS** that any and all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 subsection 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 subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

18. **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. **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

20. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of 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 subsections 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

21. **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 subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their 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.

23. **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

24. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered, with the prior written consent of Peoples Trust Company of Canada ("**PTC**"), to borrow by way of: (a) advances from the Applicant irrevocably directed to the Receiver pursuant to the terms of the Enlightened Credit Agreement; or (b) advances from PTC, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest provided for in the Enlightened Credit Agreement (with respect to advances from the Applicant) or at such rate or rates of interest as it deems advisable

for such period or periods of time as it may arrange (with respect to advances from PTC), for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures (the "**Receiver's Borrowings**"). 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 Receiver's Borrowings, 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 subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. **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.

26. **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 the Receiver's Borrowings pursuant to this Order.

27. **THIS COURT ORDERS** that the Receiver's Borrowings borrowed 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

28. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial>) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.insolvencies.deloitte.ca/en-ca/pages/search-insolvencies.aspx>.

29. **THIS COURT ORDERS** that the Debtors, the Receiver, the Applicant and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

30. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide 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, facsimile or email transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by e-mail transmission shall be deemed to be received on the same business day as transmission, or if sent 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

31. **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.

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

33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or Europe to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of

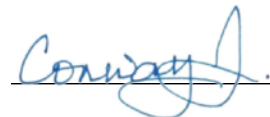
this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

34. **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 foreign representative in respect of the Debtors and the within proceedings for the purpose of having the within proceedings and this or any other Orders made in the within proceedings recognized in a jurisdiction outside Canada.

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

36. **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.

37. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Deloitte Restructuring Inc., the receiver (in such capacity, the "**Receiver**"), without security, of all of the present and future assets, undertakings and real and personal property of Velocity Asset and Credit Corporation ("**Velocity**") acquired for, or used in relation to a business carried on by Velocity, including all proceeds thereof, and of the Dealer Property (as defined in the affidavit of Eamonn Glavey sworn October 6, 2023) of 926749 Ontario Ltd., including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 26th day of October, 2023 (the "**Order**") made in an action having Court file number CV-23-00707330-00CL, 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 _____, 2023.

Deloitte Restructuring Inc., solely in its
capacity as Receiver of the Property, and not in
its personal or corporate capacity

Per: _____

Name:

Title:

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT

ENLIGHTENED FUNDING CORPORATION and **VELOCITY ASSET AND CREDIT CORPORATION AND 926749 ONTARIO LTD.**

Applicant

Respondents

Court File No.: CV-23-00707330-00CL

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

Proceedings commenced in Toronto

**AMENDED AND RESTATED RECEIVERSHIP
ORDER**

THORNTON GROUT FINNIGAN LLP
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Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Receiver

Appendix “D”

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

BETWEEN:

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**FIRST REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
DATED DECEMBER 4, 2023**

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INTRODUCTION AND PURPOSE OF THIS REPORT

1. On October 13, 2023, Enlightened Funding Corporation (“**Enlightened**”) made an application (the “**Application**”) to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver of the property, assets, and undertakings of Velocity Asset and Credit Corporation (“**Velocity**”) and certain property of 926749 Ontario Ltd. o/a Clonsilla Auto Sales and Leasing (the “**Dealer**” and, together with Velocity, the “**Debtors**”), including all of the Leases, Leased Vehicles, Rights, Collections and the Dealer Blocked Account (each as defined in a dealer security agreement entered into between Enlightened and 926749 Ontario Ltd.) and all products or proceeds thereof (the “**Dealer Property**”).
2. The Application was adjourned to October 26, 2023 to provide the Debtors with an opportunity to respond to the Application. A copy of the endorsement of Madame Justice Steele is attached hereto as **Appendix “A”**.
3. On October 26, 2023 (the “**Date of Appointment**”), pursuant to an order (the “**Receivership Order**”) of the Court, Deloitte was appointed as receiver (the “**Receiver**”) of the property, assets, and undertakings of Velocity and of the Dealer Property (together, the “**Property**”). A copy of the Receivership Order is attached hereto as **Appendix “B”**.
4. The purpose of this first report of the Receiver (the “**First Report**”) is to provide information to the Court with respect to:
 - a) the Receiver’s activities since its appointment;
 - b) the Receiver’s communications with key stakeholders;
 - c) the ongoing operations of the Dealer;

- d) the Receiver's receipts and disbursements;
- e) the basis for an order expanding the scope of the receivership and granting the Receiver enhanced investigative powers; and
- f) the basis for an order approving the activities of the Receiver.

TERMS OF REFERENCE

5. In preparing this First Report, Deloitte has been provided with, and has relied upon unaudited, draft, and/or internal financial information, the Debtors' books and records, discussions with the Debtors' management, shareholders, and employees, and information from third-party sources (collectively, the "**Information**"). Except as otherwise described in this First Report:

- a) Deloitte has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
- b) Deloitte has filed this First Report solely for the purpose of providing information to this Court. Parties using the First Report other than for the purposes outlined herein are cautioned it may not be appropriate for their purposes.

6. Unless otherwise stated, all dollar amounts contained in this First Report are expressed in Canadian Dollars.

BACKGROUND

7. Velocity was incorporated on August 21, 2019, under the *Ontario Business Corporations Act*. According to the corporation profile report attached as **Appendix “C”**, the directors and officers of Velocity are Hollinsworth Auguste (“**Auguste**”) and Hugh Waddell (“**Waddell**”).
8. The Dealer was incorporated on June 4, 1991, and was revived on July 12, 1996, under the *Ontario Business Corporations Act*. The Dealer operates a used car dealership (the “**Dealership**”) located at 809 Clonsilla Avenue, Peterborough, Ontario (the “**Premises**”). According to the corporation profile report attached as **Appendix “D”**, the directors and officers of the Dealer are Waddell and Meggan M. E. Waddell.
9. The Dealership’s primary business activity is leasing used vehicles to customers with sub-prime credit ratings. The financial and operational relationship between Velocity and the Dealer is set out in greater detail later in this First Report.

DEBTORS’ FINANCING ARRANGEMENTS

10. As context for the Receiver’s comments and observations herein and its motion for expanded powers, the Debtor’s “ordinary course” financing arrangements are described below.

11. Prior to entering into financing arrangements with Enlightened, the Receiver understands that the Debtors were involved in a lease financing facility (the “**Beacon Facility**”) with Beacon Holdings Ltd. (“**Beacon**”) and Beacon Trust (“**Beacon Trust**”).
12. Beacon assigned certain leases to Enlightened, however as of October 30, 2023, Beacon continues to have security interests in 161 lease contracts with a principal balance of \$2,013,242 (the “**Beacon Leases**”). Collections for a number of the Beacon Leases was to be serviced by Velocity pursuant to lease subservicing agreements between Velocity and Beacon (the “**Subservicer Agreements**”). However, the Receiver understands that notwithstanding the Subservicer Agreements were between Velocity and Beacon, the practice had been that the Beacon leases were subserviced by the Dealer and not Velocity.
13. The structure of the Debtors’ financing arrangement with Beacon and Beacon Trust is set out in **Appendix “E”**.

