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10
11 **STATE OF CALIFORNIA**
12 **NEW MOTOR VEHICLE BOARD**

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14 In the Matter of the Protest of:
15 WEST COVINA MOTORS, INC., dba
16 CLIPPINGER CHEVROLET,
17 Protestant,
18 v.
19 GENERAL MOTORS LLC,
20 Respondent.

Protest No.: PR-2348-12

**MOTION TO DISMISS PROTEST
FOR LACK OF JURISDICTION**

Date: February 19, 2015
Time: 10:00 a.m.

21 General Motors LLC (“GM”) moves to dismiss this protest because the Board
22 lacks jurisdiction to adjudicate it. GM has withdrawn the October 3, 2012 termination
23 notice that prompted this protest because the General Motors Dealer Sales and Service
24 Agreement (“Dealer Agreement”) of West Covina Motors, Inc. (“WCM”) terminated, as
25 determined by the Bankruptcy Court in WCM’s bankruptcy proceedings (*see* Exhibit J
26 *infra*), under section 2.6 of the Settlement and Deferred Termination Agreement and
27 Release (“Settlement Agreement”) that the Board adopted as a Stipulated Decision on
28 December 15, 2010 in Protest No. PR 2213-10 (“Stipulated Decision”). Exhibits B, C, D.

1 Simply put, without a notice of termination and with the Dealer Agreement having
2 terminated years ago, there is no proposed termination for WCM to protest here, and the
3 Board therefore lacks jurisdiction to proceed in this matter.

4 Separately, WCM is the debtor-out-of possession in a chapter 7 bankruptcy case.
5 If there were any right to proceed before the Board (which there is not) it would be vested
6 solely in the bankruptcy trustee, David A. Gill (“Trustee”), who has decided *not* to pursue
7 this protest. WCM is not the real party in interest, lacks standing to appear before the
8 Board and cannot reverse the Trustee’s business judgment not to proceed in this case.

9 **PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT**

10 This protest was filed in October 2012 in response to a 15-day termination notice
11 served by GM based on the failure of Protestant (“WCM”) to conduct customary sales and
12 service operations for seven days in violation of Article 14.5.3 of the Standard Provisions
13 of the Dealer Agreement, the so-called “going dark” clause. The termination notice and
14 this protest are now moot because WCM’s Dealer Agreement terminated in December
15 2012 on separate and independent grounds. Specifically, section 2.6 of the 2010
16 Settlement Agreement and Stipulated Decision in Protest No. PR-2213-10 provided that if
17 WCM (1) lost its floor plan credit line, (2) did not regain it within a specified period of
18 time, and then (3) proposed a buy-sell transaction but failed to close it within thirty days
19 of GM approving it, WCM’s Dealer Agreement would voluntarily terminate and WCM
20 would not protest or otherwise legally challenge the termination.

21 WCM subsequently lost its floor plan credit line and did not regain it. It proposed
22 a buy-sell transaction that GM approved on November 29, 2012. WCM then failed to
23 close the proposed transaction within the prescribed thirty-day period. As a result, the
24 Dealer Agreement terminated under section 2.6. WCM obviously cannot continue to
25 protest the termination of the already terminated Dealer Agreement and the Board
26 therefore lacks jurisdiction to hear this protest.

27 On December 28, 2012, one day before expiration of the thirty-day period to close
28 the GM-approved buy-sell transaction, WCM filed a chapter 11 bankruptcy petition. In re

1 West Covina Motors, Inc., United States Bankruptcy Court, Central District of California,
2 No. 2:12-bk-52197-ER. Following expiration of the thirty-day period to close the
3 proposed transaction, GM filed a motion under section 362(j) of the Bankruptcy Code for
4 an order determining that the automatic stay did not prevent GM from treating the Dealer
5 Agreement as terminated pursuant to the Settlement Agreement and Stipulated Decision.
6 Recognizing that the present protest could become moot depending on the Bankruptcy
7 Court's ruling on GM's motion, GM proposed and WCM (through Mr. Flanagan) agreed
8 to a stay of proceedings in this case that the Board approved on January 14, 2013.

9 WCM, at the time operating as chapter 11 debtor-in-possession, opposed GM's
10 motion under section 362(j). The Bankruptcy Court (Hon. Ernest M. Robles) granted the
11 motion on the ground that the Dealer Agreement had terminated under the express terms
12 of section 2.6 and therefore was no longer "property of the estate." Because the automatic
13 stay only applies to property of the estate, Judge Robles found that it did not bar WCM's
14 agreed voluntary termination.

15 Judge Robles made this ruling in a final appealable order, *see* 28 U.S.C. § 158, but
16 WCM did not appeal. WCM therefore cannot contest the termination of the Dealer
17 Agreement and, indeed, Judge Robles's order collaterally estops it from doing so. GM
18 later withdrew its October 3, 2012 termination notice since the Dealer Agreement already
19 had terminated pursuant to a final and valid Board decision. Thus, this protest is moot and
20 the Board lacks jurisdiction to entertain it.

21 Separately, even if there was any right to proceed in this case (which there is not)
22 that right would be vested not in WCM but exclusively in the Trustee, who according to
23 the sworn declaration of WCM's bankruptcy counsel has made the business judgment not
24 to exercise that right. Because WCM is not the real party in interest it lacks standing and
25 has no legal right to prosecute this case. Indeed, strictly speaking it does not even have
26 the right to file opposition or to argue against dismissal. Should it do so, GM intends to
27 seek monetary sanctions against WCM under Cal. Code Regs. § 551.21.

28

1 buy-sell package as required by the Settlement Agreement.” Recognizing the self-
2 executing language of section 2.3 (virtually the same language that appears in section 2.6),
3 the Board’s Decisions stated as follows: “If neither of these alternatives occur,
4 Protestant’s franchise shall terminate on the 81st day after the date of mailing to the parties
5 and their counsel by U.S. Postal Service Certified Mail a copy of the Board’s Order
6 adopting this Proposed Decision.” Exhibit E, p. 18 (Board Decision in Protest No. PR
7 2213-10, August 22, 2012).

8 On October 3, 2012, during the running of the eighty-day period referenced in the
9 Board’s Decision, GM served WCM and the Board with a second, “back up” termination
10 notice (Exhibit F). GM gave this 15-day notice pursuant to Veh. Code § 3060(a)(1)(B)(v)
11 based on WCM’s failure to conduct customary sales and service operations for seven
12 consecutive days in violation of Article 14.5.3 (the “going dark” clause) of the Dealer
13 Agreement – grounds separate from and entirely independent of GM’s right to voluntary
14 termination of the Dealer Agreement if WCM failed to comply with its obligations under
15 the Settlement Agreement and Stipulated Decision in Protest No. PR 2213-10 . WCM
16 responded to the October 3, 2012 termination notice by filing a second protest, No. PR
17 2348-12.

18 WCM within the eighty-day period allowed by the Board presented a buy-sell
19 proposal and GM approved it on November 29, 2012. Exhibit G. It is undisputed,
20 however, that the proposed transaction did not close within thirty days, as required by
21 section 2.6, which provided in pertinent part as follows:

22 If a GM-approved “buy-sell” transaction does not close within thirty
23 days of GM’s notifying WCM of the approval, then WCM agrees that its
24 Dealer Agreement will terminate voluntarily pursuant to Article 14.2 of the
25 Dealer Agreement.... WCM agrees not to protest said voluntary termination
pursuant to section 3060 of the Vehicle Code or file any other litigation of
any nature whatsoever concerning termination of the Dealer Agreement.

26 Exhibit B.

27 On December 28, 2012, the day before the thirty-day period for closing the buy-
28 sell transaction expired, WCM in violation of the final sentence of section 2.6 filed a

1 chapter 11 bankruptcy petition for the avowed purpose of avoiding termination of the
2 Dealer Agreement. Exhibit H. GM then filed a motion under section 362(j) of the
3 Bankruptcy Code in which it asked the Bankruptcy Court to determine that the bankruptcy
4 filing and attendant automatic stay under 11 U.S.C. § 362 did not bar the agreed voluntary
5 termination of the Dealer Agreement under the Settlement Agreement and Stipulated
6 Decision upon expiration of the thirty-day period. Exhibit I. The Bankruptcy Court (Hon.
7 Ernest M. Robles) granted GM's motion in a February 14, 2013 order in which it
8 explained this decision as follows:

9 [I]t is undisputed that [WCM] did not satisfy the condition set forth in
10 Section 2.6 of the Settlement Agreement which provides *that Debtor will*
voluntarily and without protest terminate the Dealer Agreement.

11 *****

12 [T]he Debtor and GM mutually and voluntarily entered in the
13 Settlement Agreement, by which *Debtor's failure to satisfy the condition of*
Section 2.6 triggered a termination of the Dealer Agreement....

14 For these reasons *the Court finds that the Dealer Agreement*
15 *terminated upon Dealer's failure to close the YTransport buy-sell*
transaction and hereby GRANTS GM's motion.

16 Exhibit J, pp. 7, 10 (emphasis added). The basis for GM's motion, as the Court noted at
17 page 4 of the Order, was that "termination of the Dealer Agreement [was] not barred by
18 the automatic stay because the Dealer Agreement terminated by operation of non-
19 bankruptcy law and therefore ceased to be property of the estate," citing *In re Gull Air,*
20 *Inc.*, 890 F.2d 1255, 1261-62 (1st Cir.1989) ("[W]hen a debtor's proprietary interest
21 expires by operation of an express condition, the Bankruptcy Code does not preserve that
22 interest and prevent termination").

23 Exhibits I, K and L are the moving, opposition and reply papers showing that GM
24 and WCM, then acting as debtor-in-possession and represented by counsel, actually
25 litigated the termination issue, culminating in Judge Robles's order. Importantly, these
26 filings (and the stipulation signed by Mr. Flanagan) also show that WCM was fully aware
27 of the running of the thirty-day period to close the GM-approved buy-sell transaction, yet
28 never argued that the Dealer Agreement did not terminate under state law. Instead, in an

1 attempt to block termination in accordance with the Settlement Agreement and Stipulated
2 Decision, WCM in its opposition asserted technical bankruptcy law arguments, to wit, that
3 the automatic stay relief sought by GM could only be obtained in an adversary proceeding
4 and that section 108(b) of the Bankruptcy Code provided an additional 60 days to close
5 the proposed buy-sell transaction. Exhibit K, pp. 8-12. Judge Robles's order properly
6 rejected these arguments (Exhibit J, pp. 6-8), and WCM chose not to appeal.

7 On March 4, 2013, WCM's bankruptcy case was converted from chapter 11
8 (reorganization) to chapter 7 (liquidation) and David A. Gill was appointed as Trustee of
9 WCM's bankruptcy estate. Exhibits M, N. The Trustee thus obtained ownership and
10 control of all of WCM's assets and proceeded to administer its estate.

11 More than eighteen months later, on October 23, 2014, WCM, acting as "Debtor-
12 out-of-Possession," filed an "emergency motion" in Bankruptcy Court seeking an order
13 compelling the Trustee to "abandon" the estate's interest in the terminated Dealer
14 Agreement to WCM, evidently for the purpose of permitting WCM to revive this protest
15 of the termination of the already terminated Dealer Agreement and, apparently, to allow
16 WCM to pursue a claim against GM for "termination assistance" (e.g., a parts buyback)
17 under the terminated Dealer Agreement.¹ Exhibit O.

18 WCM filed this motion because it obviously recognized that the right to pursue any
19 claim against GM was vested in the Trustee and, therefore, absent abandonment by the
20 Trustee, WCM as the debtor-our-of-possession would have no standing to assert any
21 claims based on the terminated Dealer Agreement that might be retained in the WCM
22 estate. The motion included a sworn declaration by WCM's bankruptcy counsel attesting
23 that the Trustee's counsel told her that the Trustee had "determined, in his business
24 judgment, not to proceed" before the New Motor Vehicle Board regarding termination of
25 WCM's Dealer Agreement. Exhibit O, pp. 3, 5 (Montgomery Decl., ¶ 3):

26
27 ¹ Article 15.2 of the Dealer Agreement provides for receipt by the Dealer of specified
28 termination assistance from GM provided the Dealer complies with the contractual
requirements for seeking such assistance. Exhibit A, pp. 29-31. WCM did not do so
inasmuch as it failed to submit a list of returnable parts and other items on a timely basis.

1 GM opposed the abandonment motion on essentially the same grounds that
2 supported its successful motion under Bankruptcy Code § 362(j): that the Dealer
3 Agreement had terminated and was not “property of the estate.” Exhibit Q. Since the
4 Bankruptcy Court previously had determined that no interest in the terminated Dealer
5 Agreement remained in WCM’s bankruptcy estate, GM argued, the Trustee had nothing to
6 “abandon” and the Bankruptcy Court therefore could not “compel” him to do so.

7 Properly viewing the emergency motion as an attempt to relitigate an issue already
8 decided in granting GM’s section 362(j) motion – *i.e.*, the termination of the Dealer
9 Agreement – Judge Robles denied WCM’s motion, confirming again in the most explicit
10 terms that any interest that WCM’s estate may once have had in the Dealer Agreement
11 had terminated and therefore could not be “abandoned” – in effect, assigned – to WCM:

12 ... Where property ceases to be property of the estate, 11 U.S.C. § 554
13 does not provide authority for abandonment.

14 The Court agrees with GM that the issue of whether the bankruptcy
15 estate has an interest in the Dealer Agreement has been decided against WCM.
16 This Court, in the 2013 Order, held that the "Debtor did not satisfy the
17 condition set forth in Section 2.6 of the Settlement Agreement, which
18 provide[d] that the Debtor will voluntarily and without protest terminate the
19 Dealer Agreement." 2013 Order, 7 (citing *In re Gull Air, Inc.*, 890 F.2d 1255,
20 1261–62 (1st Cir.1989)). This Court found that "the Dealer Agreement
21 terminated upon Debtor’s failure to close the YTransport buy-sell
22 transaction[.]" 2013 Order, 10. Implicit in the Court’s decision was that the
23 Dealer Agreement had, at the time that it terminated upon its own terms,
24 ceased to be property of the estate. WCM did not appeal this decision nor did it
25 move for reconsideration of this Order, and it is now binding on the parties as
26 law of the case. *In re Tsurukawa*, 287 B.R. 515, 518 n.2 (B.A.P. 9th Cir. 2002)
27 ("[T]he law of the case doctrine generally precludes reconsideration of an issue
28 that has already been decided by the same court.").

Based on the Court’s prior conclusion that the Dealer Agreement ceased
to be property of the estate when it terminated by its own terms, the Court finds
that it cannot now be abandoned. The Debtor cannot challenge this Court’s
prior decision now.

Exhibit Q, p. 6.

Despite the bankruptcy court’s unambiguous holdings (1) that WCM’s bankruptcy
estate did not have any remaining interest in the Dealer Agreement because it had

1 terminated pursuant to the Board's Stipulated Decision and (2) that the Trustee therefore
2 could not "abandon" anything to WCM as debtor-out-of-possession, WCM now claims
3 that bankruptcy court's ruling "effectively abandoned" the Dealer Agreement to WCM
4 and has asked the Board to lift the stay and set a schedule for litigation of this protest.

5 Upon being advised of this position, GM filed a motion in Bankruptcy Court for an
6 order enforcing the two prior rulings that the Dealer Agreement had terminated in
7 December 2012 by enjoining WCM from prosecuting this protest. In ruling on this
8 motion, Judge Robles reaffirmed his holding that the Dealer Agreement had terminated,
9 but declined under his discretionary abstention powers to grant the requested injunction:

10 This Court has issued two lengthy decisions regarding the Dealer
11 Agreement and concluded twice that it terminated pursuant to its terms and
12 ceased to be property of the estate. The Court first concluded that the
13 automatic stay did not bar the termination of the Dealer Agreement and that
14 it had terminated pursuant to its own terms. D.E. 150. Significantly later, the
15 Court determined that—as the Dealer Agreement had terminated—it ceased
16 to be property of the estate and that there was nothing to abandon.

17 The Court *did not*, as WCM contends, "effectively abandon" the
18 estate's interest to WCM. Rather, in denying WCM's motion for order
19 compelling abandonment of the estate's interest, if any, in the Dealer
20 Agreement, the Court found that WCM was bound by its *unappealed and*
21 *final determination* that the Dealer Agreement had terminated. D.E. 487, 6
22 ("Implicit in the Court's decision was that the Dealer Agreement had, at the
23 time that it terminated upon its own terms, ceased to be property of the estate.
24 WCM did not appeal this decision nor did it move for reconsideration of this
25 Order, and it is now binding on the parties as law of the case. *In re*
26 *Tsurukawa*, 287 B.R. 515, 518 n.2 (B.A.P. 9th Cir. 2002) ('[T]he law of the
27 case doctrine generally precludes reconsideration of an issue that has already
28 been decided by the same court.'). WCM did not appeal *this second*
decision and it is now binding on the parties.

23 Similarly, the Court did not find, as WCM characterizes, "that the
24 Bankruptcy Court had no role in the termination of the franchise." Opposition,
25 2:19–20. To the contrary, this Court reached the question of whether the
26 Dealer Agreement had terminated and concluded that it terminated pursuant to
27 its own terms. [D.E. 487, 6].

28 The Court rejects WCM's contention that these decisions were outside
of the scope of jurisdiction of the Bankruptcy Court. The Court has authority
to determine what is and what is not property of the estate, even when this
determination includes interpreting state law. *See* 28 U.S.C. § 157(b)(2)(A); *In*

1 *re Salander-O'Reilly Galleries, LLC*, 475 B.R. 9, 29 (S.D.N.Y. 2012);
2 *BankUnited Fin. Corp. v. FDIC (In re Bank United Fin. Corp.)*, 462 B.R. 885,
3 893–94 (Bankr.S.D.Fla.2011) ("[W]hat is or is not property of a bankruptcy
4 estate is an issue that stems from the bankruptcy itself, one that can only arise
5 in a bankruptcy proceeding, since the concept of what is property of a
6 bankruptcy estate does not exist outside of a bankruptcy case."). All of this
7 Court's relevant decisions were determinations of whether the Dealer
8 Agreement was property of the estate or whether certain actions were barred
9 by the automatic stay. These decisions are both core matters squarely within
10 this Court's jurisdiction.

11 *****

12 Efficient administration of this case requires that the Court abstain: this
13 Court has issued its orders and the NMVB can interpret those orders
14 according to its own rules and procedures. As the Court has held that the
15 Dealer Agreement has terminated and is not property of the estate and could
16 not be abandoned to any party, the Court exercises its discretion to no longer
17 entertain these issues. The Estate has nothing to gain. As WCM contends,
18 state law issues (interpretation of the California Vehicle Code, etc.) now
19 predominate over other issues. Further, there is a pending action before the
20 NMVB. To the extent that this Court's rulings dictate, and as GM
21 acknowledges, GM can move for dismissal of that action on lack of standing
22 or any other ground and the NMVB can make its own conclusions. As this
23 Court has found that the Dealer Agreement terminated on its own terms and is
24 no longer property of the estate, the issues raised are remote from the
25 bankruptcy proceeding.

26 Exhibit R, pp. 13-16 (emphasis in original).

27 On January 13, 2015, GM in light of the more-than-two-year-old termination of the
28 Dealer Agreement withdrew the October 3, 2012 notice of termination that spawned this
29 protest. GM therefore is moving to dismiss on the grounds that there is no termination
30 notice for WCM to protest, that there is no operative Dealer Agreement to terminate and
31 that the present protest therefore is entirely moot.

32 ARGUMENT

33 **I. THIS PROTEST IS MOOT AND MUST BE DISMISSED BECAUSE 34 WCM'S DEALER AGREEMENT ALREADY HAS TERMINATED**

35 It is undisputed that WCM did not close the proposed buy-sell transaction within
36 thirty days of GM's approval thereof on November 29, 2012. *See* Exhibit J, pp. 7, 10.
37 Without more, WCM's agreed voluntary termination took effect under section 2.6 of the
38

1 Settlement Agreement and Stipulated Decision of the Board. WCM obviously cannot
2 continue to prosecute a protest of the termination of a Dealer Agreement that already has
3 terminated pursuant to a valid and final Board decision. The self-evident fact that the
4 Dealer Agreement terminated upon expiration of the prescribed 30-day period for closing
5 the GM-approved buy-sell transaction has been confirmed by no less than three separate
6 orders by Judge Robles. It follows that this protest is moot and that the Board therefore
7 has no jurisdiction to entertain it.

8 **II. SEPARATELY, THERE IS NO OPERATIVE NOTICE OF TERMINATION**

9 Veh. Code § 3060(a)(1) requires that the dealer and the Board receive a specified
10 notice of any proposed termination of a Dealer Agreement. It is the receipt of this notice
11 that triggers the dealer's right to file a protest under Veh. Code § 3060(b)(2). If such a
12 notice is received but then withdrawn, there is no proposed termination to protest and
13 thereafter it is obviously pointless (and a waste of the parties' and the Board's resources)
14 to permit the dealer to continue "protesting" when there is no notice of termination as the
15 termination already has occurred.

16 **III. WCM IS COLLATERALLY ESTOPPED FROM CONTESTING THE**
17 **PRIOR TERMINATION OF THE DEALER AGREEMENT**

18 The Bankruptcy Court's February 14, 2013 order (Exhibit J) confirmed that the
19 Dealer Agreement had terminated by operation of non-bankruptcy law, to wit, section 2.6
20 of the Settlement Agreement and Stipulated Decision. Determination of that issue was
21 necessary in order for the Bankruptcy Court to determine that the Dealer Agreement was
22 not "property of the estate" and therefore not subject to the automatic stay. The
23 bankruptcy court's determination was entered as a final order that was appealable under
24 28 U.S.C. § 158 but was not appealed. *See In re Bonner Mall Partnership*, 2 F.3d 899,
25 903 (9th Cir. 1993) (bankruptcy court "order granting relief from the automatic stay was
26 clearly final" for appellate purposes).

27 In its collateral estoppel aspect, the doctrine of res judicata precludes a party from
28 relitigating a legal or factual issue that was actually or necessarily decided against that

1 party in a prior proceeding on a different cause of action. “Any issue necessarily decided
2 in [prior] litigation is conclusively determined as to the parties or their privies if it is
3 involved in a subsequent lawsuit on a different cause of action.” Levy v. Cohen, 19 Cal.
4 3d 165, 171 (1997), *citing* Bernhard v. Bank of America, 19 Cal.2d 807, 810 (1942).

5 Because the issue of the termination of the Dealer Agreement was “necessarily” –
6 indeed, actually – decided by the Bankruptcy Court, its final and unappealed February 14,
7 2013 order collaterally estops WCM from contending in this or any other subsequent
8 proceeding that the Dealer Agreement did not terminate under section 2.6 of the
9 Settlement Agreement and Stipulated Decision. As the Court of Appeal held in Roos v.
10 Red, 130 Cal.App.4th 870 (2005), *cert. denied* 546 U.S. 1174 (2006), bankruptcy court
11 orders have full collateral estoppel effect:

12 Res judicata also includes a broader principle relevant here and
13 commonly referred to as “collateral estoppel” or “issue preclusion.” Under
14 this principle an *issue* necessarily decided in prior litigation may be
15 conclusively determined as against the parties or their privies in a
16 subsequent lawsuit on a different cause of action. “Thus, res judicata does
17 not merely bar relitigation of identical claims or causes of action. Instead,
18 in its collateral estoppel aspect, the doctrine may also preclude a party to
19 prior litigation from redisp^uting *issues* therein decided against him, even
20 when those issues bear on different claims raised in a later case....”

21 ... Full faith and credit must be given to an order of the federal
22 [bankruptcy] court and such an order has the same effect in the courts of
23 this state as it would have in a federal court.

24 130 Cal.App.4th at 879, 886 (emphasis in original; citations omitted); *accord* Levy, 19
25 Cal.3d at 172-74 (bankruptcy court order releasing defendants from liability for certain
26 obligations of a limited partnership was res judicata in state court action concerning the
27 defendants' liability for partnership debts).

28 Here, WCM unsuccessfully argued not once, not twice, but three times to the
Bankruptcy Court that the Dealer Agreement did not terminate. Judge Robles’s rulings
have properly brought an end to the parties’ litigation on that issue; the doctrine of
collateral estoppel bars WCM from here snatching a fourth bite at the termination apple.

1 **IV. WCM IS NOT THE REAL PARTY IN INTEREST AND LACKS**
2 **STANDING TO APPEAR AS A PARTY TO THIS PROTEST**

3 Finally, independently of (1) the Settlement Agreement and Stipulated Decision,
4 (2) GM's withdrawal of the October 3, 2012 termination notice, and (3) Judge Robles's
5 three rulings and their collateral estoppel effect, WCM's chapter 7 bankruptcy case
6 remains pending and Mr. Gill continues to serve as Trustee. He, not WCM, is the real
7 party in interest with respect to *any* claim brought before the Board on behalf of WCM.
8 As explained in In re Leird Church Furniture Mfg. Co., 61 B.R. 444, 446 (Bankr. E.D.
9 Ark. 1986):

10 When the cause of action was brought, the debtor was a debtor-in-
11 possession in a Chapter 11 case. Since that time, the case has been converted to
12 a case under Chapter 7, and Honorable Richard Smith has been appointed
13 trustee. Consequently, the debtor is no longer in possession. The trustee is now
14 vested with all property of the estate, including this adversary proceeding and
all causes of action the debtor formerly possessed. ... Therefore, the debtor is
not the proper party plaintiff in this cause of action.

15 Essentially the same is true here. As chapter 11 debtor-in-possession during the first two
16 months of 2013, WCM was entitled to and did litigate issues concerning the termination
17 of the Dealer Agreement with GM. Once the case was converted to chapter 7, however,
18 any claims or causes of action arising out of the Dealer Agreement, including the present
19 protest, and that were filed prior to the initial chapter 11 bankruptcy filing became vested
20 in the Trustee. As a result, WCM as debtor-out-of-possession is not a proper party to, and
21 lacks standing to prosecute, this protest or any other claim against GM. Turner v. Cook,
22 362 F.3d 1219, 1225-26 (9th Cir.2003), *cert. denied* 543 U.S. 987 (2004) (appellant who
23 had filed chapter 7 bankruptcy was "no longer a real party in interest" and therefore "ha[d]
24 no standing" to pursue an appeal in a pending action absent the bankruptcy trustee's
25 formal abandonment of the case); *accord* Canterbury v. J.P. Morgan Acquisition Corp.,
26 958 F.Supp.2d 637, 649 (W.D. Va. 2013), *aff'd* 561 Fed. Appx. 293 (4th Cir.2014)
27 ("Causes of action that belong to the debtor's bankruptcy estate may only be pursued by
28 the trustee, as representative of the bankruptcy estate"); Folz v. BancOhio Nat. Bank, 88

1 B.R. 149, 150 (S.D. Ohio 1987) (under Bankruptcy Code § 541(a)(1), causes of action
2 existing prior to a bankruptcy filing “constitute property rights which are vested *solely* in
3 the trustee in bankruptcy and subject to his or her sole control.... [¶] [T]he trustee is an
4 indispensable party in this matter because he or she is the only real party in interest and, as
5 the trustee, has the *sole* right to determine if plaintiffs’ claims have sufficient merit to
6 justify suit.”) (emphasis added).

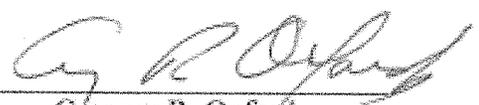
7 Because the Trustee has in this case “determined, in his business judgment, not to
8 proceed” in this protest, it should be dismissed forthwith. Any unauthorized attempt by
9 WCM to intermeddle in the protest constitutes sanctionable misconduct under 13 Cal.
10 Code Regs. § 552.21.

11 CONCLUSION

12 For all the foregoing reasons, GM respectfully requests that the Board grant its
13 motion and dismiss this protest for lack of jurisdiction.

14 DATED: January 27, 2015

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

15
16
17 By: 
18 Gregory R. Oxford
19 Attorneys for Respondent
20 General Motors LLC
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PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21515 Hawthorne Blvd., Suite 950, Torrance, California 90503.

- ✓ **VIA ELECTRONIC MAIL** on January 27, 2015 I served the foregoing documents described as **MOTION TO DISMISS PROTEST FOR LACK OF JURISDICTION** on the parties in this action by electronic mail to the electronic mailing addresses listed below.
- ✓ **VIA U.S. MAIL** on January 27, 2015, I served the foregoing document described as **MOTION TO DISMISS PROTEST FOR LACK OF JURISDICTION** on the parties in this action by U.S. mail, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Michael J. Flanagan Law Offices of Michael J Flanagan 2277 Fair Oaks Boulevard., Suite 450 Sacramento, CA 95825 LAWMJF@msn.com
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Executed on January 27, 2015 at Torrance, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Gwendolyn Oxford

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10
11 **STATE OF CALIFORNIA**
12 **NEW MOTOR VEHICLE BOARD**

13
14 In the Matter of the Protest of:
15 WEST COVINA MOTORS, INC., dba
CLIPPINGER CHEVROLET,
16
Protestant,
17
v.
18 GENERAL MOTORS LLC,
19
Respondent.

Protest No.: PR-2348-12

**DECLARATION OF GREGORY R.
OXFORD IN SUPPORT OF
MOTION TO DISMISS PROTEST
FOR LACK OF JURISDICTION**

Date: February 19, 2015
Time: 10:00 a.m.

20
21 I, Gregory R. Oxford, declare and state:

22 1. I am one of the attorneys in this matter for respondent General Motors LLC
23 (“GM”). I have personal knowledge of the matters set forth herein and could and would
24 competently testify thereto under oath.

25 2. Attached hereto as Exhibit A is a true and correct copy of the Standard
26 Provisions of the General Motors Dealer Sales and Service Agreement (“Dealer
27 Agreement”) that were applicable to GM’s Dealer Agreement with West Covina Motors,
28 Inc. (“WCM”)

1 3. Attached hereto as Exhibit B is a true and correct copy of the Settlement and
2 Deferred Termination Agreement and Release as of November 8, 2010, by and between
3 GM and WCM (“Settlement Agreement”) that the Board adopted on December 15, 2010
4 as a Stipulated Decision (“Stipulated Decision”). True and correct copies of the Proposed
5 Stipulated Decision and the Board’s Order adopting it are attached hereto as Exhibits C
6 and D, respectively.

7 4. Attached hereto as Exhibit E is a true and correct copy of the Board’s
8 Decision in Protest No. PR 2213-10 entered on August 22, 2012.

9 5. Attached hereto as Exhibit F is a true and correct copy of the notice of
10 termination that GM served on WCM and filed with the Board on or about October 3,
11 2012.

12 6. Attached hereto as Exhibit G is a true and correct copy of GM’s letter of
13 November 29, 2012 approving the buy-sell transaction proposed by WCM pursuant to the
14 terms of the Settlement Agreement and Stipulated Decision.

15 7. Attached hereto as Exhibit H is a true and correct copy of the chapter 11
16 bankruptcy petition that WCM filed on December 28, 2012 in the United States
17 Bankruptcy Court for the Central District of California.

18 8. Attached hereto as Exhibit I is a true and correct copy of GM’s
19 “Memorandum of Points and Authorities in Support of Motion for Order Confirming the
20 Automatic Stay of 11 U.S.C. § 362(a) Does Not Bar Termination of Debtor’s General
21 Motors Dealer Agreement [11 U.S.C. § 362(j)],” filed on January 22, 2013.

22 9. Attached hereto as Exhibit J is a true and correct copy of the Bankruptcy
23 Court’s “Order Granting Motion for Order Confirming That Automatic Stay Does Not Bar
24 Termination of Debtor’s General Motors Dealer Agreement,” entered on February 14,
25 2013.

26 10. Attached hereto as Exhibit K is a true and correct copy of “Debtor’s
27 Opposition to Motion for Order Confirming That Automatic Stay of 11 U.S.C. § 362(a)
28 Does Not Bar Termination of Debtor’s General Motors Dealer Agreement; Memorandum

1 of Points and Authorities and Declaration of Ziad Alhassen in Support Thereof,” filed on
2 January 29, 2013.

3 11. Attached hereto as Exhibit L is a true and correct copy of GM’s “Reply
4 Memorandum in Support of Motion for Order Confirming That Automatic Stay of 11
5 U.S.C. § 362(a) Does Not Bar Termination of Debtor’s General Motors Dealer Agreement
6 [11 U.S.C. § 362(j)],” filed on February 5, 2013.

7 12. Attached hereto as Exhibit M is a true and correct copy of the Bankruptcy
8 Court’s Order of March 4, 2013 converting WCM’s bankruptcy case from chapter 11
9 (reorganization) to chapter 7 (liquidation).

10 13. Attached hereto as Exhibit N is a true and correct copy of the Bankruptcy
11 Court’s Notice appointing David A. Gill as trustee of WCM’s chapter 7 bankruptcy estate,
12 entered March 6, 2013.

13 14. Attached hereto as Exhibit O is a true and correct copy of the “Emergency
14 Motion To Compel the Trustee to Abandon the Chevrolet Dealer Agreement and
15 Franchise” and supporting papers filed by WCM as “Debtor Out-of-Possession” on
16 October 23, 2014.

17 15. Attached hereto as Exhibit P is a true and correct copy of GM’s
18 “Memorandum of Points and Authorities in Opposition to Emergency Motion for Order
19 Compelling Trustee to Abandon Estate’s Interest in Terminated General Motors Dealer
20 Agreement,” filed on October 24, 2014.

21 16. Attached hereto as Exhibit Q is a true and correct copy of the Bankruptcy
22 Court’s “Order Denying Emergency Motion To Compel Trustee to Abandon Interest in
23 Property of the Estate,” entered on October 28, 2014.

24 17. Attached hereto as Exhibit R is a true and correct copy of the Bankruptcy
25 Court’s “Order Denying Motion for Enforcement of Prior Orders Determining That
26 Debtor and Its Estate Have No Remaining Interest in Terminated GM Dealer Sales and
27 Service Agreement,” entered on January 15, 2015.

28

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this declaration was executed this 27th day of
3 January, 2015.

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6 Gregory R. Oxford

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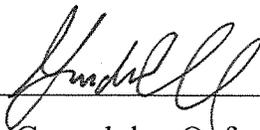
PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21515 Hawthorne Blvd., Suite 950, Torrance, California 90503.

- ✓ **VIA ELECTRONIC MAIL** on January 27, 2015 I served the foregoing documents described as **DECLARATION OF GREGORY R. OXFORD IN SUPPORT OF MOTION TO DISMISS PROTEST FOR LACK OF JURISDICTION** on the parties in this action by electronic mail to the electronic mailing addresses listed below.
- ✓ **VIA U.S. MAIL** on January 27, 2015, I served the foregoing document described as **DECLARATION OF GREGORY R. OXFORD IN SUPPORT OF MOTION TO DISMISS PROTEST FOR LACK OF JURISDICTION** on the parties in this action by U.S. mail, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Michael J. Flanagan Law Offices of Michael J Flanagan 2277 Fair Oaks Boulevard., Suite 450 Sacramento, CA 95825 LAWMJF@msn.com
--

Executed on January 27, 2015 at Torrance, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Gwendolyn Oxford

Exhibit A

Dealer Sales and Service Agreement

Standard Provisions

GENERAL MOTORS LLC

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Standard Provisions

The following Standard Provisions are part of the General Motors Dealer Sales and Service Agreement(s) (Form GMMS 1012).

PURPOSE OF AGREEMENT

The purpose of this Agreement is to promote a relationship between General Motors and its Dealers which encourages and facilitates cooperation and mutual effort to satisfy customers, and permits General Motors and its dealers to fully realize their opportunities for business success. General Motors has established a network of authorized dealers operating at approved locations to effectively sell and service its Products and to build and maintain consumer confidence and satisfaction in Dealer and General Motors. Consequently, General Motors relies upon each Dealer to provide appropriate skill, capital, equipment, staff and facilities to properly sell, service, protect the reputation, and satisfy the customers of General Motors Products in a manner that demonstrates a caring attitude toward those customers. At the same time, Dealer relies upon General Motors to provide sales and service support and to continually strive to enhance the quality and competitiveness of its Products.

This mutual dependence requires a spirit of cooperation, trust and confidence between General Motors and its dealers. To facilitate attainment of cooperation, trust and confidence, and to provide General Motors with the benefit of dealer advice regarding many decisions which affect dealer business operations, General Motors has established dealer councils, dealer advisory boards, and other mechanisms to obtain dealer input in the decision making process.

This Agreement (i) authorizes Dealer to sell and service General Motors Products and represent itself as a General Motors Dealer; (ii) states the terms under which Dealer and General Motors agree to do business together; (iii) states the responsibilities of Dealer and General Motors to each other and to customers; and (iv) reflects the mutual dependence of the parties in achieving their business objectives.

ARTICLE 1. APPOINTMENT AS AUTHORIZED DEALER

General Motors appoints Dealer as a non-exclusive dealer of General Motors Products. Dealer has the right to buy

Products and the obligation to market and service those Products in accordance with this Agreement and related documents.

ARTICLE 2. DEALER OPERATOR

This is a Personal Services Agreement, entered into in reliance on the qualifications, integrity and reputation of Dealer Operator identified in Paragraph Third, and on Dealer's assurance that Dealer Operator will provide personal services by exercising full managerial authority over Dealership Operations. Dealer Operator is responsible for developing and implementing policies, practices and procedures necessary for the Dealer to meet its obligations under this Agreement with respect to sales, service, customer satisfaction, facilities, and capitalization. Dealer Operator will have an unencumbered ownership interest in Dealer of at least 15 percent at all times. A Dealer

Operator must be a competent business person, an effective manager, must have demonstrated a caring attitude toward customers, and should have a successful record as a merchandiser of automotive products and services or otherwise have demonstrated the ability to manage a dealership. The experience necessary may vary with the potential represented by each dealer location. Although this Agreement is entered into in reliance on the personal services of the Dealer Operator, the Dealer entity specified in this Agreement is the only party to this Agreement with General Motors.

ARTICLE 3. DEALER OWNER

General Motors enters into this Agreement in reliance on the qualifications, integrity and reputation of dealer owner(s) identified in the Dealer Statement of Ownership. General Motors and Dealer agree

each dealer owner will continue to own, both of record and beneficially, the percentage stated in the Dealer Statement of Ownership, unless a change is made in accordance with Article 12.

ARTICLE 4. AUTHORIZED LOCATIONS

4.1 Dealer Network Planning

Because General Motors distributes its Products through a network of authorized dealers operating from approved locations, those dealers must be appropriate in number, located properly, and have proper facilities to represent and service General

Motors Products competitively and to permit each dealer the opportunity to achieve a reasonable return on investment if it fulfills its obligations under its Dealer Agreement. Through such a dealer network, General Motors can maximize the convenience of customers in purchasing

Products and having them serviced. As a result, customers, dealers, and General Motors all benefit.

To maximize the effectiveness of its dealer network, General Motors agrees to monitor marketing conditions and strive, to the extent practicable, to have dealers appropriate in number, size and location to achieve the objectives stated above. Such marketing conditions include General Motors sales and registration performance, present and future demographic and economic considerations, competitive dealer networks, the ability of General Motors existing dealers to achieve the objectives stated above, the opportunities available to existing dealers, the alignment of Line-Makes, General Motors dealer network plan, and other appropriate circumstances.

4.2 Area of Primary Responsibility

Dealer is responsible for effectively selling, servicing and otherwise representing General Motors Products in the Area designated in a Notice of Area of Primary Responsibility. The Area of Primary Responsibility is used by General Motors in assessing performance of dealers and the dealer network. General Motors retains the right to revise Dealer's Area of Primary Responsibility at General Motors sole

discretion consistent with dealer network planning objectives. If General Motors determines that marketing conditions warrant a change in Dealer's Area of Primary Responsibility, it will advise Dealer in writing of the proposed change, the reasons for it, and will consider any information the Dealer submits. Dealer must submit such information in writing within thirty 30 days of receipt of notice of the proposed change. If requested by Dealer within the thirty days, General Motors will extend the time for an additional 30 days for Dealer to obtain and submit relevant information. If General Motors thereafter decides the change is warranted, it will issue a revised Notice of Area of Primary Responsibility.

4.3 Establishment of Additional Dealers

General Motors reserves the right to appoint additional dealers but General Motors will not exercise this right without first analyzing dealer network planning considerations with respect to the Line-Make under consideration. Prior to establishing an additional same Line-Make dealer within Dealer's Area of Primary Responsibility, General Motors will advise Dealer in writing and give Dealer thirty days

to present relevant information before General Motors makes a final decision. If requested by Dealer within the thirty days, General Motors will extend the time for an additional thirty days for Dealer to obtain and submit relevant information. General Motors will advise Dealer of the final decision concerning the establishment of an additional dealer, which will be made solely by General Motors pursuant to its business judgment. Nothing in this Agreement is intended to require Dealer's consent to the establishment of an additional dealer, nor is this Agreement intended to give Dealer a right to object to the establishment of a different Line-Make.

The appointment of a dealer at or within three miles of a former dealership location as a replacement for the former dealer ("dealer replacement") or the relocation of an existing dealer point ("relocation") shall not be considered the establishment of an additional Dealer for purposes of this Article 4.3. General Motors shall not have any obligation to provide notice under Article 4 for a dealer replacement or relocation, and such events are within the sole discretion of General Motors pursuant to its business judgment.

4.4 Facilities

4.4.1 Location

Dealer agrees to conduct Dealership Operations only from the approved location(s) within its Area of Primary Responsibility. The Location and Premises Addendum identifies Dealer's approved location(s) and facilities ("Premises"). If more than one location is approved, Dealer agrees to conduct from each location only those Dealership Operations authorized in the Addendum for such location.

4.4.2 Change in Location or Use of Premises

If Dealer wants to make any change in location(s) or Premises, or in the uses previously approved for those Premises, Dealer will give General Motors written notice of the proposed change, together with the reasons for the proposal, for General Motors evaluation and final decision in light of dealer network planning considerations. No change in location or in the use of Premises, including addition of any other vehicle lines, will be made without General Motors prior written authorization pursuant to its business judgment.

Before General Motors requires any changes in Premises, it will consult with Dealer, indicate the rationale for the change,

and solicit Dealer's views on the proposal. If, after such review with Dealer, General Motors determines a change in Premises or location is appropriate, the Dealer will be allowed a reasonable time to implement the change. Any such changes will be reflected in a new Location and Premises Addendum or other written agreement executed by Dealer and General Motors.

Nothing herein is intended to require the consent or approval of any dealer to a proposed relocation of any other dealer.

4.4.3 Size

Dealer agrees to provide Premises at its approved location(s) that will promote the effective performance and conduct of Dealership Operations, and General Motors image and goodwill. Consistent with General Motors dealer network planning objectives and General Motors interest in maintaining the stability and viability of its dealers, Dealer agrees that its facilities will be sized in accordance with General Motors requirements for that location.

General Motors agrees to establish and maintain a clearly stated policy for determining reasonable dealer facility space requirements and to periodically

re-evaluate those requirements to ensure that they continue to be reasonable.

4.4.4 Dealership Image and Design

The appearance of Dealer's Premises is important to the image of Dealer and General Motors, and can affect the way customers perceive General Motors Products and its dealers generally. Dealer therefore agrees that its Premises will be properly equipped and maintained, clean, and appealing to customers. The interior and exterior retail environment and signs also will comply with any reasonable requirements General Motors may establish to promote and preserve the image of General Motors and its dealers.

General Motors will monitor developments in automotive and other retail industries to ensure that General Motors image and facility requirements are responsive to changes in the marketing environment.

General Motors will take into account existing economic and marketing conditions and consult with the appropriate dealer council in establishing such requirements.

4.4.5 Dealership Equipment

Effective performance of Dealer's responsibilities under this Agreement requires that the dealership be reasonably equipped to communicate with customers and General Motors and to properly diagnose and service Products. Accordingly, Dealer agrees to provide for use in the

Dealership Operations any equipment reasonably designated by General Motors as necessary for Dealer to perform effectively under this Agreement. General Motors will make such designations only after having consulted with the appropriate dealer council.

ARTICLE 5. DEALER'S RESPONSIBILITY TO PROMOTE, SELL, AND SERVICE PRODUCTS

5.1 Responsibility to Promote and Sell

5.1.1 Dealer agrees to effectively, ethically and lawfully sell and promote the purchase, lease and use of Products by consumers located in its Area of Primary Responsibility. To achieve this objective, Dealer agrees to:

- (a) maintain an adequate staff of trained sales personnel;
- (b) explain to Product purchasers the items which make up the purchase price and provide purchasers with itemized invoices;
- (c) not charge customers for services for which Dealer is reimbursed by General Motors;
- (d) include in customer orders only equipment or accessories requested by customer or required by law;
- (e) ensure that the customer's purchase and delivery experience are satisfactory; and

- (f) comply with the retail sales standards established by General Motors, as amended from time to time. General Motors will consult with the appropriate dealer council and the national dealer council before amending the retail sales standards.

If Dealer modifies or sells a modified new Motor Vehicle, or installs any equipment, accessory, recycled part or part not supplied by General Motors, or sells any non-General Motors service contract for a Motor Vehicle, Dealer will disclose this fact on the purchase order and bill of sale, indicating that the modification, equipment, accessory or part is not warranted by General Motors or, in the case of a service contract, the coverage is not provided by General Motors or an affiliate.

5.1.2 Dealer located in the United States is authorized to sell new Motor Vehicles only to customers located in the United States. Dealer agrees that it will not sell new Motor Vehicles for resale or principal use outside the United States. Dealer also agrees not to sell any new Motor Vehicles which were not originally manufactured for sale and distribution in the United States. For this section, United States includes the fifty states and the District of Columbia.

5.1.3 Dealer located in Puerto Rico or the US Virgin Islands is authorized to sell new Motor Vehicles only to customers located in Puerto Rico or the US Virgin Islands respectively. Dealer in Puerto Rico or the US Virgin Islands agrees that it will not sell new Motor Vehicles to customers located outside Puerto Rico or the US Virgin Islands respectively, or to customers for resale or principal use outside of Puerto Rico or the US Virgin Islands. Dealer agrees not to sell any new Motor Vehicles which were not originally manufactured for sale and distribution in Puerto Rico or the US Virgin Islands respectively.

5.1.4 It is General Motors policy not to sell or allocate new Motor Vehicles to dealers for resale to persons or parties (or their agents) engaged in the business of reselling, brokering (including but not limited to buying services) or wholesaling Motor Vehicles. The dealer distribution organizations that General Motors has established in the United States, Puerto Rico and US Virgin Islands are best suited for the distribution of Motor Vehicles in the United States, Puerto Rico and the US Virgin Islands respectively, and are in the best position to arrange for the proper performance of Motor Vehicle warranty repairs, field actions and inspections, pre-delivery inspections, and ongoing maintenance and compliance with government requirements. Therefore, unless otherwise authorized in writing by General Motors, Dealer agrees that this Agreement authorizes Dealer to purchase Motor Vehicles only for resale to customers for personal use or primary business use other than resale. Dealer is not authorized by this Agreement to directly or indirectly sell Motor Vehicles to persons or parties (or their agents) engaged in the business of

reselling, brokering (including but not limited to buying services) or wholesaling of Motor Vehicles. Nothing in this Article 5.1.4 is intended to restrict Dealer from selling Motor Vehicles to other General Motors dealers of the same Line-Make in the same country or territory.

5.1.5 General Motors will conduct general advertising programs to promote the sale of Products for the mutual benefit of General Motors and Dealers. General Motors will make available to Dealer advertising and sales promotion materials from time to time and advise Dealer of any requirements or applicable charges.

5.1.6 Dealer agrees to advertise and conduct promotional activities that are lawful and enhance the reputation of Dealer, General Motors and its Products. Dealer will not advertise or conduct promotional activities in a misleading or unethical manner, or that is harmful to the reputation of Dealer, General Motors, or its Products.

5.2 *Responsibility to Service*

5.2.1 Dealer agrees to maximize customer satisfaction by providing courteous, convenient, prompt, efficient and quality service to owners of Motor Vehicles,

regardless of from whom the Vehicles were purchased. All service will be performed and administered in a professional manner and in accordance with all applicable laws and regulations, this Agreement, and the Service Policies and Procedures Manual, as amended from time to time. Dealer also will comply with the retail service standards established by General Motors, as amended from time to time. General Motors will consult with the appropriate dealer council and the national dealer council before amending the retail service standards.

5.2.2 Dealer agrees to maintain an adequate service and parts organization as recommended by General Motors, including a competent, trained service and parts manager(s), trained service and parts personnel and, where service volume or other conditions make it advisable, a consumer relations manager.

5.2.3 Dealer and General Motors will each provide the other with such information and assistance as may reasonably be requested by the other to facilitate compliance with applicable laws, regulations, investigations and orders relating to Products.

5.2.4 To build and maintain consumer confidence in, and satisfaction with, Dealer and General Motors, Dealer will comply with General Motors procedures for the investigation and resolution of Product-related complaints.

5.2.5 General Motors will make available to Dealer current service and parts manuals, bulletins, and technical data publications relating to Motor Vehicles.

5.3 *Customer Satisfaction*

Dealer and General Motors recognize that appropriate care for the customer will promote customer satisfaction with General Motors Products and its dealers, which is critically important to our current and future business success. Dealer therefore agrees to conduct its operations in a manner which will promote customer satisfaction with the purchase and ownership experience. General Motors agrees to provide Dealer with reasonable support to assist Dealer's attainment of customer satisfaction, but Dealer remains responsible for promoting and maintaining customer satisfaction at the dealership.

General Motors will provide Dealer with a written report at least annually pursuant to the procedures then in effect evaluating

Dealer's purchase and delivery customer satisfaction and Dealer's service customer satisfaction. The report will compare Dealer's performance to other same Line-Make dealers in the Region. General Motors will provide a written explanation of the customer satisfaction review process to Dealer.

General Motors may revise the customer satisfaction evaluation process from time to time. General Motors will consult with the appropriate dealer council before making any changes.

5.4 *Business Planning*

General Motors has established a business planning process to assist dealers, although Dealer remains responsible for satisfying its performance obligations under the Agreement. Dealer agrees to prepare and implement a reasonable business plan if requested by General Motors. General Motors agrees to provide Dealer with information specific to its dealership, and if requested, to assist Dealer in its business planning as agreed upon by Dealer and General Motors.

5.5 *Dealer Council*

General Motors agrees to establish such dealer councils as appropriate to foster and

maintain a positive business relationship between General Motors and its dealers, and to obtain dealer input in General Motors decision-making process. These councils may be established on a national, regional or local basis, and General Motors will consult with dealers in establishing or changing such dealer councils. These councils are intended to provide General Motors with the benefit of dealer advice regarding various decisions which affect dealership operations.

5.6 Electronic Communications, Data Interchange, and Electronic Transactions

To provide for effective and efficient communication, data interchange and electronic transactions between General Motors, its dealers, and its customers, General Motors may establish reasonable requirements for Dealer's acquisition and use of certain computer software, computer hardware, and systems in Dealership Operations, including but not limited to use involving or relating to the Internet. General Motors will take into consideration factors such as market conditions, competitive circumstances, and costs in establishing such reasonable requirements. Dealer agrees to comply with those requirements and all restrictions and limitations applicable to

such computer software, computer hardware or systems. General Motors will consult with the appropriate dealer council in establishing such requirements, and such requirements shall be listed in GM Dealer World under publications, or such other website(s) as General Motors may designate.

5.7 Exchange of Information, and the Handling of Customer Information

General Motors may provide Dealer from time to time certain customer information or other information or data. Dealer agrees to use such information or data only as designated by General Motors, and not to otherwise disclose such information or data without General Motors written permission, unless otherwise required by law. This restriction only applies to information and data provided by General Motors to its dealers, and does not apply to data or information Dealer obtains from its customers or other sources.

To protect the security and confidentiality of customer information Dealer shares with General Motors, General Motors implements and maintains technical, physical and administrative safeguards in accordance with the law. General Motors shall provide privacy statements to its customers that explain how General Motors handles customer personal information, including that it shares customer personal

information with General Motors affiliates and dealers as permitted by law. General Motors privacy statement(s) for U.S. consumers shall be made available at www.gm.com, or such other website(s) as General Motors may designate.

To protect the security and confidentiality of customer information General Motors shares with Dealer, Dealer agrees to implement and maintain technical, physical and administrative safeguards in accordance with the law. Further, Dealer agrees to familiarize dealership employees that handle or have access to customer information

received from General Motors with General Motors privacy requirements, and the GM privacy statements found at www.gm.com, or such other website(s) as GM may designate. Dealer shall provide privacy statements to its customers that explain how the dealership handles customer personal information, including that it shares customer personal information with non-affiliated third parties as permitted by law. Dealer's privacy statement shall be made available at the dealership and at any Dealer websites that collect customer personal information.

ARTICLE 6. SALE OF PRODUCTS TO DEALERS

6.1 Sale of Motor Vehicles to Dealer

General Motors will periodically furnish Dealer one or more Motor Vehicle Addenda specifying the current model types or series of new Motor Vehicles which Dealer may purchase under this Agreement. General Motors may change a Motor Vehicle Addendum by furnishing a superseding one, or may cancel an Addendum at any time.

General Motors will endeavor to distribute new Motor Vehicles among its dealers in a fair and equitable manner. Many factors affect the availability and distribution of Motor Vehicles to dealers, including component availability and available production capacity, sales potential in

Dealer's Area of Primary Responsibility, varying consumer demand, weather and transportation conditions, governmental regulations, and other conditions beyond the control of General Motors. General Motors reserves to itself discretion in accepting orders and distributing Motor Vehicles, and its judgments and decisions are final. Upon written request, General Motors will advise Dealer of the total number of new Motor Vehicles, by allocation group, sold to dealers in Dealer's Market Area or Region during the preceding month.

6.2 Sale of Parts and Accessories to Dealer

New, reconditioned or remanufactured automotive parts and accessories marketed by General Motors and listed in current Dealer Parts and Accessories Price Schedules or supplements furnished to Dealer are called Parts and Accessories. Orders for Parts and Accessories will be submitted and processed according to written or electronic procedures established by General Motors or other designated suppliers.

6.3 Prices and Other Terms of Sale

6.3.1 Motor Vehicles

Prices, destination charges, and other terms of sale applicable to purchases of new Motor Vehicles will be those established according to Vehicle Terms of Sale Bulletins furnished periodically to Dealer.

Prices, destination charges, and other terms of sale applicable to any Motor Vehicle may be changed at any time. Except as otherwise provided in writing or electronically, changes apply to Motor Vehicles not shipped to Dealer at the time the changes are made effective. Dealer will receive written or electronic notice of any price increase before any Motor Vehicle to which such increase applies is shipped,

except for initial prices for a new model year or for any new model or body type. Dealer has the right to cancel or modify the affected orders by delivering written or electronic notice to General Motors within 10 days after its receipt of the price increase notice in accordance with procedures established by General Motors.

If General Motors offers any incentives to customers or dealers, and payment is conditioned upon the purchase or lease of a new Motor Vehicle, Dealer agrees to comply with the then current applicable policies and procedures in the General Motors Incentive Manual, as amended from time to time.

6.3.2 Parts and Accessories

Prices and other terms of sale applicable to Parts and Accessories are established by General Motors according to the Parts and Accessories Terms of Sale Bulletin furnished to Dealer. Prices and other terms of sale applicable to Parts and Accessories may be changed by General Motors at any time.

6.4 Inventory

6.4.1 Motor Vehicle Inventory

Dealer recognizes that customers expect Dealer to have a reasonable quantity and

variety of current model Motor Vehicles in inventory. Accordingly, Dealer agrees to purchase and stock and General Motors agrees to make available, subject to Article 6.1, a mix of models and series of Motor Vehicles identified in the Motor Vehicle Addendum in quantities adequate to enable Dealer to fulfill its obligations in its Area of Primary Responsibility.

6.4.2 Parts and Accessories

Dealer agrees to stock sufficient Parts and Accessories made available by General Motors to perform warranty repairs and policy adjustments and meet customer demand.

6.5 Warranties on Products

General Motors warrants new Motor Vehicles and Parts and Accessories (Products) as explained in documents provided with the Products or in the Service Policies and Procedures Manual.

EXCEPT AS OTHERWISE PROVIDED BY LAW, THE WRITTEN GENERAL MOTORS WARRANTIES ARE THE ONLY WARRANTIES APPLICABLE TO PRODUCTS. WITH RESPECT TO DEALERS, SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES

OR LIABILITIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY LIABILITY FOR COMMERCIAL LOSSES BASED UPON NEGLIGENCE OR MANUFACTURER'S STRICT LIABILITY EXCEPT AS MAY BE PROVIDED UNDER AN ESTABLISHED GENERAL MOTORS PROGRAM OR PROCEDURE, GENERAL MOTORS NEITHER ASSUMES NOR AUTHORIZES ANYONE TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH PRODUCTS, AND GENERAL MOTORS MAXIMUM LIABILITY IS TO REPAIR OR REPLACE THE PRODUCT.

ARTICLE 7. SERVICE OF PRODUCTS

7.1 Service for Which General Motors Pays

7.1.1 New Motor Vehicle Pre-Delivery Inspections and Adjustments

Because new vehicle delivery condition is critical to customer satisfaction, Dealer agrees to perform specified pre-delivery inspections and adjustments on each new Motor Vehicle and verify completion according to procedures identified in the Service Policies and Procedures Manual.

7.1.2 Warranty and Special Policy Repairs

Dealer agrees to perform (i) required warranty repairs on each qualified Motor Vehicle at the time of pre-delivery service and when requested by owner, and (ii) special policy repairs approved by General Motors. When the vehicle is returned to the owner, Dealer will provide owner a copy and explanation of the repair document reflecting all services performed.

7.1.3 Field Actions and Corrections

General Motors will notify Dealer of suspected unsatisfactory conditions on

Products, issue field action instructions, and make available a system that Dealer will use to check if a Product is subject to a field action. Dealer agrees to inspect and correct suspected unsatisfactory conditions on Products as instructed. For new and used Motor Vehicles in its inventory and for vehicles in its service facility, Dealer agrees to check the system for open field actions and to complete applicable field action inspections and corrections as instructed.

General Motors may ship, and Dealer agrees to accept, unordered parts and materials required for product field actions. Upon product field action completion, Dealer will receive credit for excess parts and materials so shipped if they are returned or disposed of in accordance with instructions from General Motors.

7.1.4 Payment for Pre-Delivery Adjustments, Warranty, Field Action and Transportation Damage Work

For Dealer's performance of services, pre-delivery inspections and adjustments, warranty repairs, special policy repairs, field action inspections and corrections, and transportation damage repairs, General Motors will provide or pay Dealer for the

Parts and other materials required and will pay Dealer a reasonable amount for labor. Payment will be made according to policies in the Service Policies and Procedures Manual. Dealer will not impose any charge for such service on owners or users except where a deductible or pro-rata charge applies.

7.2 *Parts, Accessories, and Body Repairs*

7.2.1 *Warranty and Policy Repairs*

Dealer agrees to use only genuine GM or General Motors approved Parts and Accessories in performing warranty repairs, special policy repairs, and any other repairs paid for by General Motors, in accordance with the applicable provisions of the Service Policies and Procedures Manual.

7.2.2 *Representations and Disclosures as to Parts and Accessories*

In servicing vehicles marketed by General Motors, Dealer agrees to disclose the use of recycled and non-General Motors parts and accessories as set forth in Article 5. 1. 1.

7.2.3 *Body Repairs*

Dealer agrees to provide quality body repair service for Motor Vehicles. Dealer can provide this service through its own body shop, or by arrangement with an alternate repair establishment approved by General Motors.

7.2.4 *Tools and Equipment*

Dealer agrees to provide and maintain on Dealership Premises essential service tools as required by General Motors, and such other tools and equipment as reasonably necessary to fulfill its responsibilities to properly diagnose and service Products. Dealer also agrees to allow General Motors or its designated representative to survey or inspect Dealer's tools and equipment to ensure that they are in good repair and proper calibration to enable Dealer to meet its service responsibilities. In the event a dispute arises from such a survey or inspection, General Motors personnel agree to discuss the matter with the Dealer in order to resolve the dispute.

ARTICLE 8. TRAINING

Properly trained personnel are essential to the success of Dealer and General Motors, and to providing customers with a satisfactory sales and service experience. General Motors agrees to make available or recommend to Dealer product, sales, service and parts, accounting, business management, finance and insurance, and systems training courses for Dealer personnel. General Motors will make such training available through training sites, interactive distance learning, or other appropriate medium as determined by General Motors. General Motors will assist Dealer in determining training requirements and periodically will require that Dealer have personnel attend or participate in specific courses held as conveniently as

practicable. Dealer agrees to comply with any such reasonable training requirements and pay any specified training charges. General Motors will consult with the appropriate dealer council prior to determining the training courses or programs from which an individual Dealer's requirements under this Article may be established. Specific minimum service training requirements will be described in General Motors Service Policies and Procedures Manual.

General Motors will make available personnel to advise and counsel Dealer personnel on sales, service, parts and accessories, and related subjects.

ARTICLE 9. REVIEW OF DEALER'S SALES PERFORMANCE

General Motors willingness to enter into this Agreement is based in part on Dealer's commitment to effectively sell and promote the purchase, lease and use of Products in Dealer's Area of Primary Responsibility. The success of General Motors and Dealer depends to a substantial degree on Dealer taking advantage of available sales opportunities.

Given this Dealer commitment, General Motors will provide Dealer with a written report at least annually pursuant to the procedures then in effect evaluating Dealer's sales performance. The report will compare Dealer's retail sales to retail sales opportunities by segment in Dealer's Area of Primary Responsibility or Area of Geographical Sales and Service Advantage,

whichever is applicable. General Motors will provide a written explanation of the sales review process to Dealer. Satisfactory performance of Dealer's sales obligations under Article 5.1 requires Dealer to achieve a Retail Sales Index equal or greater than 100. If Dealer's Retail Sales Index is less than 100, Dealer's sales performance will be rated as provided in the General Motors Sales Evaluation process. General Motors expects Dealer to pursue available sales opportunities exceeding this standard. Additionally, General Motors expectations of its sales and registration performance for a Line-Make in a particular area may exceed this standard for individual dealer compliance.

In addition to the Retail Sales Index, General Motors will consider any other relevant factors in deciding whether to proceed under the provisions of Article 13.2 to address any failure by Dealer to adequately perform its sales responsibilities. General Motors will only pursue its rights under Article 13.2 to address any failure by Dealer to adequately perform its sales responsibilities if General Motors determines that Dealer has materially breached its sales performance obligations under this Dealer Agreement.

General Motors may modify the sales evaluation process from time to time and will consult with the appropriate dealer council before adopting such modifications.

ARTICLE 10. CAPITALIZATION

10.1 Net Working Capital

The Capital Standard Addendum reflects the minimum net working capital necessary for Dealer to effectively conduct Dealership Operations. Dealer agrees to maintain at least this level of net working capital. General Motors will issue a new Addendum if changes in operating conditions or General Motors guidelines indicate capital needs have changed materially.

10.2 Wholesale Floorplan

To avoid damage to goodwill which could result if Dealer is financially unable to fulfill its commitments, Dealer agrees to have and maintain a separate line of credit from a creditworthy financial institution reasonably acceptable to General Motors and available to finance the Dealer's purchase of new vehicles in conformance with the policies and procedures established by General Motors. The amount of the line of credit will

be sufficient for Dealer to meet its

obligations under Article 6.4.

ARTICLE 11. ACCOUNTS AND RECORDS

11.1 Uniform Accounting System

A uniform accounting system facilitates an evaluation of Dealer business management practices and the impact of General Motors policies and practices. General Motors therefore agrees to maintain, and Dealer agrees to use and maintain records in accordance with a uniform accounting system set forth in an accounting manual furnished to Dealer. Dealer further agrees to submit to General Motors data in a manner specified by General Motors and on a timely basis.

11.2 Submission of Accurate Applications and Information

Dealer also agrees to timely submit true and accurate applications or claims for payments, discounts or allowances; true and correct orders for Products and reports of sale and delivery; and any other reports or statements required by General Motors, in the manner specified by General Motors,

and to retain such records for at least two years.

11.3 Examination of Accounts and Records

Dealer agrees to permit any designated representative of General Motors to access, examine, audit, and take copies of any of the accounts and records Dealer is to maintain under the accounting manual and this Agreement. Dealer agrees to make such accounts and records readily available at its facilities during regular business hours. General Motors agrees to furnish Dealer with a list of any reproduced records.

11.4 Confidentiality of Dealer Data

General Motors agrees not to furnish any personal or financial data submitted to it by Dealer to any non-affiliated entity unless authorized by Dealer, required by law, or in connection with judicial or administrative proceedings, or to proceedings under the Dispute Resolution Process.

ARTICLE 12. CHANGES IN MANAGEMENT AND OWNERSHIP

The parties recognize that customers and authorized dealers, as well as shareholders and employees of General Motors, have a vital interest in the continued success and efficient operation of General Motors dealer network. Accordingly, General Motors has the responsibility of continuing to administer the network to ensure that dealers are owned and operated by qualified persons able to meet the requirements of this Agreement.

12.1 Succession Rights Upon Death or Incapacity

12.1.1 Successor Addendum

Dealer can apply for a Successor Addendum designating a proposed dealer operator and/or owners of a successor dealer to be established if this Agreement is to expire or be terminated because of death or incapacity. General Motors will execute the Addendum provided Dealer is meeting its obligations under this Agreement and under any Dealer Agreement which Dealer may have with General Motors for the conduct of Dealership Operations at the approved location; and the proposed dealer operator is, and will continue to be, employed full-time by Dealer or a comparable automotive dealership, and is already

qualified or is being trained to qualify as a dealer operator; and provided all other proposed owners are acceptable.

Upon expiration of this Agreement, General Motors will, upon Dealer's request, execute a new successor addendum provided a new and superseding dealer agreement is executed with Dealer, and Dealer, the proposed dealer operator and dealer owners are then qualified as described above.

12.1.2 Absence of Successor Addendum

If this Agreement is to expire or be terminated because of death or incapacity of Dealer Operator, and Dealer and General Motors have not executed a Successor Addendum, any remaining Dealer Operator or, if there is not a remaining Dealer Operator, the remaining dealer owners may propose a successor dealer to continue the operations identified in this Agreement. If there are more than one dealer owners remaining, these persons may only propose a successor dealer if they can agree on such proposal.

*12.1.3 Successor Dealer
Requirements*

General Motors will accept a proposal to establish a successor dealer submitted by a proposed dealer operator under this Article 12.1 provided:

(a) the proposed successor dealer and the proposed dealer operator are ready, willing and able to meet the requirements of a new dealer agreement at the approved location(s).

(b) General Motors approves the proposed dealer operator and all proposed owners not previously approved for the existing Dealership Operations.

(c) all outstanding monetary obligations of Dealer to General Motors have been satisfied.

*12.1.4 Term of New Dealer
Agreement*

The dealer agreement offered a successor dealer will be for a three-year term. General Motors will notify the successor dealer in writing at least 90 days prior to the expiration date whether the successor dealer has performed satisfactorily and, if so, that General Motors will offer a new Dealer Agreement.

12.1.5 Limitation on Offers

Dealer will be notified in writing of the decision on a proposal to establish a successor dealer submitted under Article 12.1 within 60 days after General Motors has received from Dealer all applications and information reasonably requested by General Motors. General Motors may condition its offer of a dealer agreement on the relocation of dealership operations to an approved location by successor dealer within a reasonable time. General Motors offer of a new dealer agreement under this Article 12.1 will automatically expire if not accepted in writing by the proposed successor dealer within 60 days after it receives the offer.

12.1.6 Cancellation of Addendum

Dealer may cancel an executed Successor Addendum at any time prior to the death of a Dealer Operator or the incapacity of Dealer Operator. General Motors may cancel an executed Successor Addendum only if the proposed dealer operator is no longer qualified under Article 12. 1. 1.

*12.2 Other Changes in Ownership or
Management*

If Dealer proposes a change in Dealer Operator, a change in ownership, or a

transfer of the dealership business or its principal assets to any person conditioned upon General Motors entering into a Dealer Agreement with that person, General Motors will consider Dealer's proposal and not unreasonably refuse to approve it, subject to the following:

12.2.1 Dealer agrees to give General Motors prior written notice of any proposed change or transfer described above. Dealer understands that if any such change is made prior to General Motors approval of the proposal, termination of this Agreement will be warranted and General Motors will have no further obligation to consider Dealer's proposal.

12.2.2 General Motors agrees to consider Dealer's proposal, taking into account factors such as (a) the personal, business, and financial qualifications of the proposed dealer operator and owners, and (b) whether the proposed change is likely to result in a successful dealership operation with acceptable management, capitalization, and ownership which will provide satisfactory sales, service, and facilities at an approved location, while promoting and preserving competition and customer satisfaction.

12.2.3 General Motors will notify Dealer in writing of General Motors decision on Dealer's proposal within 60 days after General Motors has received from Dealer all applications and information reasonably requested by General Motors. If General Motors disagrees with the proposal, it will specify its reasons. General Motors may request that Dealer submit such applications and information in writing or electronically.

12.2.4 Any material change in Dealer's proposal, including change in price, facilities, capitalization, proposed owners, or dealer operator, will be considered a new proposal, and the time period for General Motors to respond shall recommence.

12.2.5 General Motors prior written approval is not required where the transfer of equity ownership or beneficial interest to an individual is (a) less than ten percent in a calendar year, and (b) between existing dealer owners previously approved by General Motors where there is no change in majority ownership or voting control. Dealer agrees to notify General Motors within 30 days of the date of the change and

to execute a new Dealer Statement of Ownership.

12.2.6 General Motors is not obligated to approve any proposed changes in management or ownership under this Article unless Dealer makes arrangements acceptable to General Motors to satisfy any indebtedness of Dealer to General Motors and other commitments of Dealer to General Motors.

12.3 Right of First Refusal to Purchase

12.3.1 Creation and Coverage

If Dealer submits a proposal for a change of ownership under Article 12.2, General Motors will have a right of first refusal to purchase the dealership assets or stock and such other rights proposed to be transferred regardless of whether the proposed buyer is qualified to be a dealer. If General Motors chooses to exercise this right, it will do so in its written response to Dealer's proposal. General Motors will have a reasonable opportunity to inspect the assets, including real estate, and corporate records before making its decision.

12.3.2 Purchase Price and Other Terms of Sale

(a) Bona Fide Agreement

If Dealer has entered into a bona fide written buy/sell agreement, the purchase price and other terms of sale will be those set forth in such agreement and any related documents, unless Dealer and General Motors agree to other terms.

Upon General Motors request, Dealer agrees to provide all documents relating to the proposed transfer. If Dealer refuses to provide such documentation or state in writing that such documents do not exist, it will be presumed that the agreement is not bona fide.

(b) Absence of Bona Fide Agreement

In the absence of a bona fide written buy/sell agreement, the purchase price of the dealership assets or stock and such other rights as proposed to be transferred will be determined by good faith negotiations by Dealer and General Motors. If agreement cannot be reached within a reasonable time, the price and other terms of sale will be established by arbitration according to the rules of the American Arbitration Association.

12.3.3 Consummation

Dealer agrees to transfer the property by Warranty Deed, where possible, conveying marketable title free and clear of liens and encumbrances. The Warranty Deed will be in proper form for recording and Dealer will deliver complete possession of the property when the Deed is delivered. Dealer will also furnish copies of any easements, licenses or other documents affecting the property and assign any permits or licenses necessary for the conduct of Dealership Operations.

12.3.4 Assignment

General Motors rights under this section may be assigned to any third party ("Assignee"). If there is an assignment, General Motors will guarantee full payment of the purchase price by the Assignee. General Motors shall have the opportunity to discuss the terms of the buy/sell agreement with the potential Assignee(s).

General Motors rights under this Article are binding on and enforceable against any assignee or successor in interest of Dealer or purchaser of Dealer's assets or stock and such other rights as proposed to be transferred.

12.3.5 Transfer Involving Family Members and Dealer Management

When the proposed change of ownership involves a transfer by a dealer owner solely to a member or members of his or her immediate family, or to a qualifying member of Dealer's Management, and such member or members meet General Motors' qualification requirements under Article 12.2, General Motors right of first refusal will not apply. An "immediate family member" shall be the spouse, child, grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner. A "qualifying member of Dealer's Management" shall be an individual who has been employed by Dealer for at least two years and otherwise qualifies as a dealer operator.

12.3.6 Expenses

If General Motors exercises its right of first refusal, General Motors agrees to pay the proposed owner the reasonable expenses, including reasonable attorney fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, and that are incurred by the proposed owner in negotiating and implementing the contract

for the proposed change in Dealer ownership before General Motors gives notice of its exercise of its right of first refusal. The proposed owner must provide a

reasonable accounting and documentation of such expenses to receive such reimbursement.

ARTICLE 13. BREACHES AND OPPORTUNITY TO REMEDY

13.1 Certain Acts or Events

The following acts or events, which are within the control of Dealer or originate from action taken by Dealer or its management or owners, are material breaches of this Agreement. If General Motors learns that any of the acts or events has occurred, it may notify the Dealer in writing. If notified, Dealer will be given the opportunity to respond in writing within 30 days of receipt of the notice, explaining or correcting the situation to General Motors satisfaction.

13.1.1 The removal, resignation, withdrawal, or elimination from Dealer for any reason of any Dealer Operator or dealer owner without General Motors prior written approval.

13.1.2 Any attempted or actual sale, transfer, or assignment by Dealer of this Agreement or any of the rights granted Dealer hereunder, or any attempted or actual transfer, assignment or delegation by Dealer

of any of the responsibilities assumed by it under this Agreement contrary to the terms of this Agreement.

13.1.3 Any change, whether voluntary or involuntary, in the record or beneficial ownership of Dealer as set forth in the Dealer Statement of Ownership furnished by Dealer, unless permitted by Article 12.2.5 or pursuant to General Motors written approval.

13.1.4 Any undertaking by Dealer or any of its owners to conduct, either directly or indirectly, any of the Dealership Operations at any un-approved location.

13.1.5 Any sale, transfer, relinquishment, discontinuance, or change of use by Dealer of any of the Dealership Premises or other principal assets required in the conduct of the Dealership Operations, without General Motors prior written approval.

13.1.6 Any dispute among the owners or management personnel of Dealer which, in General Motors judgment, may adversely affect the Dealership Operations or the interests of Dealer or General Motors.

13.1.7 Refusal by Dealer to timely furnish sales, service or financial information and related supporting data, or to permit General Motors examination or audit of Dealer's accounts and records.

13.1.8 A finding by a government agency or court of original jurisdiction or a settlement arising from charges that Dealer, Dealer Operator, or a predecessor of Dealer owned or controlled by the same person, had committed an unfair or deceptive business practice which, in General Motors judgment, may adversely affect the reputation or interests of Dealer or General Motors.

13.1.9 Willful failure of Dealer to comply with the provisions of any laws or regulations relating to Dealership Operations.

13.1.10 Submission by Dealer of false applications or reports, including false orders for Products or reports of delivery or transfer of Products.

13.1.11 Failure of Dealer to maintain the line of credit required by Article 10.

13.1.12 Failure of Dealer to timely pay its obligations to General Motors.

13.1.13 Refusal by Dealer to permit General Motors or any designated representative of General Motors to access, examine, audit, or take copies of any of the accounts or records Dealer is to maintain under the accounting manual and this Agreement.

13.1.14 Any other material breach of Dealer's obligations under this Agreement not otherwise identified in this Article 13 or in Article 14, or any other fraudulent conduct not specifically mentioned above.

If Dealer's response demonstrates that the breach has been corrected, or otherwise explains the circumstances to General Motors satisfaction, then General Motors shall confirm this fact in writing to Dealer. If, however, Dealer's response does not demonstrate that the breach has been corrected, or explain the circumstances to General Motors satisfaction, termination is warranted and General Motors may terminate this Agreement upon written

notice to Dealer. Termination will be effective 60 days following Dealer's receipt of the notice.

13.2 Failure of Performance by Dealer

If General Motors determines that Dealer's Premises are not acceptable, or that Dealer has failed to adequately perform its sales or service responsibilities, including those responsibilities relating to customer satisfaction and training, General Motors will review such failure with Dealer.

As soon as practical thereafter, General Motors will notify Dealer in writing of the nature of Dealer's failure and of the period of time (which shall not be less than six months) during which Dealer will have the opportunity to correct the failure.

