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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**Case No.: 09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

REPLY MEMORANDUM IN SUPPORT OF MOTION OF GENERAL MOTORS LLC TO ENFORCE 363 SALE ORDER AND APPROVED DEFERRED TERMINATION AGREEMENTS AGAINST RAMP CHEVROLET, INC.

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TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

General Motors LLC f/k/a General Motors Company ("**New GM**") respectfully submits this reply memorandum: (i) in support of the Motion of General Motors LLC to Enforce 363 Sale Order and Approved Deferred Termination Agreements Against Ramp Chevrolet, Inc. ("**Ramp**") (the "**Motion**") [Docket No. 7480]; and (ii) in reply to the Objection of Ramp to the Motion (the "**Ramp Objection**") [Docket No. 7738]. New GM respectfully represents:

I. OVERVIEW

1. Ramp's objection highlights that there are two essential issues. First, should the determination of Ramp's challenge to New GM's enforcement of the WDA terms be by this Court or the Ramp Bankruptcy Court? Second, does Ramp's assumption of the WDAs and the fact that the Assumption Order provides that New GM's payment obligations is to be "pursuant to" the terms of the WDA make all of the provisions, including ¶ 3(c) binding?

2. Even though ¶12 of the Wind-Down Agreements ("**WDAs**") require any disputes be adjudicated in this Court, Ramp contends that because it is a Chapter 11 debtor and its challenge is based on §553 of the Bankruptcy Code, the Bankruptcy Court for the Eastern District of New York (the "**Ramp Bankruptcy Court**") not this court should adjudicate Ramp's challenge.

3. The assumption *cum onere* issue is significant. At the October 27 hearing before the Ramp Bankruptcy Court, Ramp asserted that its assumption of the WDA did not matter because assumption does not vitiate its ability to assert §553 defenses. While the Ramp Bankruptcy Court recently identified the implication of Ramp's assumption of the WDAs as a threshold question (because Ramp's contempt motion against New GM must be denied if assumption *cum onere* means Ramp is bound regardless of any purported §553 defenses) that determination still requires consideration of the parties' respective rights and obligations under the WDAs, a dispute that the WDAs expressly provide are to be resolved here. Apparently recognizing that assumption *cum onere* really means assumption *cum onere*, Ramp now asserts

that its assumption motion itself was an adjudication of disputed terms of the WDAs and New GM is now barred from asserting otherwise. Of course, if Ramp intended the assumption motion to be an enforceable and binding adjudication of New GM's rights under the WDAs, then Ramp specifically violated ¶12 of the WDA because such motion was required to be brought in this Court. Of course, New GM viewed assumption as effectively a ratification of the WDA, rather than resolution of any controversy implicating this Court's reservation of exclusive jurisdiction.

4. At the October 27 hearing, the Ramp Bankruptcy Court directed New GM to file a supplemental memo to address the assumption *cum onere* issue. For itself, Ramp submitted a memo asserting that New GM waived any right to enforce the WDAs by not objecting to the Assumption Motion. Of course, Ramp's assertion that the Assumption Motion constituted a binding adjudication of the parties' WDA rights undercuts its entire §553 argument, because once it decided to assume the WDAs it was bound by all terms, including ¶3(c). Recognizing that it cannot avoid the implication of its assumption, Ramp now grossly mischaracterizes the Assumption Motion and the Assumption Order. Not only did the Assumption Motion not challenge the enforceability of the terms of the WDAs, but the Assumption Order specifically provides that any payment responsibility by New GM was "pursuant to the terms" of the WDA. It did not and could not alter or enforce those terms, and it did not adjudicate New GM's rights thereunder.

5. Assumption *cum onere* means that when a debtor assumes an executory contract to get its benefits, it accepts all of the provisions. While there are very limited exceptions, such as if a provision is expressly unenforceable under the Bankruptcy Code (i.e., an *ipso facto* clause), or if the court concludes that the provision was specifically designed to thwart essential bankruptcy policies (and a refusal to enforce *would not cause* a substantial economic detriment to the non-debtor party), neither is applicable here. Significantly this Court specifically approved the WDAs, and in doing so certainly did not believe the WDAs to be inconsistent with the Bankruptcy Code or that enforcement would thwart any essential bankruptcy policy. To the contrary, because New GM was offering the WDAs to 1000+ dealers each and every term being

fully enforceable was obviously important to New GM's decision to go through with the §363 sale.[1] Ramp's assumption of the WDAs prevents it now from seeking to challenge the terms of ¶3(c), whether pursuant to §553 or otherwise.

6. By focusing on the fact that it is a debtor in bankruptcy seeking to assert bankruptcy-based defenses, Ramp conflates the issue of the appropriate forum and the merits of its claims. As this Court has previously decided, the starting point for the forum analysis is the WDAs that Ramp executed (and subsequently assumed) and that the Court approved in its 363 Sale Order, agreements the Court specifically found constituted "valid and binding contracts, enforceable in accordance with their terms." *See* 363 Sale Order, ¶31. Based upon the WDAs and the 363 Sale Order, this Court has already determined that it has exclusive jurisdiction over any efforts to avoid the WDA terms. *See, e.g.,* October 4, 2010 Hearing Transcript (the "Rally Transcript") at 56:4-15, attached as Exhibit D to the Motion. Just because it is a debtor, Ramp should not be treated differently.

7. Finally, Ramp's extensive arguments under §553 miss the point. The payment terms in ¶3(c) are not simply a codification of state law set off rights. Rather, they reflect the bargain struck with the dealers being offered WDAs. Dealers would be eligible to receive a final wind-down payment (estimated in ¶3(a)) to be calculated by deducting any monies owed to New GM and its affiliates so long as they met the specific pre-conditions. New GM was not going to agree to make wind-down payments to 1000+ dealers if those dealers could intentionally run up debt to New GM but still demand a full final wind-down payment.

[1] The New York State Department of Taxation and Finance (the "**DTF**") sent to New GM a notice of determination seeking to hold New GM responsible for past due taxes owed by Ramp. Accordingly, New GM has requested that Ramp provide a release in favor of New GM executed by the DTF as a pre-condition to a final Wind-Down Payment. As of the date hereof, Ramp has not provided such release and thus Ramp has not fulfilled all of the pre-conditions to be eligible to receive the final Wind-Down Payment, because Ramp has not provided other evidence reasonably satisfactory to New GM that it will have no liability or obligation to pay any such taxes that remain unpaid. *See* Wind-Down Agreements, Exs. A-C to the Motion, ¶3.

II. ARGUMENT

A. The Fact That Ramp is a Chapter 11 Debtor Does Not Change The Fact That Ramp Agreed To This Court's Exclusive Jurisdiction To Adjudicate Any Disputes Concerning The Wind-Down Agreements.

8. Ramp's motion seeking to hold New GM in contempt for determining the final wind-down payment pursuant to the terms of the WDAs directly implicates the rights and obligations of New GM and Ramp under the WDAs. The fact that Ramp is currently a Chapter 11 debtor does not change the essential nature of the dispute. While Ramp's arguments are based on the Bankruptcy Code just like the various claims being raised by other wind-down dealers in other forums, the basic issue remains the enforceability of the WDAs. While Ramp characterizes its challenge as solely relating to set off it is still a challenge to the enforceability of the WDAs as written.

9. This Court is certainly able to determine whether a bankruptcy debtor who assumes the WDAs in order to collect a wind-down payment, is subject to all of the provisions, including how the amount of the final payment is calculated. Regardless of the underlying law sought to be applied or the forum, Ramp agreed that this Court retained "full, complete and exclusive jurisdiction to interpret, enforce, and adjudicate disputes concerning the terms of [the WDA] and any other matter related thereto." *See* Wind-Down Agreements, ¶12. The issues raised in Ramp's Contempt Motion in the Ramp Bankruptcy represent just such a dispute and should be adjudicated here.

10. As this Court noted in the Rally case, there are strong policy reasons for vesting exclusive jurisdiction of post-sale disputes over a sale order in the bankruptcy court that approved the sale, because it is important that the purchasers of assets get what they bargained for and it is also important that they have confidence in their ability to do so before committing their funds to a proposed sale. Rally Transcript at 49:2-13; *see also In re Eveleth Mines, LLC*, 312 B.R. 634, 645 n.14 (Bankr. D. Minn. 2004). That is particularly important here where Ramp is challenging the basic enforceability of the WDA payment conditions, obviously significant to New GM given that WDAs were being offered to 1000+ dealers. Moreover, it was completely

predictable that some of the wind-down dealers would ultimately file for bankruptcy themselves (as a number have), since the business of many such dealers necessarily discontinued. Ramp, or another such dealer, could choose to reject the WDA. However, a dealer that opts to assume the WDA is bound to all of its terms, just like any other debtor which assumes an executory contract.

B. Ramp's Assumption of the WDAs Means that Ramp Is Bound By Provisions, Even Those That Might Otherwise Have Been Subject To A Challenge Under §553.

(1) New GM Has Not Waived the Right to Challenge And Is Not Barred From Challenging Ramp's Attempt to Eviscerate the Express Terms of the WDAs.

11. At the hearing on October 27, the Ramp Bankruptcy Court framed the initial question as whether Ramp's assumption of the WDAs without any restrictions or limitations effectively bars its ability to challenge the provisions of ¶3(c) of the WDAs as an "improper set off." It is well established that once a debtor elects to assume an executory contract, it assumes the contract *cum onere*. *NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 531-32 (1984). This means that a debtor "cannot simply retain the favorable and excise the burdensome provisions of an agreement." *In re Kopel*, 232 B.R. 57, 63-64 (Bankr. E.D.N.Y. 1999). While Ramp's objection addresses in detail its substantive §553 arguments, it does not cite a single case for the proposition that notwithstanding its assumption of the WDA (without limitations), New GM may not enforce ¶3(c) as assumed. Instead, and essentially acknowledging that its assumption means that it is bound by all WDA terms, Ramp now asserts that because it did not object to the Assumption Motion, New GM is barred by the doctrines of *res judicata*, judicial estoppel and waiver from enforcing ¶ 3(c) (all arguments it raised for the first time after the October 27 hearing).

12. There is no waiver, estoppel or *res judicata*. "Waiver is the intentional relinquishment of a known right. Waiver must be evidenced by a clear manifestation of intent and be unmistakable and unambiguous." *In re Jamesway Corp.*, 201 B.R. 73, 76-77 (Bankr. S.D.N.Y. 1996). It is Ramp's burden to prove waiver. *Id*. As presented by Ramp's Assumption Motion, GM had no reason to object to the Assumption Motion or otherwise declare Ramp in

default. Assumption denotes ratification of the terms of an executory contract, rather than a challenge to such terms.

13. Nowhere in Ramp's Assumption Motion did it specifically state that ¶3(c) was not enforceable, that New GM was not entitled to calculate the final Wind-Down payment pursuant to the terms of the WDA, or that any enforcement of the WDAs would be anything but "pursuant to" their terms. The Assumption Motion did not challenge the application of ¶3(c) or make clear that Ramp was seeking to assume only the benefit of ¶3(a) and that it did not intend to be bound by either the pre-conditions in ¶3(b) or the final payment qualifiers in ¶3(c). Indeed, the proposed order included with the Assumption Motion specifically provided that any payment by New GM would be pursuant to the terms of the WDA. Similar to the bankruptcy court's order in *United States v. Gerth*, 991 F.2d 1428, 1429-30 (8th Cir. 1993), the Assumption Order specifically provides that any payment by New GM of the wind-down payment is to be "pursuant to the terms of the WDA." Assumption Order at 2. As such, New GM concluded that its rights under the WDAs were fully protected and that Ramp's assumption of the WDAs did not alter any of those rights. There was simply no basis to conclude otherwise.

14. Certainly, if Ramp intended its Assumption Motion to be, in effect, a declaratory judgment action nullifying certain provisions of the WDA, then it was obligated to make any such assertion clear in its papers; and, more importantly, to bring that challenge as an adversary proceeding in this Court. If it now claims that the Assumption Motion was intended as an adjudication of disputed issues under the WDAs, not only was that motion intentionally misleading, but it was also in violation of ¶12 of the WDA.[2] To be fair, nothing in the Assumption Motion suggest Ramp had such an intent. Ramp's argument now is nothing more than an after-the-fact attempt to try to avoid the implication of its assumption *cum onere* of the WDAs.

[2] If Ramp intended to "overrule" New GM's rights under the WDAs then an assumption motion was not the proper procedure. Instead, Ramp was required to seek a declaratory judgment pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure. Of course, Ramp did not do so because any request for a declaratory judgment concerning the WDAs would need to have been heard by this Court.

