

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

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

DEAN MYERS CHEVROLET LIMITED and 1125278 ONTARIO LIMITED

Respondents

**FACTUM OF THE RECEIVER (APPROVAL AND VESTING, ANCILLARY ORDERS)
(Motion returnable June 15, 2020)**

June 10, 2020

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Lawyers for the Receiver,
Deloitte Restructuring Inc.

TO: SERVICE LIST

PART I - NATURE OF MOTION

1. This is a motion by Deloitte Restructuring Inc., in its capacity as court-appointed receiver (the “**Receiver**”), appointed pursuant to order of the Court dated February 12, 2020 (the “**Appointment Order**”) of the Property of the Respondents (as defined in the Appointment Order) for, *inter alia*, the following relief;
 - a) An Approval and Vesting Order, substantially in the form attached at Schedule “B” to the Notice of Motion, *inter alia*, approving the transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement as between 2010197 Ontario Ltd. (the “**Purchaser**”) and the Receiver dated April 28, 2020 and appended to the Second Report (as defined below) as Confidential Appendix “A” (the “**Sale Agreement**”) for the sale of certain assets of the Respondent, Dean Myers Chevrolet Limited (“**DMCL**”) (the “**Purchased Assets**”), and vesting all of the right, title and interest in and to the Purchased Assets absolutely in the Purchaser;
 - b) An Ancillary Order, substantially in the form attached at Schedule “C” to the Notice of Motion, *inter alia*:
 - (i) approving the Receiver’s First Report to the Court dated March 19, 2020 (the “**First Report**”), the Confidential Report to the First Report dated March 19, 2020 (the “**Confidential First Report**”), and the Receiver’s Second Report to the Court dated June 9, 2020 (the “**Second Report**”), and the activities and conduct of the Receiver as detailed therein;
 - (ii) The release and discharge of the Receiver as Receiver of DMCL following completion of the Transaction;
 - (iii) The immediate release and discharge of the Receiver as Receiver of the Respondent, 1125278 Ontario Limited (“**112 Ontario**”); and,
 - (iv) Certain other ancillary relief including the approval of fees, a sealing order and a distribution that will see payments made, including to Service Canada for limited super priority employee claims under the

BIA, to Canada Revenue Agency for post-receivership obligations and for deemed trust obligations and any remaining cash on hand to the Applicant, Royal Bank of Canada (the “**Bank**”) following the completion of administration.

2. The Purchased Assets to be sold pursuant to the Transaction are subject to security held by the Purchaser as assigned to the Purchaser by the Bank (the former senior secured creditor of the Respondents). A term of the assignment agreement between the Bank and the Purchaser was that the Purchaser assigned any distributions from the Receiver to the Bank.
3. DMCL is now a bankrupt, as of May 8, 2020, and Baigel Corp. is the named Trustee.
4. The Court has granted certain previous Orders in this matter, including:
 - a) An Approval and Vesting Order, approving the sale Transaction certain 2020 model year cars to GM (the “**GM Transaction**”);
 - b) An Ancillary Order, that included a sealing order for the Confidential Supplement to the First Report, an increase in the borrowing limit under the Appointment Order and a distribution to RBC; and,
 - c) An Omnibus Order, that prospectively authorized the Receiver to accept offers for unsold vehicles, parts inventory, fixed assets and equipment of the Debtor, provided that the sale price for same is acceptable to the Receiver and authorizing the Receiver to execute a Bill of Sale and approving such transactions, provided that the Receiver files Receiver’s Certificates.
5. The Transaction is a credit bid by the Purchaser. It is the position of the Receiver that the Transaction and the Receiver’s actions should be approved and that the Approval and Vesting Order and Ancillary Order should be issued for the following reasons:
 - a) The Receiver has taken extensive steps to market the Property of the Respondents for sale, as detailed in the Second Report, and has sold a significant proportion of such Property, pursuant to the Omnibus Order. The

Property of DMCL sold via the Transaction represents property in which no other potential purchasers expressed a viable interest;

- b) Any physical Purchased Assets have been removed from the Premises at the expense of the Purchaser, which has resulted in savings to the estate of DMCL;
- c) The Purchaser has advanced all funds required under the Sale Agreement to the Receiver, which funds have reduced the expenses of administering the estates of the Respondents, including the costs of occupying the Premises;
- d) It is the opinion of the Receiver that the Transaction represents the best and highest recovery from the sale of the Purchased Assets, and that the Transaction is commercially reasonable;
- e) The immediate discharge of 112 Ontario is required to complete the Transaction, and the Receiver has completed its administration of the estate of 112 Ontario, subject only to certain incidental duties; and,
- f) A Sealing Order should be granted sealing the Confidential First Report and the confidential appendices to the Second Report (the “**Confidential Second Report**”), as such documents contain commercially sensitive information, including the unredacted Sale Agreement, which could harm the creditors of the Respondents should the Transaction fail to close.

