

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

**BETWEEN:**

**ROYAL BANK OF CANADA**

Applicant

- and -

**DEAN MYERS CHEVROLET and 1125278 ONTARIO LIMITED**

Respondents

**SECOND REPORT OF DELOITTE RESTRUCTURING INC.  
IN ITS CAPACITY AS RECEIVER  
DATED JUNE 9, 2020**

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## APPENDICES

APPENDIX	DESCRIPTION
A	Appointment Order dated February 12, 2020 and Endorsement of Justice Hainey dated February 12, 2020
B	First Report of the Receiver dated March 19, 2020 (without appendices)
C	Approval and Vesting Order dated March 25, 2020
D	Omnibus Order dated March 25, 2020
E	Ancillary Order dated March 25, 2020
F	Endorsement of Justice Hainey dated March 25, 2020
G	Certificate of Appointment of Baigel Corp. dated May 8, 2020
H	Finch Bill of Sale dated April 20, 2020 re New/Demo Vehicles
I	Finch Bill of Sale dated April 24, 2020 re Used Vehicles
J	Lease Buyout Bill of Sale dated May 6, 2020
K	Equipment Bill of Sale dated April 22, 2020
L	Payment Satisfaction Document re 2010197 Ontario Ltd.
M	Bills of Sale dated April 8, 2020 re 2010197 Ontario Ltd.
N	2010197 Asset Purchase Agreement dated April 28, 2020 – Redacted
O	Statement of Receipts and Disbursements for the cumulative period February 12, 2020 to June 4, 2020
P	Affidavit of Stefano Damiani of Deloitte Restructuring Inc. sworn June 9, 2020
Q	Affidavit of Thomas Masterson of Harrison Pensa LLP sworn June 8, 2020

## CONFIDENTIAL APPENDICES TO THE CONFIDENTIAL SUPPLEMENT

CONFIDENTIAL APPENDIX	DESCRIPTION
A	2010197 Asset Purchase Agreement – Unredacted Version

## INTRODUCTION

1. An application was made on February 11, 2020 by Royal Bank of Canada (“**RBC**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver (the “**Receiver**”) without security, of all the assets, undertakings and properties of each of Dean Myers Chevrolet Limited (“**DMCL**” or the “**Company**”) and 1125278 Ontario Limited (“**1125278**” or the “**Guarantor**”, and collectively with DMCL, the “**Debtors**”) acquired for, or used in relation to a business carried on by any of the Debtors (the “**Property**”).
2. As described more particularly in this report, RBC was the senior secured lender of the Debtors and certain related parties pursuant to credit facilities granted by RBC (the “**RBC Indebtedness**”).
3. By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 12, 2020 (the “**Appointment Order**”) and the endorsement of Justice Hainey (the “**February 12 Endorsement**”), Deloitte was appointed as the Receiver of the Property of the Debtors. Copies of the Appointment Order and the February 12 Endorsement are attached hereto as **Appendix “A”**.
4. DMCL is an Ontario corporation which operated as an automotive dealership and service centre located at 3180 Dufferin Street, Toronto (the “**Premises**”) since 1991. DMCL was an authorized reseller of new Chevrolet, Buick and GMC branded vehicles pursuant to a dealership agreement (the “**Dealership Agreement**”) with General Motors of Canada Limited (“**GM**”). In addition, DMCL also sold used vehicles and participated in consignment sales of vehicles located at the Premises and through an online platform.
5. The principals of DMCL were Richard Chamberlin (“**Richard**”), who is a director and the President of DMCL, and Penny Chamberlin (“**Penny**”), who is also a director and officer of DMCL. Telma Dantas (“**Dantas**”) is an officer and was employed as a financial controller of DMCL as at the date of the Appointment Order. Prior to 1991, Gordon Dean Myers (“**Gordon**”) had operated a GM dealership at the Premises for decades before ultimately selling the business to DMCL. Richard and Penny (collectively, the “**Chamberlins**”) are married, and Gordon is Penny’s father. As further detailed below, DMCL is now a bankrupt.
6. 1125278 is an Ontario corporation and primarily operated as a vehicle leasing company which also operated out of the Premises. There were 13 active lease customers as at the date of the Appointment Order.