15. If Ramp wanted a determination that it could use bankruptcy "defenses" post-petition to override the express terms of the WDAs (or that other provisions of the WDAs are not enforceable) then it was obligated not simply to move to assume, but to seek a declaratory judgment. Because it did not, if there was a waiver by anyone it was Ramp. Once Ramp chose to assume the WDAs without any limitations or challenges (unlike the debtor in *In re Kopel*, 232 B.R. 57, 63-64 (Bankr. E.D.N.Y. 1999) and like the debtor in *In re Village Rathskeller, Inc.*, 147 B.R. 665, 671-72 (Bankr. S.D.N.Y. 1992)), it should not be permitted to assert that challenge now.

16. Further, when Ramp filed its Assumption Motion, it still had not yet complied with the pre-conditions to its right to payment. In fact, Ramp did not even assert that it had purportedly satisfied the WDA pre-conditions until it filed its first amended disclosure statement on August 19. *See* Response of Debtor to Objection of Certain Parties to Debtor's Disclosure Statement, Ex. B at 6, attached hereto as **Exhibit A**. This is particularly important given the issue of the Debtor's New York tax obligations, which have not been satisfied and represent a competing claim that would allow New GM to defer from making any payment until such claim is resolved.

(2) Assumption *cum onere* means that All of the WDA Terms Are Binding upon Ramp.

17. At the October 27 hearing in the Ramp Bankruptcy Court, Ramp asserted that New GM's application of ¶3(c) is an improper and illegal set off and that its §553 defenses survive its assumption of the WDAs. *Bildisco* provides that when a debtor assumes an executory contract, all contract provisions are fully enforceable. Nevertheless, courts have recognized that in two very limited circumstances certain provisions may not be enforced in a bankruptcy context post-assumption. Neither exception is applicable here.

18. The first limited exception provides that provisions that are "expressly rendered unenforceable by the Bankruptcy Code" are not enforceable against a debtor in bankruptcy post assumption. *See e.g., In re Kopel*, 232 B.R. 57, 64 (Bankr. E.D.N.Y. 1999). The types of

provisions that explicitly violate express Bankruptcy Code protections include those that violate: §108(b), which extends certain time periods that otherwise would expire after the petition date; §365(e)(1), which makes *ipso facto* clauses unenforceable; and §365(f)(1), which makes certain contractual clauses restricting assignment unenforceable. *In re Village Rathskeller, Inc.*, 147 B.R. 665, 671-72 (Bankr. S.D.N.Y. 1992); *Kopel*, 232 B.R. at 64.

19. Paragraph 3(c) is not a provision that explicitly violates express contractual protections. Paragraph 3(c) provides:

> *In addition to any other set off rights under the Dealer Agreement* payment of all or any part of the Wind-Down Payment amount may, in GM's or the 363 Acquirer's reasonable discretion, be (i) reduced by any amount owed by Dealer to GM or the 363 Acquirer, as applicable, or their Affiliates, and/or (ii) delayed in the event GM or the 363 Acquirer, as applicable, has a reasonable basis to believe that any party has or claims any interest in the assets or properties of Dealer Relating to the Subject Dealership Operations including, but not limited to, all or any part of the Wind-Down Payment Amount. WDA, ¶3(c) (emphasis added).

As such, ¶3(c) is not simply a codification of existing state law set off (or recoupment) rights. Rather, the introductory phrase specifically reflects that it includes something more than just "set off."

20. Even if ¶3(c) is read to implicate setoff otherwise subject to challenge under §553, it is not a provision that explicitly violates any express contractual protections such that enforcement should be denied. Indeed, courts have found similar provisions enforceable post-assumption. For example, the court *In re Monroeville Dodge, Ltd.*, 166 B.R. 264, 267-68 (Bankr. W.D. Pa. 1994), found that the debtor dealer assumed its dealer agreement *cum onere* and therefore, pursuant to the agreement's netting provision, the counterparty manufacturer was permitted to apply post-petition credits owing to the debtor against the manufacturer's allowed administrative claim. In doing so, the court specifically rejected "the proposition that the *cum onere* principle does not apply to a provision in an assumed executory contract that violates §553(a) of the Code." *Id*. at 268. Similarly, in *United States v. Gerth*, 991 F.2d 1428, 1429-30 (8th Cir. 1993), the U.S. Department of Agriculture's Agricultural Stabilization and Conservation

Service sought stay relief to set off pursuant to §553 payments due to the debtor farmer, pursuant to certain Conservation Reserve Program contracts that the debtor had assumed, against a debt which the debtor owed the government. In reversing the bankruptcy court's denial of stay relief, the Eighth Circuit noted that the debtor had evaluated the contract, assumed it as beneficial to the estate, and having received the benefits, could not seek to avoid the burdens. *Id*. at 1432-33. The Eighth Circuit specifically noted that the bankruptcy court's order approving the assumption of the contract provided that "the debtor shall accept and assume the responsibilities contracted for under his contract for the Conservation Reserve Program." *Id*.

21. The second limited exception is that a Bankruptcy Court may refuse post-assumption enforcement of a contractual provision if it finds that the provision was clearly "designed to thwart policies underlying the Bankruptcy Code by circumventing certain of its provisions," and "there is no substantial economic detriment to the [contract counter party] shown and where enforcement would preclude the bankruptcy estate from realizing the intrinsic value of is assets." *Rathskeller*, 147 B.R. at 672. A critical qualifier to this limited exception, especially relevant here, is that a court may only to refuse to enforce a provision if there is "no substantial economic detriment to the [non-debtor counterparty]," i.e., New GM. *Rathskeller, Inc*., 147 B.R. at 672 (*citing In re Joshua Slocum Ltd*., 922 F.2d 1081, 1092 (3d Cir. 1992)).

22. There is certainly no basis here to refuse to enforce ¶3(c) on equitable grounds. The payment provisions (and limitations) were an essential part of New GM's bargain when it purchased Old GM's assets and offered WDAs to 1000+ dealers. Indeed, this Court blessed this provision in approving the 363 Sale, and would not have done so if it was "expressly unenforceable" or designed to thwart the policies underlying the Bankruptcy Code. These agreements were specifically approved as part of the New GM acquisition and as such were an essential part of the transaction, and thus should not be overridden lightly.[3] *E.g.*, *Rathskeller*,

[3] In *Kopel*, the debtor veterinarian entered into a transaction that included several agreements with cross default provisions that the court found to be a single transaction. *Kopel*, 232 B.R. at 60-61. The debtor later argued that the cross-default provision in the lease was unenforceable as contrary to essential bankruptcy policy and, thus need not be cured as part of the proposed lease assumption. Ultimately, the court in *Kopel* upheld the enforceability of the cross-default provisions post-assumption. *Kopel*, 232 B.R. at 67-68. In doing so, the court specifically

147 B.R. at 673 (recognizing "a subordination provision is an economic term of the landlord's bargain and ought not lightly be overridden.").[4] Indeed, the fact that the WDAs affected so many dealers is one of the reasons why the continuing jurisdiction provision was so important to New GM. Paragraph 3(c) is designed to protect New GM from the situation where wind down dealers could incur huge debts to New GM, refuse to pay those debts, file for bankruptcy protection, assume the WDAs without limitation and then seek to compel payment.[5] By choosing to receive the benefits of the WDAs, (here even after the application of the ¶3(c) reconciliation, approximately $275,000) Ramp had to assume all of the provisions and in doing so relinquished any right to challenge New GM's netting of obligations as violative of §553. Of course, having one court decide disputes concerning the fundamental bargain reflected by the WDAs is essential if there is to be uniformity of interpretation and application of those rights.[6]

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considered the impact of non-enforcement on the non-debtor counterparty's bargain: "enforcement of a cross-default provision should not be refused where to do so would thwart the non-debtor party's bargain." *Id*. at 66. While acknowledging the real possibility that enforcing the cross-default provision and requiring cure of the defaults under the other agreements upon assumption of the lease would hamper the debtors' reorganization, the *Kopel* court nonetheless found "no federal bankruptcy policy [was] offended by enforcing the cross-default provision linking the Note and the Lease." *Id*. at 67-68.

[4] Similarly, in *Rathskeller*, the court found that a subordination provision in an assumed lease was enforceable post-assumption. There, the debtor tenant assumed the lease, which was far below market rent, but the lease was subject to the lien of a mortgagee which was in the process of foreclosing. Because the lease did not include a non-disturbance agreement the subordination provision meant that the foreclosure would wipe out the otherwise valuable lease. The *Rathskeller* court, like the *Kopel* court, considered the importance of the non-debtor counterparty's bargain and noted that the subordination provision was part of the landlord's bargain and should not be overridden lightly. *Rathskeller*, 147 B.R. at 673.

[5] That is precisely what is at stake here. First, Ramp intentionally stopped paying rent, thus increasing its debt owed to New GM even though it knew that under the terms of the applicable leases any such unpaid rent would be added to its open account and reducing the final Wind-Down payment amount. It also knew when it executed the WDA that New GM asserted an audit charge back for incentive payments fraudulently earned. Second, because Ramp still has yet to provide to GM a release by the New York DTF confirming that it does not intend to pursue any claims against GM for any tax liability of Ramp, there is a competing claim putting New GM at risk of paying twice.

[6] The procedural posture in *Kopel* is also significant. The *Kopel* court was considering cross motions for summary judgment in an adversary proceeding, including the debtor's request for a declaration that the cross-default provision was unenforceable. *Kopel*, 232 B.R. at 59-60. In *Kopel*, the debtor specifically challenged the enforceability of the cross-default as contrary to basic bankruptcy policies before assumption. Here, Ramp did not raise the enforceability of ¶3(c) at the time it moved to assume the WDA. It also has not filed an adversary proceeding to seek a declaratory judgment that ¶3(c) of the WDAs is unenforceable. Instead of following the requirements of Fed. R. Bankr. P. 7001, Ramp sought a finding of contempt for alleged violation of the automatic stay (assuming, of course, that there was a stay violation), presumably because it recognized that filing a declaratory judgment action concerning the enforceability of ¶3(c) was an action that pursuant to its agreement in ¶12 of the WDAs must be brought before this Court.

C. The §3(c) Netting Provision Is Not Just "Set Off" But Defines New GM's Basic Payment Obligation.

23. Ramp's argument ignores the fact that pursuant to the express terms of the Wind-Down Agreements, Ramp is simply not entitled to a payment unless and until it (i) has satisfied all of the preconditions to payment, including, providing New GM a tax clearance letter (which it still has not done and apparently refuses to do) and (ii) owes no amounts to New GM and its affiliates.

24. New GM only agreed to make a Wind-Down payment to a dealer if that dealer met all of the pre-conditions, including not owing New GM any monies. This is a valid and enforceable condition precedent to Ramp's entitlement to payment. *See, e.g., Able Demolition v. Pontiac*, 739 N.W.2d 696, 700 (Mich. Ct. App. 2007) ("A condition precedent is a fact or event that the parties intend must take place before there is a right to performance.") (quotation omitted). If "the occurrence of a condition is required by the agreement of the parties, rather than as a matter of law, a rule of strict compliance traditionally applies." *In re Pan Am Corp.*, 175 B.R. 438, 506 (S.D.N.Y. 1994) (quotation omitted). Although Ramp characterizes New GM as effecting an improper setoff, in reality Ramp is challenging the contractual pre-conditions to its right to receive a final Wind-Down Payment. As long as Ramp owes New GM and its affiliates monies, regardless of whether those obligations arose pre- or post-petition, under the express terms of the WDAs it does not have a right to compel New GM to make a Wind-Down Payment.

D. Ramp's Wind-Down Payment is Subject to New GM's Reconciliation Rights Pursuant To The Open Account.

25. Ramp also ignores the fact that the WDAs expressly provide that the Wind-Down Payment is to be paid by New GM posting a credit to Ramp's Open Account and thus is subject to the ongoing reconciliation of monies owed to New GM under the Dealer Agreements and applicable state law. *See* Wind-Down Agreements, ¶3(b), Exs. A-C to Motion. Pursuant to the Dealer Agreements, "all monies or accounts due Dealer are net of Dealer's indebtedness to General Motors and its subsidiaries." Dealer Agreements § 17.10.

26. This reconciliation through the Open Account and the netting provision, in both the Dealer Agreements and the Wind-Down Agreements, are enforceable contract rights and remedies. *See, e.g., In re Bill Heard Enterprises, Inc.*, 400 B.R. 813, 823 (Bankr. N.D. Ala. 2009) ("[I]t would be inequitable to allow the debtors, . . . to obtain the funds owed under the dealership franchise agreements without first allowing GM to recoup its damages arising from the dealerships' breaches of the same agreements."); *In re Bob Brest Buick Inc.*, 136 B.R. 322, 323-24 (Bankr. D. Mass. 1991) (holding that Nissan was entitled to recoup charges owed to it by debtor dealer from credits being earned by dealer).

27. When Ramp decided to execute the Wind-Down Agreements in early June 2009, Ramp knew the charges to be posted to the Open Account, and that the reconciliation provisions authorized GM to net the ultimate Wind-Down Payment. Ramp simply saw the opportunity to receive a Wind-Down Payment, even as reduced by amounts it owed to New GM, as a better option than filing a claim in the Old GM Bankruptcy.