PART II - THE FACTS

- 6. Deloitte Restructuring Inc. was appointed as Receiver over the Property of the Respondents on February 12, 2020, pursuant to the Appointment Order, as defined above.

Second Report to the Court Submitted by the Receiver dated June 9, 2020 (the “Second Report”), para 3 and Appendix “A” thereto

- 7. DMCL, is an Ontario corporation, which operated as an automotive dealership and service centre located at 3180 Dufferin Street, Toronto (the “**Premises**”). DMCL is a bankrupt as of May 8, 2020, having made an assignment in bankruptcy, with Baigel Corp appointed as Licensed Insolvency Trustee (the “**Trustee**”).

Second Report, paras 4 and 17, and Appendix "G" thereto

8. 112 Ontario is an Ontario corporation and primarily operates as a vehicle leasing company, which also operated out of the Premises.

Second Report, para 6

9. The Purchaser is a related company to the Respondents.

Second Report, para 9

10. The Court has previously issued Orders in this proceeding subsequent to the Appointing Order, including:
- a) An Approval and Vesting order approving of a certain sale transaction as between the Receiver and General Motors and General Motors of Canada Limited ("**GM**"), and vesting in GM all of the Respondents' and the Receiver's right, title, and interest to the assets sold thereunder;
 - b) An Omnibus Order, authorizing and approving the Receiver to accept offers and execute sale agreements for certain remaining assets of the Debtors (the "**Omnibus Order**"); and,
 - c) An Ancillary Order, authorizing certain distribution payments to the Bank, sealing the Confidential First Report, and increasing the Receiver's borrowing limit under the Appointment Order.

Second Report, paras 11-13 and Appendices "C" to "E" thereto

The Security

11. The Receiver is satisfied, based on the information available to it and subject to the payment of any unregistered interests, deemed trusts, statutory created priority claims and the prior ranking charges under the Appointing Order that the Bank held a valid and enforceable security over the Respondents' property, including the Purchased Assets sold pursuant to the Transaction.

Second Report, para 70

12. On April 28, 2020, the indebtedness and the Bank security was assigned to the Purchaser.
13. The Receiver is aware of certain potential claims in priority to that of the Purchaser, including amounts owing to former employees of DMCL pursuant to section 81.4 of the BIA, and amounts claimed by the Canada Revenue Agency in relation Employee Source Deductions (the “**Potential Prior Claims**”). The Receiver continues to communicate with Service Canada and the Canada Revenue Agency to determine with finality the amount of the Potential Prior Claims, which rank in priority to any final distribution to the Bank.
14. All post receivership obligations of the Receiver to CRA will be paid.

Second Report, paras 57-63

Sales Process and the transactions – Omnibus Order

15. The Receiver continued the marketing and sale of assets belonging to the Respondents as detailed in the First Report and authorized by the Omnibus Order, including the sale of a number of new and used vehicles, including scrap vehicles, shop equipment, and other Property of the Respondents, pursuant to Bills of Sale in the form approved under the Omnibus Order. The process undertaken by the Receiver in this regard was extensive, and resulted in significant cash inflow to the estate for the benefit of the creditors of the Respondents.

Second Report, paras 24- 46 and Appendices “H” to “M” thereto

16. In addition to the Transaction, as further described below, the Receiver has taken additional actions to complete the administration of the Respondents’ estates, including the closing of the GM Transaction (as contemplated in the First Report), termination of DMCL’s dealership agreement with GM, management and collection of the accounts receivable and payable of the Respondents, and coordination and termination of the Receiver’s occupation of the Premises.

Second Report, para 23

17. Despite the extensive efforts undertaken by the Receiver to market and sell the Property of the Respondents, no offers were received for the Purchased Assets.

Sales Process and the Transaction – Sale Agreement

18. As referenced in the Second Report, the Receiver has entered into the Transaction with the Purchaser. Prior to the Transaction, the Purchaser had purchased DMCL's indebtedness to the Bank, less any amounts to be received by the Bank from the Receiver, and all related security (the "**Debt Purchase**"). The Transaction was entered into concurrently with the Debt Purchase.