7. DMCL had 44 employees as at the date of the Appointment Order. 1125278 did not have any employees and was administered by DMCL's management and employees.
8. The Premises were owned by Dean Myers Leasing Limited (the "**Former Landlord**"), a company controlled by Gordon. The Former Landlord entered into lease agreements (collectively, the "**Premises Lease**") with DMCL which contemplated an early termination effective June 30, 2020 to facilitate a sale of the Premises to a division of RioCan pursuant to a sale transaction which closed on March 5, 2020. As described later in this report, this sale of the Premises did close and the Receiver vacated the Premises on May 12, 2020 (the "**Vacating Date**").
9. As described in more detail in paragraph 21 of the First Report, 2010197 Ontario Ltd. ("**2010197**") is a related party entity which primarily operated under the "Dealerwerx" banner involved in the online marketing of used and consignment vehicles. Richard is a Director of 2010197, and Richard, Penny and Dantas are officers of 2010197.
10. On March 19, 2020, the Receiver issued its first report to the Court (the "**First Report**") for the purpose of, among other things, updating the Court on the Receiver's activities in respect of the Property, and seeking Orders (i) approving the sale transaction (the "**GM Transaction**") to be effected through an asset purchase agreement dated and executed on March 17, 2020 (the "**GM APA**") between the Receiver and GM with respect to certain new vehicle inventory, (ii) temporarily sealing the Receiver's confidential supplement to the First Report (the "**Confidential First Report**"), (iii) prospectively authorizing and approving the Receiver to execute sale agreements for the remaining assets of the Debtors, primarily consisting of vehicles, parts inventory, and fixed assets, and to vest title free and clear in respect of such assets, (iv) approving a distribution of available surplus proceeds to RBC and authorizing additional distributions to RBC in such amounts as the Receiver deems appropriate in partial repayment of the RBC indebtedness, and (v) approving an increase in the Receiver's borrowing limit. A copy of the First Report (without appendices) is attached hereto as **Appendix "B"**.
11. On March 25, 2020, the Court issued three orders in these proceedings. The first order (the "**GM Approval and Vesting Order**") approved the GM APA and vested in GM all of the Debtors' and Receiver's right, title and interest in respect of 49 new vehicles upon closing of the GM Transaction. As described later in this report, the GM Transaction closed on April 1, 2020. Attached hereto as **Appendix "C"** is a copy of the GM Approval and Vesting Order.
12. The second order issued was an Omnibus Order (the "**Omnibus Order**"), that prospectively authorized and approved the Receiver to accept offers and execute sale agreements for the remaining assets of the Debtors, primarily consisting of vehicles, parts inventory, and fixed assets,

and to vest title free and clear in respect of such assets. The Omnibus Order also included template forms of Bill of Sale in respect of such transactions. Attached hereto as **Appendix “D”** is a copy of the Omnibus Order.

13. The third order issued was an Ancillary Order (the “**Ancillary Order**”) which (i) authorized the Receiver to make a distribution payment to RBC as detailed in the First Report, and such further distributions to RBC at the discretion of the Receiver up to the amount owed to RBC by the Debtor, including all interest and costs, (ii) sealed the Confidential First Report until the completion of the GM APA or until further Order of the Court, and (iii) increased the Receiver’s borrowing limit in paragraph 22 of the Appointment Order from \$125,000 to \$750,000. Attached hereto as **Appendix “E”** is a copy of the Ancillary Order.
14. A copy of the Endorsement of Justice Hainey dated March 25, 2020 (the “**March 25 Endorsement**”) is attached hereto as **Appendix “F”**.
15. At the March 25, 2020 hearing, held by teleconference, the Debtors’ principals sought and obtained a 15-day deferment (the “**Temporary Sale Deferment**”) to the closing of any sale transactions under the Omnibus Order, to facilitate a potential refinancing of the RBC Indebtedness, contingent on proceeds from the sale of the Premises which could accrue to Penny.
16. On April 7, 2020, a Court videoconference hearing in the matter between the Chamberlins and Gordon resulted in an extension to the Temporary Sale Deferment until the matter could be heard on April 16, 2020. The relief sought by the Chamberlins was not granted on April 16, 2020 and the Temporary Sale Deferment was terminated at that time.
17. On May 8, 2020, DMCL was voluntarily assigned into bankruptcy and Baigel Corp. (“**Baigel**” or the “**DMCL Bankruptcy Trustee**”) was named as trustee of the bankrupt estate of DMCL. A copy of Baigel’s Certificate of Appointment is attached hereto as **Appendix “G”**.
18. The Appointment Order, together with Court documents, subsequent Orders, and the reports of the Receiver with respect to this matter are available on the Receiver’s website at [www.insolvencies.deloitte.ca/en-ca/DeanMyersChevroletLimited](http://www.insolvencies.deloitte.ca/en-ca/DeanMyersChevroletLimited).
19. The purpose of this second report of the Receiver (the “**Report**”) is to:
  - (a) provide the Court with additional information and findings in respect of the Debtors and the Property;
  - (b) provide the Court with an evidentiary basis to make Orders:

- (i) approving the activities of the Receiver, including steps taken in dealing with the Property, as described in this Report, the Confidential Supplement and in the First Report;
- (ii) approving the sale transaction (the “**2010197 Transaction**”) to be effected through an asset purchase agreement dated and executed on April 28, 2020 (the “**2010197 APA**”) between the Receiver and 2010197, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, for the sale of certain of the Property as described in the 2010197 APA (the “**Purchased Assets**”), and vesting the Company’s right, title and interest in the Purchased Assets in 2010197 and authorizing and directing the Receiver to carry out the terms of the 2010197 APA;
- (iii) temporarily sealing the confidential supplemental to this Report (the “**Confidential Supplement**”), together with the confidential appendices thereto, filed with this Court from the public record until the closing of the 2010197 Transaction or further order of the Court;
- (iv) approving the Receiver’s Statement of Receipts and Disbursements for the cumulative period February 12, 2020 to June 4, 2020;
- (v) approving the professional fees and disbursements of the Receiver and its independent legal counsel, Harrison Pensa LLP (“**Harrison Pensa**”), in the amounts set out this Report and authorizing the Receiver to pay all such fees and disbursements.
- (vi) discharging the Receiver, subject to the Receiver completing its administration of the estate herein and distributing the remaining funds held by the Receiver in the manner more particularly described herein, as will be evidenced by the Receiver filing a Certificate with the Court with respect to DMCL; and
- (vii) barring all claims against the Receiver by any person upon the Receiver’s discharge.