28. Ramp also ignores that in order to determine the amount of the Wind-Down Payment (really any payment), New GM has the right to reconcile debits and credits pursuant to the doctrine of recoupment, which is fully enforceable in bankruptcy. The doctrine of recoupment "allows the creditor to assert that mutual claims extinguish one another in bankruptcy, in spite of the fact that they could not be 'setoff' under 11 U.S.C. Sec. 553." *Lee v. Schweiker*, 739 F.2d 870, 875 (3d Cir. 1984). Thus, a creditor with a right of recoupment generally can recoup the full amount owed, to the exclusion of other creditors. *See In Re Flagstaff Realty Assocs.*, 60 F.3d 1031, 1035 (3d. Cir. 1995) ("A claim subject to recoupment avoids the usual bankruptcy channels and thus, in essence, is given priority over other creditors' claims"). And, the right to exercise recoupment generally is not subject to the automatic stay. *See, e.g., In re McWilliams*, 384 B.R. 728, 730 (Bankr. D.N.J. 2008) ("[b]ecause recoupment does not involve separate mutual debts, it is an exception to the automatic stay") (*quoting Lee*, 739 F.2d at 875).

29. In determining whether a creditor has a right to recoupment, courts look to applicable state law. *See Travelers Cas. & Sur. Co. of Am. v. Pac. Gas and Elec. Co.*, 549 U.S. 443, 452 (2007) (noting "claims enforceable under applicable state law will be allowed in bankruptcy unless they are expressly disallowed" by the Bankruptcy Code). Further, the Bankruptcy Code does not limit a party's right to recoupment, and therefore if a right to recoupment exists under state law then a creditor is allowed to exercise that right. *In re Bill Heard Enterprises, Inc.*, 400 B.R. 813, 820-21 (Bankr. N.D. Ala. 2009) (noting that "[i]f a right of recoupment or setoff exists under applicable state law, a creditor will be allowed a preference over other creditors" and that, with regard to Section 553's limitation on setoff rights, "there is no comparable provision in the Bankruptcy Code that limits a creditor's state law right to seek recoupment").

30. Michigan law applies to the WDAs and the parties' rights under those agreements. *See* Wind-Down Agreements, ¶15, Exs. A-C. Michigan common law "allows one party to deduct monies owed to it by another party under the doctrine of recoupment as long as the two obligations arise out of the same contract or transaction." *Bill Heard*, 400 B.R. at 822 (*citing Mayco Plastics, Inc. v. TRW Vehicle Safety Systems, Inc. (In re Mayco Plastics, Inc.)*, 389 B.R. 7 (Bankr. E.D.Mich. 2008) (*citing Mudge v. Macomb County*, 580 N.W.2d 845, 855 (Mich. 1998). To invoke a recoupment right, "[i]t is sufficient that the counter-claims arise out of the same subject-matter, and that they are susceptible of adjustment in one action." *Frank v. ITT Commercial Fin. Corp.* (*In re Thompson Boat Co.*), 230 B.R. 815, 824 n.11 (Bankr. E.D. Mich. 1995) (*quoting Ward v. Twp. of Alpine*, 171 N.W. 446, 450 (Mich. 1919)); *see also Minority Earth Movers, Inc. v. Walter Toebe Constr. Co.*, 649 N.W.2d 397, 402 (Mich. Ct. App. 2002) (*citing Ward*) (holding that recoupment extends to claims "aris[ing] out of, or ... connected with, the same transaction or contract.").

31. In the automobile dealer context, the bankruptcy courts that have considered the issue of recoupment have specifically upheld its application. *See In re Bill Heard Enterprises, Inc.*, 400 B.R. 813, 823 (Bankr. N.D. Ala. 2009); *In re Bob Brest Buick Inc.*, 136 B.R. 322, 323-

24 (Bankr. D. Mass. 1991). In *Bill Heard*, the court concluded: "[I]t would be inequitable to allow the debtors, . . . to obtain the funds owed under the dealership franchise agreements without first allowing GM to recoup its damages arising from the dealerships' breaches of the same agreements." *Bill Heard*, 400 B.R. at 823. *See also Bob Brest*, 136 B.R. at 323-24 (the Bankruptcy Court held that Nissan was entitled to recoup the charges owed to it by the dealer from credits being earned by the dealer). In sum, New GM has a right of recoupment under governing Michigan law and is authorized to reconcile any credits and charges posted to the Open Account before making any payment to Ramp.

32. Even if analyzed under §553, the reconciliation was authorized. First, the claims at issue here (i.e. the audit charge back, the unpaid rent and Ramp's WDA payment claim) all arose pre-petition and therefore, even if it were applicable, are not barred by §553. Section 553 provides, in relevant part, that except as otherwise provided in Sections 362 and 363 of the Bankruptcy Code, "this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case." 11 U.S.C. § 553. Section 362, in turn, provides that the automatic stay applies to "the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor." 11 U.S.C. § 362(a)(7).

33. While Ramp asserts that the credit and rent changes are pre-petition, it ignores the fact that the WDAs were executed pre-petition, and, by letter dated September 23, 2009, Ramp notified New GM that it was exercising the early termination option. As such, all of the "claims" arose pre-petition.[7] While Ramp's dealership may not have officially ceased operations until

[7] In terms of its request that GM be found to be in contempt, there is no question that New GM has asserted that it is has valid reconciliation, recoupment and setoff rights. Equally as clear, however, is that because these issues have been the subject of dispute, at least so far GM has not actually exercised those rights and therefore could not be deemed to have violated the automatic stay.

Further, New GM only filed a proof of claim in the Ramp bankruptcy proceedings to preserve its rights with regard to any amounts which are or may be due under the Dealer Agreements or the Wind-Down Agreements. The proof of claim specifically stated that the claim was "filed under the compulsion of the bar date and is filed to protect GM from a potential forfeiture of claims or rights by reason of said bar date." *See* New GM Proof of Claim,

post-petition, the Wind-Down payment does not reflect the monies generated from post-petition operations. Thus, in "set off" terms New GM is entitled under applicable law to setoff against any Wind-Down payment that may be due, the amounts owed by Ramp. Further, once Ramp assumed the Wind-Down Agreements, New GM did not need to seek relief from stay in order to effectuate a setoff. Ramp specifically assumed the netting provisions and by reducing the Wind-Down Payment by the amount of monies owed by Ramp New GM is simply enforcing a contract provision that Ramp has assumed.[8]

E. New GM's Claim Should Not Be Reduced Based on the New York Dealer Statute.

34. Finally, Ramp also asserts that the New York Dealer Statute bars GM from collecting the audit chargeback. Here, $271,000 of the $292,000 charge back relates to Ramp's disqualification for certain SFE payments because of "CSI interference". In short, Ramp's employees fraudulently manipulated the CSI survey process so that the actual retail customers were not reported to GM but rather Ramp reported fictitious customer names so that the CSI surveys were directed, for example, to dealership employees. This is not a situation where the charge back is because a form was filled out incompletely or some minor paperwork was missing. Instead, the charge back is the result of intentional fraudulent misconduct by Ramp, conduct that is not protected by the one year provision in the New York Dealer Statute. *See* N.Y. Veh. & Traf. Law § 463(z) (excluding one year provision from instances involving fraud). Thus Ramp's assertion that this charge back is somehow time barred by the New York Dealer Statute is not accurate, factually or legally.

35. The WDAs also included, among other things, a release of any claims or disputes relating to this audit. Indeed, the release included in the WDAs specifically included any claims

Ex. F to Contempt Motion, at 5. It also noted that its filing is not and shall not be deemed or construed as "consent by GM to the jurisdiction of this Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving GM." *See* New GM Proof of Claim, Ex. F to Contempt Motion, at 5.

[8] There is little question that New GM would be entitled to relief from the automatic stay to exercise a setoff here. Ramp has provided no argument or authority as to why New GM would not be entitled to relief. As discussed, New GM is exercising a contractual right pursuant to the WDAs that Ramp has assumed. Particularly in light of these facts, there is no basis for a finding of contempt against New GM, even if its conduct were found to violate the automatic stay.

related to SFE payments as well as the procedure for warranty and sales incentives post wind-down. *See* Wind-Down Agreements, ¶5, Exs. A-C. Because Ramp has assumed the Wind-Down Agreements, and once assumed, is bound by all of the provisions, Ramp cannot assert any claims or challenges now to pre-GM bankruptcy payments, including any claims relating to the SFE program. In addition, pursuant to ¶5(d) of the Wind-Down Agreements, Ramp agreed to indemnify and hold New GM harmless for any costs and expenses incurred defending or litigating released claims. For all of these reasons, the New York Dealer Statute does not provide a basis for reducing New GM's claim.

III. CONCLUSION

Ramp's assertion that it can force a payment from New GM that is fundamentally inconsistent with the terms of the WDA is particularly anomalous. Absent the WDA, Ramp would have absolutely no relationship with New GM whatsoever. Old GM would have rejected the dealer agreement and Ramp would have been left with whatever recovery it might have obtained on its claim. Having executed the WDA knowing full well its terms, and now having assumed that agreement under §365, Ramp is bound by all of its terms.

WHEREFORE, New GM respectfully requests that this Court: (i) enter an order substantially in the form attached as Exhibit I to the Motion, granting the relief sought herein; and (ii) grant New GM such other and further relief as the Court may deem proper.

Dated: November 15, 2010
New York, New York

Respectfully submitted,

/s/ Arthur Steinberg

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John R. Skelton (*pro hac vice* admission pending)
Evan J. Benanti

Attorneys for General Motors LLC
f/k/a General Motors Company

EXHIBIT A

HEARING DATE: AUGUST 23, 2010
HEARING TIME: 1:30 P.M.

WILK AUSLANDER LLP
675 Third Avenue
New York, New York 10017
Ph: (212) 421-2233
Eric J. Snyder (ES-8032)
Counsel for the Debtor

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	Chapter 11
RAMP CHEVROLET, INC.,	Case No.: 09-77513 (reg)
Debtor.	

RESPONSE OF DEBTOR TO OBJECTION OF CERTAIN PARTIES TO DEBTOR'S DISCLOSURE STATEMENT

TO: THE HONORABLE ROBERT E. GROSSMAN, UNITED STATES BANKRUPTCY JUDGE:

Ramp Chevrolet, Inc., the debtor and debtor-in-possession herein ("Debtor"), by its counsel, submits this response to the objections (the "Objections") filed by Bank of Smithtown, 1581 Holdings, LLC and General Motors LLC to the Debtor's proposed disclosure statement. In support of the Response, the Debtor states as follows:

1. The aforementioned three entities filed the Objections to the Disclosure Statement. In response, the Debtor has amended the Disclosure Statement to address the issues raised regarding disclosure. A copy of the amended disclosure statement, including a "black-lined" version to reflect changes, are annexed hereto as Exhibits A & B, respectively.

2. One of the issues raised by 1581 Holdings relates to the linking of effective date of the proposed plan to the receipt of the Wind-Down Money. This issue

does not go to disclosure, but to confirmation of the proposed plan. Therefore, it is more appropriately addressed when determining the confirmability of the plan under Section 1129 and the related provisions of the Bankruptcy Code.

CONCLUSION

For all of the reasons set forth above, the Debtor respectfully requests that this Court enter an order: (i) determining that the Disclosure Statement, as amended, contains "adequate information" as that term is defined under Section 1125 of the Bankruptcy Code; and (ii) for such other and further relief as this Court deems just and proper.

Dated: New York, New York
August 19, 2010

WILK AUSLANDER LLP
Counsel for the Debtor

By: /s/ Eric J. Snyder
Eric J. Snyder, Esq. (ES-8032)
675 Third Avenue
New York, New York 10017
(212) 421-2233

EXHIBIT A

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Eric J. Snyder, Esq. (ES 8032)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----------x

In re:

Chapter 11

RAMP CHEVROLET, INC.,

Debtor. Case No: 09-77513-REG

----------x

AMENDED DISCLOSURE STATEMENT

This Amended Disclosure Statement (the "Disclosure Statement") is filed pursuant to Section 1125 of Title 11, United States Code, on behalf of Ramp Chevrolet, Inc., Debtor and Debtor-in-Possession.

A. INTRODUCTION/NOTICE OF HEARING AND SOURCE OF INFORMATION

Pursuant to Section 1125 of Title 11 of the United States Code (the "Bankruptcy Code"), Ramp Chevrolet, Inc., the debtor herein (the "Debtor") provides this Disclosure Statement (the "Disclosure Statement") to all of the known Creditors of the Debtor and other parties in interest in order to provide information deemed by the Debtor to be material and necessary to enable such Creditors and parties in interest to make a reasonable informed decision in the exercise of their rights to vote on and participate in Debtor's Plan of Liquidation (the "Plan"). The Plan is annexed hereto as Exhibit "A". The information contained in this Disclosure Statement is based on the representations made by the Debtor in its Petition and Schedules and all other documents provided by counsel for the Debtor and are believed to be accurate. It has not been subject to certified audit or independent review. Therefore, no representation or warranty is made as to its

accuracy or completeness. However, the Debtor has reasonably endeavored to obtain and supply all material information.