If Dealer does correct the failure by the expiration of the period, General Motors will so advise the Dealer in writing. If, however, Dealer remains in material breach of its obligations at the expiration of the period, General Motors may terminate this Agreement by giving Dealer 90 days advance written notice.

ARTICLE 14. TERMINATION OF AGREEMENT

14.1 By Dealer

Dealer has the right to terminate this Agreement without cause at any time upon written notice to General Motors. Termination will be effective 30 days after General Motors receipt of the notice, unless otherwise mutually agreed in writing.

14.2 By Agreement

This Agreement may be terminated at any time by written agreement between General Motors and Dealer. Termination assistance

will apply only as specified in the written termination agreement.

14.3 Failure to be Licensed

If General Motors or Dealer fails to secure or maintain any license required for the performance of obligations under this Agreement or such license is suspended or revoked, either party may terminate this Agreement by giving the other party fifteen days written notice. Dealer may only conduct Dealership Operations if permitted by law.

14.4 Death or Incapacity of Dealer Operator

Because this is a Personal Services Agreement, General Motors may terminate this Agreement by written notice to Dealer upon the death of the Dealer Operator or if Dealer Operator is so physically or mentally incapacitated that the Dealer Operator is unable to actively exercise full managerial authority. The effective date of termination will be stated in such written notice and will be not less than three months after receipt of such notice. Prior to issuing a written notice of termination under Article 14.4, General Motors will provide Dealer with sixty days to submit a proposal for a replacement dealer operator by submitting the application forms and such other information reasonably requested by General Motors. General Motors will evaluate the candidate's qualification requirements under Article 12.2.

14.5 Acts or Events

If General Motors learns that any of the following has occurred, it may terminate this Agreement by giving Dealer written notice of termination. Termination will be effective on the date specified in the notice.

14.5.1 Conviction in a court of original jurisdiction of Dealer, or a

predecessor of Dealer owned or controlled by the same person, or any Dealer Operator or dealer owner of any felony.

14.5.2 Insolvency of Dealer; or filing by or against Dealer of a petition in bankruptcy; or filing of a proceeding for the appointment of a receiver or trustee for Dealer, provided such filing or appointment is not dismissed or vacated within thirty days; or execution by Dealer of an assignment for the benefit of creditors or any foreclosure or other due process of law whereby a third party acquires rights to the operation, ownership or assets of Dealer.

14.5.3 Failure of Dealer to conduct customary sales and service operations during customary business hours for seven consecutive business days.

14.5.4 Any misrepresentation to General Motors by Dealer or by any Dealer Operator or owner in applying for this Agreement, or in identifying the Dealer Operator, or record or beneficial ownership of Dealer.

14.5.5 Submission by Dealer of false applications or claims for any payment, credit, discount, or allowance, including false applications in connection with incentive activities, where the false information was submitted to generate a

payment to Dealer for a claim which would not otherwise have qualified for payment.

Termination for failure to correct other breaches will be according to the procedures outlined in Article 13.

14.6 Reliance on Any Applicable Termination Provision

The terminating party may select the provision under which it elects to terminate without reference in its notice to any other provision that may also be applicable. The terminating party subsequently also may assert other grounds for termination.

14.7 Transactions After Termination

14.7.1 Effect on Orders

If Dealer and General Motors do not enter into a new Dealer Agreement when this Agreement expires or is terminated, all of Dealer's outstanding orders for Products will be automatically canceled except as provided in this Article 14.7.

Termination of this Agreement will not release Dealer or General Motors from the obligation to pay any amounts owing the other, nor release Dealer from the obligation

to pay for Special Vehicles if General Motors has begun processing such orders prior to the effective date of termination.

14.7.2 Termination Deliveries

If this Agreement is voluntarily terminated by Dealer or expires or is terminated because of the death or incapacity of a Dealer Operator, without a termination or expiration deferral, General Motors will use its best efforts consistent with its distribution procedures to furnish Dealer with Motor Vehicles to fill Dealer's bona fide retail sold orders with customers as of the effective date of termination or expiration, not to exceed, however, the total number of Motor Vehicles invoiced to Dealer for retail sale during the three months immediately preceding the effective date of termination.

14.7.3 Effect of Transactions After Termination

Neither the sale of Products to Dealer nor any other act by General Motors or Dealer after termination of this Agreement will be construed as a waiver of the termination.

ARTICLE 15. TERMINATION ASSISTANCE

15.1 Deferral of Effective Date

If this Agreement is scheduled to expire or terminate because of the death or incapacity of a Dealer Operator and Dealer

requests an extension of the effective date of expiration or termination thirty days prior to such date, General Motors will defer the effective date for up to a total of eighteen

months after such death or incapacity occurs to assist Dealer in winding up its Dealership Operations.

15.2 Purchase of Personal Property

15.2.1 General Motors

Obligations

If this Agreement: a) expires or is terminated by Dealer, and General Motors does not offer Dealer or a replacement dealer a new dealer agreement, or b) is terminated by General Motors for cause under the Dealer Agreement, General Motors will offer to purchase the following items of personal property (herein called Eligible Items) from Dealer at the prices indicated:

(a) New and unused Motor Vehicles of the current model year purchased by Dealer from General Motors, and of the previous model year if purchased by Dealer from General Motors within one hundred twenty days before the effective date of termination, at a price equal to the net prices and charges that were paid to General Motors;

(b) Any signs owned by Dealer of a type recommended in writing by General Motors and bearing any Marks at a price agreed upon by General Motors and Dealer. If General Motors and Dealer cannot agree on

a price, they will select a third party who will set the price;

(c) Any essential tools recommended by General Motors and designed specifically for service of Motor Vehicles that General Motors offered for sale during the three years preceding termination at prices established in accordance with the applicable pricing formula in the Service Policies and Procedures Manual; and

(d) Unused and undamaged Parts and Accessories that (i) are still in the original, re-salable merchandising packages and in unbroken lots (in the case of sheet metal, a comparable substitute for the original package may be used); (ii) are listed for sale in the then current Dealer Parts and Accessories Price Schedules (except those items marked **NOT ELIGIBLE** Parts and Accessories); and (iii) were purchased by Dealer either directly from General Motors or from an outgoing dealer as a part of Dealer's initial Parts and Accessories inventory. Prices will be those dealer prices in effect at the time General Motors receives the Parts and Accessories, less any applicable allowances whether or not any such allowances were made to Dealer when Dealer purchased the Parts and Accessories. In addition, an allowance of five percent of dealer price for packing costs and

reimbursement for transportation charges to the destination specified by General Motors will be credited to Dealer's account.

15.2.2 Dealer's Responsibilities

General Motors obligation to purchase Eligible Items is subject to Dealer fulfilling its responsibility under this subsection.

Within fifteen days following the effective date of termination or expiration of this Agreement, Dealer will furnish General Motors with a list of vehicle identification numbers and such other information as General Motors may request pertaining to eligible Motor Vehicles. Dealer will deliver the eligible Motor Vehicles to a destination determined by General Motors that will be in a reasonable proximity to Dealer's Premises.

Within two months following the effective date of termination or expiration of this Agreement, Dealer will mail or deliver to General Motors a complete and separate list of each of the Eligible Items other than Motor Vehicles. Dealer will retain the Eligible Items until receipt of written shipping instructions from General Motors. Within thirty days after receipt of instructions, Dealer will ship the Eligible

Items, transportation charges prepaid, to the destinations specified in the instructions.

Dealer will take action and execute and deliver such instruments as necessary to (a) convey to General Motors good and marketable title to all Eligible Items to be purchased, (b) comply with the requirements of any applicable state law relating to bulk sales or transfer, and (c) satisfy and discharge any liens or encumbrances on Eligible Items prior to their delivery to General Motors.

15.2.3

Subject to Article 17.10, General Motors will pay for the Eligible Items as soon as practicable following their delivery to the specified destinations. Payment may be made directly to anyone having a security or ownership interest in the Eligible Items.

If General Motors has not paid Dealer for the Eligible Items within two months after delivery, and if Dealer has fulfilled its termination obligations under this Agreement, General Motors will, at Dealer's written request, estimate the purchase price of the unpaid Eligible Items and all other amounts owed Dealer by General Motors. After deducting the amounts estimated to be owing General Motors and its subsidiaries.

by Dealer, General Motors will pay Dealer 75 percent of the net amount owed Dealer and will pay the balance, if any, as soon as practicable thereafter.

15.2.4 Replacement Dealer

If Dealer intends to terminate its Dealer Agreement and General Motors has approved a replacement dealer, the Dealer or replacement dealer may submit electronically to General Motors prior to the closing a listing of the Dealer's parts inventory, and General Motors will advise the Dealer or replacement dealer within thirty days what parts General Motors is willing to repurchase under General Motors policies and procedures then in effect upon Dealer's termination of its Dealer Agreement. General Motors will assist the replacement dealer in establishing an appropriate Motor Vehicle inventory as provided in Article 6.4.1.

15.3 Assistance on Premises

15.3.1 General Motors Obligation

Subject to Article 17.10, General Motors agrees to give Dealer assistance in disposing of the Premises as provided below if (i) this Agreement expires for any reason or is terminated by General Motors under Articles 13.2 or 14.4 and (ii) Dealer is not

offered a new Dealer Agreement. Such assistance shall be given only on Premises that are described in the Location and Premises Addendum and only if:

(a) they are used solely for Dealership Operations (or similar dealership operations under other agreements with General Motors which will be terminated simultaneously with this Agreement); and

(b) they are not substantially in excess of space requirements at the time of termination or, if they are substantially in excess, they became excessive because of a reduction in the requirements applicable to Dealer's facilities.

Any Dealer request for such assistance must be in writing and received by General Motors within thirty days of the expiration or termination of this Agreement.

Premises that consist of more than one parcel of property or more than one building, each of which is separately usable, distinct and apart from the whole or any other part with appropriate ingress or egress, shall be considered separately under this Article 15.3.

15.3.2 Owned Premises

General Motors will provide assistance on owned Premises by either (a) locating a purchaser who will offer to purchase the Premises at a reasonable price, or (b) locating a lessee who will offer to lease the Premises. If General Motors does not locate a purchaser or lessee within a reasonable time, General Motors will itself either purchase or, at its option, lease the Premises for a reasonable term at a reasonable rent. If the cause of termination or expiration is a death or the incapacity of the Dealer Operator, General Motors may instead pay Dealer a sum equal to a reasonable rent for a period of twelve months immediately following the effective date of termination or expiration of this Agreement.

15.3.3 Leased Premises

General Motors will provide assistance on leased Premises by either:

- (a) locating a tenant(s), satisfactory to lessor, who will sublet for the balance of the lease or assume it; or
- (b) arranging with the lessor for the cancellation of the lease without penalty to Dealer; or
- (c) reimbursing Dealer for the lesser of the rent specified in the lease or settlement agreement or a reasonable rent for a period

equal to the lesser of twelve months from the effective date or termination or expiration of the balance of the lease term.

Upon request, Dealer will use its best efforts to effect a settlement of the lease with the lessor subject to General Motors prior approval of the terms. General Motors is not obligated to reimburse Dealer for rent for any month during which the Premises are occupied by Dealer or anyone else, after the first month following the effective date of termination or expiration.

15.3.4 Rent and Price

General Motors and Dealer will fix the amount of a reasonable rent and a reasonable price for the Premises by agreement at the time Dealer requests assistance. The factors to be considered in fixing those amounts are:

- (a) the adequacy and desirability of the Premises for a dealership operation; and
 - (b) the fair market value of the Premises.
- If General Motors and Dealer cannot agree, the fair market value will be determined by the median appraisal of three qualified real estate appraisers, of whom Dealer and General Motors will each select one and the two selected will select the third. The cost of

appraisals will be shared equally by Dealer and General Motors.

15.3.5 Limitations on Obligation to Provide Assistance

General Motors will not be obligated to provide assistance on Premises if Dealer:

(a) fails to accept a bona fide offer from a prospective purchaser, sub-lessee or assignee;

(b) refuses to execute a settlement agreement with the lessor if the agreement would be without cost to Dealer;

(c) refuses to use its best efforts to effect a settlement when requested by General Motors; or

(d) refuses to permit General Motors to examine Dealer's books and records if

necessary to verify claims of Dealer under this Article.

Any amount payable by General Motors as rental reimbursement or reasonable rent shall be proportionately reduced if the Premises are leased or sold to another party during the period for which such amount is payable. Payment of rental reimbursement or reasonable rent is waived by Dealer if it does not file its claim therefor within two months after the expiration of the period covered by the payment. Upon request, Dealer will support its claim with satisfactory evidence of its accuracy and reasonableness.

ARTICLE 16. DISPUTE RESOLUTION PROCESS

Dealer and General Motors recognize that it is desirable to resolve disputes in a fair, prompt, and cost efficient manner. Therefore, except for the matters specified below, and except as otherwise specifically agreed upon in writing between Dealer and General Motors, Dealer and General Motors agree to mediate any dispute arising under this Agreement or applicable law using the General Motors Dispute Resolution Process

then in effect, a copy of which has been provided to Dealer, before using other remedies available under federal, state or local law. The matters ineligible for mediation include: (i) terminations due to insolvency, a dealer's failure to conduct customary sales and service operations during customary business hours for at least seven consecutive business days, license revocation, fraud or felony convictions, (ii)

disputes requiring participation by a third party who does not agree to participate in the mediation, and (iii) disputes of General Motors Policies or Procedures as applied to dealers generally. Dealer or General Motors may file simultaneously with a court or administrative agency if necessary to retain its rights under applicable law. Mediation under the General Motors Dispute Resolution Process is mandatory, but mediation is not binding on the parties unless the parties agree upon a solution. If a dispute is not resolved through mediation, Dealer and General Motors may agree to

resolve this dispute through voluntary binding arbitration available under the General Motors Dispute Resolution Process.

The General Motors Dispute Resolution Process is set forth in a separate booklet, and this Process will be administered by a Joint Mediation/Arbitration Committee composed of dealers and General Motors representatives. General Motors may amend the Process from time to time, but will consult with the Joint Mediation/Arbitration Committee before making any changes.

ARTICLE 17. GENERAL PROVISIONS

17.1 No Agent or Legal Representative Status

This Agreement does not make either party the agent or legal representative of the other for any purpose, nor does it grant either party authority to assume or create any obligation on behalf of or in the name of the others. No fiduciary obligations are created by this Agreement.

17.2 Responsibility for Operations

Except as provided in this Agreement, Dealer is solely responsible for all expenditures, liabilities and obligations

incurred or assumed by Dealer for the establishment and conduct of its operations.

17.3 Taxes

Dealer is responsible for all local, state, federal, or other applicable taxes and tax returns related to its dealership business and will hold General Motors harmless from any related claims or demands made by any taxing authority.

17.4 Indemnification by General Motors

General Motors will assume the defense of Dealer and indemnify Dealer against any

judgment for monetary damages or rescission of contract, less any offset recovered by Dealer, in any lawsuit naming Dealer as a defendant relating to any Product that has not been altered when the lawsuit concerns:

17.4.1 Breach of the General Motors warranty related to the Product, bodily injury or property damage claimed to have been caused solely by a defect in the design, manufacture, or assembly of a Product by General Motors (other than a defect which should have been detected by Dealer in a reasonable inspection of the Product);

17.4.2 Failure of the Product to conform to the description set forth in advertisements or product brochures distributed by General Motors because of changes in standard equipment or material component parts unless Dealer received notice of the changes prior to retail delivery of the affected Product by Dealer; or

17.4.3 Any substantial damage to a Product purchased by Dealer from General Motors which has been repaired by General Motors unless Dealer has been notified of the repair prior to retail delivery of the affected Product.

If General Motors reasonably concludes that allegations other than those set forth in 17.4.1, 17.4.2, or 17.4.3 above are being pursued in the lawsuit, General Motors shall have the right to decline to accept the defense or indemnify dealer or, after accepting the defense, to transfer the defense back to Dealer and withdraw its agreement to indemnify Dealer.

Procedures for requesting indemnification, administrative details, and limitations are contained in the Service Policies and Procedures Manual under "Indemnification." The obligations assumed by General Motors are limited to those specifically described in this Article and in the Service Policies and Procedures Manual and are conditioned upon compliance by Dealer with the procedures described in the Manual. This Article shall not affect any right either party may have to seek indemnification or contribution under any other contract or by law and such rights are hereby expressly preserved.

17.5 Trademarks and Service Marks

General Motors, its subsidiaries or other affiliated companies are the exclusive owners or licensees of the various trademarks, service marks, names and

designs (Marks) used in connection with Products and services.

Dealer is granted the non-exclusive right to display Marks in the form and manner approved by General Motors in the conduct of its dealership business. Dealer agrees to permit any designated representative of General Motors upon the Premises during regular business hours to inspect Products or services in connection with Marks.

Dealer will not apply to register or maintain a registration for any Marks either alone or as part of another mark, and will not take any action which may adversely affect the validity of the Marks or the goodwill associated with them. Dealer will not apply to register or maintain a registration for any name which includes a Mark as an Internet domain name without General Motors prior written approval. Upon written notice by General Motors of any such applications or registrations by Dealer, Dealer will, at the election of General Motors, expressly abandon or assign the name to General Motors no later than 30 days from receipt of such notice.

Dealer agrees to purchase and sell goods bearing Marks only from parties authorized or licensed by General Motors.

Marks may be used as part of the Dealer's name with General Motors written approval. Dealer agrees to change or discontinue the use of any Marks upon General Motors request.

Dealer agrees that no company owned by or affiliated with Dealer or any of its owners may use any Mark to identify a business without General Motors written permission.

Upon termination of this Agreement, Dealer agrees to immediately discontinue, at its expense, all use of Marks, including but not limited to removal of all Marks from any and all Dealer owned signs. Thereafter, Dealer will not use, either directly or indirectly, any Marks or any other confusingly similar marks in a manner that General Motors determines is likely to cause confusion or mistake or deceive the public.

Dealer will reimburse General Motors for all legal fees and other expenses incurred in connection with action to require Dealer to comply with this Article 17.5.

17.6 Notices

Any notice required to be given by either party to the other in connection with this Agreement will be in writing and delivered personally or by first class or express mail or by facsimile, or electronically as provided in this Agreement. Notices to Dealer will be directed to Dealer or its representatives at Dealer's principal place of business and, except for indemnification requests made pursuant to Article 17.4, notices by Dealer will be directed to the appropriate Regional General Manager of General Motors.

17.7 No Implied Waivers

The delay or failure of either party to require performance by the other party or the waiver by either party of a breach of any provision of this Agreement will not affect the right to subsequently require such performance.

17.8 Assignment of Rights or Delegation of Duties

Dealer has not paid any fee for this Agreement. Neither this Agreement nor any right granted by this Agreement is a property right.

Except as provided in Article 12, neither this Agreement nor the rights or obligations of Dealer may be sold, assigned, delegated,

encumbered or otherwise transferred by Dealer.

General Motors may assign this Agreement and any rights, or delegate any obligations, under this Agreement to any affiliated or successor company, and will provide Dealer written notice of such assignment or delegation. Such assignment or delegation shall not relieve General Motors of liability for the performance of its obligations under this Agreement.

17.9 No Third Party Benefit Intended

This Agreement is not enforceable by any third parties and is not intended to convey any rights or benefits to anyone who is not a party to this Agreement.

17.10 Accounts Payable

All monies or accounts due Dealer are net of Dealer's indebtedness to General Motors and its subsidiaries. In addition, General Motors may deduct any amounts due or to become due from Dealer to General Motors or its subsidiaries, or any amounts held by General Motors, from any sums or accounts due or to become due from General Motors, or its subsidiaries.

17.11 Sole Agreement of Parties

Except as provided in this Agreement or in any other unexpired written agreements executed by both parties, General Motors has made no promises to Dealer, Dealer Operator, or dealer owner and there are no other agreements or understandings, either oral or written, between the parties affecting this Agreement or relating to any of the subject matters covered by this Agreement.

Except as otherwise provided herein, this Agreement cancels and supersedes all previous agreements between the parties that relate to any matters covered herein, except as to any monies which may be owing between the parties and any other unexpired written agreements executed by both parties.

No agreement between General Motors and Dealer which relates to matters covered herein, including the grant or amendment of any Dealer Agreement and no change in, addition to (except the filling in of blank lines) or modification of this Agreement, will be binding unless approved in a written agreement executed by an authorized person. Approvals required or provided for under this Agreement must be in writing by an authorized person. No General Motors

representative is authorized to orally grant, waive or revise any terms of this Agreement or any rights conferred under this Agreement. General Motors and Dealer expressly waive application of any local, state or federal law, statute, or judicial decision allowing oral grant, modifications, amendments, or additions of a Dealer Agreement notwithstanding an express provision requiring a writing signed by the Parties.

17.12 Applicable Law

This agreement is governed by the laws of the State of Michigan. The provisions of this Agreement will be deemed severable, and if any provision of this Agreement is held illegal, void, or invalid under applicable law effective in the resident jurisdiction of Dealer as of the effective date of this agreement, such provision shall be interpreted as amended to the extent reasonably necessary to make the provision legal, valid, and binding. If any provision of this Agreement is held illegal, void, or invalid in its entirety, the remaining provisions of this Agreement will not be affected but will remain binding in accordance with their terms.

17.13 Superseding Dealer Agreements

If General Motors offers a superseding form of dealer agreement or an amendment to the dealer agreement to General Motors dealers generally at any time prior to expiration of this Agreement, General Motors may terminate this Agreement by ninety days prior written notice to Dealer, provided General Motors offers Dealer a dealer agreement in the superseding form for a term of not less than the un-expired term of this Agreement.

Unless otherwise agreed in writing, the rights and obligations of Dealer that may otherwise become applicable upon termination or expiration of the term of this Agreement shall not be applicable if General Motors and Dealer execute a superseding dealer agreement, and the matured rights and obligations of the parties hereunder shall continue under the new agreement.

Dealer's performance under any prior agreement may be considered in an evaluation of Dealer's performance under this or any succeeding agreement.

GLOSSARY

Area of Primary Responsibility — The geographic area designated by General Motors from time to time in a Notice of Area of Primary Responsibility.

Dealer — The corporation, partnership, proprietorship, limited liability corporation, or limited liability partnership that signs the Dealer Agreement with General Motors.

Dealer Agreement — The Dealer Sales and Service Agreement, including the Agreement proper that is executed, the Standard Provisions, and all of the related Addenda.

Dealership Operations — All operations contemplated by the Dealer Agreement. These operations include the sale and service of Products and any other activities undertaken by Dealer related to Products, including rental and leasing operations, used vehicle sales and body shop operations, finance and insurance operations, any electronic commerce, and any service of other General Motors motor vehicles authorized by General Motors, whether conducted directly or indirectly by Dealer.

General Motors — General Motors LLC

Incentives Manual — The Manual issued periodically which details certain policies and procedures related to dealer or customer incentives or promotions.

Line-Make — A brand of General Motors Motor Vehicles, or a brand used to badge motor vehicles for another manufacturer. For this Dealer Agreement, the General Motors brands are Chevrolet Passenger Vehicles and Light Duty Trucks, Buick Motor Vehicles, Cadillac Motor Vehicles, and GMC Light Duty Trucks.

Products — Motor Vehicles, Parts and Accessories.

Motor Vehicles — All current model types or series of new motor vehicles specified in any Motor Vehicle Addendum incorporated into this Agreement and all past General Motors motor vehicles marketed through Motor Vehicle Dealers.

Service Policies and Procedures Manual — The Manual issued periodically which details certain administrative and performance requirements for Dealer service under the Dealer Agreement.

Special Vehicles — Motor Vehicles that have limited marketability because they differ from standard specifications or incorporate special equipment.

Exhibit B

SETTLEMENT AND DEFERRED TERMINATION

AGREEMENT AND RELEASE

This Settlement and Deferred Termination Agreement and Release ("Agreement") is entered into as of November 8, 2010 by and between General Motors LLC ("GM"), on the one hand, and West Covina Motors, Inc. dba Clippinger Chevrolet ("WCM") and WCM's owner Ziad Alhassen ("Owner"), on the other hand, collectively the "Parties."

1.0 RECITALS

WHEREAS, WCM conducts Chevrolet Dealership Operations in West Covina, California pursuant to a General Motors Dealer Sales and Service Agreement naming Owner as Dealer-Operator ("Dealer Agreement");

WHEREAS, GM and WCM are parties to a protest filed by WCM (the "Protest") with the California New Motor Vehicle Board ("Board") pursuant to section 3060 of the California Vehicle Code in response to GM's notice of intent to terminate the Dealer Agreement based on WCM's lack of a sufficient line of new vehicle inventory ("floor plan") financing ("Flooring") as required by the Dealer Agreement;

WHEREAS, WCM recently obtained a \$3 million Flooring commitment from GMAC;

WHEREAS, until receiving the GMAC commitment, WCM had been without Flooring since late 2008 with the exception of a period of approximately 3 months during the summer of 2009, and GM wishes to ensure that WCM continues to maintain adequate Flooring without additional interruption; and

WHEREAS, the Parties have agreed to resolve the issues presented by the Protest, the termination notice and all other existing claims, demands, causes of actions and disputes between them, if any, pursuant to the terms of this Agreement and a Stipulated Decision of the Board, and without further proceedings, hearings or adjudication of any issues of fact or law, and without the Parties' admission or acknowledgment of any responsibility, fault or liability whatsoever;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

CONFIDENTIAL

<input checked="" type="checkbox"/>	NEW MOTOR VEHICLE BOARD	<input checked="" type="checkbox"/>
ID		EVID
Exhibit	2 b	
File No.	PR-2213-10	

2.0 SETTLEMENT TERMS

2.1 Upon execution and delivery of this Agreement, WCM and GM shall promptly request that the Board enter its Confidential Stipulated Decision embodying the terms of this Agreement in the form attached hereto as Exhibit A, including ultimate dismissal of the Protest and withdrawal of GM's notice of termination of the Dealer Agreement. Further, GM shall promptly offer WCM a new Dealer Agreement naming Owner as Dealer-Operator in the same form as offered to other Chevrolet dealerships in California to be effective immediately upon execution by the Parties and continuing in effect until October 31, 2015.

2.2 WCM agrees that until at least November 30, 2012 it will maintain a line of floor plan credit of at least \$3 million with GMAC (or other financial source acceptable to GM pursuant to its normal business policies) for the sole purpose of acquiring, financing and carrying in dealer stock new Chevrolet vehicle inventory and that said Flooring shall not be used for new vehicle inventory of any other line-make or for used vehicle inventory or for any other purpose whatsoever ("Dedicated Chevrolet Flooring"). Further, WCM shall direct GMAC (or any subsequent floor plan lender approved by GM) to notify GM immediately if WCM loses its Dedicated Chevrolet Flooring or its amount declines below \$3 million. Following November 30, 2012, WCM will still be required to maintain a sufficient Flooring line pursuant to the Dealer Agreement but the provisions of this Agreement shall not apply if WCM loses its Dedicated Chevrolet Flooring or its total amount declines below \$ 3 million after November 30, 2012.

2.3 If at any time before November 30, 2012, WCM loses its Dedicated Chevrolet Flooring or its total amount decreases below \$3 million, WCM shall have ninety days to either (a) provide written evidence of a commitment for replacement Dedicated Chevrolet Flooring in the amount of at least \$ 3 million from GMAC or another GM-approved financial institution or (b) present GM with a fully-executed "buy-sell" agreement and complete proposal for the transfer of the stock or assets of WCM to a person or entity not affiliated with WCM or Owner. If WCM does not satisfy either of these conditions (a) or (b) within ninety days of the date it loses its Dedicated Chevrolet Flooring or its total amount decreases below \$3 million, WCM agrees that its Dealer Agreement will terminate voluntarily effective 30 days later (*i.e.*, 120 days after the loss of the Dedicated Chevrolet Flooring or its decrease below \$ 3 million) pursuant to Article 14.2 of the Dealer Agreement; upon such termination, WCM shall be entitled to termination assistance pursuant to Article 15 of the Dealer Agreement with the exception of Article 15.3. WCM and Owners agree not to protest said voluntary termination pursuant to section 3060 of the Vehicle Code or to challenge said termination in any judicial or administrative forum and hereby agree that they will have no legal right to do so. For purposes of this section and section 2.5 below, a person or entity shall be deemed

affiliated with WCM or Owner if it meets the definition of Affiliate set forth in paragraph 3.5 below.

2.4 If prior to the expiration of 90 days after WCM loses the Dedicated Chevrolet Flooring or it decreases below \$ 3 million, WCM obtains a new Dedicated Chevrolet Flooring commitment in at least that amount from a financing source acceptable to GM under its normal business policies, it shall continue to be subject to the condition that it maintain that Flooring commitment for the remainder of the period to and including November 30, 2012. If WCM again loses its Dedicated Chevrolet Flooring or it again decreases below \$3 million, the provisions of paragraph 2.3 above, this paragraph and paragraphs 2.5 and 2.6 below will again apply.

2.5 If prior to the expiration of 90 days after WCM loses the Dedicated Chevrolet Flooring or its amount declines below \$3 million, WCM submits a fully-executed "buy-sell" agreement and complete proposal for the transfer of the stock or assets of the dealership to a person or entity not affiliated with WCM or Owner, GM will consider WCM's proposal pursuant to its normal business policies and respond with either an approval, a conditional approval or a rejection of the proposal within sixty days in accordance with its normal business practices. If GM approves or conditionally approves the proposal, and the "buy-sell" transaction closes within thirty days of the date that WCM is notified of such approval, this Agreement shall be of no further force or effect. If GM rejects the proposal, WCM agrees that its Dealer Agreement will terminate voluntarily pursuant to Article 14.2 of the Dealer Agreement and that said termination will be effective 150 days after the date it loses its Dedicated Chevrolet Flooring or it decreases below \$3 million; upon such termination, WCM shall be entitled to termination assistance pursuant to Article 15 of the Dealer Agreement with the exception of Article 15.3. WCM agrees not to protest said voluntary termination pursuant to section 3060 of the Vehicle Code, but WCM and Owner reserve the option of instituting litigation seeking damages but not injunctive relief concerning GM's decision pursuant to Vehicle Code §§ 11713.3(d) or (e) or any other applicable law.

2.6 If a GM-approved "buy-sell" transaction does not close within thirty days of GM's notifying WCM of the approval, then WCM agrees that its Dealer Agreement will terminate voluntarily pursuant to Article 14.2 of the Dealer Agreement and that said termination will be effective 150 days after the date it loses its Dedicated Chevrolet Flooring or it decreases below \$3 million; upon such termination, WCM shall be entitled to termination assistance pursuant to Article 15 of the Dealer Agreement with the exception of Article 15.3. WCM agrees not to protest said voluntary termination pursuant to section 3060 of the Vehicle Code or file any other litigation of any nature whatsoever concerning termination of the Dealer Agreement.

2.7 This Agreement governs only GM's and WCM's rights based on WCM's obligation under the Dealer Agreement to maintain a sufficient line of Dedicated Chevrolet Flooring. If GM decides to terminate WCM's Dealer Agreement on any other basis, the provisions of Vehicle Code § 3060 *et seq.* shall govern notice requirements and all ensuing proceedings in any protest WCM may file which is not prohibited by the terms of this Agreement.

2.8 Should the Board for any reason decline to issue the Confidential Stipulated Decision of the Board, the Parties agree that their agreements in paragraphs 2.1 through 2.7 and the remainder of this Agreement shall nonetheless be fully enforceable and that within ten days of notification of the Board's decision not to issue the Confidential Stipulated Decision of the Board WCM will deliver to GM a fully executed Request for Dismissal of the Protest with prejudice and GM shall deliver to WCM a written notice withdrawing its notice of termination subject to the terms and conditions of this Agreement. In this connection, WCM and Owners expressly agree that violation by WCM or owners of this paragraph or paragraphs 2.1 through 2.7 may result in irreparable harm to GM and that, if the Board does not issue the Confidential Stipulated Decision, GM may seek enforcement of those provisions, including preliminary or provisional equitable relief, in any court of competent jurisdiction.

3.0 RELEASE AND COVENANT NOT TO SUE

3.1 WCM, for itself, its Owners, Affiliates and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Dealer Parties"), hereby releases, settles, cancels, discharges, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, which WCM or anyone claiming through or under WCM may now or hereafter have against GM, its Affiliates or any of their members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors or assigns, arising out of or relating to the Dealer Agreement and any predecessor agreement(s) thereto, provided, however, that the foregoing release shall not extend to (i) reimbursement to WCM of unpaid warranty claims, (ii) the payment to WCM of any incentives currently owing to WCM, any amounts currently owing to WCM in its Open Account, or any amounts due or to become due to WCM in connection with its return of Eligible Items pursuant to Article 15.2 of the Dealer Agreements, or (iii) any Claims of WCM pursuant to Article 17.4 of the Dealer Agreements, all of which amounts described in (i) - (iii) above of this sentence shall be subject to setoff by GM of any amounts due or to become due to GM or any of its Affiliates as a result of dealership operations prior to termination or pursuant to the terms of this Agreement.

3.2 The Dealer Parties hereby acknowledge, understand and agree that, except as provided in paragraph 3.1 above, the foregoing release extends to, and is expressly intended by them to extend to, all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected. In this regard, each of the Dealer Parties and GM hereby expressly waives the benefit, if any, to it of Section 1542 of the California Civil Code, which reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTION OF THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

The Dealer Parties expressly assume the risk that after the execution and delivery of this Agreement they may discover facts which are different from those facts which they believed to be in existence on the date hereof. Any such discovery shall not affect the validity or effectiveness of the release contained herein.

3.3 WCM, Owner and the other Dealer Parties agree not to, at any time, sue, protest, institute or assist in instituting any proceeding in any court or administrative proceeding, or otherwise assert any claim that is covered by the release provision in paragraphs 3.1 and 3.2 above. Notwithstanding anything to the contrary, the Dealer Parties acknowledge and agree that any breach of this covenant not to sue will cause irreparable harm to GM and therefore agree that GM shall be entitled to available equitable remedies, including, without limitation, injunctive relief, upon the breach of such covenant not to sue by any of the Dealer Parties.

3.4 WCM, Owner and the other Dealer Parties shall indemnify, defend and hold GM, its Affiliates and their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors and assigns (the “GM Indemnified Parties”) harmless, from and against any and all claims, demands, fines, penalties, suits, causes of action, liabilities, losses, damages, costs of settlement, and expenses (including, without limitation, reasonable attorneys’ fees and costs) which may be imposed upon or incurred by the GM Indemnified Parties, or any of them, arising from, relating to, or caused by any Dealer Party’s breach of this Agreement or WCM’s execution or delivery of or performance under this Agreement.

3.5 “Affiliate” means any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. “Person” means an individual, partnership, limited liability company, association, corporation or

other entity. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

4.0 OTHER PROVISIONS

4.1 Due Authority. Owner, WCM and the individual(s) executing this Agreement on behalf of WCM hereby jointly and severally represent and warrant to GM that this Agreement has been duly authorized by WCM and that all necessary corporate action has been taken and all necessary corporate approvals have been obtained in connection with the execution and delivery of and performance under this Agreement.

4.2 Confidentiality. Each of the Parties agrees that without the prior written consent of the other they will not, except as required by law, disclose to any person (other than its agents or employees having a need to know such information in the conduct of their duties, which agents or employees shall be bound by a similar undertaking of confidentiality) the terms or conditions of this Agreement or any facts relating hereto or to the underlying transactions.

4.3 Informed and Voluntary Acts. WCM and Owner have reviewed this Agreement with their legal, tax, or other advisors, and are fully aware of all of their rights and alternatives. In executing this Agreement, WCM and Owner acknowledge that their decisions and actions are entirely voluntary and free from any mental, physical, or economic duress.

4.4 Binding Effect. This Agreement shall be binding upon any replacement or successor dealer as referred to in the Dealer Agreement and any successors or assigns.

4.5 Effectiveness. This Agreement shall be deemed executed on the date on which it has been fully and properly executed by both Parties and, once executed, shall be deemed to be effective as of the date first written above.

4.6 Dispute Resolution. Subject to the following provisions of this section, and only in the event that the Board issues the Confidential Stipulated Decision, GM and WCM agree to submit to the Board for final and binding determination, upon either party's written notice, any and all claims, disputes, and controversies between them arising under or relating to this Agreement and its negotiation, execution, administration, modification, extension or enforcement (collectively, "Claims"). Such determination shall be made by an Administrative Law Judge appointed by the Board in accordance with its customary procedures as they may exist from time to time. Under no circumstances shall any Claim be combined with, joined with, or adjudicated in, a

common proceeding with Claims involving persons in addition to the Parties. GM and WCM agree that the dispute resolution process outlined in this section shall be the exclusive mechanism for resolving any Claims except for Claims pursuant to sections 2.8 and 3.3 hereof which may be brought in any court of competent jurisdiction. Further, any claim by WCM or Owner arising out of a rejection or conditional approval by GM of a "buy-sell" proposal under sections 2.3, 2.5 or 2.6 may only be brought in a court of competent jurisdiction.

4.7 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of California.

4.8 Complete Agreement of the Parties. This Agreement and the Stipulated Decision of the Protest by the Board together contain the entire agreement and understanding of the Parties relating to the subject matter of this Agreement and supersede all prior statements, representations and agreements relating to the subject matter of this Agreement. The Parties represent and agree that, in entering into this Agreement, they have not relied upon any oral or written agreements, representations, statements, or promises, express or implied, not specifically set forth in this Agreement. No waiver, modification, amendment or addition to this Agreement is effective unless evidenced by a written instrument signed by an authorized representative of the Parties, and each party acknowledges that no individual will be authorized to orally waive, modify, amend or expand this Agreement. The Parties expressly waive application of any law, statute, or judicial decision allowing oral modifications, amendments, or additions to this Agreement notwithstanding this express provision requiring a writing signed by the Parties.

4.9 Notices. Any notice or other communication to be given to any of the Parties hereto shall be delivered personally, or by United States registered or certified mail, with signed receipt requested to the persons listed below at the addresses indicated. Any period specified in this Agreement shall not commence until the first day after personal delivery or the fifth business day after deposition in the United States mail, as the case may be.

Notice to GM shall be sent to:

L. Joseph Lines, III
General Motors LLC
Mail Code 482-026-601
400 Renaissance Center
P.O. Box 400
Detroit, Michigan 48265-4000

With a copy by U.S Mail or facsimile to:

Gregory R. Oxford, Esq.
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
(310) 316-1330 facsimile

Notice to WCM shall be sent to:

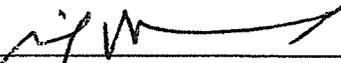
West Covina Motors, Inc.
Attention: Ziad Alhassen
2000 East Garvey Avenue South
West Covina, California 91791

With a copy by U.S Mail or facsimile to:

Michael J. Flanagan
Law Offices of Michael J. Flanagan
2277 Fair Oaks Boulevard, Suite 450
Sacramento, California 95825
(916) 646-9138 facsimile

IN WITNESS WHEREOF, WCM and GM have executed this Agreement
as of the day and year first above written.

WEST COVINA MOTORS, INC.

By:  _____

Name: ZIAD ALHASSEN

Title: PRESIDENT

Ziad Alhassen, Individually

GENERAL MOTORS LLC, a Delaware limited
liability company

By: _____

Name: _____

With a copy by U.S Mail or facsimile to:

Gregory R. Oxford, Esq.
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
(310) 316-1330 facsimile

Notice to WCM shall be sent to:

West Covina Motors, Inc.
Attention: Ziad Alhassen
2000 East Garvey Avenue South
West Covina, California 91791

With a copy by U.S Mail or facsimile to:

Michael J. Flanagan
Law Offices of Michael J. Flanagan
2277 Fair Oaks Boulevard, Suite 450
Sacramento, California 95825
(916) 646-9138 facsimile

IN WITNESS WHEREOF, WCM and GM have executed this Agreement
as of the day and year first above written.

WEST COVINA MOTORS, INC.

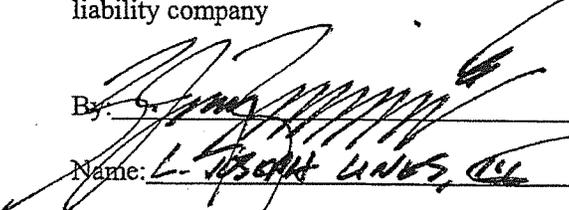
By: _____

Name: _____

Title: _____

Ziad Alhassen, Individually

GENERAL MOTORS LLC, a Delaware limited
liability company

By:  _____

Name: L. ISAAC LINDS, LLC

Title: COUS & L, GM LEGAL STAFF

Exhibit C

1 GREGORY R. OXFORD (S.B. #62333)
2 ISAACS CLOUSE CROSE & OXFORD LLP
3 21515 Hawthorne Boulevard, Suite 950
4 Torrance, California 90503
5 Telephone: (310) 316-1990
6 Facsimile: (310) 316-1330

7 Attorneys for Respondent
8 General Motors LLC

9 Of Counsel:
10 L. JOSEPH LINES, III
11 GENERAL MOTORS LLC
12 Mail Code 482-026-601
13 400 Renaissance Center
14 P.O. Box 400
15 Detroit, Michigan 48265-4000
16 Telephone: (313) 665-7386
17 Facsimile: (313) 665-7376

X	NEW MOTOR VEHICLE BOARD	X
ID		EVID
Exhibit	2	
File No.	PR-2213-10	

18 STATE OF CALIFORNIA
19 NEW MOTOR VEHICLE BOARD

20 WEST COVINA MOTORS, INC., dba
21 CLIPPINGER CHEVROLET,

22 Protestant,

23 v.

24 GENERAL MOTORS LLC

25 Respondent.

26 Protest No. PR-2213-10

27 **[PROPOSED]**
28 **CONFIDENTIAL STIPULATED**
DECISION OF THE BOARD
RESOLVING PROTEST

29 Pursuant to California Vehicle Code §§ 3050.7, 3060, 3066 and 3067, protestant
30 West Covina Motors, Inc., dba Clippinger Chevrolet ("WCM") and respondent General
31 Motors LLC ("GM" or "New GM") hereby enter into the following agreement (the
32 "Stipulated Decision") for resolution of the above-captioned protest. This [Proposed]
33 Stipulated Decision is dated November 8, 2010.

34 **THE PARTIES**

35 1. WCM is a new motor vehicle dealer licensed by the California Department
36 of Motor Vehicles and operates a Chevrolet dealership in West Covina, California under a

37 *Proposed Confidential Stipulated Decision of the Board*

1 General Motors Dealer Sales and Service Agreement (“Dealer Agreement”) initially
2 entered into with General Motors Corporation (“Old GM”) and later assigned to
3 respondent New GM. WCM is represented in this matter by Michael J. Flanagan and
4 Gavin M. Hughes of the Law Offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard,
5 Suite 450, Sacramento, California 95825, telephone (916) 646-9100.

6 2. Respondent GM is a manufacturer of new motor vehicles licensed by the
7 California Department of Motor Vehicles. Its mailing address is General Motors Dealer
8 Contractual Group, Mail Code 482-A07-C66, 100 Renaissance Center, Detroit, Michigan
9 48265-1000. GM is represented in this matter by Gregory R. Oxford of Isaacs Clouse
10 Crose & Oxford LLP, 21515 Hawthorne Boulevard, Suite 950, Torrance, California
11 90503, telephone (310) 316-1990.

12 BACKGROUND

13 3. Paragraph 10.2 of the GM Dealer Agreement requires the Dealer to maintain
14 wholesale floorplan financing (“Flooring”) in an amount sufficient to meet its new vehicle
15 sales obligations. In late 2008, WCM lost its Flooring. In May 2009, however, WCM
16 obtained Flooring from GMAC, but GMAC suspended WCM’s Flooring on September
17 15, 2009 and WCM until the last week of October 2010 had not had any Flooring since
18 that time. As a result, WCM has not been able to purchase from GM, and therefore has
19 not been able to sell or lease to retail customers, sufficient new Chevrolets to meet its new
20 vehicle sales obligations under the Dealer Agreement.

21 4. GM gave notice of its intent to terminate WCM’s Chevrolet Dealer
22 Agreement and WCM filed a protest pursuant to Vehicle Code § 3060. The protest
23 hearing is scheduled to begin on November 15, 2010.

24 5. During the last week of October 2010, WCM delivered to GM’s counsel a
25 Flooring commitment from GMAC. Because of the long period of time in which WCM
26 did not have flooring, and the short period of time during 2009 in which it was able to
27 regain and maintain Flooring, GM is concerned about the possibility that the current
28 GMAC commitment may lapse, resulting in a third potentially lengthy period in which

1 WCM lacks Flooring. To address this and other concerns, WCM and its Dealer-Operator,
2 Ziad Alhassen, have entered into the attached confidential settlement agreement with GM
3 (the "November 8, 2010 Confidential Agreement") which is submitted under seal with
4 original signatures as Exhibit A.

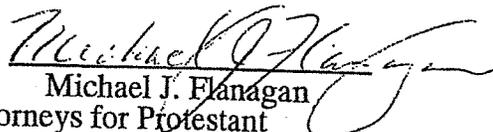
5 **STIPULATION**

6 6. The Parties hereby request the Board issue an order approving the
7 November 8, 2010 Confidential Agreement and resolving the above-captioned Protest as a
8 Stipulated Decision and Order of the Board and that the Board reserve jurisdiction to
9 enforce its Order in the future if requested by any Party hereto in accordance with the
10 terms of the Stipulated Decision and Order.

11 7. The Parties further request that the Board issue an order maintaining the
12 November 8, 2010 Confidential Agreement and its terms and conditions under
13 confidential seal so that they are not disclosed or made available under any circumstances
14 to third parties, members of the public, dealer members of the Board or the motor vehicle
15 industry. This request for confidentiality of compromise and settlement documents serves
16 the public interests in encouraging settlement, in early, efficient resolution of disputes,
17 and in conserving judicial and administrative resources. The request for confidentiality is
18 also consistent with the provisions of Government Code §§ 6254(k) and 6255(a).

19 DATED: November 8, 2010

LAW OFFICES OF MICHAEL J. FLANAGAN

21 By: 
22 Michael J. Flanagan
23 Attorneys for Protestant
24 West Covina Motors, Inc.
25 dba Clippinger Chevrolet

26 DATED: November 8, 2010

ISAACS CLOUSE CROSE & OXFORD LLP

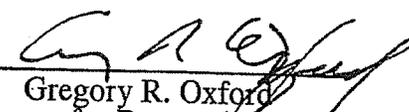
27 By: 
28 Gregory R. Oxford
Attorneys for Respondent
General Motors LLC

Exhibit D

1 NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

10
11 In the Matter of the Protest of
12 WEST COVINA MOTORS, INC., dba
13 CLIPPINGER CHEVROLET,
14 Protestant,
15 v.
16 GENERAL MOTORS, LLC,
17 Respondent.

Protest No. PR-2213-10

**ORDER ADOPTING [PROPOSED]
CONFIDENTIAL STIPULATED
DECISION OF THE BOARD
RESOLVING PROTEST**

18
19 To: Michael J. Flanagan, Esq.
Gavin M. Hughes, Esq.
Attorneys for Protestant
20 LAW OFFICES OF MICHAEL J. FLANAGAN
2277 Fair Oaks Boulevard, Suite 450
21 Sacramento, California 95825

22 Gregory R. Oxford, Esq.
Attorney for Respondent
23 ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
24 Torrance, California 90503

25 L. Joseph Lines, III
Attorney for Respondent
26 GENERAL MOTORS LLC
Mail Code 482-026-601
27 400 Renaissance Center
P.O. Box 400
28 Detroit, Michigan 48265-4000

1 Pursuant to the provisions of Vehicle Code section 3050.7, the [Proposed] Confidential Stipulated
2 Decision of the Board Resolving Protest, relating to the above-entitled matter, is hereby adopted by the
3 New Motor Vehicle Board.

4 SO ORDERED.

5
6 DATED: December 15, 2010

NEW MOTOR VEHICLE BOARD



8 By _____

9 WILLIAM G. BRENNAN
Executive Director

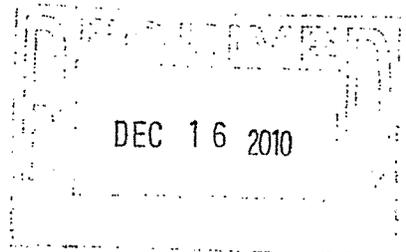
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Exhibit E

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

WEST COVINA MOTORS, INC., dba
CLIPPINGER CHEVROLET,

Protestant,

v.

GENERAL MOTORS, LLC,

Respondent.

Protest No. PR-2213-10

DECISION

At its regularly scheduled meeting of August 22, 2012, the Public Members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 22nd DAY OF AUGUST 2012.



BISMARCK OBANDO
Vice President
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD
1507 – 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888

CERTIFIED MAIL

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8 **STATE OF CALIFORNIA**
9 **NEW MOTOR VEHICLE BOARD**

10
11 In the Matter of the Protest of
12 WEST COVINA MOTORS, INC., dba
13 CLIPPINGER CHEVROLET;

14 Protestant,

15 v.

16 GENERAL MOTORS, LLC,

17 Respondent.

Protest No. PR-2213-10

PROPOSED DECISION

18
19 **PRELIMINARY STATEMENT**

20 1. Vehicle Code section 3050.7(a)¹ provides, in pertinent part, that “[t]he board may adopt
21 stipulated decisions and orders, without a hearing pursuant to Section 3066, to resolve one or more
22 issues raised by a protest or petition filed with the board.”

23 2. On December 15, 2010, pursuant to Section 3050.7(a), the New Motor Vehicle Board
24 (“Board”), at the request of the parties, issued its “Order Adopting [Proposed] Confidential Stipulated
25 Decision of the Board Resolving Protest” (hereinafter referred to as “Board Order”) in *West Covina*
26 *Motors, Inc, dba Clippinger Chevrolet v. General Motors, LLC* (Protest No. PR-2213-10). The Board
27

28 ¹ Unless otherwise indicated, all statutory references are to the California Vehicle Code.

1 Order contemplated a complete resolution of all issues. The "Settlement and Deferred Termination
2 Agreement and Release" (hereafter "Settlement Agreement"; Exhibit A to the "[Proposed] Confidential
3 Stipulated Decision of the Board Resolving Protest") was confidential and filed under Board seal. The
4 Settlement Agreement which was the subject of the Board Order remains confidential and filed under
5 Board seal.

6 3. Subsequently, a dispute arose between the parties concerning compliance with the terms
7 of the Board Order which included the parties' confidential Settlement Agreement. There is no dispute
8 that the Board is empowered to impose and enforce the conditions contained in the Board's Order.²

9 4. In a letter dated December 23, 2011, General Motors, LLC (herein "GM" or
10 "Respondent") through its Zone Manager, Chris Shane, notified Ziad Alhassen, President of West
11 Covina Motors, Inc. dba Clippinger Chevrolet (herein "WCM" or "Protestant") that due to WCM's loss
12 of floor plan financing,³ WCM "must either (1) reestablish the lost Dedicated Floor plan with a financial
13 institution acceptable to GM or (2) submit a fully executed agreement to sell the dealership or its assets
14 to an unaffiliated third party along with a complete 'buy-sell' proposal for GM's review. If neither of
15 these conditions is satisfied at the end of 90 days, *i.e.*, by February 28, 2012, the [Board Order] provides
16 for termination of the Dealer Agreement effective thirty days later, *i.e.*, by March 30, 2012 without any
17 protest or other legal challenge to the termination, as the [Board Order] confirms."

18 5. It is noted that in the December 23, 2011 letter, GM has calculated that WCM has until
19 February 28, 2012, to comply with the conditions contained in the Board's Order or the franchise
20 termination will occur on March 30, 2012. It is also noted that GM calculated the 90-day time period
21 from the time that WCM lost its flooring line (November 30, 2011), and not 90 days from the December
22 23, 2011, date of its letter to Mr. Alhassen. Using the date of GM's letter to Mr. Alhassen as the starting
23 time for the 90 days (as WCM now wishes to do with regard to the first letter to Mr. Flanagan) would
24 have given WCM until March 22, 2012 to meet the needed conditions. It is clear that GM's letter of
25

26 ² Because the Settlement Agreement was deemed confidential and under seal, the Board Order although it includes the
27 Settlement Agreement does not recite its terms. For ease of reference, the terms at issue will be referred to as those contained
28 in the Settlement Agreement which became part of the Board Order now sought to be enforced.

³ On November 30, 2011, Ally, the successor to GMAC, sent a letter to GM that "the wholesale credit lines extended to
[WCM] have been suspended as of this date..." (Joint Exhibit 4) As indicated in paragraph 21, counsel for the parties
stipulated that the flooring line ceased on or about December 1, 2011.

1 December 23, 2011 was a reminder or cautionary letter rather than a “notice” letter that would start the
2 90-day time period running.

3 6. On March 29, 2012, a letter from Norman J. Hoffman, counsel on behalf of WCM, was
4 sent to L. Joseph Lines, III, counsel for GM. It provided an account of the activities and efforts to
5 complete a buy-sell with Carlos Hidalgo.

6 7. Additionally, the letter of March 29, 2012, from Mr. Hoffman referenced section 4.9 of
7 the Settlement Agreement which pertains to Notices. The letter from counsel for WCM stated that GM
8 had not sent a copy of its December 23, 2011 letter to Michael J. Flanagan, who was also counsel for
9 WCM. Mr. Hoffman stated, “As such, the default notification embodied in GM’s December 23, 2011
10 letter did not act as proper notification of a default under the [Board Order].” Thus WCM claimed that
11 the 90-day period for submission of the buy-sell proposal would not have started to run until March 28,
12 2012.

13 8. It is noted that it was not until Mr. Hoffman’s letter of March 29, 2012 (the 89th day after
14 WCM lost its flooring with Ally) that there was any claim by a representative of WCM that there had
15 not been proper notice to counsel for WCM. Mr. Hoffman’s letter, raising the lack of notice to Mr.
16 Flanagan, was dated the day prior to March 30, 2012, which was the date that GM had calculated in its
17 letter of December 23, 2011 as the date that the franchise would terminate.

18 9. On April 2, 2012, Greg Oxford, counsel for GM, sent a letter to Norm Hoffman (WCM
19 counsel) with a copy to Michael Flanagan (also WCM counsel). GM contends that WCM did not re-
20 establish the required floor plan line of credit within 90 days but instead sent a copy of a proposed buy-
21 sell agreement that was not a “complete proposal” as required by section 2.3 of the Settlement
22 Agreement and by Article 12.2 of the Dealer Agreement. After the 90-day period expired without
23 further documentation having been submitted by WCM, the buy-sell agreement was returned to WCM.
24 As a result of these events, GM contends that WCM’s Dealer Agreement will terminate voluntarily
25 effective 30 days later, i.e., 120 days after the loss of the flooring or April 3, 2012,⁴ pursuant to Article
26 14.2 of the Dealer Agreement. GM contends that the Settlement Agreement did not obligate it to

27 _____
28 ⁴ This date is different than the March 30, 2012, termination date in GM’s December 23, 2011, letter.

1 provide any notice to WCM of default under section 2.3 or the potential consequences of such default,
2 or provide notice to Mr. Flanagan. GM maintains that section 2.3 is self-executing in providing that if
3 WCM loses its flooring and fails to satisfy the conditions of either (a) written evidence of a commitment
4 for replacement Dedicated Chevrolet Flooring in the amount of at least \$3 million, or (b) presents GM
5 with a fully-executed buy-sell agreement and complete proposal for the transfer of the stock or assets of
6 WCM to a person or entity not affiliated with WCM or its owner, WCM will terminate voluntarily.

7 10. Section 3050.7(b) provides, in part, that “[i]f the stipulated decision and order provides
8 for the termination of the franchise, conditioned upon the failure of a party to comply with specified
9 conditions, the franchise may be terminated upon a determination, according to the terms of the
10 stipulated decision and order, that the conditions have not been met” and that “[i]f the stipulated
11 decision and order provides for the termination of the franchise conditioned upon the occurrence of
12 specified conditions, the franchise may be terminated upon a determination, according to the terms of
13 the stipulated decision and order, that the stipulated conditions have occurred.”

14 11. Section 3050.7(b) does not state which party should be allocated the burden of proof as to
15 the occurrence or nonoccurrence of any conditions allegedly giving rise to the termination sought by a
16 franchisor. However because this is a termination proceeding to which Section 3060 was initially
17 applicable, it is believed that it would be appropriate for the language in Section 3066(b)⁵ to be
18 determinative in this regard so that the burden of proof to establish that termination is proper should
19 remain on the franchisor.

20 12. By agreement of the parties and in the Board’s discretion, jurisdiction to hear this dispute
21 has been assumed by the Board.⁶

22 13. On April 10, 2012, a telephonic conference was held before Administrative Law Judge
23 Lonnie M. Carlson (“ALJ Carlson”).

24
25 ⁵ Section 3066(b) states in part: “In a hearing on a protest filed pursuant to Section 3060...the franchisor shall have the burden
of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise.”

26 ⁶ The Board had previously made its Order pursuant to Section 3050.7(a) (adopting the parties’ confidential settlement
27 agreement) which resolved this protest. No statute or regulation confers jurisdiction on the Board to decide later controversies
28 between the parties arising from “stipulated decisions and orders” based upon Section 3050.7(a). Here, however, the Board
explicitly retained jurisdiction over the protests to hear the evidence and arguments of the parties on the issue of compliance
with the Board Order. Cf., *Mazda Motor of America, Inc. v. California New Motor Vehicle Board* (2003) 110 Cal.App.4th
1451; *Hardin Oldsmobile v. New Motor Vehicle Board* (1997) 52 Cal.App.4th 585.

1 14. Pursuant to Section 3050.7(b), the parties filed briefs with the Board, as follows:

2 a. Protestant's opening brief was filed on April 24, 2012.

3 b. Respondent's response to protestant's opening brief was filed on May 4, 2012.

4 c. Protestant's confidential reply brief was filed under seal on May 11, 2012.

5 d. Protestant and Respondent each filed opening statements on May 14, 2012.

6 15. For purposes of this hearing only, the parties stipulated to allow ALJ Carlson to have a
7 copy of the confidential terms of the Settlement Agreement.

8 16. An evidentiary hearing on the dispute was held before ALJ Carlson on May 17, 2012, in
9 Sacramento, California.

10 **PARTIES AND COUNSEL**

11 17. WCM is a Chevrolet dealership located at 1932 East Garvey Avenue South in West
12 Covina, California. WCM is a "franchisee" within the meaning of Sections 331.1 and 3060(a)(1).

13 18. WCM is represented by Michael J. Flanagan, Esq. and Gavin M. Hughes, Esq. of the Law
14 Offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California.

15 19. GM is a "franchisor" within the meaning of Sections 331.2 and 3060(a)(1).

16 20. GM is represented by Gregory R. Oxford, Esq. of Isaacs Clouse Crose & Oxford LLP,
17 21515 Hawthorne Boulevard, Suite 950, Torrance, California.

18 **STIPULATIONS**

19 21. Protestant lost its \$3 million Dedicated Chevrolet Flooring on or about December 1, 2011.
20 (Protestant's Opening Brief, p. 4, lines 1-2; RT 31:15-22)⁷

21 22. "Good Cause" under Section 3061 is not at issue. (RT 85:16-20)

22 **THE CONFIDENTIAL SETTLEMENT AGREEMENT**

23 23. The Settlement Agreement (incorporated into the Board's Order) contains the following
24 pertinent language regarding the conditions and the effect of their occurrence or non-occurrence.

25 Section 2.3 of the Settlement Agreement provides:

26 If at any time before November 30, 2012, WCM loses its Dedicated Chevrolet
27 Flooring or its total amount decreases below \$3 million, WCM shall have ninety days to

28 ⁷ References to "RT" are to the transcript of the proceeding on May 17, 2012.

1 either (a) provide written evidence of a commitment for replacement of Dedicated
2 Chevrolet Flooring in the amount of at least \$3 million from GMAC or another GM-
3 approved financial institution or (b) present GM with a fully-executed "buy-sell"
4 agreement and complete proposal for the transfer of the stock or assets of WCM to a person
5 or entity not affiliated with WCM or Owner. If WCM does not satisfy either of these
6 conditions (a) or (b) within ninety days of the date it loses its Dedicated Chevrolet Flooring
7 or its total amount decreases below \$3 million, WCM agrees that its Dealer Agreement will
8 terminate voluntarily effective 30 days later (*i.e.*, 120 days after the loss of the Dedicated
9 Chevrolet Flooring or its decreased below \$3 million) pursuant to Article 14.2 of the Dealer
10 Agreement; upon such termination, WCM shall be entitled to termination assistance
11 pursuant to Article 15 of the Dealer Agreement with the exception of Article 15.3. WCM
12 and Owners agree not to protest said voluntary termination pursuant to section 3060 of the
13 Vehicle Code or to challenge said termination in any judicial or administrative forum and
14 hereby agree that they will have no legal right to do so. For purposes of this section and
15 section 2.5 below, a person or entity shall be deemed affiliated with WCM or Owner if it
16 meets the definition of Affiliate set forth in paragraph 3.5 below.⁸ (Confidential Joint
17 Exhibit 2b, Pages 2 and 3) (Referenced in part at Joint Exhibit 5, Pages 1 and 2, December
18 23, 2011 letter from Chris Shane, Zone Manager, General Motors LLC, to West Covina
19 Motors, Attention: Mr. Ziad Alhassen, President)

20 24. Section 2.4 of the Settlement Agreement provides:

21 If prior to the expiration of 90 days after WCM loses the Dedicated Chevrolet
22 Flooring or it decreases below \$3 million, WCM obtains a new Dedicated Chevrolet
23 Flooring commitment in at least that amount from a financing source acceptable to GM
24 under its normal business policies, it shall continue to be subject to the condition that it
25 maintain that Flooring commitment for the remainder of the period to and including
26 November 30, 2012. If WCM again loses its Dedicated Chevrolet Flooring or it again
27 decreases below \$3 million, the provisions of paragraph 2.3 above, this paragraph and
28 paragraphs 2.5 and 2.6 below will again apply.⁹ (Confidential Joint Exhibit 2b, Page 3)

29 25. Section 2.5 of the Settlement Agreement provides:

30 If prior to the expiration of 90 days after WCM loses the Dedicated Chevrolet
31 Flooring or its amount declines below \$3 million, WCM submits a fully-executed "buy-
32 sell" agreement and complete proposal for the transfer of the stock or assets of the
33 dealership to a person or entity not affiliated with WCM or Owner, GM will consider
34 WCM's proposal pursuant to its normal business policies and respond with either an
35 approval, a conditional approval or a rejection of the proposal within sixty days in
36 accordance with its normal business practices. If GM approves or conditionally approves
37 the proposal, and the "buy-sell" transaction closes within thirty days of the date that WCM
38 is notified of such approval, this Agreement shall be of no further force or effect. If GM
39 rejects the proposal, WCM agrees that its Dealer Agreement will terminate voluntarily
40 pursuant to Article 14.2 of the Dealer Agreement and that said termination will be effective
41 150 days after the date it loses its Dedicated Chevrolet Flooring or it decreases below \$3
42 million; upon such termination, WCM shall be entitled to termination assistance pursuant
43 to Article 15 of the Dealer Agreement with the exception of Article 15.3. WCM agrees not
44 to protest said voluntary termination pursuant to section 3060 of the Vehicle Code, but
45 WCM and Owner reserve the option of instituting litigation seeking damages but not

46
47 ⁸ It is noted that nowhere in the above provision is there any language that indicates there must be a notice from GM to
48 WCM and its counsel for the time periods to commence to run.

⁹ See footnote 8.

1 injunctive relief concerning GM's decision pursuant to Vehicle Code §§ 11713.3(d) or (e)
2 or any other applicable law.¹⁰ (Confidential Joint Exhibit 2b, Page 3)

3 26. Section 2.6 of the Settlement Agreement provides:

4 If a GM-approved "buy-sell" transaction does not close within thirty days of GM's
5 notifying WCM of the approval, then WCM agrees that its Dealer Agreement will
6 terminate voluntarily pursuant to Article 14.2 of the Dealer Agreement and that said
7 termination will be effective 150 days after the date it loses its Dedicated Chevrolet
8 Flooring or it decreases below \$3 million; upon such termination, WCM shall be entitled to
9 termination assistance pursuant to Article 15 of the Dealer Agreement with the exception of
10 Article 15.3. WCM agrees not to protest said voluntary termination pursuant to section
11 3060 of the Vehicle Code or file any other litigation of any nature whatsoever concerning
12 termination of the Dealer Agreement.¹¹ (Confidential Joint Exhibit 2b, Page 3)

13 27. Section 4.6 of the Settlement Agreement provides:

14 Dispute Resolution. Subject to the following provisions, and only in the event the
15 Board issues the Confidential Stipulated Decision, GM and WCM agree to submit to the
16 Board for final and binding determination, upon either party's written notice, any and all
17 claims, disputes, and controversies between them arising under or relating to this
18 Agreement and its negotiation, execution, administration, modification, extension or
19 enforcement (collectively, "Claims"). Such determination shall be made by an
20 Administrative Law Judge appointed by the Board in accordance with its customary
21 procedures as they may exist from time to time. Under no circumstances shall any Claim
22 be combined with, joined with, or adjudicated in, a common proceeding with Claims
23 involving persons in addition to the Parties. GM and WCM agree that the dispute
24 resolution process outlined in this section shall be the exclusive mechanism for resolving
25 any Claims except for Claims pursuant to sections 2.8 and 3.3 hereof which may be
26 brought in any court of competent jurisdiction. Further, any claim by WCM or Owner
27 arising out of rejection or conditional approval by GM of a "buy-sell" proposal under
28 section 2.3, 2.5 or 2.6 may only be brought in a court of competent jurisdiction.
(Confidential Joint Exhibit 2b, Pages 6 and 7)

29 28. If all that was present as to when any time limits were to commence were the sections
30 quoted above, the language would have to be interpreted as advocated by GM, that is that the time
31 periods commence to run from the time the flooring was lost, which was stipulated to be on or about
32 December 1, 2011, and not from the time of the notices to WCM and its counsel.

33 29. However, the following provision in the Settlement Agreement provides as follows:

34 4.9 Notices. Any notice or other communication to be given to any of the
35 Parties hereto shall be delivered personally, or by United States registered or certified mail,
36 with signed receipt requested to the persons listed below at the addresses indicated. Any
37 period specified in this Agreement shall not commence until the first day after personal
38

¹⁰ See footnote 8.

¹¹ See footnote 8.

1 delivery or the fifth business day after deposition in the United States mail, as the case may
2 be.

3 Notices to GM shall be sent to:

4 L. Joseph Lines, III
5 General Motors LLC
6 Mail Code 482-026-601
7 400 Renaissance Center
8 P.O. Box 400
9 Detroit, Michigan 48265-4000
10 With a copy by U.S. Mail or facsimile to:

11 Gregory R. Oxford, Esq.
12 Isaacs Clouse Crose & Oxford LLP
13 21515 Hawthorne Boulevard, Suite 950
14 Torrance, California 90503
15 (310) 316-1330 facsimile

16 Notice to WCM shall be sent to:

17 West Covina Motors, Inc.
18 Attention: Ziad Alhassen
19 2000 East Garvey Avenue South
20 West Covina, California 91791

21 With a copy by U.S. Mail or facsimile to:

22 Michael J. Flanagan
23 Law Offices of Michael J. Flanagan
24 2277 Fair Oaks Boulevard, Suite 450
25 Sacramento, California 95825
26 (916) 646-9138 facsimile

27 (Confidential Joint Exhibit 2b, Pages 7 and 8)

28 30. There is no dispute that providing the required flooring or submission of a complete buy-
sell proposal were conditions that if not met within a stated time period would result in termination of the
franchise.

CONTENTIONS OF GM

31. After GM had received a November 30, 2011 notice from Ally (successor to GMAC) that
WCM's flooring had been suspended, GM sent WCM a "serious concern" letter dated December 23, 2011
concerning its loss of flooring with a concise reminder that section 2.3 of the Settlement Agreement
provided that WCM had agreed to voluntarily "terminate its Dealer Agreement if it did not either obtain
replacement Flooring or submit a complete 'buy-sell' proposal to GM within ninety days of the date
(December 1, 2011) that WCM lost its Flooring." (GM's Response to Protestant's Opening Brief, p. 3,

1 lines 13-23)

2 32. WCM did not obtain replacement flooring but submitted “a ‘buy-sell’ agreement to GM in
3 late January 2011” (sic 2012). GM determined the “buy-sell” agreement was incomplete and returned it
4 to WCM on March 19, 2012 because the agreement failed to contain an application from the buyer, a
5 signed lease or binding lease commitment, or sales and financial projections that GM normally requires of
6 the proposed purchaser’s application. (GM’s Response to Protestant’s Opening Brief, p. 3, lines 24-28; p.
7 4, lines 1-5; p. 7, lines 9-10, lines 21-28; p. 8, lines 1-2)

8 33. Because WCM failed to satisfy the two conditions of section 2.3 within 90 days after it
9 lost its flooring, its agreement to voluntarily terminate its Dealer Agreement became effective
10 automatically 30 days after the 90-day period expired. On March 22, 2012, GM sent WCM notice of the
11 mechanics of termination setting April 3, 2012 as the administrative termination date. (GM’s Response to
12 Protestant’s Opening Brief, p. 4, lines 6-13)

13 34. GM argues that section 2.3 of the Settlement Agreement is self-executing and did not
14 require GM to provide a redundant notice to WCM about its loss of flooring and the event that triggered
15 the running of the 90-day period was the loss of flooring and not any notice from GM. The fact that GM
16 did not send a copy of the notice of WCM’s loss of flooring and the consequences thereof to WCM’s
17 counsel was not relevant. Section 2.3 on its face did not require GM to provide any notice to WCM, let
18 alone to its counsel. (GM’s Response to Protestant’s Opening Brief, p. 6, lines 17-24; p. 7, lines 1-2; p. 8,
19 lines 25-28 and p. 9, lines 1-2)

20 35. GM argues further that because section 2.3 is self-executing and does not require GM to
21 give any notice, section 4.9 does not apply. The first sentence of section 4.9, any notice or
22 communication “to be given” plainly refers to a notice of communication that the Settlement Agreement
23 *requires* “to be given.” Sections 2.5 and 2.7 require a response from GM and notice to be given by GM to
24 WCM of the actions covered by those provisions. Therefore, while section 4.9 would apply to these
25 sections, it does not apply to section 2.3 because section 2.3 does not require any notice. (GM’s Response
26 to Protestant’s Opening Brief, p. 10, lines 1-23)

27 36. While GM was not required to provide notice to WCM of its loss of Dedicated Chevrolet
28 Flooring, it provided a detailed statement in its letter of December 23, 2011 of the application of the

1 provisions in section 2.3 of the Settlement Agreement, specifically stating, “*Under the Decision* [the
2 Board Order], *the December 1, 2011 loss of the dealership’s \$3 million dedicated floor plan line of credit*
3 *which it agreed to maintain for Chevrolet until November 30, 2012 (‘Dedicated Floor plan’) triggered a*
4 *ninety day period within which the dealership must either (1) reestablish the lost Dedicated Floor plan*
5 *with a financial institution acceptable to GM or (2) submit a fully executed agreement to sell the*
6 *dealership or its assets to an unaffiliated third party along with a complete ‘buy-sell’ proposal for GM’s*
7 *review. If neither of these conditions is satisfied at the end of 90 days, i.e., by February 28, 2012, the*
8 *Decision provides for termination of the Dealer Agreement effective thirty days later, i.e., March 30,*
9 *2012....” (Emphasis added by Protestant.) Therefore, while WCM received actual notice that was not*

10 required by section 2.3, the fact that GM did not notice WCM’s counsel with a copy of the letter
11 “somehow ‘tolls’ the ninety-day period within which WCM was required to satisfy conditions (a) or (b)
12 of section 2.3 finds no support in the language of the Settlement Agreement and, simply put, makes no
13 sense.” (GM’s Response to Protestant’s Opening Brief, p. 11, lines 6-23)

14 37. Therefore, “GM respectfully urges that the Board reject WCM’s challenge to the voluntary
15 termination of its Dealer Agreement and confirm the termination pursuant to section 2.3 of the Settlement
16 Agreement” and the Board Order. (GM’s Response to Protestant’s Opening Brief, p. 15, lines 11-14)

17 CONTENTIONS OF WCM

18 38. WCM argues that it lost its flooring source in December 2011. WCM received a letter
19 from Chris Shane, GM Zone Manager, dated December 23, 2011 notifying WCM that pursuant to the
20 Settlement Agreement it would have 90 days “to either reestablish adequate flooring or submit a fully
21 executed buy-sell agreement and complete ‘buy-sell’ proposal for GM’s review.” WCM’s counsel was
22 not copied on this correspondence and did not receive notice of the purported triggering of the 90-day
23 period. (Protestant’s Opening Brief, p. 2, lines 4-9)

24 39. WCM executed a buy-sell agreement for the sale of its GM franchise on January 26, 2012.
25 On March 19, 2012, “GM notified [WCM] that it was unable to consent to the proposed transfer of
26 Protestant’s franchise because GM had not received the required information necessary to evaluate the
27 purchase agreement.” WCM’s counsel was not copied on this correspondence. (Protestant’s Opening
28 Brief, p. 2, lines 16-19)

1 40. On March 22, 2012, GM sent notice to WCM that pursuant to the terms of the Settlement
2 Agreement its GM franchise would be terminated on April 3, 2012. Protestant’s counsel received a copy
3 of this communication. This was the first opportunity for Protestant’s counsel to advise Protestant of its
4 rights under the Settlement Agreement. (Protestant’s Opening Brief, p. 2, lines 20-24)

5 41. On April 2, 2012, counsel for Protestant invoked the provisions of section 4.6 of the
6 Settlement Agreement and requested that the Board exercise its continuing jurisdiction to resolve the
7 parties’ dispute. (Protestant’s Opening Brief, p. 2, lines 25-27)

8 42. WCM alleges that pursuant to section 4.9 of the Settlement Agreement, “GM was required
9 to provide written notice to Protestant’s counsel before ‘any period specified in this Agreement’ would
10 begin to run. Because GM failed to provide Protestant’s counsel notice of the *purported commencement*
11 *of the ninety day period* until March 22, 2012, the ninety day period did not begin to run until March 22,
12 at the earliest. Moreover, GM is currently refusing to accept a buy-sell package for consideration.”
13 Accordingly, the 90-day period must be tolled until the matter is resolved by the Board. (Italics
14 added; Protestant’s Opening Brief, p. 2, line 27 and p. 3, lines 1-7)

15 43. While WCM agrees it lost its Dedicated Chevrolet Flooring , and while section 2.3 of the
16 Agreement provides that WCM submit a buy-sell package acceptable to GM during the subsequent 90-
17 day period, section 4.9 requires that “Any notice or other communication to be given to any of the Parties
18 hereto shall be delivered personally, or by United States registered or certified mail, with signed receipt
19 requested to the persons listed below at the addresses indicated. *Any period specified in this Agreement*
20 *shall not commence until* the first day after personal delivery or the fifth business day after deposition in
21 the United States mail, as the case may be.” (Emphasis added by Protestant). Notice shall be given to
22 WCM with a copy by U.S. Mail or facsimile to Michael J. Flanagan. (Protestant’s Opening Brief, p. 4,
23 lines 1-28)

24 44. Under section 4.6 of the Settlement Agreement, the Board has continuing but limited
25 jurisdiction to hear and resolve disputes under the terms of the Agreement. Matters that go beyond the
26 scope of the Agreement are irrelevant. (Protestant’s Opening Brief, p. 5, lines 7-25)

27 45. In conclusion, GM was required to give notice to Protestant’s counsel “prior to the
28 commencement of the ninety day time period in which Protestant could either reestablish an acceptable

1 flooring source or submit a buy-sell application...GM failed to provide the required notice to counsel,
2 thus the ninety day period never began to run and Protestant's GM franchise is not subject to voluntary
3 termination at this time. Pursuant to terms of the Agreement, GM must now accept the proposed buy-sell
4 package for due consideration." (Protestant's Opening Brief, p. 7, lines 13-18)

5 **ISSUE PRESENTED**

6 46. The issues presented are whether there has been compliance with the specified conditions
7 of the Board Order concluding the protest including the following:

8 a. Whether GM was required to give notice to WCM and its counsel before the 90-day time
9 period to obtain replacement flooring or submit a complete buy-sell proposal would begin to run?