Relationship Between Enlightened and the Debtors

14. Velocity and Enlightened entered into a credit agreement dated May 26, 2022 (the “**Credit Agreement**”), pursuant to which Enlightened extended a revolving credit facility (the “**Revolving Facility**”) up to an aggregate principal amount of \$20 million. A copy of the Credit Agreement is attached hereto as **Appendix “F”**.
15. Advances under the Revolving Facility were requested in multiple tranches by way of draw-down requests submitted by Velocity to Enlightened. The draw-down requests were prepared by the Dealer and were supported by schedules of lease contracts, including details of the vehicles and VINs. The structure of the Debtors’ financing arrangement with Enlightened is set out in **Appendix “G”**.

16. The Revolving Facility was to mature on the earlier of May 26, 2023, or the date the facility was otherwise terminated pursuant to the terms of the Credit Agreement. The Receiver understands that this funding was used in part to acquire the leases in tranches 1-3 and repay Beacon.
17. In order to fund advances of the Revolving Facility in accordance with the Credit Agreement, Enlightened entered into a warehouse line of credit made as of May 26, 2022, with Peoples Trust Company of Canada (“**PTC**”), as such credit agreement was amended and restated pursuant to the terms of an amended and restated warehouse facility line of credit agreement effective July 1, 2022 between Enlightened and PTC.
18. As at the date of the Application, the total indebtedness owing by Velocity under the Credit Agreement was \$19,406,788 (excluding accruing fees, expenses and costs).
19. On May 26, 2022, Enlightened and the Dealer also entered into a Guarantee and Servicing Agreement (the “**Guarantee and Servicing Agreement**”) whereby the Dealer guaranteed the obligations of Velocity under the Revolving Facility and agreed to service the lease portfolio. A copy of the Guarantee and Servicing Agreement is attached hereto as **Appendix “H”**.

Enlightened’s Security

20. On May 26, 2022, Velocity and the Dealer both entered into security agreements in favour of Enlightened (the “**Velocity GSA**” and “**Dealer Security Agreement**”, respectively).
21. Pursuant to the Velocity GSA, Velocity granted Enlightened a security interest in all of the present and future undertakings and property, both real and personal, of Velocity in whatever form and wherever located.

22. Pursuant to the Dealer Security Agreement, the Dealer granted Enlightened a security interest in all of the Dealer's right, title and interest, both present and future, in all of its presently owned or held and after-acquired owned or held Leases, Leased Vehicles, Rights, Collections, and the Dealer Blocked Account (each as defined in the Dealer Security Agreement), and all products and proceeds of or relating to any of the foregoing, in each case, whether now owned or hereafter acquired or existing, and in whatever form and wherever located.
23. Further, Velocity and the Dealer each entered into a blocked account agreement with Enlightened dated May 20, 2022, and May 11, 2022 respectively, in which Enlightened was also granted security over those contemplated blocked accounts. However, the blocked accounts were never established or utilized.

Floor Plan Financing Arrangement with NextGear Capital

24. The Receiver understands that, pursuant to a credit agreement between NextGear Capital Corporation (“**NextGear**”) and the Dealer, NextGear provides “floor plan financing” to the Dealer. The Receiver has requested copies of the floor plan financing documents; however, to date, such documentation has not been provided to the Receiver. This financing is specific to car dealerships and allows for dealerships to purchase vehicle inventory. The floor plan financier retains title to the vehicles until they are paid out by the dealer. This typically occurs when the car is sold or leased.
25. As discussed below, NextGear has ten remaining vehicles subject to its security, four of which overlap with Enlightened's security.

ACTIVITIES OF THE RECEIVER SINCE THE DATE OF APPOINTMENT

26. Immediately following the issuance of the Receivership Order, the Receiver took possession of the Property for the purpose of preserving, protecting, and safeguarding the Debtors' assets. As the Receiver was only appointed over the Dealer Property and not over all of the property of the Dealer, the Receiver exercised care in taking possession to minimize the impact of its activities on the ongoing operations of the Dealership. In particular, although the Receiver has made several information requests of the Dealer staff (as described herein), it is not directing the activities of the Dealer staff.
27. Among other immediate activities to safeguard the Property, the Receiver:
- a) attended at the Dealership and met with Waddell to advise him of the Receiver's appointment, his obligations pursuant to the Receivership Order and to discuss the Receiver's planned activities;
 - b) secured a storage room at the Premises and changed the locks to the storage room in order to store Dealer Property, including keys to vehicles and books and records (including physical lease files);
 - c) retained a security guard to attend to the Premises outside of business hours;
 - d) contacted the Dealer's insurance broker to request copies of insurance policies and to request that the Receiver be added as a loss payee;
 - e) identified certain bank accounts in the name of the Debtors and instructed the financial institutions to restrict the accounts to 'deposit only';

- f) updated the credentials for online access to the Dealer's operating account at Royal Bank of Canada (the "**RBC Account**"), which the Receiver intends to maintain in the near term to facilitate collection of lease payments from lessees;
- g) forensically imaged files on the computer of the Dealer's office manager (the "**Office Manager**"), who is the employee responsible for the maintenance of information related to the Dealer Property;
- h) inventoried vehicles on site at the Premises and took steps to determine whether the vehicles were Dealer Property; and
- i) wrote to Auguste and Waddell requesting access to the books and records of the Debtors.

28. The Receiver undertook the following activities in connection with its review of the books and records of the Debtors:

- a) obtained copies of bank statements for accounts held by each of the Debtors and reviewed the transactions set out therein;
- b) contacted Royal Bank of Canada ("**RBC**") to obtain additional details on transactions reflected in the RBC Account;
- c) interviewed the Dealer's employees to gain an understanding of how business processes and transactions were recorded in the Dealer's book and records;
- d) attempted to reconcile lease records maintained by the Dealer with portfolio reports maintained by Enlightened and Velocity;

- e) developed an understanding of the information technology systems used by the Dealer, including a cloud-based network, vehicle maintenance management platform, and an inventory management system;
- f) obtained access to Velocity's lease origination platform (the "**Velocity Platform**") and arranged for the extraction of lease data;
- g) wrote to MNP LLP ("**MNP**"), the accountant for Velocity, and Sid Karmazyn ("**Karmazyn**"), the accountant for the Dealer, to obtain copies of accounting records of Velocity and the Dealer, respectively; and
- h) contacted various third parties, including insurance companies and other vehicle dealerships, to verify information in the Debtors' books and records.