Terms utilized in this Disclosure Statement, if not defined herein, shall have the same meaning as such terms are used or defined in the Plan unless the context hereof requires a different meaning.

THE BANKRUPTCY COURT HAS SET AUGUST __ 2010 AT 1:30 P.M. OF THAT DAY AS THE DATE AND TIME OF THE HEARING ON CONFIRMATION OF THE PLAN AND OBJECTIONS THERETO, WHICH HEARING WILL BE HELD IN THE COURTROOM OF THE HONORABLE ROBERT E. GROSSMAN, UNITED STATES COURTHOUSE-ROOM 860, CENTRAL ISLIP, NEW YORK 11722. CREDITORS OF, AND HOLDERS OF INTERESTS IN, THE DEBTOR MAY ATTEND SUCH HEARING. THE BANKRUPTCY COURT HAS FIXED JULY __, 2010 AS THE DATE AND TIME BY WHICH ALL WRITTEN OBJECTIONS TO CONFIRMATION OF THE PLAN SHALL BE FILED WITH THE BANKRUPTCY COURT AND SERVED UPON THE ATTORNEY FOR THE DEBTOR AND UPON THE UNITED STATES TRUSTEE.

A BALLOT ACCOMPANIES THIS DISCLOSURE STATEMENT FOR YOUR USE IN VOTING ON THE PLAN. IN ORDER TO BE CONFIRMED, THE PLAN MUST BE ACCEPTED BY A MAJORITY IN NUMBER AND TWO-THIRDS IN AMOUNT OF THOSE VOTING IN EACH CLASS IMPAIRED UNDER THE PLAN.

YOU ARE URGED TO REVIEW THE PLAN, THIS DISCLOSURE STATEMENT, AND THE BALLOT WITH COUNSEL OF YOUR CHOICE. HOLDERS OF CLAIMS OR INTERESTS WHICH ARE IMPAIRED UNDER THE PLAN MAY VOTE TO ACCEPT OR REJECT THE PLAN BY COMPLETING AND MAILING THE ENCLOSED BALLOT ON OR BEFORE JULY __, 2010, TO COUNSEL FOR THE DEBTOR AT THE ADDRESS SET FORTH BELOW:

WILK AUSLANDER LLP
675 Third Avenue
New York, New York 10017-5704
Attn: Eric J. Snyder, Esq.

THE DEBTOR BELIEVES THE TREATMENT OF UNSECURED CREDITORS THAT ARE IMPAIRED UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY FOR SUCH CREDITORS THAN WOULD BE AVAILABLE UNDER ANY ALTERNATIVE PLAN OR IN A CHAPTER 7 LIQUIDATION.

ACCORDINGLY, THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF THE IMPAIRED GENERAL UNSECURED CREDITORS AND RECOMMENDS THAT ALL SUCH CREDITORS VOTE TO ACCEPT THE PLAN.

Other than the information set forth in this Disclosure Statement, the Debtor has authorized no person or entity to make representations concerning the Debtor, its business, its future income, the value of the Debtor's assets, or the amounts to be distributed under the Plan. Any representations or inducements made to secure your

acceptance of the Plan which is other than as contained in this Disclosure Statement should not be relied upon by you in determining whether to accept or reject the Plan.

B. DEBTOR'S BUSINESS

The Debtor is a New York corporation. Its shareholders are John and Charles Rampone, Jr. The Debtor owns and operates Chevrolet, Chevrolet Truck and Hummer franchises (the "Dealerships"), pursuant to franchise agreements (the "Franchise Agreements") by and between the Debtor and the General Motors Company ("GM"). The Dealerships are located at 1395 Route 112, Port Jefferson, New York.

C. PRE-PETITION HISTORY OF THE DEBTOR

During June, 2009, GM filed for Chapter 11 relief. Immediately thereafter, GM informed the Debtor that it would be terminating the Franchise Agreements.

To this end, on June 12, 2009, the Debtor entered into three agreements (the "Wind-Down Agreements") with GM to "wind-down" the operations of the Dealerships. Pursuant to the Wind-Down Agreements, upon the sale of the Debtor's new car inventory of each franchise, the Debtor is required to close the Dealership. In exchange, GM has agreed to pay to the Debtor the sum of $1,304,613 (the "Wind-Down Money"), in total, for consideration in terminating the three Dealerships. During August, 2009, 25% of the Wind-Down Amount, $326,154.75, was paid to the Debtor by GM.

For the quarters ending November 30, 2009, February 28, 2009 and May 31, 2009, the Debtor failed to remit sales tax to the New York State Department of Taxation & Finance ("DTF") in the amounts of $1,442,636.09, $639,750.04 and $425,993.96, respectively, totaling $2,508,380.09 (the "DTF Claim"). Of this amount, the sum of $2,082,386.13 ("DTF Secured Claim") is subject to Tax Warrants.

As of that date, the Debtor also owed GMAC, the entity that financed the purchase of the vehicles for the Dealerships, the sum of $587,201.92 (the "GMAC Claim"), secured by all of the Debtor's assets.

On October 2, 2009, DTF sought to enforce its rights under the Tax Warrants and changed the locks on the Dealerships. As a result, the Debtor was compelled to seek Chapter 11 relief.

D. HISTORY OF THE CHAPTER 11 CASE

As stated above, as of the Petition Date, the Debtor owed GMAC the sum of approximately $507,201.92 and the DTF approximately $2,082,386.13. As a result of the DTF's secured status as of the Petition Date, it was necessary for the Debtor to seek the use of the cash collateral of GMAC and the DTF, pursuant to Section 363(c)(2)(B) of the Bankruptcy Code. By motion dated October 6, 2009, Debtor sought authority to use GMAC's and DTF's cash collateral. Pursuant to a Stipulation and Order dated October 20, 2009, the Debtor and GMAC entered into a Stipulation authorizing the Debtor to use cash collateral through November 4, 2009. On or about that date, the GMAC Claim was satisfied.

On December 3, 2009, the Debtor filed a motion (the "Assumption Motion"), pursuant to Section 365 of the Bankruptcy Code, to assume the Wind-Down Agreements.

Pursuant to an order of the Court, dated February 3, 2010, the Assumption Motion was granted.

During November, 2009, the Debtor sold the last of its retail vehicles. As a result, under the Wind-Down Agreements, the Debtor became eligible to collect the Wind-Down Money. To this end, the Debtor has requested the commencement of the procedures to terminate the Franchise Agreement by December 31, 2009 and to obtain the Wind-Down Money.

On February 8, 2010, the Office of the United States Trustee filed a motion (the "Conversion Motion") to convert or dismiss the Debtor's bankruptcy case. In order to resolve the Conversion Motion, the DTF agreed to allow a portion of the Wind-Down Money to be paid to satisfy Administrative Expenses and the Class 3 Claims, on a *pro rata* basis, as set forth below.

On July 23, 2010, GM filed a proof of claim in the bankruptcy proceeding asserting a secured claim of $699,096.01 (the "Set-Off Amount") based on set off and recoupment rights.

On August 18, 2010, the Debtor provided to GM all of the documents GM stated it requires under the Wind-Down Agreement in order for the Debtor to obtain the Wind-Down Money, The Debtor shall immediately seek to compel GM to pay to the Debtor the $279,363.79 in Wind-Down Money that is not disputed. Since the Debtor believes that GM's attempt to set-off the Set-Off Amount is improper, the Debtor shall also seek to compel GM to remit the remainder of the Wind-Down Money for the benefit of the Debtor's creditors.

E. THE LIQUIDATING DEBTOR

The Debtor is no longer operating. Its remaining assets are: a) vehicle parts, equal to approximately $100,000; b) the right to receive the remainder of the Wind-Down Money equal to approximately $975,000, totaling up to $1,075,000.

F. INSIDER TRANSACTIONS

Within one year of the Petition Date, the Debtor made no payments or transfers to any insider as that term is defined pursuant to the Bankruptcy Code, other than: i) the payments of salaries to the Rampone, as officers of the Debtor; and ii) the payment of $100,000, on August 20, 2010, by the Debtor to United Bus Co., an entity owned by the Rampones.

This $100,000 used to make this transfer to United Bus was deposited also on August 20, 2010 by Charles Rampone into the Debtor's bank account, even though he did not owe any money to the Debtor at that time, for the sole purpose of paying it over to United Bus and the Debtor.

G. CLASSIFICATION, AMOUNT AND NUMBER OF CLAIMS

1. The Plan divides all Claims and Interest into five Classes, plus Administrative Claims.

Administrative Claims consist of the allowed claims of Debtor's duly retained professionals, not paid during the bankruptcy proceeding and any other Administrative Expenses allowed under Section 503 of the Bankruptcy Code. Holders of Administrative Claims, as of May 31, 2010, are the sums owed Debtor's counsel in the amount of approximately $50,000, including a retainer received by counsel prior to the Petition in

the sum of $25,000 and the claim of 1581 Holding, LLC, the Debtor's former landlord, in the amount of $14,000. There are no other accrued unpaid Administrative Expenses except for any unpaid fees owed to the Office of the United States Trustee, for the Second Quarter 2010, in the amount of approximately $5,000, in total. The obligation to pay quarterly fees to the United States Trustee continues until the entry of the Final Decree by the Bankruptcy Court.

2. Class 1, consists of one claim, the secured claim of the DTF, in the amount of $2,082,386.13.

3. Class 2 consists of one claim, the priority sales tax claim of the DTF in the amount of $425,993.96.

4. Class 3 consists of approximately 100 Allowed General Unsecured Claims, not including the claims of insiders, as that term is defined in the Bankruptcy Code, in the aggregate amount of approximately $7,573,925.

5. Class 4 claims consist of the Claims of the Debtor's insiders, in the amount of approximately $3,500,000.

6. Class 5 consists of the Interests of the Debtor held by John and Charles Rampone, Jr.

H. REQUIREMENTS FOR CONFIRMATION OF THE PLAN

1. Confirmation Hearing.

The Bankruptcy Court has set July __, 2010 at 1:30 p.m. as the date and time for a hearing to determine whether the Plan has been accepted by the requisite number of Creditors and Interest holders and whether the other requirements for confirmation of the Plan have been satisfied.

Each Creditor and Interest Holder will receive notice of the Confirmation Hearing.

2. Requirements for Confirmation.

In order to confirm the Plan, Section 1129 of the Bankruptcy Code requires the Bankruptcy Court to make a series of determinations concerning the Plan, including that:

a. the Plan classifies Claims and Interests in a permissible manner;

b. the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code;

c. the proponent of the Plan (here the Debtor) has proposed the Plan in good faith;

d. the Plan proponent's disclosures concerning the Plan have been adequate and have included information concerning all payments and distributions to be made in connection with the Plan; and

The Debtor believes that all of these conditions have been met or will be met by the time of the Confirmation Hearing, and the Debtor will seek a determination of the Bankruptcy Court to this effect at the Confirmation Hearing.

3. Acceptances Necessary for Confirmation.

The Bankruptcy Code requires that the Plan place each Creditor's Claim and each Interest in a class with other Claims or Interests which are substantially similar. The Debtor believes that the classification system in the Plan meets the Bankruptcy Code's standard. Although the Bankruptcy Court must independently conclude that the Plan's classification system is legally authorized, any Creditor or Interest holder who believes that the Plan has improperly classified any group of Claims or Interests may object to Confirmation of the Plan.

The Bankruptcy Code requires that the Plan be accepted by requisite votes of Creditors and Interest Holders. At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether the Plan has been accepted by each Class of Creditors and Interest holders whose Claims or Interests are impaired under the Plan. Under Section 1126 of the Bankruptcy Code, any impaired Class is deemed to accept the Plan if it is accepted by at least two-thirds in amount and more than one-half in number of the Allowed Claims or Interests of Class members who have voted on the Plan.

Further, at least one impaired Class must accept the Plan, without counting the vote of Insiders of the Debtor.

Finally, unless there is unanimous acceptance of the Plan by an impaired Class, the Court must also determine that under the Plan, Class members will receive property of value as of the Effective Date of the Plan that is not less than the amount such Class members would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date. Under the Plan, the holder of the Allowed Classes 1 and 3 will receive a partial distribution, on account of their Allowed Claims. As set forth in the liquidation analysis, annexed hereto as Exhibit B, the holders of Class 3 Claims are receiving a greater distribution under the Plan than if the Debtor's case were converted to a case under Chapter 7 of the Bankruptcy Code.