10 (1) If so, when did the 90-day time period to obtain alternative financing or submit a complete
11 buy-sell proposal begin to run?

12 (2) When did the 90-day time period expire?

13 b. Was notice to Protestant alone that, absent alternative flooring or the submission of an
14 appropriate buy-sell package, the loss of floor plan financing would result in the automatic or self-
15 executing voluntary termination of Protestant's Dealer Agreement?

16 c. Does section 4.9 of the Settlement Agreement mean that the 90-day period would begin to
17 run only when notice was given by GM to Protestant and its named counsel, Mr. Flanagan?

18 d. Is the 90-day period suspended or tolled while the matter is before the Board?

19 **SUMMARY OF WITNESSES' TESTIMONY AT HEARING**¹²

20 **TESTIMONY OF GENERAL MOTORS' WITNESS**

21 **Testimony under Direct Examination:**

22 47. In response to a question posed by Respondent's counsel about GM's concern about
23 WCM's ability to maintain Dedicated Chevrolet Flooring that led to the Settlement Agreement, Dale
24 Sullivan, GM's Regional Director of Business Operations for the Western Region, testified that because
25 the dealership had lost its flooring a couple of times leading to GM being out of business in that location,
26 GM wanted to make sure that its interests were protected should WCM lose its flooring again. (RT
27 _____

28 ¹² This Summary does not refer to all exhibits in the record, nor does it include all matters testified to by the witnesses.

1 68:19-25, 69:1-2)

2 48. Mr. Sullivan testified that flooring is basically a dealer getting and maintaining an
3 adequate line of credit so that when GM ships a vehicle to a dealer, GM will draft on the credit line and
4 pay itself. (RT 61:4-23)

5 49. Mr. Sullivan testified that Section 10.2, 6.4.2, and Article 9 of the Dealer Agreement
6 require the dealer to maintain adequate flooring, maintain performance requirements in terms of sales, and
7 to promote the sales of GM's vehicles. The loss of the financing means the dealer will not have vehicles
8 to sell and there will be no sales performance to measure. (RT 62:7-10, 63:3-25, 64:1-10)

9 50. Mr. Sullivan testified that Joint Exhibit 5, the December 23, 2011 communication by Chris
10 Shane was a standard form letter sent to dealers who lose their flooring. GM was concerned because this
11 dealership had lost its flooring and was out of business a couple of times. If a GM dealer does not have
12 cars on WCM's lot, then it cannot sell GM vehicles to its customers. The Settlement Agreement was
13 executed so GM's brand was represented by WCM. (RT 67:19-25; 68:1-25, 69:1-25)

14 51. Mr. Sullivan further testified that GM never made a decision on the buy-sell agreement
15 because it never received a complete buy-sell agreement from the Protestant. Three things must be
16 presented: (1) a sales forecast and a profit forecast from the prospective dealer. GM "Never got that." (2)
17 GM usually looks for the source of funds. Mr. Sullivan acknowledged that Mr. Hidalgo is a GM dealer
18 "but every time a dealer buys another dealership, it takes more money. So you (sic) got to make sure they
19 have source of funds to run the dealership." (3) And probably the most important, GM was "really
20 worried about ... a binding lease agreement for a facility to do business. And we [did not] get any of that.
21 We [did not] get any of that in two days, 30 days, or 60 days. We did not get any of that." (RT 70:18-25,
22 71:1-6)

23 **Testimony Under Cross-examination:**

24 52. Protestant's counsel referenced page 20 of Joint Exhibit 6 as to the following language,
25 "Purchaser and Hassen Imports Partnership, a California limited partnership ("Landlord") shall have
26 entered into a lease for the property commonly known as 1932 East Garvey Avenue South, West Covina,
27 California." He then asked Mr. Sullivan the following question, "But in any case, this—is this in your
28 judgment a commitment to a lease with conditions as you read it? Mr. Sullivan's response was, "Yes".

1 (RT 83:10-25, 84:1-16)

2 *Santa Monica Group's Witnesses' Testimony*

3 53. Protestant did not offer any witness testimony.

4 **FINDINGS OF FACT**¹³

5 54. GM returned the "buy-sell" agreement because it was incomplete. As indicated above,
6 there was no sales and profit forecast, no information as to the source of funds for the new dealer, and no
7 binding lease agreement. This finding is based on the uncontroverted testimony of Dale Sullivan. (RT
8 70:18-25, 71:1-6)

9 55. Protestant's counsel, Michael J. Flanagan, was first notified of GM's intended action on
10 March 22, 2012 when he received a copy of a letter from GM to Protestant notifying Protestant that its
11 GM franchise would be terminated on April 3, 2012. This finding is based on Protestant's Opening
12 Brief and the absence of a specific rebuttal by Respondent as to the receipt date as contended by
13 Protestant. Respondent's position was that no notice to Protestant or Protestant's counsel was required
14 as section 2.3 is automatic or self-executing. (GM's Response to Protestant's Opening Brief, p. 6, lines
15 17-24; p. 7, lines 1-2; p. 8, lines 25-28 and p. 9, lines 1-2; Protestant's Opening Brief, p. 2, lines 20-21)

16 56. Although GM received the buy-sell proposal in late January 2012, it was returned to
17 WCM on March 19, 2012, almost three weeks after February 28, 2012, which is the date GM had
18 calculated as the cut-off date for compliance with the conditions in the Board's Order. Thereafter, GM
19 sent a follow-up notice on March 22, 2012 to Mr. Alhassen with a copy to Mr. Alhassen's counsel,
20 Michael J. Flanagan, that WCM's GM franchise would be terminated on April 3, 2012.

21 57. Respondent's counsel has argued that the two conditions in section 2.3 of the Settlement
22 Agreement were sufficient notice to the Protestant to effectuate the automatic or self-executing voluntary
23 termination of Protestant's Dealer Agreement. However, Protestant's counsel argued that section 4.9 of
24 the Confidential Agreement requires notice to it before operation of the 90-day period set forth in section
25 2.3 began to run.

26
27
28 ¹³ References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding and are not intended to be all-inclusive.

1 58. Protestant's counsel's argument was most persuasive and it is accordingly found that the
2 consequence of the Protestant's loss of its Dedicated Chevrolet Flooring was a critical stage in terms of
3 the Settlement Agreement. Most convincingly, Protestant's counsel argued that it was at this stage that
4 Protestant needed advice as to its rights under the Settlement Agreement. The relationship of the
5 Protestant and its counsel was critical in terms of providing legal advice on how to proceed. Accordingly,
6 it is found that the voluntary termination provision in section 2.3 of the Settlement Agreement is not
7 automatic or self-executing in the absence of notice. Notice was not provided to Protestant's counsel
8 bringing into consideration the application of section 4.9 of the Settlement Agreement.

9 59. Section 4.9 specifically states, "Any notice or **communication** to be given to any of the
10 Parties hereto shall be delivered personally, or by United States registered or certified mail, with signed
11 receipt requested to the **persons listed below** at the addresses indicated. **Any period specified in this**
12 **Agreement shall not commence until the first day after personal delivery or the fifth business day**
13 **after deposition** in the United States mail, as the case may be." Persons listed below included, "**Michael**
14 **J. Flanagan.**" (Emphasis added). Section 4.9 references any communication to the parties must be
15 delivered personally or mailed to the persons listed below that included Mr. Flanagan as Mr. Alhassen's
16 counsel. The only communication that Mr. Flanagan received was the March 22, 2012 notice. Under the
17 provisions of section 4.9, the first day that the 90-day period could begin to run was March 22, 2012, if
18 the communication was delivered personally to Mr. Flanagan, or, if it was mailed to Mr. Flanagan, the 90-
19 day period would begin to run five days after the letter was deposited in the U.S. Mail. Accordingly, the
20 notices to Mr. Alhassen dated December 23, 2011 and March 19, 2012, because they failed to copy Mr.
21 Flanagan, were not effective to begin the running of the 90-day time period set forth in sections 2.3, 2.4
22 and 2.5. Therefore, because effective notice as to when the 90 days would begin to run, as required by
23 section 4.9, was not provided to Mr. Flanagan until March 22, 2012, the 90-day period under section 2.3
24 did not begin to run until that date, or perhaps later.

25 60. As stated above, section 4.9 of the Settlement Agreement states that any period specified in
26 this Agreement shall not commence until the first day after personal delivery has been made or 5 days
27 after mailing to the named persons. Therefore, pursuant to the above cited authorities, notice or
28 communication of the intended action by GM to terminate Protestant's franchise did not occur until

1 March 22, 2012 and the 90-day period set forth in sections 2.3, 2.4 and 2.5 did not begin to run until
2 March 23, 2012 (or perhaps later). Furthermore, the time within which the alternative conditions were
3 required to occur was suspended by the timely filing of Protestant's April 2, 2012, request that the Board
4 exercise its continuing jurisdiction to resolve the parties' dispute pursuant to section 4.6.

5 61. The 90-day time period for the occurrence of the conditions should not be tolled for the
6 time between the notice to Mr. Flanagan (perhaps March 23, 2012) and April 2, 2012, the date WCM
7 sought the Board's assistance in resolving this dispute. Therefore, assuming that March 23, 2012 is the
8 relevant date, 10 days of the 90-day period for Protestant to comply with the conditions in sections 2.3,
9 2.4 and 2.5 have elapsed leaving 80 days remaining to either provide written evidence of a commitment
10 for replacement of Dedicated Chevrolet Flooring in the amount of at least \$3 million from GMAC or
11 another GM approved financial institution or present GM with a fully-executed "buy-sell" agreement
12 and complete proposal for the transfer of stock or assets of WCM to a person or entity not affiliated to
13 WCM or its owner.

14 DETERMINATION OF ISSUES

15 62. Section 4.9 of the Settlement Agreement expressly applies to "Any period specified..." in
16 the Settlement Agreement and states that such time periods "... shall not commence until the first day
17 after personal delivery or the fifth business day after deposition in the United States mail, as the case may
18 be."

19 63. In addition to agreeing upon when the times would commence, the parties also specifically
20 agreed upon the persons to whom the notices or communications must be directed, which for Protestant
21 was Mr. Alhassen as well as Protestant's counsel identified specifically as Mr. Flanagan.

22 64. GM was required to give notice to WCM and its counsel before the 90-day time period to
23 obtain replacement flooring or submit a complete buy-sell proposal commenced.

24 65. The 90-day time period to obtain alternative financing or submit a complete buy-sell
25 proposal began to run at the earliest on March 22, 2012, when WCM's counsel, Mr. Flanagan, first
26 received a communication from GM regarding the expiration of the time limits.

27 66. The 90-day period for WCM to comply with the conditions in sections 2.3, 2.4 and 2.5 of
28 the Settlement Agreement has not expired.

1 67. The notice from GM to WCM that absent alternative flooring or the submission of a
2 complete buy-sell package would result in the automatic or self-executing voluntary termination of its
3 GM Dealer Agreement but only if the time period specified in the Settlement Agreement had commenced
4 to run and had expired.

5 68. However, the time period had not expired as the 90-day period commences to run only
6 when notice is given by GM to Protestant and its named counsel, Mr. Flanagan. This did not occur until
7 March 22, 2012, at the earliest.

8 69. The 90-day period in section 2.3 was tolled effective April 2, 2012.

9 70. The 90-day period should be reduced by the 10 days that elapsed between March 22, 2012
10 (the earliest date Mr. Flanagan received the communication from GM as stated in section 4.9) and April 2,
11 2012, the time Protestant sought relief before the Board. Therefore, there remains 80 days for Protestant
12 to either: (a) provide written evidence of a commitment for replacement Dedicated Chevrolet Flooring in
13 amount of at least \$3 million from GMAC or another GM-approved financial institution or (b) present
14 GM with a fully-executed "buy-sell" agreement and complete proposal for the transfer of the stock or
15 assets of WCM to a person or entity not affiliated with WCM or its owner.

16 71. Accordingly, it is determined that while the Protestant lost its \$3 million Dedicated
17 Chevrolet Flooring and the 90-day period in the terms and conditions of the Settlement Agreement were
18 imposed by GM, GM's failure to provide earlier notice to Protestant's counsel as required by section 4.9
19 of the Settlement Agreement, results in a finding that WCM has 80 days to meet the conditions set forth
20 in sections 2.3, 2.4 and 2.5 of the Settlement Agreement.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

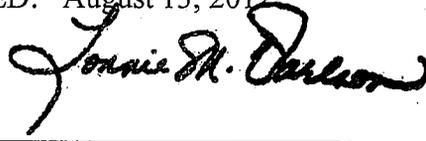
28 ///

1 **PROPOSED DECISION**

2 After consideration of the pleadings, exhibits, oral arguments and the transcript of this
3 proceeding, IT IS HEREBY ORDERED THAT Protestant's franchise shall continue in existence pending
4 the timely occurrence of one of the two alternatives available to it, that are: (1) Obtaining floor-plan
5 financing as required by the Settlement Agreement; or, (2) The submission by WCM to GM of the
6 complete buy-sell package as required by the Settlement Agreement. If neither of these alternatives
7 occur, Protestant's franchise shall terminate on the 81st day after the date of mailing to the parties and
8 their counsel by U.S. Postal Service Certified Mail a copy of the Board's Order adopting this Proposed
9 Decision.

10
11 I hereby submit the foregoing which constitutes my
12 Proposed Decision in the above-entitled matter, as
13 the result of a hearing before me, and I recommend
14 this Proposed Decision be adopted as the decision of
15 the New Motor Vehicle Board.

16 DATED: August 13, 2012

17 By: 
18 _____
19 LONNIE M. CARLSON
20 Administrative Law Judge
21
22
23
24
25
26

27 George Valverde, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

Exhibit F



General Motors LLC
Dealer Contractual Group
Mail Code 482-A16-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

CERTIFIED MAIL: 7007 0220 0000 5468 2775
RETURN RECEIPT REQUESTED

PERSONAL & CONFIDENTIAL

October 3, 2012

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

West Covina Motors, Inc.
dba Clippinger Chevrolet
1932 East Garvey Avenue South
West Covina, CA 91791-1910

Attention: Mr. Ziad Alhassen

This letter is written by General Motors LLC ("General Motors" or "GM"), on behalf of Chevrolet, and addresses the current status of West Covina Motors, Inc. dba Clippinger Chevrolet ("WCM" or "Dealership"). GM has observed that on each and every day during the period September 11, 2012 through September 19, 2012 WCM was not conducting customary sales and service operations at its dealership premises.

Specifically, GM has observed the following:

1. An empty showroom with no new Chevrolet vehicles displayed, no furniture and the lights off
2. New and Used Vehicle outdoor display and storage areas devoid of any new Chevrolet vehicles available for sale to the general public. The only Chevrolet vehicles visible were three (3) 2010 Model Year Impala police cars and one (1) 2007 Silverado 2500 HD pick up truck
3. Service write-up lane and shop devoid of customers
4. Service shop devoid of any service activity (all but 3 of 32 stalls were empty)
5. "Caretaker" employee staff consisting of three individuals who appeared to be a salesperson, service writer, and service technician

6. Not one single customer was observed to be on the dealership premises during the entire period until the last day of this nine-day period, September 19, 2012, when three (3) service customers were observed

Moreover, GM's records of the Dealership's sales, service and parts activity show that WCM has not conducted customary Chevrolet sales and service operations since at least December 2011. GM's records show that WCM has delivered only one (1) new Chevrolet vehicle (in January 2012) during the period January 1, 2012 through August 31, 2012. WCM has not purchased any parts from GM since June 2012. Paid warranty claims have steadily decreased, from approximately 150 per month in the August/September 2011 timeframe, to just 21 in August 2012 and 5 in the first half of September 2012.

Further, GM has learned that, in violation of Articles 5.6, 11.1 and 11.2 of the Dealer Agreement and GM's reasonable requirements established under those provisions, WCM has failed to maintain its dealership Data Management System ("DMS"). Without a functioning DMS, the dealership *cannot* submit new vehicle or parts orders nor provide GM with information and data that WCM is required to submit under the Dealer Agreement, including the information necessary to prepare the required Dealership Operating Reports. As a result, WCM is unable to provide customary sales and service operations at the dealership.

In short, it is obvious despite the skeleton staff sporadically present at the dealership, that WCM has not been conducting customary sales and service operations at the very least for many months. The moribund appearance of the dealership and lack of customary dealership operations are causing serious harm to the reputation of Chevrolet and its products. Chevrolet customers in the West Covina market cannot purchase new Chevrolet vehicles at the dealership and either cannot obtain warranty or customer pay service for their vehicles (because WCM cannot or has chosen not to purchase parts) or have chosen to seek service elsewhere because the dealership appears to be closed.

Article 14.5.3 of the General Motors Dealer Sales and Service Agreement ("Dealer Agreement") provides that General Motors may terminate the Dealer Agreement for the following reason:

"Failure of dealer to conduct customary sales and service operations during customary business hours for seven consecutive business days."

As detailed above, WCM's failure to conduct customary sales and service operations has continued for months. General Motors believes that any further delay in seeking replacement Chevrolet representation to provide for the sales and service needs of General Motors customers in the important West Covina market would not be in the best interests of GM, its customers and the general public. Therefore, General Motors has elected to, and does hereby, terminate the Dealer Agreement currently in effect between GM and WCM, pursuant to Article 14.5.3 of the Dealer Agreement and CAL. VEH. CODE section 3060(a)(1)(B)(v). Such termination will be effective fifteen (15)

calendar days from your receipt of this letter, and WCM's status as an authorized Chevrolet dealer will terminate at that time.

Please be advised that General Motors will endeavor to fulfill, as expeditiously as possible, its obligations, as set forth in the Dealer Agreement, that are applicable under these circumstances.

In particular, GM notes that WCM has initiated a change request seeking GM's approval of a proposed asset sale to an entity known as West Covina C. Although GM has received the executed asset purchase agreement and two amendments, the proposed buyer to date has not submitted all of the information that will be necessary to constitute a complete proposal that GM can review. If GM receives a complete proposal before the earlier of (1) the termination of WCM's Dealer Agreement pursuant to this letter and any ensuing protest proceedings or (2) November 14, 2012 (the deadline set by the New Motor Vehicle Board in its Decision of August 22, 2012 with which you are familiar), GM will then initiate review of the proposal as provided by Article 12.2 of the Dealer Agreement and applicable state law.

Very truly yours,



Dale Sullivan
Regional Director of Business Operations
General Motors LLC

c: Dealer Contractual Group
California New Motor Vehicle Board via Certified Mail # 7007 0220 0000 5468 2782

Exhibit G



General Motors LLC
Dealer Contractual Group
Mail Code 482-A16-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

FEDERAL EXPRESS 7941 7552 6008
PERSONAL & CONFIDENTIAL

November 29, 2012

West Covina C, LLC d/b/a West Covina Chevrolet
1932 East Garvey Avenue South
West Covina, CA 91791-1910
Attention: Stephen P. Ferrara

Dear Mr. Ferrara:

West Covina C, LLC, d/b/a West Covina Chevrolet ("Proposed Dealer Company") requests that General Motors LLC ("GM") enter into a General Motors Dealer Sales and Service Agreement for Chevrolet with Proposed Dealer Company naming Stephen P. Ferrara as dealer operator ("Proposed Dealer Operator") and Jeffrey Guest as executive manager ("Proposed Executive Manager") for a dealership to be established at 1932 East Garvey Avenue South, West Covina, CA 91791 (the "Location"). Proposed Dealer Company and West Covina Motors, Inc. ("Selling Dealer") have entered into an asset purchase agreement dated January 26, 2012 as amended by the First Amendment to Asset Purchase Agreement dated March 30, 2012 and the Second Amendment to Asset Purchase Agreement dated June 29, 2012 (collectively, the "Purchase Agreement") for the sale of certain Chevrolet assets used in Selling Dealer's Chevrolet dealership operations. Proposed Dealer Company and Proposed Dealer Operator are together referred to as the "Applicants", and the foregoing as the "Proposal".

GM approves the Proposal, subject to and conditioned upon Applicants' timely acceptance of the terms, conditions, and requirements set forth in this letter agreement ("Letter Agreement"). If Applicants do not accept the terms and conditions of this Letter Agreement by signing and returning an unaltered copy of this Letter Agreement to the attention of Angie Helt, 100 Renaissance Center, M/C 482-A16-C66, Detroit, MI 48265, no later than December 29, 2012, then the offer in this Letter Agreement is revoked and this Letter Agreement will be null and void.

In addition, provided that this letter has been timely executed by Applicants, and that Applicants fulfill the requirements set forth below no later than December 31, 2012, and subject to all terms, conditions, and requirements of this Letter Agreement, GM will offer the then current standard form General Motors Dealer Sales and Service Agreement ("Dealer Agreement") to Proposed Dealer Company for the Chevrolet dealership point at the Location. The parties agree as follows:

1. **Executive Manager Residency Documentation:** Proposed Executive Manager, Jeffrey Guest must provide GM with a signed copy of an enforceable property lease, rental agreement or other acceptable documentation showing residency within the APR assigned to the West Covina, CA dealership.
2. **Documents and Information Required Prior to Execution of the Dealer Agreement:** Applicants will provide GM with the documents and information listed below no later than December 31, 2012:
 - Evidence that the investment has been made in accordance with the proposal for the capitalization of the Dealer Company, to include originating account disbursements as represented on the Source of Funds Statement together with like deposits into the Dealer Company.

- A copy of Proposed Dealer Company's members or managers minutes or company resolution(s) which reflect the following: (a) the approval of Stephen P. Ferrara as Dealer Operator; and (b) Stephen P. Ferrara's ownership of at least 15% of the equity interest in Proposed Dealer Company.
 - A copy of the signed lease(s) between Hassen Imports Partnership ("HIP") as lessor and Proposed Dealer Company as lessee for the proposed dealership premises at the Location, together with an order of the United States Bankruptcy Court for the Central District of California authorizing HIP to enter into said lease(s).
 - Proposed Dealer Operator will need to complete and return the following forms and documents:
 - The Dealer Authorization Agreement for Automatic Withdrawals/Deposits form (attached) filled out and signed by Proposed Dealer Company. This will be used to establish Proposed Dealer Company's open account with GM; Part I is to be completed by Applicants, and Part II is to be completed by the Applicants' financial institution.
 - The Dealer Election Form for Wholesale Floor Plan Program & Holdback Payment Plan (attached) filled out and signed by Proposed Dealer Company.
 - The 3rd Party Data Sharing Authorization form (attached). If you have contracted or plan to contract services with a Dealer System Provider (DSP), you must provide authorization for GM to exchange files with your DSP and/or its IT partners/agents. If you are not contracting with a DSP, GM must be advised it will not need to exchange files on your behalf.
 - Prior to or at the time of the execution of the new Dealer Agreement, and in any event no later than December 31, 2012, Applicants must provide a fully executed bill of sale, stock transfer documentation, or such other documentation acceptable to GM evidencing the transfer of assets as detailed in the Purchase Agreement dated January 26, 2012 between West Covina C, LLC and West Covina Motors, Inc., as amended.
 - Prior to or at the time of the execution of the new Dealer Agreement, and in any event no later than December 31, 2012, Applicants must provide a letter from Selling Dealer to GM (i) voluntarily terminating its General Motors Dealer Sales and Service Agreement on the same date that GM signs the Dealer Agreement with Proposed Dealer Company, and (ii) requesting a waiver of the thirty-day notification as set forth in Article 14.1 of the Dealer Agreement. (Sample Termination Letter attached – should be transcribed onto Selling Dealer letterhead).
 - The GM-DI Lease Assignment form (attached) to change the dealership name on the signs at the Location. GM must receive an original signed document.
 - The GM-DI Request for Signage Change form (attached) for panel and/or line-make changes.
 - Consent to share Dealer Company's financial information with Ally.
3. **Line of Credit:** Prior to execution of the Dealer Agreement, Applicants will provide evidence that Proposed Dealer Company has obtained a separate line of credit from a creditworthy financial institution acceptable to GM to enable Proposed Dealer Company to finance the purchase of a sufficient number of new GM vehicles to meet its obligations under the Dealer Agreement. The required documentation is outlined in the Wholesale Payment Procedures instructions, revised July 2010 (attached).
4. **Licenses:** Applicants will obtain all necessary licenses to conduct Chevrolet dealership operations at the Location. It is Proposed Dealer Company's sole responsibility to take all necessary steps in a timely manner to obtain such licenses under the provisions of any applicable statutes and regulations. GM will not be responsible for any costs, expenses, damages or delays incurred as a result of any delay in securing these licenses.

5. **Capital Stock/ Membership Interests:** All of the membership of Proposed Dealer Company must be personally and directly owned by Proposed Dealer Operator and others on a basis acceptable to GM. Proposed Dealer Operator will own and continue to own, on a personal and direct basis, an unencumbered equity interest of at least fifteen percent (15%).
6. **Facility Image:** Applicants will provide and maintain facilities at the Location satisfactory to GM in both appearance and layout. The facilities and premises will be adequate in size for a Chevrolet dealer to effectively conduct dealership operations at the Location. The facility will satisfy all of GM's facilities requirements as set forth at www.gmfacilityimage.com and will be completed utilizing the GM Facility Image Program, including appropriate product identification signage. Please refer to the GM facility website for image and product identification signage requirements at www.gmfacilityimage.com.
7. **Facility (Space/Premises) Requirements:** GM facility requirements are detailed at www.gmfacilityimage.com. They include a requirement that a dealership meet minimum space requirements satisfactory to GM. Based upon average historical dealership performance/ operations in similar size markets, the Location must meet the following minimum space requirements for a Chevrolet dealership:

<u>SPACE REQUIREMENTS (Estimates)</u>	<u>GM Use</u>	
New Vehicle Display-Interior	3	Stalls
New Vehicle Display-Exterior	3	Stalls
Used Vehicle Display	45	Stalls
Productive Service – Mechanical	10	Stalls
Service-Reception	2	Stalls
Parking-Customer	26	Stalls
New Vehicle Storage	75	Stalls
Employee Parking & Miscellaneous	26	Stalls
Total Building (Includes Gen Office & Parts)	15,579	square feet
General Office (Memo)	2,032	square feet
Parts (Memo)	2,988	square feet
Usable Lot (less any required green space)	74,320	square feet
Total Usable Premises (Total Bldg + Usable Lot)	89,899	square feet
(Specific space standards by category are available at www.gmfacilityimage.com)		

The space requirements for the proposed dealership operations at the Location are as set forth above, except for any changes approved in writing by GM. Applicants must submit a written request to GM containing a detailed explanation of the circumstances and reasons for any changes.

8. **Non-GM Dual Policy/Excess Facilities Policy:** Dealer Company will not be entitled to any special consideration with respect to distribution of vehicles or any other aspect of its relationship with GM by reason of any excessively large or expensive facility. Furthermore, it is GM's policy (refer to GM Dealer Bulletin GM 01-19, Non-GM Dual Policy, dated October 1, 2001) that non-GM products should not be sold or serviced from GM dealerships, and Applicants represent and agree that the dealership premises and facilities for Chevrolet dealership operations at the New Location will not be utilized for any unauthorized non-GM dealership operations.
9. **Net Working Capital:** Applicants will make available and maintain for use in its GM sales and service business an unencumbered amount of net working capital as set forth in the minimum Capital Standard Addendum to the Dealer Agreement.
10. **Technology Infrastructure Standards:** Applicants will comply with GM's information technology infrastructure standards for dealerships as described on this GM website: www.gmdit.com.

11. **Parts and Accessories Terms of Sale Bulletin:** The Parts and Accessories Terms of Sale Bulletin, No. 2012-1 U.S. is enclosed for your reference. Please refer to this bulletin for questions regarding General Motors parts, specifically under "III. Return Plan, Section I. Buy/Sell Dealer Termination Parts Return Assistance Policy."
12. **Independent Analysis:** Applicants acknowledge, represent and agree that the Proposal is based upon their independent analysis of a business opportunity they wish to pursue. Applicants further represent and agree that in determining to enter into this Letter Agreement and to pursue the underlying business opportunity, they are not relying upon any representation, promise, guarantee or information provided by GM or by any employee, agent or representative of GM, except as expressly set forth in this Letter Agreement.
13. **Premises Liability Disclaimer:** Nothing in this Letter Agreement, including GM's space requirements or GM's approval of facility plans, creates or imposes upon GM any obligations or liabilities with respect to the dealership premises and/or facility beyond those specifically set forth in Article 15 of the Dealer Agreement.
14. **Term:** This Letter Agreement will expire automatically on December 29, 2012 unless executed by Applicants and returned to GM on or before that date.
15. **General Liability Disclaimer:** GM is not responsible or liable for any obligations or liabilities incurred by the Applicants which arise out of or are connected with Applicants' compliance with any term, condition or requirement contained in this Letter Agreement.
16. **Selling Dealer's Commitments to GM:** Before GM enters into the Dealer Agreement with Proposed Dealer Company, Selling Dealer must satisfy all of its commitments to GM, including, but not limited to, the satisfaction of any indebtedness of Selling Dealer to GM.
17. **Accurate Representations/Data:** Applicants represent that all information and written materials submitted in connection with their Proposal and to be submitted under this Letter Agreement are complete, true and accurate. GM's obligation to enter into the Dealer Agreement with Proposed Dealer Company for the Location is contingent upon (i) Applicants' satisfying the terms, conditions and requirements set forth above, and (ii) the accuracy of the representations contained in the Proposal and related materials. Therefore, Applicants agree that should either (a) Proposed Dealer Company or Proposed Dealer Operator fail or refuse to fulfill all of the terms and conditions set forth herein, or (b) GM determine that the Proposal or any related materials were inaccurate, untrue or incomplete, or (c) GM be prevented in any way from appointing Proposed Dealer Company as a Chevrolet dealer at the Location, then GM may, at its option, revoke this Letter Agreement and terminate all of its commitments described herein, without any obligation or liability whatsoever to Proposed Dealer Company or Proposed Dealer Operator.
18. **Dealer Agreement:** Applicants will fulfill all of the terms and conditions set forth in the Dealer Agreement. Upon execution of the Dealer Agreement by Proposed Dealer Company, all of the obligations set forth in this Letter Agreement are incorporated by reference into the Dealer Agreement.
19. **Dealer Operator/Assignment Limitations:** GM executes this Letter Agreement in reliance upon the personal services, business experience and financial qualifications of Stephen P. Ferrara as Proposed Dealer Operator. Accordingly, Applicants may not assign, transfer or convey this Letter Agreement, in whole or in part, without the express written consent of GM. Moreover, GM will not be obligated, under any circumstances, to enter into the Dealer Agreement with Proposed Dealer Company, unless Proposed Dealer Operator is named dealer operator thereof in accordance with the terms of this Letter Agreement. Although this Letter Agreement is entered into in reliance upon the personal services, business experience and financial qualifications of the Proposed Dealer Operator, Proposed Dealer Company is the only party to the Dealer Agreement with GM. Upon execution of the Dealer Agreement as contemplated by this Letter Agreement, the

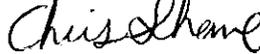
provisions of the Dealer Agreement will supersede the inconsistent terms, conditions and requirements of this Letter Agreement, except that GM may continue to rely upon the representations and promises of the Applicants contained in this Letter Agreement.

There are no other agreements or understandings, written or verbal, between the parties with regard to the matters covered by this Letter Agreement, aside from the documents referenced and contemplated herein. The parties acknowledge and represent that: 1) this Letter Agreement will be construed according to the laws of the State of Michigan, 2) this Letter Agreement cannot be modified except by a writing executed by an authorized individual of behalf of each of the parties, and 3) no representative of GM is authorized to orally modify this Letter Agreement or any of its terms, conditions or requirements.

If Applicants agree to the terms, conditions and requirements set forth in this Letter Agreement, please indicate your acceptance by signing the two attached duplicates. One signed letter should be maintained for your records and the other should be returned to GM within the time frame set forth above. Any documents and information that Applicants have to provide to GM as set out in this Letter Agreement should be sent to the attention of: **Angie Helt, 100 Renaissance Center, M/C 482-A16-C66, Detroit, MI 48265.**

Please note that in the event GM and Proposed Dealer Company enter into the Dealer Agreement, the Dealer Agreement will become effective on the first business day following the date on which the Dealer Agreement is signed by Proposed Dealer Company and GM, and unless otherwise noted, will reflect an expiration date of October 31, 2015 to coincide with the expiration date of the standard GM Dealer Agreement.

Very truly yours,



 Chris Shane
Zone Manager
General Motors LLC

Acknowledged and agreed this _____ day of _____, 2012.

West Covina C, LLC

Stephen P. Ferrara

By: _____
Title: _____

Proposed Dealer Operator

Attachments: Dealer Authorization Agreement for Automatic Withdrawals/Deposits form
GM Dealer Bulletins: GM 01-19 and P&A Terms of Sale
GM-DI Lease Assignment form
GM-DI Request for Signage Change form
Wholesale Payment Procedures instructions
GM Dealer Sales and Service Agreement Standard Terms and Conditions including
Dispute Resolution Process
Ally Dealer Consent Form

cc: Ziad Alhassen (via Federal Express)
Michael J. Flanagan (via Federal Express)
Delgretta Dobbs (Standards for Excellence)
Diana Mac Arthur (Mark of Excellence)
Kevin Boyne (CRM)

Exhibit H

B1 (Official Form 1)(12/11)

United States Bankruptcy Court Central District of California		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): West Covina Motors, Inc.		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): DBA Clippinger Chevrolet; DBA Clippinger Chrysler Jeep Dodge		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) 95-4444923		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): 2000 East Garvey Avenue South West Covina, CA <div style="text-align: right; font-size: small;">ZIP Code 91791</div>		Street Address of Joint Debtor (No. and Street, City, and State): <div style="text-align: right; font-size: small;">ZIP Code</div>
County of Residence or of the Principal Place of Business: Los Angeles		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): <div style="text-align: right; font-size: small;">ZIP Code</div>		Mailing Address of Joint Debtor (if different from street address): <div style="text-align: right; font-size: small;">ZIP Code</div>
Location of Principal Assets of Business Debtor (if different from street address above):		
Type of Debtor (Form of Organization) (Check one box) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
Chapter 15 Debtors Country of debtor's center of main interests: Each country in which a foreign proceeding by, regarding, or against debtor is pending:	Tax-Exempt Entity (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	Nature of Debts (Check one box) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.
Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.	Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).	
Statistical/Administrative Information <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> OVER 100,000		
Estimated Assets <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		
Estimated Liabilities <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): West Covina Motors, Inc.	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)			
Location Where Filed: - None -	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: Hassen Imports Partnership	Case Number: 2:11-bk-42068-ER	Date Filed: 7/27/11	
District: Central District of California (Los Angeles Division)	Relationship: Potentially Related Entity	Judge: Ernest M. Robles	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.	Exhibit B <small>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</small> I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b). X _____ Signature of Attorney for Debtor(s) (Date)		
Exhibit C			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.			
Exhibit D			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input checked="" type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)			

(Name of landlord that obtained judgment)			

(Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):
West Covina Motors, Inc.

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
Signature of Foreign Representative

Printed Name of Foreign Representative

Date

Signature of Attorney*

X /s/ Martin J. Brill
Signature of Attorney for Debtor(s)

Martin J. Brill 53220
Printed Name of Attorney for Debtor(s)

Levene, Neale, Bender, Yoo & Brill LLP
Firm Name

10250 Constellation Blvd.
Suite 1700
Los Angeles, CA 90067

Address

(310) 229-1234
Telephone Number

December 28, 2012 53220
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.)(Required by 11 U.S.C. § 110.)

Address

X _____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ Ziad Alhassen
Signature of Authorized Individual

Ziad Alhassen
Printed Name of Authorized Individual

President
Title of Authorized Individual

December 28, 2012
Date

B4 (Official Form 4) (12/07)

**United States Bankruptcy Court
Central District of California**

In re West Covina Motors, Inc.

Debtor(s)

Case No.

Chapter

11

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
City of West Covina c/o James H. Broderick, Jr. 555 South Flower Street, 31st Floor Los Angeles, CA 90071	City of West Covina c/o James H. Broderick, Jr. 555 South Flower Street, 31st Floor Los Angeles, CA 90071	Loan/Judgment	Disputed	7,586,603.92 (0.00 secured)
State of California Employment Development Department 10330 Pioneer Blvd., Suite 150 Santa Fe Springs, CA 90670	State of California Employment Development Department 10330 Pioneer Blvd., Suite 150 Santa Fe Springs, CA 90670	Taxes		488,078.34
Reynolds & Reynolds One Reynolds Way Dayton, OH 45430	Reynolds & Reynolds	Services		400,000.00
Farhat Chamani	Farhat Chamani	Trade Debt		268,000.00
William Larry Colvin 1568 Green Drive Chino Hills, CA 91709	William Larry Colvin 1568 Green Drive Chino Hills, CA 91709	Trade Debt		200,000.00
Kaiser Foundation Health Plan, Inc. One Kaiser Plaza Oakland, CA 94612	Kaiser Foundation Health Plan, Inc. One Kaiser Plaza Oakland, CA 94612	Services	Disputed	189,357.24
Smeal Manufacturing Company 610 West 4th Street Snyder, NE 68664	Smeal Manufacturing Company 610 West 4th Street Snyder, NE 68664	Trade Debt		79,200.00
State of California Board of Equalization P.O. Box 1500 West Covina, CA	State of California Board of Equalization P.O. Box 1500 West Covina, CA	Taxes		74,100.00
A&G Custom Auto Sound 5747 Whittier Blvd. Los Angeles, CA 90022	A&G Custom Auto Sound 5747 Whittier Blvd. Los Angeles, CA 90022	Trade Debt		33,000.00

B4 (Official Form 4) (12/07) - Cont.

In re **West Covina Motors, Inc.**

Case No. _____

Debtor(s) _____

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS
(Continuation Sheet)

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	<i>Amount of claim [if secured, also state value of security]</i>
Fisher & Phillips LLP 444 South Flower Street, Suite 1590 Los Angeles, CA 90071	Fisher & Phillips LLP 444 South Flower Street, Suite 1590 Los Angeles, CA 90071	Services	Disputed	4,187.80

**DECLARATION UNDER PENALTY OF PERJURY
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, the President of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date **December 28, 2012**

Signature **/s/ Ziad Alhassen**
Ziad Alhassen
President

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

MASTER MAILING LIST
Verification Pursuant to Local Bankruptcy Rule 1007-2(d)

Name Martin J. Brill 53220

Address 10250 Constellation Blvd. Suite 1700 Los Angeles, CA 90067

Telephone (310) 229-1234

- Attorney for Debtor(s)
 Debtor in Pro Per

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
List all names including trade names used by Debtor(s) within last 8 years: West Covina Motors, Inc. DBA Clippinger Chevrolet; DBA Clippinger Chrysler Jeep Dodge	Case No.:
	Chapter: 11

VERIFICATION OF CREDITOR MAILING LIST

The above named debtor(s), or debtor's attorney if applicable, do hereby certify under penalty of perjury that the attached Master Mailing List of creditors, consisting of 0 sheet(s) is complete, correct, and consistent with the debtor's schedules pursuant to Local Rule 1007-2(d) and I/we assume all responsibility for errors and omissions.

Date: 12/28/2012

/s/ Ziad Alhassen
Ziad Alhassen, President
Signer/Title

West Covina Motors, Inc.
2000 East Garvey Avenue South
West Covina, CA 91791

Martin J. Brill
Levene, Neale, Bender, Yoo & Brill LLP
10250 Constellation Blvd.
Suite 1700
Los Angeles, CA 90067

U.S. Trustee
Ernst & Young Plaza
725 S. Figueroa Street, 26th Floor
Los Angeles, CA 90017

A&G Custom Auto Sound
5747 Whittier Blvd.
Los Angeles, CA 90022

Centerline Dynamics

City of West Covina
c/o James H. Broderick, Jr.
555 South Flower Street, 31st Floor
Los Angeles, CA 90071

CorePointe Capital Finance LLC
c/o Kim Gage, Esq.
535 Anton Blvd., 10th Floor
Costa Mesa, CA 92626

Dighton America, Inc.
100 North Barranca Avenue
Suite 900
West Covina, CA 91791

Farhat Chamani

Fisher & Phillips LLP
444 South Flower Street, Suite 1590
Los Angeles, CA 90071

Franchise Tax Board
Special Procedures
POB 2952
Sacramento, CA 95812

General Motors LLC
300 Renaissance Center
Detroit, MI 48265

Hassen Holding Company
100 North Barranca Avenue
Suite 900
West Covina, CA 91791

Hassen Imports Partnership
100 North Barranca Avenue
Suite 900
West Covina, CA 91791

Internal Revenue Service
Insolvency I Stop 5022
300 N. Los Angeles St., #4062
Los Angeles, CA 90012-9903

Internal Revenue Service
9350 Flair Drive
El Monte, CA 91731

Kaiser Foundation Health Plan, Inc.
One Kaiser Plaza
Oakland, CA 94612

Kay Automotive Distributors
14650 Calvert Street
Van Nuys, CA 91411

Los Angeles Treasurer and Tax
Collector
PO Box 54110
Los Angeles, CA 90054

Preferred Auto Dealers Self
Insurance Program
P.O. Box 7138
Folsom, CA 95763

Preferred Auto Dealers Self
Insurance Program
248 Baurer Circle
Folsom, CA 95630

Reynolds & Reynolds
One Reynolds Way
Dayton, OH 45430

Smeal Manufacturing Company
610 West 4th Street
Snyder, NE 68664

State of California
Board of Equalization
P.O. Box 1500
West Covina, CA

State of California Employment
Development Department
10330 Pioneer Blvd., Suite 150
Santa Fe Springs, CA 90670

Warren Distributing, Inc.
8737 Dice Road
Santa Fe Springs, CA 90670

West Covina Ford, Inc.
2000 East Garvey Avenue South
West Covina, CA 91791

William Larry Colvin
1568 Green Drive
Chino Hills, CA 91709

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Martin J. Brill Levene, Neale, Bender, Yoo & Brill LLP 10250 Constellation Blvd. Suite 1700 Los Angeles, CA 90067 (310) 229-1234 53220 <input type="checkbox"/> Attorney for.	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: West Covina Motors, Inc. Debtor(s).	CASE NO.: CHAPTER: 11 ADV. NO.:

**ELECTRONIC FILING DECLARATION
(CORPORATION/PARTNERSHIP)**

<input checked="" type="checkbox"/>	Petition, statement of affairs, schedules or lists	Date Filed: <u>12/28/2012</u>
<input type="checkbox"/>	Amendments to the petition, statement of affairs, schedules or lists	Date Filed: _____
<input type="checkbox"/>	Other: _____	Date Filed: _____

PART I - DECLARATION OF AUTHORIZED SIGNATORY OF DEBTOR OR OTHER PARTY

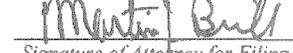
I, the undersigned, hereby declare under penalty of perjury that: (1) I have been authorized by the Debtor or other party on whose behalf the above-referenced document is being filed (Filing Party) to sign and to file, on behalf of the Filing Party, the above-referenced document being filed electronically (Filed Document); (2) I have read and understand the Filed Document; (3) the information provided in the Filed Document is true, correct and complete; (4) the "/s/," followed by my name, on the signature lines for the Filing Party in the Filed Document serves as my signature on behalf of the Filing Party and denotes the making of such declarations, requests, statements, verifications and certifications by me and by the Filing Party to the same extent and effect as my actual signature on such signature lines; (5) I have actually signed a true and correct hard copy of the Filed Document in such places on behalf of the Filing Party and provided the executed hard copy of the Filed Document to the Filing Party's attorney; and (6) I, on behalf of the Filing Party, have authorized the Filing Party's attorney to file the electronic version of the Filed Document and this Declaration with the United States Bankruptcy Court for the Central District of California.

 12/28/2012
 Signature of Authorized Signatory of Filing Party Date

Ziad Alhassen
 Printed Name of Authorized Signatory of Filing Party
President
 Title of Authorized Signatory of Filing Party

PART II - DECLARATION OF ATTORNEY FOR FILING PARTY

I, the undersigned Attorney for the Filing Party, hereby declare under penalty of perjury that: (1) the "/s/," followed by my name, on the signature lines for the Attorney for the Filing Party in the Filed Document serves as my signature and denotes the making of such declarations, requests, statements, verifications and certifications to the same extent and effect as my actual signature on such signature lines; (2) an authorized signatory of the Filing Party signed the Declaration of Authorized Signatory of Debtor or Other Party before I electronically submitted the Filed Document for filing with the United States Bankruptcy Court for the Central District of California; (3) I have actually signed a true and correct hard copy of the Filed Document in the locations that are indicated by "/s/," followed by my name, and have obtained the signature of the authorized signatory of the Filing Party in the locations that are indicated by "/s/," followed by the name of the Filing Party's authorized signatory, on the true and correct hard copy of the Filed Document; (4) I shall maintain the executed originals of this Declaration, the Declaration of Authorized Signatory of Debtor or Other Party, and the Filed Document for a period of five years after the closing of the case in which they are filed; and (5) I shall make the executed originals of this Declaration, the Declaration of Authorized Signatory of Debtor or Other Party, and the Filed Document available for review upon request of the Court or other parties.

 12/28/2012
 Signature of Attorney for Filing Party Date

Martin J. Brill 53220
 Printed Name of Attorney for Filing Party

**CERTIFICATE OF WEST COVINA MOTORS, INC.,
A CALIFORNIA CORPORATION
AUTHORIZING FILING OF PETITION UNDER
CHAPTER 11 OF THE BANKRUPTCY CODE**

I, Ziad Alhassen, hereby certify as follows:

1. I am the President and the Chairman of the Board of West Covina Motors, Inc. (the "Company").

2. At a special meeting of the Company's Board of Directors, the following resolutions were duly enacted, and the same remain in full force and effect, without modification, as of the date hereof:

RESOLVED, that Ziad Alhassen ("Alhassen") is hereby authorized to determine, based upon subsequent events and advice of counsel, whether it is desirable and in the best interests of the Company, its creditors, and other interested parties, that the Company file a Petition under the provisions of Chapter 11 of Title 11, United States Code (the "Bankruptcy Code");

FURTHER RESOLVED, that Mr. Alhassen, or such other or additional officer(s) or representative(s) of the Company that Mr. Alhassen may designate and appoint, is hereby authorized and directed on behalf of and in the name of the Company to execute a Chapter 11 bankruptcy petition and all related documents and papers on behalf of the Company in order to enable the Company to commence a Chapter 11 bankruptcy case;

FURTHER RESOLVED, that Mr. Alhassen, or such other or additional officer(s) or representative(s) of the Company that Mr. Alhassen may designate and appoint, is hereby authorized and directed on behalf of and in the name of the Company to execute and file and to cause counsel for the Company to prepare with the assistance of the Company as appropriate all petitions, schedules, lists and other papers, documents and pleadings in connection with the Company's bankruptcy case, and to take any and all action which Mr. Alhassen, or such other or additional officer(s)

or representative(s) of the Company that Mr. Alhassen may designate and appoint, deems necessary and proper in connection with the Company's bankruptcy case without further approval of the Board; and

FURTHER RESOLVED that the Company hereby retains the law offices of Levene, Neale, Bender, Yoo & Brill L.L.P. as bankruptcy counsel for the Company for purposes of, among other things, representing the Company in its Chapter 11 case.

Dated: December 28, 2012

WEST COVINA MOTORS, INC.

By: 

ZIAD ALHASSEN
PRESIDENT AND CHAIRMAN OF
THE BOARD OF DIRECTORS OF
WEST COVINA MOTORS, INC.

Exhibit I

1 GREGORY R. OXFORD (State Bar No. 62333)
goxford@icclawfirm.com
2 ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
3 Torrance, California 90503
Telephone: (310) 316-1990
4 Facsimile: (310) 316-1330
Attorneys for General Motors LLC
5
6
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 In re:
12 WEST COVINA MOTORS, INC.,
13 Debtor.

Case No.: Case 2:12-bk-52197-ER

Chapter 11

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER
CONFIRMING THAT AUTOMATIC
STAY OF 11 U.S.C. § 362(a) DOES
NOT BAR TERMINATION OF
DEBTOR'S GENERAL MOTORS
DEALER AGREEMENT
[11 U.S.C. § 362(j)]**

14
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18 Date: February 12, 2013
19 Time: 10:00 a.m.
Courtroom 1568
20 Honorable Ernest M. Robles

21 General Motors LLC ("GM") respectfully submits this memorandum in support of
22 its motion for an order pursuant to Section 362(j) of the Bankruptcy Code confirming that
23 the automatic stay of Section 362(a) does not bar it from treating the Chevrolet Dealer
24 Sales and Service Agreement between GM and the Debtor ("Dealer Agreement") as
25 having been terminated under non-bankruptcy law pursuant to the termination provisions
26 of a Settlement and Deferred Termination Agreement and Release between the Debtor and
27 GM ("Settlement Agreement").
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PRELIMINARY STATEMENT

1
2 For several years before the filing of this case, GM and the Debtor, West Covina
3 Motors, Inc. (“WCM” or “Dealer”), were parties to the Dealer Agreement under which
4 WCM sporadically operated an authorized Chevrolet dealership in West Covina.

5 In 2010, after WCM had repeatedly defaulted on its obligation under the Dealer
6 Agreement to maintain a wholesale “floor plan” credit line to finance its purchase of new
7 Chevrolets from GM in a quantity sufficient to support expected sales to retail customers,
8 GM gave written notice of its intent to terminate the Dealer Agreement. If WCM did not
9 have the credit necessary to purchase new Chevrolets from GM, it obviously could not
10 sell enough vehicles to satisfy its retail sales obligations under the Dealer Agreement.

11 In response to the termination notice, WCM filed a “protest” with the New Motor
12 Vehicle Board of the State of California (“New Motor Vehicle Board” or, simply,
13 “Board”) pursuant to Section 3060 of the California Vehicle Code. Section 3060 and
14 related Vehicle Code provisions entitled WCM to a hearing before the Board at which
15 GM would have been required to prove that there was “good cause” for termination of the
16 Dealer Agreement. In lieu of a hearing, GM and WCM entered into the Settlement
17 Agreement and asked the Board to adopt it as a Stipulated Decision of the Board pursuant
18 to Cal. Veh. Code § 3050.7(a), which the Board did on December 15, 2010.

19 In a nutshell, the Settlement Agreement required WCM to establish and maintain a
20 new floor plan credit line and, if it did not do so, WCM agreed to terminate the Dealer
21 Agreement voluntarily or present a proposal to GM to sell the dealership to an unaffiliated
22 party. After WCM again lost its floor plan credit line in December 2011, it presented such
23 a “buy-sell” proposal and GM approved it, but the sale did not close by December 31,
24 2012, as required by the Settlement Agreement and Stipulated Decision, triggering
25 WCM’s agreement under Section 2.6 to voluntarily terminate the Dealer Agreement.

26 On December 28, 2012, three days before the deadline for closing, WCM filed its
27 chapter 11 petition for the avowed purpose of avoiding termination of the Dealer
28 Agreement. The issue presented by the present motion is whether the bankruptcy filing

1 and resulting automatic stay actually accomplished that goal. It did not. Under well-
2 settled principles of bankruptcy law, neither the filing of a bankruptcy petition nor the
3 automatic stay could stay the passage of time or “undo” WCM’s voluntary agreement
4 under non-bankruptcy law to terminate the Dealer Agreement if it failed to close the
5 proposed buy-sell transaction within the period prescribed by the Settlement Agreement.
6 As a result, the automatic stay does not bar the agreed voluntary termination of the Dealer
7 Agreement or preclude GM from taking prompt steps unilaterally to identify and appoint a
8 new Chevrolet dealer to serve West Covina and the surrounding communities.

9 Simply put, WCM’s repeated contractual defaults, protracted legal proceedings and
10 other delays have deprived Chevrolet of dealer representation in West Covina *for years*
11 while at the same time preventing GM from appointing a replacement dealership with the
12 financial capability of actually doing business there. In fact, with the exception of 2011
13 and a brief period in 2009 the Chevrolet brand has been “out of business” in West Covina
14 since late 2008 – four and one-half years ago. During most of this extended period,
15 WCM’s empty dealership facility – adjacent to the I-10 freeway and fully visible to the
16 tens of thousands of potential customers who drive past each day – has severely damaged
17 Chevrolet’s good will and the reputation of its products, and that damage deepens with
18 each passing day that the Clippinger Chevrolet “ghost town” persists beneath the ample
19 and conspicuous Chevrolet signage at the deserted dealership.

20 GM believes that the Dealer Agreement terminated by operation of law when the
21 proposed “buy sell” transaction failed to close by December 31, 2012, but it has not taken
22 any of the administrative steps necessary to complete the termination because it did not
23 want to do anything that could somehow be interpreted as violating the automatic stay.
24 Based on the undisputed facts, however, GM believes that no principle of bankruptcy,
25 state or federal law interfered with the agreed termination of the Dealer Agreement or
26 justifies delaying further GM’s legal right to identify and appoint a new Chevrolet dealer
27 freed from the long-running legal obstacles and entanglements sponsored by WCM and its
28 Dealer-Operator, Mr. Alhassen. Thus, GM respectfully urges that its motion be granted.

STATEMENT OF FACTS

A. WCM's Repeated Flooring Defaults

Article 10.2 of the Standard Provisions of the Dealer Agreement requires GM dealers like WCM "to have and maintain a separate line of credit from a creditworthy financial institution reasonably acceptable to General Motors and available to finance the Dealer's wholesale purchase of new [GM] vehicles." Such "floor plan" financing, or "flooring," enables the Dealer to finance and maintain an inventory of new vehicles to support its expected rate of new vehicle sales. Oxford Decl., ¶ 2 & Exh. A.

In late 2008, WCM's floor plan financing provider, General Motors Acceptance Corporation ("GMAC"), suspended WCM's flooring. In May 2009, WCM obtained new flooring from GMAC, but GMAC withdrew WCM's flooring again on September 15, 2009. Thereafter, WCM was not able to purchase from GM, and therefore could not sell to retail customers, enough new Chevrolets to meet its obligations under the Dealer Agreement. Oxford Decl., ¶ 3 & Exhs. B, C and D.

Based on WCM's extended history of non-compliance with Article 10.2, GM in January 2010 gave notice of its intent to terminate WCM's Dealer Agreement. WCM filed a "protest" with the New Motor Vehicle Board pursuant to California Vehicle Code § 3060. Filing of the protest had the legal effect of enjoining termination of the Dealer Agreement pending an administrative hearing at which GM would have had to show there was "good cause" for the termination. Oxford Decl., ¶ 4 & Exhs. E and F.

B. The Settlement and Deferred Termination Agreement and Release

The Board protest hearing was scheduled to begin on November 15, 2010. As the hearing approached, WCM had been without any floor plan financing for nearly two years (late 2008 to late 2010, except for about three and one-half months in mid-2009). Pictures taken in October 2010 dramatically illustrate the resulting dealership "ghost town" – a large, empty dealership lot devoid of new vehicle inventory – that then had persisted for many months beneath the Chevrolet signage clearly visible from the I-10 freeway. Oxford Decl., ¶ 5 & Exh. G. The damage to the reputation and good will of Chevrolet

1 and its products was incalculable, to say nothing of the dealership's abysmal new vehicle
2 sales performance. *See* Oxford Decl., ¶ 5 & Exh. H (excerpt from 2010 Sales Evaluation
3 Report showing that WCM was last in the entire State of California in terms of combined
4 new Chevrolet car and light-duty truck sales and had a "retail sales index" of 7.81 versus
5 the minimum level of 100.00 required by Article 9 of the Dealer Agreement).

6 In October 2010, about three weeks before the protest hearing, WCM delivered to
7 GM's counsel a new flooring commitment from GMAC. Oxford Decl., ¶ 6 & Exh. I.
8 Given WCM's extended lack of flooring, GM was concerned that WCM's flooring could
9 again lapse, resulting in still another lengthy period in which WCM could not perform its
10 key inventory-stocking and sales obligations under the Dealer Agreement and in which
11 the damage to Chevrolet's good will and reputation would resume. To address this
12 concern and obviate the need for a hearing at the Board, GM and WCM negotiated the
13 Settlement Agreement and requested that the Board adopt it as a Stipulated Decision. The
14 Board did so on December 15, 2010. Oxford Decl., ¶ 6 & Exhs. J, K and L.

15 Under the Settlement Agreement GM agreed to withdraw its termination notice and
16 WCM agreed – insofar as is pertinent here – substantially as follows:

17 (a) that it would obtain from GMAC and maintain a new floor plan line
18 of credit for Chevrolet of at least \$3 million;

19 (b) that if it lost its floor plan financing again, it would terminate its
20 Dealer Agreement voluntarily if it did not within ninety days either:

21 (1) provide GM with written confirmation that it had obtained a new
22 floor plan line of credit of at least \$3 million; or

23 (2) present for GM's approval a fully executed agreement and
24 complete proposal for the sale of its dealership company stock or dealership
25 business assets to an unaffiliated party (a "buy-sell" proposal);

26 (c) that if WCM presented and GM approved or conditionally approved
27 a buy-sell proposal, WCM would voluntarily terminate its Dealer Agreement
28

1 unless the proposed buy-sell transaction closed within a prescribed period of
2 time (30 days after the day after receipt of the approval notice from GM); and

3 (d) that if the approved buy-sell transaction did not close within the
4 prescribed period, WCM would not “protest said voluntary termination
5 pursuant to section 3060 of the Vehicle Code or file any other litigation of any
6 nature whatsoever concerning termination of the Dealer Agreement.”

7 Specifically, the relevant provisions of the Settlement Agreement are set out in
8 pertinent part below [Exh. J (pp. 2-3)]:

9 “2.2. WCM agrees that until at least November 30, 2012 it will maintain
10 a line of floor plan credit of at least \$3 million with GMAC (or other financial
11 source acceptable to GM pursuant to its normal business policies) for the sole
12 purpose of acquiring, financing and carrying in dealer stock new Chevrolet
13 vehicle inventory ... ("Dedicated Chevrolet Flooring"). Further, WCM shall
14 direct GMAC (or any subsequent floor plan lender approved by GM) to notify
15 GM immediately if WCM loses its Dedicated Chevrolet Flooring or its amount
16 declines below \$3 million....

17 “2.3. If at any time before November 30, 2012, WCM loses its Dedicated
18 Chevrolet Flooring or its total amount decreases below \$3 million, WCM shall
19 have ninety days to either (a) provide written evidence of a commitment for
20 replacement Dedicated Chevrolet Flooring in the amount of at least \$ 3 million
21 from GMAC or another GM-approved financial institution or (b) present GM
22 with a fully-executed "buy- sell" agreement and complete proposal for the
23 transfer of the stock or assets of WCM to a person or entity not affiliated with
24 WCM or Owner. If WCM does not satisfy either of these conditions (a) or (b)
25 within ninety days of the date it loses its Dedicated Chevrolet Flooring or its
26 total amount decreases below \$3 million, WCM agrees that its Dealer
27 Agreement will terminate voluntarily effective 30 days later (*i.e.*, 120 days after
28 the loss of the Dedicated Chevrolet Flooring or its decrease below \$ 3 million)

1 pursuant to Article 14.2 of the Dealer Agreement;... WCM and Owners agree
2 not to protest said voluntary termination pursuant to section 3060 of the Vehicle
3 Code or to challenge said termination in any judicial or administrative forum and
4 hereby agree that they will have no legal right to do so....

5 “... ”

6 “2.5. If prior to the expiration of 90 days after WCM loses the Dedicated
7 Chevrolet Flooring or its amount declines below \$3 million, WCM submits a
8 fully- executed "buy-sell" agreement and complete proposal for the transfer of
9 the stock or assets of the dealership to a person or entity not affiliated with
10 WCM or Owner, GM will consider WCM's proposal pursuant to its normal
11 business policies and respond with either an approval, a conditional approval or
12 a rejection of the proposal within sixty days in accordance with its normal
13 business practices. If GM approves or conditionally approves the proposal, and
14 the "buy-sell" transaction closes within thirty days of the date that WCM is
15 notified of such approval, this Agreement shall be of no further force or effect....

16 “2.6. If a GM-approved "buy-sell" transaction does not close within
17 thirty days of GM's notifying WCM of the approval, then WCM agrees that its
18 Dealer Agreement will terminate voluntarily pursuant to Article 14.2 of the
19 Dealer Agreement and that said termination will be effective 150 days after the
20 date it loses its Dedicated Chevrolet Flooring or it decreases below \$3 million;
21 upon such termination, WCM shall be entitled to termination assistance pursuant
22 to Article 15 of the Dealer Agreement with the exception of Article 15.3. WCM
23 agrees not to protest said voluntary termination pursuant to section 3060 of the
24 Vehicle Code or file any other litigation of any nature whatsoever concerning
25 termination of the Dealer Agreement.”

26 **C. WCM’s Loss of Flooring (Again) Breaches the Settlement Agreement**

27 As required by the Settlement Agreement, WCM initially did obtain a floor plan
28 credit line of \$3 million from GMAC and maintained it for approximately one year. On

1 December 1, 2011, however, GM received notice from GMAC that it was again
2 terminating WCM's flooring. Oxford Decl., ¶ 7 & Exh. M. Under Section 2.3 of the
3 Settlement Agreement, WCM then had ninety days either to obtain a replacement \$3
4 million floor plan line of credit or to submit a complete buy-sell proposal. WCM did not
5 satisfy either of these conditions within the specified ninety-day period. However, WCM
6 claimed – and instituted proceedings in which it obtained a Board decision – that WCM
7 and its counsel had not received proper notice from GM under section 4.9 of the
8 Settlement Agreement and, as a result, the ninety-day period had not yet expired. Oxford
9 Decl., ¶ 7 & Exh. N.

10 The Board's decision extended the deadline for WCM to obtain a replacement \$3
11 million floor plan line of credit or submit a complete buy-sell proposal until the 80st day
12 after the mailing of the Board's decision to the parties on August 24, 2012; consistent with
13 the voluntary termination clause of the Settlement Agreement, the Board's decision stated
14 that if WCM failed to satisfy one of the conditions set forth in Section 2.3 of the
15 Settlement Agreement, "Protestant's franchise shall terminate on the 81st day after the
16 date of mailing to the parties and their counsel by U.S. Postal Service certified mail a copy
17 of the Board's [decision]." Exh. N, pp. 17-18. Thus, if WCM failed to satisfy one of the
18 conditions set forth in Section 2.3 within eighty days, its Dealer Agreement would
19 terminate automatically.

20 **D. WCM Fails To Close the "Buy-Sell" Transaction and Files Chapter 11**

21 On November 12, 2012, WCM and a proposed purchaser, West Covina C, LLC
22 ("WCC"), completed their submission to GM of a buy-sell proposal. On November 29,
23 2012, GM conditionally approved the buy-sell proposal. Oxford Decl., ¶ 8 & Exh. O.
24 Pursuant to Sections 2.5 and 2.6 WCC and the Debtor then had 30 days after the day after
25 WCM's receipt of GM's approval notice, *i.e.*, until December 31, 2012, to close the buy-
26 sell transaction.¹ It is undisputed that the buy-sell transaction did not close by that date.

27 ¹ Oddly, the debtor's motion for approval of bid procedures asserts that GM gave WCM
28 only two weeks to close the proposed WCC transaction. Under the clear language of
Sections 2.5, 2.6 and 4.9, however, WCC and WCM actually had 32 days to close.

1 Recognizing that the proposed WCC transaction would not close on time (or at all),
2 WCM commenced the present bankruptcy case on December 28, 2012. As the Court
3 knows, Hassen Imports Partnership (“HIP”), an affiliate of WCM that also is owned and
4 controlled by WCM’s President, Ziad Alhassen, is the debtor in a long-running chapter 11
5 bankruptcy case that recently was converted to chapter 7. The conversion was ordered
6 based on the inability of HIP, which owns the real estate on which the WCM dealership
7 formerly operated, to confirm a plan of reorganization that depended, among other things,
8 on the closing of the same proposed buy-sell transaction with WCC and on the execution
9 by WCC and its affiliates of leases of HIP’s real estate. In a last ditch effort to save the
10 HIP case from conversion to chapter 7, HIP on New Years Day filed a supplemental
11 memorandum and a supporting declaration in which Mr. Alhassen stated, among other
12 things, the following:

13 “14. On December 28, 2012, WCM had no choice but to seek the
14 protection of a chapter 11 bankruptcy filing. GM required the closing of the
15 GM Transaction with [WCC, an affiliate of] Y Transport by no later than
16 December 31, 2012 and further required Y Transport to submit an executed
17 letter by December 29, 2012 committing to close the GM Transaction by such
18 a date. GM asserted that, in the event that either condition was not timely
19 performed, WCM’s Chevrolet (GM) franchise would be terminated.

20 “15. Because, among other things, the parties had not been able to
21 obtain Bankruptcy Court approval for the leases of the Chevrolet Property or
22 Hummer Property by the GM-imposed deadline, *the GM Transaction was not*
23 *capable of closing by the end of the year*, and Y Transport was unwilling to
24 return an executed letter to GM stating otherwise. As a result, WCM faced the
25 very real possibility that it would lose all value associated with its Chevrolet
26 (GM) franchise if it did not seek the protection of a bankruptcy filing.”

27 Oxford Decl., ¶ 9 & Exh. P (emphasis added). Thus, it is apparent that a primary goal of
28 this bankruptcy case is to avoid WCM’s agreement that the Dealer Agreement would

1 terminate automatically under the Settlement Agreement and Stipulated Board Decision if
2 it did not satisfy the condition that it timely close the proposed “buy-sell” transaction.

3 **E. GM Seeks Termination To Re-Establish Chevrolet Representation**

4 Following the loss of GMAC flooring on December 1, 2011, WCM has been
5 without flooring – and Chevrolet has been without dealer representation in West Covina –
6 for more than one year. In fact, WCM’s inability to maintain the required line of floor
7 plan financing has essentially put Chevrolet “out of business” in West Covina for more
8 than three of the last four years (late 2008 until May 2009, from September 2009 to
9 December 2010, and December 2011 to present).

10 After its most recent loss of floorplan, the WCM dealership rapidly reverted to
11 “ghost town” status, as graphically depicted in the photos that GM representatives took in
12 mid-September 2012. Navari Decl., ¶¶ 4-12 & Exhs. 1-9. During calendar year 2012, the
13 dealership sold only a single current model year new Chevrolet vehicle to a retail
14 customer, and GM business records show that, with the exception of a single 2012
15 Chevrolet Suburban, the Dealer appears not to have had any significant inventory of
16 current model year Chevrolet vehicles at any time after that single retail sale and that the
17 few units (approximately five) that briefly showed up in his inventory during the first half
18 of 2012 were never delivered by the Dealer to a retail customer, but instead likely were re-
19 sold to another dealer. *Id.*, ¶ 3. Further, as explained in Mr. Navari’s declaration, the
20 dealership’s service department was essentially deserted for the entire nine-day period in
21 September 2012 in which GM monitored daily business activity at the dealership. GM
22 did not observe a single sales or service customer at the dealership until the ninth day. For
23 all practical purposes, the dealership was closed.

24 Recognizing that this state of affairs was a flagrant and continuing breach of
25 WCM’s obligation to conduct customary dealership sales and service operations during
26 normal business hours, GM served WCM with another termination notice on October 3,
27 2012 pursuant to Article 14.5.3 of the Dealer Agreement. Oxford Decl., ¶ 10 & Exhs. A
28 & Q. Article 14.5.3 entitles GM without more to terminate a Dealer Agreement if the

1 *agreement's own terms and applicable state law.*") (emphasis added; citations omitted);
2 Counties Contracting and Const. Co. v. Constitution Life Ins. Co., 855 F.2d 1054, 1061
3 (3d Cir.1988) ("Once the contract is no longer in existence, the right to assume it is
4 extinguished. A contract may not be assumed under § 365 if it has already expired
5 according to its terms."); Texscan Corp. v. Commercial Union Ins. Co. (In re Texscan
6 Corp.), 107 B.R. 227, 230 (B.A.P. 9th Cir.1989) ("It is axiomatic that before 11 U.S.C. §
7 365 can apply a contract must exist. If a contract has expired by its own terms then there
8 is nothing left to assume or reject.").

9 It is well-settled, therefore, that a franchise or dealer agreement that has expired or
10 that has terminated under the contract terms and/or non-bankruptcy law, either before or
11 after the bankruptcy filing, is *not* property of the estate, *not* an executory contract and *not*
12 subject to the automatic stay, even if the termination does not become effective until after
13 the date of the bankruptcy filing. *See, e.g., Turnpike Nissan, Inc. v. Nissan Motor Corp.*
14 in U.S.A. (In re Turnpike Nissan, Inc.), 150 B.R. 345, 346 & n.1 (Bankr.M.D.Pa.1992)
15 ("The automatic stay created by the Debtor's bankruptcy on June 4, 1991, cannot extend
16 the [June 7, 1991] termination date of the franchise agreement"), *citing* Moody v.
17 AMOCO Oil Co., 734 F.2d 1200 (7th Cir.), *cert. denied* 469 U.S. 982 (1984); White
18 Motor Corp. v. Nashville White Trucks, Inc. (In re Nashville White Trucks, Inc.), 5 B.R.
19 112 (Bankr.M.D.Tenn.1980) (dealer agreement ceased to be an executory contract when it
20 expired by its own terms several weeks after the bankruptcy filing); In re Diversified
21 Washes of Vandalia, Inc., 147 B.R. 23, 25-27 (Bankr.S.D.Ohio 1992) (automatic stay did
22 not prevent running of time until pre-petition notice terminating Shell Dealer Agreement
23 became effective). The same principles govern the analogous expiration or termination of
24 leases and licenses. *See, e.g., In re P.I.N.E., Inc.*, 52 B.R. 463, 465 (Bankr.W.D.Mich.
25 1985) ("a lease that expires by its own terms after the filing of the bankruptcy petition
26 leaves nothing to assume or reject"); In re Beck, 5 B.R. 169, 170-71 (Bankr.D.Haw.1980)
27 ("the filing of the petition for relief with the Bankruptcy Court in no way gives rise to a
28

1 right in the ... debtor in possession to extend the ... License Agreements, which expired
2 by their terms [one month after the filing of the petition]”).

3 Stating most broadly the legal principle that is dispositive here, the United States
4 Court of Appeals for the First Circuit said this:

5 “Regardless of whether Gull Air's proprietary interest in the [airport
6 landing and take-off] slots rises to the level of ‘property of the estate’ within
7 the meaning of the bankruptcy laws, Gull Air lost its limited proprietary
8 interest by its failure to satisfy a qualifying condition. *The Bankruptcy Code*
9 *does not create or enhance property rights of a debtor. Thus, when a*
10 *debtor's proprietary interest expires by operation of an express condition, the*
11 *Bankruptcy Code does not preserve that interest and prevent termination.*

12 Accordingly, Gull Air's filing of a bankruptcy petition did not preserve Gull
13 Air's interest in the LaGuardia slots and prevent that interest from
14 automatically expiring upon Gull Air's failure to use the slots as required.”

15 Fed. Aviation Admin. v. Gull Air Inc. (In re Gull Air, Inc.), 890 F.2d 1255, 1261-62 (1st
16 Cir.1989) (emphasis added; citations and footnote omitted).

17 This conclusion follows from the most basic principle governing the assumption of
18 executory contracts by a trustee or, here, a debtor-in-possession: as stated by the U.S.
19 Supreme Court, an executory contract must be assumed *cum onere*, *i.e.*, subject to all of its
20 express terms, including any applicable expiration date or termination provisions:

21 “Cancellation of a contract pursuant to its terms alters, of course,
22 rights and duties of the trustee. But the bankruptcy rule is that he takes the
23 contracts of the debtor subject to their terms and conditions. Contracts
24 adopted by him are assumed *cum onere*. The general rule is ... that if the
25 other party had a right to terminate the arrangement, that right survives
26 adoption of the contract by the trustee....”

27 Thompson v. Texas Mexican Ry. Co., 328 U.S. 134, 141, 66 S.Ct. 937, 90 L.Ed. 1132
28 (1946) (footnote omitted).

1 Many decisions apply this rule. *E.g.*, Texas North Western Ry. Co. v. Diamond
2 Shamrock Refining & Mktg Co. (In re Chicago, Rock Island & Pac. R.R. Co.), 865 F.2d
3 807, 815 (7th Cir.1988) (“The fact that Rock Island had filed a bankruptcy petition in
4 1975 did not prevent Diamond Shamrock from treating the contracts as terminated [based
5 on Rock Island’s anticipatory repudiation]. A bankruptcy trustee ‘cannot accept the
6 benefits of an executory contract without accepting the burdens as well.’ Therefore, ‘if
7 the debtor has committed, or the trustee commits, an incurable breach, the trustee has no
8 continuing rights under the contract.”); In re Trigg, 630 F.2d 1370, 1374 (10th Cir.1980)
9 (“A contract that provides for termination on the default of one party may terminate under
10 ordinary principles of contract law even if the defaulting party has filed a petition under
11 the Bankruptcy Act”); Schokbeton Indus. v. Schokbeton Prods. Corp., 466 F.2d 171, 176
12 (5th Cir.1972) (“[T]he principle is in all instances the same -- a contractual termination
13 provision is unaffected by the filing of a petition in bankruptcy and may be enforced
14 against the trustee or debtor in possession”); In re Penn Traffic Co., 322 B.R. 63, 72
15 (Bankr.S.D.N.Y.2005) (“[T]he mere filing of a bankruptcy petition does not enhance a
16 debtor's contract rights or diminish its obligations,” *citing numerous authorities*²); Shell
17 Oil Co. v. Anne Cara Oil Co. (In re Anne Cara Oil Co.), 32 B.R. 643, 647 (Bankr.D.Mass.
18 1983) (“Generally, a bankruptcy court may not extend a contract beyond its original
19 terms. The Bankruptcy Code neither enlarges the rights of a debtor under a contract, nor
20 prevents the termination of a contract by its own terms.”).

21
22 ² *E.g.*, Moody supra, 734 F.2d at 1213 (“The filing of the Chapter 11 petition cannot
23 expand debtors’ rights as against [the counter-contracting party, the franchisor]”); In re
24 Sanders, 969 F.2d 591, 593 (7th Cir.1992) (“Filing a bankruptcy petition does not ‘expand
25 or change a debtor's interest in an asset....’”); In re ANR Advance Transp. Co., 247 B.R.
26 771, 774 (Bankr.E.D.Wis.2000) (same) In re M.J. & K Co., 161 B.R. 586, 593 (Bankr.
27 S.D.N.Y.1993) (“The filing of a petition under the Code does not expand those rights
28 [under a license agreement at issue]”); In re Nemko, Inc., 143 B.R. 980, 987 (Bankr.
E.D.N.Y.1992) (“This contractual right is not affected by the filing of a Chapter 11
petition. The rights of a debtor to the property of the estate do not expand when the
debtor files a petition in bankruptcy”); Aetna Casualty & Surety Co. v. Gamel, 45 B.R.
345, 349 (N.D.N.Y.1984) (same); In re Heaven Sent, Ltd., 37 B.R. 597, 598 (Bankr.
E.D.Pa.1984) (same); Valley Forge Plaza Assoc. v. Schwartz, 114 B.R. 60, 62 (E.D.Pa.
1990) (“A debtor in bankruptcy has no greater rights or powers under a contract than the
debtor would have outside of bankruptcy”).