29. The Receiver undertook the following activities with respect to its statutory obligations:

- a) on November 3, 2023, the Receiver mailed copies of the Notice and Statement of the Receiver in respect of Velocity and the Dealer (the "**245 Notices**"), copies of which are attached hereto as **Appendix "I"** and **Appendix "J"**, respectively, to all known creditors of the Debtors;
- b) on the same day, the Receiver faxed copies of the 245 Notices to the Office of the Superintendent of Bankruptcy; and
- c) the Receiver uploaded copies of relevant information to its case website at: <https://www.insolvencies.deloitte.ca/en-ca/pages/VelocityAssetandCreditCorporation926749OntarioLtdoaClonsillaLeasing.aspx?searchpage=search-insolvencies.aspx>.

COMMUNICATIONS WITH STAKEHOLDERS

Lessees

30. The Receiver has spent considerable time and effort attempting to reconcile and validate various schedules of leases maintained by the Dealer. Due to material deficiencies and inconsistencies in the Dealer's record-keeping, which are set out in greater detail in this First Report, the Receiver has been unable to compile a definitive listing of leases which comprise the Dealer Property (the "**Dealer Leases**").
31. Relying on information extracted from the Velocity Platform and validated by comparison with portfolio reports maintained by Enlightened, the Receiver prepared a preliminary schedule of leases that it believes are included in the Dealer Property (the "**Provisional Lease Schedule**").
32. On November 9, 2023, the Receiver sent a notice (the "**Lessee Notice**") to all lessees on the Provisional Lease Schedule advising them of the receivership proceedings and directing them to continue to remit their lease payments through pre-authorized debit according to the terms of their lease with the Dealer.
33. In response to the Lessee Notice, the Receiver received numerous telephone calls and emails from lessees expressing concerns regarding a number of issues, including, but not limited to:
 - a) the inaccuracy of the payment amount and/or payment frequency in the Dealer's records;
 - b) the relevant lease having been terminated or the vehicle returned;

- c) the vehicle being inoperable or the Dealer not having fulfilled its obligations under the lease; and
- d) the recipient of the Lessee Notice had never dealt with the Dealer and had not leased a vehicle from the Dealer.

34. The Receiver continues to investigate the concerns raised by lessees as detailed above. Details of these investigations are described in greater detail in this First Report.

35. Based on the issues noted above, the Receiver is of the view that it is prudent to seek enhanced powers to enable a more robust investigation into the nature and location of the Property.

Secured Creditors

Enlightened

36. The Receiver has requested and received information from Enlightened, including copies of draw-down notices, portfolio reports, and records of buyout payments from the Debtors.

37. On September 12, 2023, Enlightened provided the Receiver with a lease portfolio report (the “**Enlightened Portfolio Report**”) setting out information as of August 31, 2023, in respect of the Dealer Leases. The Enlightened Portfolio Report included 920 leases related to the Dealer with a principal balance of \$17,942,805. The Receiver noted that the report did not include:

- a) vehicle identification numbers (“**VINs**”);
- b) names of vehicle lessees; and
- c) address information for approximately 230 of the 920 leases.

38. On November 17, 2023, in response to a request from the Receiver, Enlightened's controller (the "**Enlightened Controller**") provided an updated version of the report (the "**Revised Portfolio Report**") that included VINs, noting that it had only recently noticed multiple duplicate VINs in the portfolio reports. A copy of the Enlightened Controller's email is attached hereto as **Appendix "K"**.
39. The Receiver also asked Enlightened to provide copies of drawdown requests with schedules of leases for the 44 tranches funded by Enlightened. Details of Enlightened's funding arrangements with Velocity are described above. The Enlightened Controller advised the Receiver that it was unable to provide copies of drawdown reports for tranches 1-3, representing approximately 800 vehicles or, in other words, approximately 80% of the lease portfolio. A copy of the Enlightened Controller's email is attached hereto as **Appendix "L"**. The Receiver understands that tranches 1-3 represent the initial funding provided by Enlightened in May 2022, to acquire this portfolio from Beacon.

Beacon

40. The Receiver also corresponded with Beacon. As described in greater detail above, Beacon continues to have other lease financing arrangements with the Debtors.
41. On October 27, 2023, the Receiver wrote to Beacon requesting particulars of its security. Beacon responded on October 30, 2023 providing the list of Beacon Leases.
42. On November 7, 2023, Beacon wrote to the Receiver to request an update on collections on the Beacon contracts that were serviced by Velocity pursuant to the Subservicing Agreements. The Receiver advised Beacon that it was not servicing the Beacon Contracts. A copy of the email exchange with Beacon is attached hereto as **Appendix "M"**.

43. On November 23, 2023, Beacon wrote to Velocity and Waddell to provide notice of termination of the Subservicer Agreements between Velocity and Beacon (the “**Termination Notices**”). Waddell did not advise the Receiver of the Termination Notices.
44. On November 29, 2023, Beacon provided a copy of the Termination Notices to the Receiver and advised of its intention to terminate its servicing agreement with Velocity and the Dealer and to begin drawing pre-authorized payments from lessees related to the Beacon Leases on December 1, 2023. Subsequent to this notice, Beacon provided the Receiver with an updated schedule of the Beacon Leases, including VINs. A copy of the Termination Notices by Beacon to Velocity and the email to the Receiver are attached hereto as **Appendix “N”**.
45. Initially, the Receiver had communicated to Beacon that it had not identified any overlap between the Beacon Leases and the Property. However, upon review of the newly received documentation, it became evident that there is an overlap in the vehicles subject to the Beacon and Enlightened security interests. Specifically, the Receiver identified 80 vehicles, identified by their VIN, that appear to have been submitted by the Dealer as collateral for lease funding by both Beacon and Enlightened. A list of the leases that, to date, the Receiver has identified that are likely subject to both Beacon and Enlightened’s security interests are set out in **Appendix “O”**.
46. On November 29, 2023, the Receiver convened a call with Beacon to advise that certain of the vehicles to which Beacon is asserting an interest are subject to Enlightened’s security and that the stay of proceedings created by the Receivership Order is applicable to Beacon. The Receiver further advised of the challenges it has faced with the lease portfolio and of its intention to seek an amended Receivership Order, as described herein.

The Receiver understands that Beacon is supportive of the expanded scope sought in the amended Receivership Order.

NextGear

47. The Receiver has also corresponded with NextGear. NextGear provided floorplan financing to the Dealer to finance the acquisition of vehicles.
48. On October 27, 2023, the Receiver wrote to NextGear to request particulars of its security. NextGear provided the Receiver with a list of 13 vehicles subject to its security with a principal balance of \$257,606. Of these 13 vehicles, seven were subject to a lease funded by Enlightened.
49. NextGear also provided the Receiver with schedules of payments received from the Dealer and vehicles paid off and discharged in the period August 1, 2023, to October 31, 2023. The Receiver had requested this information in the context of its investigations detailed herein.
50. On November 27, 2023, NextGear provided the Receiver with an updated schedule of vehicles subject to its security, showing ten remaining vehicles subject to its security with a principal balance of \$198,264.24, of which four vehicles are subject to a lease funded by Enlightened. The Receiver understands that the three vehicles no longer appearing on NextGear's November 27 schedule were paid off by the Dealer.