## TERMS OF REFERENCE

20. In preparing this Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors’ books and records, and discussions with

management of the Debtors (“**Management**”) (collectively, the “**Information**”). Except as described in this Report:

- (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver 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 Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
  - (b) the Receiver has prepared this Report in its capacity as a Court-appointed Receiver to support the Court’s approval of the Receiver’s activities and other relief being sought. Parties using the Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
21. Unless otherwise stated, all dollar amounts contained in the Report are expressed in Canadian dollars.
22. Unless otherwise provided, all other capitalized terms not otherwise defined in this Report are as defined in the Appointment Order or the First Report.

### **RECEIVER’S ACTIVITIES**

23. Since the First Report, the Receiver has undertaken, with the assistance of DMCL employees where necessary, the following activities:
- (a) closed the GM Transaction pursuant to the GM APA as evidenced by the filing of a Receiver’s Certificate dated April 3, 2020 with the Court, and facilitating the release of vehicles and ownership documentation to GM.
  - (b) executed the GM dealer termination notice on April 14, 2020 in accordance with the GM APA;
  - (c) continued marketing of the remaining new, demo and used vehicle inventory, parts, and fixed assets to prospective purchasers, facilitated site inspections and responded to inquiries, which culminated in four (4) Bills of Sale as described later in this Report;



- (d) issued two (2) Bills of Sale with 2010197 with respect to six (6) used vehicles and execution of a payment satisfaction agreement for seven (7) used cars purchased prior to the date of the Appointment Order as described later in this Report;
- (e) attended a site meeting and teleconference calls with Richard with respect to the 2010197 APA;
- (f) responded to inquiries from the former DMCL employees and matters with respect to the *Wage Earner Protection Program Act* (“WEPPA”);
- (g) arranged for ongoing payroll with respect to four DMCL employees who were temporarily retained by the Receiver to assist with the receivership administration and realization of assets, and subsequently issued final payroll and termination letters;
- (h) corresponded with Canada Revenue Agency (“CRA”) with respect to audits and the status of accounts with CRA;
- (i) continued retention of a third-party security services provider for 24-hour coverage and security cameras at the Premises;
- (j) undertook transition planning and on-site meetings with representatives of RioCan with respect to vacating the Premises, and provided notice to oversee the dismantling and removal of fixed assets under the 2010197 APA;
- (k) obtained an executed release agreement dated May 19, 2020 from the Former Landlord confirming, among other things, receipt of all occupancy amounts owing up to the Vacating Date;
- (l) corresponded with the Ontario Motor Vehicle Industry Council (“OMVIC”) and its internal legal counsel with respect to deposit creditors and other matters as described in greater detail later in this Report;
- (m) coordinated customer inquiries with GM and a third-party tire storage provider in respect of more than 150 DMCL customers who made seasonal tire storage arrangements with DMCL, and reconciled additional customer sets of tires located at the Premises for transfer by GM to customers;
- (n) reviewed details with respect to vehicles owned by third-parties, coordinated release and removal from the Premises;

- (o) further to paragraph 41(a) of the First Report, the Receiver subsequently arranged for the release of specific key equipment owned and registered by CWB National Leasing Inc. which located at the Premises;
- (p) further to paragraph 41(b) of the First Report, the Receiver, Pattison Sign Group and RioCan entered into a Release and Indemnity Agreement with respect to the specific signage to be removed from the Premises;
- (q) attended to numerous stakeholder inquiries from vendors, customers and former employees;
- (r) continued collection efforts with respect to DMCL's third-party accounts receivable;
- (s) undertook additional review and inquiries with DMCL financial management with respect to amounts due from related parties, and issuance of additional demand letters;
- (t) undertook additional review of financial information with DMCL financial management;
- (u) corresponded with Baigel with respect to the bankruptcy of DMCL and facilitated the transfer of physical records and electronic server to the DMCL Bankruptcy Trustee;
- (v) arranged for continued deposits of monthly lease payments from 1125278 leasing customers; and
- (w) addressed various additional matters as they arose from time to time.

## **MARKETING AND SALE OF THE REMAINING INVENTORY AND TRANSACTIONS PURSUANT TO THE OMNIBUS ORDER**

### ***Marketing of the Remaining Assets***

- 24. As set out in paragraph 111 of the First Report, on February 28, 2020, the Receiver issued a detailed listing of all new vehicle inventory to GM dealers in Ontario and select GM dealers in Quebec.
- 25. On March 23, 2020, the Receiver issued a further marketing package to 61 GM Dealers, which included:
  - (a) an updated list of remaining model year 2020, 2019, 2018 and 2017 new and demo vehicles from which the vehicles repurchased by GM had been removed;
  - (b) copies of purchase invoices in respect of the remaining new vehicle inventory;
  - (c) listings of parts and accessory inventory;