1 As a result, despite WCM's announced intent to seek approval for, among other
2 things, its assumption of the Dealer Agreement and assignment of it to a potential auction
3 purchaser of the dealership assets, the Court cannot approve the proposed assumption and
4 assignment because, among other reasons, WCM has no remaining interest in the Dealer
5 Agreement and, as a result, it is no longer an executory contract. *See* Texscan Corp. v.
6 Commercial Union Ins. Co. (In re Texscan Corp.), 107 B.R. 227, 230 (9th Cir. B.A.P.
7 1989), *aff'd on other gds* 976 F.2d 1269 (9th Cir.1992) ("It is axiomatic that before 11
8 U.S.C. § 365 can apply a contract must exist. If a contract has expired by its own terms
9 then there is nothing left to assume or reject.... [S]ince the [subject insurance] Plan
10 expired five weeks after the bankruptcy case commenced and before either party filed a 11
11 U.S.C. § 365(a) motion there was nothing for Texscan to assume or reject.") (citation
12 omitted).³

13
14 ³ It is well settled that, while the "executoriness" of a contract is determined initially on
15 the date the bankruptcy petition is filed, the subsequent termination of the contract under
16 its own terms or non-bankruptcy law precludes assumption. Gloria Mfg. Corp. v. Int'l
17 Ladies Garment Workers' Union, 734 F.2d 1020, 1022 (4th Cir.1984) ("Once a contract
18 has expired on its own terms, there is nothing left for the trustee to reject or assume....
19 Because the contract expired before [the debtor] was able to obtain court approval for its
20 attempt at rejection, the contract was no longer executory."); In re Government Sec.
21 Corp., 101 B.R. 343, 349 (Bankr.S.D.Fla.1989) (same); In re Balco Equities Ltd., 312
22 B.R. 734, 750 (Bankr.S.D.N.Y.2004) ("It is well settled that 'events after the filing of the
23 bankruptcy petition' may cause the contract to be regarded as not executory when the
24 motion to assume or reject was made, such as contracts which expired post-petition by
25 their own terms after the date of the petition but before the motion was heard"); In re
26 Riodizio, Inc., 204 B.R. 417, 421 (Bankr.S.D.N.Y.1997) ("Sometimes ... postpetition
27 events alter the executoriness of a contract, as when a contract expires post-petition. In
28 those circumstances, a court will look to the date the motion to assume or reject is made or
heard rather than the petition date."); In re Spectrum Information Technologies, Inc., 193
B.R. 400, 404 (Bankr.E.D.N.Y.1996) ("[E]vents after the filing ... may cause the contract
to be regarded as not executory when the motion to assume or reject was made, such as
contracts which expired post-petition by their own terms after the date of [filing] but
before the motion was heard"); In re Child World, Inc., 147 B.R. 847, 851-52 (Bankr.
S.D.N.Y.1992) (same); West Virginia Hosp. Ins. Corp. v. Broaddus Hosp. Ass'n (In re
Broaddus Hosp. Ass'n), 159 B.R. 763, 771 (Bankr.N.D.W.Va.1993) ("The critical date
for determining the executory nature of a contract is the date on which the bankruptcy
court considers the debtor's application to assume or reject the contract"); In re Wang
Laboratories, Inc., 154 B.R. 389, 391 (Bankr.D.Mass.1993) ("The determination of
whether a contract is executory is to be made not at the time of filing but at the time that
the issue is before the Court"); In re B & K Hydraulic Co., 106 B.R. 131, 132 (Bankr.E.D.
Mich.1989) ("when the time duration of an executory contract expires before the Court
considers the issue of assumption or rejection, the issue is moot").

1 This case is precisely analogous: under the Settlement Agreement and Stipulated
2 Decision of the Board, the parties stipulated and the Board ordered that the Dealer
3 Agreement would terminate by operation of law upon the failure of the condition set forth
4 in Section 2.6 of the Settlement Agreement: that the GM-approved buy-sell transaction
5 with WCC close no later than December 31, 2012. WCM's last minute filing of a chapter
6 11 bankruptcy petition did not affect the operation of this termination clause. Both non-
7 bankruptcy law in the form of the Board's Stipulated Decision and the Dealer Agreement
8 itself, as modified by the Settlement Agreement and Board Decision, compel this
9 conclusion. Thus, WCM no longer had any legal or equitable interest in the Dealer
10 Agreement, its former interest therein is no longer "property of the estate," the Dealer
11 Agreement is no longer an executory contract, and the automatic stay does not restrain
12 GM from treating the Dealer Agreement as having been voluntarily terminated in
13 accordance with WCM's express pre-petition agreement.

14 **CONCLUSION**

15 For all the foregoing reasons, GM respectfully requests that the Court grant its
16 motion in all respects.

17 DATED: January 21, 2013

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

19
20 By: [s] Gregory R. Oxford
Gregory R. Oxford
21 Attorneys for Moving Party
General Motors LLC

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

21515 Hawthorne Blvd., Suite 950
Torrance, CA 90503

A true and correct copy of the foregoing document entitled (*specify*): **Memorandum of Points and Authorities in Support of Motion for Order Confirming that Automatic Stay of 11 U.S.C. § 362(a) Does Not Bar Termination of Debtor's General Motors Dealer Agreement 11 U.S.C. §§ 362(j)** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **January 22, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Todd M Arnold** tma@lnbyb.com
- **Martin J Brill** mjb@lnbrb.com
- **James H Broderick** Jbroderick@ssd.com, stephen.owens@ssd.com;christopher.petersen@ssd.com;juanita.vasquez@ssd.com;jordan.kroop@ssd.com
- **David I Brownstein** brownsteinlaw@gmail.com
- **Kim P. Gage** kgage@cookseylaw.com
- **Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
- **Mark S Hoffman** mshllh@aol.com
- **Daniel A Lev** dlev@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com
- **Halvor R Melom** halvor.r.melom@irscounsel.treas.gov
- **United States Trustee (LA)** ustpregion16.la.ecf@usdoj.gov
- **Hatty K Yip** hatty.yip@usdoj.gov

Service information continued on
attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*), I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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Service information continued on

attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL
(state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)*
January 22, 2013, I served the following persons and/or entities by personal delivery, overnight mail
service, or (for those who consented in writing to such service method), by facsimile transmission and/or
email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight
mail to, the judge will be completed no later than 24 hours after the document is filed.

Board of Equalization: P.O. Box 942879, Sacramento, CA 94279-0001

Employment Development Department: P.O. Box 826880, Sacramento, CA 94280-0001
Franchise Tax Board Special Procedures: POB2952, Sacramento, CA 95812-2952

Hassen Imports Partnership c/o H Ehrenberg Chapter & TTEE: 333 South Hope Street, 35th Floor, Los
Angeles, CA 90071-1406

LA County Tax Collector-Unsecured- P.O. Box 514818, Los Angeles, CA 90051-4818

Los Angeles Treasurer and Tax Collector: P.O. Box 54110, Los Angeles, CA 90054-0110

Hon. Ernest M. Robles
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1560 / Courtroom 1568
Los Angeles, CA 90012

Service information continued on

attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 22, 2013	Gwendolyn Oxford	<u>[s] Gwendolyn Oxford</u>
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

Exhibit J

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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
WEST COVINA MOTORS, INC.,
Debtor.

Case No.: Case 2:12-bk-52197-ER
Chapter 11

**ORDER GRANTING MOTION FOR
ORDER CONFIRMING THAT
AUTOMATIC STAY DOES NOT
BAR TERMINATION OF
DEBTOR'S GENERAL MOTORS
DEALER AGREEMENT**

For the reasons set forth in the attached tentative ruling, the Court hereby
GRANTS the Motion of General Motors LLC for an Order Confirming That Automatic
Stay of 11 U.S.C. § 362(a) Does Not Bar Termination of Debtor's General Motors Dealer
Agreement.

IT IS SO ORDERED.

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Date: February 14, 2013



Ernest M. Robles
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California**

Los Angeles

Judge Ernest Robles, Presiding

Courtroom 1568 Calendar

Tuesday, February 12, 2013

Hearing Room 1568

10:00 am

2:12-52197 West Covina Motors, Inc.

Chapter 11

#18.00

Hearing

RE: [48] Motion for Order Confirming that Automatic Stay of 11 U.S.C. 362(a)
Does Not Bar Termination of Debtor's General Motors Dealer Agreement

Docket #: 48

Tentative Ruling:

2/12/2013: (Revised tentative ruling)

Grant Motion for the reasons set forth below:

Pleadings Filed and Reviewed for this Motion

Notice of Motion and Motion for Order Confirming that the Automatic Stay Does Not Bar
Termination of Debtor's General Motors Dealer Agreement ("Motion") (D.E. 48)
Memorandum of Points and Authorities in Support of General Motors Motion (D.E. 51)
Declaration of Gregory R. Oxford in Support of General Motors Motion (D.E. 52)
Declaration of Michael A. Navari in Support of General Motors Motion (D.E. 53)
Debtor's Opposition to General Motors Motion (D.E. 82)
Reply of General Motors to Debtor's Opposition (D.E. 104)

Facts and Summary of Pleadings:

West Covina Motors, Inc. d/b/a Clippinger Chevrolet and Clippinger Chrysler Jeep Dodge (the "Debtor") filed a voluntary petition under chapter 11 on December 28, 2012. Debtor is in the business of selling and servicing new Chevrolet, Chrysler, Jeep and Dodge vehicles and various models of previously owned vehicles. Debtor is related to Hassen Imports Partnership ("Hassen"), which is a debtor in Case No. 11-42068 pending before this Court.

The Court herein considers the Motion of General Motors ("GM") for an Order Confirming that the Automatic Stay Does Not Bar Termination of Debtor's General Motors Dealer Agreement (the "Motion"). GM argues that the Dealer Agreement between West Covina Motors, LLC (the "Debtor" or "WCM") and GM (the "Dealer Agreement") terminated by operation of non-bankruptcy law and thus is not subject to the automatic stay of § 362(a).

**United States Bankruptcy Court
Central District of California**

Los Angeles

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Cont.... West Covina Motors, Inc.

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The relevant facts are as follows:

Debtor was authorized to operate the Chevrolet Dealership pursuant to the Dealer Agreement with GM. Section 10.2 of the Dealer Agreement provides, in relevant part, as follows:

“To avoid damage to goodwill which could result if [WCM] is financially unable to fulfill its commitments, [WCM] agrees to have and maintain a separate line of credit from a creditworthy financial institution reasonably acceptable to [GM] and available to finance the Debtor’s wholesale purchase of new [GM] vehicles.” *Oxford Declaration*, Exhibit A, at p. 17.

On September 15, 2009, Debtor’s financing provider, GMAC Financial Services, sent notice to GM that it was withdrawing Debtor’s credit line. As a result, GM provided notice to Debtor that it was seeking to terminate the Dealer Agreement for breach of Section 10.2. *Oxford Declaration*, Exhibit E.

In response, WCM filed a protest with the New Motor Vehicle Board pursuant to Cal. Veh. Code § 3060. *Oxford Declaration*, Exhibit F.

The Protest hearing was scheduled for November 15, 2010. Prior to the hearing, WCM regained a line of credit. *Oxford Declaration*, Exhibit I. To address GM’s concerns that this new line of credit would eventually be withdrawn, as it had twice before, and to obviate the need for a protest hearing, WCM and GM negotiated and executed the Settlement Agreement. The New Motor Vehicle Board adopted the Settlement Agreement as a Stipulated Decision on December 15, 2010. *Oxford Declaration*, Exhibits J, K, and L.

The Settlement Agreement provides, in relevant part, as follows:

“WCM agrees that until at least November 30, 2012 it will maintain a line of floor plan credit of at least \$3 million with GMAC (or other financial source acceptable to GM pursuant to its normal business policies.” *Oxford Declaration*, Exhibit J, at Section 2.2.

“If at any time before November 30, 2012, WCM loses its Dedicated Chevrolet Flooring or its total amount decreases below \$3 million, WCM shall have ninety days to either (a) provide written evidence of a commitment for replacement Dedicated Chevrolet Flooring in the amount of at least \$3 million from GMAC or another GM-approved financial institution or (b) within ninety days of the date it loses its Dedicated Chevrolet Flooring or its total amount decreases below \$3 million, WCM agrees that its Dealer Agreement will terminate voluntarily effective 30 days later (*i.e.*, 120 days after the loss of the Dedicated Chevrolet

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Flooring or its decrease below \$3 million) pursuant to Article 14.2 of the Dealer Agreement...WCM and Owners agree not to protest said voluntary termination pursuant to section 3060 of the Vehicle Code or to challenge any said termination in any judicial or administrative forum and hereby agree that they will have no legal right to do so.” *Id.* at Section 2.3.

“If prior to the expiration of 90 days after WCM loses the Dedicated Chevrolet Flooring or its amount declines below \$3 million, WCM submits a fully-executed ‘buy-sell’ agreement and complete proposal for the transfer of the stock or assets of the dealership to a person or entity not affiliated with WCM or Owner, GM will consider WCM’s proposal...and respond within sixty days.” *Id.* at Section 2.5.

“If GM approves or conditionally approves the proposal, and the ‘buy-sell’ transaction closes within thirty days of the date that WCM is notified of such approval, this Agreement shall be of no further force or effect.” *Ibid.*

“If a GM-approved ‘buy-sell’ transaction does not close within thirty days of GM’s notifying WCM of the approval, then WCM agrees that its Dealer Agreement will terminate voluntarily pursuant to Article 14.2 of the Dealer Agreement and that said termination will be effective 150 days after the date it loses its Dedicated Chevrolet Flooring or it decreases below \$3 million; upon such termination, WCM...agrees not to protest said voluntary termination pursuant to section 3060 of the Vehicle Code or file any other litigation of any nature whatsoever concerning termination of the Dealer Agreement.” *Id.* at Section 2.6.

On December 1, 2011, approximately one year after the parties executed, and the New Motor Vehicle Board adopted, the Settlement Agreement, GM received notice that WCM had again lost its line of credit. *Oxford Declaration*, at Exhibit M.

GM’s December 1, 2011 receipt of notice of WCM’s loss of financing triggered the timeline set forth in Sections 2.3 and 2.5 of the Settlement Agreement.

WCM disputed that GM had provided proper notice under the Settlement Agreement and, after proceedings before the New Motor Vehicle Board, received an extension of the ninety day deadline to November 12, 2012. *See Oxford Declaration*, Exhibit N.

On November 12, 2012, WCM complied with Section 2.5 by submitted a buy-sell proposal, which was conditionally approved on November 29, 2012. *Id.*, at Exhibit O. The buy-sell proposal named YTransport as the buyer (the “YTransport buy-sell transaction”).

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Cont.... West Covina Motors, Inc.

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Pursuant to Section 2.6 of the Settlement Agreement, WCM had until December 31, 2012 to close the buy-sell transaction.

WCM filed a voluntary petition under Chapter 11 on December 28, 2012.

The buy-sell transaction did not close by December 31, 2012.

GM's Argument

GM's Motion seeks relief pursuant to § 362(j), which provides that "[o]n request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated." 11 U.S.C. § 362(j). Subsection (c), in relevant part, provides that "the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate." 11 U.S.C. § 362(c)(1).

In essence, GM argues that termination of the Dealer Agreement is not barred by the automatic stay because the Dealer Agreement terminated by operation of non-bankruptcy law and therefore ceased to be property of the estate. GM cites numerous cases in which courts reiterate the principle that "[t]he Bankruptcy Code does not create or enhance property rights of a debtor. Thus, when a debtor's proprietary interest expires by operation of an express condition, the Bankruptcy Code does not preserve that interests and prevent termination." *In re Gull Air, Inc.*, 890 F.2d 1255, 1261-62 (1st Cir. 1989). Further, GM notes that "before 11 U.S.C. § 365 can apply a contract must exist....[and] [i]f a contract has expired by its own terms then there is nothing left to assume or reject." *In re Texscan Corp.*, 107 B.R. 227, 230 (9th Cir. BAP 1989).

GM asserts that the Debtor's interest in the Dealer Agreement was that of an executory contract at the date of filing its petition, and that Debtor's failure to close the YTransport buy-sell transaction by December 31, 2012 (the 30-day deadline imposed by the Settlement Agreement) triggered the automatic and voluntary termination of the Dealer Agreement pursuant to Section 2.6 of the Settlement Agreement. Therefore, GM argues, Debtor no longer held any interest in the Dealer Agreement as of December 31, 2012 and GM is entitled to a Court Order confirming that the automatic stay has been terminated.

Debtor's Opposition

The Debtor, in its Opposition to GM's Motion, makes two separate arguments.

(1) Debtor argues that the Motion should be denied because it seeks relief that can only be obtained through an adversary proceeding. Debtor describes the dispositive issue as "whether the bankruptcy court is dealing with property of the bankruptcy estate." *Opposition*, at p. 9. Debtor disputes that the Dealer Agreement terminated, stating that it met the condition of Section 2.5 of the Settlement Agreement by submitting the buy-sell proposal. Further, Debtor argues that GM itself is

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Cont.... West Covina Motors, Inc.

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in breach of the Settlement Agreement and the Orders of the New Motor Vehicle Board because it did not act in good faith. *Id.* at p. 10.

Based on these disputes, Debtor concludes that “there are material disputes between the parties as to whether or not the Dealership Agreement terminated and, therefore, whether the Debtor has an interest in the Dealership Agreement,” and that “[the New Motor Vehicle] Board is the proper venue for a determination of such issues, not on a summary basis pursuant to the Motion without a full opportunity for discovery.” *Ibid.* Therefore, the Debtor argues that “the Court is really being asked to issue declaratory relief based on complex facts regarding whether or not the Debtor has an interest in the Dealership Agreement.” *Ibid.*

Given Debtor’s characterization of the Motion as seeking declaratory relief, Debtor argues that FRBP 7001(2) and (9) require an adversary proceeding.

(2) Debtor argues that the Motion should be denied because Debtor is entitled to the 60-day extension provided by 11 U.S.C. § 108(b), and thus the Dealership Agreement does not terminate until February 26, 2013. Debtor argues that “while closing the Ytransport [buy-sell] transaction would admittedly likely require emergency motions for approval before this Court, closing with YTransport is not impossible.” *Opposition*, at p. 11. Further, Debtor argues that “the Ytransport [buy-sell] transaction is not the only transaction that could be consummated in order to satisfy Section 2.6 of the Settlement Agreement.” Debtor asserts that “[s]ince the Hidalgo transaction is on essentially the same terms as were previously approved by GM for the YTransport [buy-sell] transaction, GM could not reasonably reject Hidalgo as a buyer, nor would it be allowed to do so under California Law.” *Id.*, at p. 11-12 (citing Cal. Veh. Code §11713.3(d)(1) and (e)).

GM’s Reply

In Reply, GM argues that it did act in good faith and disputes both of Debtor’s arguments.

(1) GM argues that its Motion is properly presented as a contested matter, capable of resolution without an adversary proceeding, because FRBP 4001 reflects a policy favoring “expedited relief” when the validity of a bankruptcy stay is challenged. *Reply*, at p. 2 (citing *Wade v. State Bar of Arizona*, 115 B.R. 222, 230 (9th Cir. BAP 1990)). GM states that filing an adversary proceeding is neither required nor necessary: “The Opposition seeks to transmute GM’s motion into a ‘declaratory judgment’ action that supposedly requires the filing of an adversary proceeding that, if required, would enable the Debtor’s continued stalling for months as the parties senselessly settled the pleadings and briefed a motion for summary judgment in a case in which there will be only one question—whether the [buy-sell] transaction close in time—with an indisputable answer—it did not.” *Id.* at p. 3. GM points to the explicit language of § 362(j), which provides

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that a court “shall issue” an order confirming that the automatic stay has been terminated. GM also distinguishes the case cited by Debtor in support of its argument that an adversary proceeding is required.

(2) GM argues that § 108(b) neither applies nor would help the Debtor. First, GM asserts that § 108(b) does not apply because it only provides a 60-day extension to “cure” or “perform” when “applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor ... may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act.” GM states that “[b]y its express terms, therefore, section 108(b) would apply in this case only if the Settlement Agreement and Stipulated Decision fixed a period within which the Debtor could ‘cure a default’ or perform an act ‘similar’ to curing a default.” *Reply*, at p. 8. GM characterizes Debtor’s 30-day window to close the YTransport buy-sell transaction as a right, not an obligation, concluding that failure to do so was not a “default.” GM states that the Settlement Agreement does not provide for any “cure” once the 30-day deadline has passed.

Second, GM argues that a 60-day extension would not help the Debtor, even if the Court were to find § 108(b) to apply because there is no admissible evidence to support the Debtor’s assertion that the YTransport buy-sell transaction can be closed by February 26, 2013. Further, GM notes that Debtor’s filing of a Motion to Sell to Hidalgo is obviously inconsistent with the existence of an active sale to YTransport.

Lastly, GM asserts that Debtor has no right to propose a second buy-sell transaction. Though GM disputes that the Hidalgo transaction “is on essentially the same terms,” GM states that the Settlement Agreement is “very specific” and does not allow for a new buy-sell transaction to be proposed.

The Court Finds and Concludes as follows:

Adversary Proceeding vs. Contested Matter

FRBP 7001 describes matters that are adversary proceedings. Debtor states that GM’s Motion is improper because an adversary proceeding is required under either FRBP 7001(2) or 7001(9). FRBP 7001(2) provides that an adversary proceeding is “a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d).” FRBP 7001(9) provides that an adversary proceeding is “a proceeding to obtain a declaratory judgment relating to any of the foregoing.”

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FRBP 7001, however, must be interpreted with the provisions of the Bankruptcy Code in mind. GM seeks relief pursuant to § 362(j), which is a mandatory provision. Section 362(j) provides that the Court “shall issue an order under subsection (c) confirming that the automatic stay has been terminated.” 11 U.S.C. § 362(j). In relevant part, subsection (c) provides that the automatic stay continues until “such property is no longer property of the estate.” 11 U.S.C. § 362(c)(1).

First, the Court notes that cases addressing the issue of whether termination of a dealer or franchise agreement that terminates by its own terms postpetition violates the automatic stay have been determined both in the context of adversary proceedings, *see, e.g., In re Round Hill Travel, Inc.*, 52 B.R. 807 (D. Nev. 1985); *In re Nashville White Trucks*, 5 B.R. 112 (M.D. Tenn. 1980), and in the context of a motion for relief from stay, *see, e.g., In re Round Hill Travel, Inc.* 52 B.R. 807 (D. Nev. 1985); *In re Cecil W. McCallen and Bessie McCallen, dba McCallen Equip. Rental Co.*, 49 B.R. 948 (D. Ore. 1985); *In re Gull Air, Inc.*, 890 F.2d 1255 (1st Cir. 1989); *In re Diversified Washes of Vandalia*, 147 B.R. 23 (S.D. Ohio 1992). Thus, the Court finds it appropriate to determine the applicability of the automatic stay to GM’s termination of the Dealer Agreement in the context of the instant motion.

Further, the Court in this case need not determine the precise nature of Debtor’s interest in the Dealer Agreement in order to hold that the automatic stay does not apply. Regardless of the nature of Debtor’s interest in the Dealer Agreement at the time of filing the petition, it is undisputed that Debtor did not satisfy the condition set forth in Section 2.6 of the Settlement Agreement, which provides that Debtor will voluntarily and without protest terminate the Dealer Agreement. *See In re Gull Air, Inc.* 890 F.2d 1255, 1262 & n.8 (1st Cir. 1989) (“In this case, we need not decide the issue of whether a carrier’s proprietary interest in an arrival or departure slot constitutes ‘property of the estate’ within the meaning of the Bankruptcy Code. Even if a carrier’s interest in a slot rises to the level of ‘property of the estate,’ the interest would cease to be ‘property of the estate’ when the interest expired by force of regulation. A carrier’s interest in a slot is analogous to a debtor’s interest in a lease which ceases to be ‘property of the estate’ when the interest terminates at the expiration of the stated term of such lease during the bankruptcy case.”).

For these reasons, the Court finds that GM’s Motion is properly on consideration before the Court as a contested matter.

Applicability of Section 108(b)

In relevant part, Section 108(b) provides as follows:

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[I]f applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor...may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) 60 days after the order for relief.

11 U.S.C. § 108(b).

Debtor argues that it is entitled to a 60-day extension pursuant to §108(b) of the deadline to close the YTransport buy-sell transaction. Debtor does not cite any case law to support its argument. In its Opposition, Debtor also does not dispute GM's characterization of the Dealer Agreement as an executory contract. The Court agrees with GM that the Dealer Agreement at the time of filing the petition was an executory contract. *In re Lauderdale Motorcar Corp*, 35 B.R. 544, 548 (S.D. Fla. 1983) ("The cases that have considered termination or non-renewal of franchise agreements under the Code have viewed them as executory contracts and therefore governed by section § 365 of the Code.").

The Court, in its independent review of the case law governing the applicability of § 108(b), finds that it does not apply in the case of executory contracts. "Those courts which have directly address the relationship between § 108(b) and § 365 have concluded that § 365 governs the debtor's right to assume executory contracts and hence the time for cure of defaults. These courts reason that § 365 is the more specific, hence the controlling, provision, as it expressly addresses the cure of defaults in executory contracts, while § 108(b) is merely a general provision as to extension of time." *In re Round Hill Travel, Inc.*, 52 B.R. 807, 808 (D. Nev. 1985). The court in *Round Hill* recognized a distinction "between the expiration of a contract according to its own terms, and termination of a contract for default," stating that only "[w]here the latter is involved, [does] the Code...operate to modify rights and extend time periods." *Id.* at 809. *See also, e.g., In re Lowell D. Henke*, 84 B.R. 693, 697 (D. Mont. 1988) ("[I]n an executory contract situation, § 365, non 108(b), applies."); *In re Cecil W. McCallen and Bessie McCallen, dba McCallen Equip. Rental Co.*, 49 B.R. 948, (D. Ore. 1985) ("[S]ection 108(b) does not apply to curing defaults in executory contracts. Section 365 specifically governs the time for curing defaults in executory contracts, and thus, it controls here.") (quoting *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1215 (7th Cir. 1984), *cert. denied*, 469 U.S. 982 (1984)).

GM's Requested Relief: Confirmation that the Dealer Agreement Terminated

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Based on the above-stated conclusion, the Court finds that § 365 would apply to the time limits applicable to the Debtor with regards to the executory Dealer Agreement. Section 365 in fact provides a longer time period within which to assume a contract. However, the Supreme Court described the basic principle governing the assumption of executory contracts in *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 141-42 (1946) as follows: “The bankruptcy rule is that [the trustee or debtor in possession] takes the contracts of the debtor subject to their terms and conditions....the right to terminate a contract pursuant to its terms survives the bankruptcy of the other contracting party.” Therefore, “when a debtor’s proprietary interest expires by operation of an express condition, the Bankruptcy Code does not preserve that interest and prevent termination.” *In re Gull Air, Inc.* 890 F.2d 1255, 1262 (1st Cir. 1989). The Seventh Circuit described the principle as follows:

[T]he filing of a chapter 11 petition cannot expand debtor’s rights as against Amoco. When the termination notice was sent, debtors only had a right to ninety days’ worth of dealership contracts. The filing of the petition does not expand that right. This conclusion is supported by a number of decisions in the Bankruptcy Courts. Similarly, § 541(a) provides that a debtor’s estate consists of ‘all legal or equitable interests of the debtor in property as of the commencement of a case.’ Thus, whatever rights a debtor has in property at the commencement of a case continue in bankruptcy—no more, no less. Section 541 ‘is not intended to expand the debtor’s rights against other more than they exist at the commencement of a case.’ Section 362, which creates an automatic stay of certain creditor actions upon the filing of a petition in the bankruptcy court, does not help debtors here. The automatic stay does not toll the mere running of time under a contract, and thus it does not prevent automatic termination of the contract. Section 362 does not give a debtor greater rights in a contract. Thus, debtors cannot rely on section 362 to prevent termination of the contracts.

Moody v. Amoco Oil Co., 734 F.2d 1200, 1213 (7th Cir. 1984) (internal citations omitted), *cert. denied*, 469 U.S. 982 (1984). *See also In re Nashville White Trucks*, 5 B.R. 112, 116-17 (M.D. Tenn. 1980) (“An executory contract or unexpired lease may be assumed. It is a fundamental concept that the assumed contract or lease is accompanied by all its provisions and conditions. Thus, a contract may be assumed subject to all its limitations, one of which is obviously the expiration date.....The Code does not [] grant the debtor in bankruptcy greater rights and powers under the contract that he had outside of bankruptcy.”); *In re Diversified Washes of Vandalia*, 147 B.R. 23, 27 (S.D. Ohio 1992) (“[T]he automatic stay does not prevent the mere running of time

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under a contract.”); *In re P.I.N.E., Inc.*, 52 B.R. 463, 465 (W.D. Mich. 1985) (“[A] lease that expires by its own terms after the filing of the bankruptcy petition leaves nothing to assume or reject.”).

In this case, the Debtor and GM mutually and voluntarily entered into the Settlement Agreement, by which Debtor’s failure to satisfy the condition of Section 2.6 triggered a termination of the Dealer Agreement. Debtor’s failure to seek to assume the Dealer Agreement prior to its termination precludes it from now arguing it should have an extension of time within which to meet the condition.

For these reasons the Court finds that the Dealer Agreement terminated upon Debtor’s failure to close the YTransport buy-sell transaction and hereby GRANTS GM’s Motion.

Party Information

Debtor(s):

West Covina Motors, Inc.

Represented By

Martin J Brill

Todd M Arnold

Movant(s):

General Motors LLC

Represented By

Gregory R Oxford

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): Order Granting Motion for Order Confirming That Automatic Stay Does Not Bar Termination of Debtor's General Motors Dealer Agreement was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) – Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of **February 12, 2012**, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

- **Todd M Arnold** tma@lnbyb.com
- **Martin J Brill** mjb@lnbrb.com
- **James H Broderick** Jbroderick@ssd.com, stephen.owens@ssd.com;christopher.petersen@ssd.com;juanita.vasquez@ssd.com;jordan.kroop@ssd.com
- **David I Brownstein** brownsteinlaw@gmail.com
- **Marina Fineman** mfineman@stutman.com
- **Ben G Gage** bgage@cookseylaw.com
- **Kim P. Gage** kgage@cookseylaw.com
- **Barry S Glaser** bglaser@swjlaw.com
- **Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
- **Mark S Hoffman** mshllh@aol.com
- **Daniel A Lev** dlev@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com
- **Halvor R Melom** halvor.r.melom@irsconsult.treas.gov
- **Krikor J Meshefejian** kjm@lnbrb.com
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- **Aram Ordubegian** ordubegian.aram@arentfox.com
- **Christine M Pajak** cpajak@stutman.com
- **Lisa M Peters** lisa.peters@kutakrock.com
- **United States Trustee (LA)** ustpregion16.la.ecf@usdoj.gov
- **Hatty K Yip** hatty.yip@usdoj.gov

Service information continued on
attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Service information continued on
attached page

1 **3. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment
2 or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete
3 copy bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email
4 and file a proof of service of the entered order on the following persons and/or entities at the addresses,
5 facsimile transmission numbers, and/or email addresses stated below:

6 **Board of Equalization:** P.O. Box 942879, Sacramento, CA 94279-0001

7 **Employment Development Department:** P.O. Box 826880, Sacramento, CA 94280-0001

8 **Franchise Tax Board Special Procedures:** POB 2952, Sacramento, CA 95812-2952

9 **Hassen Imports Partnership c/o H Ehrenberg Chapter & TTEE:** 333 South Hope Street, 35th Floor, Los
10 Angeles, CA 90071-1406

11 Service information continued on attached page

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Exhibit K

1 MARTIN J. BRILL (State Bar No. 53220)
TODD M. ARNOLD (State Bar No. 221868)
2 KRIKOR J. MESHEFEJIAN (State Bar No. 255030)
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
3 10250 Constellation Boulevard, Suite 1700
4 Los Angeles, California 90067
Telephone: (310) 229-1234
5 Facsimile: (310) 229-1244
Email: mjb@lnbyb.com, tma@lnbyb.com, kjm@lnbyb.com
6

7 Proposed Attorneys for Debtor and Debtor in Possession

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**
11

12 In re:

13 WEST COVINA MOTORS, INC.
14 d/b/a Clippinger Chevrolet and Clippinger
15 Chrysler Jeep Dodge

16 Debtor and Debtor in Possession.

Case No.: 2:12-BK-52197-ER

Chapter 11 Case

**DEBTOR'S OPPOSITION TO MOTION
FOR ORDER CONFIRMING THAT
AUTOMATIC STAY OF 11 U.S.C. § 362(a)
DOES NOT BAR TERMINATION OF
DEBTOR'S GENERAL MOTORS
DEALER AGREEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
ZIAD ALHASSEN IN SUPPORT
THEREOF**

Hearing:

Date: February 12, 2013

Time: 10:00 a.m.

Place: Courtroom "1568"
255 East Temple Street
Los Angeles, CA 90012

1 West Covina Motors, Inc. d/b/a Clippinger Chevrolet and Clippinger Chrysler Jeep
2 Dodge, the debtor and debtor in possession in the above captioned Chapter 11 case (the “Debtor”),
3 hereby files its opposition (the “Opposition”) to the Motion (the “Motion”) for Order Confirming that
4 Automatic Stay of U.S.C. § 362(a) Does Not Bar Termination of General Motors Dealer Agreement
5 (the “Dealer Agreement”) and the memorandum of points and authorities in support of the Motion
6 (the “Memorandum”) filed by General Motors, LLC (“GM”).

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I.**

9 **INTRODUCTION**

10 GM admits that the Dealer Agreement had not terminated as of the date the Debtor filed
11 its bankruptcy petition on December 28, 2012. Therefore, the Dealer Agreement and the Debtor’s
12 rights thereunder became property of the Debtor’s bankruptcy estate on the petition date. GM is
13 now seeking a determination that the Dealership Agreement automatically terminated after the
14 petition date due to the Debtor’s failure to satisfy a condition to close a sale of its Chevrolet
15 dealership by December 31, 2012. In effect, GM is seeking an order of the Court declaring whether
16 or not the Debtor has an interest in the Dealer Agreement. Pursuant to Fed.R.Bankr.P. 7001(2) and
17 (9), such determinations can only be made in the context of an adversary proceeding. Thus, the
18 Motion is procedurally improper. Even if GM could seek its requested relief pursuant to its Motion,
19 the Motion lacks merit. Under 11 U.S.C. § 108(b), the Debtor has an additional 60 days from the
20 petition date – *i.e.*, until February 26, 2013 – to close a sale of its Chevrolet dealership. In
21 consideration of the foregoing, the Motion must be denied.

22 **II.**

23 **STATEMENT OF FACTS**

24 **A. BACKGROUND.**

25 On December 28, 2012 (the “Petition Date”), the Debtor commenced its bankruptcy case
26 by filing a voluntary petition for relief under Chapter 11 of title 11, United States Code § 101, *et seq.*
27 (the “Bankruptcy Code”).¹ No trustee has been appointed, and the Debtor is continuing to operate
28

¹ Unless otherwise stated, all section references herein are to the Bankruptcy Code.

1 its business and manage its financial affairs as a debtor in possession pursuant to Sections 1107 and
2 1108.

3 The Debtor, which has been operating since 1993, is in the business of selling and
4 servicing new Chevrolet, Chrysler, Jeep, and Dodge vehicles and various models of previously
5 owned vehicles. The Debtor operates its Chevrolet Dealership pursuant to, among other things, the
6 Dealer Agreement. A copy of the Dealer Agreement is attached to the Declaration of Gregory R.
7 Oxford in support of the motion (the "Oxford Dec.") as Exhibit "A." Without the Dealer
8 Agreement, the Debtor cannot operate its Chevrolet Dealership. Prior to the termination of the
9 Hummer brand by GM, the Debtor was also in the business of selling and servicing Hummer
10 vehicles. In addition, the Debtor operates an auto body shop and a truck fabrication shop, which
11 take truck chassis and adds various body parts and equipment to make work trucks. Additional
12 information regarding the Debtor and its business operations can be found at clippingerchevy.com
13 and clippingertruckequipment.com.

14 A related entity, Hassen Imports Partnership ("HIP"), is a debtor in Case No. 2:11-bk-
15 42068-ER (the "HIP Case") pending before this Court. The HIP Case was converted from Chapter
16 11 to Chapter 7 by order entered January 2, 2013. Howard Ehrenberg is the Chapter 7 Trustee for
17 the HIP Case. HIP owns various parcels of real property (the "HIP Properties"), including, but not
18 limited to, the real property upon which the Debtor and a related entity, West Covina Ford ("WCF"),
19 operate their businesses. In particular, among other real property assets, HIP owns the following 5
20 parcels of land, (1) 1932 East Garvey Avenue, South, West Covina California from which the
21 Debtor operates its Chevrolet dealership (the "Chevrolet Property"), (2) 298 North Azusa Avenue,
22 West Covina, California from which the Debtor operates its Chrysler/Jeep/Dodge dealership, (3)
23 2000 East Garvey Avenue, South, West Covina California from which WCF operates a Ford
24 dealership (the "Ford Property"), (4) 1900 East Garvey Avenue, South, West Covina, California,
25 from which WCM previously operated a Hummer dealership until the cessation of the Hummer
26 brand and which is now vacant (the "Hummer Property"), and (5) 2539 East Garvey Avenue, North,
27 West Covina, California on which there was previously located a Mazda dealership, which is no
28 longer operational (the "Mazda Property").

1 As discussed in the Debtor's Omnibus Statement of Facts in Support of First Day
2 Motions (the "Omnibus Facts") [Docket No. 17], there were a host of circumstances that resulted in
3 the Debtor's decision to file for bankruptcy protection, including unresolved issues with GM,
4 CorePointe Capital Finance, LLC ("CorePointe"), the Debtor's primary secured creditor, and the
5 City of West Covina (the "City").

6 **B. THE DEBTOR'S RELATIONSHIP WITH GM AND THE DEALER**
7 **AGREEMENT.**

8 As discussed in the Omnibus Facts, the financial crisis that began in 2008 left an
9 indelible mark on many businesses, and the Debtor's dealerships were no exception. The damage to
10 the Debtor and its business resulted largely from the bankruptcies filed by GM and Chrysler, and the
11 discontinuation of flooring financing by Ally, the successor to GMAC, and Chrysler Financial to the
12 Debtor. As part of their bankruptcies, GM and Chrysler terminated about 30% of their
13 underperforming dealerships. The dealerships whose dealership agreements were terminated
14 received nominal consideration. For example, the Debtor invested approximately \$3.75 million into
15 its Hummer dealership, which was spent on the unique design of the dealership suited solely for
16 Hummer's use, to promote the product, to purchase fixtures, etc., in order to meet Hummer's
17 standards, but received only a \$1.25 million payment when GM terminated the Hummer brand.

18 Despite the foregoing setbacks, the Debtor attempted to continue its operations.
19 However, disputes arose between the Debtor and GM, which sells the Debtor its new Chevrolet
20 vehicles pursuant to the Dealer Agreement. On January 28, 2010, GM sent a letter (the "First
21 Termination Letter") to the Debtor notifying the Debtor that, due to alleged breaches of the Dealer
22 Agreement, GM would seek to terminate the Dealer Agreement 60 days after the date of the First
23 Termination Letter. A copy of the First Termination Letter is attached to the Oxford Dec. as Exhibit
24 "E." In response, on February 22, 2010, the Debtor filed a protest (the "First Protest") with the
25 California New Motor Vehicle Board (the "Board"). A copy of the First Protest is attached to the
26 Oxford Dec. as Exhibit "F." In November 2010, in an effort to resolve these disputes, the Debtor
27 and GM entered into a stipulated order (the "First Board Order") and settlement agreement (the
28 "Settlement Agreement") resolving the Debtor's First Protest before the Board of GM's efforts to

1 terminate the Dealership Agreement. A copy of the First Board Order is attached to the Oxford Dec.
2 as Exhibit “K.” A copy of the Settlement Agreement is attached to the Oxford Dec. as Exhibit “J.”
3 The Settlement Agreement and First Board Order were adopted by the Board. See Oxford Dec.
4 Exhibit “L.” Importantly, the Settlement Agreement has specific requirements regarding all notices
5 under the Settlement Agreement (the “Notice Requirements”). See Oxford Dec. Exhibit “J,” at ¶
6 4.9.

7 Disputes eventually arose between the parties regarding compliance with the First Board
8 Order and Settlement Agreement. In summary, in November 2011, Ally, the successor to GMAC,
9 sent a letter (the “Ally Letter”) to GM indicating that Ally would no longer provide loans (“flooring
10 loans”) to the Debtor to purchase new vehicle inventory from GM. A copy of the Ally Letter is
11 attached to the Oxford Dec. Exhibit “M.” In December 2011, GM sent a letter (the “Second
12 Termination Letter”) to the Debtor notifying the Debtor that, pursuant to the Settlement Agreement,
13 due to the loss of the Debtor’s ability to obtain flooring loans from Ally, the Debtor would have to
14 either obtain a replacement lender acceptable to GM to provide flooring loans or submit a fully
15 executed agreement to GM to sell the Debtor’s Chevrolet dealership. GM asserted that, if neither
16 occurred by February 28, 2012, and there was no protest by the Debtor, the Debtor’s GM Dealership
17 Agreement would terminate on March 30, 2012.

18 Soon after the receipt of the Second Termination Letter, the Debtor sought to remedy
19 issues with GM by obtaining a replacement flooring loan provider and/or to sell the Chevrolet
20 dealership to WestCovina C, LLC, an affiliate of YTransport, pursuant to a buy-sell agreement that
21 was submitted to GM but rejected by GM because it was allegedly incomplete. The Debtor and GM
22 disputed whether the Second Termination Letter and responses thereto, including the submission of
23 the WestCovina C, LLC/YTransport buy-sell agreement to GM, which GM refused to consider,
24 satisfied the conditions of the First Board Order and Settlement Agreement for the termination of the
25 GM Dealership Agreement, and the Debtor protested the termination of the GM Dealership
26 Agreement. The parties submitted briefs and statements to the Board regarding their positions.

27 On August 13, 2012, the administrative judge presiding over the dispute issued a
28 proposed decision (the “Second Board Order”) regarding the disputes between the Debtor and GM.

1 A copy of the Second Board Order is attached to the Oxford Dec. as Exhibit “N.” The Second
2 Board Order was premised, in large part, on the failure of GM to satisfy the Notice Requirements of
3 the First Board Order and the effect of such failure on the timelines set forth in the First Settlement
4 Agreement. See Oxford Dec. Exhibit “J,” at ¶¶ 29, 45, 46, 54-71. The Second Board Order
5 provides, in relevant part, as follows:

6
7 After consideration of the pleadings, exhibits, oral arguments and
8 the transcripts of this proceeding, IT IS HEREBY ORDERED
9 THAT, [the Debtor’s] franchise [and the Dealer Agreement] shall
10 continue in existence pending the timely occurrence of one of the
11 two alternatives available to it, that are (1) Obtaining floor-plan
12 financing as required by the Settlement Agreement; or (2) The
13 submission by [the Debtor] to GM of the complete buy-sell
14 package as required by the Settlement Agreement. If neither of
15 these alternatives occur, [the Debtor’s] franchise [and the Dealer
16 Agreement] shall terminate on the 81st day after the date of mailing
17 to the parties and their counsel by U.S. Postal Service Certified
18 Mail a copy of the Board’s Order adopting this Proposed Decision.

14
15 Second Board Order [Oxford Dec. Ex “N], at p. 18. On August 24, 2012, the members of the Board
16 adopted the (“Second Board Order”) and mailed it as required by the Second Board Order. See
17 Motion, 7:10-12 (confirming date Second Board Order was mailed as required). Accordingly,
18 November 12, 2012, was the deadline for the Debtor to take one of the actions required by the
19 Second Board Order. It is undisputed that the Debtor indeed took one of the actions.

20 On October 3, 2012, GM sent a letter (the “Third Termination Letter”) to the Debtor
21 notifying the Debtor that it intended to terminate the Dealership Agreement because the Debtor
22 allegedly failed to conduct customary sales and service operations during customary business hours
23 for seven consecutive days (i.e., “going dark”). Oxford Dec., ¶ 10 and Exhibit “Q.” In response, on
24 February 22, 2012, the Debtor filed a protest (the “Second Protest”) with the Board. Oxford Dec., ¶
25 10 and Exhibit “R.” The Second Protest is still pending with the Board.

26 After the issuance of the Second Board Order, the Debtor continued its efforts to sell its
27 Chevrolet dealership (and the Chrysler/Jeep/Dodge dealership) to YTransport and its affiliates. As
28 admitted by GM, WestCovina C, LLC/ YTransport and the Debtor timely submitted a complete buy-

1 sell package to GM. See Oxford Dec. ¶ 8. On November 29, 2012, GM approved YTransport and
2 its buy-sell package. See Oxford Dec., ¶ 8 and Exhibit “O.” It took GM only approximately 2
3 weeks to approve the YTransport buy-sell package when it usually takes at least 30 to 60 days to
4 approve such a buy-sell package. Upon approval of the buy-sell package, GM gave only until
5 December 31, 2012, for the Debtor and YTransport to close the sale of the Chevrolet dealership.
6 With weekends, and the Thanksgiving, Christmas, and New Years’ holidays, this only gave the
7 parties 19 days to close. Due to the holiday period and the related unavailability of critical GM
8 personnel, YTransport requested an extension of time to close the transaction. GM denied the
9 request. Likewise, on December 19, 2012, the Debtor sent a letter (the “12/19/12 Letter”) to GM
10 indicating that, due to the foregoing circumstances, it would probably be impossible to close the
11 proposed transaction by December 31, 2012. A true and correct copy of the 12/19/12 is attached
12 hereto as Exhibit “2.” Based on the foregoing, in the 12/19/12 Letter, the Debtor also requested a
13 short extension of time to January 15, 2013 to close the transaction. On December 21, 2012, GM
14 sent a letter (the “12/21/12 Letter”) to the Debtor denying the requested extension. A true and
15 correct copy of the 12/21/12 is attached hereto as Exhibit “3.” Under the foregoing circumstances,
16 and for other reasons, YTransport was unable or unwilling to close the sale of the Chevrolet
17 dealership in such a short amount of time. Moreover, even assuming YTransport was prepared to
18 proceed with the sale on an expedited basis, it would have been impossible for YTransport to obtain
19 required approvals from GM and the Department of Motor Vehicles in such a short period of time
20 during the holiday period. Thus, the closing requirements established by GM created a situation
21 where it would be very difficult, if not impossible, to comply.

22 Due to the existing and continuing uncertainty as to whether or when YTransport would
23 close any or all of the contemplated sale transactions, the Debtor and various of its affiliates sought
24 other back-up buyers to complete the proposed sales transactions. On December 21, 2012, the
25 Debtor and various of its affiliates entered into letters of intent with B&B regarding the sale of their
26 Chrysler/Jeep/Dodge and Ford dealerships, respectively.

27 On December 31, 2012, the Debtor and several of its affiliates entered into a letter of
28 intent with Carlos Hidalgo (“Hidalgo”) regarding the contemplated global sales transaction. On

1 January 16, 2013, after substantial, arms-length negotiations, the Debtor and its affiliates entered into
2 asset purchase agreements and lease agreements with Hidalgo to effectuate the proposed global
3 transaction for the sale of the dealerships. The Chevrolet APA entered into by the Debtor and
4 Hidalgo regarding the Chevrolet Assets is attached hereto as Exhibit "1." The Debtor believes that
5 Hidalgo is a qualified buyer and should obtain the required approval from GM.

6 On January 17, 2013, in conjunction with seeking to close the sale of the Chevrolet
7 dealership to Hidalgo pursuant to the Chevrolet APA, the Debtor filed a motion to approve bidding
8 procedures related to the sale of substantially all of its assets, including the Chevrolet Dealership (the
9 "Bid Pro Motion"). Responses to the Bid Pro Motion were filed by GM, the City, the Trustee,
10 Chrysler and CorePointe. Notably, all parties, other than GM, essentially were in favor of a sale of
11 the Chevrolet dealership, but had issues with the proposed procedures under the Bid Pro Motion.
12 GM opposed the sale based on the arguments that the Dealer Agreement had terminated pursuant to
13 the Second Board Order and, therefore, the Debtor could not sell its rights under the Dealer
14 Agreement or seek to assume or assign it. As discussed below, these arguments have no merit. At
15 the January 24, 2013 hearing on the Bid Pro Motion, the Court denied the Bid Pro Motion, without
16 prejudice.

17 The Debtor is still in contact with YTransport regarding the potential for YTransport to
18 close on the buy-sell agreement previously approved by GM. YTransport has not definitively
19 indicated that it will not close on such transaction. Thus, it is still possible that it may close, albeit
20 subject to Court approval.

21 II. 22 DISCUSSION

23 A. THE MOTION SHOULD BE DENIED BECAUSE IT SEEKS RELIEF THAT 24 CAN ONLY BE OBTAINED THROUGH AN ADVERSARY PROCEEDING.

25 Section 541 defines what constitutes property of the estate. 11 U.S.C. § 541(a). Section
26 541's definition is extremely broad and includes contracts and rights thereunder. Carroll v. Tri-
27 Growth Centre City, Ltd. (In re Carroll), 903 F.2d 1266, 1271 (9th Cir. 1990) (executory contract is
28 property of the estate that can only be terminated after a grant of relief from the stay); see also In re
Ryerson, 739 F.2d 1423 (9th Cir.1984) (holding a contract right to severance pay contingent on

1 termination of employment, which employment did not cease until nine months after bankruptcy
2 was filed, includable in the bankruptcy estate to the extent of the debtor's pre-petition service); In re
3 National Environmental Waste Corp., 191 B.R. 832, 834 (Bankr. C.D. Cal. 1996); Lauderdale
4 Motorcar Corp. v. Rolls-Royce Motors, Inc. (In re Lauderdale Motorcar Corp.), 35 B.R. 544, 547
5 (Bankr S.D. Fla. 1983). Under Section 362(a), the automatic stay applies to, among other things,
6 “the enforcement ... against property of the estate, of a judgment obtained before the [Petition
7 Date]” and “any act to obtain possession of property of the estate ... or to exercise control over
8 property of the estate”. 11 U.S.C. § 362(a). Thus, the question of whether the automatic stay applies
9 requires an inquiry into whether the underlying property is property of the debtor’s bankruptcy
10 estate.

11 As discussed by GM in its motion, Section 362(j) allows bankruptcy courts to issue
12 orders confirming that the automatic stay has been terminated. However, Section 362(j) only relates
13 to confirming that the automatic stay has been terminated under Section 362(c). Section 362(c)(1)
14 indicates that the stay of an act against property of the estate continues until such property is no
15 longer property of the estate. Thus, as with Section 362(a), in the end, the issue is whether the
16 bankruptcy court is dealing with property of the bankruptcy estate.

17 The Motion indicates that it is made pursuant to Section 362(j) and that GM is seeking
18 “an order confirming that the automatic stay of Section 362(a) does not bar it from treating the
19 [Dealer Agreement] as having been terminated under non-bankruptcy law pursuant to the
20 [Settlement Agreement]. [Motion, 1:24-2:2; Memorandum, 1:21-27] More particularly, GM asserts
21 that the Dealer Agreement is no longer part of the Debtor’s bankruptcy estate, because “GM believes
22 that the Dealer Agreement terminated by operation of law when the proposed ‘buy sell’ transaction
23 failed to close by December 31, 2012.” [Memorandum, 2:20-23] GM also asserts that the
24 Dealership Agreement terminated because of the Debtor “going dark.” [Memorandum, 9:3-10:12]

25 The Debtor adamantly disputes GM’s assertion that Dealer Agreement terminated. This
26 assertion is largely premised on GM believing that the Second Board Order “stated that if [the
27 Debtor] failed to satisfy one of the conditions in Section 2.3 of the Settlement agreement” then the
28 Dealer Agreement would terminate on November 12, 2012. [Memorandum, 7:10-17] In actuality,

1 as discussed above, the Second Board Order only required that the Debtor either obtain new floor
2 financing or submit a complete buy-sell package to GM by November 12, 2012. Only failure to
3 meet one of those requirements would result in automatic termination of the Dealer Agreement, as
4 modified by the Second Board Order. By GM's own admission, the Debtor satisfied one of the
5 foregoing requirements by submitting the complete WestCovina C, LLC/YTransport buy-sell
6 agreement to GM by November 12, 2012.

7 In addition to the foregoing, the Debtor believes that GM breached the Settlement
8 Agreement, the First Settlement Order, and the Second Settlement Order by not acting in good faith
9 by, among other things, (1) giving the Debtor and YTransport only 30 days to close the proposed
10 sale transaction and requiring it to be done in the middle of the holiday season, which GM knew, or
11 should have known would be nearly, if not actually, impossible, and (2) continuing to litigate the
12 Second Protest over the "going dark" issues, as no buyer, including YTransport, would be interested
13 in purchasing the Chevrolet dealership knowing that they would still have to defeat GM in the
14 Second Protest in order to operate the dealership.

15 The Debtor also disputes all of the allegations at issue in the Second Protest of the Debtor
16 allegedly going dark. The Board is the proper venue for a determination of such issues, not on a
17 summary basis pursuant to the Motion without a full opportunity for discovery. As GM knows, GM
18 would have to obtain relief from stay, which has not been requested by it, in order to proceed on the
19 Second Protest.

20 As can be seen above, there are material disputes between the parties as to whether or not
21 the Dealership Agreement terminated and, therefore, whether the Debtor has an interest in the
22 Dealership Agreement. GM cites to a number of cases saying that contracts that expire by their own
23 terms are no longer property of a debtor and its bankruptcy estate. [Memorandum, 10:21-12:16.]
24 However, this case is not as simple as those cases. Here, there is not a bright line where the Court
25 can determine if the Dealership Agreement terminated or the Dealership Agreement did not
26 terminate. Instead, the Court is really being asked to issue declaratory relief based on complex facts
27 regarding whether or not the Debtor has an interest in the Dealership Agreement. Pursuant to
28 Fed.R.Bankr.P. 7001(2) and (9), this requires an adversary proceeding. See Johnson v. TRE

1 Holdings (In re Johnson), 346 B.R. 190, 195 (9th Cir. 2006) (“Under Federal Rules of Bankruptcy
2 Procedure, the determination of interests in property requires an adversary proceeding.”)²
3 Therefore, GM’s Motion is procedurally improper and must be denied.

4 **B. THE MOTION SHOULD BE DENIED BECAUSE THE DEALERSHIP**
5 **AGREEMENT HAS NOT TERMINATED.**

6 Even if this Court finds that GM’s motion is procedurally proper, the Motion must still be
7 denied. GM asserts that the only way the Debtor could have satisfied paragraph 2.6 of the
8 Settlement Agreement and avoided alleged automatic termination of the Dealer Agreement was to
9 close the YTransport transaction approved by GM by December 31, 2012. The Debtor filed its
10 bankruptcy petition on December 28, 2012. Therefore, pursuant to Section 108(b), the Debtor has
11 an additional 60 days from the petition date – until 2/26/13 – to close the YTransport transaction and
12 the Dealership Agreement cannot terminate or be terminated before that date. As discussed above,
13 YTransport is still considering closing on the proposed transaction. Thus, while closing the
14 YTransport transaction would admittedly likely require emergency motions for approval before this
15 Court, closing with YTransport is not impossible.

16 Moreover, contrary to GM’s contentions, the YTransport transaction is not the only
17 transaction that could be consummated in order to satisfy Section 2.6 of the Settlement Agreement.
18 That section provides, in relevant part, that “[i]f a GM-approved buy-sell” transaction does not close
19 within 30 days of GM’s notifying [the Debtor] of the approval, then [the Debtor] agrees its Dealer
20 Agreement will terminate voluntarily.” Thus, even despite the denial of the Bid Pro Motion, the
21 Debtor still may be able to close the proposed transaction with Hidalgo. Since the Hidalgo
22 transaction is on essentially the same terms as were previously approved by GM for the YTransport
23

24 ² The Debtor is aware of the ruling in Wade v. State of Arizona (In re Wade), 115 B.R. 222 (9th Cir. BAP 1990). In that
25 case, the BAP held that, where a party seeks a determination that the automatic stay does not apply, or, alternatively, for
26 relief from the automatic stay, that such relief may be sought by motion as a contested matter pursuant to Fed.R.Bankr.P.
27 4001(a) and 9014. Wade 115 B.R., at 230-31. The facts in Wade are distinguishable from the facts herein. In Wade, the
28 movant was seeking a determination that one of the exceptions to the imposition of the automatic stay under Section
362(b) (specifically the police power exception of Section 362(b)(4)) was applicable). Here, GM is seeking a
determination as to whether the automatic stay terminated, which requires a direct determination of whether or not the
Debtor has an interest in the Dealer Agreement. More importantly, in Wade, the request for a determination that the stay
did not apply was joined with an alternative request for relief from stay. Here, GM has not made a request for relief from
stay.

1 transaction, GM could not reasonably reject Hidalgo as a buyer, nor would it be allowed to do so
2 under California law. Cal.Veh.Code §11713.3(d)(1) and (e).

3 Based on the foregoing, it is clear that the Dealer Agreement has not yet expired.
4 Accordingly, the Motion must be denied.

5 **III.**

6 **CONCLUSION**

7 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order:

- 8 1. Denying the Motion, and
9 2. Affording such other and further relief as is appropriate under the circumstances.

10 Dated: January 29, 2013

WEST COVINA MOTORS, INC.
d/b/a Clippinger Chevrolet and
Clippinger Chrysler Jeep Dodge

11
12 By: /s/ Martin J. Brill
13 MARTIN J. BRILL
14 TODD M. ARNOLD
15 KRIKOR J. MESHEFEJIAN
16 LEVENE, NEALE, BENDER, YOO
& BRILL L.L.P.
17 Proposed Attorneys for Debtor and
18 Debtor in Possession
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1
2 **DECLARATION OF ZIAD ALHASSEN**

3 I, Ziad Alhassen, hereby declare as follows:

4 1. I am over 18 years of age. Except where otherwise stated, I have personal
5 knowledge of the facts set forth below and, if called to testify, I could and would testify competently
6 thereto.

7 2. I make this declaration in support of the Motion to which this declaration is
8 attached. Unless otherwise stated, all capitalized terms herein have the same meanings as in the
9 Motion to which this declaration is attached.

10 3. On December 28, 2012 (the "Petition Date"), the Debtor commenced its
11 bankruptcy case by filing a voluntary petition for relief under Chapter 11 of title 11, United States
12 Code § 101, et seq. (the "Bankruptcy Code"). No trustee has been appointed, and the Debtor is
13 continuing to operate its business and manage its financial affairs as a debtor in possession pursuant
14 to Sections 1107 and 1108.

15 4. The Debtor, which has been operating since 1993, is in the business of selling and
16 servicing new Chevrolet, Chrysler, Jeep, and Dodge vehicles and various models of previously
17 owned vehicles. The Debtor operates its Chevrolet Dealership pursuant to, among other things, the
18 Dealer Agreement. A copy of the Dealer Agreement is attached to the Declaration of Gregory R.
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20 the Debtor cannot operate its Chevrolet Dealership. Prior to the termination of the Hummer brand by
21 GM, the Debtor was also in the business of selling and servicing Hummer vehicles. In addition, the
22 Debtor operates an auto body shop and a truck fabrication shop, which take truck chassis and adds
23 various body parts and equipment to make work trucks. Additional information regarding the Debtor
24 and its business operations can be found at clippingerchevy.com and clippingertruckequipment.com.

25 5. A related entity, Hassen Imports Partnership ("HIP"), is a debtor in Case No.
26 2:11-bk-42068-ER (the "HIP Case") pending before this Court. The HIP Case was converted from
27 Chapter 11 to Chapter 7 by order entered January 2, 2013. Howard Ehrenberg is the Chapter 7
28 Trustee for the HIP Case. HIP owns various parcels of real property (the "HIP Properties"),

1 including, but not limited to, the real property upon which the Debtor and a related entity, West
2 Covina Ford (“WCF”), operate their businesses. In particular, among other real property assets, HIP
3 owns the following 5 parcels of land, (1) 1932 East Garvey Avenue, South, West Covina California
4 from which the Debtor operates its Chevrolet dealership (the “Chevrolet Property”), (2) 298 North
5 Azusa Avenue, West Covina, California from which the Debtor operates its Chrysler/Jeep/Dodge
6 dealership, (3) 2000 East Garvey Avenue, South, West Covina California from which WCF operates
7 a Ford dealership (the “Ford Property”), (4) 1900 East Garvey Avenue, South, West Covina,
8 California, from which WCM previously operated a Hummer dealership until the cessation of the
9 Hummer brand and which is now vacant (the “Hummer Property”), and (5) 2539 East Garvey
10 Avenue, North, West Covina, California on which there was previously located a Mazda dealership,
11 which is no longer operational (the “Mazda Property”).

12 6. As discussed in the Debtor’s Omnibus Statement of Facts in Support of First Day
13 Motions and my prior declaration in support thereof (the “Omnibus Facts”) [Docket No. 17], there
14 were a host of circumstances that resulted in the Debtor’s decision to file for bankruptcy protection,
15 including unresolved issues with GM, CorePointe Capital Finance, LLC (“CorePointe”), the Debtor’s
16 primary secured creditor, and the City of West Covina (the “City”).

17 7. As discussed in the Omnibus Facts and my prior declaration in support thereof, the
18 financial crisis that began in 2008 left an indelible mark on many businesses, and the Debtor’s
19 dealerships were no exception. The damage to the Debtor and its business resulted largely from the
20 bankruptcies filed by GM and Chrysler, and the discontinuation of flooring financing by Ally, the
21 successor to GMAC, and Chrysler Financial to the Debtor. As part of their bankruptcies, GM and
22 Chrysler terminated about 30% of their underperforming dealerships. The dealerships whose
23 dealership agreements were terminated received nominal consideration. For example, the Debtor
24 invested approximately \$3.75 million into its Hummer dealership, which was spent on the unique
25 design of the dealership suited solely for Hummer's use, to promote the product, to purchase fixtures,
26 etc., in order to meet Hummer's standards, but received only a \$1.25 million payment when GM
27 terminated the Hummer brand.

1 8. Despite the foregoing setbacks, the Debtor attempted to continue its operations.
2 However, disputes arose between the Debtor and GM, which sells the Debtor its new Chevrolet
3 vehicles pursuant to the Dealer Agreement. On January 28, 2010, GM sent a letter (the “First
4 Termination Letter”) to the Debtor notifying the Debtor that, due to alleged breaches of the Dealer
5 Agreement, GM would seek to terminate the Dealer Agreement 60 days after the date of the First
6 Termination Letter. A copy of the First Termination Letter is attached to the Oxford Dec. as Exhibit
7 “E.” In response, on February 22, 2010, the Debtor filed a protest (the “First Protest”) with the
8 California New Motor Vehicle Board (the “Board”). A copy of the First Protest is attached to the
9 Oxford Dec. as Exhibit “F.” In November 2010, in an effort to resolve these disputes, the Debtor and
10 GM entered into a stipulated order (the “First Board Order”) and settlement agreement (the
11 “Settlement Agreement”) resolving the Debtor’s First Protest before the Board of GM’s efforts to
12 terminate the Dealership Agreement. A copy of the First Board Order is attached to the Oxford Dec.
13 as Exhibit “K.” A copy of the Settlement Agreement is attached to the Oxford Dec. as Exhibit “J.”
14 The Settlement Agreement and First Board Order were adopted by the Board. See Oxford Dec.
15 Exhibit “L.” Importantly, the Settlement Agreement has specific requirements regarding all notices
16 under the Settlement Agreement (the “Notice Requirements”). See Oxford Dec. Exhibit “J,” at ¶ 4.9.

17 9. Disputes eventually arose between the parties regarding compliance with the First
18 Board Order and Settlement Agreement. In summary, in November 2011, Ally, the successor to
19 GMAC, sent a letter (the “Ally Letter”) to GM indicating that Ally would no longer provide loans
20 (“flooring loans”) to the Debtor to purchase new vehicle inventory from GM. A copy of the Ally
21 Letter is attached to the Oxford Dec. Exhibit “M.” In December 2011, GM sent a letter (the “Second
22 Termination Letter”) to the Debtor notifying the Debtor that, pursuant to the Settlement Agreement,
23 due to the loss of the Debtor’s ability to obtain flooring loans from Ally, the Debtor would have to
24 either obtain a replacement lender acceptable to GM to provide flooring loans or submit a fully
25 executed agreement to GM to sell the Debtor’s Chevrolet dealership. GM asserted that, if neither
26 occurred by February 28, 2012, and there was no protest by the Debtor, the Debtor’s GM Dealership
27 Agreement would terminate on March 30, 2012.

1 10. Soon after the receipt of the Second Termination Letter, the Debtor sought to
2 remedy issues with GM by obtaining a replacement flooring loan provider and/or to sell the
3 Chevrolet dealership to WestCovina C, LLC, an affiliate of YTransport, pursuant to a buy-sell
4 agreement that was submitted to GM but rejected by GM because it was allegedly incomplete. The
5 Debtor and GM disputed whether the Second Termination Letter and responses thereto, including the
6 submission of the WestCovina C, LLC/YTransport buy-sell agreement to GM, which GM refused to
7 consider, satisfied the conditions of the First Board Order and Settlement Agreement for the
8 termination of the GM Dealership Agreement, and the Debtor protested the termination of the GM
9 Dealership Agreement. The parties submitted briefs and statements to the Board regarding their
10 positions.

11 11. On August 13, 2012, the administrative judge presiding over the dispute issued a
12 proposed decision (the "Second Board Order") regarding the disputes between the Debtor and GM.
13 A copy of the Second Board Order is attached to the Oxford Dec. as Exhibit "N." The Second Board
14 Order was premised, in large part, on the failure of GM to satisfy the Notice Requirements of the
15 First Board Order and the effect of such failure on the timelines set forth in the First Settlement
16 Agreement.

17 12. On August 24, 2012, the members of the Board adopted the ("Second Board
18 Order") and mailed it as required by the Second Board Order. See Motion, 7:10-12 (confirming date
19 Second Board Order was mailed as required). Accordingly, November 12, 2012, was the deadline
20 for the Debtor to take one of the actions required by the Second Board Order. It is undisputed that
21 the Debtor indeed took one of the actions.

22 13. On October 3, 2012, GM sent a letter (the "Third Termination Letter") to the
23 Debtor notifying the Debtor that it intended to terminate the Dealership Agreement because the
24 Debtor allegedly failed to conduct customary sales and service operations during customary business
25 hours for seven consecutive days (i.e., "going dark"). Oxford Dec., ¶ 10 and Exhibit "Q." In
26 response, on February 22, 2012, the Debtor filed a protest (the "Second Protest") with the Board.
27 Oxford Dec., ¶ 10 and Exhibit "R." The Second Protest is still pending with the Board.
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1 14. After the issuance of the Second Board Order, the Debtor continued its efforts to
2 sell its Chevrolet dealership (and the Chrysler/Jeep/Dodge dealership) to YTransport and its
3 affiliates. As admitted by GM, WestCovina C, LLC/ YTransport and the Debtor timely submitted a
4 complete buy-sell package to GM. See Oxford Dec. ¶ 8. On November 29, 2012, GM approved
5 YTransport and its buy-sell package. See Oxford Dec., ¶ 8 and Exhibit “O.” It took GM only
6 approximately 2 weeks to approve the YTransport buy-sell package when it usually takes at least 30
7 to 60 days to approve such a buy-sell package. Upon approval of the buy-sell package, GM gave
8 only until December 31, 2012, for the Debtor and YTransport to close the sale of the Chevrolet
9 dealership. With weekends, and the Thanksgiving, Christmas, and New Years’ holidays, this only
10 gave the parties 19 days to close. I am informed that, due to the holiday period and the related
11 unavailability of critical GM personnel, YTransport requested an extension of time to close the
12 transaction. I am further informed that GM denied the request. Likewise, on December 19, 2012, the
13 Debtor sent a letter (the “12/19/12 Letter”) to GM indicating that, due to the foregoing circumstances,
14 it would probably be impossible to close the proposed transaction by December 31, 2012. A true and
15 correct copy of the 12/19/12 is attached hereto as Exhibit “2.” Based on the foregoing, in the
16 12/19/12 Letter, the Debtor also requested a short extension of time to January 15, 2013 to close the
17 transaction. On December 21, 2012, GM sent a letter (the “12/21/12 Letter”) to the Debtor denying
18 the requested extension. A true and correct copy of the 12/21/12 is attached hereto as Exhibit “3.”
19 Under the foregoing circumstances, and for other reasons, YTransport was unable or unwilling to
20 close the sale of the Chevrolet dealership in such a short amount of time. Moreover, even assuming
21 YTransport was prepared to proceed with the sale on an expedited basis, it would have been
22 impossible for YTransport to obtain required approvals from GM and the Department of Motor
23 Vehicles in such a short period of time during the holiday period. Thus, the closing requirements
24 established by GM created a situation where it would be very difficult, if not impossible, to comply.

25 15. Due to the existing and continuing uncertainty as to whether or when YTransport
26 would close any or all of the contemplated sale transactions, the Debtor and various of its affiliates
27 sought other back-up buyers to complete the proposed sales transactions. On December 21, 2012, the
28

1 Debtor and various of its affiliates entered into letters of intent with B&B regarding the sale of their
2 Chrysler/Jeep/Dodge and Ford dealerships, respectively.

3 16. On December 31, 2012, the Debtor and several of its affiliates entered into a letter
4 of intent with Carlos Hidalgo (“Hidalgo”) regarding the contemplated global sales transaction. On
5 January 16, 2013, after substantial, arms-length negotiations, the Debtor and its affiliates entered into
6 asset purchase agreements and lease agreements with Hidalgo to effectuate the proposed global
7 transaction for the sale of the dealerships. The Chevrolet APA entered into by the Debtor and
8 Hidalgo regarding the Chevrolet Assets is attached hereto as Exhibit “1.” I believe that Hidalgo is a
9 qualified buyer and should obtain the required approval from GM.

10 17. On January 17, 2013, in conjunction with seeking to close the sale of the Chevrolet
11 dealership to Hidalgo pursuant to the Chevrolet APA, the Debtor filed a motion to approve bidding
12 procedures related to the sale of substantially all of its assets, including the Chevrolet Dealership (the
13 “Bid Pro Motion”). Responses to the Bid Pro Motion were filed by GM, the City, the Trustee,
14 Chrysler and CorePointe. Notably, all parties, other than GM, essentially were in favor of a sale of
15 the Chevrolet dealership, but had issues with the proposed procedures under the Bid Pro Motion.
16 GM opposed the sale based on the arguments that the Dealer Agreement had terminated pursuant to
17 the Second Board Order and, therefore, the Debtor could not sell its rights under the Dealer
18 Agreement or seek to assume or assign it. At the January 24, 2013 hearing on the Bid Pro Motion,
19 the Court denied the Bid Pro Motion, without prejudice.

20 18. The Debtor is still in contact with YTransport regarding the potential for
21 YTransport to close on the buy-sell agreement previously approved by GM. YTransport has not
22 definitively indicated that it will not close on such transaction. Thus, it is still possible that it may
23 close, albeit subject to Court approval.

24 19. I believe that GM breached the Settlement Agreement, the First Settlement Order,
25 and the Second Settlement Order by not acting in good faith by, among other things, (1) giving the
26 Debtor and YTransport only 30 days to close the proposed sale transaction and requiring it to be done
27 in the middle of the holiday season, which GM knew, or should have known would be nearly, of not
28 actually, impossible, and (2) continuing to litigate the Second Protest over the “going dark” issues, as

1 no buyer, including YTransport, would be interested in purchasing the Chevrolet dealership knowing
2 that they would still have to defeat GM in the Second Protest in order to operate the dealership.

3 20. I also dispute all of the allegations at issue in the Second Protest of the Debtor
4 allegedly going dark.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct.

7 Executed this 29th day of January 2013, at West Covina, California.

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11 ZIAD ALHASSEN
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EXHIBIT "1"

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is entered into effective January 16, 2013 (the “**Effective Date**”) by and among Carlos Hidalgo or nominee, (“**Purchaser**”), on the one hand, and West Covina Motors, Inc., a California corporation, and Debtor and Debtor in Possession under Chapter 11 (“**Seller**”) West Covina Automotive Holding, Inc., a California corporation (“**Holding**”), which owns all of the outstanding capital stock of Seller and Ziad Alhassen (“**Owner**”) on the other, and is made with respect to the following facts and circumstances.

- A. Owner owns substantially all of the capital stock of Holding.
- B. Seller owns and operates a Chevrolet automobile dealership operated under the business name of “Clippinger Chevrolet” (the “**Dealership**”) and located at 1932 East Garvey Avenue South, West Covina, California (the “**Premises**”).
- C. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, certain of the assets, property and business of Seller in connection with the Dealership and to either enter into: (1) a new lease for the Premises (“**New Lease**”); or (2) a sublease (the “**Sublease**”) with Seller regarding Seller’s current lease (the “**Premises Lease**”) of the Premises, or, alternatively, take an assignment of the Premises Lease.

NOW, THEREFORE, in recognition of the foregoing premises, in exchange of the covenants, agreements, representations and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:

1.1 Acquired Assets. The “**Acquired Assets**” are the assets and property to be purchased by Purchaser hereunder, as more fully described in Section 2 hereof.

1.2 Closing Date. Unless otherwise mutually agreed between Purchaser and Seller, the “**Closing Date**” shall be ten (10) business days from the date the conditions specified in Sections 9 and 10 herein are satisfied; subject however to the provisions of Section 17 below. The closing (“**Closing**”) shall take place at the Dealership on the Closing Date commencing at 10:00 a.m.

1.3 Damaged Vehicles. “**Damaged Vehicles**” are any new vehicles which have incurred “material damage”, as such damage is defined in California Vehicle Code Section 9990.

1.4 Employee Benefit Plan. “**Employee Benefit Plan**” means any (a) nonqualified deferred compensation or retirement plan or arrangement which is an Employee Pension Benefit Plan, (b) qualified defined contribution retirement plan or arrangement which is an Employee

Pension Benefit Plan, (c) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer Plan), or (d) Employee Welfare Benefit Plan or material fringe benefit plan or program.

1.5 Employee Pension Benefit Plan. “**Employee Pension Benefit Plan**” has the meaning set forth in ERISA Section 3(2).

1.6 Employee Welfare Benefit Plan. “**Employee Welfare Benefit Plan**” has the meaning set forth in ERISA Section 3(1).

1.7 ERISA. “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

1.8 Sales and Service Agreement. “**Sales and Service Agreement**” means the Chevrolet automobile Sales and Service Agreement currently held by Seller in connection with the Dealership at the Premises.

1.9 Manufacturer. “**Manufacturer**” means Chevrolet Division of General Motors Corporation.

1.10 Hazardous Materials. “**Hazardous Materials**” shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term “hazardous material” includes, without limitation, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Under Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos not in compliance with applicable laws or regulations, (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (x) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601).

1.11 Major Documents. “**Major Documents**” shall mean: Seller's Sales and Service Agreement with Manufacturer; a schedule of assets for the Dealership; all contracts and leases set forth in Schedule 2.7 attached hereto and any Phase I or II environmental studies or

investigations concerning the Dealership including any documents related to environmental remediation and governmental closure reports.

1.12 Obsolete Parts. “**Obsolete Parts**” means factory parts which are not listed in the most current Manufacturer's wholesale price book or, if listed therein, are valued at Zero Dollars (\$0.00), parts which are not returnable to the manufacturer (as defined by the Manufacturer) for any reason other than on account of being unboxed or in an opened or damaged container, or parts indicated as discontinued, parts for which there has been no sale in the last twelve (12) months, and broken or damaged parts, regardless of whether listed in the manufacturer's current wholesale price book.

1.13 Signs. “**Signs**” shall mean any signs owned or leased by Seller of a type recommended or required by the Manufacturer and bearing the Manufacturer's trademark or logo.

1.14 Tax. “**Tax**” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Internal Revenue Code Section 59A), customs duties, capital stock, profits, withholding, social security (or similar), unemployment disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

1.15 Knowledge of Seller. “**Knowledge of Seller**” means the actual knowledge of Ziad Alhassen without any duty of investigation or examination.

2. Sale of Assets. Seller agrees to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser agrees to buy, receive and accept from Seller, on the Closing Date all of the following assets utilized in the operation of the Dealership (the “**Acquired Assets**”):

2.1 Fixed Assets. All of the fixed assets owned by Seller used in the operation of the Dealership, and located at the Premises as of the Effective Date, including, without limitation, all machinery and shop equipment, Chevrolet special tools, signs, all as more particularly listed on Schedule 2.1 attached hereto. All of such fixed assets shall be in substantially the same condition and repair on the Closing Date as existed on the date on which Purchaser approves their condition as of the Effective Date, normal wear and tear excepted.

2.2 Goodwill, Sales and Service Agreement and Intangible Property. All of Seller's goodwill developed and utilized in connection with the Dealership and all other intangible assets of a similar nature including without limitation the service and sales customer lists; vehicle sales and service records; telephone and facsimile numbers; website, URLs, domain name; computer software; approvals, permits, licenses, orders, registrations, certificates, variances and similar rights obtained from governmental authorities; creative materials, product advertising and promotional materials, studies, reports and other printed or written materials relating to the Dealership; finance and insurance information; parts inventory history; training materials;

reference books; shop reference books; parts reference manuals; accounting forms; the Sales and Service Agreement.