Second Report, paras 47-49

19. A term of the Debt Purchase was that the Purchaser directed the Receiver to pay any distribution to the Bank.

Second Report, para 49

20. Despite the Receiver's efforts to market the non-vehicle property of DMCL, including the Purchased Assets, as set out in the Second Report, no offers were received. It is the Receiver's opinion that the Transaction represents the most commercially reasonable value for the Purchased Assets in the circumstances.

21. Pertinent terms of the Transaction include:

- a) As detailed in the First Report, the Receiver's opinion that the estimated recovery from the assets and undertakings of DMCL and 112 Ontario will not be sufficient to retire the estimated amount of the RBC Indebtedness and potential priority claims with the result that there will be no recovery available to the unsecured creditors of the receivership estates of DMCL and 112 Ontario;
- b) The Transaction would take the form of a credit bid, with certain additional payments from the Purchaser to the Receiver, as outlined in the Sale Agreement;

- c) The Purchased Assets would include, inter alia, personal property (parts, equipment, office furniture), accounts receivable, intercompany loans, intellectual property and goodwill, and certain remaining vehicle inventory of DMCL;
- d) Cash is excluded from the Purchased Assets; and
- e) The terms of the Sale Agreement also require the discharge of 112 Ontario and the obtaining of the Approval and Vesting Order, as sought in the herein motion.

Second Report, para 53 and Confidential Appendix "A" thereto

22. Pending approval of this Honourable Court, the conditions of closing for the Transaction have largely been fulfilled. The Transaction is commercially reasonable in the circumstances, and the Receiver is not aware of any objections to the Transaction from other third parties.

Second Report, para 54

Discharge – 112 Ontario

23. The immediate discharge of 112 Ontario is a term of closing of the Sale Agreement. With the exception of certain incidental duties, the Receiver has completed the administration of the estate of 112 Ontario, and takes the position that it should be discharged as Receiver of 112 Ontario.

Second Report, paras 50, 53

Proposed Distribution

24. The Receiver has made interim distributions totaling \$3,678,238 to the Bank at the date of this motion.

Second Report, para 73

25. The Receiver is seeking to make a final distribution to the Bank, as has been directed by the Purchaser, of any cash remaining after the closing of the Transaction and the administration of Respondents' estates, including payment of all potential prior claims, and subject to the approval of this Honourable Court, including the payment of:
- a) The Professional Fees as set out in the Second Report, including fees of Receiver and its counsel;
 - b) Any priority payables, such as deemed trust amounts owing to the Canada Revenue Agency at the time of distribution; and,
 - c) All amounts owing to the Bank up to the sum total of the Indebtedness.
- (all as defined in the Second Report).

Second Report, paras 70-73

26. Following the completion of the Transaction, the distributions recommended in the Second Report, and any additional incidental matters, the Receiver will have completed the administration of the estate of DMCL, and as such requests its discharge.

Second Report, paras 83-84

PART III - ISSUES, LAW AND ARGUMENT

A. The Receiver's Activities

27. The Receiver's activities in these proceedings have been undertaken in furtherance of the Receiver's duties and are consistent with the Receiver's powers, as set out in the Appointment Order. The Receiver has acted reasonably and in the best interests of the Respondents' stakeholders. It is respectfully submitted that the Receiver's activities should therefore be approved by this Court.
28. This Court has the jurisdiction to approve such activities. The "court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver" and "it would be unusual and illogical [if] the receiver could come to court for prior approval but not post approval."

Bank of America Canada v. Willann Investments Ltd. (1993) 20 C.B.R. (3d) 223 (ONSC), Tab 1 at paras. 3 and 4

29. All of the Receiver's activities were conducted within the ambit of its powers granted by the Appointment Order and each of the activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible.
30. The Receiver therefore respectfully submits that its activities to date should be approved by this Court.

B. Approval of the Transaction and the Approval and Vesting Order

31. Receivers are clothed with the powers set out in the order appointing them. Receivers are consistently granted the power to market and sell property belonging to a debtor. Absent evidence that a sale is improvident or that there was an abuse of process, it is respectfully submitted that a Court is to grant deference to the recommendation of the Receiver to sell the Purchased Assets.