- (d) copies of the Receiver's template forms of Bill of Sale with respect to the purchase of vehicles and other assets; and
  - (e) information in respect of site inspections.
26. A similar package excluding the new vehicle inventory was issued by the Receiver to select parties in addition to GM dealers.
  27. The Receiver consulted with the retained DMCL manager in preparing inventory lists, assessing offers received, and responding to technical inquiries from prospective purchasers.
  28. DMCL's parts inventory was also primarily marketed to GM dealers due to the nature of those products.
  29. In accordance with further restrictive Provincial COVID-19 guidelines announced on April 3, 2020 and effective April 4, 2020, automotive dealerships in Ontario, including GM dealerships, were ordered to temporarily close their physical and vehicle showroom operations, with the exception of vehicle repair and parts supply operations. This resulted in a significant reduction in industry sale activity in the months of March and April 2020, and corresponding higher inventory levels among many prospective purchasers. Accordingly, the Receiver further consulted with GM with respect to realization strategies for the vehicle and parts inventory, regional inventory levels and potential GM dealers who may be seeking such assets.
  30. The Receiver also obtained proposals from four auctioneers and liquidators in respect of the remaining vehicle and parts inventory. Two of the auctioneers attended at the Premises to inspect the assets available for sale. The proposals contemplated different sale timelines, reflecting the unknown timeframe for Provincial restrictions for conducting live auctions which resulted in the temporary suspension of certain auction operations which had not been classified as an essential service.
  31. Paragraph 70 of the First Report set out a table of up to 148 used vehicle inventory, many of which were significantly aged, including 80 vehicles aged 2010 and older. The Receiver consulted with DMCL management which had internally classified 41 used vehicles as "scrap" and approximately 28 were classified by DMCL "as-is".
  32. The Receiver obtained informal proposals from two scrap vehicle resellers which were primarily based on vehicle weight and size. One vehicle scrap dealer attended at the Premises on two occasions to inspect the assets, and identified between 61 to 70 cars as scrap, with an offer of between \$200 to \$400 per car.
  33. The Receiver also facilitate site inspections by secondary equipment and parts resellers.

34. None of the GM dealers, auctioneers, or secondary market parties expressed any interest in purchasing the parts inventory, primarily due to the large volume of aged parts and market uncertainty.

***Finch Bill of Sale – Remaining New and Demo Vehicle Inventory***

35. On April 20, 2020, the Receiver accepted an *en bloc* offer from Finch Chevrolet Cadillac Buick GMC Ltd. (“**Finch**”) for the remaining 39 new and demo vehicles in the amount of \$1,362,550 plus HST (the “**Finch New Vehicle Offer**”). The model years of the 39 purchased vehicles were as follows: 1 (2017), 10 (2018), 25 (2019), and 3 (2020). Of the 39 vehicles, 15 were demonstrator vehicles with varying amounts of mileage, use, and wear and tear.
36. The Receiver determined the Finch New Vehicle Offer to be commercially reasonable and advantageous to the receivership estate for the following reasons:
- (a) The purchase price, which was primarily based on invoice cost less GM incentive rebates previously applied against those vehicles and assessed condition adjustments, was reasonable in the circumstances after taking into consideration the guidelines set out in paragraph 1 of the Omnibus Order;
  - (b) The Receiver had obtained confirmation from GM on the application of existing GM incentive rebates in favour of Finch to mitigate any corresponding purchase price reductions;
  - (c) The *en bloc* transaction minimized the amount of professional time required to liquidate the remaining new and demo inventory leading to enhanced realizations; and
  - (d) Finch had the ability to close the transaction and remove the vehicles in a timely manner.
37. A copy of the Bill of Sale in respect of the Finch New Vehicle Offer is attached as **Appendix “H”**.

***Finch Bill of Sale – Used Vehicle Inventory***

38. On April 24, 2020, the Receiver accepted an *en bloc* offer from Finch for 138 used vehicles in the amount of \$750,000 plus HST (the “**Finch Used Vehicle Offer**”), and executed a Bill of Sale with Finch (the “**Finch Used Bill of Sale**”) with respect to its *en bloc* offer.
39. The Receiver determined the Finch Used Vehicle Offer to be commercially reasonable and advantageous to the receivership estate for the following reasons:

- (a) The purchase price was reasonable in the circumstances after taking into consideration the guidelines set out in Paragraph 1 of the Omnibus Order;
  - (b) The transaction addressed substantially all of the remaining used vehicles, including the “scrap” vehicles, which reduced the level of administration and uncertainty to the receivership estate as compared to an auction scenario;
  - (c) Finch would remove the vehicles by April 30, 2020, which mitigated any additional occupancy/storage costs and transportation costs that the Receiver might otherwise have to incur; and
  - (d) Finch agreed to the immediate remittance of purchase proceeds without delay.
40. A copy of the Bill of Sale in respect of the Finch Used Vehicle Offer is attached as **Appendix “I”**.
41. The Receiver subsequently executed vehicle plating letters to facilitate the transfer of ownership registrations to Finch in respect of numerous used vehicles, as necessary.

#### ***Lease Customer Buyback***

42. The Receiver facilitated the contractual lease buyback of a 1125278 customer whose lease had expired. The Receiver executed a Bill of Sale dated May 6, 2020, a copy of which is attach hereto as **Appendix “J”**, collected purchase proceeds of \$18,380, and executed a vehicle plating letter to facilitate the transfer of ownership.

#### ***Sale of Certain Equipment***

43. The Receiver obtained two bids with respect to certain of the shop equipment at the Premises, and ultimately accepted an offer from Anthony Ventura which culminated in a Bill of Sale dated April 22, 2020 (the “**Ventura Bill of Sale**”). That transaction closed on April 27, 2020 and the Receiver collected purchase proceeds of \$4,350 plus HST with respect to three units of equipment. A copy of the Ventura Bill of Sale is attached hereto as **Appendix “K”**.