2.3 Vehicles. All 2012 and 2013 new, unregistered, unused but excluding any Damaged Vehicle; Chevrolet vehicles owned by Seller and offered for sale at the Dealership with not more than three hundred (300) miles as shown on the odometer, or in transit, on the Closing Date but excluding any Damaged Vehicle; no more than two (2) 2012 or 2013 new unregistered demonstrator Chevrolet vehicles owned by Seller and offered for sale at the Dealership with not more than five thousand (5000) miles as shown on the odometer; and all used vehicles on which Purchaser and Seller can agree on a purchase price.

2.4 Parts and Accessories. All returnable current, unused, undamaged, new factory (i.e., Manufacturer) parts and accessories, excluding any Obsolete Parts, on hand on the Closing Date which are listed in the most recent factory parts catalogue, and all parts return privileges associated therewith (collectively, "**Factory Parts**"). All useable new parts and accessories from any supplier other than the Manufacturer and located on the Premises on the Closing Date which are listed in the applicable supplier's most recent parts catalogue (collectively, "**Non-Factory Parts**"). Purchaser shall not be obligated to purchase, and the definitions of Factory Parts and Non-Factory Parts shall not include, any used, damaged or Obsolete Parts or accessories.

2.5 Miscellaneous Inventory. All miscellaneous inventories including without limitation gas, oil, grease and the like, on hand at the Dealership on the Closing Date.

2.6 Work in Process and Sublet Repairs. All work in process and sublet work related to the Dealership not completed by Seller prior to the Closing Date. Work in process shall refer to service work or repair orders (customer, insurance/service contract and warranty) written by Seller in relation to the operation of the Dealership prior to the Closing Date but not complete on that date; work in process shall be further limited to only those vehicles in the actual possession, custody or control of Seller on the Premises on the Closing Date.

2.7 Unexpired Leases and Executory Contracts. All unexpired leases and executory contracts (the "**Assumed Contracts**") are set forth in Schedule 2.7 hereto. Schedule 2.7 also includes the amounts and other consideration (the "**Cure Amounts**") that, pursuant to Bankruptcy Code Section 365(b), to the best knowledge of Seller, as of the Closing Date, will be required to cure any default on the part of Seller under the Assumed Contracts or that will be otherwise due to the parties under the Assumed Contracts, which amounts or other consideration must be delivered to the nondebtor parties under the Assumed Contracts, or with respect to which adequate assurance of prompt delivery must be provided, as a prerequisite to the assumption and assignment of such Assumed Contracts under Bankruptcy Code Section 365(b). The Cure Amounts shall be paid by Seller from the Purchase Price out of Escrow.

Notwithstanding the inclusion of the Premises Lease on Schedule 2.7 hereto, Seller and Purchaser intend for Seller and Purchaser to enter into the New Lease, substantially in the form

set forth in Schedule 13.1, if approved by the United States Bankruptcy Court for the Central District of California (the “**Bankruptcy Court**”).

However, in the event that the New Lease is not entered into, and the parties enter into the Sublease or assign the Premises Lease, instead, attached hereto as Schedule 2.7.1, to the extent the rent specified in the Sublease or the Premises Lease for a particular month is higher than the rent for such month specified in the New Lease, Purchaser shall pay the lower rent amount specified in the New Lease. To the extent the rent specified in the Sublease or the Premises Lease for a particular month is lower than the rent for such month specified in the New Lease, Purchaser shall pay Seller the difference between the two amounts as additional rent.

Only in the event the Bankruptcy Court does not approve the New Lease in conjunction with the approval of the other transactions described herein, Seller will seek to either (i) enter into, and obtain approval of the Sublease, or (ii) assume the Premises Lease and assign it to Purchaser.

2.8 Excluded Assets. Notwithstanding anything in this Section to the contrary, the following assets and property shall be retained by Seller and shall not be sold or transferred to Purchaser (the “**Excluded Assets**”):

(a) Customer and Manufacturer accounts receivable, marketable securities, cash and cash equivalents.

(b) Any of Seller's accounting or personnel records.

(c) Supplies consumed and all vehicles, parts, accessories and other inventory sold in the normal course of business prior to the Closing Date.

(d) Any contracts, leases, concessions or other assets of Seller not specifically included in this Agreement.

(e) Seller's dealership-related reserves at banks and finance companies.

(f) Books and records relating to tax returns of the Dealership, its shareholders, as well as minute books, stock registers, or other books and records relating to changes in ownership of the Dealership.

(g) Any claims and causes of action arising under Chapter 5 of 11 U.S.C. § 101 et seq. (the “**Bankruptcy Code**”).

(h) Any assets located at, and utilized in connection with, Seller's body shop and truck fabrication shop located at 137 West San Bernardino, Covina, California.

(i) Any assets located at, and utilized in connection with, Seller's Chrysler/Jeep/Dodge dealership located at 298 North Azusa Avenue, West Covina, California and Ford Dealership located at 2000 East Garvey Avenue South, West Covina, California.

3. Consideration for Acquired Assets. Subject to the terms and conditions of this Agreement, the consideration to be paid by Purchaser for the Acquired Assets (the “**Purchase Price**”) shall be the aggregate value of the Acquired Assets determined in accordance with this Section 3. The Acquired Assets shall be valued as provided below:

3.1 Fixed Assets. The purchase price for the fixed assets identified in Section 2.1 shall be the sum of One Million Three Hundred and Eighty-Five Dollars (\$1,385,000).

3.2 Goodwill, Sales and Service Agreement and Intangible Property. The value of the Goodwill, Sales and Service Agreement and Intangible Property shall be the sum of Three Million Six Hundred Fifteen Thousand Dollars (\$3,615,000).

3.3 Vehicles. The vehicles identified in Section 2.3 shall be valued as follows:

(a) The price for all 2012 and 2013 new, unregistered, undamaged unused Chevrolet model vehicles with not more than three hundred (300) miles as shown on the odometer shall be valued at the sum of the following:

(i) The wholesale cost of each new vehicle determined in accordance with the factory invoice, including advertising charges; plus

(ii) The wholesale cost of all optional parts and accessories installed by Seller in the new vehicles plus the cost of labor (determined at the internal rate pursuant to the standard factory formula) for installation of the same; **plus**

(iii) The cost of pre-delivery expenses actually performed related to specific automobiles transferred at Closing, but only to the extent that such pre-delivery expense has not previously been reimbursed to Seller, or is not payable to Seller, in which event the right to assign reimbursement shall be assigned to Purchaser at the Closing; **less**

(iv) The sum of all distributor's allowances as of the Closing including, but not limited to, inventory allowances, floor plan assistance, interest credits, advertising credits, discounts, holdbacks, rebates, contests, model changes and similar distributor's allowances applicable to specific automobiles, including dealer trades, transferred on the Closing; **less**

(v) The cost (as reasonably determined by the parties) to repair any damage to any new vehicle existing as of the Closing Date; provided, however, that in the event the reasonable cost of both parts and labor to repair any damage to a new vehicle exceeds Five Hundred Dollars (\$500), such vehicle shall be considered a used vehicle and shall be valued in accordance with Section 3.3(d); **less**

(vi) The wholesale cost of any missing accessories, equipment or parts.

(b) All amounts due for pre-delivery inspection (“**PDI**”) for the new motor vehicle inventory will be the property of Seller with respect to any new vehicle for which Seller performed the PDI prior to the Closing Date.

(c) Up to two (2) 2012 or 2013 new, unregistered Chevrolet model demonstrator vehicles with more than five hundred (500) miles but less than five thousand (5,000) miles as shown on the odometer, shall be valued pursuant to the provisions of Section 3.3(a), less the sum of twenty cents (\$0.20) per mile for each mile as shown on the odometer for each vehicle.

(d) All used vehicles located at the Premises (which shall include new, unregistered vehicles not acquired pursuant to Section 3(a) and 3(b) above, all company vehicles and loaner vehicles and all demonstrator vehicles) shall be valued as mutually agreed between Purchaser and Seller. Any vehicles about which Purchaser and Seller cannot agree on the value shall be retained by Seller and Seller shall have ten (10) days after the Closing Date to remove such vehicles from the Premises.

3.4 Parts and Accessories. Parts and accessories shall be valued as follows:

(a) All Factory Parts which are in the possession of Seller as of the Closing Date shall be valued at dealer cost in accordance with the manufacturer's or distributor's most current wholesale parts and accessories price book as of the Closing Date, less any dealer discounts (if applicable). The value of Factory Parts with no sale within the last twelve (12) months shall equal the actual fair market value as determined by the appraisal service.

(b) All Non-Factory Parts which are in possession of the Seller at the Premises as of the Closing Date shall be valued at Seller's cost in accordance with the applicable supplier's most current wholesale parts and accessories price book as of the Closing Date, less any applicable discounts; provided that Purchaser shall have no obligation to purchase in excess of Twenty Thousand Dollars (\$20,000) of Non-Factory Parts.

(c) Seller shall assign to Purchaser Seller's terminating dealer parts return privilege under the Sales and Service Agreement, if any, with respect to the Factory Parts and the Non-Factory Parts purchased hereunder. Seller shall keep any Factory Parts and Non-Factory Parts located at the Premises not purchased by Purchaser hereunder and shall remove such Factory Parts and Non-Factory Parts from the Premises within thirty (30) days following the Closing

3.5 Miscellaneous Inventory and Supplies. All miscellaneous inventories, including gas, oil, and grease, in stock at the Premises on the Closing Date shall be valued at cost.

3.6 Work in Process and Sublet Repairs. All work in process and sublet repairs at the Premises shall be valued at Seller's actual cost, which shall consist of the actual cost of all parts and accessories which are a part of the work in process/repair plus the cost of labor (determined at the internal rate pursuant to the standard factory formula) associated therewith and incurred by Seller through the Closing Date; provided, however, that Purchaser shall not be obligated to purchase any work in process that Seller had not completed within thirty (30) days from the date

Seller began the work. In the event Seller and Purchaser disagree as to the collectability of any work in process or sublet repair, Purchaser shall assume the work and complete it, and Seller's share of the invoice price for the work shall be paid to Seller upon receipt by Purchaser of payment for such work.

3.7 Purchase Orders and Deposits. At no charge to Purchaser, Seller shall transfer to Purchaser on the Closing Date all rights to existing, unfulfilled purchase orders incurred in the ordinary course of the Dealership's business and corresponding customer deposits for new Chevrolet vehicles. All customer contracts for undelivered Chevrolet vehicles that Purchaser will be assuming at Closing will be valid and effective in accordance with their terms, and there will be no defaults or events of default or events which with notice or lapse of time or both would constitute defaults thereunder.

3.8 Pre-closing Inventory. As of the close of business on the day immediately preceding the Closing Date or on such other date as mutually agreed upon by Purchaser and Seller, a physical inventory to determine the value of the new and used vehicles, sublet repairs, miscellaneous inventories, and work-in-progress at the Premises shall be taken jointly by the parties. Each party shall bear the expenses associated with its own personnel in connection with the valuation of the assets. The parties shall jointly employ an independent inventory service selected by Seller and reasonably acceptable to Purchaser to take an inventory of parts and accessories immediately prior to the Closing. The cost of such inventory shall be paid one-half by Purchaser and one-half by Seller.

4. Payment of Purchase Price; Pro-rations; Sales Tax. The Purchase Price to be paid by Purchaser pursuant to this Agreement shall be paid as follows:

4.1 Deposit. Purchaser shall deliver (i) the sum of Fifty Thousand Dollars (\$50,000) (the "**Initial Deposit**") to the Escrow Holder (as defined in [Section 19](#)) within three (3) business days of the full execution of this Agreement and the delivery thereof to Purchaser and (ii) a further deposit in the amount of One Hundred and Fifty Thousand Dollars (\$150,000) within three (3) business days following the entry of an order of the Bankruptcy Court approving the Bid Procedures (as defined below) ("**Additional Deposit**"). The Initial Deposit and the Additional Deposit shall collectively be referred to as the "**Deposit.**" The Deposit shall be held in an interest bearing account by Escrow Holder and shall be applied to the benefit of Purchaser toward the purchase price of the Dealership upon Closing. If the transaction does not close, and this Agreement is terminated pursuant to [Section 18](#), the Deposit, together with all accrued interest, shall be disbursed to Purchaser, unless the provisions of [Section 22](#) are applicable, in which case the disposition of the Deposit shall be governed by the provisions of [Section 22](#).

4.2 Floor Plan Payment. Purchaser shall receive a credit against the Purchase Price in the amount of the floor plan financing paid by Purchaser on behalf of Seller's current floor plan loan.

4.3 Balance. The balance of the Purchase Price shall be payable by Purchaser through Escrow to Seller in immediately available funds on the Closing Date.

4.4 Closing and Post-Closing Adjustments. All adjustments normal in asset acquisitions, including but not limited to rents, lease deposits, utilities, telephone charges, personal property taxes, real property taxes, customer prepayments, if relating to a period before and after the Closing Date, and prepaid expenses inuring to the benefit of Purchaser shall be apportioned between Seller and Purchaser according to the number of days in the period covered thereby which occurred prior to and including the Closing Date and subsequent to the Closing Date. The aggregate amount of any adjustment shall be determined and paid through Escrow as of the Closing Date. Any additional amounts as reasonably determined by the parties after the Closing Date to be paid by either party under this Section 4.4 shall be paid by check delivered within seven (7) days following determination of the amount of any such adjustment. In the event Seller and Purchaser are unable to agree on any post-closing adjustments in accordance with this Section 4.4, such dispute shall be resolved in accordance with [Section 24](#) herein below.

4.5 Sales Taxes. To the extent applicable, Purchaser shall pay any sales tax in connection with this transfer. Purchaser shall reimburse Seller through Escrow for the sales tax which may be imposed or payable on or in connection with the transfer of the Acquired Assets pursuant to this Agreement.

4.6 Liabilities. Purchaser shall have no obligation for any liabilities of Seller other than obligations for liabilities and claims that first accrue under the Assumed Contracts set forth on [Schedule 2.7](#) or in relation to the Acquired Assets on or subsequent to the Closing Date. Purchaser and Seller shall execute such assignment and assumption documents in connection with the liabilities to be assumed by Purchaser as provided for herein. Seller shall be fully responsible for any and all costs or charges of any kind whatsoever arising out of such Assumed Contracts for the period prior to the Closing Date. Seller shall use commercially reasonable efforts to obtain Bankruptcy Court required for approval of the New Lease and the assumption and assignment of the Assumed Contracts and/or the Sublease. Purchaser shall cooperate with Seller in obtaining such consents and approvals, including by providing information necessary to demonstrate adequate assurance of future performance under the Assumed Contracts as required by 11 U.S.C. § 365(b), and shall enter into an arrangement of assumption as may be reasonably requested by any lessor or contracting party of an Assumed Contract set forth on [Schedule 2.7](#) or required by the Bankruptcy Court. Without limiting the generality of the foregoing and except as may be specifically provided to the contrary in this Agreement, the parties acknowledge and agree that Purchaser is not assuming and Seller shall remain responsible for: employment agreements, labor agreements, collective bargaining agreements, retirement plans, Employee Benefit Plans or other similar contracts; any liability of Seller for Taxes; any liability of Seller relating to or arising out of the violation by Seller of any law (including rules and regulations) of any federal, state, local or foreign government (or agency thereof); any liability of Seller relating to or arising out of the sale of products or the performance of services by Seller or the conduct or operation of the Dealership prior to the Closing Date; and/or any liability of Seller relating to or arising out of any agreement, contract, lease, license or other arrangement not specifically identified on [Schedule 2.7](#) attached hereto. The parties acknowledge and agree that Seller shall terminate all of Seller's employees as of the Closing Date.

4.7 Factory Orders. On the Closing Date, Purchaser will assume the obligation to purchase and pay when due any amounts relating to new, unused and undamaged 2012 and 2013 model year Chevrolet vehicles, and OEM Parts and Accessories which have been ordered by Seller in its normal course of business prior to the Closing Date but which have not been delivered to the Dealership as of the Closing Date and which are not otherwise included among the Acquired Assets.

4.8 We Owes. On the Closing Date, Purchaser will assume the obligation to perform the services and/or provide the accessories due to customers of Seller as specifically listed on Schedule 4.8, which will be attached to this Agreement on the Closing Date and thereby made a part hereof (collectively "**We Owes**"). Purchaser will receive a credit against the Purchase Price equal to the estimated costs to Purchaser determined at Purchaser's internal rates of performing any such We Owes. Purchaser shall promptly refund Seller the amount of the credit given for any We Owes which was not fulfilled by Purchaser within twelve (12) months after the Closing Date and Seller will reimburse Purchaser for the costs of satisfying the We Owes as later presented by the customer.

5. Bidding Procedures Motion and Order and Sale Motion. As soon as practicable, and no later than three (3) business days after the full execution of this Agreement, Seller shall file a motion (the "**Bid Procedures Motion**") with the Bankruptcy Court seeking an order (the "**Bid Procedures Order**") approving the bid procedures (the "**Bid Procedures**") described below. As soon as practicable, Seller shall file a motion to obtain Bankruptcy Court approval of the transactions contemplated hereby.

5.1 Overbid Requirements, Qualifying Bidder Requirements, Breakup Fee.

(a) Overbid Requirements. The Bid Procedures Motion shall seek, and the Bid Procedures Order shall provide for, minimum overbid requirements of (i) \$100,000 for the initial overbid and (ii) \$50,000 over the then-highest bid for any additional bids.

(b) Qualifying Bidder Requirements. The Bidding Procedures Motion shall seek, and the Bid Procedures Order shall provide that, (i) only qualified bidders ("**Qualified Bidders**") will be allowed to bid for the assets which are the subject of this Agreement, and (ii) in order to become a Qualified Bidder, a bidder must meet all of the requirements set forth below:

(i) Provide, not later than three (3) days prior to the auction date set by the Bid Procedures Order, a deposit, by wire transfer or cashier's check, of \$200,000;

(ii) Provide, not later than three (3) days prior to the scheduled auction date, evidence, in the form of a letter of credit, non-contingent commitment from a recognized lending institution or substantial equivalent thereof, of such competing bidder's ability to close the transaction;

(iii) Provide, not later than three (3) days prior to the scheduled auction date, a redlined and clean copy of an asset purchase agreement, including all Schedules, substantially similar to the within Agreement and its Schedules (including, without limitation, the New Lease and the Sublease), to be used for the competing bidder's purchase of the assets referenced herein, save and except for the final purchase price and certain other provisions only applicable to Purchaser;

(iv) Provide, not later than three (3) days prior to the scheduled auction date, information reasonably required by Seller to demonstrate adequate assurance of future performance by the competing buyer in order to effectuate an assumption and assignment of the Assumed Contracts; and

(v) Provide, not later than fourteen (14) days prior to the scheduled auction date, (x) bidder's "CSI Scores," which means manufacturer-issued customer satisfaction reports (sales and service) for all franchises owned (in whole or in part) or operated by bidder for the last three (3) years, including corresponding national average comparator score(s).

(c) Stalking Horse. Purchaser understands that the Acquired Assets are subject to competitive bidding, and will be sold to the highest and best bidder, subject to Bankruptcy Court approval. Purchaser consents to the foregoing. Seller acknowledges that Purchaser may choose to not participate in an auction, provided, however, that (i) if there are no other higher bids received by Seller, then this Agreement shall be binding on Purchaser, (ii) in the event another bid from a Qualified Bidder is approved by the Court, Purchaser shall keep its offer under this Agreement open for a period of sixty (60) days and, in the event the sale to the other Qualified Bidder is not consummated for any reason, Purchaser shall perform under the terms of this Agreement.

(d) Break Up Fee. If Purchaser is overbid at auction by another Qualified Bidder who acquires the Acquired Assets herein, Seller will pay Purchaser a break-up fee of \$50,000 from the Purchase Price received from the Qualified Bidder.

6. Representations and Warranties of Seller and Owner. Seller and Owner represent, warrant, and agree with Purchaser as follows:

6.1 Good Standing. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of California and is entitled to and has the power and authority to own or lease its property and to carry on its business in the manner and in the places where such property is now owned, leased or operated and such business is now conducted. Seller is the debtor and debtor in possession in a chapter 11 proceeding pending in the Bankruptcy Court.

6.2 Title to Assets; Liens and Encumbrances. Except for signs and equipment leases to be assumed by Purchaser pursuant to Section 2.7 above, Seller will convey to Purchaser good

and marketable title to the Acquired Assets, free and clear of all security interests, liens, claims, restrictions, equities and encumbrances whatsoever.

6.3 Authorization. The execution and delivery of this Agreement and the transactions contemplated hereby have been duly authorized by the board of directors of Seller and all other corporate action, including all shareholder approvals necessary to authorize the execution and delivery of this Agreement and the transactions contemplated hereby, have also been taken. Except for consent of the Bankruptcy Court, Manufacturer, lessors under leases, floor plan lenders, secured creditors, and other persons or entities disclosed in writing by Seller to Purchaser, no consent of any lender, trustee, security holder, lessor or any other person or entity is required to be obtained by Seller in connection with the execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby. Subject to Bankruptcy Court approval, this Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforceability of creditors' rights generally. Except for obtaining the consent of the Manufacturer, and except as may be provided in Seller's existing floor plan financing agreements, and except as otherwise disclosed in writing by Seller to Purchaser, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby (a) do not violate or constitute a breach of or default under any contract, agreement or commitment to which Seller is a party, under which it is obligated or to which any of the Acquired Assets are subject, (b) do not violate any judgment, order, statute, rule or regulation to which Seller or any of the Acquired Assets are subject or the bylaws or other formation or governance documents of Seller, and (c) will not result in the creation of any lien, charge or encumbrance on any of the Acquired Assets.

6.4 Representations and Warranties on Closing Date. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date.

6.5 Litigation. Except as set forth on Schedule 6.5 attached hereto, there is not pending, or, to the best knowledge of Seller, threatened, any suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation against or affecting Seller or any of the Acquired Assets.

6.6 Environmental and Other Compliance Notices. Seller has received no notice advising Seller of any defects, defaults or non-compliance in connection with the Acquired Assets and/or the Dealership pursuant to the laws, rules and regulations from any governmental agency dealing with environmental laws, except notices which have been previously complied with or expressly waived in writing by the governmental agency. Seller represents to Purchaser that the Dealership and the Premises now meet and will at the Closing meet the requirements established by all governmental and regulatory agencies governing the operation of the Dealership, including, but not limited to, the Department of Motor Vehicles, the City of West Covina, California and all other state, city and/or county permit and license departments,

environmental regulatory authorities and other agencies. There are no underground storage tanks located at the Premises. Seller represents, to the best of Seller's knowledge, there is no Hazardous Material or toxic waste located upon, below or in the immediate vicinity of the Premises which is not properly stored in compliance with all applicable law. Seller has no knowledge of any release or discharge of Hazardous Materials at, on, or under the Premises which would require any remediation activities.

6.7 Compliance With Law. Seller has complied with, and is not in violation of, applicable federal, state or local statutes, laws or regulations the violation of which would have a material adverse effect on the financial condition of the Dealership.

6.8 Collective Bargaining Agreements or Organizational Efforts; Labor Disputes. Seller has no collective bargaining agreements with respect to its employees. There are no proceedings pending for union certification or representation before the National Labor Relations Board nor, to the best of Seller's knowledge, has there been any attempt within the past three (3) years to organize the employees of Seller into a collective bargaining unit. There is no labor strike, dispute, slowdown or stoppage actually pending or, to the best of Seller's knowledge, threatened against or involving Seller, and no grievance which might have an adverse effect on Seller or the conduct of its business is pending. Seller has fewer than 100 employees.

6.9 Employee Benefits. Except as otherwise disclosed in writing by Seller to Purchaser, Seller neither maintains nor contributes to any Employee Benefit Plans nor any Employee Welfare Plans. None of Seller's employees are participants in any Employee Benefit Plans or any Employee Welfare Plans by virtue of their employment by Seller.

6.10 Taxes. The sale of assets under this Agreement shall be free and clear of all tax liens, taxes and other interests, pursuant to the Bankruptcy Court's order approving the sale, to be entered in accordance with Bankruptcy Code Section 363.

6.11 Insurance. Schedule 6.11 to this Agreement (which shall be prepared and delivered to Purchaser within ten (10) days of the execution of this Agreement) sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which Seller has been a party, a named insured, or otherwise the beneficiary of coverage at any time that Seller has owned and operated the Dealership:

- (a) the risk covered;
- (b) the amount of coverage; and
- (c) the scope (including an indication of whether the coverage was on a claims made, occurrence, or other basis) of coverage.

With respect to each such insurance policy, the policy is legal, valid, binding, enforceable, and in full force and effect.

6.12 As-Is, Where-Is. The sale of the Acquired Assets is on an "as-is, where-is" basis and without representations or warranties of any kind, nature or description by the Seller, or its agents.

6.13 Untrue Statements and Omissions. Subject to the written disclosures by Seller to Purchaser, to the best of knowledge of Seller, no statement by Seller contained in this Agreement or any exhibit or schedule attached hereto and no statement contained in any certificate or other instrument or document furnished by or on behalf of Seller pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact which is necessary to make the statements contained herein or therein not misleading as of the Closing Date.

6.14 Purchaser's Disclaimer. Purchaser acknowledges that except as otherwise set forth in this Agreement, Seller and Owner make no representations, warranties or statements whatsoever respecting the Acquired Assets being purchased, Seller's business or the Premises and that in entering into this Agreement and in consummating the transactions contemplated herein, Purchaser is not relying upon any representation, warranty or statement made by Owner or by Seller nor any of its members, affiliates, employees, agents, brokers, or attorneys, other than those expressly set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise specifically set forth in this Agreement, neither Seller nor Owner makes any representations, warranties or statements of any nature whatsoever respecting the financial condition (past or present), results of Seller's dealership operations for current or for prior periods, liabilities, employees, suppliers, customers, market position, reputation or prospects of Seller or the Dealership; the physical condition or the marketability for resale of the Acquired Assets; the physical condition of the Premises; or any matter which might affect Purchaser's ability in the future to conduct business using the Acquired Assets which is in any manner similar to the current manner in which Seller conducts business. For all purposes in connection with its decision to enter into this Agreement and to consummate the transactions contemplated herein, and except as to the representations and warranties set forth in this Section 5 and elsewhere in this Agreement, Purchaser has undertaken and is relying upon such independent investigations and examinations of material facts as Purchaser, in its sole discretion, has deemed relevant, or necessary under the circumstances to make such decision.

7. Representations and Warranties of Purchaser. Purchaser represents, warrants, and agrees with Seller as follows:

7.1 Good Standing. To the extent Purchaser is a limited liability company, the Purchaser is duly organized, validly existing and in good standing under the laws of the State of California and is entitled to and has the power and authority to own or lease its property and to carry on its business in the manner and in the places where such property is now owned, leased or operated and such business is now conducted.

7.2 Authorization. The execution and delivery of this Agreement and the transactions contemplated hereby have been duly authorized by Purchaser and all other action necessary to authorize the execution and delivery of this Agreement and the transactions contemplated

hereby, have also been taken. This Agreement is a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforceability of creditors' rights generally. Except for consent of the Manufacturer, no consent of any trustee, security holder or any other person or entity is required to be obtained by Purchaser in connection with the execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby. Except for obtaining the consent of the Manufacturer, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby (a) do not violate or constitute a breach of or default under any contract, agreement or commitment to which Purchaser is a party or under which it is obligated, and (b) do not violate any judgment, order, statute, rule or regulation to which Purchaser is subject.

8. Conduct Prior to Closing Date.

8.1 Ongoing Operations. Seller will use its reasonable efforts to preserve intact the Acquired Assets and to continue to operate the Dealership as a going concern to the extent financially able to do so. The parties acknowledge that the Dealership is only operating on a limited basis and that the remaining vehicle inventory may be sold. Seller will not order vehicles or make other commitments to third parties except in the ordinary course of business and in a manner consistent with Seller's past business practices. Seller will not dispose of any of the Acquired Assets except in the ordinary course of business consistent with past practices, and will not, without limiting the foregoing, hold a "going-out-of-business" or "liquidation" sale. Seller shall maintain all of its insurance in effect with respect to its business and assets as of the Effective Date. Seller shall not, without Purchaser's prior written consent, further encumber or suffer to be further encumbered any of the Acquired Assets or other Premises Lease or facilities (except for normal flooring of inventory vehicles in the normal and ordinary course of business).

8.2 Approvals. Each of Purchaser and Seller will use its commercially reasonable efforts to obtain all permits, approvals, authorizations and consents of third parties necessary or desirable for the consummation of the transactions contemplated by this Agreement and for the ownership and operation by Purchaser of the Acquired Assets and the Dealership. Purchaser and Seller shall proceed as promptly as practicable after the date hereof to prepare and file with the Manufacturer all materials necessary to obtain the consent of Manufacturer as is necessary for Purchaser to acquire the Acquired Assets and for consummation of the transactions contemplated hereby.

8.3 Covenant to Comply. Seller and Purchaser shall not take any action or fail to take any action which will make any of their representations and warranties not true and correct in all material respects on the Closing Date. Seller and Purchaser shall each use its commercial reasonable efforts to satisfy or cause to be satisfied all of the conditions precedent to obligations hereunder. Seller and Purchaser shall give prompt written notice to the other of any material change in any of the information contained in the representations and warranties made in this Agreement or the schedules referred to herein which occur prior to the Closing Date; provided, however, that any change in the information contained in the representations and warranties or

schedules will not relieve the disclosing party of any obligations hereunder if such changes result in a breach of the representations and warranties contained herein.

8.4 Seller's Employees. At Purchaser's request, Seller will permit Purchaser to interview Seller's employees and to otherwise meet with Seller's employees, either individually or in groups, as Purchaser may determine. Seller will pay all its employees in full for their services rendered through the Closing Date and will otherwise satisfy all of Seller's obligations to its employees through such date, including, but not limited to, any individual employment contracts, accrued vacation time, accrued bonuses, etc.

8.5 WARN Act. Seller shall comply in all respects (including, without limitation delivering notice to such employees which might otherwise be required) with the Federal Worker Adjustment and Retraining Notification Act (the "**WARN Act**") and any state worker notification requirement applicable to the transaction described herein.

9. Conditions to Purchaser's Obligations to Close. The obligations of Purchaser under this Agreement are subject to fulfillment of the conditions set forth below. Purchaser shall have the right to waive in writing all or part of any one or more of the following conditions without releasing Seller from any liability for any loss or damage sustained by Purchaser by reason of the breach by Seller of any covenant, obligation or agreement contained herein, or by reason of any misrepresentation made by Seller and upon such waiver may proceed with the transactions contemplated by this Agreement.

9.1 Agreements and Conditions. On or before the Closing Date, Seller shall have complied with and duly performed in all respects all agreements and conditions on its part to be complied with and performed pursuant to or in connection with this Agreement on or before the Closing Date, including, without limitation, delivering to Purchaser and/or the Escrow Holder all items described in Section 11 of this Agreement.

9.2 Representations and Warranties. The representations and warranties of Seller contained in this Agreement, or otherwise made in writing in connection with the transactions contemplated hereby, shall be true and correct in all respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date and Purchaser shall have received a certificate to that effect dated as of the Closing Date and executed by the President of Seller or such other corporate officer authorized to execute such certificate.

9.3 No Legal Proceedings. No action or proceeding shall have been instituted or threatened to restrain or prohibit the acquisition by Purchaser or the conveyance by Seller of the Acquired Assets or which might result in any material adverse change in the business, prospects or financial or other condition of the Acquired Assets.

9.4 Loss, Damage or Destruction. No material loss, damage or destruction of the Acquired Assets, or the Premises shall have occurred prior to the Closing Date. The risk of any loss or damage to the Acquired Assets, or any part thereof, or to the Dealership, or any part thereof, from any casualty, including without limitation: acts of God; fire; explosion, tornado;

earthquake; accident; flood; riot, condemnation; theft; damage; or, activities of armed forces, shall be upon the Seller between the date hereof through and including the Closing Date. The provisions of this section shall also apply to any actual or threatened condemnation of the Premises occurring on or before the Closing Date.

If, on or prior to the Closing Date, there shall be an occurrence resulting in any kind of physical loss or damage to the Acquired Assets or to the Dealership, or to any part of the foregoing, to the extent such loss or damage is not restored by Seller prior to the Closing Date, or cannot be repaired at the Seller's cost within thirty (30) days after Closing, then the Purchaser shall have the option to elect to close the transaction contemplated herein, receive any and all insurance proceeds, and deduct from the Purchase Price the deficiency of any uninsured loss or damage and if applicable, the deductible, or terminate this Agreement.

9.5 Consents. Purchaser shall have received the written approval of the Manufacturer designating Purchaser as the duly authorized dealer for the sales and service of the Manufacturer's vehicles at 1932 East Garvey Avenue South, West Covina, California, or such other premises in West Covina, California as determined by Purchaser, on commercially reasonable terms and conditions, and Purchaser and Manufacturer shall have entered into a customary dealer sales and service agreement; provided, however, that if Manufacturer seeks to impose any facility or other conditions not consistent with conditions imposed by the Manufacturer related to its standard image programs as a condition to the granting of such Sales and Service Agreement to Purchaser that Purchaser in good faith finds unacceptable, Purchaser shall be free to reject such conditions and shall incur no liability to Seller as a result thereof. All permits and licenses necessary to enable Purchaser to conduct the Sales and Service Agreement and service facilities shall have been obtained. All other requisite consents and approvals shall have been obtained.

9.6 Environmental Assessment. Within thirty days (30) of the Effective Date, Purchaser shall have approved, in writing delivered to Seller and Escrow Holder and in its sole and absolute discretion, the results of Phase I and (if applicable) Phase II environmental investigation(s) of the Premises. Purchaser shall have the right to conduct an environmental assessment (the "**Environmental Assessment**") of the Premises. Seller shall deliver to Purchaser copies of any Phase I or II reports or studies within Seller's possession or control pertaining to the Premises. Purchaser shall bear the cost of any Phase I study to be obtained by Purchaser, which cost shall be paid out of the Initial Deposit. In the event Purchaser's environmental consultant recommends that a Phase II investigation be conducted, then Purchaser shall bear the cost of the Phase II study to be obtained by Purchaser, which cost shall also be paid out of the Initial Deposit. Seller shall make all Dealership facilities available to Purchaser on a reasonable basis and schedule in order to allow Purchaser's environmental consultant to complete a Phase I and/or II study or studies, including, without limitation, obtaining any required consent of the landlord(s) of such facilities, if any. In the event a Phase II study is recommended by Purchaser's environmental consultant, Purchaser shall have an additional thirty (30) days to conduct its Phase II study.. In the event that Purchaser obtains actual knowledge regarding the presence of any Hazardous Materials at the Premises in violation of any applicable environmental law, Purchaser shall give Seller written notice of such information, which

notification requirement may be satisfied by delivery to Seller of copies of such report(s). Unless Seller agrees to remediate the condition at its sole costs and expense prior to the Closing Date, Purchaser may terminate all of its obligations under this Agreement by written notice to Seller, delivered in writing within three (3) business days following Purchaser's actual knowledge regarding the presence of any Hazardous Materials at the Premises. Failure by Purchaser to timely notify Seller of its intent to terminate this Agreement shall be deemed a waiver of its right to terminate this Agreement.

9.7 Physical Audit. On or before the Closing Date the valuation of the Acquired Assets pursuant to the physical audit specified in Section 3.8 shall be completed.

9.8 Tax Clearance. Purchaser shall have received either an order from the Bankruptcy Court approving a sale to Purchaser free and clear of all tax liens and claims or, alternatively, a Certificate of Release (or other customary written confirmation) from the California Employment Development Department (“**EDD**”) stating that as of a date not more than fifteen (15) days prior to the Closing Date, no contributions, interest or penalties are due to the EDD from Seller or conditioned on payment of all sums due and owing upon the Closing through escrow. Purchaser shall additionally have received a Certificate of Release (or other customary written confirmation) from the California Board of Equalization (“**BOE**”) stating that as of a date no more than fifteen (15) days prior to the Closing Date, that Seller has paid all sales taxes, interest and penalties which Seller owes to the BOE. Seller shall have additionally furnished Purchaser with a Tax Clearance Certificate for Seller issued by the California Sales and Service Agreement Tax Board as of a date not more than fifteen (15) days prior to the Closing Date. In the event such certificates are not reasonably available, the parties shall defer to the custom of the Escrow Holder with respect to the delivery of such certificates following the Closing Date (including without limitation the retention of a portion of the Purchase Price in escrow after closing until such certificates are available)

9.9 List of Employees. Seller shall have terminated or taken all other appropriate actions to terminate its employees' employment with Seller, effective as of the Closing Date. Seller shall have paid all employee benefits accrued prior to the Closing Date, including, without limitation, FICA, SDI and other payroll taxes, and all sales commissions and other compensation, including vacation pay and sick leave, for all employees of Seller. Seller shall furnish to Purchaser a list of all employees, their rates of pay, including, separately, base pay, and incentive, commission plans and employee benefits. Further Seller shall make reasonable efforts to deliver to Purchaser a certificate from each of such employees showing that such employee has received from Seller all compensation including all sick leave, vacation, and any and all other compensation due such employee through the Closing Date. In addition thereto and if applicable, Seller shall have complied with any and all obligation of Seller under any collective union agreements and/or collective bargaining agreements.

9.10 Assumption and Assignment of Assumed Contracts.

One of the following alternative conditions shall be satisfied:

(1) Owner of the Premises and Purchaser shall have entered into the New Lease for the Premises in accordance with Section 13 below, in the form attached hereto as Schedule 13.1. Purchaser shall have received a final order from the Bankruptcy Court approving the New Lease and providing in form and substance such assurances that, in the event of foreclosure by any lienholder on the Premises, the lease shall remain in full force and effect, unless Purchaser waives such condition; or

(2) Seller shall have: (A) either obtained (i) approval of the Sublease, or (ii) obtained an order of the Bankruptcy Court authorizing Seller to assume the Premises Lease, and to assign the Premises Lease to Purchaser; and (B) either obtained (y) an executed Non-Disturbance Agreement executed by all lien holders on the Premises as provided for in Section 13.1 herein below, or (z) an order of the Bankruptcy Court providing for equivalent non-disturbance protection for the Purchaser, unless Purchaser waives such condition.

In addition, Seller shall have obtained an order of the Bankruptcy Court authorizing Seller to assume the Assumed Contracts (other than the Premises Lease) and to assign them to Purchaser.

9.11 Governmental Approvals. Purchaser shall have obtained all governmental licenses and permits necessary to operate a Chevrolet dealership at the Premises.

9.12 No Release. During the period from the date hereof to the Closing Date, no release of petroleum or any Hazardous Material shall have occurred at the Premises of such a nature as would place the Premises in violation of any environmental law, unless Seller agrees to remediate the condition at its sole cost and expense prior to the Closing.

9.13 No Adverse Event. During the period from the date hereof to the Closing Date, no event, occurrence or condition shall have occurred specifically with respect to Seller or Seller's dealership, which has a material and adverse effect solely on Seller's dealership operations.

9.14 WARN Act. All applicable waiting periods (and any extensions thereof) under the WARN Act and any state notification requirements, if applicable, will have expired or otherwise been terminated.

10. Conditions of Seller's Obligations to Close. The obligations of Seller under this Agreement are subject to the fulfillment of the conditions set forth below. Seller shall have the right to waive in writing all or part of any one or more of the following conditions without, however, releasing Purchaser from any liability for any loss or damage sustained by Seller by reason of the breach by Purchaser of any covenant, obligation or agreement contained herein, or by reason of any misrepresentation made by Purchaser and upon such waiver may proceed with the transactions contemplated by this Agreement.

10.1 Agreements and Conditions. On or before the Closing Date, Purchaser shall have complied with and duly performed in all material respects all of the agreements and conditions on its part required to be complied with or performed pursuant to this Agreement on or before

the Closing Date, including, without limitation, delivering to Seller and/or Escrow Holder all items described in Section 11 of this Agreement.

10.2 Representations and Warranties of Purchaser. The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date.

11. Deliveries of Seller on the Closing Date. Seller agrees on the Closing Date to deliver to Purchaser:

11.1 Bankruptcy Court Orders. The entry of one or more orders of the Bankruptcy Court acceptable to Purchaser: (a) either (x) approving the form of New Lease and authorizing the entry of the Seller and Purchaser into the New Lease, or (y) approving the Sublease, or (z) approving the assumption of the Premises Lease and subsequent assignment of the Premises Lease to Purchaser; and (b) authorizing the transfer of the Acquired Assets free and clear of all liens and claims; and (c) authorizing the assumption of the Assumed Contracts (other than the Premises Lease) by Seller and assignment thereof to Purchaser.

11.2 Title to Acquired Assets. All conveyances, covenants, warranties, deeds, assignments, bills of sale, motor vehicle titles, confirmations, powers of attorney, approvals, consents and any and all further instruments as may be necessary, expedient or proper in order to complete any and all conveyances, transfers and assignments herein provided for and to convey to Purchaser such title to the Acquired Assets as Seller is obligated hereunder to convey. The parties shall agree on the form of all transfer documents, including without limitation a bill of sale.

11.3 Certificate of Secretary. Certificate of the Secretary of Seller setting forth a copy of the resolutions adopted by Seller authorizing and approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

11.4 Certificate of President. Certificate of the President of Seller or other corporate officer authorized to execute such certificate referred to in Section 9.2.

11.5 Consents. All consents, approvals, authorizations or orders of any person or entity or court or governmental agency required or necessary for the consummation of the transactions contemplated hereby, provided that Seller shall not be obligated to deliver the consent of the Manufacturer.

11.6 Assignments. Duly executed assignments to Purchaser of all of Seller's purchase orders for new vehicles as of the Closing Date pursuant to customer contracts that have been accepted by Purchaser, together with all deposits on such purchase orders.

11.7 Statements of Origin. Valid manufacturers' statements of origin and factory invoices for each of the new vehicles.

11.8 Registration. Signed registration and ownership certificates effectively conveying good and marketable title to all of the used and company vehicles.

11.9 Sales and Service Agreement. Such documents as may be required by Manufacturer relinquishing Seller's Sales and Service Agreement authorizing and approving Purchaser to enter into a new Sales and Service Agreement with Manufacturer.

11.10 Keys. All of Seller's keys to the Premises.

11.11 Telephone Numbers and Websites. An assignment to Purchaser of all telephone numbers facsimile numbers and websites as provided for herein currently used by Seller.

11.12 Other Documents. Such other documents and instruments as may reasonably be required by Purchaser or its counsel as may be reasonably necessary in order to consummate the transaction and to otherwise effectuate the agreement of the parties hereto.

12. Deliveries of Purchaser on the Closing Date. Purchaser agrees on the Closing Date to deliver or cause to be delivered:

12.1 Consideration. The aggregate amounts to be delivered pursuant to Section 3 hereof.

12.2 Certificate of Manager. Certificate of the Manager of Purchaser setting forth a copy of the resolutions adopted by Purchaser authorizing and approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

13. New Lease, Hidalgo Guaranty and New Hummer Lease.

13.1 New Lease for Premises. If the New Lease is approved by the Bankruptcy Court, then:

Purchaser and Hassen Imports Partnership, a California limited partnership (“**Landlord**”) shall have entered into the New Lease for the property commonly known as 1932 East Garvey Avenue South, West Covina, California. The New Lease shall include the terms set forth herein below. The New Lease shall provide for an initial rent of Forty Five Thousand Dollars (\$45,000) per month for the first ten (10) months, thereafter, the rent shall be increased to Seventy Five Thousand Dollars (\$75,000) which rent shall continue for the balance of the first sixty (60) months of the Lease. Thereafter, the rent shall increase every five (5) years during the term and any options exercised by Purchaser by an amount equal to any increase in the Consumer Price Index from the prior five (5) years; provided such increase shall not exceed ten percent (10%). The term of the New Lease shall be ten (10) years with Purchaser having four (4) five (5) year options to extend the term of the New Lease. The Landlord shall provide to Purchaser, at Closing, a final, nonappealable Bankruptcy Court Order in form and substance reasonably approved by Purchaser and its counsel approving the lease of the Premises and confirm that such New Lease shall not be disturbed by a lienholder on the Premises together with a Nondisturbance Agreement confirming that notwithstanding the exercise of any right by a lienholder against the Landlord, Purchaser’s rights under the Lease shall not be disturbed, unless

such requirement is waived by Purchaser. The Nondisturbance Agreement shall be a form and substance reasonably approved by Purchaser and its counsel. The New Lease shall be in the form attached hereto as Schedule 13.1.

13.2 New Hummer Lease. Separately, Purchaser also agrees to enter into a lease (the “**New Hummer Lease**”) for the premises located at 1900 East Garvey Avenue South, West Covina, California (the “**Hummer Premises**”), in the same form attached hereto as Schedule 13.2. If the New Hummer Lease is approved by the Bankruptcy Court:

Purchaser and Landlord shall have entered into the New Hummer Lease. The New Hummer Lease shall include the terms set forth herein below. The New Hummer Lease shall provide for initial rent of Eighteen Thousand Dollars (\$18,000) per month for first ten (10) months, thereafter, the rent shall be increased to Thirty Thousand Dollars (\$30,000) per month. Thereafter, the rent shall increase every five (5) years during the term and any options exercised by Purchaser by an amount equal to any increase in the Consumer Price Index from the prior five (5) years; provided such increase shall not exceed ten percent (10%). The term of the New Hummer Lease shall be ten (10) years with Purchaser having four (4) five (5) year options to extend the term of the New Hummer Lease. The New Hummer Lease shall further contain a right of first refusal in the event the Landlord decides to sell the Hummer Premises. The Landlord shall provide to Purchaser, at Closing, a final, nonappealable Bankruptcy Court Order in form and substance reasonably approved by Purchaser and its counsel approving the lease of the Hummer Premises and confirm that such New Hummer Lease shall not be disturbed by a lienholder on the Hummer Premises together with a Nondisturbance Agreement confirming that notwithstanding the exercise of any right by a lienholder against the Landlord, Purchaser’s rights under the New Hummer Lease shall not be disturbed, unless such requirement is waived by Purchaser. The Nondisturbance Agreement shall be a form and substance reasonably approved by Purchaser and its counsel.

Notwithstanding the foregoing, in the event Purchaser is not able to obtain an approved and executed New Hummer Lease to Purchaser in accordance with this Section 13.2, such inability to obtain the New Hummer Lease shall in no way impact any other obligations of Purchaser under any part of this Agreement.

13.3 Hidalgo Guaranty. Carlos Hidalgo shall execute a guaranty of all of the obligations of Purchaser as lessee under the New Lease, the Sublease, and the New Hummer Lease, as applicable, for the initial ten (10) year term of each lease or sublease. The form of the Guaranty shall be attached hereto as Schedule 13.3 incorporated by this reference.

14. Covenants after Closing Date.

14.1 Transfer of Acquired Assets. Seller agrees, at any time and from time to time after the Closing Date, upon the request of Purchaser, to do, execute, acknowledge and deliver, or to cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required for the better assigning, transferring, conveying, and confirming to Purchaser, or to its successors

and assigns, or for the aiding, assisting, collecting and reducing to possession of, any or all of the Acquired Assets as provided herein.

14.2 Cooperation. Seller will cooperate and use its best efforts to have its officers and employees cooperate with Purchaser at Purchaser's request, on and after the Closing Date in furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings, arrangements or disputes involving Purchaser and based upon contracts, arrangements, commitments or acts of Seller which were in effect or occurred on or prior to the Closing Date.

14.3 Post-Closing Repair of Vehicles. The parties acknowledge and agree that Purchaser in its discretion may repair automobiles sold and/or serviced by Seller to correct miscellaneous bona fide customer complaints that Purchaser determines in Purchaser's reasonable judgment are an obligation of Seller; provided, however, Purchaser shall obtain Seller's approval for any and all customer repairs in excess of Two Hundred Fifty Dollars (\$250). Purchaser shall have the right to reimbursement from Seller for the cost of correcting such customer complaints. In order to facilitate the intent of this Section, Escrow Holder shall retain Five Thousand Dollars (\$5,000) of the proceeds due Seller at Closing in an interest bearing account for one hundred eighty (180) days following the Closing Date. Should Purchaser have a claim for customer repair, Purchaser shall submit the same to Seller for approval, and upon approval, the parties shall jointly instruct Escrow Holder to release the appropriate sum to Purchaser. At the conclusion of the one hundred eighty (180) day period, all remaining funds shall be released to Seller. Each of the parties agrees to execute all documentation requested by Escrow Holder to cause the fund releases contemplated by this Section.

15. Indemnification.

15.1 Indemnification by Seller and Owner. Seller and Owner agree to indemnify and hold harmless Purchaser from and against any and all losses, costs, damages, claims and expenses (including reasonable attorneys' fees) which Purchaser may sustain at any time by reason of (a) any debt, liability or obligation of Seller except obligations specifically assumed by Purchaser under this Agreement and/or any of the documents, instruments or other materials to be delivered at the Closing, (b) any liability or obligation of any kind relating to the operations of the Acquired Assets or Dealership prior to the Closing Date except for obligations specifically assumed by Purchaser under this Agreement and/or any of the documents, instruments or other materials to be delivered at the Closing, (c) any presence of Hazardous Materials located on or before the Closing Date on or about the Premises, or (d) the breach or inaccuracy of or failure to comply with, or the existence of any facts resulting in the inaccuracy of, any of the warranties, representations, covenants or agreements of Seller contained in this Agreement or in any agreement or document delivered pursuant hereto or in connection herewith or with the closing of the transactions contemplated hereby.

15.2 Indemnification by Purchaser. Purchaser agrees to indemnify and hold harmless Seller from and against any and all losses, costs, damages, claims and expenses (including

reasonable attorneys' fees) which Seller may sustain at any time by reason of (a) any debt, liability or obligation of Purchaser, (b) any liability or obligation of any kind relating to the operations of the Acquired Assets or Dealership after the Closing Date, or (c) the breach or inaccuracy of or failure to comply with, or the existence of any facts resulting in the inaccuracy of, any of the warranties, representations, covenants or agreements of Purchaser contained in this Agreement or in any agreement or document delivered pursuant hereto or in connection herewith or with the closing of the transactions contemplated hereby.

15.3 Defense. Any party who receives notice of a claim for which it will seek indemnification shall promptly notify the indemnifying party in writing of such claim. The indemnifying party shall have the right to assume the defense of such action at its cost with counsel reasonably satisfactory to the indemnified party. The indemnified party shall have the right to participate in such defense with its own counsel at its cost.

16. Survival of Representations. The parties hereto each agree that all representations, warranties and agreements contained herein shall survive the execution and delivery of this Agreement, the Closing Date hereunder but will expire and terminate three (3) years after the Closing Date

17. Finder | Broker. Purchaser and Seller acknowledge that no broker or finder has been connected with the transactions contemplated by this Agreement. In the event of a claim by any other broker or finder based upon his or her representing or being retained by Seller on the one hand, or by Purchaser on the other, Seller or Purchaser, as the case may be, agrees to indemnify and save harmless the other in respect of such claim.

18. Termination. If the Closing Date shall not have occurred on or before April 30, 2013, subject to any right of extension contained herein, or if Purchaser shall receive disapproval or no approval from the Manufacturer prior thereto, any party that is not in default in the performance of its obligations under this Agreement may, thereafter, terminate this Agreement by giving written notice to the other party; provided, however, that upon written notice delivered prior to the scheduled original Closing Date to exercise, Seller and Purchaser shall each have the right to extend the scheduled Closing Date by up to thirty (30) days in order to allow additional time as necessary for the satisfaction of any of the conditions set forth in Sections 9 and 10 above. Such written notice shall be given prior to the Closing Date.

19. Escrow. The parties, upon execution of this Agreement shall open an escrow (the "**Escrow**") with an escrow company acceptable to Seller and Purchaser (the ("**Escrow Holder**"). Any and all costs of such escrow shall be paid one-half by Purchaser and one-half by Seller.

20. Notices. All notices, requests or demands to a party hereunder shall be in writing and shall be given or served upon the other party by personal service, by certified return receipt requested or registered mail, postage prepaid, or by Federal Express or other nationally recognized commercial courier, charges prepaid, addressed as set forth below. Any such notice, demand, request or other communication shall be deemed to have been given upon the earlier of personal delivery thereof, three (3) business days after having been mailed as provided above, or

one (1) business day after delivery to a commercial courier for next business day delivery, as the case may be. Notices may be given electronically by facsimile or email and shall be effective upon the transmission of such notice provided that the notice is transmitted on a business day and a copy of the notice indicating the date and time of transmission is sent no later than the immediately succeeding business day by recognized overnight carrier for next business day delivery. Each party shall be entitled to modify its address by notice given in accordance with this Section 20.

To Seller and Owner: 2000 East Garvey Avenue South
(Before Closing) West Covina CA 91791
Telephone: (626) 331-0041

(After Closing) 100 West Barranca Avenue, Suite 900
West Covina, CA 91791
Telephone: (626) 967-7683

With a copy to: Martin J. Brill, Esq.
Levene, Neale, Bender, Yoo & Brill L.L.P.
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067
Telephone: Phone 310 229 1234
Email: MJB@lnbyb.com

To Purchaser: Carlos Hidalgo
78419 Prospect Court
Granite Bay, CA 95746
Telephone: 916-275-2275

With a copy to: Lawrence W. Miles, Jr.
The Miles Law Firm,
A Professional Corporation
3838 Watt Ave., #301
Sacramento, Ca. 95821
Telephone: 916-973-9674
Email: larry@milesfirm.com

21. Miscellaneous.

21.1 Entire Agreement. This Agreement, including the exhibits and schedules hereto, sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of every kind and nature between them and no party hereto shall be bound by any condition, definition, warranty or representation other than as expressly provided for in this Agreement or as may be on a date subsequent to the date hereof duly set forth in writing signed by the party hereto which is to be bound thereby. This Agreement shall not be changed, modified or amended except by a writing signed by the party to be charged and this Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the party to be charged.

21.2 Governing Law. This Agreement and its validity, construction and performance shall be governed in all respects by the laws of the State of California, without giving effect to principles of conflict of laws.

21.3 Severability. If any provision of this Agreement or the application of any provision hereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected unless the provision held invalid shall substantially impair the benefits of the remaining portions of this Agreement.

21.4 Benefit of Parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and assigns. Purchaser shall have the right to assign its rights and obligations under this Agreement to an entity controlled by, controlling or under common control with Purchaser.

21.5 Necessary Documents. Each of the parties does hereby agree to do any act and to execute any other or further documents necessary or convenient to the carrying out of the provisions of this Agreement.

21.6 Headings. The headings in the sections of this Agreement are provided for convenience of reference only and shall not constitute a part hereof.

21.7 Attorneys' Fees. In the event that any action or proceeding is brought to enforce or interpret any provision, covenant or condition contained in this Agreement on the part of Purchaser or Seller, the prevailing party in such action or proceeding (whether after trial or appeal) shall be entitled to recover from the party not prevailing its expenses therein, including reasonable attorneys' fees and allowable costs.

21.8 Time is of the Essence. Time is of the essence with respect to the performance of each obligation hereunder.

21.9 Counterparts. This Agreement may be executed in any number of counterparts, including via facsimile, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties herein.

22. Liquidated Damages. If Purchaser breaches this Agreement, and the consummation contemplated by this Agreement fails to close by reason thereof, Seller shall, after written notice to Purchaser and Purchaser's failure to cure such alleged default within five (5) business days of such notice (as to an alleged monetary default) or ten (10) business days of any other alleged default), be entitled to terminate this Agreement and retain the amount of Cash Deposits, plus any accrued interest thereon (the "Specified Sum") as liquidated damages. **SELLER AND PURCHASER ACKNOWLEDGE THAT SELLER'S DAMAGES WOULD BE DIFFICULT TO DETERMINE, AND THAT THE SPECIFIED SUM IS A REASONABLE ESTIMATE OF SELLER'S DAMAGES. SELLER AND PURCHASER FURTHER AGREE THAT THIS SECTION IS INTENDED TO AS DOES LIQUIDATE THE AMOUNT OF DAMAGES DUE TO SELLER, AND SHALL BE SELLER'S EXCLUSIVE REMEDY AGAINST PURCHASER, BOTH AT LAW AND IN EQUITY ARISING FROM OR RELATED TO A BREACH BY PURCHASER OF ITS OBLIGATIONS TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.**

Initial Below


Purchaser


Seller

23. Confidentiality Agreement. Until and unless the Closing occurs or the parties otherwise agree in writing, except to the extent otherwise expressly provided by another provision of this Agreement, (a) the parties agree to keep confidential the existence of this Agreement; and (b) Purchaser agrees to keep confidential any confidential data or information obtained from Seller relating to the Dealership and its facilities. This provision shall not prohibit Purchaser and Seller from sharing any such information with their lenders, attorneys, accountants, the direct or indirect partners, investors, potential investors or employees of Purchaser, environmental

consultants, architects, engineers or other professionals assisting Purchaser and Seller who have a legitimate need therefor. This provision shall not prohibit Purchaser from disclosing the fact of this Agreement to the Manufacturer and/or to the City of West Covina, California or other governmental authorities as may be reasonably necessary in order to obtain the consent of Manufacturer and/or for Purchaser as contemplated by this Agreement. This provision shall not prohibit Seller from attaching this Agreement to any pleadings that need to be filed with the Bankruptcy Court in order to obtain approval of the transactions described herein. In addition, Purchaser may share such information with employees of Purchaser and its affiliated entities who are assisting Purchaser in the transaction contemplated by this Agreement and who have a legitimate need therefor. However, Seller and Purchaser shall instruct all such persons to whom any confidential information is given to keep such information confidential. The provisions of this Section do not apply to information that (a) is available to the trade or the public other than as a result of a disclosure by Purchaser; (b) was available to Purchaser on a non-confidential basis from a source other than Seller who is not bound by a confidentiality agreement with Seller; or (c) must be disclosed to a governmental authority because of a legal or regulatory requirement. Notwithstanding the preceding, Seller and Purchaser shall be allowed to confirm the existence of this Agreement to third parties making inquiry of Seller or Purchaser, but neither party shall disclose to any such third party prior to the Closing the purchase price or other material terms of this Agreement.

24. Arbitration. In the event a dispute arises between the parties concerning the enforcement or interpretation of this Agreement or any of its provisions, the parties hereby agree that such dispute shall be (i) determined by the Bankruptcy Court if the dispute arises and is submitted for determination before the close of Seller's bankruptcy case, and (ii) submitted for final, binding resolution to the American Arbitration Association ("AAA") in West Covina, California, pursuant to the commercial dispute rules and procedures then in effect at the AAA if the dispute arises and is submitted for determination after the close of Seller's bankruptcy case. Notwithstanding the foregoing, in the event of arbitration before the AAA, the parties shall have, and the AAA shall have no authority to restrict, the right to conduct discovery pursuant to the provisions of Code of Civil Procedure section 1280, et seq. The arbitrator shall be bound by, and apply, California law, and the parties shall not be bound by any error in the application of California law committed by the arbitrator. The arbitrator's decision shall be in writing and shall include a statement of factual findings and conclusions of law. The arbitrator shall further award reasonable attorneys' fees and costs of arbitration to the prevailing party in any final decision.

25. Allocation. Purchaser and Seller agree that the Total Purchase Price shall be allocated to the Acquired Assets in accordance with this Section 25 (the "**Allocation**"). Purchaser and Seller shall report (including with respect to the filing of Form 8594 to the Internal Revenue Service) the sale and purchase of the Acquired Assets for all income tax purposes in a manner consistent with the Allocation and expressly acknowledge that the Allocation was determined pursuant to arm's length bargaining between them regarding the fair market value for the Acquired Assets and in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended (the "**Code**"). Purchaser and Seller agree to consult with one another with respect to any tax audit, controversy or litigation relating to the Allocation. Neither Seller nor Purchaser shall take or agree to any position that is inconsistent with the Allocation in connection with any tax audit,

controversy or litigation which would adversely affect the taxes of the other party to any material extent without the prior written consent of the other party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

PURCHASER:

CARLOS HIDALGO

By: 

Carlos Hidalgo

SELLER:

WEST COVINA MOTORS, INC.
a California corporation

By: 

Ziad Alhassen, President

HOLDING:

WEST COVINA AUTOMOTIVE HOLDINGS, INC.,
a California corporation

By: 

Ziad Alhassen, President

OWNER:



Ziad Alhassen

SCHEDULES

Schedule 2.1	Fixed Assets
Schedule 2.7	Assumed Contracts and Cure
Schedule 2.7.1	Form of Sublease
Schedule 4.8	We Owes
Schedule 6.5	Litigation
Schedule 6.11	Insurance
Schedule 13.1	Form of New Lease for Premises
Schedule 13.2	Form Of New Hummer Lease
Schedule 13.3	Form of Guaranty

SCHEDULE 2.1

FIXED ASSETS

SCHEDULE 2.7

ASSUMED CONTRACTS

<u>Other Party to Contract/Lease</u>	<u>Description of Contract/Lease</u>	<u>Cure Amount</u>
Hassen Imports Partnership	Unexpired lease of real property located at 1932 East Garvey Avenue, South, West Covina, California	\$1,987,712.73

SCHEDULE 2.7.1

FORM OF SUBLEASE

SCHEDULE 4.8

WE OWES

SCHEDULE 6.5

LITIGATION

SCHEDULE 6.11

INSURANCE

SCHEDULE 13.1

FORM OF NEW LEASE

LEASE AGREEMENT

This Lease (this "**Lease**") is entered into effective _____, 2013 (the "**Effective Date**") by and between [Hassen Imports Partnership, a California limited partnership] OR [Howard M. Ehrenberg, solely in his capacity as Chapter 7 Trustee of the Bankruptcy Estate of Hassen Imports Partnership, a California limited partnership and not individually] ("**Landlord**") and Carlos Hidalgo ("**Tenant**").

1. Premises. On and subject to the terms, covenants and conditions set forth in this Lease, Landlord leases to Tenant and Tenant rents from Landlord that certain real property constituting approximately _____ (_____) acres and buildings in the approximate size of _____ (_____) square feet located in the City of West Covina, County of Los Angeles, State of California commonly known as 1932 East Garvey Avenue South, West Covina, California and more particularly described on Exhibit A attached hereto (the "**Premises**"). Landlord hereby represents and warrants that the existing electrical, plumbing, lighting, heating, ventilation and air conditioning systems ("**HVAC**") are in good working order and adequately serve the Premises, and that the structural elements of the roof, bearing walls and foundations of the Premises are in good working order. If a non-compliance with said systems warranty exists as of the Effective Date, or if one of such HVAC systems or elements should malfunction or fail within the warranty period, Landlord shall, as Landlord's sole obligation with respect to such matter, except as otherwise provided in Section 9.2 of this Lease, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Landlord's expense. The warranty period shall be the period commencing on the Effective Date and continuing through the date that is one (1) year thereafter. Except as otherwise provided in Section 9.2 of this Lease, if Tenant does not give Landlord the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Tenant at Tenant's sole cost and expense. Tenant shall, at Tenant's sole expense, procure and maintain contracts, with copies to Landlord, in customary form and substance for, and with contractors specializing and experienced in the maintenance of HVAC equipment. Landlord represents and warrants that there are no hazardous materials located on the Premises, except for hazardous materials used in the normal operation of an automotive dealership and stored in compliance with applicable law.

2. Term.

2.1 Initial Term. The term of this Lease (the "**Term**") shall be for ten (10) years commencing on the Effective Date (the "**Commencement Date**") and continuing through and including _____ (the "**Termination Date**").

2.2 Extended Terms. Tenant shall have the option to extend the Term for four (4) additional, consecutive five (5) year periods (collectively, the "**Extended Terms**", individually, the "**First Extended Term**", the "**Second Extended Term**", the "**Third Extended Term**" and the "**Fourth Extended Term**", respectively) on all the terms and conditions contained in this Lease including, without limitation, continuation of the adjustment of the Base Rent on an annual basis as provided in Section 3.2 below. Tenant shall deliver, if at all, written notice of its exercise of the option (each an "**Option Notice**") to Landlord at least six (6) months prior to the expiration of the

initial five (5) year Term, or the First Extended Term, Second Extended Term or Third Extended Term, as the case may be. In the event Tenant fails to deliver the Option Notice within the time allowed, Landlord shall deliver written notice to Tenant advising Tenant of its failure to deliver the Option Notice ("**Reminder Notice**"), and Tenant shall then have thirty (30) days from receipt of the Reminder Notice within which to deliver the Option Notice, if at all, to Landlord. In the event Tenant fails to deliver an Option Notice to Landlord within such thirty (30) days, Tenant shall be considered to have elected not to extend the Term of this Lease and thereafter, Tenant shall have no further right to extend the Term of this Lease. Provided Tenant timely delivers the Option Notice and is not in default of this Lease on the date the subject Extended Term is to commence, this Lease shall be extended for the subject Extended Term. In the event Landlord delivers a Reminder Notice to Tenant and Tenant fails to deliver an Option Notice within thirty (30) days thereafter or is deemed to have elected not to extend the Term of the Lease, the Term of the Lease shall be extended such that Landlord receives six (6) months' notice of Tenant not exercising its option to extend the Lease prior to the expiration of the applicable Term. By way of illustration of the foregoing, if Tenant fails to timely deliver an Option Notice for the First Extended Term and Landlord delivers a Reminder Notice and Tenant fails to timely respond to the Reminder Notice, the initial five (5) year Term shall be extended to a date that is six (6) months after the earlier of (i) notice from Tenant that it is not exercising its option for an Extended Term of the Lease or (ii) six (6) months from the expiration of the Reminder Notice.

2.3 **Other Leases.** Tenant's right to exercise its options to extend the term of the Lease shall be conditioned upon Tenant's concurrent exercise of its option to extend the corresponding terms of the lease for the property at 1900 East Garvey Avenue South, West Covina, CA ("**Related Garvey Avenue South Lease**").

3. Rent.

3.1 **Base Rent.** Tenant shall pay to Landlord as monthly Base Rent ("**Base Rent**") for the Premises, in advance on the Commencement Date and on the first (1st) day of each and every calendar month of the Term thereafter, without deduction, set-off, prior notice or demand in a lawful currency of the United States of America, the Base Rent as described in this Lease. The Base Rent during the first ten (10) months of the term of the Lease shall be the sum of Forty Five Thousand Dollars (\$45,000) per month. The Base Rent for the next fifty (50) months of the term of the Lease shall be the sum of Seventy Five Thousand Dollars (\$75,000) per month. Tenant shall pay the Base Rent by automatic wire transfer initiated by Tenant from its checking or savings account to the checking or savings account designated by Landlord.

3.2 **Adjustment to Base Rent.** The Base Rent Commencing on the first day of the calendar month immediately following the calendar month which the fifth anniversary of the Commencement Date occurs ("**Initial Adjustment Date**") shall be adjusted in accordance with the provisions of this Section 3.2 and shall thereafter be adjusted at the commencement of each Extended Term thereafter as applicable (each an "**Adjustment Date**"). The Base Rent shall be adjusted to reflect any increase in the Consumer Price Index (All Items) for Urban Consumers for the Los Angeles-Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics ("**Index**"), and shall be calculated as follows:

3.2.1 On each Adjustment Date the Base Rent until the next Adjustment Date shall be increased over the Base Rent paid in the month immediately prior to the subject Adjustment Date by the percentage increase in the Index published immediately prior to such Adjustment Date over the Index in effect five (5) years earlier; provided, however, that in no event shall the Base Rent be adjusted upward by more than ten percent (10%) from the Base Rent immediately prior to the prior Adjustment Date, and in no event shall the Base Rent as adjusted be less than the Base Rent payable immediately prior to the Adjustment Date.

3.2.2 If the Index is changed so that the base year differs from 1982-1984=100, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. On adjustment of the Base Rent as provided in this Section 3.2, the parties shall immediately execute a written amendment to the Lease setting forth the new Base Rent, but the failure to do so shall not affect the enforceability thereof, and in no event shall the Base Rent as adjusted be less than the Base Rent payable immediately prior to the Adjustment Date.

3.3 **Late Charge.** Tenant acknowledges that late payment by Tenant to Landlord of any Base Rent shall cause Landlord to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and late charges that may be imposed on Landlord by the terms of any encumbrance or note secured by the Premises. Therefore, if any Base Rent is not received by Landlord within ten (10) days of its due date, Tenant shall pay to Landlord a late charge equal to three percent (3%) of the Base Rent not paid within such ten (10) day period. Landlord and Tenant hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment and that the late charge is in addition to any and all remedies available to the Landlord and that the assessment and/or collection of the late charge shall not be deemed a waiver of any other default.

3.4 **Proration.** If the Term begins or ends on a day other than the first or last day of a calendar month, the Base Rent payable for such calendar month of the Term shall be prorated on the basis which the number of days of the Term in the calendar month bears to the total number of days in such month. The term "**Rent**" as used in this Lease shall refer to Base Rent, Initial Improvement Rent, prepaid rent, if any, real property taxes, insurance costs, repairs and maintenance costs, utilities, late charges and other monetary obligations imposed upon Tenant pursuant to this Lease, either directly to Landlord or otherwise.

3.5 **Default Interest.** Tenant shall pay to Landlord interest at the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law ("**Default Rate**") on the following sums until paid in full: (a) all installments of Rent from the respective due dates thereof if the same are not paid within ten (10) days following written notice from Landlord that such sums are due; and (b) all overdue amounts of Rent relating to obligations that Landlord shall have paid on behalf of Tenant as provided herein if the same are not paid within ten (10) days following written notice from Landlord that such sums are due for the period commencing on the date of payment thereof by

Landlord to the date of payment by Tenant.

3.6 **Place of Payment.** All Base Rent shall be paid to Landlord in lawful money of the United States of America, at the following address ("**Landlord's Address**"):

[**Hassen Imports Partnership**
100 North Barranca Avenue
Suite 900
West Covina, CA 91791]

OR

[**Howard M. Ehrenberg**
Sulmeyer Kupetz PC
333 S Hope Street
35th Floor,
Los Angeles, CA 90071]

or to such other individual, partnership, limited liability company, association, corporation or other entity (each a "**Person**") or at such other place as Landlord may from time to time designate by notice to Tenant.

4. Taxes.

4.1 **Personal Property Taxes.** Tenant shall pay prior to delinquency all taxes assessed against and levied upon Tenant owned leasehold improvements, trade fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause its leasehold improvements, trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

4.2 **Real Property Taxes.** Tenant shall pay prior to delinquency all Real Property Taxes (as defined below) which accrue in connection with the Premises during the Term of this Lease. Upon request, Tenant shall furnish Landlord with satisfactory evidence that all Real Property Taxes are paid and current. If Tenant shall fail to pay any Real Property Taxes required by this Lease to be paid by Tenant, Landlord shall have the right to pay the same upon ten (10) days written notice to Tenant, and Tenant shall reimburse Landlord therefor, including any interest and penalties upon demand. In no event, however, shall Landlord be required to pay any franchise, income, inheritance, estate, succession, transfer or gift taxes that are or may be imposed upon Tenant or its successors or assigns.

4.2.1 As used herein, the term "**Real Property Taxes**" shall include any form of real estate tax, any general, special, ordinary or extraordinary assessment, any improvement bond, levy or similar tax (or any other fee, charge, or excise which may be imposed as a substitute for any of the foregoing) imposed upon the Premises by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district, levied against any legal or equitable interest of Landlord in the Premises.

4.3 **Tax Bills.** The collecting authority shall continue sending all pertinent tax bills directly to Landlord or its designee. All pertinent tax bills received by Landlord shall be immediately forwarded directly to Tenant or its designee to permit timely remittance in the normal course of business. Landlord shall be fully liable for all interest and penalties reasonably chargeable due to its failure to perform as provided in this Section 4.3.

4.4 **Challenges.** Tenant shall be entitled to any refund obtained by Tenant with respect to any charges or other fees paid by Tenant hereunder. Tenant or its designees, at its sole cost and expense, shall have the right to contest or review all taxes, charges or other fees by legal proceedings or in such other manner as is commercially reasonable. If necessary, Landlord shall reasonably cooperate in any such proceedings.

5. Uses.

5.1 **Authorized.** The Premises shall be used by Tenant for the sales, servicing and repair of automobiles and light trucks, and all uses incidental and related thereto, or any other lawful use but only in compliance with the provisions of Section 5.2 below.

5.2 **Compliance with Laws.** Tenant shall not do or suffer anything to be done in or on the Premises which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement applicable to the Premises during the Term, including without limitation, any agreement with a redevelopment agency or public authority (i) entered into as of the Commencement Date and (ii) provided to Tenant by Landlord, or cause or create any nuisance. Tenant shall, at its sole cost and expense, promptly comply with each and all of said governmental measures existing now or in the future.

6. Hazardous Materials.

6.1 **Permitted Use.** Landlord acknowledges that the use of the Premises contemplated by Section 5 above necessarily requires that Tenant have and maintain certain petroleum-based and other substances on the Premises during the Term which constitute Hazardous Materials (as defined below). At all times, Tenant shall store, handle and otherwise maintain all Hazardous Materials kept on the Premises in full compliance with all applicable laws and regulations, and Tenant shall take every commercially reasonable caution in connection with the presence and handling of Hazardous Materials on the Premises. If Tenant breaches the obligations stated in the preceding sentence, Tenant shall promptly remediate the condition at its sole cost and expense. Upon written request, Tenant shall provide Landlord with information or documentation reasonably requested by Landlord regarding any inspection, testing, remediation or other activities undertaken by Tenant under this Section 6.1. This Section 6.1 shall survive the termination or expiration of this Lease.

6.2 **Indemnification of Landlord.** Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, demands, liabilities, responsibilities, losses, damages, penalties, fines and/or costs (including reasonable attorney's and consultant fees) made against or incurred by Landlord arising from or relating to the release of Hazardous Materials as a result of Tenant's activities at the Premises during the Term. Tenant's indemnification obligations created by this Section 6.2 shall include, without limitation, all costs of (i) site investigation and testing, (ii) clean-up, remediation, removal or restoration work, and (iii) all monitoring activities which are

required by any federal, state or local governmental agency with jurisdiction over the matter as a result of use or storage of Hazardous Materials at the Premises by Tenant. This Section 6.2 shall survive the termination or expiration of the Lease.

6.3 Notice of Environmental Actions. Tenant shall promptly notify Landlord of any (a) enforcement, clean-up, removal or other governmental or regulatory action concerning the Premises instituted, completed or threatened pursuant to any Environmental Law; (b) claim made or threatened by any Person against Landlord and/or Tenant, or the Premises, relating to damage, condemnation, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances; (c) reports made to any environmental agency arising out of or in connections with any Hazardous Substance in, or about the Premises or with respect to any Hazardous Substance removed from the Premises, including any complaints, notices, warnings, reports or asserted violations in connection therewith; and (d) Hazardous Substance that Tenant knows has been, or will come to be, released or located within, under or about the Premises.

6.4 Indemnification of Tenant. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, liabilities, responsibilities, losses, damages, penalties, fines and/or costs (including reasonable attorney's and consultant fees) made against or incurred by Tenant arising from or relating to the release of Hazardous Materials from the Premises prior to the Term. Landlord's indemnification obligations created by this Section 6.4 shall include, without limitation, all costs of (i) site investigation and testing, (ii) clean-up, remediation, removal or restoration work, and (iii) all monitoring activities which are required by any federal, state or local governmental agency with jurisdiction over the matter as a result of use or storage of Hazardous Materials at the Premises prior to the Effective Date. This Section 6.4 shall survive the termination or expiration of the Lease. In the event that the Landlord is the Chapter 7 Trustee, then Tenant shall be indemnified by being able to offset any recoverable damages by offsetting dollar for dollar against the repayment obligations of the Tenant Improvement Allowance, as described below in Section 8.4 hereof.

6.5 Hazardous Materials Defined. As used herein, the term "**Hazardous Materials**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "hazardous material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Under Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos not in compliance with applicable laws or regulations, (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a

“hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (x) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601) (collectively, “**Environmental Laws**”).

7. Services and Utilities. Tenant shall pay prior to delinquency all charges for water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial, landscaping, and all other materials and utilities supplied to the Premises during the Term. Landlord shall not be liable, and Tenant shall not be entitled to any abatement of Rent (including without limitation, Base Rent) for the reduction, interruption or suspension of any utility service to the Premises unless caused by the negligent act or omission of Landlord or its agents. No such interruption, reduction or suspension of utilities shall constitute an eviction of Tenant from the Premises.