4. Confirmation of Plan Without Necessary Acceptances.

The Plan may be confirmed even if it is not accepted by all of the impaired classes if the Court finds that the Plan was accepted by at least one impaired Class and does not discriminate unfairly against, and is fair and equitable with respect to, all non-accepting impaired Classes. This provision is set forth in Section 1129(b) of the Bankruptcy Code

and requires, among other things, that the holders of Claims or Interests which are impaired must either receive or retain the full value of their Claims or, if they receive less, no Class with a junior priority may receive anything.

5. Absolute Priority Rule.

With certain exceptions, one of the requirements for Confirmation is that a plan not provide for any payments to a junior Class unless all senior Classes are paid in full. Since General Unsecured Claims are superior to Interests, stockholders may not retain their Interests unless one of three situations occurs:

(i) The plan provides for full payment to general unsecured creditors; or

(ii) The stockholders seeking to retain their equity interests contribute "money or money's worth" in the form of needed capital to the reorganized debtor reasonably equivalent in value to that of the equity interest sought to be retained; or

(iii) The class of unsecured creditors waives their rights by consenting to the plan as proposed. In the present case, Class 5 Equity Interests will be cancelled. Therefore, the absolute priority rule will be satisfied.

6. Persons Entitled to Vote on the Plan.

Only the votes of Classes whose Claims or Interests are impaired by the Plan will be counted in connection with Confirmation. Generally, this includes any holders of Claims who, under the Plan, will receive less than payment in full of the Allowed Amount of their Claims on the Effective Date. Holders of Administrative Claims are not impaired and are not entitled to vote. Classes 1and 3 Claims are impaired and entitled to vote. Holders of Class 2 and 4 Claims and Class 5 Interests will not receive a distribution under the Plan and are deemed to have rejected the Plan.

In determining the acceptance of the Plan, votes will be counted only if submitted by a holder of a Claim whose Claim is scheduled by the Debtor as undisputed, non-

contingent, and liquidated, or who timely filed with the Bankruptcy Court a proof of claim which has not been objected to or disallowed.

7. Solicitation of Acceptances.

This Disclosure Statement must be approved by the Bankruptcy Court in accordance with Section 1125 of the Bankruptcy Code and be provided to each holder of a Claim who has been scheduled by the Debtor or who has filed a proof of claim. This Disclosure Statement is intended to assist holders of Claims which are impaired in evaluating the Plan and in determining whether to accept or reject the Plan. Under the Bankruptcy Code, a determination that the Disclosure Statement contains "adequate information", as required by the Bankruptcy Code, does not constitute a recommendation by the Bankruptcy Court either for or against the Plan.

8. Voting Procedures.

All persons or entities entitled to vote on the Plan may cast their votes for or against the Plan by completing, dating, and signing the ballot for accepting or rejecting the Plan to be sent to them under separate cover, and delivering same to counsel for the Debtor, Eric J. Snyder, Esq., Wilk Auslander LLP, 675 Third Avenue, New York, New York 10017. In order to be counted, all ballots must be received by Wilk Auslander LLP on or before July __, 2010.

I. DESCRIPTION OF THE PLAN

The following is a summary of certain provisions of the Plan. **IT IS NOT A COMPLETE STATEMENT OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO PROVISIONS OF THE PLAN.** The Plan (annexed thereto as Exhibit "A"), which is subject to the provisions of the Bankruptcy

Code, provides for treatment of all holders of Claims and Interests of the Debtor. **SINCE THE PLAN DEALS WITH SOPHISTICATED LEGAL CONCEPTS, AND INCORPORATES THE DEFINITIONS AND REQUIREMENTS OF THE BANKRUPTCY CODE, YOU MAY WISH TO CONSULT WITH COUNSEL OF YOUR CHOICE IN MAKING ANY DECISIONS REGARDING YOUR VOTING ON THE PLAN.**

1. Summary of Classifications and Treatment of Claims and Interests under the Plan.

The Plan divides Claims and Interests of the Debtor into Administrative Claims and five (5) Classes of Claims and Interests. The Classes and payments to be made in respect of, or treatment proposed to be accorded to Allowed Claims and Interests of each Class under the Plan are summarized and described below. The term "Allowed Claim" is defined in the Plan. The Plan also defines "Disputed Claim(s)" and proposes the treatment to be accorded to Disputed Claims. The proposed treatment of Disputed Claims is also summarized and described below.

A. ADMINISTRATIVE CLAIMS.

In order to Confirm the Plan, it is necessary for the Debtor to satisfy the Administrative Claims on the Effective Date or to have the holders of the Administrative Claims agree to different treatment.

DTF, the holder of the Class 1 Claim, has agreed to allow the payment of the following amounts (the "Carve-Out"), upon receipt by the Debtor of the Wind-Down Money: a) professionals to be paid up to the sum of $25,000, on account of their Allowed Claim; b) the claim of 1581 Holdings, LLC, in the amount of $14,000; and c) the sum of $50,000 to be shared *pro rata* with all Allowed Class 3 Claims, as set forth below.

Upon approval of the Bankruptcy Court, the Administrative Claims of Debtor's professionals shall be paid either on the Confirmation Date or as otherwise agreed to by the parties.

B. CLASS 1 CLAIM (SECURED CLAIM OF DTF)

Subsequent to the payment of the Carveout Amount set forth above, and on the Effective Date, DTF will be paid up to the amount of its Allowed Class 1 Claim The Class 1 Claim shall retain its lien on the Debtor's property until satisfied in full. The Class 1 Claim is impaired and entitled to vote.

C. CLASS 2 (PRIORITY CLAIMS OF THE TAXING AUTHORITIES)

The holder of the Class 2 Claims shall not receive a distribution on account of their Class 2 Claim. As a result, the Class 2 Claims are impaired and are deemed to have rejected the Plan.

D. CLASS 3 (GENERAL UNSECURED CLAIMS)

On the Effective Date, the holder of the Class 3 Claims shall receive a distribution on account of their Class 3 Claim equal to a pro rata distribution of the $50,000 that the Debtor shall receive, pursuant to the Carve-Out, from the Wind-Down Money. As a result, the Class 3 Claims are impaired and are entitled to vote.

E. CLASS 4 (SUBORDINATED INSIDER GENERAL UNSECURED CLAIMS)

Class 4 Subordinated General Unsecured Claims shall not receive a distribution under the Plan. As a result, the Class 4 Claims are impaired and are deemed to have rejected their treatment under the Plan.

F. CLASS 5 (EQUITY INTERESTS)

The Class 5 Interests will be cancelled on the Effective Date. As a result, the Class 5 Interests are impaired and are deemed to have rejected his treatment under the Plan.

G. CLAIMS OBJECTIONS

The Debtor reserves the right to bring claims objections within 90 days of the Confirmation Date.

H. VALUE OF EQUITY INTERESTS TO BE RETAINED

On the date all of the Wind-Down Money is received, all the rights and interest of the holder of the Class 5 Interests will be extinguished.

I. TAX CONSEQUENCES OF THE PLAN

1. General Consequences.

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN SELECTED SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES BUT NOT STATE, LOCAL OR FOREIGN TAX CONSEQUENCES, OF THE PLAN TO THE DEBTOR, HOLDERS OF CLAIMS AND HOLDERS OF INTERESTS. THESE TAX CONSEQUENCES MAY BE AFFECTED BY SUCH FACTORS AS CHANGES IN THE STRUCTURE OF THE DEBTOR FROM THAT

DESCRIBED HEREIN. THE FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS OF CLAIMS AND INTERESTS MAY VARY SIGNIFICANTLY DEPENDING ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER.

MOREOVER, THE FEDERAL INCOME TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN BECAUSE OF THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN FEDERAL INCOME TAX LAWS. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM OR INTEREST IS STRONGLY ADVISED TO CONSULT WITH SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

In general, the federal income tax consequences to the Debtor and to each holder of an Allowed Claim will depend on numerous factors. These factors include but are not limited to the following:

a. The identity and status of the particular Claimant for federal income tax purposes;

b. The financial status of the Claimant and the Debtor, including the amount and character of any current tax attributes and tax attribute carryovers or carrybacks of the Claimant and/or the Debtor;

c. The nature (recourse or nonrecourse) and terms of the debt instrument(s) to be restructured including the allocation of payments between principal and accrued but unpaid interest;

d. The accounting method of the Claim holder;

e. The relationship, if any, between the Debtor and the Claim holder;

f. The residency, alienage or place of legal incorporation or formation (foreign or U.S.) of the Claim holder and/or the persons owning beneficial equity interests in the Claim holder.

g. The type or method of debt restructure adopted by the Debtor and the Claim holder and the timing of such debt restructure.

The application of the factors to each Claim holder will depend on the Claim holder's individual facts and circumstances. In addition the federal income tax consequences to the Debtor and Claim holder may depend on events which occur several years after the Plan is implemented.

THE DEBTOR'S LEGAL COUNSEL DOES NOT HAS SUFFICIENT INFORMATION TO DETERMINE ALL OF THE SPECIFIC FEDERAL INCOME TAX CONSEQUENCES TO EACH OF THE CLAIM AND INTEREST HOLDERS RESULTING FROM THE PLAN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY ADVISED TO CONSULT WITH SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

NO RULINGS HAVE BEEN OR ARE EXPECTED TO BE REQUESTED FROM THE INTERNAL REVENUE SERVICE (THE "IRS") OR ANY STATE TAX AGENCY CONCERNING ANY OF THE TAX MATTERS DESCRIBED HEREIN. THERE CAN BE NO ASSURANCE THAT THE IRS OR ANY STATE TAX AGENCY WILL NOT CHALLENGE THE POSITIONS TAKEN BY THE DEBTOR WITH RESPECT TO ANY OF THE ISSUES ADDRESSED HEREIN OR THAT A COURT OF COMPETENT JURISDICTION WOULD NOT SUSTAIN SUCH A CHALLENGE.

2. Tax Consequences of Cash Payments to Holders of Allowed Claims.

The federal income tax consequences with respect to payments of Cash to holders of Allowed Claims in partial or full satisfaction of debt, or pursuant to a tax free recapitalization or other restructuring, depend on the allocation of such payments to principal and interest owed on the debt. The allocation of payments between interest and principal may affect:

a. the existence and timing of recognition of interest income by a cash basis Claim holder;

b. the existence and timing of interest deductions on a cash basis (and sometimes to an accrual basis) Debtor;

c. the amount (and possibly the character) of worthless debt loss recognized by the Claim holder;

d. the amount of cancellation of indebtedness income recognized by the Debtor; and

e. the amount of gain or loss recognized by the Claim holder pursuant to a recapitalization under Internal Revenue Code § 368(a)(1)(E).

A holder of an Allowed Claim will recognize ordinary income to the extent that any stock, debt securities, other premises, or cash received is attributable to interest (including original issue discount) which has accrued while the Claim holder held the debt and which the Claim holder previously included in income, exceeds the fair market value of stock, debt and cash received by the Claim holder which is attributable to such accrued interest.

In addition, such Claim holders will realize gain on such amount equal to the excess of the fair market value of stock, debt, other premises and cash received (excluding amounts attributable to interest and discussed above) over the cost or other tax basis of the debt claims surrendered (excluding any tax basis allocated to accrued interest). The gain may be a capital gain or ordinary gain unless the exchange has the

effect of the distribution of a dividend under Internal Revenue Code § 305 (discussed below) in which case gain recognized that is not in excess of earnings and profits of the Debtor will be treated as a dividend. A corporate Claim holder who receives a dividend may qualify for a dividend received deduction with respect to the dividend.

The rules regarding taxation of payments to Claim holders which are attributable to other accrued but unpaid income items (*e.g.*, rents, compensation, royalties, dividends, *etc.*) are similar to the rules described above for payments allocated to interest.

3. Importance of Obtaining professional Tax Assistance.

THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF SELECTED FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH, AND RECEIPT OF ADVISE FROM, A TAX PROFESSIONAL. THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN THAT ARE DESCRIBED HEREIN AND THE STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN THAT ARE NOT ADDRESSED HEREIN, ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. ACCORDINGLY, EACH CLAIMANT AND EQUITY HOLDER IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

J. ACCOUNTING PROCESS

The financial information contained in this Disclosure Statement was derived from the Petition, Schedules and monthly operating reports filed by the Debtor in this case as well as based on certain assumptions made by the Debtor.

K. POST-PETITION ASSETS AND LIABILITIES

The Debtor has acquired no significant assets since the filing of the Chapter 11 and has incurred no significant liabilities.

L. EXECUTORY CONTRACTS

The only executory contracts related to the operation of Debtor's business are the Wind-Down Agreements that were assumed.