#### ***2010197 Purchase and Payment Satisfaction re Used Vehicles***

44. Paragraph 118 of the First Report made reference to a demand letter issued by the Receiver to 2010197 with respect to the pre-receivership sale of seven (7) used vehicles. The Receiver collected payment of \$104,122 and subsequently issued an executed satisfaction document to

2010197 (the “**Payment Satisfaction Document**”) on April 30, 2020. A copy of the Payment Satisfaction Document is attached hereto as **Appendix “L”**.

45. Paragraphs 119 and 120 of the First Report discussed an offer from Richard for six (6) used vehicles which were in the possession of the Chamberlain family as at the date of the Appointment Order. In April 2020, the Receiver and 2010197 agreed to terms for the sale of those six vehicles as follows:

- (a) four (4) used vehicles owned by DMCL for the aggregate purchase price of \$180,870 plus HST;
- (b) two (2) used vehicles owned by 1125278 for the aggregate purchase price of \$75,729 plus HST;

46. Copies of the two Bills of Sale (the “**2010197 Vehicle Bills of Sale**”) for the six vehicles are attached hereto as **Appendix “M”**. As the purchase price under the 2010197 Vehicle Bills of Sale were in aggregate less than the \$500,000 limit set out in Section 3(k)(ii) of the Appointment Order, Court approval was not required for this transaction, and were not subject to the template forms of bill of sale which were set out in the Omnibus Order.

## **THE 2010197 TRANSACTION**

### ***Events Leading to the 2010197 Transaction for Remaining Assets***

47. During the Temporary Sale Deferment established in the March 25 Endorsement, as extended, the Receiver sought clarification from Richard and other stakeholders with respect to a potential transaction framework for the purchase by the Chamberlins of all of the remaining assets of the Debtors, other than the vehicles sold under the GM APA. The Receiver learned that the funding of such a solution advanced by the Chamberlins was contingent on the immediate release of funds held by the Former Landlord in respect of sale of the Premises. As set out earlier in this Report, the Chamberlins and the Former Landlord did not agree to terms by the April 16, 2020 Court hearing, and the Court did not grant the relief sought by the Chamberlins. Accordingly, the Receiver moved to market and sell the remaining assets, which culminated in the sale of substantially all remaining vehicle inventory of DMCL as discussed above.

48. Discussions and negotiations among the stakeholders continued to advance following the April 16, 2020 Court hearing. The Receiver also met with and facilitated site access to Chamberlin to inspect the remaining assets.
49. On April 28, 2020, the Chamberlins and 2010197 entered into an assignment of debt and security agreement with RBC. Also on April 28, 2020, the Receiver and 2010197 executed the 2010197 APA which included, among other things, a credit bid with respect to remaining assets of DMCL.
50. The 2010197 APA also contemplates the discharge of Deloitte as Receiver of 1125278, which will result in 1125278 continuing to administer the remaining vehicle leases and continue operations, and the corresponding stay of proceedings under the Appointment Order will be lifted.
51. Since the execution of the 2010197 APA, the Receiver has collected cash advances due pursuant to the 2010197 APA, and provided access to Richard and 2010197's representatives to dismantle and remove the Purchased Assets located at the Premises.
52. A redacted copy the 2010197 APA is attached hereto as **Appendix "N"**, and the unredacted copy is attached as **Confidential Appendix "A"** to the Confidential Supplement. The Confidential Supplement includes the Purchase Price under the 2010197 APA. In the event that the 2010197 Transaction is not approved by this Court, or if the 2010197 Transaction is approved by the Court but does not close, the disclosure of the Purchase Price under the 2010197 APA would negatively impact any future sale process for the assets subject to the 2010197 APA. For that reason, the Receiver is seeking an Order of this Honourable Court to seal the Confidential Supplement, which includes an unredacted version of the 2010197 APA, until the Receiver's Certificate pursuant to an approval and vesting Order has been filed with this Honourable Court.

***Terms of the 2010197 APA***

53. A summary of the non-commercially sensitive key terms of the 2010197 APA is provided below.

<b>Summary of the 2010197 APA</b>	
<b>Purchaser</b>	<ul style="list-style-type: none"><li>• 2010197 Ontario Ltd.</li></ul>
<b>Transaction Type</b>	<ul style="list-style-type: none"><li>• Sale of assets</li><li>• Approval and Vesting Order and Discharge Order</li></ul>