8. Alterations.

8.1 Tenant Improvements. Tenant shall obtain Landlord's written consent prior to performing any alteration, addition or improvement on or to the Premises; provided, however, that Landlord's consent shall not be required where the contemplated work (i) does not include any alteration of the structural components of the Premises, or (ii) will not cost more than Four Hundred Thousand Dollars (\$400,000.00) to complete. In the event Landlord's consent is required, such consent shall not be unreasonably withheld, conditioned or delayed. In the event Landlord has no objected to such alternations requiring Landlord's consent within twenty (20) days of receipt of the request, Landlord shall be deemed to have approved such alteration, addition or improvement. All alterations, additions and improvements shall be constructed in a good and workmanlike manner by licensed contractors and in compliance with all applicable laws, regulations, CC&R's, zoning ordinances and building codes. Except as provided immediately below, all alterations, additions and improvements constructed in or on the Premises by Tenant shall remain on the Premises without compensation of any kind to Tenant upon expiration of the Term. Tenant shall not be required to remove any of the alterations, additions or improvements made to the Premises during the Term except only those alterations, additions or improvements requiring Landlord's consent, to the extent Landlord conditioned its consent upon removal of the subject alteration, addition or improvement by Tenant at the expiration of the Term. With respect to such alterations, additions or improvements only, Tenant upon the written request of Landlord, shall upon the expiration of the Term, remove such alteration, addition or improvement at its cost and restore the Premises to its condition prior to such alteration, addition or improvement. Tenant shall maintain insurance as required by Section 11.2 covering any improvements, alterations or additions to the Premises made by Tenant under the provisions of this Section 8.1, it being understood and agreed that none of such improvements shall be insured by Landlord. At any time, Landlord may request from Tenant reasonably detailed plans of any alterations completed by Tenant and to the extent available, Tenant shall promptly provide such plans to Landlord.

8.2 Governmental Approvals. Tenant shall commence making any alterations only after all required approvals for the alterations, including plans and specifications, have been obtained from

the City of West Covina and any other governmental authorities whose consent or approval is required.

8.3 **Liens.** Tenant shall keep the Premises free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. Landlord shall have the right to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens. Tenant shall give Landlord written notice at least twenty (20) days prior to the expected date of commencement of any work done or materials delivered to the Premises for the purpose of posting notices.

8.4 **Tenant Improvement Allowance.** Landlord shall provide Tenant an improvement allowance of Two Million One Hundred Seventy Five Thousand Dollars (\$2,175,000) (the "**Tenant Improvement Allowance**"). In the event Tenant fails to use the Tenant Improvement Allowance to make improvements and alterations to the Premises within one (1) year of the Effective Date, Tenant agrees to reimburse Landlord for the Tenant Improvement Allowance as follows:

(a) The Tenant Improvement Allowance shall bear interest at the rate of two percent (2%) per annum until paid in full.

(b) No payments during the first two (2) years of the Effective Date of this Lease.

(c) During years three (3) through six (6) from the Effective Date of this Lease, Tenant agrees to pay Landlord each year the following allocation of yearly net profits after taxes, as reflected on Tenant's annual tax return relating to the operation of the dealership being operated on the Premises (the "**Operating Dealership**"): \$0 to \$1 million in net profits after taxes, no payment required; \$1 million to \$5 million in net profits after taxes, 25% of such profits; net profits of over \$5 million, 50% of such net profits.

(d) Tenant shall pay the annual payments due in accordance with subparagraph (c) above to Landlord within thirty (30) days of the date on which Tenant files its annual tax return; provided, however, that in the event Tenant does not file its annual tax return on or by April 15 of any given year, Tenant shall pay to Landlord seventy-five percent (75%) of the amount owed under subparagraph (c) above by no later than April 15 of that year, which amount shall be calculated based on a reasonable estimate of the amount owed to Landlord, and the twenty-five percent (25%) unpaid balance shall be paid within thirty (30) days of the date Tenant's tax return is filed in that year, which amount may be adjusted based on Tenant's filed tax return for that year.

(e) Commencing in year 7, the outstanding balance, if any, of the Tenant Improvement Allowance including accrued interest shall be amortized over 7 years (the "**Amortization Amount**") by adjusting the then existing Base Rent by the Amortization Amount.

(f) Notwithstanding the foregoing, the remaining balance of the Tenant Improvement Allowance including interest shall be immediately payable upon a sale of the Operating Dealership through either an asset or stock sale transaction. If Tenant subleases the Premises, the

Tenant Improvement Allowance shall be payable during years one (1) through 6 (six) from any amount of additional rent that Tenant collects under such sublease in excess of the rent amount provided for in Section 3 above. Starting in year seven (7), the balance of the Tenant Improvement Allowance shall be paid in accordance with subparagraph (e) above.

9. Maintenance and Repairs.

9.1 Tenant's Obligations.

9.1.1 Subject to Section 9.2, Tenant shall, at all times during the Term and at Tenant's sole cost and expense, keep the Premises (and any improvements constructed thereon during the Term) and every part thereof, in good order, condition and repair, ordinary wear and tear and casualty as described in Section 19 excepted. Tenant shall exercise and perform good maintenance practices. Tenant's repair and maintenance obligations shall include all equipment or facilities serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, including fire alarm and/or smoke detection systems and equipment, fire hydrants, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, signs, sidewalks and parkways located in, on, about or adjacent to the Premises (whether or not such portion of the Premises requiring repairs, or the means of repairing same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises). Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair; provided, however, that Tenant and Landlord shall share the cost of any replacements incurred after the first five (5) years on a prorated basis in the event the useful life of any equipment or component replacement exceeds the remainder of the Term of this Lease. Further, Tenant shall obtain all necessary Permits deemed required to operate the dealership, from the Local Authorities and Government, including but not limited to The Los Angeles County, AQMD, State of California and other and keep them in full force and effect, without any time lapsing during the initial term of the Lease and thereafter.

9.1.2 Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in the same condition as delivered on the Commencement Date, subject to permitted alterations, additions and improvements, and ordinary wear and tear and casualty, and Tenant shall promptly remove or cause to be removed, at Tenant's expense, all of Tenant's signs, displays, trade fixtures and personal property from the Premises.

9.2 **Landlord's Obligations.** Except for any obligations of Landlord to repair the Premises to meet the representations as set forth in Section 1 above and Landlord's obligations per Section 6.4, Landlord shall have no obligation to repair or maintain the Premises or any equipment therein, all of which obligations are intended to be that of Tenant, with the exception only of the roof and foundation of the Premises, all structural walls and components thereof which shall remain the

obligation of Landlord. It is the intention of the parties that the terms of this Lease govern the respective obligations of the parties as to the maintenance and repair of the Premises.

9.3 Compliance With Law. Tenant shall each do all acts required to comply with all present and future applicable laws, ordinances, regulations and rules of any public authority including without limitation, any agreement with a redevelopment agency or public authority (i) entered into as of the Commencement Date and (ii) provided to Tenant by Landlord, relating to its maintenance obligations as set forth herein including, without limitation, securing at its cost and expense prior to the Commencement Date all licenses, permits required to operate its automobile dealership on the Premises.

10. Indemnity.

10.1 Tenant's Obligations. Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, demands, liabilities, responsibilities, losses, damages, penalties, fees, expenses and costs (including attorney's fees) of any kind and nature whatsoever made against or incurred by Landlord arising from or related to (i) Tenant's breach of any material covenant or condition contained in this Lease, (ii) Tenant's use and occupancy of the Premises, and/or (iii) the negligent or willful misconduct of Tenant. In the event any action or proceeding is brought against Landlord which falls within the scope of this Section 10.1, Tenant, upon written notice from Landlord, shall defend Landlord in such action at Tenant's expense by counsel reasonably satisfactory to Landlord. For purposes of this paragraph, "Tenant" shall include all of the employees, agents, officers and directors of Tenant. To the extent that Landlord recovers from any insurance, Tenant is hereby released from this indemnification to the extent of such proceeds. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Lease.

10.2 Landlord's Obligations. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, liabilities, responsibilities, losses, damages, penalties, fees, expenses and costs (including attorney's fees) of any kind and nature whatsoever made against or incurred by Tenant arising from or related to (i) Landlord's breach of any material covenant or condition contained in this Lease, and/or (ii) the negligent or willful misconduct of Landlord. In the event any action or proceeding is brought against Tenant which falls within the scope of this Section 10.2, Landlord, upon written notice from Tenant, shall defend Tenant in such action at Landlord's expense by counsel reasonably satisfactory to Tenant. For purposes of this paragraph, "Landlord" shall include all of the employees, agents, officers and directors of Landlord. To the extent that Tenant recovers from any insurance, Landlord is hereby released from this indemnification to the extent of such proceeds. The provisions of this Section 10.2 shall survive the expiration or earlier termination of this Lease.

11. Insurance.

11.1 General. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies reasonably acceptable to Landlord and the holder of any mortgage or deed of trust secured by any portion of the Premises (referred to herein as a "**Mortgagee**"). All policies of insurance provided for in this Lease shall be issued by insurance companies licensed to do business in the State of California, with general policy holder's rating of not less than "A-" and a financial rating of not less than "Class VII" as rated in the most current available "Best's Insurance

Reports." Each policy shall name Landlord and at Landlord's request any Mortgagee as an additional insured, as their respective interests may appear, and a duplicate original of all policies or certificates evidencing the existence and amounts of such insurance shall be delivered to Landlord upon Landlord's written request. All policies of insurance delivered to Landlord shall contain a provision that the company writing said policy will give Landlord (and any Mortgagee with respect to property insurance) ten (10) days written notice in advance of any cancellation or lapse of or any change in such insurance. All public liability, property damage and other casualty insurance policies shall be written as primary policies, not contributing with, and not in excess of coverage which Landlord may carry. Tenant shall furnish Landlord with renewals or "binders" of any such policy within ten (10) days of the Effective Date of the insurance. If Tenant does not procure and maintain such insurance, Landlord may (but shall not be required to) obtain such insurance on Tenant's behalf and charge Tenant the premiums therefor which shall be payable upon demand, and no such action by Landlord shall constitute a waiver of Tenant's default hereunder. Tenant may carry such insurance under a blanket policy, provided such blanket policy expressly affords the coverage required by this Lease by a Landlord's protective liability endorsement or otherwise.

11.2 Property Insurance. Tenant shall obtain and keep in force during the Term a policy of insurance in the name of Landlord and Tenant, with loss payable to Landlord and to any Mortgagee insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, including the roof, as the same shall exist from time to time, or the amount required by any lender(s). Such insurance shall, in addition, include flood coverage if the Premises are within a designated flood zone. Notwithstanding anything to the contrary herein, Tenant shall not be required to carry earthquake insurance. The insurance required by this Section 11.2 shall, in addition, include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Premises required to be demolished, and shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, then Tenant shall be liable for such deductible amount.

11.3 Liability Insurance. Tenant shall obtain and keep in force during the Term of this Lease a commercial general liability policy of insurance protecting Tenant and Landlord (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence with an "Additional Insured-Managers or Landlords of Premises" endorsement and contain an "Amendment of the Pollution Exclusion" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only.

11.4 **Rental Value.** Tenant shall, in addition, obtain and keep in force during the Term of this Lease a policy or policies insuring the loss of the full rental or other charges payable by Tenant to Landlord pursuant to this Lease for a period of not less than one year. Such insurance shall provide that in the event that the Lease is terminated or the Base Rent is reduced by reason of an insured loss, as well as a non-insured loss if such coverage is available at commercially reasonable rates, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of Rent from the date of any such loss. Said insurance shall contain an agreed evaluation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent payable by Tenant for the next twelve (12) month period. Tenant shall be liable for any deductible amount in the event of such loss.

11.5 **Mutual Waiver.** Notwithstanding any provision to the contrary contained in this Lease, to the extent that this release and waiver does not invalidate or impair their respective insurance policies, the parties hereto release each other and their respective agents, employees, officers, directors, shareholders, successors and assigns from all liability for injury to any person or damage to any property that is caused by or results from a risk which is actually insured against pursuant to the provisions of this Lease without regard to the negligence or willful misconduct of the parties so released. Each party shall use its best efforts to cause each insurance policy it obtains to provide that the insurer thereunder waives all right of recovery by way of subrogation as required herein in connection with any injury or damage covered by the policy. If such insurance policy cannot be obtained with such waiver of subrogation, or if such a waiver of subrogation is only available at additional cost and the party for whose benefit the waiver is not obtained does not pay such additional cost after reasonable notice, then the party obtaining such insurance shall promptly notify the other party of the inability to obtain insurance coverage with the waiver of subrogation.

11.6 **Premiums.** Tenant shall pay as they become due all premiums for the insurance required by this Article 11, shall renew or replace each policy and deliver to Landlord evidence of the payment of the full premium therefore or installment then due at least ten (10) days prior to the expiration date of such policy, and upon written request shall promptly deliver to Landlord certificates evidencing the existence of all such policies.

12. Assignment and Subletting.

12.1 **Assignment to Affiliate.** Tenant shall have the right to assign its interest in this Lease, or sublet any portion of the Premises, to any entity in which Tenant, or any of Tenant's wholly owned subsidiaries or the owner of the Tenant, hold either directly or indirectly a fifty-one percent (51%) ownership interest without the prior consent of Landlord, provided that such entity agrees to be bound by the terms and conditions of this Lease. Tenant shall give Landlord written notice of the effective date of such assignment or subletting as soon as practicable. In connection with any such assignment, the Tenant shall continue to be jointly and severally liable with the assignee for the obligations of the Tenant pursuant to this Lease. Landlord acknowledges that the merger of Tenant with another entity shall not constitute an assignment pursuant to this Section 12, and Landlord's consent to such a merger shall not be required.

12.2 **Assignment to Third Parties.** Except as provided in Section 12.1 above, Tenant shall not assign or encumber its interest in this Lease or the Premises without first obtaining

Landlord's written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Landlord shall give written notice of its consent or its determination not to consent within thirty (30) days following written request for such consent given by Tenant to Landlord. In the event Landlord has not objected to such assignment within thirty (30) days of such written request Landlord shall be deemed to have approved such assignment. Any assignment or encumbrance without Landlord's prior written consent shall be voidable and at Landlord's election shall constitute a material default of this Lease.

12.3 Sublease. Tenant shall have the right to sublease all or any portion of the Premises without the prior consent of Landlord provided that such sublessee agrees to lease the Premises and agrees to the terms and conditions of this Lease. In the event of such sublease Tenant shall remain liable for all rights and obligations under this Lease.

12.4 Involuntary Assignment. No interest of Tenant in this Lease shall be assignable by operation of law including, without limitation, the transfer of this Lease by will or intestacy. Each of the following acts shall be considered an involuntary assignment: (a) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes or becomes the subject of a proceeding under the Bankruptcy Code in which Tenant is the debtor and such proceeding remains undismissed for a period of sixty (60) days; (b) if a writ of attachment or execution is levied on this Lease and not released within sixty (60) days; (c) if, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall be deemed to constitute a material default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.

12.5 No Release of Tenant.

12.5.1 Notwithstanding any assignment or subletting of any interest in this Lease or the Premises by Tenant, unless Landlord otherwise consents in writing, Tenant shall continue to be liable for the full performance of all Tenant obligations set forth in the Lease.

12.5.2 If, with the Landlord's consent, the Tenant assigns or subleases this Lease and Tenant is not released from all obligations hereunder, the Landlord, when giving notice to said assignee or any future assignee in respect of any default, shall also serve a copy of such notice upon the original Tenant or any successor to such original Tenant (the "**Original Tenant**"), and no notice of default shall be effective until a copy thereof is so given to the Original Tenant. The Original Tenant shall have the same period after receipt of such notice plus an additional ten (10) days to cure such defaults as is given to the Tenant therefore under this Lease. If this Lease terminates because of a default of such assignee or subtenant after transfer of this Lease shall have been made, the Landlord shall promptly give to the Original Tenant notice thereof, and the Original Tenant shall have the option, exercisable by the giving of notice by the Original Tenant to the Landlord within twenty (20) days after receipt by the Original Tenant of the Landlord's notice, to cure any default in the payment of Base Rent or other charges hereunder and become "Tenant" under a new lease for a term equal to the period of the then remainder of the term of this Lease if this Lease had not been terminated, and upon all of the same terms and conditions as then remain under this Lease, if the same had not been terminated, including the right to exercise any remaining options for Extended Terms and such new lease shall commence

on the date of termination of this Lease, except that if the Landlord delivers to the Original Tenant, together with the Landlord's notice, a release in favor of the Original Tenant as to all future liability under this Lease, the Original Tenant shall not have the foregoing option to exercise any remaining options or an Extended Term of the Lease.

12.5.3 The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease, or consent to the assignment or subletting of the Premises. Consent to any particular assignment or subletting for which consent is required shall not be deemed consent to any future assignment or subletting

13. Sale of Premises or Building. Each conveyance by Landlord or its successor in interest of Landlord's interest in the Premises prior to the expiration or termination of this Lease shall be subject to this Lease and shall relieve the Landlord as grantor of all further liability or obligations as Landlord, except for such liability or obligations accruing prior to the date of such conveyance. Tenant agrees to attorn to Landlord's successors in interest, whether such interest is acquired by sale, transfer, foreclosure, and deed in lieu of foreclosure or otherwise.

14. Entry by Landlord. Landlord and its authorized representatives shall have the right to enter the Premises during business hours and after reasonable notice (except in the event of an emergency in which case entry may be at any time and with such prior notice to Tenant as is reasonable under the circumstances): (a) to inspect the Premises; (b) to supply any service provided to Tenant hereunder; (c) to show the Premises to prospective lenders, purchasers, or broker and agents in connection with a sale of the building; (d) to show the Premises to prospective tenants or brokers and agents in connection with a leasing of the Premises, but only during the last twelve (12) months of the Term; (e) to post notices of non-responsibility; (f) to alter, improve or repair the Premises (to the extent permitted or required hereunder); (g) to erect scaffolding and other necessary structures, where required by the work to be performed, all without reduction or abatement of rent and (h) to obtain a Phase I Environmental Site Assessment and/or a Phase II Environmental Site Assessment of the Premises.

15. Insolvency or Bankruptcy.

15.1 **Acts of Default.** Without limitation, the following events shall constitute a default under this Lease: (a) if Tenant shall admit in writing its inability to pay its debts as they mature; (b) if Tenant shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors; (c) if Tenant shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; (d) if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent; (e) if Tenant shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief for itself under any present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors; (f) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant seeking any relief described in the preceding clause (e), and (i) Tenant acquiesces in the entry of such order, judgment or decree (the term "**acquiesce**" as used in this Section 15.1 shall include, without limitation, Tenant's failure to file a petition or motion to vacate or discharge any order, judgment or decree within sixty (60) days after entry of such order, judgment or decree), or (ii) such order, judgment or decree shall remain unvacated and unstayed for an aggregate

of sixty (60) days, whether or not consecutive, from the date of entry thereof; (g) if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of Tenant of all or any substantial part of Tenant's properties or its interest in the Premises; (h) if any trustee, receiver, conservator or liquidator of Tenant or of all or any substantial part of its property or its interest in the Premises shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; or (i) if this Lease or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive. Notwithstanding the foregoing, the above described events shall not constitute a default under this Lease where Tenant has assigned the Premises as permitted in this Lease, such assignee has assumed this Lease, and such assignee is not otherwise in default hereunder.

15.2 Rights and Obligations under the Bankruptcy Code. Upon the filing of a petition by or against Tenant under the United States Bankruptcy Code, Tenant, as debtor in possession, and any trustee who may be appointed agree as follows: (a) to perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (b) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Premises the sum required under Section 3, and all other charges otherwise due pursuant to this Lease; (c) to reject or assume this Lease within sixty (60) days of the filing of such petition; (d) to give Landlord at least forty-five (45) days prior written notice of any abandonment of the Premises, any such abandonment to be deemed a rejection of this Lease; (e) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; (f) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (g) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

16. Default by Tenant.

16.1 Acts Constituting Defaults. In addition to the events specified as a default under Section 15.1 or elsewhere in this Lease, it shall constitute a default hereunder if (i) Tenant fails to pay Rent when due (and such failure is not cured within ten (10) days following written notice from Landlord) or (ii) if Tenant breaches or violates any material provision of this Lease applicable to Tenant other than the obligation to pay Rent, including, without limitation, the obligation to repay the Tenant Improvement Allowance under Section 8.4 above (and such failure is not cured within twenty (20) days following written notice from Landlord) or (iii) if the tenant under the Related Garvey Avenue South Lease fails to pay Rent when due or breaches or violates any material provision of the applicable Related Garvey Avenue South Lease (and such breach or violation is not cured within the applicable cure period under the applicable Related Garvey Avenue South Lease). However, Landlord shall not commence any action to terminate Tenant's right of possession as a consequence of a default until any period of grace with respect thereto has elapsed and such period of grace shall be in addition to the period during which Tenant may cure such default following the delivery of notice pursuant to California Code of Civil Procedure Section 1161.

16.1.1 Tenant shall have a period of ten (10) days from the date of written notice from Landlord to Tenant within which to cure any default in the payment of Rent or any other monetary obligation of Tenant pursuant to this Lease.

16.1.2 Tenant shall have a period of twenty (20) days from the date of written notice from Landlord to Tenant (which notice shall specifically state the nature of the asserted default) within which to cure any nonmonetary default under this Lease; provided, however, that with respect to any default which cannot reasonably be cured within twenty (20) days, the default shall not be deemed to be uncured if Tenant commences to cure within twenty (20) days from Landlord's notice and thereafter prosecutes diligently and continuously to completion all acts required to cure the default.

16.2 Landlord's Remedies. If Tenant fails to cure a default within the time allowed, Landlord shall have the following rights and remedies in addition to any other rights and remedies available to Landlord at law or in equity.

16.2.1 Landlord may, pursuant to Civil Code Section 1951.4, continue this Lease in full force and effect, and this Lease will continue in effect so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Rent (including, without limitation, Base Rent) as it becomes due. During the period Tenant is in default, Landlord can enter the Premises and relet the Premises, or any part of the Premises, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Lease. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rental amounts Landlord receives from any reletting. No act by Landlord allowed by this Section 16.2.1 shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease. After Tenant's default and for so long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability. Landlord's consent to such a proposed assignment or subletting shall not be unreasonably withheld. If Landlord elects to relet the Premises as provided in this Section 16.2.1, any rental amounts that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than Rent due from Tenant; second, all costs, including for maintenance incurred by Landlord in reletting; and third, Rent due and unpaid under this Lease. After deducting the payments referred to in this Section 16.2.1, any sum remaining from the rental amounts Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rental received by Landlord. If, on the date Rent is due under this Lease, the rent received from the reletting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs including for maintenance Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this Section 16.2.1.

16.2.2 Landlord may, pursuant to Civil Code Section 1951.2, terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving express written notice thereof to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the

Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. Upon termination of Tenant's right to possession, Landlord has the right to recover from Tenant: (1) the Worth of the unpaid Rent that had been earned at the time of termination of Tenant's right to possession; (2) the Worth of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (3) the Worth of the amount of the unpaid Rent that would have been earned after the award throughout the remaining Term of the Lease to the extent such unpaid Rent exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and (4) any other amount, including but not limited to, expenses incurred to relet the Premises, court costs, attorneys' fees and collection costs necessary to compensate Landlord for all detriment caused by Tenant's default. The "Worth", as used above in (1) and (2) in this subsection is to be computed by allowing interest at the lesser of ten percent (10%) per annum or the maximum legal interest rate permitted by law. The "Worth", as used above in (3) in this subsection is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

16.2.3 In lieu of or in addition to any of the foregoing remedies and damages, Landlord may exercise any remedies and collect any damages available to it at law or in equity from Tenant or from Guarantor under its Guaranty. All remedies are cumulative and concurrent and no remedy is exclusive of any other remedy. Each remedy may be exercised at any time an event of default has occurred and is continuing and may be exercised from time to time.

16.2.4 No failure of Landlord (i) to insist at any time upon the strict performance of any provision of this Lease or (ii) to exercise any option, right, power or remedy contained in this Lease shall be construed as a waiver, modification or relinquishment thereof. A receipt by Landlord of any sum in satisfaction of any obligation with knowledge of the breach of any provision hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in a writing signed by Landlord.

17. Landlord's Right to Cure Default. All covenants and agreements to be performed by Tenant under the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. If Tenant shall be in default of its obligations under this Lease to pay any money other than rental or to perform any other act hereunder, and if such default is not cured within the applicable grace period (if any) provided in this Section 17, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any of its obligations. All sums so paid and all costs incurred by Landlord shall be paid to Landlord on demand together with interest thereon at the Default Rate from the date of payment of any such advance and costs by Landlord to the date of payment thereof by Tenant.

18. Default by Landlord. Landlord shall not be deemed to be in default in the performance of any obligation under this Lease unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Tenant to Landlord specifying such failure; provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are required for its cure, then Landlord shall not be deemed to be in default if Landlord

meaningfully commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. Tenant agrees to give any Mortgagee a copy, by registered mail, of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise), of the address of such Mortgagee. Any time during which such Mortgagee may cure Landlord's default hereunder may, at Tenant's election, run concurrently with Landlord's time to cure.

19. Damage and Destruction.

19.1 Damage - Insured. In the event that the Premises are damaged by fire or other casualty which is covered under insurance pursuant to the provisions of Section 11 above, Landlord shall restore such damage provided that: (i) insurance proceeds are available (inclusive of any deductible amounts) to pay substantially all of the cost of restoration; and (ii) in the reasonable judgment of Landlord, the restoration can be completed within three hundred sixty five (365) days after the date of the damage or casualty under the laws and regulations of the state, federal, county and municipal authorities having jurisdiction; provided, that if the remaining portion of the Premises is suitable for Tenant's continued use of the Premises, the three hundred sixty five (365) day limit shall not apply. Landlord shall use its best efforts to obtain the required approvals and permits as soon as reasonably possible after the occurrence of the event causing the need for the restoration. The deductible amount of any insurance coverage shall be paid by Tenant. If such conditions apply so as to require Landlord to restore such damage pursuant to this Section 19.1, this Lease shall continue in full force and effect, unless otherwise agreed to in writing by Landlord and Tenant. Tenant shall be entitled to a proportionate reduction of Rent at all times during which Tenant's use of the Premises are interrupted, such proportionate reduction to be based on the extent to which the damage and restoration efforts interfere with Tenant's business in the Premises, as long as the Landlord is equally compensated for such reduction by proceeds of rental value insurance if such insurance is required to be carried by Tenant in accordance with the provisions of Section 11.4 above for the term of such insurance. Tenant's right to a reduction of Rent hereunder shall be Tenant's sole and exclusive remedy in connection with any such damage.

19.2 Damage - Uninsured. In the event that the Premises is damaged by a fire or other casualty and Landlord is not required to restore such damage in accordance with the provisions of Section 19.1 immediately above, Landlord shall have the option to either (i) repair or restore such damage, with the Lease continuing in full force and effect, but Rent to be proportionately abated as provided in Section 19.1 above; or (ii) give notice to Tenant at any time within thirty (30) days after the occurrence of such damage terminating this Lease as of a date to be specified in such notice which date shall not be less than thirty (30) nor more than sixty (60) days after the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Rent, reduced by any proportionate reduction in Rent as provided for in Section 19.1 above, shall be paid to the date of such termination as long as the Landlord is equally compensated for such reduction by proceeds of rental value insurance if such insurance is required to be carried by Tenant in accordance with the provisions of Section 11.4 above for the term of such insurance. Notwithstanding the foregoing, if Tenant delivers to Landlord the funds necessary to make up the shortage (or absence) in insurance proceeds and the restoration can be completed in a

three hundred sixty five (356) day period, as reasonably determined by Landlord, Landlord shall restore the Premises as provided in Section 19.1 above.

19.3 End of Term Casualty. Notwithstanding the provisions of Sections 19.1 and 19.2 above, either Landlord or Tenant may terminate this Lease if the Premises is damaged by fire or other casualty (and Landlord's reasonably estimated cost of restoration of the Premises exceeds ten percent (10%) of the then replacement value of the Premises) and such damage or casualty occurs during the last twelve (12) months of the Term of this Lease (or the Term of any option for an Extended Term, if applicable) by giving the other notice thereof at any time within thirty (30) days following the occurrence of such damage or casualty. Such notice shall specify the date of such termination which date shall not be less than thirty (30) nor more than sixty (60) days following the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Rent shall be paid to the date of such termination. Notwithstanding the foregoing to the contrary, Landlord shall not have the right to terminate this Lease if damage or casualty occurs during the last twelve (12) months of the Term if Tenant timely exercises its option for an Extended Term pursuant to Section 2.2 of this Lease within twenty (20) days after the date of such damage or casualty.

19.4 Termination by Tenant. In the event that the destruction to the Premises cannot be restored as required herein under applicable laws and regulations within three hundred sixty-five (365) days of the damage or casualty, notwithstanding the availability of insurance proceeds, Tenant shall have the right to terminate this Lease by giving Landlord notice thereof within thirty (30) days of date of the occurrence of such casualty specifying the date of termination which shall not be less than thirty (30) days nor more than sixty (60) days following the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Rent, reduced by any proportionate reduction in Rent as provided for in Section 19.1 above, shall be paid to the date of such termination.

19.5 Restoration. Landlord agrees that, in any case in which Landlord is required to, or otherwise agrees to restore the Premises, that Landlord shall proceed with due diligence to make all appropriate claims and applications for the proceeds of insurance and to apply for and obtain all permits necessary for the restoration of the Premises. Landlord shall restore the Premises to the condition existing prior to the date of the damage if permitted by applicable law. Landlord shall not be required to restore alterations made by Tenant, Tenant's trade fixtures, and Tenant's personal property, such excluded items being the sole responsibility of Tenant to restore provided, however, that Landlord shall, to the extent of available insurance proceeds, restore improvements to the Premises made by Tenant.

19.6 Waiver. Tenant waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) with respect to any destruction of the Premises.

20. Condemnation.

20.1 Definitions. The following definitions shall apply: (1) "**Condemnation**" means (a) the exercise of any governmental power of eminent domain, whether by legal proceedings or

otherwise by condemnor, or (b) the voluntary sale or transfer by Landlord to any condemnor either under threat of condemnation or while legal proceedings for condemnation are proceeding; (2) "**Date of Taking**" means the date the condemnor has right to possession of the property being condemned; (3) "**Award**" means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation; and (4) "**condemnor**" means any public or quasi-public authority, or private corporation or individual, having power of condemnation.

20.2 Obligations to be Governed by Lease. If during the Term of the Lease there is any Condemnation of all or any part of the Premises, the rights and obligations of the parties shall be determined strictly pursuant to this Lease. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial Condemnation of the Premises.

20.3 Total or Partial Taking. If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking. If any portion of the Premises is taken by Condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving notice to Landlord within thirty (30) days after the nature and extent of the Condemnation have been finally determined. If Tenant elects to terminate this Lease, Tenant shall also notify Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the Date of Taking if the Date of Taking falls on a date before the date of termination as designated by Tenant. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect, on the Date of Taking the Rent shall be reduced by an amount in the same ratio as the total number of square feet in the building(s) which are a part of the Premises taken bears to the total number of square feet in the building(s) which are a part of the Premises immediately before the Date of Taking. Any Award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such Award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any compensation separately awarded to Tenant for Tenant's relocation expenses and/or loss of Tenant's trade fixtures, and for the value of the leasehold interest represented by this Lease.

20.4 Landlord's Power to Sell in Lieu of Condemnation. Landlord may, without any obligation or liability to Tenant and without affecting the validity or continuation of this Lease other than as expressly provided in this Article, agree to sell or convey to the condemnor, without first requiring that an action or proceeding for condemnation be instituted or tried, the portion of the Premises sought by the condemnor free from this Lease and the rights of Tenant in the Premises other than as provided in this Article, including without limitation, the rights of Tenant under Section 20.3 above; provided however, Landlord's rights under this Section 20.4 are expressly conditioned upon Landlord providing Tenant with prior written notice of its intent to exercise its rights under this Section 20.4 which notice shall include information regarding the proposed terms affecting Tenant and Tenant shall have a period of thirty (30) days to approve or disapprove of such transfer. In the

event Tenant timely disapproves, Landlord shall not have the right to proceed with the sale to the condemnor.

21. Holding Over. Any holding over after the expiration of the Term shall be a tenancy from month to month. The terms, covenants and conditions of such tenancy shall be the same as provided herein, except that the Rent shall be one hundred ten percent (110%) of the Rent in effect immediately prior to the commencement of such holding over. Acceptance by Landlord of Rent after such expiration shall not result in any other tenancy or any renewal of the Term of this Lease, and the provisions of this Section 21 are in addition to and do not affect Landlord's right of reentry or other rights provided under this Lease or by applicable law.

22. Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in the same condition in which the Premises were at the commencement of the term, except as repaired, rebuilt, restored, altered, replaced or added to as permitted or required by any provision of this Lease, and except for ordinary wear and tear. Subject to the terms and conditions of Section 8.1, within thirty (30) days following the expiration or termination of this Lease, Tenant shall remove from the Premises all property owned by Tenant and repair any damage caused by such removal. Property not so removed shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Premises. Tenant shall pay to Landlord on demand the reasonable cost of removing and disposing of such property (together with interest at the Default Rate from the date of demand). The provisions of this Section 22 shall survive the termination of this Lease.

23. Estoppel Certificates and Financial Statements. Within ten (10) business days following any written request which Landlord and Tenant may make from time to time, Tenant or Landlord, without any charge therefor, shall execute, acknowledge and deliver to the other a statement certifying: (a) the Commencement Date of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in the statement; and (e) such other reasonable matters requested by Landlord or Tenant. Landlord and Tenant intend that any statement delivered pursuant to this Section 23 may be relied upon by a mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein, or any financial institution, investment banker, underwriter or the counsel of each of the foregoing, providing credit or seeking capital for Tenant or Landlord. The failure of Landlord or Tenant to deliver any such statement within said ten (10) business day period shall constitute a material default, and the defaulting party shall indemnify and hold the other party harmless from and against any and all liability, loss, cost, damage and expense which such party may sustain or incur as a result of or in connection with the defaulting party's failure or delay in delivering such statement. In addition Landlord shall execute such commercially reasonable Landlord waiver adding to the lender of tenant right to enter the Premises whose such Lender's collateral.

24. Subordination and Attornment.

24.1 Subordination. Upon the written request of Landlord or any Mortgagee, Tenant will in writing subordinate its rights under this Lease to the lien of any mortgage or deed of trust now or hereafter in force against the Premises, and to all advances made or hereafter to be made upon the security thereof, and to all extensions, modifications and renewals thereunder. Tenant shall also, upon Landlord's request, subordinate its rights hereunder to any ground or underlying lease which may now exist or hereafter be executed affecting the Premises and/or the underlying land. Tenant shall have the right to condition its subordination upon the execution and delivery of an attornment and non-disturbance agreement, as described in Section 24.2, between the Mortgagee or the lessor under any such ground or underlying lease and Tenant.

24.2 Attornment and Non-Disturbance. Upon the written request of the Landlord or any Mortgagee or any lessor under a ground or underlying lease, Tenant shall attorn to any such Mortgagee or beneficiary, provided such Mortgagee or lessor agrees that if Tenant is not in material default under this Lease, Tenant's possession of the Premises in accordance with the terms of this Lease shall not be disturbed. Such agreement shall provide, among other things, (a) that this Lease shall remain in full force and effect, (b) that Tenant pay rent to said Mortgagee or lessor from the date of said attornment, (c) that said Mortgagee or lessor shall not be responsible to Tenant under this Lease except for obligations accruing subsequent to the date of such attornment, and (d) that Tenant, in the event of foreclosure or a deed in lieu thereof or a termination of the ground or underlying lease, will enter into and will have the right to, a new lease with the Mortgagee, lessor or other person having or acquiring title on the same terms and conditions as this Lease and for the balance of the Term including the right to exercise any remaining options for the Extended Term. Within a reasonable time after the Commencement Date, Landlord shall provide Tenant with a commercially reasonable form of Subordination, Nondisturbance and Attornment Agreement executed by Landlord and any Mortgagee providing that Tenant's occupancy of the Premises will not be disturbed as provided above.

24.3 Nonmaterial Amendments. If any lender should require any nonmaterial modification of this Lease as a condition of loans secured by a lien on the Premises, or the land underlying the Premises, or if any such nonmaterial modification is required as a condition to a ground or underlying lease, Tenant will approve and execute any such modifications, promptly after request by Landlord provided no such modification shall relate to the net effective rent payable hereunder, the length of the Term or otherwise materially change the rights or obligations of Landlord or Tenant.

25. Waiver. If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of the term, covenant or condition itself or a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. Furthermore, the acceptance of rent by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such rent. Failure by either Landlord or Tenant to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or to decrease the right to insist

thereafter upon strict performance by the nonperforming party. Waiver by either party to this Lease may only be made by a written document signed by the waiving party.

26. Attorneys' Fees. In the event that any action or proceeding (including arbitration) is brought to enforce or interpret any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such action or proceeding (whether after trial or appeal) shall be entitled to recover from the party not prevailing its expenses therein, including reasonable attorneys' fees and all allowable costs.

27. Notices. All notices, requests or demands to a party hereunder shall be in writing and shall be given or served upon the other party by personal service, by certified return receipt requested or registered mail, postage prepaid, or by Federal Express or other nationally recognized commercial courier, charges prepaid, addressed as set forth below. Any such notice, demand, request or other communication shall be deemed to have been given upon the earlier of personal delivery thereof, three (3) business days after having been mailed as provided above, or one (1) business day after delivery to a commercial courier for next business day delivery, as the case may be. Notices may be given electronically by facsimile or email and shall be effective upon the transmission of such notice provided that the notice is transmitted on a business day and a copy of the notice indicating the date and time of transmission is sent no later than the immediately succeeding business day by recognized overnight carrier for next business day delivery. Each party shall be entitled to modify its address by notice given in accordance with this Section 27.

If to Landlord: **[Hassen Imports Partnership
100 North Barranca Avenue
Suite 900
West Covina, CA 91791]**

OR

**[Howard M. Ehrenberg
Sulmeyer Kupetz PC
333 S Hope Street
35th Floor,
Los Angeles, CA 90071]**

With a copy to: **[Stutman, Treister & Glatt
1901 Ave of the Stars
Suite 1200
Los Angeles, CA 90067
Attn: Theodore B. Stolman, Esq.]**

OR

**[Sulmeyer Kupetz PC
333 S Hope Street
35th Floor,
Los Angeles, CA 90071]
Attn: _____]**

If to Tenant: Carlos Hidalgo
7847 Prospect Court
Granite Bay, CA 95746

With a copy to: Lawrence W. Miles, Jr.
The Miles Law Firm,
A Professional Corporation
3838 Watt Ave., #301
Sacramento, Ca. 95821

28. Merger. Notwithstanding the acquisition (if same should occur) by the same party of the title and interests of both Landlord and Tenant under this Lease, there shall not be a merger of the estates of Landlord and Tenant under this Lease, but instead the separate estates, rights, duties and obligations of Landlord and Tenant, as existing hereunder, shall remain unextinguished and continue, separately, in full force and effect until this Lease expires or otherwise terminates in accordance with the express provisions herein contained.

29. Defined Terms and Headings. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in neuter gender include the feminine and masculine, where applicable. If there is more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several. The headings and titles to the sections and paragraphs of this Lease are used for convenience only and shall have no effect upon the construction or interpretation of this Lease.

30. Time and Applicable Law. Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by and interpreted in accordance with the laws of the State of California.

31. Successors and Assigns. Subject to the provisions of Section 12 and the limitation expressed below, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties

hereto. However, the obligations imposed on Landlord under this Lease shall be binding upon Landlord's successors and assigns only with respect to obligations arising during their respective periods of ownership of the Premises.

32. Entire Agreement. This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or Tenant or understandings made between the parties other than those set forth in this Lease and its exhibits.

33. Severability. If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

34. Signs. Tenant shall have the exclusive right, at its own cost and expense, to install and affix to the Premises such signs (the "**Signs**") as Tenant may desire. The location, construction, size and appearance of the Signs shall comply with all applicable laws, ordinances and regulations and the requirements of any governmental agency or authority having jurisdiction thereof. The Signs shall remain the property of Tenant and may be removed by Tenant at any time provided that Tenant, at its expense, shall repair any damage caused by reason of such removal and shall restore the Premises to its original condition. Tenant shall, at its own expense, maintain the Signs in good condition and working order, shall comply with all laws, ordinances and regulations with respect thereto (including the requirements of any governmental agency or authority having jurisdiction thereof), and shall pay for all utility service to the Signs. Upon the expiration of the Term or earlier termination of this Lease, or upon the vacation of the Premises by Tenant, Tenant shall remove the Signs, shall repair any damage caused by reason of such removal and shall restore the Premises to its original condition, all at Tenant's sole cost and expense.

35. Memorandum of Lease. Landlord and Tenant agree that a Memorandum of Lease, in a form reasonably acceptable to both Landlord and Tenant, shall be recorded at the request of either party.

36. Construction. All provisions hereof, whether covenants or conditions, shall be deemed to be both covenants and conditions. The definitions contained in this Lease shall be used to interpret the Lease. All rights and remedies of Landlord and Tenant shall, except as otherwise expressly provided, be cumulative and non-exclusive of any other remedy at law or in equity.

37. Consent. Whenever in this Lease the consent of a party is required to any act by or for the other party, such consent shall not be unreasonably withheld or delayed.

38. Liability to Perform. This Lease and the obligations of Tenant or Landlord hereunder as the case may be, shall not be affected or impaired because the other party is unable to fulfill any of its obligations hereunder, other than the payment of money, or is delayed in doing so, if such inability or delay is caused by reason of force majeure, strike, labor troubles, acts of God, acts of government, unavailability of materials or labor, or any other cause beyond the control of such other party.

39. Corporate Authority. Each individual executing this Lease on behalf of Tenant represents and warrants that Tenant is duly incorporated, in good standing and qualified to do business in California, and that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that he or she will deliver appropriate certification to that effect if requested.

40. Quiet Enjoyment. So long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises for the Term, subject to all the terms and conditions of this Lease and all liens and encumbrances prior to this Lease.

41. Amendment. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification.

42. Review. The Landlord and Tenant acknowledge that each has had its counsel review this Lease and hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or in any amendments or exhibits hereto.

43. Effect of Default on Options to Extend Term.

43.1 Tenant shall have no right to exercise an option for an Extended Term (i) during the period commencing with the giving of any notice of default and continuing until said Default is cured, (ii) during the period of time any Base Rent is unpaid (without regard to whether written notice thereof is given Tenant), or (iii) any of the occurrences set forth in (i) or (ii) above, shall have occurred with respect to any of the Related Garvey Avenue South Lease.

43.2 The period of time within which an option for an Extended Term may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise an option for an Extended Term because of the provisions of Section 43.1 above.

43.3 If the Lease is deemed terminated under California law, any unexercised option for an Extended Term shall terminate and be of no further force and effect.

44. Guaranty. The obligations of Tenant hereunder and the Related Garvey Avenue South Lease during the Initial Term shall be personally thereof guaranteed by Carlos Hidalgo who shall execute and deliver to Landlord a Guaranty of Lease attached hereto as Exhibit B concurrently with the execution of the Lease by Tenant.

45. Non-Discrimination. The Tenant herein covenants by and for itself, or its successors, executors, administrators and assigns, and all persons claiming under or through it and this Lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location,

number use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the
Premises herein leased.”

Wherefore, Landlord and Tenant execute and deliver this Lease as of the day and year first above written.

Landlord:

[Hassen Imports Partnership, a California limited partnership

By: _____
Name: Ziad Alhassen
Title: President, General Partner]

Tenant:

Carlos Hidalgo

By: _____
Name: _____
Title: _____

OR

[Hassen Imports Partnership, a California limited partnership

By: _____
Name: Howard M. Ehrenberg
Title: Solely in his capacity as Chapter 7 Trustee of the bankruptcy estate of Hassen Imports Partnership and not individually]

Exhibit A

Description of Premises

Exhibit B

Form of Guaranty

SCHEDULE 13.2

FORM OF NEW HUMMER LEASE

LEASE AGREEMENT

This Lease (this "**Lease**") is entered into effective _____, 2013 (the "**Effective Date**") by and between [**Hassen Imports Partnership, a California limited partnership**] OR [**Howard M. Ehrenberg, solely in his capacity as Chapter 7 Trustee of the Bankruptcy Estate of Hassen Imports Partnership, a California limited partnership and not individually**] ("**Landlord**") and Carlos Hidalgo ("**Tenant**").

1. Premises. On and subject to the terms, covenants and conditions set forth in this Lease, Landlord leases to Tenant and Tenant rents from Landlord that certain real property constituting approximately _____ (_____) acres and buildings in the approximate size of _____ (_____) square feet located in the City of West Covina, County of Los Angeles, State of California commonly known as 1900 East Garvey Avenue South, West Covina, California and more particularly described on Exhibit A attached hereto (the "**Premises**"). Landlord hereby represents and warrants that the existing electrical, plumbing, lighting, heating, ventilation and air conditioning systems ("**HVAC**") are in good working order and adequately serve the Premises, and that the structural elements of the roof, bearing walls and foundations of the Premises are in good working order. If a non-compliance with said systems warranty exists as of the Effective Date, or if one of such HVAC systems or elements should malfunction or fail within the warranty period, Landlord shall, as Landlord's sole obligation with respect to such matter, except as otherwise provided in Section 9.2 of this Lease, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Landlord's expense. The warranty period shall be the period commencing on the Effective Date and continuing through the date that is one (1) year thereafter. Except as otherwise provided in Section 9.2 of this Lease, if Tenant does not give Landlord the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Tenant at Tenant's sole cost and expense. Tenant shall, at Tenant's sole expense, procure and maintain contracts, with copies to Landlord, in customary form and substance for, and with contractors specializing and experienced in the maintenance of HVAC equipment. Landlord represents and warrants that there are no hazardous materials located on the Premises, except for hazardous materials used in the normal operation of an automotive dealership and stored in compliance with applicable law.

2.Term.

2.1 Initial Term. The term of this Lease (the "**Term**") shall be for ten (10) years commencing on the Effective Date (the "**Commencement Date**") and continuing through and including _____ (the "**Termination Date**").

2.2 Extended Terms. Tenant shall have the option to extend the Term for four (4) additional, consecutive five (5) year periods (collectively, the "**Extended Terms**", individually, the "**First Extended Term**", the "**Second Extended Term**", the "**Third Extended Term**" and the "**Fourth Extended Term**", respectively) on all the terms and conditions contained in this Lease including, without limitation, continuation of the adjustment of the Base Rent on an annual basis as provided in Section 3.2 below. Tenant shall deliver, if at all, written notice of its exercise of the option (each an "**Option Notice**") to Landlord at least six (6) months prior to the expiration of the

initial five (5) year Term, or the First Extended Term, Second Extended Term or Third Extended Term, as the case may be. In the event Tenant fails to deliver the Option Notice within the time allowed, Landlord shall deliver written notice to Tenant advising Tenant of its failure to deliver the Option Notice ("**Reminder Notice**"), and Tenant shall then have thirty (30) days from receipt of the Reminder Notice within which to deliver the Option Notice, if at all, to Landlord. In the event Tenant fails to deliver an Option Notice to Landlord within such thirty (30) days, Tenant shall be considered to have elected not to extend the Term of this Lease and thereafter, Tenant shall have no further right to extend the Term of this Lease. Provided Tenant timely delivers the Option Notice and is not in default of this Lease on the date the subject Extended Term is to commence, this Lease shall be extended for the subject Extended Term. In the event Landlord delivers a Reminder Notice to Tenant and Tenant fails to deliver an Option Notice within thirty (30) days thereafter or is deemed to have elected not to extend the Term of the Lease, the Term of the Lease shall be extended such that Landlord receives six (6) months' notice of Tenant not exercising its option to extend the Lease prior to the expiration of the applicable Term. By way of illustration of the foregoing, if Tenant fails to timely deliver an Option Notice for the First Extended Term and Landlord delivers a Reminder Notice and Tenant fails to timely respond to the Reminder Notice, the initial five (5) year Term shall be extended to a date that is six (6) months after the earlier of (i) notice from Tenant that it is not exercising its option for an Extended Term of the Lease or (ii) six (6) months from the expiration of the Reminder Notice.

2.3 **Other Leases.** Tenant's right to exercise its options to extend the term of the Lease shall be conditioned upon Tenant's concurrent exercise of its option to extend the corresponding terms of the lease for the property at 1932 East Garvey Avenue South, West Covina, CA ("**Related Garvey Avenue South Lease**").

3. Rent.

3.1 **Base Rent.** Tenant shall pay to Landlord as monthly Base Rent ("**Base Rent**") for the Premises, in advance on the Commencement Date and on the first (1st) day of each and every calendar month of the Term thereafter, without deduction, set-off, prior notice or demand in a lawful currency of the United States of America, the Base Rent as described in this Lease. The Base Rent during the first ten (10) months of the term of the Lease shall be the sum of Eighteen Thousand Dollars (\$18,000) per month. The Rent for the next fifty (50) months of the term of the Lease shall be the sum of Thirty Thousand Dollars (\$30,000) per month. Tenant shall pay the Base Rent by automatic wire transfer initiated by Tenant from its checking or savings account to the checking or savings account designated by Landlord.

3.2 **Adjustment to Base Rent.** The Base Rent Commencing on the first day of the calendar month immediately following the calendar month which the fifth anniversary of the Commencement Date occurs ("**Initial Adjustment Date**") shall be adjusted in accordance with the provisions of this Section 3.2 and shall thereafter be adjusted at the commencement of each Extended Term thereafter as applicable (each an "**Adjustment Date**"). The Base Rent shall be adjusted to reflect any increase in the Consumer Price Index (All Items) for Urban Consumers for the Los Angeles-Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics ("**Index**"), and shall be calculated as follows:

3.2.1 On each Adjustment Date the Base Rent until the next Adjustment Date shall be increased over the Base Rent paid in the month immediately prior to the subject Adjustment Date by the percentage increase in the Index published immediately prior to such Adjustment Date over the Index in effect five (5) years earlier; provided, however, that in no event shall the Base Rent be adjusted upward by more than ten percent (10%) from the Base Rent immediately prior to the prior Adjustment Date, and in no event shall the Base Rent as adjusted be less than the Base Rent payable immediately prior to the Adjustment Date.

3.2.2 If the Index is changed so that the base year differs from 1982-1984=100, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. On adjustment of the Base Rent as provided in this Section 3.2, the parties shall immediately execute a written amendment to the Lease setting forth the new Base Rent, but the failure to do so shall not affect the enforceability thereof, and in no event shall the Base Rent as adjusted be less than the Base Rent payable immediately prior to the Adjustment Date.

3.3 **Late Charge.** Tenant acknowledges that late payment by Tenant to Landlord of any Base Rent shall cause Landlord to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and late charges that may be imposed on Landlord by the terms of any encumbrance or note secured by the Premises. Therefore, if any Base Rent is not received by Landlord within ten (10) days of its due date, Tenant shall pay to Landlord a late charge equal to three percent (3%) of the Base Rent not paid within such ten (10) day period. Landlord and Tenant hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment and that the late charge is in addition to any and all remedies available to the Landlord and that the assessment and/or collection of the late charge shall not be deemed a waiver of any other default.

3.4 **Proration.** If the Term begins or ends on a day other than the first or last day of a calendar month, the Base Rent payable for such calendar month of the Term shall be prorated on the basis which the number of days of the Term in the calendar month bears to the total number of days in such month. The term "**Rent**" as used in this Lease shall refer to Base Rent, Initial Improvement Rent, prepaid rent, if any, real property taxes, insurance costs, repairs and maintenance costs, utilities, late charges and other monetary obligations imposed upon Tenant pursuant to this Lease, either directly to Landlord or otherwise.

3.5 **Default Interest.** Tenant shall pay to Landlord interest at the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law ("**Default Rate**") on the following sums until paid in full: (a) all installments of Rent from the respective due dates thereof if the same are not paid within ten (10) days following written notice from Landlord that such sums are due; and (b) all overdue amounts of Rent relating to obligations that Landlord shall have paid on behalf of Tenant as provided herein if the same are not paid within ten (10) days following written notice from Landlord that such sums are due for the period commencing on the date of payment thereof by Landlord to the date of payment by Tenant.

3.6 **Place of Payment.** All Base Rent shall be paid to Landlord in lawful money of the United States of America, at the following address ("**Landlord's Address**"):

**[Hassen Imports Partnership
100 North Barranca Avenue
Suite 900
West Covina, CA 91791]**

OR

**[Howard M. Ehrenberg
Sulmeyer Kupetz PC
333 S Hope Street
35th Floor,
Los Angeles, CA 90071]**

or to such other individual, partnership, limited liability company, association, corporation or other entity (each a "**Person**") or at such other place as Landlord may from time to time designate by notice to Tenant.

4. Taxes.

4.1 **Personal Property Taxes.** Tenant shall pay prior to delinquency all taxes assessed against and levied upon Tenant owned leasehold improvements, trade fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause its leasehold improvements, trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

4.2 **Real Property Taxes.** Tenant shall pay prior to delinquency all Real Property Taxes (as defined below) which accrue in connection with the Premises during the Term of this Lease. Upon request, Tenant shall furnish Landlord with satisfactory evidence that all Real Property Taxes are paid and current. If Tenant shall fail to pay any Real Property Taxes required by this Lease to be paid by Tenant, Landlord shall have the right to pay the same upon ten (10) days written notice to Tenant, and Tenant shall reimburse Landlord therefor, including any interest and penalties upon demand. In no event, however, shall Landlord be required to pay any franchise, income, inheritance, estate, succession, transfer or gift taxes that are or may be imposed upon Tenant or its successors or assigns.

4.2.1 As used herein, the term "**Real Property Taxes**" shall include any form of real estate tax, any general, special, ordinary or extraordinary assessment, any improvement bond, levy or similar tax (or any other fee, charge, or excise which may be imposed as a substitute for any of the foregoing) imposed upon the Premises by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district, levied against any legal or equitable interest of Landlord in the Premises.

4.3 **Tax Bills.** The collecting authority shall continue sending all pertinent tax bills directly to Landlord or its designee. All pertinent tax bills received by Landlord shall be immediately forwarded directly to Tenant or its designee to permit timely remittance in the normal course of

business. Landlord shall be fully liable for all interest and penalties reasonably chargeable due to its failure to perform as provided in this Section 4.3.

4.4 **Challenges.** Tenant shall be entitled to any refund obtained by Tenant with respect to any charges or other fees paid by Tenant hereunder. Tenant or its designees, at its sole cost and expense, shall have the right to contest or review all taxes, charges or other fees by legal proceedings or in such other manner as is commercially reasonable. If necessary, Landlord shall reasonably cooperate in any such proceedings.

5.Uses.

5.1 **Authorized.** The Premises shall be used by Tenant for the sales, servicing and repair of automobiles and light trucks, and all uses incidental and related thereto, or any other lawful use but only in compliance with the provisions of Section 5.2 below.

5.2 **Compliance with Laws.** Tenant shall not do or suffer anything to be done in or on the Premises which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement applicable to the Premises during the Term, including without limitation, any agreement with a redevelopment agency or public authority (i) entered into as of the Commencement Date and (ii) provided to Tenant by Landlord, or cause or create any nuisance. Tenant shall, at its sole cost and expense, promptly comply with each and all of said governmental measures existing now or in the future.

6.Hazardous Materials.

6.1 **Permitted Use.** Landlord acknowledges that the use of the Premises contemplated by Section 5 above necessarily requires that Tenant have and maintain certain petroleum-based and other substances on the Premises during the Term which constitute Hazardous Materials (as defined below). At all times, Tenant shall store, handle and otherwise maintain all Hazardous Materials kept on the Premises in full compliance with all applicable laws and regulations, and Tenant shall take every commercially reasonable caution in connection with the presence and handling of Hazardous Materials on the Premises. If Tenant breaches the obligations stated in the preceding sentence, Tenant shall promptly remediate the condition at its sole cost and expense. Upon written request, Tenant shall provide Landlord with information or documentation reasonably requested by Landlord regarding any inspection, testing, remediation or other activities undertaken by Tenant under this Section 6.1. This Section 6.1 shall survive the termination or expiration of this Lease.

6.2 **Indemnification of Landlord.** Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, demands, liabilities, responsibilities, losses, damages, penalties, fines and/or costs (including reasonable attorney's and consultant fees) made against or incurred by Landlord arising from or relating to the release of Hazardous Materials as a result of Tenant's activities at the Premises during the Term. Tenant's indemnification obligations created by this Section 6.2 shall include, without limitation, all costs of (i) site investigation and testing, (ii) clean-up, remediation, removal or restoration work, and (iii) all monitoring activities which are required by any federal, state or local governmental agency with jurisdiction over the matter as a result of use or storage of Hazardous Materials at the Premises by Tenant. This Section 6.2 shall survive the termination or expiration of the Lease.

6.3 Notice of Environmental Actions. Tenant shall promptly notify Landlord of any (a) enforcement, clean-up, removal or other governmental or regulatory action concerning the Premises instituted, completed or threatened pursuant to any Environmental Law; (b) claim made or threatened by any Person against Landlord and/or Tenant, or the Premises, relating to damage, condemnation, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances; (c) reports made to any environmental agency arising out of or in connections with any Hazardous Substance in, or about the Premises or with respect to any Hazardous Substance removed from the Premises, including any complaints, notices, warnings, reports or asserted violations in connection therewith; and (d) Hazardous Substance that Tenant knows has been, or will come to be, released or located within, under or about the Premises.

6.4 Indemnification of Tenant. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, liabilities, responsibilities, losses, damages, penalties, fines and/or costs (including reasonable attorney's and consultant fees) made against or incurred by Tenant arising from or relating to the release of Hazardous Materials from the Premises prior to the Term. Landlord's indemnification obligations created by this Section 6.4 shall include, without limitation, all costs of (i) site investigation and testing, (ii) clean-up, remediation, removal or restoration work, and (iii) all monitoring activities which are required by any federal, state or local governmental agency with jurisdiction over the matter as a result of use or storage of Hazardous Materials at the Premises prior to the Effective Date. This Section 6.4 shall survive the termination or expiration of the Lease. In the event that the Landlord is the Chapter 7 Trustee, then Tenant shall be indemnified by being able to offset any recoverable damages by offsetting dollar for dollar against the repayment obligations of the Tenant Improvement Allowance, as described below in Section 8.4 hereof.

6.5 Hazardous Materials Defined. As used herein, the term "**Hazardous Materials**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "hazardous material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Under Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos not in compliance with applicable laws or regulations, (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation

and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601) (collectively, "**Environmental Laws**").

7. Services and Utilities. Tenant shall pay prior to delinquency all charges for water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating, scavenger, janitorial, landscaping, and all other materials and utilities supplied to the Premises during the Term. Landlord shall not be liable, and Tenant shall not be entitled to any abatement of Rent (including without limitation, Base Rent) for the reduction, interruption or suspension of any utility service to the Premises unless caused by the negligent act or omission of Landlord or its agents. No such interruption, reduction or suspension of utilities shall constitute an eviction of Tenant from the Premises.

8. Alterations.

8.1 Tenant Improvements. Tenant shall obtain Landlord's written consent prior to performing any alteration, addition or improvement on or to the Premises; provided, however, that Landlord's consent shall not be required where the contemplated work (i) does not include any alteration of the structural components of the Premises, or (ii) will not cost more than Four Hundred Thousand Dollars (\$400,000.00) to complete. In the event Landlord's consent is required, such consent shall not be unreasonably withheld, conditioned or delayed. In the event Landlord has no objected to such alternations requiring Landlord's consent within twenty (20) days of receipt of the request, Landlord shall be deemed to have approved such alteration, addition or improvement. All alterations, additions and improvements shall be constructed in a good and workmanlike manner by licensed contractors and in compliance with all applicable laws, regulations, CC&R's, zoning ordinances and building codes. Except as provided immediately below, all alterations, additions and improvements constructed in or on the Premises by Tenant shall remain on the Premises without compensation of any kind to Tenant upon expiration of the Term. Tenant shall not be required to remove any of the alterations, additions or improvements made to the Premises during the Term except only those alterations, additions or improvements requiring Landlord's consent, to the extent Landlord conditioned its consent upon removal of the subject alteration, addition or improvement by Tenant at the expiration of the Term. With respect to such alterations, additions or improvements only, Tenant upon the written request of Landlord, shall upon the expiration of the Term, remove such alteration, addition or improvement at its cost and restore the Premises to its condition prior to such alteration, addition or improvement. Tenant shall maintain insurance as required by Section 11.2 covering any improvements, alterations or additions to the Premises made by Tenant under the provisions of this Section 8.1, it being understood and agreed that none of such improvements shall be insured by Landlord. At any time, Landlord may request from Tenant reasonably detailed plans of any alterations completed by Tenant and to the extent available, Tenant shall promptly provide such plans to Landlord.

8.2 Governmental Approvals. Tenant shall commence making any alterations only after all required approvals for the alterations, including plans and specifications, have been obtained from the City of West Covina and any other governmental authorities whose consent or approval is required.

8.3 Liens. Tenant shall keep the Premises free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless

and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. Landlord shall have the right to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens. Tenant shall give Landlord written notice at least twenty (20) days prior to the expected date of commencement of any work done or materials delivered to the Premises for the purpose of posting notices.

8.4 Tenant Improvement Allowance. Landlord shall provide Tenant an improvement allowance of Eight Hundred Seventy Thousand Dollars (\$870,000) (the "**Tenant Improvement Allowance**"). In the event Tenant fails to use the Tenant Improvement Allowance to make improvements and alterations to the Premises within one (1) year of the Effective Date, Tenant agrees to reimburse Landlord for the Tenant Improvement Allowance as follows:

(a) The Tenant Improvement Allowance shall bear interest at the rate of two percent (2%) per annum until paid in full.

(b) No payments during the first two (2) years of the Effective Date of this Lease.

(c) During years three (3) through six (6) from the Effective Date of this Lease, Tenant agrees to pay Landlord each year the following allocation of yearly net profits after taxes, as reflected on Tenant's annual tax return relating to the operation of the dealership being operated on the Premises (the "**Operating Dealership**"): \$0 to \$1 million in net profits after taxes, no payment required; \$1 million to \$5 million in net profits after taxes, 25% of such profits; net profits of over \$5 million, 50% of such net profits.

(d) Tenant shall pay the annual payments due in accordance with subparagraph (c) above to Landlord within thirty (30) days of the date on which Tenant files its annual tax return; provided, however, that in the event Tenant does not file its annual tax return on or by April 15 of any given year, Tenant shall pay to Landlord seventy-five percent (75%) of the amount owed under subparagraph (c) above by no later than April 15 of that year, which amount shall be calculated based on a reasonable estimate of the amount owed to Landlord, and the twenty-five percent (25%) unpaid balance shall be paid within thirty (30) days of the date Tenant's tax return is filed in that year, which amount may be adjusted based on Tenant's filed tax return for that year.

(e) Commencing in year 7, the outstanding balance, if any, of the Tenant Improvement Allowance including accrued interest shall be amortized over 7 years (the "**Amortization Amount**") by adjusting the then existing Base Rent by the Amortization Amount.

(f) Notwithstanding the foregoing, the remaining balance of the Tenant Improvement Allowance including interest shall be immediately payable upon a sale of the Operating Dealership through either an asset or stock sale transaction. If Tenant subleases the Premises, the Tenant Improvement Allowance shall be payable during years one (1) through 6 (six) from any amount of additional rent that Tenant collects under such sublease in excess of the rent amount provided for in Section 3 above. Starting in year seven (7), the balance of the Tenant Improvement Allowance shall be paid in accordance with subparagraph (e) above.

9. Maintenance and Repairs.

9.1 Tenant's Obligations.

9.1.1 Subject to Section 9.2, Tenant shall, at all times during the Term and at Tenant's sole cost and expense, keep the Premises (and any improvements constructed thereon during the Term) and every part thereof, in good order, condition and repair, ordinary wear and tear and casualty as described in Section 19 excepted. Tenant shall exercise and perform good maintenance practices. Tenant's repair and maintenance obligations shall include all equipment or facilities serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, including fire alarm and/or smoke detection systems and equipment, fire hydrants, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, signs, sidewalks and parkways located in, on, about or adjacent to the Premises (whether or not such portion of the Premises requiring repairs, or the means of repairing same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises). Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair; provided, however, that Tenant and Landlord shall share the cost of any replacements incurred after the first five (5) years on a prorated basis in the event the useful life of any equipment or component replacement exceeds the remainder of the Term of this Lease. Further, Tenant shall obtain all necessary Permits deemed required to operate the dealership, from the Local Authorities and Government, including but not limited to The Los Angeles County, AQMD, State of California and other and keep them in full force and effect, without any time lapsing during the initial term of the Lease and thereafter.

9.1.2 Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in the same condition as delivered on the Commencement Date, subject to permitted alterations, additions and improvements, and ordinary wear and tear and casualty, and Tenant shall promptly remove or cause to be removed, at Tenant's expense, all of Tenant's signs, displays, trade fixtures and personal property from the Premises.

9.2 **Landlord's Obligations.** Except for any obligations of Landlord to repair the Premises to meet the representations as set forth in Section 1 above and Landlord's obligations per Section 6.4, Landlord shall have no obligation to repair or maintain the Premises or any equipment therein, all of which obligations are intended to be that of Tenant, with the exception only of the roof and foundation of the Premises, all structural walls and components thereof which shall remain the obligation of Landlord. It is the intention of the parties that the terms of this Lease govern the respective obligations of the parties as to the maintenance and repair of the Premises.

9.3 **Compliance With Law.** Tenant shall each do all acts required to comply with all present and future applicable laws, ordinances, regulations and rules of any public authority including without limitation, any agreement with a redevelopment agency or public authority (i) entered into as of the Commencement Date and (ii) provided to Tenant by Landlord, relating to its maintenance obligations as set forth herein including, without limitation, securing at its cost and

expense prior to the Commencement Date all licenses, permits required to operate its automobile dealership on the Premises.

10. Indemnity.

10.1 Tenant's Obligations. Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, demands, liabilities, responsibilities, losses, damages, penalties, fees, expenses and costs (including attorney's fees) of any kind and nature whatsoever made against or incurred by Landlord arising from or related to (i) Tenant's breach of any material covenant or condition contained in this Lease, (ii) Tenant's use and occupancy of the Premises, and/or (iii) the negligent or willful misconduct of Tenant. In the event any action or proceeding is brought against Landlord which falls within the scope of this Section 10.1, Tenant, upon written notice from Landlord, shall defend Landlord in such action at Tenant's expense by counsel reasonably satisfactory to Landlord. For purposes of this paragraph, "Tenant" shall include all of the employees, agents, officers and directors of Tenant. To the extent that Landlord recovers from any insurance, Tenant is hereby released from this indemnification to the extent of such proceeds. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Lease.

10.2 Landlord's Obligations. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, liabilities, responsibilities, losses, damages, penalties, fees, expenses and costs (including attorney's fees) of any kind and nature whatsoever made against or incurred by Tenant arising from or related to (i) Landlord's breach of any material covenant or condition contained in this Lease, and/or (ii) the negligent or willful misconduct of Landlord. In the event any action or proceeding is brought against Tenant which falls within the scope of this Section 10.2, Landlord, upon written notice from Tenant, shall defend Tenant in such action at Landlord's expense by counsel reasonably satisfactory to Tenant. For purposes of this paragraph, "Landlord" shall include all of the employees, agents, officers and directors of Landlord. To the extent that Tenant recovers from any insurance, Landlord is hereby released from this indemnification to the extent of such proceeds. The provisions of this Section 10.2 shall survive the expiration or earlier termination of this Lease.

11. Insurance.

11.1 General. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies reasonably acceptable to Landlord and the holder of any mortgage or deed of trust secured by any portion of the Premises (referred to herein as a "**Mortgagee**"). All policies of insurance provided for in this Lease shall be issued by insurance companies licensed to do business in the State of California, with general policy holder's rating of not less than "A-" and a financial rating of not less than "Class VII" as rated in the most current available "Best's Insurance Reports." Each policy shall name Landlord and at Landlord's request any Mortgagee as an additional insured, as their respective interests may appear, and a duplicate original of all policies or certificates evidencing the existence and amounts of such insurance shall be delivered to Landlord upon Landlord's written request. All policies of insurance delivered to Landlord shall contain a provision that the company writing said policy will give Landlord (and any Mortgagee with respect to property insurance) ten (10) days written notice in advance of any cancellation or lapse of or any change in such insurance. All public liability, property damage and other casualty insurance policies shall be written as primary policies, not contributing with, and not in excess of coverage which Landlord may

carry. Tenant shall furnish Landlord with renewals or "binders" of any such policy within ten (10) days of the Effective Date of the insurance. If Tenant does not procure and maintain such insurance, Landlord may (but shall not be required to) obtain such insurance on Tenant's behalf and charge Tenant the premiums therefor which shall be payable upon demand, and no such action by Landlord shall constitute a waiver of Tenant's default hereunder. Tenant may carry such insurance under a blanket policy, provided such blanket policy expressly affords the coverage required by this Lease by a Landlord's protective liability endorsement or otherwise.

11.2 Property Insurance. Tenant shall obtain and keep in force during the Term a policy of insurance in the name of Landlord and Tenant, with loss payable to Landlord and to any Mortgagee insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, including the roof, as the same shall exist from time to time, or the amount required by any lender(s). Such insurance shall, in addition, include flood coverage if the Premises are within a designated flood zone. Notwithstanding anything to the contrary herein, Tenant shall not be required to carry earthquake insurance. The insurance required by this Section 11.2 shall, in addition, include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Premises required to be demolished, and shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, then Tenant shall be liable for such deductible amount.

11.3 Liability Insurance. Tenant shall obtain and keep in force during the Term of this Lease a commercial general liability policy of insurance protecting Tenant and Landlord (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence with an "Additional Insured-Managers or Landlords of Premises" endorsement and contain an "Amendment of the Pollution Exclusion" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only.

11.4 Rental Value. Tenant shall, in addition, obtain and keep in force during the Term of this Lease a policy or policies insuring the loss of the full rental or other charges payable by Tenant to Landlord pursuant to this Lease for a period of not less than one year. Such insurance shall provide that in the event that the Lease is terminated or the Base Rent is reduced by reason of an insured loss, as well as a non-insured loss if such coverage is available at commercially reasonable rates, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of Rent from the date of any such loss. Said insurance shall contain an agreed evaluation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent payable

by Tenant for the next twelve (12) month period. Tenant shall be liable for any deductible amount in the event of such loss.

11.5 Mutual Waiver. Notwithstanding any provision to the contrary contained in this Lease, to the extent that this release and waiver does not invalidate or impair their respective insurance policies, the parties hereto release each other and their respective agents, employees, officers, directors, shareholders, successors and assigns from all liability for injury to any person or damage to any property that is caused by or results from a risk which is actually insured against pursuant to the provisions of this Lease without regard to the negligence or willful misconduct of the parties so released. Each party shall use its best efforts to cause each insurance policy it obtains to provide that the insurer thereunder waives all right of recovery by way of subrogation as required herein in connection with any injury or damage covered by the policy. If such insurance policy cannot be obtained with such waiver of subrogation, or if such a waiver of subrogation is only available at additional cost and the party for whose benefit the waiver is not obtained does not pay such additional cost after reasonable notice, then the party obtaining such insurance shall promptly notify the other party of the inability to obtain insurance coverage with the waiver of subrogation.

11.6 Premiums. Tenant shall pay as they become due all premiums for the insurance required by this Article 11, shall renew or replace each policy and deliver to Landlord evidence of the payment of the full premium therefore or installment then due at least ten (10) days prior to the expiration date of such policy, and upon written request shall promptly deliver to Landlord certificates evidencing the existence of all such policies.

12. Assignment and Subletting.

12.1 Assignment to Affiliate. Tenant shall have the right to assign its interest in this Lease, or sublet any portion of the Premises, to any entity in which Tenant, or any of Tenant's wholly owned subsidiaries or the owner of the Tenant, hold either directly or indirectly a fifty-one percent (51%) ownership interest without the prior consent of Landlord, provided that such entity agrees to be bound by the terms and conditions of this Lease. Tenant shall give Landlord written notice of the effective date of such assignment or subletting as soon as practicable. In connection with any such assignment, the Tenant shall continue to be jointly and severally liable with the assignee for the obligations of the Tenant pursuant to this Lease. Landlord acknowledges that the merger of Tenant with another entity shall not constitute an assignment pursuant to this Section 12, and Landlord's consent to such a merger shall not be required.

12.2 Assignment to Third Parties. Except as provided in Section 12.1 above, Tenant shall not assign or encumber its interest in this Lease or the Premises without first obtaining Landlord's written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Landlord shall give written notice of its consent or its determination not to consent within thirty (30) days following written request for such consent given by Tenant to Landlord. In the event Landlord has not objected to such assignment within thirty (30) days of such written request Landlord shall be deemed to have approved such assignment. Any assignment or encumbrance without Landlord's prior written consent shall be voidable and at Landlord's election shall constitute a material default of this Lease.

12.3 **Sublease.** Tenant shall have the right to sublease all or any portion of the Premises without the prior consent of Landlord provided that such sublessee agrees to lease the Premises and agrees to the terms and conditions of this Lease. In the event of such sublease Tenant shall remain liable for all rights and obligations under this Lease.

12.4 **Involuntary Assignment.** No interest of Tenant in this Lease shall be assignable by operation of law including, without limitation, the transfer of this Lease by will or intestacy. Each of the following acts shall be considered an involuntary assignment: (a) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes or becomes the subject of a proceeding under the Bankruptcy Code in which Tenant is the debtor and such proceeding remains undismissed for a period of sixty (60) days; (b) if a writ of attachment or execution is levied on this Lease and not released within sixty (60) days; (c) if, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall be deemed to constitute a material default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.

12.5 **No Release of Tenant.**

12.5.1 Notwithstanding any assignment or subletting of any interest in this Lease or the Premises by Tenant, unless Landlord otherwise consents in writing, Tenant shall continue to be liable for the full performance of all Tenant obligations set forth in the Lease.

12.5.2 If, with the Landlord's consent, the Tenant assigns or subleases this Lease and Tenant is not released from all obligations hereunder, the Landlord, when giving notice to said assignee or any future assignee in respect of any default, shall also serve a copy of such notice upon the original Tenant or any successor to such original Tenant (the "**Original Tenant**"), and no notice of default shall be effective until a copy thereof is so given to the Original Tenant. The Original Tenant shall have the same period after receipt of such notice plus an additional ten (10) days to cure such defaults as is given to the Tenant therefore under this Lease. If this Lease terminates because of a default of such assignee or subtenant after transfer of this Lease shall have been made, the Landlord shall promptly give to the Original Tenant notice thereof, and the Original Tenant shall have the option, exercisable by the giving of notice by the Original Tenant to the Landlord within twenty (20) days after receipt by the Original Tenant of the Landlord's notice, to cure any default in the payment of Base Rent or other charges hereunder and become "Tenant" under a new lease for a term equal to the period of the then remainder of the term of this Lease if this Lease had not been terminated, and upon all of the same terms and conditions as then remain under this Lease, if the same had not been terminated, including the right to exercise any remaining options for Extended Terms, and such new lease shall commence on the date of termination of this Lease, except that if the Landlord delivers to the Original Tenant, together with the Landlord's notice, a release in favor of the Original Tenant as to all future liability under this Lease, the Original Tenant shall not have the foregoing option to exercise any remaining options or an Extended Term of the Lease.

12.5.3 The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease, or consent to the assignment or subletting of the

Premises. Consent to any particular assignment or subletting for which consent is required shall not be deemed consent to any future assignment or subletting

13. Sale of Premises or Building. Each conveyance by Landlord or its successor in interest of Landlord's interest in the Premises prior to the expiration or termination of this Lease shall be subject to this Lease and shall relieve the Landlord as grantor of all further liability or obligations as Landlord, except for such liability or obligations accruing prior to the date of such conveyance. Tenant agrees to attorn to Landlord's successors in interest, whether such interest is acquired by sale, transfer, foreclosure, and deed in lieu of foreclosure or otherwise.