Accounting Firms

51. On October 27, 2023, the Receiver wrote to Karmazyn, whom Waddell had advised was the Dealer's accountant, and asked: (a) whether he was also the accountant for Velocity, and (b) that he provide copies of the Debtors' most recent financial statements.
52. Having received no reply to its email, the Receiver wrote to Karmazyn again on November 16, 2023, to which Karmazyn simply replied that he was not the accountant for Velocity. Karmazyn provided no information with respect to his accounting relationship with the Dealer, nor did he provide the requested information.
53. On November 22, 2023, Karmazyn requested a list of specific documents in which the Receiver was interested and demanded a retainer of \$5,000 to gather such information for the Receiver. The Receiver replied to Karmazyn on the same day, advising him of his obligations under the Appointment Order. As of the date of this report the Receiver has not received any books and records from Karmazyn. A copy of the Receiver's email correspondence with Karmazyn is attached hereto as **Appendix "P"**.
54. The Receiver has also engaged with MNP, the accountant for Velocity, who has provided copies of accounting records up to December 31, 2022. MNP advised the Receiver that they were told to cease work after the 2022 year-end. MNP has fully addressed the Receiver's requests for information.

Ontario Motor Vehicle Industry Council

55. On November 18, 2023, the Receiver received an email from the Ontario Motor Vehicle Industry Council ("**OMVIC**"). OMVIC is a regulatory agency responsible for the enforcement and administration of the *Motor Vehicle Dealers Act*. OMVIC expressed concern about the potential for consumer harm arising from the receivership proceedings.

56. On the same date, the Receiver wrote to OMVIC and clarified the limited scope of the receivership proceedings in respect of the Dealer. The Receiver also participated in a conference call with OMVIC on November 22, 2023 to provide additional detail on the scope of the Receiver's activities and to discuss OMVIC's concerns related to potential consumer harm.
57. The Receiver convened a conference call with OMVIC on December 1, 2022 to advise of the Receiver's intention to seek expanded scope and investigative powers. During this call, OMVIC advised the Receiver that OMVIC's investigations revealed the Dealer had not remitted customer payments to Canada General Warranty in respect of insurance and warranty products. This has the effect of depriving the customers of insurance and warranty products they have paid for. OMVIC estimates that more than 100 customers are affected.

RECEIVER'S ASSESSMENT OF THE LEASE PORTFOLIO

58. Through its initial review of the Dealer's books and records, the Receiver has determined that the Dealer did not maintain basic business records relating to the lease portfolio, including:
- a) a schedule of active leases;
 - b) a schedule of lease receivables or arrears owing by lessees;
 - c) records of leases that had been referred to a collection agency or were in legal proceedings;
 - d) records of lease buyouts;
 - e) inventory listings; and

- f) detailed records of sales and purchases of vehicles.
59. The Receiver was advised by the Dealer's employees that business and accounting records were not consistently maintained, and that a reconciliation was performed each month to determine which lease payments had been received and which leases were in arrears. The Receiver has not been provided with any such reconciliations, despite its repeated requests as described herein. The Dealer's employees advised that there was no single person responsible for the collection of accounts receivable or repossession of vehicles, and that these functions were completed on a 'case by case' basis as directed by Waddell.
60. Immediately following its appointment, the Receiver requested that the Dealer's employees prepare a schedule of active leases indicating the lessee's payment amount and frequency and indicating whether the lease was funded by Enlightened, along with a schedule of lease arrears and a list of leases in collections or legal proceedings. As of the date of this First Report, the Dealer has not provided the information requested. The Receiver notes that the Dealer services Velocity's leases. It is unclear how it does so, given its failure and apparent inability to produce basic financial and accounting records and information.
61. Waddell has advised the Receiver that the Dealer's ability to provide the information requested is constrained by several ongoing projects, including efforts to reconcile historical GST/HST returns and related accounting information in pursuit of a GST/HST refund that Waddell estimated at \$1.4 million. This GST/HST refund project has been in progress since at least the Date of Appointment and to the Receiver's knowledge is not yet complete. The Receiver's expectation is that, once filed, this return will be subject to audit

by the CRA, which audit will likely take considerable time to complete. As such, the quantum and timing of this refund is highly uncertain in the Receiver's view.

62. Given the Dealer's inability to produce the information required to assess and service the lease portfolio, the Receiver has expended significant time and resources in attempting to reconstruct the portfolio. These efforts include:

- a) comparing lease information extracted from the Velocity Platform with the Enlightened Portfolio Report;
- b) reviewing physical lease files to resolve discrepancies;
- c) reviewing spreadsheets and other electronic records imaged from the Office Manager's computer;
- d) reviewing *Personal Property Security Act (Ontario)*, R.S.O. 1990, c. P.10 and motor vehicle registries to validate details of leased vehicles and the registered owners of same; and
- e) enquiries of Management and discussions with lessees.

63. The Enlightened Portfolio Report reflected 920 leases with a principal balance of \$17.9 million as of August 31, 2023. While the Receiver's efforts to validate the information related to the lease portfolio are ongoing, the Receiver has confirmed that 117 of the leases listed in the Enlightened Portfolio Report are in default or have been terminated. The Receiver is unable at this time to estimate the actual receivable balance of the Dealer Leases. Based on pre-authorized payment contracts reviewed by the Receiver, it appears that there are fewer than 400 lessees remitting payments to the Dealer each month.

LEASE SERVICING

64. As described above, the Receiver wrote to known lessees on November 9, 2023, and directed them to continue remitting payment through pre-approved payments set up by the Dealer. The Receiver was also advised by Management that some lessees remit payment in person at the Dealership in cash or by Interac debit. This generally occurs when lessees' pre-authorized payments are rejected or returned and the Dealer requests that the lessee cure the payment default.
65. In order to secure cash payments in respect of the Dealer Property, the Receiver has arranged for its staff to be at the Dealership during business hours and maintains a log of cash payments received. These payments are deposited into the RBC Account by the Receiver's staff and a Dealership employee as soon as they are received.
66. The Receiver's ability to effectively service the Dealer Leases has been challenged by the deficiencies in the Dealership's books and records as detailed above. The Receiver is in the process of manually re-creating schedules of arrears based on bank statements and other reports issued by RBC.
67. The Receiver continues to work with the Dealer's employees to reconstruct the portfolio and, in the interim, is undertaking to reconcile incoming payments and pursue arrears as they are identified.
68. For the period October 26, 2023, to November 21, 2023, the Receiver collected \$221,630 in respect of the Dealer Leases. For comparative purposes, the Receiver estimates that the Dealer's collections in the three months prior to the Date of Appointment averaged

\$192,388 per month. The variance in monthly collections represents returned or rejected pre-authorized payments.