<b>APA Date</b>	<ul style="list-style-type: none"> <li>• April 28, 2020</li> </ul>
<b>Purchase Price</b>	<ul style="list-style-type: none"> <li>• Confidential</li> <li>• Credit bid</li> </ul>
<b>Deposits and Advances Received</b>	<ul style="list-style-type: none"> <li>• No deposit with respect to the Credit Bid, other than for HST as described below</li> <li>• 2010197 has advanced the three (3) amounts to the Receiver pursuant to the terms of the 2010197 APA: <ul style="list-style-type: none"> <li>○ Confidential – An amount for HST equal to 13% of the purchase price for the Purchase Assets of DMCL</li> <li>○ \$6,500 with respect to the estimated unpaid pre-receivership HST owed by 1125278 which has since been remitted by the Receiver to CRA</li> <li>○ \$75,000 as an advance for occupancy costs beyond April 30, 2020, subject to accounting and refund provisions as agreed to by the parties</li> </ul> </li> </ul>
<b>Outside Closing Date</b>	<ul style="list-style-type: none"> <li>• Two calendar days after the date on which the Approval and Vesting Order in respect of the 2010197 Transaction and the Discharge Order of 1125278 is granted</li> </ul>
<b>Purchased Assets of DMCL</b>	<ul style="list-style-type: none"> <li>• Parts inventory, equipment, office furniture and other personal property located at the Premises</li> <li>• Accounts receivable, intercompany loans and choses in action</li> <li>• Intellectual property and goodwill</li> <li>• Remaining vehicle inventory comprised of a 2018 Chevrolet Corvette located in Florida, and residual assets situated at the Premises</li> </ul>
<b>Delivery</b>	<ul style="list-style-type: none"> <li>• 2010197 removed from the Premises the physical Purchased Assets pursuant to the 2010197 APA prior to the Vacating Date</li> </ul>
<b>Additional Terms</b>	<ul style="list-style-type: none"> <li>• Contemplates the discharge of Deloitte as Receiver of the Property of 1125278, which will continue operations, and results in the lifting of the stay of proceedings under the Appointment Order</li> </ul>
<b>Conditions to Closing</b>	<ul style="list-style-type: none"> <li>• Approval and Vesting Order issued by the Court</li> <li>• Discharge Order with respect to 1125278, DMCL and the Receiver</li> <li>• Evidence of an assignment and subsequent cancellation of the RBC Indebtedness</li> <li>• Evidence of the filing of a voluntary assignment of DMCL into bankruptcy at the cost of 2010197</li> <li>• Filing of the Receiver’s Certificate in the form substantially similar to the Approval and Vesting Order, together with other requisite closing documentation, as necessary</li> </ul>



	<ul style="list-style-type: none"><li>• Execution of a release and indemnity as required by the Receiver</li><li>• Payment of advances as contemplated in the 2010197 APA</li></ul>
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***The Receiver's Observations with Respect to the 2010197 Transaction***

54. The Receiver makes the following observations with respect to the 2010197 Transaction for consideration by the Court:

- (a) 2010197 has dismantled and removed the physical Purchased Assets from the Premises at its own expense, which mitigated significant security and occupancy costs, which is commercially advantageous to the receivership estate and reduces administration costs;
- (b) the Receiver did not receive any other reasonable offers for the Purchased Assets, which were generally aged, and would require up-front investment to dismantle, remove, catalogue and subsequently store such assets for potential future realization;
- (c) funds due under the 2010197 APA have been advanced to the Receiver;
- (d) the Receiver is not aware of any other party that objects to the conclusion of the 2010197 Transaction;
- (e) the Receiver believes the 2010197 Transaction represents commercially reasonable value; and
- (f) the 2010197 APA represents an advantageous offer and maximizes recoveries for all stakeholders.

**UPDATE ON WEPPA ADMINISTRATION**

55. Paragraphs 46 to 48 of the First Report set out that the former DMCL employees did not receive payroll for the period February 2 to 12, 2020, and that the Receiver expedited the performance of WEPPA obligations and mailing of WEPPA packages to eligible employees. The Receiver calculated that \$268,101 was payable to the former employees under WEPPA, of which approximately \$93,277 may be subject to a limited super priority pursuant to Sections 81.3 and 81.4 of the BIA.

56. The Receiver has continued to communicate with Service Canada and respond to employee inquiries. The Receiver will evaluate Service Canada's final statement of account and assessed priority payable amount upon receipt and will make arrangements to promptly remit payment in due course.

## UPDATE ON TAX MATTERS

### *Payroll Taxes*

57. As set out in paragraphs 42 to 45 of the First Report, DMCL had administered payroll using a third-party payroll service provider which remitted source deductions up to February 1, 2020, and the Receiver arranged for the issuance of final T4's to DMCL employees for the 2019 tax year and the 2020 stub-period to the date of the Appointment Order. The Receiver had made requests to CRA with respect to the performance of a payroll audit.
58. By email dated June 2, 2020, copies of CRA's proofs of claim with respect to the pre-receivership payroll tax (the "**CRA Payroll Claim**") and HST (the "**CRA HST Claim**") accounts of DMCL were delivered to the Receiver's legal counsel.
59. The CRA Payroll Claim set out a total claim of \$25,646 with respect to the pre-receivership period, of which CRA calculated \$19,816 to be a deemed trust claim. The Receiver has contacted the CRA Officer who prepared the CRA Payroll Claim for additional information and to further request a payroll audit. The Receiver will continue to communicate with CRA in this regard.
60. The Receiver also established a separate DMCL branch payroll account in respect of the four DMCL employees which were temporarily retained for the receivership. The Receiver has remitted post-receivership payroll source deductions directly to CRA. The Receiver will be issuing final T4's to those employees and has made requests to CRA for an audit of the receivership period payroll tax account.

### *Harmonised Sales Tax*

61. The CRA HST Claim set out unpaid HST amounts totaling \$243,429 owing by DMCL with respect to the pre-receivership period. The Receiver has reviewed the CRA HST Claim and informed CRA by telephone that DMCL was voluntarily assigned into bankruptcy with Baigel Corp as trustee on May 8, 2020, and that the amounts pursuant to the pre-receivership HST which remain unpaid represent an unsecured claim of the receivership estate. The Receiver's counsel has provided CRA's counsel with a copy of the Certificate of Appointment with respect to the DMCL bankruptcy.