14. Entry by Landlord. Landlord and its authorized representatives shall have the right to enter the Premises during business hours and after reasonable notice (except in the event of an emergency in which case entry may be at any time and with such prior notice to Tenant as is reasonable under the circumstances): (a) to inspect the Premises; (b) to supply any service provided to Tenant hereunder; (c) to show the Premises to prospective lenders, purchasers, or broker and agents in connection with a sale of the building; (d) to show the Premises to prospective tenants or brokers and agents in connection with a leasing of the Premises, but only during the last twelve (12) months of the Term; (e) to post notices of non-responsibility; (f) to alter, improve or repair the Premises (to the extent permitted or required hereunder); (g) to erect scaffolding and other necessary structures, where required by the work to be performed, all without reduction or abatement of rent and (h) to obtain a Phase I Environmental Site Assessment and/or a Phase II Environmental Site Assessment of the Premises.

15. Insolvency or Bankruptcy.

15.1 Acts of Default. Without limitation, the following events shall constitute a default under this Lease: (a) if Tenant shall admit in writing its inability to pay its debts as they mature; (b) if Tenant shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors; (c) if Tenant shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; (d) if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent; (e) if Tenant shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief for itself under any present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors; (f) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant seeking any relief described in the preceding clause (e), and (i) Tenant acquiesces in the entry of such order, judgment or decree (the term "**acquiesce**" as used in this Section 15.1 shall include, without limitation, Tenant's failure to file a petition or motion to vacate or discharge any order, judgment or decree within sixty (60) days after entry of such order, judgment or decree), or (ii) such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive, from the date of entry thereof; (g) if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of Tenant of all or any substantial part of Tenant's properties or its interest in the Premises; (h) if any trustee, receiver, conservator or liquidator of Tenant or of all or any substantial part of its property or its interest in the Premises shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; or (i) if this Lease or any estate of Tenant hereunder shall be levied upon under

any attachment or execution and such attachment or execution shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive. Notwithstanding the foregoing, the above described events shall not constitute a default under this Lease where Tenant has assigned the Premises as permitted in this Lease, such assignee has assumed this Lease, and such assignee is not otherwise in default hereunder.

15.2 Rights and Obligations under the Bankruptcy Code. Upon the filing of a petition by or against Tenant under the United States Bankruptcy Code, Tenant, as debtor in possession, and any trustee who may be appointed agree as follows: (a) to perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (b) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Premises the sum required under Section 3, and all other charges otherwise due pursuant to this Lease; (c) to reject or assume this Lease within sixty (60) days of the filing of such petition; (d) to give Landlord at least forty-five (45) days prior written notice of any abandonment of the Premises, any such abandonment to be deemed a rejection of this Lease; (e) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; (f) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (g) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

16. Default by Tenant.

16.1 Acts Constituting Defaults. In addition to the events specified as a default under Section 15.1 or elsewhere in this Lease, it shall constitute a default hereunder if (i) Tenant fails to pay Rent when due (and such failure is not cured within ten (10) days following written notice from Landlord) or (ii) if Tenant breaches or violates any material provision of this Lease applicable to Tenant other than the obligation to pay Rent, including, without limitation, the obligation to repay the Tenant Improvement Allowance under Section 8.4 above (and such failure is not cured within twenty (20) days following written notice from Landlord), or (iii) if the tenant under any of the Related Garvey Avenue South Leases fails to pay Rent when due or breaches or violates any material provision of the applicable Related Garvey Avenue South Lease (and such breach or violation is not cured within the applicable cure period under the applicable Related Garvey Avenue South Lease). However, Landlord shall not commence any action to terminate Tenant's right of possession as a consequence of a default until any period of grace with respect thereto has elapsed and such period of grace shall be in addition to the period during which Tenant may cure such default following the delivery of notice pursuant to California Code of Civil Procedure Section 1161.

16.1.1 Tenant shall have a period of ten (10) days from the date of written notice from Landlord to Tenant within which to cure any default in the payment of Rent or any other monetary obligation of Tenant pursuant to this Lease.

16.1.2 Tenant shall have a period of twenty (20) days from the date of written notice from Landlord to Tenant (which notice shall specifically state the nature of the asserted default) within which to cure any nonmonetary default under this Lease; provided, however, that with respect to any default which cannot reasonably be cured within twenty (20) days, the default shall not be deemed to be uncured if Tenant commences to cure within twenty (20) days from Landlord's notice

and thereafter prosecutes diligently and continuously to completion all acts required to cure the default.

16.2 Landlord's Remedies. If Tenant fails to cure a default within the time allowed, Landlord shall have the following rights and remedies in addition to any other rights and remedies available to Landlord at law or in equity.

16.2.1 Landlord may, pursuant to Civil Code Section 1951.4, continue this Lease in full force and effect, and this Lease will continue in effect so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Rent (including, without limitation, Base Rent) as it becomes due. During the period Tenant is in default, Landlord can enter the Premises and relet the Premises, or any part of the Premises, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Lease. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rental amounts Landlord receives from any reletting. No act by Landlord allowed by this Section 16.2.1 shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease. After Tenant's default and for so long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability. Landlord's consent to such a proposed assignment or subletting shall not be unreasonably withheld. If Landlord elects to relet the Premises as provided in this Section 16.2.1, any rental amounts that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than Rent due from Tenant; second, all costs, including for maintenance incurred by Landlord in reletting; and third, Rent due and unpaid under this Lease. After deducting the payments referred to in this Section 16.2.1, any sum remaining from the rental amounts Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rental received by Landlord. If, on the date Rent is due under this Lease, the rent received from the reletting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs including for maintenance Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this Section 16.2.1.

16.2.2 Landlord may, pursuant to Civil Code Section 1951.2, terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving express written notice thereof to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. Upon termination of Tenant's right to possession, Landlord has the right to recover from Tenant: (1) the Worth of the unpaid Rent that had been earned at the time of termination of Tenant's right to possession; (2) the Worth of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (3) the Worth of the amount of the unpaid Rent that would have been earned after the award throughout the remaining Term of the Lease to the extent such unpaid Rent exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

(4) any other amount, including but not limited to, expenses incurred to relet the Premises, court costs, attorneys' fees and collection costs necessary to compensate Landlord for all detriment caused by Tenant's default. The "Worth", as used above in (1) and (2) in this subsection is to be computed by allowing interest at the lesser of ten percent (10%) per annum or the maximum legal interest rate permitted by law. The "Worth", as used above in (3) in this subsection is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

16.2.3 In lieu of or in addition to any of the foregoing remedies and damages, Landlord may exercise any remedies and collect any damages available to it at law or in equity from Tenant or from Guarantor under its Guaranty. All remedies are cumulative and concurrent and no remedy is exclusive of any other remedy. Each remedy may be exercised at any time an event of default has occurred and is continuing and may be exercised from time to time.

16.2.4 No failure of Landlord (i) to insist at any time upon the strict performance of any provision of this Lease or (ii) to exercise any option, right, power or remedy contained in this Lease shall be construed as a waiver, modification or relinquishment thereof. A receipt by Landlord of any sum in satisfaction of any obligation with knowledge of the breach of any provision hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in a writing signed by Landlord.

17. Landlord's Right to Cure Default. All covenants and agreements to be performed by Tenant under the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. If Tenant shall be in default of its obligations under this Lease to pay any money other than rental or to perform any other act hereunder, and if such default is not cured within the applicable grace period (if any) provided in this Section 17, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any of its obligations. All sums so paid and all costs incurred by Landlord shall be paid to Landlord on demand together with interest thereon at the Default Rate from the date of payment of any such advance and costs by Landlord to the date of payment thereof by Tenant.

18. Default by Landlord. Landlord shall not be deemed to be in default in the performance of any obligation under this Lease unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Tenant to Landlord specifying such failure; provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are required for its cure, then Landlord shall not be deemed to be in default if Landlord meaningfully commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. Tenant agrees to give any Mortgagee a copy, by registered mail, of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise), of the address of such Mortgagee. Any time during which such Mortgagee may cure Landlord's default hereunder may, at Tenant's election, run concurrently with Landlord's time to cure.

19. Damage and Destruction.

19.1 Damage - Insured. In the event that the Premises are damaged by fire or other casualty which is covered under insurance pursuant to the provisions of Section 11 above, Landlord shall restore such damage provided that: (i) insurance proceeds are available (inclusive of any deductible amounts) to pay substantially all of the cost of restoration; and (ii) in the reasonable judgment of Landlord, the restoration can be completed within three hundred sixty five (365) days after the date of the damage or casualty under the laws and regulations of the state, federal, county and municipal authorities having jurisdiction; provided, that if the remaining portion of the Premises is suitable for Tenant's continued use of the Premises, the three hundred sixty five (365) day limit shall not apply. Landlord shall use its best efforts to obtain the required approvals and permits as soon as reasonably possible after the occurrence of the event causing the need for the restoration. The deductible amount of any insurance coverage shall be paid by Tenant. If such conditions apply so as to require Landlord to restore such damage pursuant to this Section 19.1, this Lease shall continue in full force and effect, unless otherwise agreed to in writing by Landlord and Tenant. Tenant shall be entitled to a proportionate reduction of Rent at all times during which Tenant's use of the Premises are interrupted, such proportionate reduction to be based on the extent to which the damage and restoration efforts interfere with Tenant's business in the Premises, as long as the Landlord is equally compensated for such reduction by proceeds of rental value insurance if such insurance is required to be carried by Tenant in accordance with the provisions of Section 11.4 above for the term of such insurance. Tenant's right to a reduction of Rent hereunder shall be Tenant's sole and exclusive remedy in connection with any such damage.

19.2 Damage - Uninsured. In the event that the Premises is damaged by a fire or other casualty and Landlord is not required to restore such damage in accordance with the provisions of Section 19.1 immediately above, Landlord shall have the option to either (i) repair or restore such damage, with the Lease continuing in full force and effect, but Rent to be proportionately abated as provided in Section 19.1 above; or (ii) give notice to Tenant at any time within thirty (30) days after the occurrence of such damage terminating this Lease as of a date to be specified in such notice which date shall not be less than thirty (30) nor more than sixty (60) days after the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Rent, reduced by any proportionate reduction in Rent as provided for in Section 19.1 above, shall be paid to the date of such termination as long as the Landlord is equally compensated for such reduction by proceeds of rental value insurance if such insurance is required to be carried by Tenant in accordance with the provisions of Section 11.4 above for the term of such insurance. Notwithstanding the foregoing, if Tenant delivers to Landlord the funds necessary to make up the shortage (or absence) in insurance proceeds and the restoration can be completed in a three hundred sixty five (356) day period, as reasonably determined by Landlord, Landlord shall restore the Premises as provided in Section 19.1 above.

19.3 End of Term Casualty. Notwithstanding the provisions of Sections 19.1 and 19.2 above, either Landlord or Tenant may terminate this Lease if the Premises is damaged by fire or other casualty (and Landlord's reasonably estimated cost of restoration of the Premises exceeds ten percent (10%) of the then replacement value of the Premises) and such damage or casualty occurs during the last twelve (12) months of the Term of this Lease (or the Term of any option for an

Extended Term, if applicable) by giving the other notice thereof at any time within thirty (30) days following the occurrence of such damage or casualty. Such notice shall specify the date of such termination which date shall not be less than thirty (30) nor more than sixty (60) days following the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Rent shall be paid to the date of such termination. Notwithstanding the foregoing to the contrary, Landlord shall not have the right to terminate this Lease if damage or casualty occurs during the last twelve (12) months of the Term if Tenant timely exercises its option for an Extended Term pursuant to Section 2.2 of this Lease within twenty (20) days after the date of such damage or casualty.

19.4 **Termination by Tenant.** In the event that the destruction to the Premises cannot be restored as required herein under applicable laws and regulations within three hundred sixty-five (365) days of the damage or casualty, notwithstanding the availability of insurance proceeds, Tenant shall have the right to terminate this Lease by giving Landlord notice thereof within thirty (30) days of date of the occurrence of such casualty specifying the date of termination which shall not be less than thirty (30) days nor more than sixty (60) days following the date on which such notice of termination is given. In the event of the giving of such notice of termination, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Rent, reduced by any proportionate reduction in Rent as provided for in Section 19.1 above, shall be paid to the date of such termination.

19.5 **Restoration.** Landlord agrees that, in any case in which Landlord is required to, or otherwise agrees to restore the Premises, that Landlord shall proceed with due diligence to make all appropriate claims and applications for the proceeds of insurance and to apply for and obtain all permits necessary for the restoration of the Premises. Landlord shall restore the Premises to the condition existing prior to the date of the damage if permitted by applicable law. Landlord shall not be required to restore alterations made by Tenant, Tenant's trade fixtures, and Tenant's personal property, such excluded items being the sole responsibility of Tenant to restore provided, however, that Landlord shall, to the extent of available insurance proceeds, restore improvements to the Premises made by Tenant.

19.6 **Waiver.** Tenant waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) with respect to any destruction of the Premises.

20. Condemnation.

20.1 **Definitions.** The following definitions shall apply: (1) "**Condemnation**" means (a) the exercise of any governmental power of eminent domain, whether by legal proceedings or otherwise by condemnor, or (b) the voluntary sale or transfer by Landlord to any condemnor either under threat of condemnation or while legal proceedings for condemnation are proceeding; (2) "**Date of Taking**" means the date the condemnor has right to possession of the property being condemned; (3) "**Award**" means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation; and (4) "**condemnor**" means any public or quasi-public authority, or private corporation or individual, having power of condemnation.

20.2 Obligations to be Governed by Lease. If during the Term of the Lease there is any Condemnation of all or any part of the Premises, the rights and obligations of the parties shall be determined strictly pursuant to this Lease. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial Condemnation of the Premises.

20.3 Total or Partial Taking. If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking. If any portion of the Premises is taken by Condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving notice to Landlord within thirty (30) days after the nature and extent of the Condemnation have been finally determined. If Tenant elects to terminate this Lease, Tenant shall also notify Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the Date of Taking if the Date of Taking falls on a date before the date of termination as designated by Tenant. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect, on the Date of Taking the Rent shall be reduced by an amount in the same ratio as the total number of square feet in the building(s) which are a part of the Premises taken bears to the total number of square feet in the building(s) which are a part of the Premises immediately before the Date of Taking. Any Award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such Award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any compensation separately awarded to Tenant for Tenant's relocation expenses and/or loss of Tenant's trade fixtures, and for the value of the leasehold interest represented by this Lease.

20.4 Landlord's Power to Sell in Lieu of Condemnation. Landlord may, without any obligation or liability to Tenant and without affecting the validity or continuation of this Lease other than as expressly provided in this Article, agree to sell or convey to the condemnor, without first requiring that an action or proceeding for condemnation be instituted or tried, the portion of the Premises sought by the condemnor free from this Lease and the rights of Tenant in the Premises other than as provided in this Article, including without limitation, the rights of Tenant under Section 20.3 above; provided however, Landlord's rights under this Section 20.4 are expressly conditioned upon Landlord providing Tenant with prior written notice of its intent to exercise its rights under this Section 20.4 which notice shall include information regarding the proposed terms affecting Tenant and Tenant shall have a period of thirty (30) days to approve or disapprove of such transfer. In the event Tenant timely disapproves, Landlord shall not have the right to proceed with the sale to the condemnor.

21. Holding Over. Any holding over after the expiration of the Term shall be a tenancy from month to month. The terms, covenants and conditions of such tenancy shall be the same as provided herein, except that the Rent shall be one hundred ten percent (110%) of the Rent in effect immediately prior to the commencement of such holding over. Acceptance by Landlord of Rent after such expiration shall not result in any other tenancy or any renewal of the Term of this Lease, and the

provisions of this Section 21 are in addition to and do not affect Landlord's right of reentry or other rights provided under this Lease or by applicable law.

22. Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in the same condition in which the Premises were at the commencement of the term, except as repaired, rebuilt, restored, altered, replaced or added to as permitted or required by any provision of this Lease, and except for ordinary wear and tear. Subject to the terms and conditions of Section 8.1, within thirty (30) days following the expiration or termination of this Lease, Tenant shall remove from the Premises all property owned by Tenant and repair any damage caused by such removal. Property not so removed shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Premises. Tenant shall pay to Landlord on demand the reasonable cost of removing and disposing of such property (together with interest at the Default Rate from the date of demand). The provisions of this Section 22 shall survive the termination of this Lease.

23. Estoppel Certificates and Financial Statements. Within ten (10) business days following any written request which Landlord and Tenant may make from time to time, Tenant or Landlord, without any charge therefor, shall execute, acknowledge and deliver to the other a statement certifying: (a) the Commencement Date of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in the statement; and (e) such other reasonable matters requested by Landlord or Tenant. Landlord and Tenant intend that any statement delivered pursuant to this Section 23 may be relied upon by a mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein, or any financial institution, investment banker, underwriter or the counsel of each of the foregoing, providing credit or seeking capital for Tenant or Landlord. The failure of Landlord or Tenant to deliver any such statement within said ten (10) business day period shall constitute a material default, and the defaulting party shall indemnify and hold the other party harmless from and against any and all liability, loss, cost, damage and expense which such party may sustain or incur as a result of or in connection with the defaulting party's failure or delay in delivering such statement. In addition Landlord shall execute such commercially reasonable Landlord waiver adding to the lender of tenant right to enter the Premises whose such Lender's collateral.

24. Subordination and Attornment.

24.1 Subordination. Upon the written request of Landlord or any Mortgagee, Tenant will in writing subordinate its rights under this Lease to the lien of any mortgage or deed of trust now or hereafter in force against the Premises, and to all advances made or hereafter to be made upon the security thereof, and to all extensions, modifications and renewals thereunder. Tenant shall also, upon Landlord's request, subordinate its rights hereunder to any ground or underlying lease which may now exist or hereafter be executed affecting the Premises and/or the underlying land. Tenant shall have the right to condition its subordination upon the execution and delivery of an attornment and non-disturbance agreement, as described in Section 24.2, between the Mortgagee or the lessor under any such ground or underlying lease and Tenant.

24.2 Attornment and Non-Disturbance. Upon the written request of the Landlord or any Mortgagee or any lessor under a ground or underlying lease, Tenant shall attorn to any such Mortgagee or beneficiary, provided such Mortgagee or lessor agrees that if Tenant is not in material default under this Lease, Tenant's possession of the Premises in accordance with the terms of this Lease shall not be disturbed. Such agreement shall provide, among other things, (a) that this Lease shall remain in full force and effect, (b) that Tenant pay rent to said Mortgagee or lessor from the date of said attornment, (c) that said Mortgagee or lessor shall not be responsible to Tenant under this Lease except for obligations accruing subsequent to the date of such attornment, and (d) that Tenant, in the event of foreclosure or a deed in lieu thereof or a termination of the ground or underlying lease, will enter into and will have the right to, a new lease with the Mortgagee, lessor or other person having or acquiring title on the same terms and conditions as this Lease and for the balance of the Term including the right to exercise any remaining options for the Extended Term. Within a reasonable time after the Commencement Date, Landlord shall provide Tenant with a commercially reasonable form of Subordination, Nondisturbance and Attornment Agreement executed by Landlord and any Mortgagee providing that Tenant's occupancy of the Premises will not be disturbed as provided above.

24.3 Nonmaterial Amendments. If any lender should require any nonmaterial modification of this Lease as a condition of loans secured by a lien on the Premises, or the land underlying the Premises, or if any such nonmaterial modification is required as a condition to a ground or underlying lease, Tenant will approve and execute any such modifications, promptly after request by Landlord provided no such modification shall relate to the net effective rent payable hereunder, the length of the Term or otherwise materially change the rights or obligations of Landlord or Tenant.

25. Waiver. If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of the term, covenant or condition itself or a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. Furthermore, the acceptance of rent by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such rent. Failure by either Landlord or Tenant to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or to decrease the right to insist thereafter upon strict performance by the nonperforming party. Waiver by either party to this Lease may only be made by a written document signed by the waiving party.

26. Attorneys' Fees. In the event that any action or proceeding (including arbitration) is brought to enforce or interpret any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such action or proceeding (whether after trial or appeal) shall be entitled to recover from the party not prevailing its expenses therein, including reasonable attorneys' fees and all allowable costs.

27. Notices. All notices, requests or demands to a party hereunder shall be in writing and shall be given or served upon the other party by personal service, by certified return receipt requested or registered mail, postage prepaid, or by Federal Express or other nationally recognized commercial courier, charges prepaid, addressed as set forth below. Any such notice, demand, request or other communication shall be deemed to have been given upon the earlier of personal delivery thereof,

three (3) business days after having been mailed as provided above, or one (1) business day after delivery to a commercial courier for next business day delivery, as the case may be. Notices may be given electronically by facsimile or email and shall be effective upon the transmission of such notice provided that the notice is transmitted on a business day and a copy of the notice indicating the date and time of transmission is sent no later than the immediately succeeding business day by recognized overnight carrier for next business day delivery. Each party shall be entitled to modify its address by notice given in accordance with this Section 27.

If to Landlord: Hassen Imports Partnership
100 North Barranca Avenue
Suite 900
West Covina, CA 91791

With a copy to: **[Stutman, Treister & Glatt
1901 Ave of the Stars
Suite 1200
Los Angeles, CA 90067
Attn: Theodore B. Stolman, Esq.]**

OR

**[Sulmeyer Kupetz PC
333 S Hope Street
35th Floor,
Los Angeles, CA 90071]
Attn: _____]**

If to Tenant: Carlos Hidalgo
7847 Prospect Court
Granite Bay, CA 95746

With a copy to: Lawrence W. Miles, Jr.
The Miles Law Firm,
A Professional Corporation
3838 Watt Ave., #301
Sacramento, Ca. 95821

28. Merger. Notwithstanding the acquisition (if same should occur) by the same party of the title and interests of both Landlord and Tenant under this Lease, there shall not be a merger of the estates of Landlord and Tenant under this Lease, but instead the separate estates, rights, duties and obligations of Landlord and Tenant, as existing hereunder, shall remain unextinguished and continue, separately, in full force and effect until this Lease expires or otherwise terminates in accordance with the express provisions herein contained.

29. Defined Terms and Headings. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in neuter gender include the feminine and

masculine, where applicable. If there is more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several. The headings and titles to the sections and paragraphs of this Lease are used for convenience only and shall have no effect upon the construction or interpretation of this Lease.

30. Time and Applicable Law. Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by and interpreted in accordance with the laws of the State of California.

31. Successors and Assigns. Subject to the provisions of Section 12 and the limitation expressed below, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties hereto. However, the obligations imposed on Landlord under this Lease shall be binding upon Landlord's successors and assigns only with respect to obligations arising during their respective periods of ownership of the Premises.

32. Entire Agreement. This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or Tenant or understandings made between the parties other than those set forth in this Lease and its exhibits.

33. Severability. If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

34. Signs. Tenant shall have the exclusive right, at its own cost and expense, to install and affix to the Premises such signs (the "Signs") as Tenant may desire. The location, construction, size and appearance of the Signs shall comply with all applicable laws, ordinances and regulations and the requirements of any governmental agency or authority having jurisdiction thereof. The Signs shall remain the property of Tenant and may be removed by Tenant at any time provided that Tenant, at its expense, shall repair any damage caused by reason of such removal and shall restore the Premises to its original condition. Tenant shall, at its own expense, maintain the Signs in good condition and working order, shall comply with all laws, ordinances and regulations with respect thereto (including the requirements of any governmental agency or authority having jurisdiction thereof), and shall pay for all utility service to the Signs. Upon the expiration of the Term or earlier termination of this Lease, or upon the vacation of the Premises by Tenant, Tenant shall remove the Signs, shall repair any damage caused by reason of such removal and shall restore the Premises to its original condition, all at Tenant's sole cost and expense.

35. Memorandum of Lease. Landlord and Tenant agree that a Memorandum of Lease, in a form reasonably acceptable to both Landlord and Tenant, shall be recorded at the request of either party.

36. Construction. All provisions hereof, whether covenants or conditions, shall be deemed to be both covenants and conditions. The definitions contained in this Lease shall be used to interpret

the Lease. All rights and remedies of Landlord and Tenant shall, except as otherwise expressly provided, be cumulative and non-exclusive of any other remedy at law or in equity.

37. Consent. Whenever in this Lease the consent of a party is required to any act by or for the other party, such consent shall not be unreasonably withheld or delayed.

38. Liability to Perform. This Lease and the obligations of Tenant or Landlord hereunder as the case may be, shall not be affected or impaired because the other party is unable to fulfill any of its obligations hereunder, other than the payment of money, or is delayed in doing so, if such inability or delay is caused by reason of force majeure, strike, labor troubles, acts of God, acts of government, unavailability of materials or labor, or any other cause beyond the control of such other party.

39. Corporate Authority. Each individual executing this Lease on behalf of Tenant represents and warrants that Tenant is duly incorporated, in good standing and qualified to do business in California, and that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that he or she will deliver appropriate certification to that effect if requested.

40. Quiet Enjoyment. So long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises for the Term, subject to all the terms and conditions of this Lease and all liens and encumbrances prior to this Lease.

41. Amendment. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification.

42. Review. The Landlord and Tenant acknowledge that each has had its counsel review this Lease and hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or in any amendments or exhibits hereto.

43. Effect of Default on Options to Extend Term.

43.1 Tenant shall have no right to exercise an option for an Extended Term (i) during the period commencing with the giving of any notice of default and continuing until said Default is cured, (ii) during the period of time any Base Rent is unpaid (without regard to whether written notice thereof is given Tenant), or (iii) any of the occurrences set forth in (i) or (ii) above, shall have occurred with respect to any of the Related Garvey Avenue South Leases.

43.2 The period of time within which an option for an Extended Term may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise an option for an Extended Term because of the provisions of Section 43.1 above.

43.3 If the Lease is deemed terminated under California law, any unexercised option for an Extended Term shall terminate and be of no further force and effect.

44. Guaranty. The obligations of Tenant hereunder and each of the Related Garvey Avenue South Leases during the Initial Term shall be personally thereof guaranteed by Carlos Hidalgo who shall execute and deliver to Landlord a Guaranty of Lease attached hereto as Exhibit B concurrently with the execution of the Lease by Tenant.

45. Non-Discrimination. The Tenant herein covenants by and for itself, or its successors, executors, administrators and assigns, and all persons claiming under or through it and this Lease is made and accepted upon and subject to the following conditions:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises herein leased.”

Wherefore, Landlord and Tenant execute and deliver this Lease as of the day and year first above written.

Landlord:

[Hassen Imports Partnership, a California limited partnership

By: _____
Name: Ziad Alhassen
Title: President, General Partner]

Tenant:

Carlos Hidalgo

By: _____
Name: _____
Title: _____

OR

[Hassen Imports Partnership, a California limited partnership

By: _____
Name: Howard M. Ehrenberg
Title: Solely in his capacity as Chapter 7 Trustee of the bankruptcy estate of Hassen Imports Partnership and not individually]

SCHEDULE 13.3

FORM OF GUARANTY

EXHIBIT "2"

WEST COVINA MOTORS, INC.

DbA: Clippinger Chevrolet

1932 East Garvey Avenue South, West Covina, CA 91791, Telephone (626) 339-6261, Fax (626) 331-7302

December 19, 2012

Chris Shane, Zone Manager
General Motors LLC
Dealer Contractual Group
Mail Code 482-A16-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

Re: **Transfer of the GM Dealership Established at
1932 East Garvey Avenue South, West Covina, CA 91791**

Dear Mr. Shane:

This letter has reference to that certain pending transaction pursuant to which West Covina Motors proposes to transfer its Chevrolet GM Dealership located at 1932 East Garvey Avenue South, West Covina, California 91791, to West Covina C, LLC dba West Covina Chevrolet (the "Transaction").

As GM is aware, West Covina Motors has been actively involved in the process of finding a qualified buyer for its Chevrolet franchise for an extended period of time. These efforts have culminated in the execution of a definitive Purchase Agreement pursuant to which West Covina C, LLC ("Purchaser") has agreed to acquire the subject franchise and enter into a long-term lease for the premises. The process of completing the Transaction has been an arduous one which is well known to GM. Both West Covina Motors and the Purchaser were surprised that GM approved the transfer in its letter dated November 29, 2012, which was only a couple of weeks after the Purchaser completed its application with GM. While the parties were obviously pleased with GM's prompt approval of the Transaction, year-end considerations including access to critical personnel are becoming an issue given the short period of time allotted to close the Transaction.

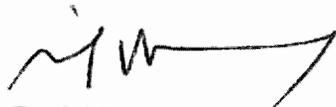
Although the parties have been working diligently to complete the Transaction by the required deadline of December 31, 2012, there is concern that there is insufficient time to satisfy all of the conditions required for a closing by the end of the year. Accordingly, we are requesting that GM grant a short extension through January 15, 2013, to close the Transaction. I want to personally assure you that I am committed to see this Transaction

Chris Shane, Zone Manager
General Motors LLC
December 19, 2012
Page 2

through to conclusion and will do everything in my power to make it happen. I know the Transaction is equally important to GM so that the dealership can promptly resume full activities at the earliest possible time. Accordingly, I believe that the short extension being requested ensures the best possible likelihood for an early and successful reopening of the Chevrolet Dealership under the ownership and management of the Purchaser.

Regards,

WEST COVINA MOTORS, INC.
Dba: Clippinger Chevrolet



Ziad Alhassen
President

Cc: Lawrence J. Lines, Esq.
Gregory R. Oxford, Esq.
Dale Sullivan
Michael J. Flanagan, Esq.
Theodore B. Stolman, Esq.

EXHIBIT "3"



General Motors LLC
Dealer Contractual Group
Mail Code 482-A16-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

CERTIFIED MAIL: 7007 0220 0000 5468 3000
RETURN RECEIPT REQUESTED

PERSONAL & CONFIDENTIAL

December 21, 2012

West Covina Motors, Inc.
dba Clippinger Chevrolet
1932 East Garvey Avenue South
West Covina, CA 91791-1910

Attention: Mr. Ziad Alhassen

This letter is written by General Motors LLC ("General Motors" or "GM") in response to your letter of December 19, 2012 and pursuant to the Stipulated Decision of the New Motor Vehicle Board dated December 15, 2010 ("Board Decision") which incorporated the terms of that certain Settlement and Deferred Termination Agreement and Release as of November 8, 2010 ("Settlement Agreement") by and between GM and West Covina Motors, Inc. ("WCM").

The Board Decision provided in pertinent part that if WCM timely submitted a complete proposal for the sale of its dealership assets to an unaffiliated party, and if GM approved the proposal, WCM and the proposed purchaser would have thirty days to close the proposed transaction and, if the transaction did not close within that thirty-day period, the Dealer Agreement between GM and WCM ("Dealer Agreement") would terminate automatically. See Settlement Agreement, Section 2.5 and 2.6.

WCM submitted a complete proposal for the sale of its dealership assets to West Covina C, LLC ("WCC") and GM approved the transaction in a letter dated November 29, 2012 that was delivered to WCM and its counsel the next day. Accordingly, pursuant to Sections 2.6 and 4.9 of the Settlement Agreement and Board Decision, the Dealer Agreement will terminate automatically if the proposed transaction does not close within thirty days of the day after WCM's receipt of notice of GM's approval of the transaction, *i.e.*, no later than Monday, December 31, 2012 (the deadline acknowledged in your letter of December 19, 2012).

Your letter of December 19, 2012 requests that GM extend the December 31, 2012 deadline for closing the proposed transaction to January 15, 2013, thereby implicitly acknowledging that the transaction will not close by December 31, 2012. There is, however, no assurance that the transaction, certain aspects of which require

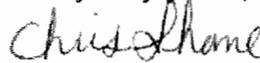
Page 2

Bankruptcy Court approval, will close by the extended deadline you have requested, or that it will ever close.

As you know, Clippinger Chevrolet has not conducted normal Chevrolet dealership operations for a full year now, and the resulting severe damage to GM's goodwill and the reputation of its products continues, to say nothing of lost new vehicle sales and the erosion of Chevrolet's position in the West Covina market. Under these circumstances, GM is not willing to grant the extension you have requested.

If the proposed WCC transaction does not close by December 31, 2012, WCM's GM Dealer Agreement will terminate by operation of law pursuant to the express terms of the Settlement Agreement and Board Decision.

Very truly yours,



Chris Shane
Zone Manager
General Motors LLC

c: Dealer Contractual Group
Michael J. Flanagan Certified Mail 7007 0220 0000 5468 3017

General Motors LLC
Dealer Contractual Group
100 Renaissance Ctr.
482-A16-C66
Detroit, MI 48265-1000

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™

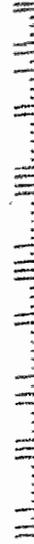


7007 0220 0000 5468 3000

Ziad Alhassen
Clippinger Chevrolet
1932 East Garvey Avenue South
West Covina, CA 91791-1910

CONFIDENTIAL

91791#1910 0053



PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10250 Constellation Boulevard, Suite 1700, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S OPPOSITION TO MOTION FOR ORDER CONFIRMING THAT AUTOMATIC STAY OF 11 U.S.C. § 362(a) DOES NOT BAR TERMINATION OF DEBTOR'S GENERAL MOTORS DEALER AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF ZIAD ALHASSEN IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **January 29, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**: On (*date*) **January 29, 2013**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **January 29, 2013**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Served by Personal Delivery
The Hon. Ernest M. Robles
United States Bankruptcy Court
255 East Temple Street
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 29, 2013
Date

Lourdes Cruz
Printed Name

/s/ Lourdes Cruz
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Todd M Arnold on behalf of Debtor West Covina Motors, Inc.
tma@lnbyb.com

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mjb@lnbrb.com

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Lisa M Peters on behalf of Creditor Chrysler Group LLC
lisa.peters@kutakrock.com

United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

Hatty K Yip on behalf of U.S. Trustee United States Trustee (LA)
hatty.yip@usdoj.gov

Exhibit L

1 GREGORY R. OXFORD (State Bar No. 62333)
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3 Torrance, California 90503
Telephone: (310) 316-1990
4 Facsimile: (310) 316-1330
Attorneys for Interested Party
5 General Motors LLC

6
7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**
11

12 In re:
13 WEST COVINA MOTORS, INC.,
14 Debtor.

Case No.: Case 2:12-bk-52197-ER
Chapter 11

**REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR
ORDER CONFIRMING THAT
AUTOMATIC STAY DOES NOT
BAR TERMINATION OF
DEBTOR'S GENERAL MOTORS
DEALER AGREEMENT
[11 U.S.C. § 362(j)]**

Date: February 12, 2013
Time: 10:00 a.m.
Courtroom 1568
Honorable Ernest M. Robles

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23 General Motors LLC ("GM") respectfully submits this memorandum in reply to
24 the Debtor's Opposition to Motion Confirming That Automatic Stay of 11 U.S.C. § 362(a)
25 Does Not Bar Termination of Debtor's General Motors Dealer Agreement ("Opp").
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1 **PRELIMINARY STATEMENT**

2 The Opposition is a monument to form over substance, and provides none of the
3 latter in support of the Debtor's position. It merely presages another last ditch, meritless
4 attempt to sell the supposed "good will" of a dealership that has been *shut down* for the
5 last year, and for 3-1/2 of the last 4-1/2 years. That enterprise "survives" only as a ghost
6 town – an empty but shiny beacon astride the I-10 freeway that daily deepens the damage
7 to GM, the Chevrolet brand and Chevrolet customers in the West Covina area. At some
8 point the prolonged procedural entanglements that have permitted the Debtor to
9 perpetuate this thoroughly unsatisfactory state of affairs must end. That point is now.

10 **RESPONSE TO FACTS ASSERTED BY THE DEBTOR**

11 There is little if any dispute about the material facts leading up to Debtor's failure
12 to close the GM-approved "buy-sell" transaction with West Covina C, LLC (an affiliate of
13 YTransport, hereinafter "WCC-Y") by the December 31, 2012 deadline. *See* Opp., page
14 4, line 20 through page 7, line 15. The only issue concerns a point on which the Debtor's
15 new counsel may simply be confused. Contrary to the Debtor's statement (Opp., page 9,
16 lines 25-28), GM's assertion that the Dealer Agreement has terminated is *not* "largely
17 premised" *on section 2.3* of the Settlement Agreement and Stipulated Decision.

18 To be sure, section 2.3 did provide that the Dealer Agreement would automatically
19 terminate absent satisfaction of certain conditions by November 12, 2012, but the Debtor
20 satisfied those conditions by submitting a complete buy-sell proposal on November 12,
21 2012. Thus, GM's motion does not rely on section 2.3, *but instead rests on a second,*
22 *parallel automatic termination provision:* under *section 2.6*, if GM approves a "buy-sell"
23 proposal under section 2.5, as it did, the transaction must close within thirty days after the
24 day after the Debtor receives notice of the approval, *see* section 4.9, and if it does not
25 close by that deadline (December 31, 2012) the Debtor "agrees that its Dealer Agreement
26 will terminate voluntarily" and "agrees not to protest said voluntary termination pursuant
27 to section 3060 of the Vehicle Code or file any other litigation of any nature whatsoever
28 concerning termination of the Dealer Agreement." Oxford Decl., Exh. J. It is undisputed

1 that the WCC-YTransport sale did not close by the deadline. Thus, just as would have
2 been the case if the Debtor had not satisfied the conditions of section 2.3, the Debtor's
3 failure to satisfy the conditions of section 2.5 and 2.6 resulted in automatic termination of
4 the Dealer Agreement by operation of law as soon as the deadline passed. *See* Second
5 Board Order (Oxford Decl., Exh. N), p. 18 (quoted at Opp., page 6).

6 The Debtor complains that GM did not "act in good faith" when it declined to
7 extend the December 31, 2012 deadline. Nonsense. First, GM was merely standing on its
8 adjudicated rights embodied in the Settlement Agreement *and Stipulated Board Decision*,
9 which it of course had no unilateral ability to amend. Second, the Debtor cites no
10 authority – and GM believes there is none – that alleged "lack of good faith" could
11 somehow limit GM's right to enforce the Debtor's obligations under the decision of an
12 administrative agency with unquestioned jurisdiction of the subject matter. Further, as is
13 apparent from the *January 26, 2012* Asset Purchase Agreement – and from subsequent
14 extended proceedings in this Court in the Hassen Imports Partnership case – the Debtor
15 and HIP had *more than eleven months* to negotiate and close the sale transaction with
16 WCC-Y. The fact that, after GM approved the sale, the Debtor and WCC-Y after nearly a
17 year of negotiations and due diligence were not ready (or, in the case of WCC-Y, not
18 willing) to close in no way diminishes GM's right to enforce the Debtor's agreement to
19 voluntarily terminate the Dealer Agreement pursuant to the Board's Decision.

20 ARGUMENT

21 **I. GM'S MOTION IS PROPERLY PRESENTED AS A CONTESTED MATTER**

22 Bankruptcy Rule 4001 reflects a policy favoring "expedited relief" when the
23 validity of a bankruptcy stay is challenged. Wade v. State Bar of Arizona, 115 B.R. 222,
24 230 (9th Cir. BAP 1990), *aff'd on other gds* 948 F.2d 1122 (9th Cir.1991). Thus, as
25 explained by the Advisory Committee, Rule 4001 "transforms with respect to the
26 automatic stay what was an adversary proceeding under the former rules" into a matter to
27 be determined on motion. The policy favoring expedited relief has obvious application
28

1 here, where the Debtor by filing bankruptcy is attempting to continue shutting Chevrolet
2 out of the important West Covina market.

3 The Opposition seeks to transmute GM's motion into a "declaratory judgment"
4 action that supposedly requires the filing of an adversary proceeding that, if required,
5 would enable the Debtor's continued stalling *for months* as the parties senselessly settled
6 the pleadings and briefed a motion for summary judgment in a case in which there will be
7 only one question – whether the WCC-Y transaction closed in time – with an indisputable
8 answer – it did not. But most importantly, the Debtor's argument collides head-on with
9 the express language of section 362. Section 362(c)(1) provides that "the stay of an act
10 against property of the estate under subsection (a) of this section continues *until such*
11 *property is no longer property of the estate*" (emphasis added). Then, in plain English,
12 section 362(j) states that "[o]n request of a party in interest, the court *shall issue* an order
13 under subsection (c) confirming that the automatic stay has been terminated." That is
14 exactly what GM is requesting that the Court do here – confirm the Dealer Agreement is
15 no longer "property of the estate." Assuming, without conceding, that the Debtor's
16 interest in the Dealer Agreement became "property of the estate" upon filing of the
17 petition on December 28, 2012, three days before the deadline to close the WCC-Y sale,¹
18 it ceased to be property of the estate, and the stay ended, once the Dealer Agreement

19 ¹ In reality, the Debtor's interest in the Dealer Agreement no longer qualified to be the
20 property of any potential bankruptcy estate no later than December 19, 2012, when the
21 Debtor's principal, Mr. Alhassen, wrote GM requesting an extension of the closing
22 deadline because there was "insufficient time ... for a closing by the end of the year."
23 Alhassen to Shane, December 19, 2012 (Opp., Exh. 2); *see also* Shane to Alhassen,
24 December 21, 2012 (Opp., Exh. 3) ("Your letter of December 16, 2012 requests that GM
25 extend the December 31, 2012 deadline for closing the proposed transaction to January
26 15, 2013, thereby implicitly acknowledging that the transaction will not close by
27 December 31, 2012"). And, of course, Mr. Alhassen has admitted in a sworn declaration
28 filed in this Court that a principal reason for the Debtor's filing of this bankruptcy case on
December 28, 2012 was that the WCC-Y Transport sale "*was not capable* of closing by
the end of the year." Oxford Decl., Exh. P, ¶¶ 14-15 (emphasis added). These statements
show an anticipatory breach that terminated the Dealer Agreement prior to bankruptcy.
As stated in Central Valley Gen. Hosp. v. Smith, 162 Cal.App.4th 501, 514 (2008),
"[w]hen a repudiation occurs before any breach by nonperformance," it excuse[s] the
nonoccurrence of a condition to a duty of the repudiating party." Thus, the Debtor's
December 19, 2012 admission that the sale would not close on time excused GM from
awaiting the December 31, 2012 closing deadline for termination to occur based on the
Debtor's admitted inability to comply with the condition set forth in section 2.6.

1 terminated by operation of law pursuant to the clear and unambiguous terms of sections
2 2.5 and 2.6 of the Settlement Agreement and Stipulated Decision.

3 The only case the Debtor cites in support of its claim that an adversary proceeding
4 is required, Johnson v. TRE Holdings (In re Johnson), 346 B.R. 190 (9th Cir. BAP 2006),
5 is plainly inapposite. There, as this Court may recall, the issue was the validity of so-
6 called *in rem* order entered in a prior bankruptcy case that purported to prevent the
7 automatic stay from attaching to the real property in question in any later bankruptcy case
8 filed within a specified period of time. In holding that a secured creditor in a second
9 bankruptcy case could not rely on the *in rem* order in the first case, and thus had to move
10 for relief from stay in the second case in order to foreclose, the BAP concluded that the
11 Bankruptcy Code did not authorize the *in rem* order at the time it was entered (prior to the
12 2005 Bankruptcy Code amendments that addressed the issue of repetitive bankruptcy
13 filings to defeat foreclosure and authorized *in rem* orders in some circumstances).

14 Out of this clearly inapposite factual situation, the Opposition dexterously lifts the
15 following out-of-context quotation from the BAP's opinion: "Under Federal Rules of
16 Bankruptcy Procedure, the determination of interests in property requires an adversary
17 proceeding." 346 B.R. at 195; Opp., pp. 10-11. This is sleight of hand. The very next
18 sentence makes it clear that this snippet was only addressing the question of whether the
19 bankruptcy court in a prior case could, without an adversary proceeding, make an *in rem*
20 ruling that would *prospectively* determine "interests in [the] property" in a second case:

21 "Thus, in a relief from stay motion [in the prior case] that is a *Rule 9014*
22 contested matter, not a *Rule 7001* adversary proceeding, the bankruptcy court
23 is not authorized by the rules of procedure to enter an 'in rem' order that
24 determines interests in property [for purposes of a later bankruptcy case]."

25 346 B.R. at 195. In other words, without an adversary proceeding, the bankruptcy court's
26 ruling in the first case was not valid and was not binding in the second case on those who
27 were not parties in the first case – a thoroughly sound and completely unremarkable
28

1 conclusion, but one that simply doesn't apply here where there is no issue about any order
2 in a previous case.

3 Moreover, if the sentence quoted out-of-context in the Opposition truly had the
4 broad application asserted by the Debtor, it would fly in the face of the reality that
5 bankruptcy courts decide every day on motion whether particular property is, or is not,
6 "property of the estate" and therefore either is, or is not, subject to the stay. After all,
7 section 362(j) by its terms requires nothing more than a "request" by a party in interest as
8 the predicate for an order finding the stay inapplicable, and the issuance of such an order
9 is *mandatory* when the stay no longer applies. *See id.* ("On *request* of a party in interest,
10 the court *shall issue* an order ... confirming that the automatic stay has been terminated")
11 (emphasis added).

12 Recognizing as much, the Opposition takes pains to distinguish the Wade case,
13 cited above, on the ground *inter alia* that the motion in that case for a determination that
14 the stay did not apply – which the BAP found procedurally proper – was paired with an
15 alternative motion for relief from the stay if it did apply. According to the Debtor, such a
16 paired motion for relief from stay is a *sine qua non* for the Court to decide on motion
17 rather than in an adversary proceeding whether the stay applies at all. *Opp.*, p. 11, n. 2.
18 The Wade panel, however, did not so limit its holding, and another reported case, not
19 cited by the Debtor, is directly on point in granting a motion for an order finding the stay
20 inapplicable *that was not filed in conjunction with a paired relief from stay motion*. In re
21 Torrez, 132 B.R. 924 (Bankr.E.D.Cal.1991), held that a motion for a "determination that
22 the automatic stay was inapplicable to the[] foreclosure of [certain] real property and that
23 the same was not property of the estate," *id.* at 930, was proper procedurally, saying this:

24 ***"Lawrence [a party-in-interest] suggests that a request to find the stay***
25 ***inapplicable may only attach to a request for relief from the stay and not be***
26 ***brought independently.*** Lawrence reasons that, as a motion for relief at this
27 juncture would be an act in futility since the foreclosure has already occurred,
28 Northwestern [a secured creditor] is compelled to proceed by way of adversary

1 proceeding as they seek a determination of the nature, extent and validity of
2 Northwestern’s interest in the property.”

3 *****

4 “*[The] motion seeks an order determining the stay legally invalid as to*
5 *a creditor or property. Moreover, in all motions for relief from the automatic*
6 *stay, the nature, extent, and validity of the creditor's interest are decided. It*
7 *is not necessary to determine these matters by an adversary proceeding.*

8 Therefore, consistent with the swiftness that the legislature deemed necessary
9 to advance the policies favoring expedited relief and this Court's authority to
10 grant relief by annulling the automatic stay, the Court finds and holds that a
11 request for such an order is a contested matter within the contemplation of *Rule*
12 *9014* and that this matter is appropriately before the Court as a motion. No
13 sound reason exists to require an adversary proceeding to determine that the
14 automatic stay is of no legal effect.”

15 132 B.R. at 931, 936 (emphasis added).

16 In support of this holding, Torrez quoted Wade, as follows:

17 “The [Arizona State] Bar's request for relief from the stay was a
18 contested matter that was properly commenced by a motion. *Bankruptcy Rules*
19 *4001(a)* and *9014*. The fact that the Bar alternatively contended that the stay
20 did not apply, did not change this into an adversary proceeding. Bankruptcy
21 courts regularly hear motions for relief from the stay where a party contends in
22 the alternative that the stay does not apply, but that if it does it should be lifted.
23 *The policies favoring expedited relief apply equally to such alternative*
24 *motions as to motions which request only that the stay be lifted.* Framing the
25 request for relief in such a manner, therefore, should not convert the dispute
26 into one which should be determined in an adversary proceeding.”

27 115 B.R at 230 (emphasis added). Here, too, there is no sound reason for requiring the
28 elaborate and time-consuming filing and processing of an adversary proceeding to find

1 what is indisputable based on the facts and law already before the Court: the WCC-Y
2 transaction did not close on time, so the Debtor's Dealer Agreement has terminated by
3 operation of law.

4 Contrary to the Debtor's assertion (Opp., p. 10), this determination does not depend
5 on "complex facts." The conditions set forth in section 2.5 and 2.6 of the Settlement
6 Agreement and Stipulated Decision are clear, and it is not disputed that the WCC-Y
7 transaction did not close by the December 31, 2012 deadline. As noted above, the
8 Debtor's attempt to inject issues about GM's alleged "lack of good faith" in advising the
9 Debtor that it expected compliance with the Settlement Agreement and Board Decision
10 has no legal basis so far as GM can determine, and the Debtor cites no case that so much
11 as suggests that GM's rights under the binding decision of the Board could be subject to
12 an alleged duty of "good faith." As for the Second Protest, which is based on a separate
13 termination notice citing the Debtor's failure for the better part of a year to conduct
14 customary dealership sales and service operations during normal business hours, GM
15 obviously was entitled to assert its legal rights under Article 14.5.3 of the Dealer
16 Agreement and to defend those rights *when the Debtor instituted protest litigation before*
17 *the Board challenging GM's termination rights*. In fact, GM's conduct in "continuing to
18 litigate the Second Protest over the 'going dark' issues" was not only legally permissible
19 but was absolutely privileged under section 47(b) of the California Civil Code, which
20 immunizes statements in judicial proceedings from tort liability. Silberg v. Anderson, 50
21 Cal.3d 205, 212 (1990); Sacramento Brewing Co. v. Desmond, Miller & Desmond, 75
22 Cal.App.4th 1082, 1089-90 (1999) (finding that filing in bankruptcy court was absolutely
23 privileged, even though it was factually incorrect, because it had "some connection or
24 logical relation" to the bankruptcy proceedings).

25 Finally, while it is not necessary for this Court to reach the issue now, GM is not
26 required to proceed before the Board and defeat the Debtor's Second Protest in order to
27 raise the "going dark" issue with this Court. That issue relates directly to the question of
28 whether there is an incurable default that would prevent the Debtor from assuming and

1 assigning the Dealer Agreement *separate and apart from the issue of whether the Dealer*
2 *Agreement terminated on December 31, 2012* pursuant to the terms of the Settlement
3 Agreement and Board Decision. Independent of any Board proceedings on the (now
4 stayed) Second Protest – and passing for the moment the mootness of the issue because
5 the Dealer Agreement has automatically terminated pursuant to the Board’s Decision –
6 this Court would be **required** to address the “going dark” issues to determine if there was
7 an incurable default in the event of a hearing on any motion for approval for an asset sale
8 that included the Debtor’s purported rights under the Dealer Agreement. In re Claremont
9 Acquisition Corp., 113 F.3d 1029, 1032-35 (9th Cir.1997).

10 **II. SECTION 108(b) NEITHER APPLIES NOR WOULD HELP THE DEBTOR**

11 The Debtor says section 108(b) of the Bankruptcy Code gives it “an additional 60
12 days from the petition date – until 2/26/13 – to close the YTransport transaction and the
13 Dealer Agreement cannot terminate or be terminated before that date.” Opp., p. 11.
14 Section 108(b), however, does not apply here, and would not prevent the inevitable
15 termination of the Dealer Agreement even if it did apply. Moreover, it could not be more
16 clear – contrary to the Debtor’s alternative argument – that section 108(b) cannot expand
17 the Debtor’s rights under the Settlement Agreement and Stipulated Decision by permitting
18 the Debtor to propose – let alone requiring GM to consider or approve – a second “buy-
19 sell” agreement with a party other than YTransport such as Mr. Hidalgo.

20 **A. Section 108(b) Does Not Apply Here**

21 By its terms, section 108(b) gives a trustee or debtor-in-possession a maximum
22 sixty-day extension of the time to “cure” or “perform” when “applicable nonbankruptcy
23 law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period
24 within which the debtor ... may file any pleading, demand, notice, or proof of claim or
25 loss, cure a default, or perform any other similar act....” By its express terms, therefore,
26 section 108(b) would apply in this case only if the Settlement Agreement and Stipulated
27 Decision fixed a period within which the Debtor could “cure a default” or perform an act
28 “similar” to curing a default.

1 Under the Settlement Agreement and Board Decision, the Debtor's failure to close
2 the proposed "buy-sell" transaction before the deadline was not a "default." That is
3 because the Debtors had the right, *but not the obligation*, to close the WCC-Y sale.
4 Because there was no "default," the Debtor had no right, after failing to satisfy the closing
5 conditions of sections 2.5 and 2.6, to avoid termination of the Dealer Agreement by
6 "curing a default" or performing any act "similar" to curing a default. To the contrary, the
7 parties agreed that the Dealer Agreement would terminate automatically if the GM-
8 approved buy-sell transaction did not close within the specified time period, and the
9 Settlement Agreement made no provision for any "cure" once the December 31, 2012
10 deadline passed. Without more, section 108(b) does not apply in this case.

11 By way of analogy, "[w]hen a debtor or a trustee fails to exercise or renew an
12 option by paying the agreed price, there is no contractual 'default' to be cured. The rights
13 that the debtor purchased for the price of the option have merely expired of their own
14 terms. There is no obligation to exercise or extend such an option, and thus no default
15 when further payment is not made." Good Hope Refineries, Inc. v. Benevides, 602 F.2d
16 998, 1003 (1st Cir.), *cert. denied* 442 U.S. 992 (1979). Here, the Debtor had a parallel
17 right, but not the obligation, to complete the WCC-Y sale transaction if it met certain
18 conditions. When it did not meet those conditions, its Dealer Agreement expired by
19 operation of law per the express terms of the Settlement Agreement and Stipulated
20 Decision. There was no "default," and thus no right to "cure" a default.

21 Similarly, in the case of an oil and gas lease that required payment of "delay rent"
22 in order to maintain the lease in force, the Bankruptcy Court held "there was no default"
23 when the debtor failed to pay "because debtor had no contractual duty to make delay-
24 rental payments." In re P.I.N.E., Inc., 52 B.R. 463, 469-70 (Bankr.W.D.Mich.1985).

25 To hold otherwise would expand the debtor's substantive rights in violation of the
26 cardinal principles that the Bankruptcy Code (1) "does not create or enhance property
27 rights of a debtor" or (2) prevent termination of a debtor's proprietary interest that expires
28 "by operation of an express condition." Fed. Aviation Admin. v. Gull Air Inc. (In re Gull

1 Air, Inc.), 890 F.2d 1255, 1261-62 (1st Cir.1989) (citations and footnote omitted); *accord*
2 Schokbeton Indus. v. Schokbeton Prods. Corp., 466 F.2d 171, 176 (5th Cir.1972) (“[T]he
3 principle is in all instances the same -- a contractual termination provision is unaffected by
4 the filing of a petition in bankruptcy and may be enforced against the trustee or debtor in
5 possession”).

6 **B. A Stay Until February 26, 2013 Would Not Help the Debtor Anyway**

7 Even supposing *arguendo* that section 108(b) extended the December 31, 2012
8 deadline by sixty days from the date the Debtor filed its petition (until February 26, 2013),
9 it would not help the Debtor.

10 First, there is no admissible evidence to support the Debtor’s assertion (Opp., p.
11 11) that “YTransport is still considering closing on the proposed transaction.” Instead, in
12 paragraph 18 of his declaration, Mr. Alhassen only offers conclusory statements that
13 “[t]he Debtor is still in contact with YTransport regarding the *potential* for YTransport to
14 close on the buy-sell agreement previously approved by GM” and that YTransport “has
15 *not definitively indicated* that it will not close on such transaction” (emphasis added). The
16 nature or content of the “contact” is not disclosed, and the fact that YTransport has not
17 said “no” in a “definitive” way is not evidence that it will say “yes,” or even that there is a
18 reasonable possibility that it would do so. In this regard, it speaks volumes that there is
19 not even the cursory expression of continuing interest from YTransport’s attorney that
20 was presented last December in the HIP case. *See* Declaration of W. Bruce Berkovich in
21 Support of Emergency Motion for Reconsideration of Ruling Converting Debtor’s Case to
22 Chapter 7, filed December 14, 2012, In re Hassen Imports Partnership (Dkt. 571).

23 Second, the Debtor’s current position meets itself going the other way: after
24 claiming in paragraph 14 of Mr. Alhassen’s declaration that thirty-two days was not
25 enough time to close the transaction in December 2012 due to the lack of expedited
26 approvals, the Debtor after the February 12 hearing would need to obtain the required
27 approvals in a period of time less than half as long. (And, contrary to the Debtor’s claim,
28 there is no evidence any relevant GM employee was unavailable before the deadline.)

1 Third, with only three weeks to go at this point, the Debtor has not begun to seek
2 the required approvals (1) from the City (of WCC-Y as the proposed new dealer), (2) from
3 this Court (of the asset sale by the Debtor to WCC-Y), or (3) from this Court and HIP's
4 trustee (of the necessary leases between WCC-Y and HIP).

5 Fourth, with the denial of the Debtor's motion for an order setting sale procedures
6 in connection with the proposed sale to Mr. Hidalgo, and with the recent filing of a
7 (persuasive) motion by the City asking the Court to convert this case to chapter 7 or, in the
8 alternative, appoint a trustee – a motion that is set for hearing on February 27, 2013 – it is
9 unrealistic to believe that the required approvals of the proposed YTransport transaction
10 by the City, the HIP Trustee and the Court would be forthcoming in any event until after
11 the Court decides who will be in control of the Debtor's bankruptcy case going forward,
12 which on the present schedule would not occur until after February 26, 2013, when any
13 limited stay provided by section 108(b) would expire.

14 Fifth, abundant case law holds that the 60-day extension provided by section 108,
15 assuming *arguendo* that section 108 applies here at all, is the only extension available to
16 debtors and is not subject to further extension. See Johnson v. First National Bank of
17 Montevideo, 719 F.2d 270, 278 (8th Cir.1983), *cert. denied* 465 U.S. 1012 (1984);
18 Goldberg v. Tynan (In re Tynan), 773 F.2d 177, 179-80 (7th Cir.1985). As explained in
19 Geron v. Valeray Realty Co. (In re Hudson Transfer Group, Inc.), 245 B.R. 456 (Bankr.
20 S.D.N.Y.2000):

21 “The majority of the courts that have considered this issue have
22 concluded that the court cannot utilize its powers under §105(a) to extend the
23 [section 108] cure period, at least in the absence of some wrongdoing by the
24 non-debtor party. This view is premised upon the principle that although a
25 bankruptcy court's equitable powers under §105 are broad, they cannot be
26 exercised in a manner inconsistent with other provisions of the Bankruptcy
27 Code. Section 108(b) specifically addresses the duration of any extension of
28 the debtor's right to cure a default under applicable non-bankruptcy law.

1 Section 105(a) cannot, therefore, be used to frustrate Congress' unambiguous
2 intent to establish an extension of no more than sixty days."
3 245 B.R. at 459-60 (numerous citations omitted). Thus, any dispute over the applicability
4 of section 108(b) in this case may be mooted very soon by events that appear to be all but
5 inevitable.

6 Finally, of course, there is the filing *yesterday* of a motion for approval of a
7 proposed asset sale to Mr. Hidalgo, which obviously is inconsistent with the existence of
8 an active sale to WCC-Y.

9 **C. The Debtor Has No Right To Propose a Second Buy-Sell Transaction**

10 The Debtor finally makes the remarkable claim that Section 2.6 would permit the
11 closing of the proposed transaction with Mr. Hidalgo "even with the denial of the Bid Pro
12 Motion" because the Hidalgo transaction "is on essentially the same terms" as the WCC-
13 Y transaction that GM approved, and that GM could not reasonably reject Mr. Hidalgo as
14 the proposed dealer-operator under Cal. Veh. Code §11713.3(d)(1), (e). Opp., pp. 11-12.

15 Seriously? Under the Settlement Agreement and Stipulated Decision, GM and the
16 Debtor agreed that the Debtor would have very specific rights in the event it lost its \$3
17 million dedicated Chevrolet floor plan financing. It could either (1) re-establish the
18 required floor plan financing within ninety days of the loss of its initial floor plan
19 financing or (2) submit a proposed "buy-sell" transaction for GM's approval, also within
20 the same ninety-day period. The deadline for satisfying these conditions – either getting
21 new flooring *or proposing a buy-sell transaction* – was November 12, 2012, as the
22 Debtor acknowledges. Opp., p. 6. In the latter event, sections 2.5 and 2.6 provided that,
23 once approved by GM, the Debtor had the right (but not the obligation) to close the
24 proposed sale transaction within approximately thirty days. The agreement does not
25 provide the Debtor with any right – for obvious reasons – to "cure" by proposing a
26 second, separate "buy-sell" transaction to GM in the event that the first approved buy-sell
27 transaction (with WCC-Y in this case) does not close within thirty days. To the contrary,
28 the deadline for submitting buy-sell proposals passed more than six weeks before the

1 December 31, 2012 closing deadline. And section 2.6 is specific in providing that, absent
2 a timely closing of the first GM-approved transaction, the Debtor would terminate the
3 Dealer Agreement voluntarily and not file any legal challenge to the agreed termination.

4 Moreover, if it matters (which it probably does not), the factual predicate for the
5 Debtor's argument has not been established. The Hidalgo transaction is *not* essentially on
6 the same terms as the WCC-Y transaction, inasmuch as the proposed dealer-operator is
7 different (Mr. Hidalgo), as is the source of the necessary and very significant financial
8 commitment (formerly to be provided by YTransport and York Capital Management, a
9 very substantial hedge fund, and now to be provided by Ally Financial pursuant to a non-
10 binding term sheet). Although the Debtor *yesterday* moved for approval of the proposed
11 asset sale to Mr. Hidalgo, GM has not received an application or complete proposal from
12 the parties to the proposed transaction and therefore currently has no basis for evaluating,
13 let alone approving that transaction, even if it had a contractual obligation to consider
14 such a proposal, which it clearly does not. There is, therefore, no factual basis whatsoever
15 for the Debtor's assertion that GM "could not reasonably reject" Mr. Hidalgo or the other
16 terms of the proposed transaction. To the contrary, GM's obligation, if any, to consider or
17 approve any proposed sale to Mr. Hidalgo depends not only on the continued vitality of
18 the Debtor's Dealer Agreement – which has expired – but also on the submission of
19 detailed information – required both by Articles 12.2.1, 12.2.2 and 12.2.3 of the Dealer
20 Agreement and by Veh. Code § 11713.3(d) – which has not been submitted and therefore
21 cannot be evaluated.²

22
23
24 ² Separately, of course, GM contends that the Dealer Agreement could not be assumed
25 and assigned to Mr. Hidalgo under Bankruptcy Code section 365 due to the Debtor's
26 incurable default in "going dark" for the better part of a year. Although the Debtor and
27 Mr. Alhassen claim to dispute the existence of such a default, neither their opposition nor
28 their memorandum and Mr. Alhassen's declaration in support of the proposed asset sale to
Mr. Hidalgo includes any *evidence* contrary to GM's showing in the Navari Declaration
and its Exhibits or to the HIP trustee's statements to the Court at the January 24, 2013
hearing that he saw no indication of any active business activity at the dealership site
during two inspections of it.

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CONCLUSION

For all the foregoing reasons, GM respectfully requests that the Court grant its motion in all respects.

DATED: February 5, 2013

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: [s] Gregory R. Oxford
Gregory R. Oxford
Attorneys for Interested Party
General Motors LLC

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

21515 Hawthorne Blvd., Suite 950
Torrance, CA 90503

A true and correct copy of the foregoing document entitled (*specify*): **Reply Memorandum in Support of Motion for Order Confirming that Automatic Stay Does Not Bar Termination of Debtor's General Motors Dealer Agreement** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **February 5, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Todd M Arnold** tma@lnbyb.com
- **Martin J Brill** mjb@lnrb.com
- **James H Broderick** Jbroderick@ssd.com, stephen.owens@ssd.com;christopher.petersen@ssd.com;juanita.vasquez@ssd.com;jordan.kroop@ssd.com
- **David I Brownstein** brownsteinlaw@gmail.com
- **Marina Fineman** mfineman@stutman.com
- **Ben G Gage** bgage@cookseylaw.com
- **Kim P. Gage** kgage@cookseylaw.com
- **Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
- **Mark S Hoffman** mshllh@aol.com
- **Daniel A Lev** dlev@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com
- **Halvor R Melom** halvor.r.melom@irsounsel.treas.gov
- **Krikor J Meshefejian** kjm@lnrb.com
- **Aram Ordubegian** ordubegian.aram@arentfox.com
- **Christine M Pajak** cpajak@stutman.com
- **Lisa M Peters** lisa.peters@kutakrock.com
- **United States Trustee (LA)** ustpregion16.la.ecf@usdoj.gov
- **Hatty K Yip** hatty.yip@usdoj.gov

attached page

Service information continued on

1 **2. SERVED BY UNITED STATES MAIL:**

2 On (*date*), I served the following persons and/or entities at the last known addresses in this bankruptcy
3 case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the
4 United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here
5 constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the
6 document is filed.

7 Service information continued on
8 attached page

9 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL**

10 (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*)
11 **February 5, 2013**, I served the following persons and/or entities by personal delivery, overnight mail
12 service, or (for those who consented in writing to such service method), by facsimile transmission and/or
13 email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight
14 mail to, the judge will be completed no later than 24 hours after the document is filed.

15 **Board of Equalization:** P.O. Box 942879, Sacramento, CA 94279-0001

16 **Employment Development Department:** P.O. Box 826880, Sacramento, CA 94280-0001

17 **Franchise Tax Board Special Procedures:** POB 2952, Sacramento, CA 95812-2952

18 **Hassen Imports Partnership c/o H Ehrenberg Chapter & TTEE:** 333 South Hope Street, 35th Floor, Los
19 Angeles, CA 90071-1406

20 **LA County Tax Collector-Unsecured-** c/o Barry S. Glaser, Esq., 333 S. Hope Street, 36th Floor Los
21 Angeles, California 90071

22 **Los Angeles Treasurer and Tax Collector:** c/o Barry S. Glaser, Esq., 333 S. Hope Street, 36th Floor Los
23 Angeles, California 90071

24 **Hon. Ernest M. Robles**

25 United States Bankruptcy Court
26 Central District of California
27 Edward R. Roybal Federal Building and Courthouse
28 255 E. Temple Street, Suite 1560 / Courtroom 1568
Los Angeles, CA 90012

Service information continued on
attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 5, 2013

Date

Gwendolyn Oxford

Printed Name

[s] Gwendolyn Oxford

Signature

Exhibit M

1 ARNOLD M. ALVAREZ-GLASMAN (Bar No. 80095)
2 CITY ATTORNEY OF THE CITY OF WEST COVINA
3 ALVAREZ-GLASMAN & COLVIN
4 13181 Crossroads Parkway North
5 Suite 400 – West Tower
6 City of Industry, CA 91746
7 Telephone: (562) 699-5500
8 aglasman@agclawfirm.com

9 STEPHEN T. OWENS (Bar No. 82601)
10 JORDAN A. KROOP (Admitted *Pro Hac Vice*)
11 CHRISTOPHER J. PETERSEN (Bar No. 251439)
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13 555 South Flower Street, 31st Floor
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15 Telephone: (213) 624-2500
16 stephen.owens@squiresanders.com
17 jordan.kroop@squiresanders.com
18 christopher.petersen@squiresanders.com

19 Attorneys for Creditor
20 CITY OF WEST COVINA, on its own behalf and as successor to
21 the City of West Covina Community Development Commission

22 UNITED STATES BANKRUPTCY COURT
23 CENTRAL DISTRICT OF CALIFORNIA
24 LOS ANGELES DIVISION

25 In re
26 WEST COVINA MOTORS, INC.,
27 Debtor.

Chapter 11
Case No.: 2:12-bk-52197-ER

**ORDER ON THE CITY'S MOTION UNDER
11 U.S.C. § 1112(b) TO CONVERT CASE TO
ONE UNDER CHAPTER 7 OR, IN THE
ALTERNATIVE, FOR THE APPOINTMENT
OF A TRUSTEE UNDER 11 U.S.C. § 1104(a)
[DKT. NO. 86]**

Hearing Information

Date: February 27, 2013
Time: 1:30 p.m.
Courtroom: 1568
255 East Temple Street
Los Angeles, CA 90012

FILED & ENTERED

MAR 04 2013

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

1 On February 27, 2013 at 1:30 p.m., in Courtroom 1568 of the above-captioned Court, the
2 *Motion Under 11 U.S.C. § 1112(b) to Convert Case to One Under Chapter 7 or, in the*
3 *Alternative, for the Appointment of a Trustee Under 11 U.S.C. § 1104(a)* [Dkt. No. 86]
4 (“Motion”) brought by Creditor the City of West Covina, on behalf of itself and as successor to
5 the City of West Covina Community Development Commission (“City”), was heard before the
6 Honorable Ernest M. Robles, United States Bankruptcy Judge.

7 Stephen T. Owens and Christopher J. Petersen of Squire Sanders (US) LLP appeared on
8 behalf of the City.

9 Martin J. Brill and Todd M. Arnold of Levene, Neale, Bender, Yoo & Brill LLP appeared
10 on behalf of Debtor West Covina Motors, Inc.

11 On February 26, 2013, the Court issued a tentative ruling regarding the Motion.

12 On February 27, 2013, the Court issued an amended tentative ruling regarding the Motion
13 [Dkt. No. 172] (the “Amended Tentative Ruling”).

14 After considering the papers filed in support of, and in opposition to, the Motion, as
15 specifically identified in the “Pleadings Filed and Reviewed For This Motion” section of the
16 Amended Tentative Ruling, and after hearing the argument of counsel for the City and the
17 Debtor, as well as the comments of other interested parties, the Court adopts its Amended
18 Tentative Ruling, a true and correct copy of which is attached hereto and incorporated herein, as
19 the order of the Court. Accordingly, the Court rules as follows:

20 **IT IS ORDERED THAT:**

21 The City’s Motion is GRANTED and the case is converted to one under Chapter 7.
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Approved as to form pursuant to Local Rule 9021-1(b)(3)(A):

/s/ Stephen T. Owens

Stephen T. Owens
Christopher J. Petersen

Squire Sanders (US) LLP
Counsel for Creditor
CITY OF WEST COVINA, on its own behalf
and as successor to the City of West Covina
Community Development Commission

/s/ Martin J. Brill

Martin J. Brill
Todd M. Arnold

Levene, Neale, Bender, Yoo & Brill LLP
Counsel for Debtor and Debtor in Possession
WEST COVINA MOTORS, INC.

LOSANGELES/356649.1

###

Date: March 4, 2013



Ernest M. Robles
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California**

**Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 27, 2013

Hearing Room 1568

1:30 pm

2:12-52197 West Covina Motors, Inc. Chapter 11
#104.00 Hearing: [86] Motion to Convert Case From Chapter 11 to 7. City of West
Covinas Motion Under 11 U.S.C. § 1112(b) to Convert Case to One Under
Chapter 7 or, in the Alternative, for the Appointment of a Trustee Under
11 U.S.C. § 1104(a) James)
Docket #: 86

Matter Notes:
2/27/2013

The tentative ruling will be the order.
POST PDF OF TENTATIVE RULING TO CIAO

Tentative Ruling:

2/26/2013: (AMENDED AFTER HEARING) Grant Motion. Case converted to chapter 7 and the United States Trustee shall appoint a case trustee forthwith.

Pleadings Filed and Reviewed for this Motion:

Motion under 11 U.S.C. § 1112(b) to Convert Case to One Under Chapter 7 or, in the
Alternative, for the Appointment of a Trustee under 11 U.S.C. § 1104(a) ("Motion")
(D.E. 86)
Request for Judicial Notice in Support of Motion (D.E. 87)
Declaration of Christopher J. Petersen in Support of Motion (D.E. 88)
Debtor's Opposition to Motion (D.E. 144)
Errata to Debtor's Opposition to Motion (D.E. 146)
UST's Response to Motion (D.E. 137)
Errata to UST's Response to Motion (D.E. 151)
Reply by City of West Covina to Debtor's Opposition (D.E. 159)
Request for Judicial Notice in Support of Reply (D.E. 160)
Declarations in Support of Debtor's Opposition to Motion (D.E. 166)
UST's Supplement re: Response to Motion to Convert (D.E. 170)

**United States Bankruptcy Court
Central District of California**

Los Angeles

Judge Ernest Robles, Presiding

Courtroom 1568 Calendar

Wednesday, February 27, 2013

Hearing Room 1568

1:30 pm

Cont.... West Covina Motors, Inc.

Chapter 11

Facts and Summary of Pleadings:

West Covina Motors, Inc. d/b/a Clippinger Chevrolet and Clippinger Chrysler Jeep Dodge (the “Debtor”) filed a voluntary petition under chapter 11 on December 28, 2012. Debtor is in the business of selling and servicing new Chevrolet, Chrysler, Jeep and Dodge vehicles and various models of previously owned vehicles. Debtor is related to Hassen Imports Partnership (“HIP”), which is a debtor in Case No. 11-42068 pending before this Court.

The Court herein considers the Motion of Creditor City of West Covina (the “City”) to Convert the Case to One Under Chapter 7 or, in the Alternative, for the Appointment of a Trustee Under § 1104(a) (the “Motion”). The City argues that “cause” exists to convert Debtor’s case under § 1112(b)(4)(A) based on the fact that Debtor is suffering a substantial and continuing loss to and diminution of its estate and has no reasonable likelihood of rehabilitation. The City further contends that “cause” exists to convert Debtor’s case under § 1112(b)(4)(B) based on the allegation that Debtor’s estate is being grossly mismanaged by the individual in control of the estate, Ziad Alhassen (“Alhassen”).

Section 1112(b)(4)(A) provides that “cause” includes “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). With regards to “substantial or continuing loss to or diminution of the estate,” the City alleges “losses continue to mount with each day that passes.” *Motion*, at 4. The City argues that Debtor “is generating no significant revenue,” stating that Debtor has sold only one new Chevrolet to a retail customer in the past year, in January 2012, has no current vehicle inventory for sale, has admitted that it has no ability to obtain financing with which to purchase any new vehicle inventory, and has “moribund” vehicle service departments. *Id.* at 11. The City further argues that the estate is suffering substantial and continuing losses because “Debtor has not paid its full rent due to HIP for several years and currently owes millions of dollars in unpaid rent,” Debtor has failed to pay its full rent since it filed its Chapter 11 petition, Debtor has failed to pay its property taxes and the interest and penalties accruing post-petition on the delinquent property taxes, and Debtor has failed to make adequate protection payments to the senior secured lender CorePointe. *Id.* at 11-13. Further, the City argues that the Debtor is using cash collateral without Court authority, having generated \$40,000 in income from a film production company that it has not reported to the Court. *Id.* at 13. Lastly, the City argues that “Debtor’s estate has incurred very substantial losses totaling approximately half a million dollars (by Mr. Alhassen’s own estimate)” as a result of the fact that Debtor’s premises “are in such a derelict condition that the criminal element is taking full advantage of the ‘ghost town’ character of the Chevrolet dealership” by

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burglarizing the premises at least three separate times in January 2013. *Id.* at 13.

The City argues that, with regards to the “absence of a reasonable likelihood of rehabilitation” under § 1112(b)(4)(A), the Debtor “is nothing but a hollow shell.” *Id.* at 17. “[T]he record is clear that it is pure fantasy that the Debtor would ever be able to rehabilitate itself, as evidenced by the facts that it is not economically or financially viable on its own and relies entirely on financial assistance from [an affiliated company] to stay afloat.” *Id.* at 15-16. “Debtor remains ‘in business’ in name only...[and] is an empty husk that has not done any appreciable business for a long time or paid its rent, its property taxes or even its employees, and cannot even secure its remaining physical assets.” *Id.* at 3-4.

In support of its argument under § 1112(b)(4)(B), the City alleges that “gross mismanagement” of the estate exists in that the management of the estate is “not designed to maximize benefit to the Debtor’s creditors.” *Id.* at 18. The City argues that Debtor has breached its fiduciary duties as a Chapter 11 debtor-in-possession by “enter[ing] into self-dealing, conflict of interest transactions with its affiliates, [HIP] and Clippinger Motors, Inc., in which the Debtor’s dealership assets would be sold in such a way that the primary beneficiary would be HIP and [Alhassen].” Further, Debtor’s failure to pay past-due rent and property taxes and to maintain adequate financing resulted in the filing by General Motors of a motion to confirm that the termination of Debtor’s agreement with General Motors would not violate the automatic stay. The City states that Debtor’s failure to secure the premises to avoid the recent thefts and failure to pay all of its employees constitute gross mismanagement.