Appointment Order, sub-paragraphs 3(j) and 3(k)

Integrated Building Corp. v. Bank of Nova Scotia (1989), 75 C.B.R. (N.S.) 158 (Alta. C.A.), Tab 2

Battery Plus Inc. (Re.), [2002] O.J. No. 731, Tab 3 at para. 2-3, 19, 22-23

32. Under Section 100 of the *Courts of Justice Act* (Ontario), this Honourable Court has the power to vest in any person an interest in real or personal property that the court has the authority to order be disposed of, encumbered or conveyed.

Courts of Justice Act (Ontario), R.S.O. 1990, c. C-43, s. 100, Tab 4

33. Where a Court is asked to approve a transaction in a receivership context, the Court is to consider:
 - i. whether the party made a sufficient effort to obtain the best price and to not act improvidently;
 - ii. the interests of all parties;
 - iii. the efficacy and integrity of the process by which the party obtained offers; and

iv. whether the working out of the process was unfair.

Royal Bank of Canada v. Soundair Corp. (1991), 4 O.R. (3d) 1 (ONCA), Tab 5 at para. 16

Skyepharm PLC v. Hyal Pharmaceutical Corp. (1999), 12 C.B.R. (4th) 87 (ONSC., appeal quashed, (2000), 47 O.R. (3d) 234 (C.A.)), Tab 6 at para. 3

34. Only in exceptional circumstances where there is clear evidence that a sale is improvident or involved an abuse of process will a Court intervene and proceed contrary to the recommendation of its officer, the Receiver.

Royal Bank of Canada v. Soundair, supra at para. 21

Skyepharm PLC, supra at para. 3

35. Based on the foregoing, it is respectfully submitted that this Honourable Court should approve the Transaction and grant the Approval and Vesting Order, in accordance with the recommendation of the Receiver. It is the Receiver's position that the Transaction be approved by the Court for the following reasons:

- a) The Receiver has taken extensive steps to market the Property of the Respondents for sale, as detailed in the Second Report, and has sold a significant proportion of such Property, pursuant to the Omnibus Order;
- b) The Property of DMCL sold via the Transaction represents property in which no other potential purchasers expressed a viable interest;
- c) Any physical Purchased Assets have been removed from the Premises at the expense of the Purchaser, which has resulted in savings to the estate of DMCL;
- d) The Purchaser has advanced all funds required under the Sale Agreement to the Receiver, which funds have reduced the expenses of administering the estates of the Respondents, including the costs of occupying the Premises;
- e) It is the opinion of the Receiver that the Transaction represents the best and highest recovery from the sale of the Purchased Assets, and that the Transaction is commercially reasonable;
- f) No third parties have objected to the Transaction.

Second Report, para 53

Limited et al. v. Reichert, 2014 ON SC 6435 (CanLII), Tab 7 at para. 15

36. The Receiver states that, for the reasons set out above, the Transaction is provident. The quantum thereof is commercially reasonable in the relevant market conditions, and represents the maximal recovery for the creditors of the Respondents, and should be approved by this Honourable Court accordingly.
37. The Receiver states that the Bank, as the senior secured creditor of the Respondents, approves of the Transaction, and will suffer a shortfall following the distribution of any proceeds of same.

C. The Sealing Order

38. It is just, appropriate and necessary to the integrity of these receivership proceedings that the Confidential First Report and the Confidential Second Report be sealed by this Court until the Transaction has closed.

Jurisdiction

39. The Court's jurisdiction to seal documents filed with it is found in s. 137(2) of the *Courts of Justice Act* (Ontario):

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form a part of the public record.

Courts of Justice Act (Ontario), s. 137(2), Tab 8.

40. In addition to statutory jurisdiction, the Court also has inherent jurisdiction to issue sealing orders: "there is no doubt that the court has inherent jurisdiction, and jurisdiction under s. 137(2) of the Courts of Justice Act, to seal a portion of the court file."

Fairview Donut Inc. v. TDL Group Corp. (2010), 100 O.R. (3d) 510 (ONSC), Tab 9, at para. 34.

Discretion

41. The leading case on sealing orders is the Supreme Court of Canada's decision in *Sierra Club of Canada v. Canada (Minister of Finance)*, which was decided under the federal

rules of court but has been widely applied to provincial cases. *Sierra Club* holds that a sealing order is discretionary and should only be granted when (*emphasis added*):

- a. such an order is necessary in order to prevent a serious risk to an important interest, *including a commercial interest*, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- b. the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

***Sierra Club of Canada v. Canada (Minister of Finance)* [2002] 2 S.C.R. 522 (SCC) (“*Sierra Club*”). Tab 10 at para. 53.**

42. Three elements are subsumed under the first branch of the test:

- a) the risk in question must be real and substantial, in that the risk is well grounded in evidence, and poses a serious threat to the commercial interest in question;
- b) in order to qualify as an “important commercial interest”, the interest in question cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in maintaining confidentiality; and
- c) the Court must consider not only whether reasonable alternatives to a confidentiality order are available, but must also restrict the order as much as is reasonably possible while preserving the commercial interest in question.