62. As set out earlier in this Report, the 2010197 APA contemplates the discharge and continued operations of 1125278. Moreover, 2010197 has delivered \$6,500 with respect to the estimated unpaid pre-receivership HST owing by 1125278 which the Receiver has since remitted to CRA.
63. The Receiver has established receivership branch HST accounts for DMCL and 1125278, and has filed HST returns for the post-receivership period to date. The Receiver will complete HST reporting and remittance of HST payable with respect to the post-receivership HST accounts.

#### **UPDATE ON CUSTOMER DEPOSITS AND OMVIC COMMUNICATIONS**

64. As set out in paragraphs 84 to 90 of the First Report, the Receiver conducted a detailed reconciliation of customer deposits in respect of future vehicle purchases, consulted with OMVIC, GM and Richard in this regard, and arranged for the issuance of letters by Harrison Pensa to all 58 affected customers. DMCL financial management calculated a total balance of \$194,212, with 56 customers having made deposits under \$5,000, and two large amounts of \$25,000 (the “**Corvette Deposit**”) and \$78,000. In addition, GM had advised the Receiver that it was dealing directly with substantially all of the affected customers.
65. As set out in paragraphs 55 and 58 of the First Report, DMCL also held a trust account pursuant to the *Motor Vehicle Dealer Act* (Ontario) (the “**MVDA Trust Account**”) which was held at RBC, and the full balance of \$38,285 held in the MVDA Trust Account was delivered to the Receiver without any deduction.
66. OMVIC has since advised the Receiver that two of the 58 affected customers have submitted claims under the OMVIC Compensation Fund, both of which were in respect of the two large amounts disclosed above. OMVIC accepted the claim with respect to the Corvette Deposit and provided evidence of payment of \$25,000 to the affected customer. The Receiver traced the Corvette Deposit to the MVDA Trust Account and subsequently remitted \$25,000 to OMVIC.
67. OMVIC rejected the other claim it received, but did not disclose reasons to the Receiver due to confidentiality. Moreover, DMCL financial management confirmed that amount was not deposited in the MVDA Trust Account.
68. OMVIC advised the Receiver that GM had offered solutions to the other 56 affected customers who do did not submit a claim under the OMVIC Compensation Fund.

69. DMCL financial management was unable to reconcile the balance of \$13,285 to specific customers. OMVIC has advised the Receiver that it is not seeking a direction of the residual funds in the MVDA Trust Account. Accordingly, it is the Receiver's view that these funds represent property of the receivership estate.

#### **INTERIM DISTRIBUTIONS TO RBC**

70. As described in paragraphs 38 to 41 of the First Report, the Receiver obtained an independent legal opinion confirming the validity and enforceability of the security granted by the Debtors in favour of RBC, subject to the standard assumptions and qualifications.
71. Section 6 of the Ancillary Order authorized the Receiver to make a distribution payment to RBC as detailed in the First Report, and such further distributions to RBC at the discretion of the Receiver up to the amount owed to RBC by the Debtor, including all interest and costs.
72. After accounting for the distributions to RBC described above, RBC is expected to suffer a shortfall on its secured advances to the Debtors. As such, no funds will be available for distribution to other secured and unsecured creditors of the Debtors.
73. The Receiver has made three interim distributions to RBC totaling \$3,678,238 as at the date of this Report. In accordance with the 2010197 APA, the Receiver will issue further distributions to RBC following the settlement of estate liabilities and professional costs prior to its completion of its receivership administration.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

74. Attached as **Appendix "O"** is a Statement of Receipts and Disbursements for the interim period March 17, 2020 to June 4, 2020 and the cumulative period February 12, 2020 to March 16, 2020. As at June 4, 2020, the closing cash balance was approximately \$1,340,809. The Receiver will settle remaining estate liabilities and issue a final distribution prior to filing its Receiver's Discharge Certificate (defined below).
75. Due to the closing of additional sale transactions and the receipt of proceeds as set out in this Report, the Receiver did not need to borrow any funds to support the receivership administration as provided for by paragraph 22 of the Appointment Order and paragraph 5 of the Ancillary Order, respectively.

## **PROFESSIONAL FEES**

76. The Receiver, and its legal counsel, Harrison Pensa, have maintained detailed records of their professional time and costs since the issuance of the Appointment Order. Pursuant to paragraphs 19 and 20 of the Appointment Order, the Receiver and its legal counsel were directed to pass their accounts from time to time before this Honourable Court and were granted a Receiver's Charge over the Property.
77. The fees of the Receiver during the period February 8, 2020 to June 9, 2020 amount to \$542,474.00, and together with other expenses and disbursements of \$26,099.69, and HST in the amount of \$73,914.58, total \$642,488.27. The time spent by the Receiver is more particularly described in the Affidavit of Stefano Damiani of Deloitte, sworn June 9, 2020 (the "**Damiani Affidavit**") in support hereof and is attached hereto as **Appendix "P"**.
78. The legal fees incurred by Harrison Pensa during the period February 10, 2020 to June 2, 2020 amount to \$99,472.50, and together with disbursements of \$4,049.14 and HST of \$13,393.09, total \$116,914.73. The time spent by Harrison Pensa personnel is more particularly described in the Affidavit of Thomas Masterson of Harrison Pensa, sworn June 8, 2020 (the "**HP Affidavit**") in support hereof and attached hereto as **Appendix "Q"**.
79. The Receiver estimates fees of the Receiver and its counsel to the conclusion of the Receivership to be in the amounts of \$20,000 and \$15,000 plus HST, respectively.
80. The Receiver is of the view that the fees and disbursements set out in the Damiani Affidavit and HP Affidavit (collectively, the "**Fee Affidavits**") are reasonable in the circumstances and should be approved by the Court.