69. The Receiver has also made efforts to retain a third-party provider to service the lease portfolio. To date, the Receiver has reached out to six potential servicers, of which five have entered into non-disclosure agreements and reviewed available data on the Dealer Leases. The Receiver's efforts to identify and retain potential servicers are ongoing and are challenged by the relatively small portfolio size, the lack of a definitive lease portfolio listing and portfolio performance metrics resulting from the Dealer and Velocity's inability to produce such information. To date, three servicers have indicated they have no interest in the opportunity and the Receiver has yet to receive a servicing proposal from three potential servicers that are considering this opportunity.
70. The Receiver is of the view that retaining an established portfolio servicer to manage the portfolio is a cost-effective solution that will provide the Receiver with relevant information to market the portfolio for sale. However, its efforts have been hampered by the challenges noted earlier in this First Report. The Receiver is continuing to pursue proposals from servicers.

SALE OF VEHICLES

71. Following its appointment, the Receiver took possession of 47 vehicles subject to Enlightened's security that had been returned by lessees or repossessed (i.e., for non-payment) by the Dealer and were stored at the Premises (the "**Seized Vehicles**"). Of those vehicles, 40 were delivered to North Toronto Auto Auctions ("**NTAA**") to be sold by public auction pursuant to section 4(k) of the Receivership Order.

72. NTAA carried out a public auction on November 25, 2023, at which 39 of the 40 vehicles were sold for gross proceeds of \$183,850. A schedule of sale proceeds is attached hereto as **Appendix “Q”**.
73. The Receiver was advised by NTAA that Waddell purchased eight of the Seized Vehicles at the auction on behalf of the Dealer. The Receiver understands that Waddell has subsequently requested that NTAA release the liens on the vehicles he purchased so that he can secure financing from NextGear to pay for these vehicles.

INVESTIGATION OF DEALER OPERATIONS AND FLOW OF FUNDS

74. Since its appointment, the Receiver has undertaken an extensive investigation of the Dealer’s operations, including:
- a) the submission of purported previously encumbered vehicles for new tranche funding (i.e., possible duplicate funding) from Enlightened;
 - b) irregularities in lease documentation as detailed below;
 - c) the transfer of Dealer Property following the Receivership Order; and
 - d) the misappropriation of lease proceeds to purchase additional vehicles.

Apparent Duplicate Funding

75. During the Receiver’s review of the Debtors’ books and records, the Receiver has discovered 30 examples to date whereby the Debtors appear to have re-leased a vehicle with the same VIN without a corresponding buyout of the lease (the **“Duplicate VINs”**), as required under the Guarantee and Servicing Agreement. A list of the vehicles subject to duplicate funding are set out in **Appendix “R”**.

76. The circumstances of the re-leasing vary from case to case. In most cases, a vehicle that was returned or repossessed from an initial lease was simply re-leased by the Dealer to a new customer and submitted on a separate funding tranche without repaying the remaining principal balance to Velocity/Enlightened. In some cases, the vehicle is re-leased to the original customer but again submitted as part of a separate funding tranche. Several of the vehicles identified appear to have been re-leased multiple times, as described below.
77. The current capital cost of the vehicles represented by the Duplicate VINs is \$1,595,578. The Receiver estimates that the total value of currently outstanding Enlightened funding related to the Duplicate VINs is in excess of \$3.0 million, indicating that the advances by Enlightened are under-secured by approximately \$1.4 million as a result of the Dealer's activity.
78. On November 17, 2023, counsel to the Receiver, Thornton Grout Finnigan LLP ("**TGF**") sent a letter to Waddell (the "**November 17 Letter**") noting the apparent duplication of VINs described above, along with other issues discussed herein, and requested an explanation of same by no later than November 20, 2023, which deadline was extended by the Receiver to November 27, 2023 at Waddell's request. A copy of the November 17 Letter, which includes a schedule of the Duplicate VINs identified to date, is attached hereto as **Appendix "S"**.
79. As of the date of this First Report, neither the Receiver nor TGF has received a satisfactory explanation of the Duplicate VINs from Waddell. However, Waddell verbally advised an employee of the Receiver that the Dealer was only responsible for originating leases, and that Velocity was solely responsible for maintenance of accounting records to track

previously funded vehicles. The Receiver notes that Waddell is a director and officer of Velocity.

80. Additionally, Waddell wrote to the Receiver on November 29 in response to the November 17 Letter. Rather than providing an explanation of the Duplicate VINs, Waddell alleged that accounting errors by Enlightened had resulted in the Dealer being over-charged by approximately \$880,000. Waddell did not provide any evidence to support his allegations. The Receiver advised Waddell that his explanation was not satisfactory. A copy of the Receiver's response is attached hereto as **Appendix "T"**.
81. The Receiver wrote to Auguste on November 22, 2023, and asked him to confirm his understanding of the role of the Dealer and Velocity pursuant to the Credit Agreement and the Guarantee and Servicing Agreement, and to address Waddell's statement above.
82. Auguste advised the Receiver that, in his view, the Guarantee and Servicing Agreement clearly sets out the Dealer's obligation to service and manage all aspects of the lease contract, including buyouts. Auguste claimed to be unaware of the duplication of tranche funding for the same vehicles and advised that Velocity was unaware of the Dealer's practice. A copy of Auguste's email is attached hereto as **Appendix "U"**.

Irregularities in Lease Documentation

83. In response to the Lessee Notice sent to lessees on November 9, 2023, the Receiver has, to date, been contacted by 52 lessees disputing the information set out in the Dealer's books and records. In many cases, lessees have advised the Receiver that the vehicle in question was returned or repossessed. Three lessees advised the Receiver that they never entered into a lease with the Dealer.

84. The Receiver has investigated one such claim in respect of lease number 3270 (“**Lease 3270**”). In response to the lessee’s claim, the Receiver provided the lessee with copies of the lease documentation, which included:
- a) the lease contract and an addendum thereto;
 - b) a pre-authorized payment (“**PAP**”) authorization form; and
 - c) a certificate of insurance issued by Echelon Insurance (“**Echelon**”) which listed Whitley Newman Insurance & Financial Services (“**Whitley Newman**”) as the insurance broker.
85. The lessee advised the Receiver that he had not signed the lease contract or addendum; that the banking information in the PAP authorization form was not his; and that he did not have an insurance policy with Echelon or deal with Whitley Newman. A copy of the lessee’s email correspondence (with the name redacted) is attached hereto as **Appendix “V”**.
86. The Receiver wrote to Whitley Newman on November 17, 2023, and November 22, 2023, and to Echelon on November 22, 2023, and November 23, 2023, to verify the authenticity of the certificate of insurance. Copies of the Receiver’s letters to each of Whitley Newman and Echelon (with the name of the lessee redacted) are attached hereto as **Appendix “W”**. Whitley Newman advised the Receiver that it had no record of the lessee in its records and, in a separate email, advised that it believed the certificate of insurance to be “completely bogus”. Copies of Whitley Newman’s emails (with the name of the lessee redacted) are attached hereto as **Appendix “X”**. As at the date of this First Report, the Receiver has not received a response from Echelon.