M. RETENTION OF JURISDICTION

Following Confirmation, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, without limitation, for the purposes set forth in Article XII of the Plan. These purposes include, among other things: (i) to determine the allowability, classification, or priority of Claims or Interests; (ii) to construe and to take any action to enforce and execute the Plan, the Confirmation Order, or any other order of the Bankruptcy Court; (iii) to issue such orders as may be necessary for the implementation, execution, performance, and consummation of the Plan; (iv) to determine any and all applications for allowance of compensation and expense reimbursement of Professional Persons; (v) to determine any other request for payment of Administrative Claims; (vi) to determine all applications, motions, adversary proceedings, contested matters, and any other litigated matters instituted prior to the closing of the Reorganization Case, including litigation commenced to set aside or avoid

any transfers pursuant to Bankruptcy Code Sections 544, 545, 547, 548, 549, 550 and 553; (vii) to modify the Plan under Bankruptcy Code Section 1127, to remedy any defect or omission in the Plan, (vii) to enforce the Debtor's right to compel the payment of the Wind-Down Money from GM, if necessary; and (viii) or to reconcile any inconsistency in the Plan, or to reconcile any inconsistency in the Plan so as to carry out its intent and purposes.

N. DISTRIBUTIONS UNDER THE PLAN

1. Cash Payments.

Cash payments made pursuant to the Plan will be in U.S. dollars by checks drawn on a domestic bank selected by the Debtor, or by wire transfer from a domestic bank, at the option of the Debtor.

2. Transmittal of Distributions.

All distributions shall be deemed made at the time such distribution is deposited in the United States mail, postage prepaid. Except as otherwise agreed with the holder of an Allowed Claim or Allowed Interest, any distribution on account of an Allowed Claim or Allowed Interest shall be distributed by mail to (i) the latest mailing address filed of record for the party entitled thereto or to a holder of a power of attorney designated by such holder to receive such distributions or (ii) if no such mailing address has been so filed, the mailing address reflected on the filed Schedules of Assets and Liabilities or in the Debtor's books and records.

3. Undeliverable Distributions.

If any distribution is returned to the Debtor as undeliverable, no further distributions shall be made to the holder of the Allowed Claim or Allowed Interest on

which such distribution was made unless and until the Debtor is notified in writing of such holder's then current address. Undeliverable distributions shall remain in the possession of the Debtor until such time as a distribution becomes deliverable or is deemed canceled (as hereinafter provided). Any unclaimed distribution held by the Debtor shall be accounted for separately, but the Debtor shall be under no duty to invest any such unclaimed distribution in any manner. Any holder of an Allowed Claim or Allowed Interest that does not present a Claim for an undeliverable distribution within one hundred and twenty (120) days after the date upon which a distribution is first made available to such holder shall have its right to such distribution discharged pursuant to Section 1141 of the Bankruptcy Code and shall be forever barred from asserting any such Claim or Interest against the Debtor or its property. All unclaimed or undistributed distributions shall be redistributed to the remaining holders of Allowed Claims in the same Class as the holder of the unclaimed or undistributed distribution.

O. LEGAL EFFECTS OF CONFIRMATION AND EFFECTIVENESS OF THE PLAN

1. Discharge and Injunction.

Since the Debtor is liquidating substantially all of its assets, confirmation of the Plan will not result in a discharge of Claims pursuant to Section 1141 of the Bankruptcy Code.

2. Revesting of Property of the Estate and Release of Liens.

Except as otherwise provided in the Plan, any contract, instrument, or other agreement or document created in connection with the Plan, or the Confirmation Order, on the Effective Date, all property of the estate, wherever situated, shall be revested in the Debtor free and clear of all Claims, mortgages, deeds of trust, liens, security interests,

encumbrances, and other interests of any Person, and the Debtor may thereafter operate its business and may use, acquire, and dispose of property and compromise or settle any Claims or Interests without the supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of New York, and the guidelines and requirements of the Office of the United States Trustee for the Eastern District of New York.

P. MODIFICATION OR REVOCATION OF THE PLAN

Subject to the restrictions on modification set forth in Section 1127 of the Bankruptcy Code, the Debtor reserves the right to alter, amend, or modify the Plan before or after the Effective Date. No alterations, amendments, or modifications may be made by any party except the Debtor. If the Plan is modified by the Debtor, it may be necessary to amend the Disclosure Statement and to resolicit ballots from all or some voting Classes. A hearing on such issues and any resolicitation of ballots likely would significantly delay Confirmation and, consequently, significantly delay distributions under the Plan.

The provisions of the Plan are not severable unless such severance is agreed to by the Debtor and such severance would constitute a permissible modification of the Plan pursuant to Bankruptcy Code Section 1127.

Q. ANALYSIS OF POTENTIAL RECOVERIES UNDER SECTIONS 542 THROUGH 550 OF THE BANKRUPCTCY CODE.

The Debtor has undertaken an analysis as to whether any causes of action exist under Sections 542 through 550 of Title 11. the Debtor has concluded that no viable causes of action exist under these sections of the Bankruptcy Code.

R. SUMMARY OF CERTAIN OTHER PROVISIONS OF THE PLAN

Except as otherwise provided in the Plan, agreements entered into in connection therewith, the Confirmation Order, or in agreements previously approved by Final Order of the Bankruptcy Court, the Debtor may, pursuant to Bankruptcy Code Section 553 or applicable nonbankruptcy law, setoff against any Allowed Claim (before any distribution is made on account of such Claim) any and all of the Claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim.

S. MEANS OF IMPLEMENTING THE PLAN

The funds required for the Confirmation and performance of this Plan shall be provided from the fund currently in the Debtor's possession, the liquidation of the parts inventory and the collection of the Wind-Down Money.

CONCLUSION

The Debtor believes that the Plan affords Creditors the potential for the greatest realization from the Debtor's assets and, therefore, is in the best interest of the Creditors. Accordingly, the Debtor urges all Secured and Unsecured Creditors to cast their ballots in favor of accepting the Plan.

Dated: New York, New York
August 19, 2010

WILK AUSLANDER LLP
Attorney for Debtor

By: /s/Eric J. Snyder
Eric J. Snyder (ES-8032)
675 Third Avenue
New York, New York 11207
(516) 997-0999

EXHIBIT B

~~SILLER~~ WILK **AUSLANDER** LLP
Counsel for the Debtor
675 Third Avenue
New York, New York 10017
(212) 421-2233
Eric J. Snyder, Esq. (ES 8032)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

RAMP CHEVROLET, INC.,

Debtor. Case No: 09-77513-REG

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AMENDED DISCLOSURE STATEMENT

This **Amended** Disclosure Statement **(the "Disclosure Statement")** is filed pursuant to Section 1125 of Title 11, United States Code, on behalf of Ramp Chevrolet, Inc., Debtor and Debtor-in-Possession.

A. INTRODUCTION/NOTICE OF HEARING AND SOURCE OF INFORMATION

Pursuant to Section 1125 of Title 11 of the United States Code (the "Bankruptcy Code"), Ramp Chevrolet, Inc., the debtor herein (the "Debtor") provides this Disclosure Statement (the "Disclosure Statement") to all of the known Creditors of the Debtor and other parties in interest in order to provide information deemed by the Debtor to be material and necessary to enable such Creditors and parties in interest to make a reasonable informed decision in the exercise of their rights to vote on and participate in Debtor's Plan of Liquidation (the "Plan"). The Plan is annexed hereto as Exhibit "A". The information contained in this Disclosure Statement is based on the representations made by the Debtor in its Petition and Schedules and all other documents provided by counsel for the Debtor and ~~is~~**are** believed to be accurate. It has not been subject to certified audit or independent review. Therefore, no representation or warranty is made

as to its accuracy or completeness. However, the Debtor has reasonably endeavored to obtain and supply all material information.

Terms utilized in this Disclosure Statement, if not defined herein, shall have the same meaning as such terms are used or defined in the Plan unless the context hereof requires a different meaning.

THE BANKRUPTCY COURT HAS SET AUGUST __ 2010 AT 1:30 P.M. OF THAT DAY AS THE DATE AND TIME OF THE HEARING ON CONFIRMATION OF THE PLAN AND OBJECTIONS THERETO, WHICH HEARING WILL BE HELD IN THE COURTROOM OF THE HONORABLE ROBERT E. GROSSMAN, UNITED STATES COURTHOUSE-ROOM 860, CENTRAL ISLIP, NEW YORK 11722. CREDITORS OF, AND HOLDERS OF INTERESTS IN, THE DEBTOR MAY ATTEND SUCH HEARING. THE BANKRUPTCY COURT HAS FIXED JULY __, 2010 AS THE DATE AND TIME BY WHICH ALL WRITTEN OBJECTIONS TO CONFIRMATION OF THE PLAN SHALL BE FILED WITH THE BANKRUPTCY COURT AND SERVED UPON THE ATTORNEY FOR THE DEBTOR AND UPON THE UNITED STATES TRUSTEE.

A BALLOT ACCOMPANIES THIS DISCLOSURE STATEMENT FOR YOUR USE IN VOTING ON THE PLAN. IN ORDER TO BE CONFIRMED, THE PLAN MUST BE ACCEPTED BY A MAJORITY IN NUMBER AND TWO-THIRDS IN AMOUNT OF THOSE VOTING IN EACH CLASS IMPAIRED UNDER THE PLAN.

YOU ARE URGED TO REVIEW THE PLAN, THIS DISCLOSURE STATEMENT, AND THE BALLOT WITH COUNSEL OF YOUR CHOICE. HOLDERS OF CLAIMS OR INTERESTS WHICH ARE IMPAIRED UNDER THE PLAN MAY VOTE TO ACCEPT OR REJECT THE PLAN BY COMPLETING AND MAILING THE ENCLOSED BALLOT ON OR BEFORE JULY __, 2010, TO COUNSEL FOR THE DEBTOR AT THE ADDRESS SET FORTH BELOW:

~~SILLER~~ WILK AUSLANDER LLP
675 Third Avenue
New York, New York 10017-5704
Attn: Eric J. Snyder, Esq.

THE DEBTOR BELIEVES THE TREATMENT OF UNSECURED CREDITORS THAT ARE IMPAIRED UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY FOR SUCH CREDITORS THAN WOULD BE AVAILABLE UNDER ANY ALTERNATIVE PLAN OR IN A CHAPTER 7 LIQUIDATION.

ACCORDINGLY, THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF THE IMPAIRED GENERAL UNSECURED CREDITORS AND RECOMMENDS THAT ALL SUCH CREDITORS VOTE TO ACCEPT THE PLAN.

Other than the information set forth in this Disclosure Statement, the Debtor has authorized no person or entity to make representations concerning the Debtor, its business, its future income, the value of the Debtor's assets, or the amounts to be distributed under the Plan. Any representations or inducements made to secure your

acceptance of the Plan which ~~are~~is other than as contained in this Disclosure Statement should not be relied upon by you in determining whether to accept or reject the Plan.

B. DEBTOR'S BUSINESS

The Debtor is a New York corporation. Its shareholders are John and Charles Rampone, Jr. The Debtor owns and operates Chevrolet, Chevrolet Truck and Hummer franchises (the "Dealerships"), pursuant to franchise agreements (the "Franchise Agreements") by and between the Debtor and the General Motors Company ("GM"). The Dealerships are located at 1395 Route 112, Port Jefferson, New York.

C. PRE-PETITION HISTORY OF THE DEBTOR

During June, 2009, GM filed for Chapter 11 relief. Immediately thereafter, GM informed the Debtor that it would be terminating the Franchise Agreements.

To this end, on June 12, 2009, the Debtor entered into three agreements (the "Wind-Down Agreements") with GM to "wind-down" the operations of the Dealerships. Pursuant to the Wind-Down Agreements, upon the sale of the Debtor's new car inventory of each franchise, the Debtor is required to close the Dealership. In exchange, GM has agreed to pay to the Debtor the sum of $1,304,613 (the "Wind-Down Money"), in total, for consideration in terminating the three Dealerships. During August, 2009, 25% of the Wind-Down Amount, $326,154.75, was paid to the Debtor by GM.

For the quarters ending November 30, 2009, February 28, 2009 and May 31, 2009, the Debtor failed to remit sales tax to the New York State Department of Taxation & Finance ("DTF") in the amounts of $1,442,636.09, $639,750.04 and $425,993.96, respectively, totaling $2,508,380.09 (the "DTF Claim"). Of this amount, the sum of $2,082,386.13 ("DTF Secured Claim") is subject to Tax Warrants.

As of that date, the Debtor also owed GMAC, the entity that financed the purchase of the vehicles for the Dealerships, the sum of $587,201.92 (the "GMAC Claim"), secured by all of the Debtor's assets.

On October 2, 2009, DTF sought to enforce its rights under the Tax Warrants and changed the locks on the Dealerships. As a result, the Debtor was compelled to seek Chapter 11 relief.

D. HISTORY OF THE CHAPTER 11 CASE

As stated above, as of the Petition Date, the Debtor owed GMAC the sum of approximately $507,201.92 and the DTF approximately $2,082,386.13. As a result of the DTF's secured status as of the Petition Date, it was necessary for the Debtor to seek the use of the cash collateral of GMAC and the DTF, pursuant to Section 363(c)(2)(B) of the Bankruptcy Code. By motion dated October 6, 2009, Debtor sought authority to use GMAC's and DTF's cash collateral. Pursuant to a Stipulation and Order dated October 20, 2009, the Debtor and GMAC entered into a Stipulation authorizing the Debtor to use cash collateral through November 4, 2009. On or about that date, the GMAC Claim was satisfied.