## **BOOKS AND RECORDS**

81. Pursuant to a Direction and Release executed by the DMCL Bankruptcy Trustee, 2010197, Richard, and 1125278, the Receiver released physical possession of the Debtors' computer server (the "**Server**") and physical books and records ("**Documents**") located at the Premises to the DMCL Bankruptcy Trustee. Accordingly, the Receiver is no longer in possession of the books and records of the Debtors, except for a limited number of documentation primarily with respect to the 1125278 lease portfolio which will be released to 2010197 in due course.
82. The Receiver maintains its own records relating to the administration of the receivership proceeding and will retain such records in accordance with statutory requirements.

## REMAINING ACTIVITIES AND DISCHARGE OF THE RECEIVER

83. The tasks to be undertaken by the Receiver prior to the conclusion of these proceedings as are as follows:
- (a) Complete remaining HST tax reporting and correspondence with CRA, and closing of the receivership period tax accounts following the audits by CRA to be coordinated with the Receiver;
  - (b) Issue Records of Employment and final T4's with respect to employees retained by the Receiver, and facilitation of CRA payroll trust audit;
  - (c) Issuance of further distributions to RBC of residual funds;
  - (d) Settlement of estate liabilities and professional fees in the discretion of the Receiver;
  - (e) Preparation and filing the Receiver's statutory interim and final reports to the Superintendent of Bankruptcy pursuant to subsections 246(2) and 246(3) of the BIA;
  - (f) Release of documentation with respect to 1125278 lease portfolio to 2010197 following the issuance of a discharge Order;
  - (g) Review of residual Service Canada correspondence with respect to WEPPA upon receipt, obtain a final statement for payment of priority payables pursuant to BIA section 81.4, and respond to ongoing queries from former employees of DMCL;
  - (h) Stakeholder communications, as required; and
  - (i) Final reconciliation of the Receiver's bank accounts once all distributions and expenses have cleared and subsequent closure of the receivership trust accounts.
84. Other than the issues addressed in this Report, the Receiver has completed its administration of the estate in accordance with the terms of the Appointment Order and the various other orders rendered by the Court in the course of these proceedings. Accordingly, the Receiver recommends that it be discharged and that effective upon its discharge all claims against the Receiver and its agents be forever barred. The Receiver proposes that the discharge with respect to 1125278 be effective upon the issuance of a discharge Order, and that the discharge with respect to DMCL be effective upon the filing with the Court of a Discharge Certificate in the form appended to the form of Order being sought by the Receiver.

## RECEIVER'S RECOMMENDATIONS

85. For the reasons set out above, the Receiver recommends that the Court make Orders:

- (a) approving the activities of the Receiver, including steps taken in dealing with the Property, as described in this Report, the Confidential Supplement and in the First Report;
- (b) approving the 2010197 Transaction to be effected through the 2010197 APA between the Receiver and 2010197, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, for the sale of certain of the Purchased Assets, and vesting the Company's right, title and interest in the Purchased Assets in 2010197 and authorizing and directing the Receiver to carry out the terms of the 2010197 APA;
- (c) temporarily sealing the Confidential Supplement, together with the confidential appendices thereto, filed with this Court from the public record until the closing of the 2010197 Transaction or further order of the Court;
- (d) approving the Receiver's Statement of Receipts and Disbursements for the cumulative period February 12, 2020 to June 4, 2020;
- (e) approving the professional fees and disbursements of the Receiver and its independent legal counsel, Harrison Pensa, in the amounts set out this Report and authorizing the Receiver to pay all such fees and disbursements.
- (f) discharging the Receiver, subject to the Receiver completing its administration of the estate herein and distributing the remaining funds held by the Receiver in the manner more particularly described herein, as will be evidenced by the Receiver filing a Certificate with the Court with respect to DMCL; and
- (g) barring all claims against the Receiver by any person upon the Receiver's discharge.

All of which is respectfully submitted at Toronto, Ontario this 9<sup>th</sup> day of June, 2020.

**DELOITTE RESTRUCTURING INC.,**

solely in its capacity as the  
Court-appointed Receiver of  
Dean Myers Chevrolet Limited and  
1125278 Ontario Limited, and  
without personal or corporate liability

Per:



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Paul M. Casey, CPA, CA, FCIRP, LIT  
Senior Vice-President



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Stefano Damiani, CPA, CA, CIRP, LIT  
Vice-President



ROYAL BANK OF CANADA

-and-

DEAN MYERS CHEVROLET LIMITED and 1125278 ONTARIO LIMITED

Applicant

Respondents

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

PROCEEDING COMMENCED AT  
TORONTO

**SECOND REPORT OF THE RECEIVER, DELOITTE  
RESTRUCTURING INC.**

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