87. When the Receiver requested a copy of the physical lease file for Lease 3270 from the Dealer, the Dealer advised that there was no physical lease file. The lease evidence provided to the lessee included electronic PDF copies of a driver's license, PAP authorization form and certificate of insurance.
88. The Receiver's investigation of irregularities in the lease documentation is ongoing.

Transfer of Dealer Property

89. Auto Connect Sales Inc. ("**Auto Connect**") is a vehicle dealership located at 1175 Lansdowne Street West, Peterborough, Ontario, approximately 500 metres from the Premises.
90. During the course of its investigations, the Receiver discovered that certain vehicles that are Property and subject to the receivership proceedings (the "**Transferred Vehicles**") have been transferred by the Dealer to Auto Connect and were posted on Auto Connect's website for sale.
91. TGF wrote to Auto Connect on November 16, 2023, to advise it that the Transferred Vehicles may be Property and subject to the receivership proceedings and directed Auto Connect not to sell the Transferred Vehicles. The letter also demanded records relating to any vehicles of the Debtors transferred to Auto Connect since August 1, 2023. A copy of TGF's letter is attached hereto as **Appendix "Y"**.
92. The Receiver spoke to Martin Tempelman ("**Tempelman**"), the owner of Auto Connect, via telephone on November 20, 2023. Tempelman advised the Receiver that he had forwarded the Receiver's letter to Auto Connect's counsel, John Ewart ("**Ewart**") of Ewart O'Dwyer LLP.

93. Having received no response from Auto Connect, and after leaving two voice messages with Ewart, TGF wrote again to Auto Connect on November 23, 2023, to demand delivery of the information requested on November 16. A copy of TGF's November 23 letter is attached hereto as **Appendix "Z"**.
94. On November 30, 2023, Ewart contacted TGF to advise that Auto Connect would be providing the requested information shortly. Ewart confirmed that, since August 1, 2023, the Dealer had sold vehicles to Auto Connect. As of the date of this First Report, the Receiver has not received the requested information.

Misappropriation of Dealer Property

95. Relying on bank statements, additional reports provided by RBC, and enquiries of the Dealer's staff, the Receiver has prepared a preliminary analysis of the Dealer's receipts and disbursements for the period August 1, 2023, to October 25, 2023 (the "**Flow of Funds**"). A summary of the Flow of Funds is attached hereto as **Appendix "AA"**.
96. As set out in the Flow of Funds, the lease proceeds collected over the period were \$577,166, representing 38.6% of total collections of approximately \$1.5 million. Other principal sources of collections include:
- a) \$270,859 made up of deposits for which the Dealer was unable to provide supporting documentation;
 - b) \$219,824 made up of proceeds from third party financiers including 2M7 Financial Solutions, Sheaves Capital and CCP Advance;

- c) \$313,825 made up of the proceeds of vehicle sales of which \$206,225 appears to relate to vehicles subject to Enlightened's security as detailed in **Appendix "BB"** attached hereto; and
 - d) \$60,650 in deposits from Waddell and related parties.
97. Total disbursements over the period were \$1.7 million, of which \$547,363 or 32.3% were payments to NextGear to discharge fleet financing obligations in respect of 26 vehicles, of which 19 were subject to Enlightened's security. Of those 19 vehicles, at least three appear to have been subsequently leased to new customers.
98. The November 17 Letter described above also demanded information related to the apparent misappropriation of Dealer Property detailed above. Waddell advised an employee of the Receiver that he had personally deposited over \$400,000 into the Dealer in the period from August 1, 2023, to September 30, 2023, and provided a schedule of the purported deposits, a copy of which is attached hereto as **Appendix "CC"**.
99. The Receiver notes that of the transactions set out in **Appendix "CC"**, \$136,371 are proceeds from third-party financiers to the Dealer. Of the remaining balance, \$116,500 is composed of bank deposits for which no supporting documentation was provided, and \$115,872 is composed of advances from unnamed parties, again for which no supporting documentation was provided.
100. Notwithstanding Waddell's purported deposits, it appears from the analysis above that the Dealer used the proceeds of lease collections and vehicle sales that it was required to remit to Velocity and/or Enlightened pursuant to the Guarantee and Servicing Agreement, to instead repay amounts owing to NextGear in order to release vehicles that it subsequently

disposed of through leases or sales. Accordingly, it appears to the Receiver that the Dealer has been using money owing to Enlightened to pay a separate creditor – NextGear – and to acquire additional vehicles that it leased to customers to generate cash flow.

101. Finally, on December 2, 2023, Waddell provided a written response to the November 17 Letter. In the response, Waddell attempted to minimize the Dealer’s role in the leasing process and asserted that accounting errors were the reason for the irregularities. With respect to the transfer of vehicles to Auto Connect, Waddell said it was “unintentional” that the vehicles were transferred without paying Enlightened. The Receiver does not consider this response to be a satisfactory explanation of the issues identified in this First Report. A copy of Waddell’s letter (with attachment) is attached hereto as **Appendix “DD”**.
102. The results of the Receiver’s investigations as set out above are preliminary. The Receiver is requesting enhanced powers to complete its investigations.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

103. Attached as **Appendix “EE”** is an interim Statement of Receipts and Disbursements for the period October 26, 2023 to November 21, 2023. As of November 21, 2023 the Receiver had realized receipts of \$221,630 and had made disbursements of \$808.29.

FEES AND BORROWING POWERS OF THE RECEIVER

104. Pursuant to paragraph 22 of the Receivership Order, the Receiver is empowered to borrow up to \$470,000 for the purpose of funding the exercise of the powers and duties conferred on the Receiver by the Receivership Order (the “**Receiver’s Borrowings**”).

105. Given the material deficiencies in the Debtors' books and records detailed herein, as well as the additional effort required of the Receiver and TGF related to the Duplicate VINs and misappropriation of assets detailed herein, the Receiver believes that professional fees will exceed the limit on the Receiver's Borrowings imposed by the Receivership Order. As such, the Receiver is seeking the Court's approval to amend the Receivership Order to increase the limit on the Receiver's Borrowings to \$750,000.