On December 3, 2009, the Debtor filed a motion (the "Assumption Motion"), pursuant to Section 365 of the Bankruptcy Code, to assume the Wind-Down Agreements.

Pursuant to an order of the Court, dated February 3, 2010, the Assumption Motion was granted.

During November, 2009, the Debtor sold the last of its retail vehicles. As a result, under the Wind-Down Agreements, the Debtor became eligible to collect the Wind-Down Money. To this end, the Debtor has requested the commencement of the procedures to terminate the Franchise Agreement by December 31, 2009 and to obtain the Wind-Down Money.

On February 8, 2010, the Office of the United States Trustee filed a motion (the "Conversion Motion") to convert or dismiss the Debtor's bankruptcy case. In order to resolve the Conversion Motion, the DTF agreed to allow a portion of the Wind-Down Money to be paid to satisfy Administrative Expenses and the Class 3 Claims, on a *pro rata* basis, as set forth below.

On July 23, 2010, GM filed a proof of claim in the bankruptcy proceeding asserting a secured claim of $699,096.01 (the "Set-Off Amount") based on set off and recoupment rights.

On August 18, 2010, the Debtor provided to GM all of the documents GM stated it requires under the Wind-Down Agreement in order for the Debtor to obtain the Wind-Down Money, The Debtor shall immediately seek to compel GM to pay to the Debtor the $279,363.79 in Wind-Down Money that is not disputed. Since the Debtor believes that GM's attempt to set-off the Set-Off Amount is improper, the Debtor shall also seek to compel GM to remit the remainder of the Wind-Down Money for the benefit of the Debtor's creditors.

E. THE LIQUIDATING DEBTOR

The Debtor is no longer operating. Its remaining assets are: a) vehicle parts, equal to approximately $100,000; b) the right to receive the remainder of the Wind-Down Money equal to approximately $975,000, totaling ~~approximately~~**up to** $1,075,000.

F. INSIDER TRANSACTIONS

Within one year of the Petition Date, the Debtor made no payments or transfers to any insider as that term is defined pursuant to the Bankruptcy Code, other than**: i)** the payments of salaries to the ~~Ramones~~**Rampone**, as officers of the Debtor~~.~~**; and ii) the payment of $100,000, on August 20, 2010, by the Debtor to United Bus Co., an entity owned by the Rampones.**

This $100,000 used to make this transfer to United Bus was deposited also on August 20, 2010 by Charles Rampone into the Debtor's bank account, even though he did not owe any money to the Debtor at that time, for the sole purpose of paying it over to United Bus and the Debtor.

G. CLASSIFICATION, AMOUNT AND NUMBER OF CLAIMS

1. The Plan divides all Claims and Interest into five Classes, plus Administrative Claims.

Administrative Claims consist of the allowed claims of Debtor's duly retained professionals, not paid during the bankruptcy proceeding and any other Administrative Expenses allowed under Section 503 of the Bankruptcy Code. Holders of Administrative Claims, as of May 31, 2010, are the sums owed Debtor's counsel in the amount of approximately $50,000, including a retainer received by counsel prior to the Petition in

the sum of $25,000 and the claim of 1581 Holding, LLC, the Debtor's former landlord, in the amount of $14,000. There are no other accrued unpaid Administrative Expenses except for any unpaid fees owed to the Office of the United States Trustee, for the Second Quarter 2010, in the amount of approximately $5,000, in total. The obligation to pay quarterly fees to the United States Trustee continues until the entry of the Final Decree by the Bankruptcy Court.

2. Class 1, consists of one claim, the secured claim of the DTF, in the amount of $2,082,386.13.

3. Class 2 consists of one claim, the priority sales tax claim of the DTF in the amount of $425,993.96.

4. Class 3 consists of approximately 100 Allowed General Unsecured Claims, not including the claims of insiders, as that term is defined in the Bankruptcy Code, in the aggregate amount of approximately ~~$1,500,000.~~**7,573,925.**

5. Class 4 claims consist of the Claims of the Debtor's insiders, in the amount of approximately $3,500,000.

6. Class 5 consists of the Interests of the Debtor held by John and Charles Rampone, Jr.

H. REQUIREMENTS FOR CONFIRMATION OF THE PLAN

1. Confirmation Hearing.

The Bankruptcy Court has set July __, 2010 at 1:30 p.m. as the date and time for a hearing to determine whether the Plan has been accepted by the requisite number of Creditors and Interest holders and whether the other requirements for confirmation of the Plan have been satisfied.

Each Creditor and Interest Holder will receive notice of the Confirmation Hearing.

2. Requirements for Confirmation.

In order to confirm the Plan, Section 1129 of the Bankruptcy Code requires the Bankruptcy Court to make a series of determinations concerning the Plan, including that:

a. the Plan classifies Claims and Interests in a permissible manner;

b. the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code;

c. the proponent of the Plan (here the Debtor) has proposed the Plan in good faith;

d. the Plan proponent's disclosures concerning the Plan have been adequate and have included information concerning all payments and distributions to be made in connection with the Plan; and

The Debtor believes that all of these conditions have been met or will be met by the time of the Confirmation Hearing, and the Debtor will seek a determination of the Bankruptcy Court to this effect at the Confirmation Hearing.

3. Acceptances Necessary for Confirmation.

The Bankruptcy Code requires that the Plan place each Creditor's Claim and each Interest in a class with other Claims or Interests which are substantially similar. The Debtor believes that the classification system in the Plan meets the Bankruptcy Code's standard. Although the Bankruptcy Court must independently conclude that the Plan's classification system is legally authorized, any Creditor or Interest holder who believes that the Plan has improperly classified any group of Claims or Interests may object to Confirmation of the Plan.

The Bankruptcy Code requires that the Plan be accepted by requisite votes of Creditors and Interest Holders. At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether the Plan has been accepted by each Class of Creditors and Interest holders whose Claims or Interests are impaired under the Plan. Under Section 1126 of the Bankruptcy Code, any impaired Class is deemed to accept the Plan if it is accepted by at least two-thirds in amount and more than one-half in number of the Allowed Claims or Interests of Class members who have voted on the Plan.

Further, at least one impaired Class must accept the Plan, without counting the vote of Insiders of the Debtor.

Finally, unless there is unanimous acceptance of the Plan by an impaired Class, the Court must also determine that under the Plan, Class members will receive property of value as of the Effective Date of the Plan that is not less than the amount such Class members would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date. Under the Plan, the holder of the Allowed Classes 1 and 3 will receive a partial distribution, on account of their Allowed Claims. As set forth in the liquidation analysis, annexed hereto as Exhibit B, the holders of Class 3 Claims are receiving a greater distribution under the Plan than if the Debtor's case were converted to a case under Chapter 7 of the Bankruptcy Code.

4. Confirmation of Plan Without Necessary Acceptances.

The Plan may be confirmed even if it is not accepted by all of the impaired classes if the Court finds that the Plan was accepted by at least one impaired Class and does not discriminate unfairly against, and is fair and equitable with respect to, all non-accepting impaired Classes. This provision is set forth in Section 1129(b) of the Bankruptcy Code

and requires, among other things, that the holders of Claims or Interests which are impaired must either receive or retain the full value of their Claims or, if they receive less, no Class with a junior priority may receive anything.

5. Absolute Priority Rule.

With certain exceptions, one of the requirements for Confirmation is that a plan not provide for any payments to a junior Class unless all senior Classes are paid in full. Since General Unsecured Claims are superior to Interests, stockholders may not retain their Interests unless one of three situations ~~occur~~**occurs**:

(i) The plan provides for full payment to general unsecured creditors; or

(ii) The stockholders seeking to retain their equity interests contribute "money or money's worth" in the form of needed capital to the reorganized debtor reasonably equivalent in value to that of the equity interest sought to be retained; or

(iii) The class of unsecured creditors ~~waive~~**waives** their rights by consenting to the plan as proposed. In the present case, Class 5 Equity Interests will be cancelled. Therefore, the absolute priority rule will be satisfied.

6. Persons Entitled to Vote on the Plan.

Only the votes of Classes whose Claims or Interests are impaired by the Plan will be counted in connection with Confirmation. Generally, this includes any holders of Claims who, under the Plan, will receive less than payment in full of the Allowed Amount of their Claims on the Effective Date. Holders of Administrative Claims are not impaired and are not entitled to vote. Classes 1and 3 Claims are impaired and entitled to vote. Holders of Class 2 and 4 Claims and Class 5 Interests will not receive a distribution under the Plan and are deemed to have rejected the Plan.

In determining the acceptance of the Plan, votes will be counted only if submitted by a holder of a Claim whose Claim is scheduled by the Debtor as undisputed, non-

contingent, and liquidated, or who timely filed with the Bankruptcy Court a proof of claim which has not been objected to or disallowed.

7. Solicitation of Acceptances.

This Disclosure Statement must be approved by the Bankruptcy Court in accordance with Section 1125 of the Bankruptcy Code and be provided to each holder of a Claim who has been scheduled by the Debtor or who has filed a proof of claim. This Disclosure Statement is intended to assist holders of Claims which are impaired in evaluating the Plan and in determining whether to accept or reject the Plan. Under the Bankruptcy Code, a determination that the Disclosure Statement contains "adequate information", as required by the Bankruptcy Code, does not constitute a recommendation by the Bankruptcy Court either for or against the Plan.

8. Voting Procedures.

All persons or entities entitled to vote on the Plan may cast their votes for or against the Plan by completing, dating, and signing the ballot for accepting or rejecting the Plan to be sent to them under separate cover, and delivering same to counsel for the Debtor, Eric J. Snyder, Esq., ~~Siller~~ Wilk~~,~~ **Auslander** LLP, 675 Third Avenue, New York, New York 10017. In order to be counted, all ballots must be received by ~~Siller~~ Wilk **Auslander** LLP on or before July __, 2010.

I. DESCRIPTION OF THE PLAN

The following is a summary of certain provisions of the Plan. **IT IS NOT A COMPLETE STATEMENT OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO PROVISIONS OF THE PLAN.** The Plan (annexed thereto as Exhibit "A"), which is subject to the provisions of the Bankruptcy

Code, provides for treatment of all holders of Claims and Interests of the Debtor. **SINCE THE PLAN DEALS WITH SOPHISTICATED LEGAL CONCEPTS, AND INCORPORATES THE DEFINITIONS AND REQUIREMENTS OF THE BANKRUPTCY CODE, YOU MAY WISH TO CONSULT WITH COUNSEL OF YOUR CHOICE IN MAKING ANY DECISIONS REGARDING YOUR VOTING ON THE PLAN.**

1. Summary of Classifications and Treatment of Claims and Interests under the Plan.

The Plan divides Claims and Interests of the Debtor into Administrative Claims and five (5) Classes of Claims and Interests. The Classes and payments to be made in respect of, or treatment proposed to be accorded to Allowed Claims and Interests of each Class under the Plan are summarized and described below. The term "Allowed Claim" is defined in the Plan. The Plan also defines "Disputed Claim(s)" and proposes the treatment to be accorded to Disputed Claims. The proposed treatment of Disputed Claims is also summarized and described below.

A. ADMINISTRATIVE CLAIMS.

In order to Confirm the Plan, it is necessary for the Debtor to satisfy the Administrative Claims on the Effective Date or to have the holders of the Administrative Claims agree to different treatment.

DTF, the holder of the Class 1 Claim, has agreed to allow the payment of the following amounts (the "Carve-Out"), upon receipt by the Debtor of the Wind-Down Money: a) professionals to be paid up to the sum of $25,000, on account of their Allowed Claim; b) the claim of 1581 Holdings, LLC, in the amount of $14,000; and c) the sum of $50,000 to be shared *pro rata* with all Allowed Class 3 Claims, as set forth below.

Upon approval of the Bankruptcy Court, the Administrative Claims of Debtor's professionals shall be paid either on the Confirmation Date or as otherwise agreed to by the parties.

B. CLASS 1 CLAIM (SECURED CLAIM OF DTF)

Subsequent to the payment of the Carveout Amount set forth above, and on the Effective Date, DTF will be paid up to the amount of its Allowed Class 1 Claim The Class 1 Claim shall retain its lien on the Debtor's property until satisfied in full. The Class 1 Claim is impaired and entitled to vote.

C. CLASS 2 (PRIORITY CLAIMS OF THE TAXING AUTHORITIES)

The holder of the Class 2 Claims shall not receive a distribution on account of their Class 2 Claim. As a result, the Class 2 Claims are impaired and are deemed to have rejected the Plan.