***Sierra Club, supra*, at paras 54-57.**

43. Judges sitting on the Commercial List have recognized the usual and customary practice of seeking a sealing order in the context of a sale approval motion. In *Ron Handelman Investments Ltd, v. Mass Properties Inc.*, Madam Justice Pepall (as she then was) stated:

[a]s is customary in sale approval motions, the Receiver seeks an order sealing the appraisal until the transaction is completed. This ensures the

integrity of the process and avoids any prejudice to stakeholders in the event that the transaction does not close and a new purchaser must be sought.

Ron Handelman Investments Ltd. v Mass Properties Inc. (2009), 55 CBR (5th) 271, 2009 CarswellOnt 4257 (ONSC [Commercial List]) Tab 11 at para 26.

44. Sealing orders are routinely granted in receiverships where the *Sierra Club* test is met. For example, appendices to a receivers report were sealed where they contained sensitive commercial information, the release of which could be prejudicial to stakeholders, a copy of an executed sale agreement was sealed when submitted to the court as part of a sale approval motion, and bids made in a sales process have been sealed.

Maxtech Manufacturing Inc., Re (2010), 64 C.B.R. (5th) 239 (ONSC [Commercial List]), Tab 12 at paras. 29 & 30.

45. The Confidential Second Report contains an unredacted version of the Sale Agreement and includes the purchase price of the Purchased Assets. Should the Transaction fail to close for any reason, the information contained within these confidential appendices could cause a reduction in any future sale of the Purchased Assets, and harm the creditors of the Respondents if made available to the public. Protecting the information contained within the Confidential Second Report is an important commercial interest that should be protected. There is no other reasonable alternative to sealing that will prevent Confidential Second Report from becoming public.
46. With regard to the Confidential Second Report, it is the Receiver's opinion that the Confidential Second Report should remain sealed until the completion of the Receivership proceedings.
47. The Receiver respectfully submits that the principles in *Sierra Club* have been satisfied.

D. The Receiver's recommended distributions Should Be Approved

48. The Receiver has received opinions from its counsel that the security held by the Purchaser is valid and enforceable.
49. Distributions out of the estate have been assigned to the Bank by the Purchaser, and the Bank will suffer a shortfall following such distribution.

50. Canadian and Ontario Courts have routinely granted distributions with a reserve for undetermined priority claims in insolvency proceedings and receiverships, and the Receiver respectfully submits that the factors set out in *Re AbitibiBowater Inc.* (albeit in relation to an interim distribution under the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36) and elsewhere favour Court's approval of the distributions recommended by the Receiver in the Second Report.

***Re Windsor Machine & Stamping Ltd.*, 2009 CarswellOnt 4505 (ONSC), Tab 13 at para. 8;**

***Re AbitibiBowater Inc.*, 2009 QCCS 6461, 2009 CarswellQue 14224 (QC. Sup. Ct.) ("Abitibi"), Tab 14 at paras. 70-75.**

E. The Professional Fees Should Be Approved

51. The Receiver respectfully submits that the Professional Fees as detailed in the Second Report, including the fees of the Receiver and its counsel, and all estimated fees to the conclusion of the herein Receivership, should be approved.
52. In determining whether to approve the fees of a receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred in carrying out the receivership were fair and reasonable and take into consideration the following factors, which constitute a useful guideline, but are not exhaustive:
- a) the nature, extent and value of the assets;
 - b) the complications and difficulties encountered;
 - c) the degree of assistance provided by the debtor;
 - d) the time spent;
 - e) the Receiver's knowledge, experience and skill;
 - f) the diligence and thoroughness displayed;
 - g) the responsibilities assumed;
 - h) the results of the receiver's efforts; and,

- i) the cost of comparable services when performed in a prudent and economical manner.

Bank of Nova Scotia v. Diemer, 2014 ONCA 851, Tab 15 at paras 33 and 45.