REQUEST TO AMEND RECEIVERSHIP ORDER

106. Given the above, the Receiver has significant concerns about the Debtors and the potential for further dissipation of Property.
107. As detailed herein, the Receiver's efforts to service the Dealer Leases and realize on the Dealer Property have been severely hampered by the Dealer's inability or unwillingness to provide basic financial and accounting information related to the Dealer Property.
108. The Dealer, Auto Connect and Karmazyn have failed to respond to the Receiver's requests for information as required under the Receivership Order. The Dealer and Velocity have both failed to respond to the Receiver's inquiries as required by the Receivership Order and have tried to assign blame for any irregularities to the other party.
109. Furthermore, the Receiver has identified significant concerns with respect to the Dealer's operations, including the possible misappropriation of Dealer Property; irregularities in lease documentation; the submission of already encumbered vehicles for new advances (which would result in the same assets being used as security for more than one unrelated loan); and the transfer of Property to third parties.

110. In order to address these issues, the Receiver recommends that the Court amend and restate the Receivership Order to:

- a) provide the Receiver with investigatory powers available to a trustee in bankruptcy under the *Bankruptcy and Insolvency Act*;
- b) authorize the Receiver to seek a bankruptcy order against the Debtors if the Receiver determines that this would be beneficial to the stakeholders of Velocity and/or the Dealer;
- c) expand the scope of the receivership to include all property of the Dealer; and
- d) increase the limit on the Receiver's Borrowings to \$750,000.

All of which is respectfully submitted at Toronto, Ontario this 4th day of December, 2023.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-Appointed
Receiver of Velocity Asset and Credit
Corporation and the Dealer Property,
and without personal or corporate liability

Per:



Jorden Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President

TAB 3

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

THE HONOURABLE) FRIDAY, THE 19th
)
JUSTICE CONWAY) DAY OF JANUARY, 2024

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Velocity Asset and Credit Corporation ("**Velocity**") and of 926749 Ontario Ltd. (the "**Dealer**" and together with Velocity, the "**Debtors**"), for an order, amongst other things, vesting the Debtors' right, title and interest in certain vehicles sold by the Receiver at public auction (the "**Purchased Vehicles**") to the purchasers of the Purchased Vehicles (each, a "**Purchaser**") free and clear of any encumbrances, was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report (including the appendices thereto) of the Receiver dated January 15, 2024 (the "**Second Report**"), and on hearing the submissions of counsel for the

Receiver and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, filed,

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Second Report.

TRANSACTIONS

3. **THIS COURT ORDERS AND DECLARES** that all of the Debtors' right, title and interest in and to the Purchased Vehicles listed on Schedule "A" hereto shall vest absolutely in the respective Purchasers, 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 Conway made December 8, 2023 (the "**Receivership Order**"); and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") or any other personal property registry system, and, for greater certainty, this Court orders that all the Claims affecting or relating to such Purchased Vehicles are hereby expunged and discharged as against such Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Vehicles shall stand in the place and stead of the Purchased Vehicles sold at public auction, and that all Claims shall attach to such net proceeds from the sale of the Purchased Vehicles sold at public auction with the same priority as they had with respect to such Purchased Vehicles immediately prior to their sale, as if such

Purchased Vehicles had not been sold and remained in the possession or control of the person having that possession or control immediately prior to their sale.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to discharge, delete and expunge all registrations or liens in respect of Claims against the Purchased Vehicles pursuant to the PPSA or any other personal property registry system, without further order of this Court.

6. **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 Debtors;

the vesting of each of the Purchased Vehicles in its respective Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that is now or 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.

GENERAL

7. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

8. **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.

9. **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. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee and its agents as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. Toronto Time on the date of this Order and is enforceable without the need for entry and filing.

SCHEDULE "A"
Purchased Vehicles

MAKE	MODEL	VIN
HYUNDAI	SANTE FE	KM8SM4HF2EU038032
CHRYSLER	300	2C3CA5CV9AH254547
CHEVROLET	AVALANCHE	3GNVKFB08AB141544
JEEP	GRAND CHEROKEE	1C4RJFAG5CC178752
HYUNDAI	ELANTRA	5NPDH4AE8DH178968
FORD	EXPLORER	1FM5K8D81DGB16668
NISSAN	SENTRA	3N1ABOAP3CL629470
JEEP	PATRIOT	1C4NJRAB4FD101681
FORD	ESCAPE	1FMCU9GX7GUA56105
SUBARU	OUTBACK	4S4BRCCC8C3256357
HYUNDAI	VERA CRUZ	KM8NU73C99U090663
FORD	FOCUS	1FADP3F22DL286919
HYUNDAI	GENESIS	KMHGC4DD4DU216289
JEEP	WRANGLER	1J4BA3H11BL567947
DODGE	DURANGO	1C4RDJAG7DC701135
DODGE	GRAND CARAVAN	2D4RN4DEXAR276993
DODGE RAM	1500	1D3HV18T99S820112
JEEP	WRANGLER	1J4GA59188L595687
MITSUBISHI	LANCER	JA32X2HU1DU601342
CHEVROLET	SILVERADO	1GC2KVCXGXDZ312448
DODGE RAM	1500	1D7RV1GTXAS167282
KIA	SORENTO	5XYKUDA26BG166735
DODGE	GRAND CARAVAN	2C4RDGBG5ER241841
MITSUBISHI	LANCER	JA32U2FU1DU605564
DODGE RAM	1500	1C6RD7FP8CS178828
DODGE	JOURNEY	3D4PG5FV7AT214839
DODGE	GRAND CARAVAN	2C4RDGBG7CR317010
DODGE	GRAND CARAVAN	2C4RDGDGXDR783187
TOYOTA	SIENNA	5TDKK3DC9DS290086
DODGE	GRAND CARAVAN	2D4RN4DE9AR471953
HYUNDAI	ELANTRA	5NPDH4RF2DH223757
DODGE RAM	2500	3C6TR5DT2DG547400
GMC	SIERRA	1GTV2UEC3EZ261054
DODGE	GRAND CARAVAN	2D4RN4DE0AR221100
CHEVROLET	CAMARO	2G1FC1E30D9116247
SATURN	VUE XR	3GSDL63729S647790
AUDI	A4 PREMIUM	WAUFFCFL6BN024527
FORD	EXPLORER LIMITED	1FM5K8F82FGB33835
DODGE RAM	1500 LIMITED	1C6RR7WT8ES425735

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

ENLIGHTENED FUNDING CORPORATION

and

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD.**

Applicant

Respondents

Court File No.: CV-23-00707330-00CL

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

Proceedings commenced in Toronto

VESTING ORDER

THORNTON GROUT FINNIGAN LLP
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T.D. West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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Lawyers for the Receiver

TAB 4

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

THE HONOURABLE) FRIDAY, THE 19th
)
JUSTICE CONWAY) DAY OF JANUARY, 2024

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

ORDER

(Approval of Activities and Form of Vesting Order)

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Velocity Asset and Credit Corporation ("**Velocity**") and of 926749 Ontario Ltd. (the "**Dealer**" and together with Velocity, the "**Debtors**"), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report (including the appendices thereto) of the Receiver dated January 15, 2024 (the "**Second Report**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, sworn and filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Second Report.