D. CLASS 3 (GENERAL UNSECURED CLAIMS)

On the Effective Date, the holder of the Class 3 Claims shall receive a distribution on account of their Class 3 Claim equal to a pro rata distribution of the $50,000 that the Debtor shall receive, pursuant to the Carve-Out, from the Wind-Down Money. As a result, the Class 3 Claims are impaired and are entitled to vote.

E. CLASS 4 (SUBORDINATED INSIDER GENERAL UNSECURED CLAIMS)

Class 4 Subordinated General Unsecured Claims shall not receive a distribution under the Plan. As a result, the Class 4 Claims are impaired and are deemed to have rejected their treatment under the Plan.

F. CLASS 5 (EQUITY INTERESTS)

The Class 5 Interests will be cancelled on the Effective Date. As a result, the Class 5 Interests are impaired and are deemed to have rejected his treatment under the Plan.

G. CLAIMS OBJECTIONS

The Debtor reserves the right to bring claims objections within 90 days of the Confirmation Date.

H. VALUE OF EQUITY INTERESTS TO BE RETAINED

On the date all of the Wind-Down Money is received, all the rights and interest of the holder of the Class 5 Interests will be extinguished.

I. TAX CONSEQUENCES OF THE PLAN

1. General Consequences.

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN SELECTED SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES BUT NOT STATE, LOCAL OR FOREIGN TAX CONSEQUENCES, OF THE PLAN TO THE DEBTOR, HOLDERS OF CLAIMS AND HOLDERS OF INTERESTS. THESE TAX CONSEQUENCES MAY BE AFFECTED BY SUCH FACTORS AS CHANGES IN THE STRUCTURE OF THE DEBTOR FROM THAT

DESCRIBED HEREIN. THE FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS OF CLAIMS AND INTERESTS MAY VARY SIGNIFICANTLY DEPENDING ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER.

MOREOVER, THE FEDERAL INCOME TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN BECAUSE OF THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN FEDERAL INCOME TAX LAWS. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM OR INTEREST IS STRONGLY ADVISED TO CONSULT WITH SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

In general, the federal income tax consequences to the Debtor and to each holder of an Allowed Claim will depend on numerous factors. These factors include but are not limited to the following:

a. The identity and status of the particular Claimant for federal income tax purposes;

b. The financial status of the Claimant and the Debtor, including the amount and character of any current tax attributes and tax attribute carryovers or carrybacks of the Claimant and/or the Debtor;

c. The nature (recourse or nonrecourse) and terms of the debt instrument(s) to be restructured including the allocation of payments between principal and accrued but unpaid interest;

d. The accounting method of the Claim holder;

e. The relationship, if any, between the Debtor and the Claim holder;

f. The residency, alienage or place of legal incorporation or formation (foreign or U.S.) of the Claim holder and/or the persons owning beneficial equity interests in the Claim holder.

g. The type or method of debt restructure adopted by the Debtor and the Claim holder and the timing of such debt restructure.

The application of the factors to each Claim holder will depend on the Claim holder's individual facts and circumstances. In addition the federal income tax consequences to the Debtor and Claim holder may depend on events which occur several years after the Plan is implemented.

THE DEBTOR'S LEGAL COUNSEL DOES NOT ~~HAVE~~HAS SUFFICIENT INFORMATION TO DETERMINE ALL OF THE SPECIFIC FEDERAL INCOME TAX CONSEQUENCES TO EACH OF THE CLAIM AND INTEREST HOLDERS RESULTING FROM THE PLAN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY ADVISED TO CONSULT WITH SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

NO RULINGS HAVE BEEN OR ARE EXPECTED TO BE REQUESTED FROM THE INTERNAL REVENUE SERVICE (THE "IRS") OR ANY STATE TAX AGENCY CONCERNING ANY OF THE TAX MATTERS DESCRIBED HEREIN. THERE CAN BE NO ASSURANCE THAT THE IRS OR ANY STATE TAX AGENCY WILL NOT CHALLENGE THE POSITIONS TAKEN BY THE DEBTOR WITH RESPECT TO ANY OF THE ISSUES ADDRESSED HEREIN OR THAT A COURT OF COMPETENT JURISDICTION WOULD NOT SUSTAIN SUCH A CHALLENGE.

2. Tax Consequences of Cash Payments to Holders of Allowed Claims.

The federal income tax consequences with respect to payments of Cash to holders of Allowed Claims in partial or full satisfaction of debt, or pursuant to a tax free recapitalization or other restructuring, depend on the allocation of such payments to principal and interest owed on the debt. The allocation of payments between interest and principal may affect:

a. the existence and timing of recognition of interest income by a cash basis Claim holder;

b. the existence and timing of interest deductions on a cash basis (and sometimes to an accrual basis) Debtor;

c. the amount (and possibly the character) of worthless debt loss recognized by the Claim holder;

d. the amount of cancellation of indebtedness income recognized by the Debtor; and

e. the amount of gain or loss recognized by the Claim holder pursuant to a recapitalization under Internal Revenue Code § 368(a)(1)(E).

A holder of an Allowed Claim will recognize ordinary income to the extent that any stock, debt securities, other premises, or cash received is attributable to interest (including original issue discount) which has accrued while the Claim holder held the debt and which the Claim holder previously included in income, exceeds the fair market value of stock, debt and cash received by the Claim holder which is attributable to such accrued interest.

In addition, such Claim holders will realize gain on such amount equal to the excess of the fair market value of stock, debt, other premises and cash received (excluding amounts attributable to interest and discussed above) over the cost or other tax basis of the debt claims surrendered (excluding any tax basis allocated to accrued interest). The gain may be a capital gain or ordinary gain unless the exchange has the

effect of the distribution of a dividend under Internal Revenue Code § 305 (discussed below) in which case gain recognized that is not in excess of earnings and profits of the Debtor will be treated as a dividend. A corporate Claim holder who receives a dividend may qualify for a dividend received deduction with respect to the dividend.

The rules regarding taxation of payments to Claim holders which are attributable to other accrued but unpaid income items (*e.g.*, rents, compensation, royalties, dividends, *etc.*) are similar to the rules described above for payments allocated to interest.

3. Importance of Obtaining professional Tax Assistance.

THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF SELECTED FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH, AND RECEIPT OF ADVISE FROM, A TAX PROFESSIONAL. THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN THAT ARE DESCRIBED HEREIN AND THE STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN THAT ARE NOT ADDRESSED HEREIN, ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. ACCORDINGLY, EACH CLAIMANT AND EQUITY HOLDER IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

J. ACCOUNTING PROCESS

The financial information contained in this Disclosure Statement was derived from the Petition, Schedules and monthly operating reports filed by the Debtor in this case as well as based on certain assumptions made by the Debtor.

K. POST-PETITION ASSETS AND LIABILITIES

The Debtor has acquired no significant assets since the filing of the Chapter 11 and has incurred no significant liabilities.

L. EXECUTORY CONTRACTS

The only executory contracts related to the operation of Debtor's business are the Wind-Down Agreements that were assumed.

M. RETENTION OF JURISDICTION

Following Confirmation, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, without limitation, for the purposes set forth in Article XII of the Plan. These purposes include, among other things: (i) to determine the allowability, classification, or priority of Claims or Interests; (ii) to construe and to take any action to enforce and execute the Plan, the Confirmation Order, or any other order of the Bankruptcy Court; (iii) to issue such orders as may be necessary for the implementation, execution, performance, and consummation of the Plan; (iv) to determine any and all applications for allowance of compensation and expense reimbursement of Professional Persons; (v) to determine any other request for payment of Administrative Claims; (vi) to determine all applications, motions, adversary proceedings, contested matters, and any other litigated matters instituted prior to the closing of the Reorganization Case, including litigation commenced to set aside or avoid

any transfers pursuant to Bankruptcy Code Sections 544, 545, 547, 548, 549, 550 and 553; (vii) to modify the Plan under Bankruptcy Code Section 1127, to remedy any defect or omission in the Plan, (vii) to enforce the Debtor's right to compel the payment of the Wind-Down Money from GM, if necessary; and (viii) or to reconcile any inconsistency in the Plan, or to reconcile any inconsistency in the Plan so as to carry out its intent and purposes.

N. DISTRIBUTIONS UNDER THE PLAN

1. Cash Payments.

Cash payments made pursuant to the Plan will be in U.S. dollars by checks drawn on a domestic bank selected by the Debtor, or by wire transfer from a domestic bank, at the option of the Debtor.

2. Transmittal of Distributions.

All distributions shall be deemed made at the time such distribution is deposited in the United States mail, postage prepaid. Except as otherwise agreed with the holder of an Allowed Claim or Allowed Interest, any distribution on account of an Allowed Claim or Allowed Interest shall be distributed by mail to (i) the latest mailing address filed of record for the party entitled thereto or to a holder of a power of attorney designated by such holder to receive such distributions or (ii) if no such mailing address has been so filed, the mailing address reflected on the filed Schedules of Assets and Liabilities or in the Debtor's books and records.

3. Undeliverable Distributions.

If any distribution is returned to the Debtor as undeliverable, no further distributions shall be made to the holder of the Allowed Claim or Allowed Interest on

which such distribution was made unless and until the Debtor is notified in writing of such holder's then current address. Undeliverable distributions shall remain in the possession of the Debtor until such time as a distribution becomes deliverable or is deemed canceled (as hereinafter provided). Any unclaimed distribution held by the Debtor shall be accounted for separately, but the Debtor shall be under no duty to invest any such unclaimed distribution in any manner. Any holder of an Allowed Claim or Allowed Interest that does not present a Claim for an undeliverable distribution within one hundred and twenty (120) days after the date upon which a distribution is first made available to such holder shall have its right to such distribution discharged pursuant to Section 1141 of the Bankruptcy Code and shall be forever barred from asserting any such Claim or Interest against the Debtor or its property. All unclaimed or undistributed distributions shall be redistributed to the remaining holders of Allowed Claims in the same Class as the holder of the unclaimed or undistributed distribution.

O. LEGAL EFFECTS OF CONFIRMATION AND EFFECTIVENESS OF THE PLAN

1. Discharge and Injunction.

Since the Debtor is liquidating substantially all of its assets, confirmation of the Plan will not result in a discharge of Claims pursuant to Section 1141 of the Bankruptcy Code.

2. Revesting of Property of the Estate and Release of Liens.

Except as otherwise provided in the Plan, any contract, instrument, or other agreement or document created in connection with the Plan, or the Confirmation Order, on the Effective Date, all property of the estate, wherever situated, shall be revested in the Debtor free and clear of all Claims, mortgages, deeds of trust, liens, security interests,

encumbrances, and other interests of any Person, and the Debtor may thereafter operate its business and may use, acquire, and dispose of property and compromise or settle any Claims or Interests without the supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of New York, and the guidelines and requirements of the Office of the United States Trustee for the Eastern District of New York.

P. MODIFICATION OR REVOCATION OF THE PLAN

Subject to the restrictions on modification set forth in Section 1127 of the Bankruptcy Code, the Debtor reserves the right to alter, amend, or modify the Plan before or after the Effective Date. No alterations, amendments, or modifications may be made by any party except the Debtor. If the Plan is modified by the Debtor, it may be necessary to amend the Disclosure Statement and to resolicit ballots from all or some voting Classes. A hearing on such issues and any resolicitation of ballots likely would significantly delay Confirmation and, consequently, significantly delay distributions under the Plan.

The provisions of the Plan are not severable unless such severance is agreed to by the Debtor and such severance would constitute a permissible modification of the Plan pursuant to Bankruptcy Code Section 1127.

Q. ANALYSIS OF POTENTIAL RECOVERIES UNDER SECTIONS 542 THROUGH 550 OF THE BANKRUPCTCY CODE.

The Debtor has undertaken an analysis as to whether any causes of action exist under Sections 542 through 550 of Title 11. the Debtor has concluded that no viable causes of action exist under these sections of the Bankruptcy Code.

R. SUMMARY OF CERTAIN OTHER PROVISIONS OF THE PLAN

Except as otherwise provided in the Plan, agreements entered into in connection therewith, the Confirmation Order, or in agreements previously approved by Final Order of the Bankruptcy Court, the Debtor may, pursuant to Bankruptcy Code Section 553 or applicable nonbankruptcy law, setoff against any Allowed Claim (before any distribution is made on account of such Claim) any and all of the Claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim.

~~R~~S. MEANS OF IMPLEMENTING THE PLAN

The funds required for the Confirmation and performance of this Plan shall be provided from the fund currently in the Debtor's possession, the liquidation of the parts inventory and the collection of the Wind-Down Money.

CONCLUSION

The Debtor believes that the Plan affords Creditors the potential for the greatest realization from the Debtor's assets and, therefore, is in the best interest of the Creditors. Accordingly, the Debtor urges all Secured and Unsecured Creditors to cast their ballots in favor of accepting the Plan.

Dated: New York, New York
AUSLANDER LLP
~~June 16,~~**August 19,** 2010

~~SILLER~~ WILK
Attorney for Debtor

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