- 53. It is the Receiver's view that it and its counsel's fees and disbursements were incurred at the respective party's standard rates and charges, and are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately reflect the work done by the Receiver and by its counsel in connection with the receivership.

F. The Discharge of the Receiver

Discharge - 112 Ontario

- 54. The Receiver has substantially completed its mandate as contemplated by the Appointing Order, the Approval and Vesting Order, the Ancillary Order, and under the *Bankruptcy and Insolvency Act* with regard to 112 Ontario, subject only to certain remaining incidental duties.
- 55. It is a term of closing of the Transaction that the Receiver be discharged immediately as Receiver of 112 Ontario. The Bank does not object to this discharge, and it is the Receiver's position that such discharge is desirable and necessary to complete the Transaction.

Discharge - DMCL

- 56. The Receiver has substantially completed its mandate as contemplated by the Appointing Order, the Approval and Vesting Order, the Ancillary Order, and under the *Bankruptcy and Insolvency Act* with regard to DMCL. Accordingly, the Receiver respectfully submits that it should be discharged and released on completion of the Transaction, subject to the filing of the Discharge Certificate with the Court certifying that all payments contemplated by the Second Report have been made, and the activities necessary to conclude the receivership proceedings have been completed.

Discharge - General

57. The Receiver is seeking a discharge at the hearing of this Motion in order to avoid the cost to the receivership estate of another motion, which would include another report to the Court, another motion record and the re-attendance by the Receiver and its counsel. The Receiver believes, under the circumstances of this receivership, that it is both efficient and appropriate for this Court to grant the Receiver a discharge, immediately in the case of 112 Ontario, and upon the filing of the Discharge Certificate in the case of DMCL.
58. The Receiver also seeks a release from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the act or omissions of the Receiver while acting in its capacity as Receiver of both Respondents, save and except for any gross negligence or wilful misconduct on the part of the Receiver.
59. The Release is a standard term and mirrors the language used in the Commercial List model discharge order. Indeed, as Justice Patillo asserted in *Kraus*, “in the absence of any evidence of improper or negligence conduct, the release should issue.” As in *Kraus*, there is no such evidence in the case at bar. Thus, the Release should be granted.

***Pinnacle Capital Resources Ltd. v. Kraus Inc.*, 2012 CarswellOnt. 14138 (ONSC [Commercial List]), Tab 16 at para 47.**

PART IV - ORDER REQUESTED

60. The Receiver requests the following Orders:

- a) That the Transaction be approved as recommended by the Receiver and that an Approval and Vesting Order be granted; and
- b) That the relief sought in the Ancillary Order be granted, including the distributions as recommended in the Second Report, and the Discharge of the Receiver.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of June, 2020.



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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)
2. *Integrated Building Corp. v. Bank of Nova Scotia* (1989), 75 C.B.R. (N.S.) 158 (Alta. C.A.)
3. *Battery Plus Inc. (Re.)*, [2002] O.J. No. 731
4. *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (ONCA)
5. *Skyepharma PLC v. Hyal Pharmaceutical Corporation*, 1999 CanLII 15007 (ONSC)
6. *Limited et al. v. Reichert*, 2014 ON SC 6435 (CanLII), Tab 7 at para. 15
7. *Re Fairview Donut Inc. v. TDL Group Corp.* (2010), 100 O.R. (3d) 510 (ONSC)
8. *Re Sierra Club of Canada v. Canada (Minister of Finance)* [2002] 2 S.C.R. 522 (SCC)
9. *Ron Handelman Investments Ltd. v. Mass Properties Inc.* (2009), 55 CBR (5th) 271 (ONSC -[Commercial List])
10. *Re Maxtech Manufacturing Inc., RE* (2010), 64 B.C.R. (5th) 239 (ONSC - [Commercial List])
11. *Re Windsor Machine & Stamping Ltd.*, 2009 CarswellOnt 4505 (ONSC)
12. *Re Abitibiwater Inc.*, 2009 QCCS 6461, 2009 CarswellQue 14224 (QC. Sup. Ct.)
13. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
14. *Pinnacle Capital Resources Ltd. v. Kraus Inc.*, 2012 CarswellOnt. 14138 (ONSC)

SCHEDULE "B"
RELEVANT STATUTES

1. *Courts of Justice Act (Ontario), R.S.O. 1990, c. C-43, s. 100*
2. *Courts of Justice Act (Ontario), s. 137(2)*

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Court File No. CV-20- 00636095-00CL

**ONTARIO
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Proceeding commenced at TORONTO

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