APPROVAL OF ACTIVITIES

3. **THIS COURT ORDERS** that the Second Report and the Receiver's activities set out therein be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FORM OF VESTING ORDER

4. **THIS COURT ORDERS** that the form of vesting order attached hereto as Schedule "A" be and is hereby approved in order to permit the completion of sale transactions in respect of vehicles that may be sold by the Receiver from time to time (the "**Unsold Vehicles**"), including, but not limited to, the Unsold Vehicles listed on Schedule "B" hereto.
5. **THIS COURT ORDERS** that Thornton Grout Finnigan LLP ("**TGF**"), counsel to the Receiver, is hereby authorized to insert into each draft vesting order a description of the Unsold Vehicles which have been sold subsequent to the date of this Order on Schedule "A" to each draft vesting order.
6. **THIS COURT ORDERS** that, upon completion of a draft vesting order by TGF in accordance with paragraph 5 above (a "**Completed Vesting Order**"), a representative of TGF shall present such Completed Vesting Order to the Registrar of the Ontario Superior Court of Justice (Commercial List). The Registrar is authorized, empowered and directed to sign, issue and enter each Completed Vesting Order as presented to it by TGF.

GENERAL

7. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
 8. **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.
 9. **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. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee and its agents as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.
 10. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. Toronto Time on the date of this Order and is enforceable without the need for entry and filing.
-

SCHEDULE "A"
Form of Vesting Order

Court File No.: CV-23-00707330-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) _____, THE ____
JUSTICE)
DAY OF _____, 2024

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Velocity Asset and Credit Corporation ("**Velocity**") and of 926749 Ontario Ltd. (the "**Dealer**" and together with Velocity, the "**Debtors**"), for an order, amongst other things, vesting the Debtors' right, title and interest in certain vehicles sold by the Receiver at public auction (the "**Purchased Vehicles**") to the purchasers of the Purchased Vehicles (each, a "**Purchaser**") free and clear of any encumbrances, was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report (including the appendices thereto) of the Receiver dated January 15, 2024 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Second Report.

TRANSACTIONS

3. **THIS COURT ORDERS AND DECLARES** that all of the Debtors’ right, title and interest in and to the Purchased Vehicles listed on Schedule “A” hereto shall vest absolutely in the respective Purchasers, 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 Conway made December 8, 2023 (the “**Receivership Order**”); and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”) or any other personal property registry system, and, for greater certainty, this Court orders that all the Claims affecting or relating to such Purchased Vehicles are hereby expunged and discharged as against such Purchased Assets.
4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Vehicles shall stand in the place and stead of the Purchased Vehicles sold at public auction, and that all Claims shall attach to such net proceeds from the sale of the Purchased Vehicles sold at public auction with the same priority as

they had with respect to such Purchased Vehicles immediately prior to their sale, as if such Purchased Vehicles had not been sold and remained in the possession or control of the person having that possession or control immediately prior to their sale.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to discharge, delete and expunge all registrations or liens in respect of Claims against the Purchased Vehicles pursuant to the PPSA or any other personal property registry system, without further order of this Court.

6. **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 Debtors;

the vesting of each of the Purchased Vehicles in its respective Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that is now or 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.

GENERAL

7. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

8. **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.

9. **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. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee and its agents as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. Toronto Time on the date of this Order and is enforceable without the need for entry and filing.

SCHEDULE "A"
Purchased Vehicles

MAKE	MODEL	VIN
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IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

ENLIGHTENED FUNDING CORPORATION

and

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD.**

Applicant

Respondents

Court File No.: CV-23-00707330-00CL

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

Proceedings commenced in Toronto

VESTING ORDER

THORNTON GROUT FINNIGAN LLP
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Derek Harland (LSO#: 79504N)

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Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Receiver

SCHEDULE "B"
Unsold Vehicles to be Sold at Auction on January 27, 2024

MAKE	MODEL	VIN
JEEP	LIBERTY	1J8GN28K58W230054
DODGE	JOURNEY	3C4PDDEG8DT518799
DODGE	RAM 1500	1C6RR7MT4DS645567
DODGE	RAM 3500	3C63D3FLXCG237722
FORD	F250	1FT7W2BT5BEA48874
SUBARU	LEGACY	4S3BMGL69B3244270
INFINITY	QX80	JN8AZ2NCXE9351207
JEEP	LIBERTY	1C4PJMAKXCW101955
CHEVROLET	AVEO	3G1TC5DE8AL142665
RAM	1500	1C6RD7FP3CS226820
FORD	F150	1FTEX1C85GFB57278
RAM	1500	1C6RR7MT3FS733562
RAM	1500	1D7RV1GT2BS572165
AUDI	A6	WAUDG74F25N081613
NISSAN	ROGUE	JN8AS5MT7BW174345
DODGE	GRAND CARAVAN	2D4RN4DE7AR226858
CHEVROLET	SILVERADO	3GCRKREAXAG228866
GMC	SIERRA	2GTEC19V951133532
DODGE	JOURNEY	3D4GG57V29T578712
JAGUAR	XK	SAJDA44B475B02873
DODGE	TOWN & COUNTRY	2C4RC1BG5CR317328
RAM	1500	1C6SRFTT2KN552197
FORD	EXPLORER	1FM5K8D81DGB16668
HYUNDAI	ELANTRA	5NPDH4AE8DH178968
CHRYSLER	300	2C3CA5CV9AH254547
FORD	ESCAPE	1FMCU0GX1DUA08431
NISSAN	SENTRA	3N1AB6AP3CL629470
DODGE	RAM 1500	1D3HV13TX9S825987
CHEVROLET	SILVERADO	3GCPCREA1BG285110
JEEP	LIBERTY	1J8GN28K58W230054
DODGE	JOURNEY	3C4PDDEG8DT518799
DODGE	RAM 1500	1C6RR7MT4DS645567
DODGE	RAM 3500	3C63D3FLXCG237722
FORD	F250	1FT7W2BT5BEA48874
SUBARU	LEGACY	4S3BMGL69B3244270
INFINITY	QX80	JN8AZ2NCXE9351207
JEEP	LIBERTY	1C4PJMAKXCW101955
CHEVROLET	AVEO	3G1TC5DE8AI142665
RAM	1500	1C6RD7FP3CS226830

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

ENLIGHTENED FUNDING CORPORATION

and

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD.**

Applicant

Respondents

Court File No.: CV-23-00707330-00CL

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

Proceedings commenced in Toronto

**ORDER
(Approval of Activities and Form of Vesting
Order)**

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**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

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ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Applicant

Respondents

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

MOTION RECORD
(Returnable January 19, 2024)

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