In the alternative, on the same evidence of gross mismanagement, the City requests that a Chapter 11 Trustee be appointed under § 1104(a). *Id.* at 19.

In Opposition, the Debtor argues that “cause” does not exist for conversion of its case to one under Chapter 7. The Debtor argues that “cause” may be established only by evidence of post-petition circumstances, and that not only does the City rely primarily on pre-petition circumstances and conduct, but also that “[a]s to the allegations regarding post-petition conduct, some are outright false and others lack merit once subjected to examination.” *Opposition*, at 2. Additionally, Debtor argues that the City’s Motion is premature given that Debtor only filed for bankruptcy at the end of 2012. *Ibid.*

With regards to § 1112(b)(4)(A), the Debtor disputes the City’s allegations that losses are mounting. The Debtor states that it has paid its post-petition rent for the months of January and February 2013. *Id.* at 18. The Debtor further states that the contribution of the affiliated company Dighton (“Dighton”) toward payment of Debtor’s expenses does not constitute loss of diminution

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of the estate, but on the contrary represents a preservation of the estate. *Id.* at 17. Though it has not made adequate protection payments, the Debtor argues that this fact does not reflect any losses to the estate because the parties are working on a stipulation to address cash collateral and adequate protection issues, and until that time the Debtor has the consent of CorePointe to make payments with cash collateral for wages and other expenses, which Debtor is current on. *Ibid.* The Debtor also argues that “[w]hile a lack of inventory and flooring financing may limit income, it does not result in a substantial or continuing loss or diminution of the estate.” *Ibid.* The Debtor notes that it has not made any post-petition property taxes because none “have yet come due.” *Id.* at 19. Lastly, the Debtor argues that it has indeed taken action to prevent crime on the premises including changing locks, erecting barriers, and hiring security guards, and that “[i]n any event, the thefts will be covered by insurance and therefore do not amount to a substantial or continuing loss of the estate.” *Ibid.*

The Debtor disputes the City’s allegation that it has no reasonable likelihood of rehabilitation because “Debtor’s case has only been pending for one full month and, therefore, it is extremely early in the case to make final decisions as to whether there is an absence of a reasonable likelihood of rehabilitation.” *Ibid.* The Debtor notes that its failure to effectuate a sale of the Chevrolet dealership assets is “extremely unfortunate,” but does not mean that the Debtor cannot rehabilitate because Debtor is continuing its efforts to sell the Chrysler dealership assets. *Id.* at 20. Debtor notes that it “continues to operate its body shop and truck fabrication shop, which can be used to fund a plan,” and that if it appears that the Debtor will not be able to sell the Chrysler dealership, it “will seek to obtain floor plan financing.” *Ibid.*

The Debtor argues that “cause” does not exist under § 1112(b)(4)(B) because there has been no gross mismanagement of the estate. Again, the Debtor argues that the Court may only consider post-petition acts as evidence of gross mismanagement. With the City’s pre-petition evidence eliminated from consideration, the Debtor disputes the allegations of the City that Alhassen is acting to protect HIP and avoid the consequences of its conversion to Chapter 7. The Debtor argues that its Sales Procedures Motion reflected “his best efforts to realize value for the Debtor’s creditors.” *Id.* at 21. The Debtor further argues that, though its attempt to sell the Chevrolet dealership was thwarted by the Court’s determination that GM could terminate its agreement with the Debtor, “Alhassen cannot be said to have grossly mismanaged the estate. To the contrary, Mr. Alhassen exercised sound business judgment in seeking to effectuate the sale of the Chevrolet dealership assets.” *Id.* at 22. The Debtor argues that Alhassen is continuing efforts to sell the Chrysler dealership, continuing to operate the Debtor’s body shop and fabrication shop, and

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continuing to obtain the payment of substantial fees to the Debtor for the use of the Debtor's real estate to shoot commercials, all of which demonstrate that Debtor's estate is not being grossly mismanaged.

In the event that the Court finds "cause" to convert the case, the Debtor argues that it is entitled to rebut the evidence by demonstrating "unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate" pursuant to § 1112(b)(2). The Debtor argues that "unusual circumstances" exist that favor maintaining Debtor's Chapter 11 status because the Debtor's Chrysler dealership must remain in operation or there will be an incurable default that will prevent assumption and assignment of the Chrysler Dealer Agreement and "[i]t is doubtful that a Chapter 7 trustee would continue to operate the Chrysler dealerships, which would result in a substantial loss for the creditors of the estate." *Id.* at 23. For this reason the Debtor argues that dismissal is preferable to conversion as the best way to maximize return to creditors. Further, the Debtor argues that, pursuant to § 1112(b)(2) it has an opportunity to establish that a plan will be confirmed with a "reasonable period of time," and that reasonable period of time has not elapsed because the case was only filed in December 2012. *Id.* at 23-24. Lastly, the Debtor argues that it is entitled to the protection of § 1112(b)(2)(B) because there "exists a reasonable justification for the act or omission" alleged by the City. First, the Debtor notes that the alleged "failure to secure assets" is justifiable because there was "no reason to believe that the first theft would be followed by others." *Id.* at 24. Second, the Debtor notes that the alleged conflicts of interest between HIP and Debtor have been "cured" pursuant to §1112(b)(2)(B) by the appointment of a Chapter 7 Trustee in the HIP case.

On the same grounds, the Debtor argues that the City has not demonstrated "cause" to appoint a Chapter 11 Trustee.

The City filed a Reply to Debtor's Opposition in which it reasserts its argument that the estate is suffering continuing losses because "there is no assurance of any further financial support from Dighton" and provides a list of ten different sources of losses and diminution of the estate. *See Reply* at 4-13. The list provides as follows: 1) Substantial Loss Due to Termination of the Chevrolet Dealership Agreement; 2) Continuing Loss Due to Interest On Unpaid Income Taxes Owed to the IRS; 3) Continuing Loss Due to Interest On Unpaid Taxes Owed to the Employment Development Department; 4) Continuing Loss Due to Interest On Unpaid Sales and Use Taxes Owed to the California State Board of Equalization; 5) Continuing Loss Due to Interest and Penalties On Delinquent Real Property Taxes; 6) Continuing Loss Due to the Failure to Pay Post-Petition Real Property Taxes Due on February 1, 2013; 7) Continuing Loss Due to the Failure

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to Pay Interest Due On CorePointe's Floor Plan Loans; 8) Continuing Loss Due to Shortfall in Rents Paid by the Debtor; 9) Continuing Loss Due to the Accumulation of Unpaid Professional Fees; and 10) Losses Due to Three Post-Petition Burglaries. *See ibid.*

The City also argues that there is an absence of a reasonable likelihood of rehabilitation based on the Debtor's own assertions in its Opposition. The City characterizes the Debtor's arguments as to possible reorganization avenues as "inconsistent, indefinite and highly speculative proposals as to how it might proceed, with none of those proposals being supported by any evidentiary support whatsoever." *Reply*, at 13. Further, the City notes that "even the Debtor does not argue that its successful rehabilitation is likely. Instead, it admits that it doesn't know at this point whether it will even attempt rehabilitation." *Id.* at 14. The City quotes the Debtor's Opposition to support this assertion: "[T]he Debtor does not know whether its plan will be a liquidating or rehabilitation plan or some combination of the two." *Ibid.* (quoting *Opposition* at 26). With regards to the Debtor's argument that it had the consent of CorePointe to use cash collateral, the City argues that "that claim has been contradicted by CorePointe's counsel in his discussions with the City's counsel." *Id.* at 15. The City's Reply addresses the Debtor's argument that it is entitled to the protective provisions of §1112(b)(2): "There are no such 'unusual circumstances' here. Moreover, no creditor has filed any opposition to the conversion motion." *Ibid.* The City notes that Debtor's argument that a Chapter 7 trustee would likely cease operation of the Chrysler dealership is unavailing because Chrysler, in appearances and pleadings submitted to the Court, has already stated that "if [it] wished to terminate the agreement, it could do so at any time since the Debtor had already committed incurable defaults under the agreement." *Id.* at 16. "In other words, the Debtor's Chrysler dealership agreement is already at risk and faces as much risk of termination in a Chapter 11 as in Chapter 7." *Ibid.*

Lastly, the City's Reply disputes Debtor's assertion that dismissal is preferable to conversion because "[i]t would do nothing to enhance the value of the Debtor's assets or the likelihood of payment to any of the creditors." *Ibid.* On the contrary, the City argues that "an outright dismissal would be the worst possible outcome [because] it would simply turn the Debtor and its control[ling] parties free of any supervision by this Court or the [UST's] Office, with the certain outcome that they dedicate themselves to creating as much mischief and disruption as possible for the HIP Chapter 7 Trustee in his efforts to market and sell the HIP real estate." *Ibid.*

Debtor filed an untimely supplement on February 25, 2013 (D.E. 166), in which it provides the Declarations of twenty employees of the Debtor, who are also creditors of the estate. The Declarations are identical in form and content. Each declaration expresses an opposition to

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conversion on the grounds that the declarant and likely many others will lose their jobs.

The Court finds and concludes as follows:

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of “cause.” Section 1112(b)(4) provides a nonexclusive list of factors that constitute “cause,” which includes “(A) substantial and continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation” and “(B) gross mismanagement of the estate,” “(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public,” “(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter,” and “(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any).” 11 U.S.C. § 1112(b)(4)(A), (B), (C), (F) & (H).

An interested party may petition the bankruptcy court to convert or dismiss a Chapter 11 case for cause. 11 U.S.C. § 1112(b)(1). The moving party bears the burden of establishing that conversion or dismissal under § 1112(b) is in the best interests of the both the creditors and the estate. *In re Momentum Hospital II, LLC*, 418 B.R. 439, 411 (Bankr. M.D. Fla. 2009). Once the Court determines that cause exists, it is within the Court’s discretion whether to convert or dismiss the case, based on an examination of the particular case and the interests of the creditors.

The Court finds cause to convert the case under § 1112(b)(4)(A). The Court finds that the City has sufficiently demonstrated by way of its Motion, Reply and Declarations in Support thereof that the Debtor’s estate is suffering continuing losses. Even sustaining Debtor’s objection as to the introduction of pre-petition acts as evidence, the City’s demonstration that Debtor has failed to make full post-petition rental payments and post-petition interest and adequate protection payments constitute is sufficient to find that the estate is suffering substantial and continuing losses. *See Reply, Declaration of Howard M. Ehrenberg*.

Further, the Court notes that, even at this early point in the Debtor’s case, the totality of the circumstances demonstrates that Debtor does not have a reasonable likelihood of rehabilitation. First, the Court disagrees with Debtor that a determination as to the likelihood of rehabilitation is premature. *In re Johnston*, 149 B.R. 158, 162 (9th Cir. BAP 1992) (dismissal should be ordered at the outset if it appears that the debtor has no prospects of reorganizing). The Supreme Court has interpreted § 1112(b)(4)(A) as requiring that there be a “reasonable possibility of a successful reorganization within a reasonable time.” *United Sav. Ass’n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 376 (1988). Rehabilitation means that a debtor will be reestablished on secured financial basis, which implies establishing cash flow from which its current obligations can be met.

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In re Motel Props, Inc., 314 B.R. 889 (S.D. Ga. 2004). Courts have consistently understood “rehabilitation” to refer to the debtor’s ability to restore the viability of its business. *See, e.g., In re Gonic Realty Trust*, 909 F.2d 624, 627 (1st Cir. 1990); *In re Loop Corp.*, 379 F.3d 511, 516 (8th Cir. 2004); *In re The Ledges Apartments*, 58 B.R. 84, 87 (D. Vt. 1986) (“Rehabilitation encompasses rehabilitation and may contemplate liquidation. Rehabilitation, on the other hand, may not include liquidation.”). As the Supreme Court has pointed out “[h]owever honest in its efforts the debtor may be, and however sincere its motives, the [] Court is not bound to clog its docket with visionary or impractical schemes for resuscitation.” *Tennessee Publ’g Co. v. Am. Nat’l Bank*, 299 U.S. 18, 22 (1930).

As the City has pointed out, the current body shop and truck fabrication operations are insufficient, without more, to fund payments toward and throughout reorganization. Moreover, as the City has argued, the Debtor’s own admission that it may ultimately seek a liquidating plan is support for the argument that rehabilitation is not in prospect.

Having found that the “cause” exists to convert the case under the above-mentioned provisions, the Court declines to issue a ruling on whether Debtor has grossly mismanaged the estate. However, the City’s evidence in support of its argument that cause exists pursuant to § 1112(b)(4)(B) is compelling evidence that conversion and not dismissal is the appropriate remedy. Indeed, as the City points out, the Court previously held in its Memorandum of Decision Denying Debtor’s Motion for Order Establishing Procedures for Sales of Assets that Debtor was not acting in the best interests of the estate:

Ultimately, the Court agrees with the City that this is a thinly veiled attempt to evade the restrictions and consequences of [HIP’s] conversion to Chapter 7. The Sales Procedures, as proposed, do not promote a fair and competitive bidding process, do not maximize benefit to the Debtor’s estate, and are supported by the desire of [HIP] to avoid the harsh results of its conversion to Chapter 7, not by sound business judgment.

Memorandum of Decision, D.E. 77, at 8-9.

The Court finds that conversion is in the best interests of the creditors and for the maximization of estate assets.

For these reasons, the City’s Motion is GRANTED and the case is converted to one under Chapter 7.

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Party Information

Debtor(s):

West Covina Motors, Inc.

Represented By

Martin J Brill

Todd M Arnold

Krikor J Meshefejian

Movant(s):

City Of West Covina

Represented By

James H Broderick

1 **NOTE:** When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in
2 Category I. Proposed orders do not generate an NEF because only orders that have been entered are
placed on a CM/ECF docket.

3 **NOTICE OF ENTERED ORDER AND SERVICE LIST**

4 Notice is given by the court that a judgment or order entitled (*specify*) **[PROPOSED] ORDER ON THE**
5 **CITY'S MOTION UNDER 11 U.S.C. § 112(b) TO CONVERT CASE TO ONE UNDER CHAPTER**
6 **7 OR, IN THE ALTERNATIVE, FOR THE APPOINTMENT OF A TRUSTEE UNDER 11 U.S.C. §**
7 **1104(a) [DKT. NO. 86]** was entered on the date indicated as "Entered" on the first page of this
judgment or order and will be serve I the manner indicated below:

8 **I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** - Pursuant to
controlling General Order(s) and LBR(s), the foregoing document was served on the following person(s)
9 by the court via NEF and hyperlink to the judgment or order. As of **March 4, 2013**, the following person(s)
are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive
10 NEF transmission at the email address(es) indicated below:

11 Service information continued on attached page

12
13 **II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or
order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or
14 entity(ies) at the address(es) indicated below:

15 Service information continued on attached page

16 **III. TO BE SERVED BY THE LODING PARTY:** Within 72 hours after receipt of a copy of this judgment
or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete
17 copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a
proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es),
18 facsimile transmission number(s), and/or email address(es) indicated below:

19
20 Service information continued on attached page

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In re	CHAPTER 11
WEST COVINA MOTORS, INC.	CASE NUMBER: 2:12-BK-52197-ER
Debtor(s).	

SERVICE LIST

James H Broderick on behalf of Interested Party Courtesy NEF
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Juanita.vasquez@squiresanders.com Jordan.kroop@squiresanders.com

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Martin J. Brill on behalf of Debtor West Covina Motors, Inc.
mjb@lnbrb.com

David I. Brownstein on behalf of Interested Party Courtesy NEF
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Kim P. Gage on behalf of Creditor CorePointe Capital Finance LLC
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Halvor R. Melom on behalf of Creditor United States of America, IRS
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Gregory R. Oxford on behalf of Interested party General Motors LLC
goxford@icclawfirm.com gwenoxford@icclawfirm.com

Lisa M. Peters on behalf of Creditor Chrysler Group LLC
Lisa.peters@kutakrock.com

United States Trustee (LA)
Ustpreion16.la.ecf@usdoj.gov

Hatty K Yip on behalf of U.S. Trustee United States Trustee (LA)
Hatty.yip@usdoj.gov

Exhibit N

1 PETER C. ANDERSON
UNITED STATES TRUSTEE
2 OFFICE OF THE UNITED STATES TRUSTEE
725 South Figueroa Street, 26th Floor
3 Los Angeles, California 90017-5418
(213) 894-6811

4 **UNITED STATES BANKRUPTCY COURT**
5 **CENTRAL DISTRICT OF CALIFORNIA**
6 **LOS ANGELES DIVISION**

7 In re:)
8 WEST COVINA MOTORS, INC.) Chapter 7
9 Debtors) Case No.: 2:12-bk-52197 ER
10) NOTICE OF APPOINTMENT OF
11) TRUSTEE AND FIXING OF BOND;
ACCEPTANCE OF APPOINTMENT AS
INTERIM TRUSTEE

12 Pursuant to 11 U.S.C. 701 and 11 U.S.C. 322

13 **DAVID GILL, of LOS ANGELES, CA**

14
15
16 is appointed Interim Trustee of the case of said debtor(s) and is hereby designated to
17 preside at the meeting of creditors. This case is covered by the chapter 7 blanket bond on file with
18 the Court on behalf of the Trustees listed on Schedule A of the bond and any amendments or
modifications thereto.

19 DATED: March 5, 2013

20
21 **PETER C. ANDERSON**
22 UNITED STATES TRUSTEE

23 I, the undersigned, affirm that to the best of my knowledge and belief, I am disinterested within the
24 meaning of 11 U.S.C. 101(14), and on this basis, I hereby accept my appointment as Interim
25 Trustee in the above case. I will immediately notify the United States Trustee if I become aware of
any facts to the contrary.

26 DATED: MARCH 5, 2013
4:20 P.M.

27 
28 **DAVID GILL**
Interim Trustee

Exhibit O

1 **TO THE HONORABLE ERNEST M. ROBLES, UNITED STATES BANKRUPTCY**
2 **JUDGE, TO THE CHAPTER 7 TRUSTEE DAVID GILL, AND TO ALL**
3 **INTERESTED PARTIES:**

4 West Covina Motors, Inc. (“WCM”), a debtor-out-of possession, with the consent of
5 David A. Gill, the chapter 7 trustee of the estate (“Estate”) of West Covina Motors, Inc. (“the
6 Trustee”), and with the support of secured creditor CorePointe Capital Finance, LLC
7 (“CorePointe), hereby moves this Court, on an emergency basis, for an order that compels
8 the Trustee to abandon the Chevrolet franchise and the Chevrolet Dealer Sales and Service
9 Agreement between GM and the Debtor (“Dealer Agreement”). The motion is made
10 pursuant to 11 U.S.C. § 554(b) and Fed.R.Bankr.P. 6007(b), on the ground that the Trustee
11 has determined as a matter of his business judgment not to proceed to further administer the
12 Deal Agreement or Chevrolet franchise, or to pursue any further proceedings before the New
13 Motor Vehicle Board (“NMBV”). Accordingly, the Deal Agreement and franchise are of
14 inconsequential value and benefit to the Estate.

15 WCM further moves this Court for an order pursuant to Fed.R.Bankr.P. 6007(a) that
16 limits service of this motion to the parties on the ECF Notice list, which include the Trustee,
17 his counsel, the U.S. Trustee, and counsel for General Motors, among others.

18 This motion is based on this motion and the Memorandum of Points and Authorities;
19 Declarations of Michael Flanagan and Susan Montgomery and the exhibits thereto, and such
20 further evidence as may be submitted at or prior to the hearing on the motion.

21 Dated: October 23, 2014

22 Respectfully submitted,

23 LAW OFFICE OF SUSAN I. MONTGOMERY

24 By /s/ Susan I. Montgomery

25 SUSAN I. MONTGOMERY

26 Attorney for West Covina Motors, Inc., a debtor-
27 out-of possession
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 West Covina Motors, Inc. (“WCM”) submits this memorandum of points and
3 authorities in support of its Motion to compel the Trustee to abandon the Estate’s interest in
4 the Chevrolet franchise and the Chevrolet Dealer Sales and Service Agreement between
5 General Motors (“GM”) and the Debtor (“Dealer Agreement”). As set forth in the motion,
6 the Trustee consents to the relief requested and the entry of an abandonment order on an
7 emergency basis.

8 **I. STATEMENT OF FACTS**

9 On December 28, 2012, WCM filed a voluntary petition for relief under chapter 11.
10 On March 4, 2013, on motion of the City of West Covina, the case was converted to chapter
11 7 and David Gill was thereafter appointed as the chapter 7 trustee.

12 Prior to the filing of the petition, WCM and GM had entered into a settlement
13 agreement that provided, among other things, that WCM would agree to the termination of
14 the Dealer Agreement if WCM had not transferred the Dealer Agreement to new dealer
15 approved by GM by December 31, 2012, and further, if such termination were to occur, GM
16 would pay the assistance termination payments to WCM required under the Dealer
17 Agreement. Also prior to the bankruptcy filing, WCM had filed to protests with the New
18 Motor Vehicle Board (“NMVB”). By stipulation signed by counsel for General Motors and
19 WCM on or about January 10, 2013, the parties stipulated to stay the proceedings before the
20 NMVB. *See* Exhibit 1. By order signed January 14, 2013, the NMVB stayed the
21 proceedings but provided that either party could give 5 days’ notice of its intention to vacate
22 the stay and recommence the proceedings before the NMVB. *See* Exhibit 2. Neither party
23 has served a five (5) day notice to vacate, and therefore the stay remains in effect. Flanagan
24 decl., ¶ 6.

25 On January 22, 2013, GM filed a motion for an order confirming that the automatic
26 Stay of 11 U.S.C. § 362(a) does not bar termination of Debtor’s General Motors’ Dealer
27 Agreement. GM argued that the Dealer Agreement terminated by operation of non-
28 bankruptcy law. On February 14, 2013, the Court entered its order confirming that the

1 automatic stay did not bar the termination of the Dealer Agreement in accordance with non-
2 bankruptcy law. *See* Exhibit 3.

3 On or about May 13, 2014, GM apparently sent notice to the NMVB of its intention to
4 establish a new Chevrolet franchise in West Covina. That Notice was served on other
5 dealership in the area, but was never served on WCM as required by Cal.Veh.Code § 3062 (a
6 copy is attached hereto as Exhibit 4). Furthermore the protest regarding the termination of
7 the Chevrolet franchise remains stayed. Flanagan decl., ¶ 6.

8 On October 22, 2014, counsel for WCM spoke with counsel to the Trustee regarding
9 GM's intention to establish a new franchise and WCM's desire to restart the proceedings
10 before the NMVB to pursue the stayed protest. On October 23, 2014, counsel for the Trustee
11 advised counsel for WCM that the Trustee has decided not to proceed before the NMVB and
12 that he consents to the abandonment of the Estate's interest in the Dealer Agreement and
13 Franchise. Montgomery decl., ¶ 3.

14 **II. THE COURT SHOULD COMPEL THE TRUSTEE TO ABANDON THE**
15 **CHEVROLET FRANCHISE AND DEALER AGREEMENT TO WCM AND**
16 **ENTER AN IMMEDIATE ORDER OF ABANDONMENT**

17 Section 554(b) of the Bankruptcy Code provides;

18 On request of a party in interest and after notice and a hearing,
19 the court may order the trustee to abandon any property of the
20 estate that is burdensome to the estate or that is of
21 inconsequential value and benefit to the estate.

22 The purpose of §554 is to permit the trustee to abandon property that consumes
23 resources and drains the income of the estate. *In re Johnston*, 39 F.3d 538, 540 (9th Cir.
24 1995). Section 554(b) provides that such relief is available on motion by a party if the
25 property sought to be abandoned is of inconsequential value or benefit to the estate.

26 The Trustee has advised counsel to WCM that he consents to the abandonment of the
27 Estate's interest in the Chevrolet franchise and the Dealer Agreement as the value of the
28 franchise and Dealer Agreement is highly questionable and, it is his business judgment that

1 he does not want to expend any additional assets of the bankruptcy estate pursuing actions
2 before the NMVB. Montgomery decl, ¶ 3. Moreover, CorePointe Financial Capital, LLC
3 (“CorePointe”) has a security interest in all assets of WCM and it supports and joins in this
4 Motion to compel abandonment.

5 This Motion is being made pursuant to 11 U.S.C. § 554(b), rather than under §554(a)
6 so that the abandonment order can be expedited without cost to the Estate.

7 **III. CONCLUSION**

8 For the reasons set forth above, and based on the consent of both the Trustee and
9 secured creditor CorePointe, WCM requests that the Court enter an immediate order
10 declaring the franchise and Dealer Agreement abandoned to WCM so WCM can take
11 whatever steps it deems appropriate to pursue its remedies before the NMVB. WCM further
12 requests that the Court limit service of this Motion to those parties on the Court’s ECF list.

13 Dated: October 23, 2014

14 Respectfully submitted,

15 LAW OFFICE OF SUSAN I. MONTGOMERY

16 By /s/ Susan I. Montgomery

17 SUSAN I. MONTGOMERY

18 Attorney for West Covina Motors, Inc., a debtor-
19 out-of possession
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DECLARATION OF SUSAN I. MONTGOMERY

I, SUSAN I. MONTGOMERY, declare:

1. I am an attorney licensed to practice before this Court and I am counsel for West Covina Motors, Inc. (“WCM”), the debtor-out-of-possession. Except as otherwise stated, I have personal knowledge of the facts set for herein and would competently testify thereto under oath if requested to do so.

2. The Court may take judicial notice of the following facts:

- a. On December 28, 2012, WCM filed a voluntary petition for relief under chapter 11.
- b. On March 4, 2013, on motion of the City of West Covina, the case was converted to chapter 7 and David Gill was thereafter appointed as the chapter 7 trustee.
- c. On January 21, 2013, General Motors (“GM”) filed a motion in this bankruptcy case to determine that the automatic stay did not bar the termination of the Dealer Agreement pursuant to non-bankruptcy law.
- d. By order entered on February 14, 2014, the Court granted GM’s motion finding that the automatic stay did not bar the termination of the Dealer Agreement under non-bankruptcy law. A copy of the February 14, 2013 order is attached hereto as Exhibit 2.

3. On October 22 and 23, 2014, I communicated with John Tedford, counsel to David A. Gill, the Chapter 7 Trustee, regarding the Trustee’s interest, if any, in proceeding before the New Motor Vehicle Board in connection with the termination of the Chevrolet franchise and Dealer Agreement, which were at the date of bankruptcy assets of the WCM bankruptcy estate.. On October 23, 2014, Mr. Tedford advised me that the Trustee has determined, in his business judgment, not to proceed before the NMVB and consents to the abandonment of the estate’s interest in the Dealer Agreement and franchise. Mr. Tedford also advised me that the Trustee has no opposition to the filing of an emergency motion by WCM to compel abandonment. On October 22, 2014, I also spoke to Kim Gage, attorney

1 for CorePointe Capital Finance, LLC. Mr. Gage confirmed that CorePointe has a security
2 interest in all assets of WCM, including the Dealer Agreement and franchise, and that it
3 supports the abandonment and joins in WCM's motion being heard on a emergency basis.

4 I declare under penalty of perjury that the foregoing is true and correct and that this
5 declaration was executed this 23rd day of October, 2014, at Los Angeles, California.

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/s/ Susan I. Montgomery
SUSAN I. MONTGOMERY

DECLARATION OF MICHAEL J. FLANAGAN

I, MICHAEL J. FLANAGAN, declare:

1. I am an attorney licensed to practice before this Court and I have represented West Covina Motors, Inc. (“WCM”) in negotiations with General Motors (“GM”) regarding WCM’s Chevrolet Franchise and Dealer Agreement. I have personal knowledge of the facts set forth in this declaration and would competently testify thereto under oath if requested to do so.

2. In or about November 2010, my office (including myself and my associate Gavin Hughes) negotiated a settlement on behalf of WCM with GM regarding WCM’s Chevrolet dealership. The settlement resolved a pending protest before the New Motor Vehicle Board (“NMVB”) regarding the reinstatement of the Chevrolet franchise based on WCM obtaining flooring (i.e. loan commitments for purchase of inventory), and/or the sale of the franchise to a GM approved dealer in the event that WCM lost its Chevrolet flooring or it decreased below \$3 million.

3. As part of the deal, if the franchise was to be sold, the sale had to close by December 31, 2012, and if the franchise was otherwise terminated GM agreed to pay termination assistance payments as defined in the Dealer Agreement.

4. Prior to December 31, 2012, I filed protests on behalf of WCM with the NMVB, which has statutory authority over all automobile dealers pursuant to the California Vehicle Code.

5. Following WCM’s bankruptcy filing on December 28, 2012, WCM and GM signed a stipulation for a stay of the pending protests. A true and correct copy of the Stipulation signed on January 10, 2013, by my associate Gavin Hughes on behalf of WCM and by GM’s counsel is attached hereto as Exhibit 1. The protests were thereafter stayed by order of the NMVB signed on January 14, 2013. A copy of the Order is attached as Exhibit 2 hereto.

6. As counsel for WCM in connection with the protests and stay of proceedings, I should have been served with notice by GM if it intended to vacate the stay and reconvene

1 the Pre-Hearing Conference before the NMVB. I have not received any such Notice and I
2 have confirmed with the NMVB that no Notice pursuant to the Stipulation was ever filed
3 with the NMVB and that the protest proceedings remains stayed.

4 7. On October 22, 2014, I confirmed with representatives of the NMVB that GM
5 had sent Notices to other Chevrolet dealerships in the relevant area notifying them of GM's
6 intention to establish a new franchise within the West Covina area. California Vehicle Code
7 § 3062 requires that the Notice to establish a new dealership be served on each franchisee in
8 the area whether the new franchise is to be established or relocated. A copy of Vehicle Code
9 § 3062 is attached hereto as Exhibit 4. No such Notice was ever served on WCM. Copies of
10 the Notices sent to the other franchisees, and received by the NMVB, are attached hereto as
11 Exhibit 5.

12 8. Because the Chevrolet franchise and the Dealer Agreement has not been
13 validly terminated by the NMBV, it is my opinion that there may be value in the franchise
14 for WCM or that a new franchise could be required to lease the space previously occupied by
15 WCM. Either option will be lost unless the franchise and Dealer Agreement is immediately
16 abandoned to WCM so that it can lawfully give notice to vacate the stay and request that the
17 NMBV immediately order GM not to establish a new dealership unless GM complies with
18 the prior settlement with WCM and/or pays the required termination assistance payments.

19 I declare under penalty of perjury that the foregoing is true and correct and that this
20 declaration was executed this 23rd day of October, 2014, at Sacramento, California.

21
22 
23 MICHAEL J. FLANAGAN
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27
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Exhibit 1

Exhibit 1

1 GREGORY R. OXFORD (S.B. #62333)
2 ISAACS CLOUSE CROSE & OXFORD LLP
3 21515 Hawthorne Boulevard, Suite 950
4 Torrance, California 90503
5 goxford@icclawfirm.com
6 Telephone: (310) 316-1990
7 Facsimile: (310) 316-1330

8 Attorneys for Respondent
9 General Motors LLC

10 Of Counsel
11 L. JOSEPH LINES, III
12 GENERAL MOTORS LLC
13 Mail Code 482-026-601
14 400 Renaissance Center
15 P.O. Box 400
16 Detroit, Michigan 48265-4000
17 Telephone: (313) 665-7386
18 Facsimile: (313) 665-7376

19 **STATE OF CALIFORNIA**
20 **NEW MOTOR VEHICLE BOARD**

21 WEST COVINA MOTORS, INC.,
22 Protestant,
23 v.
24 GENERAL MOTORS LCC
25 Respondent.

26 Protest No.: PR-2348-12

27 **STIPULATION AND [PROPOSED]**
28 **ORDER STAYING PROTEST**
PROCEEDINGS

29 WHEREAS, protestant West Covina Motors, Inc. ("WCM") has filed this protest
30 under Veh. Code section 3060 and asserts herein that respondent General Motors LLC
31 ("GM") is not entitled to terminate WCM's General Motors Dealer Sales and Service
32 Agreement ("Dealer Agreement") based on WCM's alleged failure to conduct customary
33 dealership sales and service operations for seven consecutive business days;

34 WHEREAS, GM separately contends that WCM's Dealer Agreement terminated
35 automatically on December 31, 2012 pursuant to the Settlement Agreement and Stipulated
36 Decision of the Board in Protest No. PR-2213-10 because the proposed buy-sell

1 agreement between WCM and West Covina C, LLC that GM approved did not close
2 within the time permitted by section 2.6 of the parties' Settlement Agreement that was
3 incorporated into the Stipulated Decision, *i.e.*, no later than December 31, 2012;

4 WHEREAS, WCM on December 28, 2012 filed a chapter 11 bankruptcy petition in
5 the United States Bankruptcy Court for the Central District of California, which WCM
6 contends prevented the automatic termination of its Dealer Agreement;

7 WHEREAS, GM believes that the present protest, initiated by the debtor, is not
8 subject to the automatic stay of 11 U.S.C. section 362(a), but also believes that expected
9 resolution by the Bankruptcy Court and/or the Board of GM's contention that WCM's
10 bankruptcy filing did not affect the automatic termination of the WCM's Dealer
11 Agreement pursuant to section 2.6 of the Settlement Agreement that was incorporated into
12 the Stipulated Decision may (depending on the outcome of future proceedings before the
13 Bankruptcy Court and/or the Board) moot the present protest proceedings,

14 IT IS HEREBY STIPULATED, by and between WCM and GM, by and through
15 their undersigned counsel, without prejudice to any of their rights and remedies in this
16 protest, that the Board may enter its order staying all further proceedings in the present
17 protest, subject to the right of either WCM or GM to request on five days written notice to
18 the other party that the Board vacate and reconvene the Pre-Hearing Conference for the
19 purpose of setting a new hearing date and a new pre-hearing schedule in this matter.

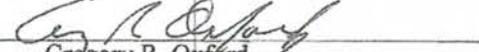
20 Dated: January 10, 2013

MICHAEL J. FLANAGAN
GAVIN M. HUGHES
LAW OFFICES OF MICHAEL J. FLANAGAN

21
22 By: 
23 Gavin M. Hughes
Attorneys for Protestant
West Covina Motors, Inc.

24 Dated: January 10, 2013

25 GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

26 By: 
27 Gregory R. Oxford
Attorneys for Respondent
28 General Motors LLC

1 agreement between WCM and West Covina C, LLC that GM approved did not close
2 within the time permitted by section 2.6 of the parties' Settlement Agreement that was
3 incorporated into the Stipulated Decision, *i.e.*, no later than December 31, 2012;

4 WHEREAS, WCM on December 28, 2012 filed a chapter 11 bankruptcy petition in
5 the United States Bankruptcy Court for the Central District of California, which WCM
6 contends prevented the automatic termination of its Dealer Agreement;

7 WHEREAS, GM believes that the present protest, initiated by the debtor, is not
8 subject to the automatic stay of 11 U.S.C. section 362(a), but also believes that expected
9 resolution by the Bankruptcy Court and/or the Board of GM's contention that WCM's
10 bankruptcy filing did not affect the automatic termination of the WCM's Dealer
11 Agreement pursuant to section 2.6 of the Settlement Agreement that was incorporated into
12 the Stipulated Decision may (depending on the outcome of future proceedings before the
13 Bankruptcy Court and/or the Board) moot the present protest proceedings,

14 IT IS HEREBY STIPULATED, by and between WCM and GM, by and through
15 their undersigned counsel, without prejudice to any of their rights and remedies in this
16 protest, that the Board may enter its order staying all further proceedings in the present
17 protest, subject to the right of either WCM or GM to request on five days written notice to
18 the other party that the Board vacate and reconvene the Pre-Hearing Conference for the
19 purpose of setting a new hearing date and a new pre-hearing schedule in this matter.

20 Dated: January 10, 2013

MICHAEL J. FLANAGAN
GAVIN M. HUGHES
LAW OFFICES OF MICHAEL J. FLANAGAN

21 By: 
22 Gavin M. Hughes
23 Attorneys for Protestant
24 West Covina Motors, Inc.

25 Dated: January __, 2013

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

26 By: _____
27 Gregory R. Oxford
28 Attorneys for Respondent
General Motors LLC

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Of Counsel
L. Joseph Lines, III
General Motors LLC

Exhibit 2

Exhibit 2

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Protest of
12 WEST COVINA MOTORS, INC., dba
CLIPPINGER CHEVROLET,
13 Protestant,
14
v.
15 GENERAL MOTORS LLC,
16 Respondent.
17

Protest No. PR-2348-12
ORDER STAYING PROCEEDING

18 To: Michael J. Flanagan, Esq.
Gavin M. Hughes, Esq.
19 Attorneys for Protestant
LAW OFFICES OF MICHAEL J. FLANAGAN
20 2277 Fair Oaks Boulevard, Suite 450
Sacramento, California 95825
21

22 Gregory R. Oxford, Esq.
Attorney for Respondent
ISAACS CLOUSE CROSE & OXFORD LLP
23 21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
24

25 E. Joseph Lines, III, Esq.
Attorney for Respondent
GENERAL MOTORS LLC
26 Mail Code 482-026-601
400 Renaissance Center
27 P.O. Box 400
Detroit, Michigan 48265-4000
28 ///

1 All proceedings before the New Motor Vehicle Board in the Protest of West Covina Motors, Inc.,
2 dba Clippinger Chevrolet v. General Motors LLC, are hereby stayed in light of the stipulation of counsel
3 dated January 10, 2013, which refers to a "chapter 11 bankruptcy petition" having been filed by West
4 Covina Motors, Inc., on December 28, 2012, in the United States Bankruptcy Court for the Central
5 District of California. The Protest is stayed pending the Board's receipt of notice of an order from the
6 Bankruptcy Court granting relief from the automatic stay, an order from the Bankruptcy Court indicating
7 that an automatic stay is not applicable to the proceedings before the New Motor Vehicle Board, or the
8 matter has been completed and/or dismissed by the Bankruptcy Court. This stay is subject to the right of
9 either West Covina Motors, Inc., dba Clippinger Chevrolet or General Motors LLC, to request, on five
10 days written notice to the other party, that the Board vacate and reconvene the Pre-Hearing Conference
11 for the purpose of setting a new hearing date and a new pre-hearing schedule in the matter.
12 SO ORDERED.

13
14 DATED: January 14, 2013.

NEW MOTOR VEHICLE BOARD

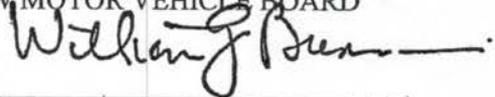
By 
WILLIAM G. BRENNAN
Executive Director

Exhibit 3

Exhibit 3

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
WEST COVINA MOTORS, INC.,
Debtor.

Case No.: Case 2:12-bk-52197-ER
Chapter 11

**ORDER GRANTING MOTION FOR
ORDER CONFIRMING THAT
AUTOMATIC STAY DOES NOT
BAR TERMINATION OF
DEBTOR'S GENERAL MOTORS
DEALER AGREEMENT**

For the reasons set forth in the attached tentative ruling, the Court hereby
GRANTS the Motion of General Motors LLC for an Order Confirming That Automatic
Stay of 11 U.S.C. § 362(a) Does Not Bar Termination of Debtor's General Motors Dealer
Agreement.

IT IS SO ORDERED.

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Date: February 14, 2013



Ernest M. Robles
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California**

Los Angeles

Judge Ernest Robles, Presiding

Courtroom 1568 Calendar

Tuesday, February 12, 2013

Hearing Room 1568

10:00 am

2:12-52197 West Covina Motors, Inc.

Chapter 11

#18.00

Hearing

RE: [48] Motion for Order Confirming that Automatic Stay of 11 U.S.C. 362(a)
Does Not Bar Termination of Debtor's General Motors Dealer Agreement

Docket #: 48

Tentative Ruling:

2/12/2013: (Revised tentative ruling)

Grant Motion for the reasons set forth below:

Pleadings Filed and Reviewed for this Motion

Notice of Motion and Motion for Order Confirming that the Automatic Stay Does Not Bar
Termination of Debtor's General Motors Dealer Agreement ("Motion") (D.E. 48)
Memorandum of Points and Authorities in Support of General Motors Motion (D.E. 51)
Declaration of Gregory R. Oxford in Support of General Motors Motion (D.E. 52)
Declaration of Michael A. Navari in Support of General Motors Motion (D.E. 53)
Debtor's Opposition to General Motors Motion (D.E. 82)
Reply of General Motors to Debtor's Opposition (D.E. 104)

Facts and Summary of Pleadings:

West Covina Motors, Inc. d/b/a Clippinger Chevrolet and Clippinger Chrysler Jeep Dodge (the "Debtor") filed a voluntary petition under chapter 11 on December 28, 2012. Debtor is in the business of selling and servicing new Chevrolet, Chrysler, Jeep and Dodge vehicles and various models of previously owned vehicles. Debtor is related to Hassen Imports Partnership ("Hassen"), which is a debtor in Case No. 11-42068 pending before this Court.

The Court herein considers the Motion of General Motors ("GM") for an Order Confirming that the Automatic Stay Does Not Bar Termination of Debtor's General Motors Dealer Agreement (the "Motion"). GM argues that the Dealer Agreement between West Covina Motors, LLC (the "Debtor" or "WCM") and GM (the "Dealer Agreement") terminated by operation of non-bankruptcy law and thus is not subject to the automatic stay of § 362(a).

**United States Bankruptcy Court
Central District of California**

Los Angeles

Judge Ernest Robles, Presiding

Courtroom 1568 Calendar

Tuesday, February 12, 2013

Hearing Room 1568

10:00 am

Cont.... West Covina Motors, Inc.

Chapter 11

The relevant facts are as follows:

Debtor was authorized to operate the Chevrolet Dealership pursuant to the Dealer Agreement with GM. Section 10.2 of the Dealer Agreement provides, in relevant part, as follows:

“To avoid damage to goodwill which could result if [WCM] is financially unable to fulfill its commitments, [WCM] agrees to have and maintain a separate line of credit from a creditworthy financial institution reasonably acceptable to [GM] and available to finance the Debtor’s wholesale purchase of new [GM] vehicles.” *Oxford Declaration*, Exhibit A, at p. 17.

On September 15, 2009, Debtor’s financing provider, GMAC Financial Services, sent notice to GM that it was withdrawing Debtor’s credit line. As a result, GM provided notice to Debtor that it was seeking to terminate the Dealer Agreement for breach of Section 10.2. *Oxford Declaration*, Exhibit E.

In response, WCM filed a protest with the New Motor Vehicle Board pursuant to Cal. Veh. Code § 3060. *Oxford Declaration*, Exhibit F.

The Protest hearing was scheduled for November 15, 2010. Prior to the hearing, WCM regained a line of credit. *Oxford Declaration*, Exhibit I. To address GM’s concerns that this new line of credit would eventually be withdrawn, as it had twice before, and to obviate the need for a protest hearing, WCM and GM negotiated and executed the Settlement Agreement. The New Motor Vehicle Board adopted the Settlement Agreement as a Stipulated Decision on December 15, 2010. *Oxford Declaration*, Exhibits J, K, and L.

The Settlement Agreement provides, in relevant part, as follows:

“WCM agrees that until at least November 30, 2012 it will maintain a line of floor plan credit of at least \$3 million with GMAC (or other financial source acceptable to GM pursuant to its normal business policies.” *Oxford Declaration*, Exhibit J, at Section 2.2.

“If at any time before November 30, 2012, WCM loses its Dedicated Chevrolet Flooring or its total amount decreases below \$3 million, WCM shall have ninety days to either (a) provide written evidence of a commitment for replacement Dedicated Chevrolet Flooring in the amount of at least \$3 million from GMAC or another GM-approved financial institution or (b) within ninety days of the date it loses its Dedicated Chevrolet Flooring or its total amount decreases below \$3 million, WCM agrees that its Dealer Agreement will terminate voluntarily effective 30 days later (*i.e.*, 120 days after the loss of the Dedicated Chevrolet

**United States Bankruptcy Court
Central District of California**

Los Angeles

Judge Ernest Robles, Presiding

Courtroom 1568 Calendar

Tuesday, February 12, 2013

Hearing Room 1568

10:00 am

Cont....

West Covina Motors, Inc.

Chapter 11

Flooring or its decrease below \$3 million) pursuant to Article 14.2 of the Dealer Agreement...WCM and Owners agree not to protest said voluntary termination pursuant to section 3060 of the Vehicle Code or to challenge any said termination in any judicial or administrative forum and hereby agree that they will have no legal right to do so.” *Id.* at Section 2.3.

“If prior to the expiration of 90 days after WCM loses the Dedicated Chevrolet Flooring or its amount declines below \$3 million, WCM submits a fully-executed ‘buy-sell’ agreement and complete proposal for the transfer of the stock or assets of the dealership to a person or entity not affiliated with WCM or Owner, GM will consider WCM’s proposal...and respond within sixty days.” *Id.* at Section 2.5.

“If GM approves or conditionally approves the proposal, and the ‘buy-sell’ transaction closes within thirty days of the date that WCM is notified of such approval, this Agreement shall be of no further force or effect.” *Ibid.*

“If a GM-approved ‘buy-sell’ transaction does not close within thirty days of GM’s notifying WCM of the approval, then WCM agrees that its Dealer Agreement will terminate voluntarily pursuant to Article 14.2 of the Dealer Agreement and that said termination will be effective 150 days after the date it loses its Dedicated Chevrolet Flooring or it decreases below \$3 million; upon such termination, WCM...agrees not to protest said voluntary termination pursuant to section 3060 of the Vehicle Code or file any other litigation of any nature whatsoever concerning termination of the Dealer Agreement.” *Id.* at Section 2.6.

On December 1, 2011, approximately one year after the parties executed, and the New Motor Vehicle Board adopted, the Settlement Agreement, GM received notice that WCM had again lost its line of credit. *Oxford Declaration*, at Exhibit M.

GM’s December 1, 2011 receipt of notice of WCM’s loss of financing triggered the timeline set forth in Sections 2.3 and 2.5 of the Settlement Agreement.

WCM disputed that GM had provided proper notice under the Settlement Agreement and, after proceedings before the New Motor Vehicle Board, received an extension of the ninety day deadline to November 12, 2012. *See Oxford Declaration*, Exhibit N.

On November 12, 2012, WCM complied with Section 2.5 by submitted a buy-sell proposal, which was conditionally approved on November 29, 2012. *Id.*, at Exhibit O. The buy-sell proposal named YTransport as the buyer (the “YTransport buy-sell transaction”).

**United States Bankruptcy Court
Central District of California**

Los Angeles

Judge Ernest Robles, Presiding

Courtroom 1568 Calendar

Tuesday, February 12, 2013

Hearing Room 1568

10:00 am

Cont.... West Covina Motors, Inc.

Chapter 11

Pursuant to Section 2.6 of the Settlement Agreement, WCM had until December 31, 2012 to close the buy-sell transaction.

WCM filed a voluntary petition under Chapter 11 on December 28, 2012.

The buy-sell transaction did not close by December 31, 2012.

GM's Argument

GM's Motion seeks relief pursuant to § 362(j), which provides that "[o]n request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated." 11 U.S.C. § 362(j). Subsection (c), in relevant part, provides that "the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate." 11 U.S.C. § 362(c)(1).

In essence, GM argues that termination of the Dealer Agreement is not barred by the automatic stay because the Dealer Agreement terminated by operation of non-bankruptcy law and therefore ceased to be property of the estate. GM cites numerous cases in which courts reiterate the principle that "[t]he Bankruptcy Code does not create or enhance property rights of a debtor. Thus, when a debtor's proprietary interest expires by operation of an express condition, the Bankruptcy Code does not preserve that interests and prevent termination." *In re Gull Air, Inc.*, 890 F.2d 1255, 1261-62 (1st Cir. 1989). Further, GM notes that "before 11 U.S.C. § 365 can apply a contract must exist...[and] [i]f a contract has expired by its own terms then there is nothing left to assume or reject." *In re Texscan Corp.*, 107 B.R. 227, 230 (9th Cir. BAP 1989).

GM asserts that the Debtor's interest in the Dealer Agreement was that of an executory contract at the date of filing its petition, and that Debtor's failure to close the YTransport buy-sell transaction by December 31, 2012 (the 30-day deadline imposed by the Settlement Agreement) triggered the automatic and voluntary termination of the Dealer Agreement pursuant to Section 2.6 of the Settlement Agreement. Therefore, GM argues, Debtor no longer held any interest in the Dealer Agreement as of December 31, 2012 and GM is entitled to a Court Order confirming that the automatic stay has been terminated.

Debtor's Opposition

The Debtor, in its Opposition to GM's Motion, makes two separate arguments.

(1) Debtor argues that the Motion should be denied because it seeks relief that can only be obtained through an adversary proceeding. Debtor describes the dispositive issue as "whether the bankruptcy court is dealing with property of the bankruptcy estate." *Opposition*, at p. 9. Debtor disputes that the Dealer Agreement terminated, stating that it met the condition of Section 2.5 of the Settlement Agreement by submitting the buy-sell proposal. Further, Debtor argues that GM itself is

**United States Bankruptcy Court
Central District of California**

Los Angeles

Judge Ernest Robles, Presiding

Courtroom 1568 Calendar

Tuesday, February 12, 2013

Hearing Room 1568

10:00 am

Cont.... West Covina Motors, Inc.

Chapter 11

in breach of the Settlement Agreement and the Orders of the New Motor Vehicle Board because it did not act in good faith. *Id.* at p. 10.

Based on these disputes, Debtor concludes that “there are material disputes between the parties as to whether or not the Dealership Agreement terminated and, therefore, whether the Debtor has an interest in the Dealership Agreement,” and that “[the New Motor Vehicle] Board is the proper venue for a determination of such issues, not on a summary basis pursuant to the Motion without a full opportunity for discovery.” *Ibid.* Therefore, the Debtor argues that “the Court is really being asked to issue declaratory relief based on complex facts regarding whether or not the Debtor has an interest in the Dealership Agreement.” *Ibid.*

Given Debtor’s characterization of the Motion as seeking declaratory relief, Debtor argues that FRBP 7001(2) and (9) require an adversary proceeding.

(2) Debtor argues that the Motion should be denied because Debtor is entitled to the 60-day extension provided by 11 U.S.C. § 108(b), and thus the Dealership Agreement does not terminate until February 26, 2013. Debtor argues that “while closing the Ytransport [buy-sell] transaction would admittedly likely require emergency motions for approval before this Court, closing with YTransport is not impossible.” *Opposition*, at p. 11. Further, Debtor argues that “the Ytransport [buy-sell] transaction is not the only transaction that could be consummated in order to satisfy Section 2.6 of the Settlement Agreement.” Debtor asserts that “[s]ince the Hidalgo transaction is on essentially the same terms as were previously approved by GM for the YTransport [buy-sell] transaction, GM could not reasonably reject Hidalgo as a buyer, nor would it be allowed to do so under California Law.” *Id.*, at p. 11-12 (citing Cal. Veh. Code §11713.3(d)(1) and (e)).

GM’s Reply

In Reply, GM argues that it did act in good faith and disputes both of Debtor’s arguments.

(1) GM argues that its Motion is properly presented as a contested matter, capable of resolution without an adversary proceeding, because FRBP 4001 reflects a policy favoring “expedited relief” when the validity of a bankruptcy stay is challenged. *Reply*, at p. 2 (citing *Wade v. State Bar of Arizona*, 115 B.R. 222, 230 (9th Cir. BAP 1990)). GM states that filing an adversary proceeding is neither required nor necessary: “The Opposition seeks to transmute GM’s motion into a ‘declaratory judgment’ action that supposedly requires the filing of an adversary proceeding that, if required, would enable the Debtor’s continued stalling for months as the parties senselessly settled the pleadings and briefed a motion for summary judgment in a case in which there will be only one question—whether the [buy-sell] transaction close in time—with an indisputable answer—it did not.” *Id.* at p. 3. GM points to the explicit language of § 362(j), which provides

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Los Angeles

Judge Ernest Robles, Presiding

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Cont.... West Covina Motors, Inc.

Chapter 11

that a court “shall issue” an order confirming that the automatic stay has been terminated. GM also distinguishes the case cited by Debtor in support of its argument that an adversary proceeding is required.

(2) GM argues that § 108(b) neither applies nor would help the Debtor. First, GM asserts that § 108(b) does not apply because it only provides a 60-day extension to “cure” or “perform” when “applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor ... may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act.” GM states that “[b]y its express terms, therefore, section 108(b) would apply in this case only if the Settlement Agreement and Stipulated Decision fixed a period within which the Debtor could ‘cure a default’ or perform an act ‘similar’ to curing a default.” *Reply*, at p. 8. GM characterizes Debtor’s 30-day window to close the YTransport buy-sell transaction as a right, not an obligation, concluding that failure to do so was not a “default.” GM states that the Settlement Agreement does not provide for any “cure” once the 30-day deadline has passed.

Second, GM argues that a 60-day extension would not help the Debtor, even if the Court were to find § 108(b) to apply because there is no admissible evidence to support the Debtor’s assertion that the YTransport buy-sell transaction can be closed by February 26, 2013. Further, GM notes that Debtor’s filing of a Motion to Sell to Hidalgo is obviously inconsistent with the existence of an active sale to YTransport.

Lastly, GM asserts that Debtor has no right to propose a second buy-sell transaction. Though GM disputes that the Hidalgo transaction “is on essentially the same terms,” GM states that the Settlement Agreement is “very specific” and does not allow for a new buy-sell transaction to be proposed.

The Court Finds and Concludes as follows:

Adversary Proceeding vs. Contested Matter

FRBP 7001 describes matters that are adversary proceedings. Debtor states that GM’s Motion is improper because an adversary proceeding is required under either FRBP 7001(2) or 7001(9). FRBP 7001(2) provides that an adversary proceeding is “a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d).” FRBP 7001(9) provides that an adversary proceeding is “a proceeding to obtain a declaratory judgment relating to any of the foregoing.”

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FRBP 7001, however, must be interpreted with the provisions of the Bankruptcy Code in mind. GM seeks relief pursuant to § 362(j), which is a mandatory provision. Section 362(j) provides that the Court “shall issue an order under subsection (c) confirming that the automatic stay has been terminated.” 11 U.S.C. § 362(j). In relevant part, subsection (c) provides that the automatic stay continues until “such property is no longer property of the estate.” 11 U.S.C. § 362(c)(1).

First, the Court notes that cases addressing the issue of whether termination of a dealer or franchise agreement that terminates by its own terms postpetition violates the automatic stay have been determined both in the context of adversary proceedings, *see, e.g., In re Round Hill Travel, Inc.*, 52 B.R. 807 (D. Nev. 1985); *In re Nashville White Trucks*, 5 B.R. 112 (M.D. Tenn. 1980), and in the context of a motion for relief from stay, *see, e.g., In re Round Hill Travel, Inc.* 52 B.R. 807 (D. Nev. 1985); *In re Cecil W. McCallen and Bessie McCallen, dba McCallen Equip. Rental Co.*, 49 B.R. 948 (D. Ore. 1985); *In re Gull Air, Inc.*, 890 F.2d 1255 (1st Cir. 1989); *In re Diversified Washes of Vandalia*, 147 B.R. 23 (S.D. Ohio 1992). Thus, the Court finds it appropriate to determine the applicability of the automatic stay to GM’s termination of the Dealer Agreement in the context of the instant motion.

Further, the Court in this case need not determine the precise nature of Debtor’s interest in the Dealer Agreement in order to hold that the automatic stay does not apply. Regardless of the nature of Debtor’s interest in the Dealer Agreement at the time of filing the petition, it is undisputed that Debtor did not satisfy the condition set forth in Section 2.6 of the Settlement Agreement, which provides that Debtor will voluntarily and without protest terminate the Dealer Agreement. *See In re Gull Air, Inc.* 890 F.2d 1255, 1262 & n.8 (1st Cir. 1989) (“In this case, we need not decide the issue of whether a carrier’s proprietary interest in an arrival or departure slot constitutes ‘property of the estate’ within the meaning of the Bankruptcy Code. Even if a carrier’s interest in a slot rises to the level of ‘property of the estate,’ the interest would cease to be ‘property of the estate’ when the interest expired by force of regulation. A carrier’s interest in a slot is analogous to a debtor’s interest in a lease which ceases to be ‘property of the estate’ when the interest terminates at the expiration of the stated term of such lease during the bankruptcy case.”).

For these reasons, the Court finds that GM’s Motion is properly on consideration before the Court as a contested matter.

Applicability of Section 108(b)

In relevant part, Section 108(b) provides as follows:

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[I]f applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor...may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) 60 days after the order for relief.

11 U.S.C. § 108(b).

Debtor argues that it is entitled to a 60-day extension pursuant to § 108(b) of the deadline to close the YTransport buy-sell transaction. Debtor does not cite any case law to support its argument. In its Opposition, Debtor also does not dispute GM's characterization of the Dealer Agreement as an executory contract. The Court agrees with GM that the Dealer Agreement at the time of filing the petition was an executory contract. *In re Lauderdale Motorcar Corp*, 35 B.R. 544, 548 (S.D. Fla. 1983) ("The cases that have considered termination or non-renewal of franchise agreements under the Code have viewed them as executory contracts and therefore governed by section § 365 of the Code.").

The Court, in its independent review of the case law governing the applicability of § 108(b), finds that it does not apply in the case of executory contracts. "Those courts which have directly address the relationship between § 108(b) and § 365 have concluded that § 365 governs the debtor's right to assume executory contracts and hence the time for cure of defaults. These courts reason that § 365 is the more specific, hence the controlling, provision, as it expressly addresses the cure of defaults in executory contracts, while § 108(b) is merely a general provision as to extension of time." *In re Round Hill Travel, Inc.*, 52 B.R. 807, 808 (D. Nev. 1985). The court in *Round Hill* recognized a distinction "between the expiration of a contract according to its own terms, and termination of a contract for default," stating that only "[w]here the latter is involved, [does] the Code...operate to modify rights and extend time periods." *Id.* at 809. *See also, e.g., In re Lowell D. Henke*, 84 B.R. 693, 697 (D. Mont. 1988) ("[I]n an executory contract situation, § 365, non 108(b), applies."); *In re Cecil W. McCallen and Bessie McCallen, dba McCallen Equip. Rental Co.*, 49 B.R. 948, (D. Ore. 1985) ("[S]ection 108(b) does not apply to curing defaults in executory contracts. Section 365 specifically governs the time for curing defaults in executory contracts, and thus, it controls here.") (quoting *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1215 (7th Cir. 1984), *cert. denied*, 469 U.S. 982 (1984)).

GM's Requested Relief: Confirmation that the Dealer Agreement Terminated

**United States Bankruptcy Court
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Los Angeles

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Cont.... West Covina Motors, Inc.

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Based on the above-stated conclusion, the Court finds that § 365 would apply to the time limits applicable to the Debtor with regards to the executory Dealer Agreement. Section 365 in fact provides a longer time period within which to assume a contract. However, the Supreme Court described the basic principle governing the assumption of executory contracts in *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 141-42 (1946) as follows: “The bankruptcy rule is that [the trustee or debtor in possession] takes the contracts of the debtor subject to their terms and conditions....the right to terminate a contract pursuant to its terms survives the bankruptcy of the other contracting party.” Therefore, “when a debtor’s proprietary interest expires by operation of an express condition, the Bankruptcy Code does not preserve that interest and prevent termination.” *In re Gull Air, Inc.* 890 F.2d 1255, 1262 (1st Cir. 1989). The Seventh Circuit described the principle as follows:

[T]he filing of a chapter 11 petition cannot expand debtor’s rights as against Amoco. When the termination notice was sent, debtors only had a right to ninety days’ worth of dealership contracts. The filing of the petition does not expand that right. This conclusion is supported by a number of decisions in the Bankruptcy Courts. Similarly, § 541(a) provides that a debtor’s estate consists of ‘all legal or equitable interests of the debtor in property as of the commencement of a case.’ Thus, whatever rights a debtor has in property at the commencement of a case continue in bankruptcy—no more, no less. Section 541 ‘is not intended to expand the debtor’s rights against other more than they exist at the commencement of a case.’ Section 362, which creates an automatic stay of certain creditor actions upon the filing of a petition in the bankruptcy court, does not help debtors here. The automatic stay does not toll the mere running of time under a contract, and thus it does not prevent automatic termination of the contract. Section 362 does not give a debtor greater rights in a contract. Thus, debtors cannot rely on section 362 to prevent termination of the contracts.

Moody v. Amoco Oil Co., 734 F.2d 1200, 1213 (7th Cir. 1984) (internal citations omitted), *cert. denied*, 469 U.S. 982 (1984). *See also In re Nashville White Trucks*, 5 B.R. 112, 116-17 (M.D. Tenn. 1980) (“An executory contract or unexpired lease may be assumed. It is a fundamental concept that the assumed contract or lease is accompanied by all its provisions and conditions. Thus, a contract may be assumed subject to all its limitations, one of which is obviously the expiration date.....The Code does not [] grant the debtor in bankruptcy greater rights and powers under the contract that he had outside of bankruptcy.”); *In re Diversified Washes of Vandalia*, 147 B.R. 23, 27 (S.D. Ohio 1992) (“[T]he automatic stay does not prevent the mere running of time

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under a contract.”); *In re P.I.N.E., Inc.*, 52 B.R. 463, 465 (W.D. Mich. 1985) (“[A] lease that expires by its own terms after the filing of the bankruptcy petition leaves nothing to assume or reject.”).

In this case, the Debtor and GM mutually and voluntarily entered into the Settlement Agreement, by which Debtor’s failure to satisfy the condition of Section 2.6 triggered a termination of the Dealer Agreement. Debtor’s failure to seek to assume the Dealer Agreement prior to its termination precludes it from now arguing it should have an extension of time within which to meet the condition.

For these reasons the Court finds that the Dealer Agreement terminated upon Debtor’s failure to close the YTransport buy-sell transaction and hereby GRANTS GM’s Motion.

Party Information

Debtor(s):

West Covina Motors, Inc.

Represented By

Martin J Brill

Todd M Arnold

Movant(s):

General Motors LLC

Represented By

Gregory R Oxford

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): Order Granting Motion for Order Confirming That Automatic Stay Does Not Bar Termination of Debtor's General Motors Dealer Agreement was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) – Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of **February 12, 2012**, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

- **Todd M Arnold** tma@lnbyb.com
- **Martin J Brill** mjb@lnbrb.com
- **James H Broderick** Jbroderick@ssd.com, stephen.owens@ssd.com;christopher.petersen@ssd.com;juanita.vasquez@ssd.com;jordan.kroop@ssd.com
- **David I Brownstein** brownsteinlaw@gmail.com
- **Marina Fineman** mfineman@stutman.com
- **Ben G Gage** bgage@cookseylaw.com
- **Kim P. Gage** kgage@cookseylaw.com
- **Barry S Glaser** bglaser@swjlaw.com
- **Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
- **Mark S Hoffman** mshllh@aol.com
- **Daniel A Lev** dlev@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com
- **Halvor R Melom** halvor.r.melom@irscounsel.treas.gov
- **Krikor J Meshefejian** kjm@lnbrb.com
- **Yen Nguyen** nguyenjea@yahoo.com
- **Aram Ordubegian** ordubegian.aram@arentfox.com
- **Christine M Pajak** cpajak@stutman.com
- **Lisa M Peters** lisa.peters@kutakrock.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov
- **Hatty K Yip** hatty.yip@usdoj.gov

Service information continued on

attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Service information continued on

attached page

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3. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

Board of Equalization: P.O. Box 942879, Sacramento, CA 94279-0001

Employment Development Department: P.O. Box 826880, Sacramento, CA 94280-0001

Franchise Tax Board Special Procedures: POB 2952, Sacramento, CA 95812-2952

Hassen Imports Partnership c/o H Ehrenberg Chapter & TTEE: 333 South Hope Street, 35th Floor, Los Angeles, CA 90071-1406

Service information continued on attached page

Exhibit 4

Exhibit 4

§ 3062. Establishing or relocating dealerships, CA VEHICLE § 3062

West's Annotated California Codes
Vehicle Code (Refs & Annos)
Division 2. Administration
Chapter 6. New Motor Vehicle Board (Refs & Annos)
Article 4. Hearings on Franchise Modification, Replacement, Termination, Refusal to Continue, Delivery and Preparation Obligations, and Warranty Reimbursement (Refs & Annos)

West's Ann.Cal.Vehicle Code § 3062

§ 3062. Establishing or relocating dealerships

Effective: January 1, 2014

Currentness

(a)(1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership, or seeks to relocate an existing motor vehicle dealership, that has a relevant market area within which the same line-make is represented, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the proposed dealership establishment or relocation described in the franchisor's notice. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to [Section 3066](#), and that the franchisor may not establish the proposed dealership or relocate the existing dealership until the board has held a hearing as provided in [Section 3066](#), nor thereafter, if the board has determined that there is good cause for not permitting the establishment of the proposed dealership or relocation of the existing dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) If a franchisor seeks to enter into a franchise that authorizes a satellite warranty facility to be established at, or relocated to, a proposed location that is within two miles of a dealership of the same line-make, the franchisor shall first give notice in writing of the franchisor's intention to establish or relocate a satellite warranty facility at the proposed location to the board and each franchisee operating a dealership of the same line-make within two miles of the proposed location. Within 20 days of receiving the notice satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the satellite warranty facility. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to [Section 3066](#), and that the franchisor may not establish or relocate the proposed satellite warranty facility until the board has held a hearing as provided in [Section 3066](#), nor thereafter, if the board has determined that there is good cause for not permitting the satellite warranty facility. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(3) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

§ 3062. Establishing or relocating dealerships, CA VEHICLE § 3062

“NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.”

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to a location that is both within the same city as, and within one mile from, the existing dealership location.

(2) The establishment at a location that is both within the same city as, and within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

(c) Subdivision (a) does not apply to a display of vehicles at a fair, exposition, or similar exhibit if actual sales are not made at the event and the display does not exceed 30 days. This subdivision may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though the event is sponsored by a financial institution, as defined in [Section 31041 of the Financial Code](#) or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(d) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(e) As used in this section, the following definitions apply:

(1) “Motor vehicle dealership” or “dealership” means an authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new motor vehicles.

(2) “Satellite warranty facility” means a facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.

Credits

(Added by Stats.1973, c. 996, p. 1969, § 16, operative July 1, 1974. Amended by Stats.1974, c. 384, p. 954, § 5, eff. July 5,

§ 3062. Establishing or relocating dealerships, CA VEHICLE § 3062

1974, operative July 1, 1974; Stats.1975, c. 653, p. 1413, § 1; Stats.1977, c. 880, p. 2649, § 1; Stats.1978, c. 638, p. 2097, § 1; Stats.1983, c. 709, § 1; Stats.1985, c. 1201, § 5, eff. Sept. 29, 1985; Stats.1985, c. 1566, § 1, eff. Oct. 2, 1985; [Stats.1998, c. 662 \(A.B.2707\), § 4](#); [Stats.2003, c. 451 \(A.B.1718\), § 14](#); [Stats.2013, c. 512 \(S.B.155\), § 10.](#))

Notes of Decisions containing your search terms (0)

[View all 8](#)

West's Ann. Cal. Vehicle Code § **3062**, CA VEHICLE § **3062**

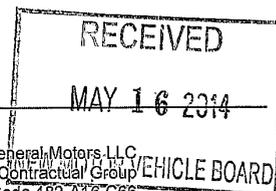
Current with urgency legislation through Ch. 931 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

End of Document

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Exhibit 5

Exhibit 5



General Motors LLC
Dealer Contractual Group
Mail Code 482-A18-C68
100 GM Renaissance Center
Detroit, MI 48265-0900

**Sent by
Certified Mail**

Postmarked 5-13-14

DATE

Certified Mail Return Receipt # 7002 2410 0006 5390 9365

Personal & Confidential

Martin Automotive, Inc.
d/b/a Chevrolet of Glendora
1959 Auto Centre Dr.
Glendora CA 91740

May 13, 2014 **Rec'd by NMVB 5-16-14**
DATE

7002-2410-0006-5390-9419

Attention: Mr. Michael W. Martin, Dealer Operator

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear Mr. Martin:

On November 11, 2013, General Motors LLC ("GM") completed its analysis of the market conditions in the LA Section 6 - Los Angeles County, CA Area of Primary Responsibility and sent notice, pursuant to Section 3062(a)(1) of the California Vehicle Code, of its decision at that time to re-establish Chevrolet representation at 2539 East Garvey Avenue North, West Covina, CA.

General Motors LLC ("GM") has completed its revised analysis of the market conditions in the LA Section 6 - Los Angeles County, CA Area of Primary Responsibility. A revised decision has been made to establish Chevrolet representation at 635 S. Citrus Avenue, Covina, CA instead of 2539 East Garvey Avenue North, West Covina, CA. This establishment will not become effective until at least 20 days after you receive this letter.



RECEIVED
MAY 16 2014

General Motors
Dealer Contractual Group
Mail Code 482-A16-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

Sent by
Certified Mail
Postmarked _____

DATE

This notice is being provided to you pursuant to Section 3062(a)(1) of the California
Vehicle Code.

Rec'd by

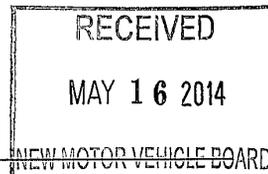
DATE

Very truly yours,

Chris Shane

 Chris Shane
Zone Manager
General Motors LLC
(805) 373-9794

cc: California New Motor Vehicle Board – Certified Mail Receipt # 7002 2410 0006
5390 9419
Dealer Contractual Group



General Motors LLC
Dealer Contractual Group
Mail Code 482-A16-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

Certified Mail Return Receipt #7002 2410 0006 5390 9372

Personal & Confidential

Leo Hoffman Chevrolet, Inc.
d/b/a Puente Hill's Chevrolet
17300 E Gale Avenue
City of Industry CA 91748 1512

Attention: Mr. Thomas L. Hoffman, Dealer Operator

Sent by
Certified Mail
Postmarked 5-13-14
DATE
May 13, 2014
Rec'd by NMVB 5-16-14
DATE

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear Mr. Hoffman:

On November 11, 2013, General Motors LLC ("GM") completed its analysis of the market conditions in the LA Section 6 - Los Angeles County, CA Area of Primary responsibility and sent notice, pursuant to Section 5002(a)(1) of the California Vehicle Code, of its decision at that time to re-establish Chevrolet representation at 2539 East Garvey Avenue North, West Covina, CA.

General Motors LLC ("GM") has completed its revised analysis of the market conditions in the LA Section 6 - Los Angeles County, CA Area of Primary Responsibility. A revised decision has been made to establish Chevrolet representation at 635 S. Citrus Avenue, Covina, CA instead of 2539 East Garvey Avenue North, West Covina, CA. This establishment will not become effective until at least 20 days after you receive this letter.



General Motors LLC
Dealer Contractual Group
Mail Code 482-A16-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

This notice is being provided to you pursuant to Section 3062(a)(1) of the California Vehicle Code.

Very truly yours,

A handwritten signature in cursive script that reads "Chris Shane".

Chris Shane
Zone Manager
General Motors LLC
(805) 373-9794



cc: California New Motor Vehicle Board – Certified Mail Receipt #7002 2410 0006
5390 9402
Dealer Contractual Group

Sent by
Certified Mail
Postmarked 5-13-14



RECEIVED
MAY 16 2014
NEW MOTOR VEHICLE BOARD

DATE
Rec'd by NMVB 5-16-14

General Motors LLC
Dealer Contractual Group
Mail Code 482-A18-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

DATE
7002-2410-0006-5390-9389

DATE

DATE

Certified Mail Return Receipt #7002 2410 0006 5390 9389

Rec'd by NMVB
Postmarked
Certified Mail
Sent by
May 13, 2014

Personal & Confidential

Sierra Autocars, Inc.
d/b/a Sierra Chevrolet
1450 S Shamrock Ave
Monrovia, CA 91016 4267

Attention: Mr. Peter Hoffman, Dealer Operator

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear Mr. Hoffman:

On November 11, 2013, General Motors LLC ("GM") completed its analysis of the market conditions in the LA Section 6 - Los Angeles County, CA Area of Primary Responsibility and sent notice, pursuant to Section 3062(a)(1) of the California Vehicle Code, of its decision at that time to re-establish Chevrolet representation at 2539 East Garvey Avenue North, West Covina, CA.

General Motors LLC ("GM") has completed its revised analysis of the market conditions in the LA Section 6 - Los Angeles County, CA Area of Primary Responsibility. A revised decision has been made to establish Chevrolet representation at 635 S. Citrus Avenue, Covina, CA instead of 2539 East Garvey Avenue North, West Covina, CA. This establishment will not become effective until at least 20 days after you receive this letter.



General Motors LLC
Dealer Contractual Group
Mail Code 482-A16-C86
100 GM Renaissance Center
Detroit, MI 48265-1000

This notice is being provided to you pursuant to Section 3062(a)(1) of the California Vehicle Code.

Very truly yours,

A handwritten signature in cursive script that reads "Chris Shane".

A circular stamp containing a stylized signature or initials, positioned to the left of the typed name.
Chris Shane
Zone Manager
General Motors LLC
(805) 373-9794

cc: California New Motor Vehicle Board – Certified Mail Receipt #7002 2410 0006
5390 9396
Dealer Contractual Group

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1925 Century Park East, Suite 2000, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled **EMERGENCY MOTION TO COMPEL THE TRUSTEE TO ABANDON THE CHEVROLET DEALER AGREEMENT AND FRANCHISE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF SUSAN I. MONTGOMERY AND MICHAEL J. FLANAGAN IN SUPPORT THEREOF; EXHIBITS** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **October 23, 2014**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Todd M Arnold tma@lnbyb.com
- Martin J Brill mjb@lnbrb.com
- David I Brownstein david@brownsteinfirm.com
- Kevin T Cauley kevin@sshbclaw.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **October 23, 2014**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **October 23, 2014**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Ernest M. Robles [Personal Delivery]
United States Bankruptcy Court
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 23, 2014 Jennifer A. Montgomery
Date Printed Name

/s/ Jennifer A. Montgomery
Signature

CONTINUED SERVICE LIST

NEF

- James H Broderick Jbroderick@ssd.com, stephen.owens@ssd.com; christopher.petersen@ssd.com; juanita.vasquez@ssd.com; jordan.kroop@ssd.com
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- Debbie Tanner BKClaimConfirmation@ftb.ca.gov
- John N Tedford jtedford@dgdk.com, DanningGill@gmail.com; jtedford@ecf.inforuptcy.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
- Hatty K Yip hatty.yip@usdoj.gov

Exhibit P

1 GREGORY R. OXFORD (State Bar No. 62333)
goxford@icclawfirm.com
2 ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
3 Torrance, California 90503
Telephone: (310) 316-1990
4 Facsimile: (310) 316-1330
Attorneys for General Motors LLC
5

6
7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 In re:
12 WEST COVINA MOTORS, INC.,
13 Debtor.

Case No.: Case 2:12-bk-52197-ER
Chapter 7

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION
TO EMERGENCY MOTION FOR
ORDER COMPELLING TRUSTEE
TO ABANDON ESTATE'S
ALLEGED INTEREST IN
TERMINATED GENERAL
MOTORS DEALER AGREEMENT**

14
15
16
17
18 Date: October 28, 2014
Time: 10:00 a.m.
Courtroom 1568
19 Honorable Ernest M. Robles
20

21 General Motors LLC ("GM") respectfully submits this memorandum in opposition
22 to the Emergency Motion for Order Compelling the Trustee to Abandon the Chevrolet
23 Dealer Agreement and Franchise filed by Debtor Out-of-Possession West Covina Motors,
24 Inc. ("WCM").

25 The issue of the debtor's interest in WCM's former General Motors Dealer Sales
26 and Service Agreement for Chevrolet ("Dealer Agreement") previously was before the
27 Court in February 2013 when the Court granted GM's motion for an order under Section
28 362(j) of the Bankruptcy Code confirming that the automatic stay of Section 362(a) did

Memorandum: Trustee Cannot Be
Compelled to "Abandon" Property No
Longer Part of the Estate

1 not bar it from treating the Chevrolet Dealer Sales and Service Agreement between GM
2 and the Debtor (“Dealer Agreement”) as having been terminated under non-bankruptcy
3 law pursuant to the provisions of a Settlement and Deferred Termination Agreement and
4 Release between WCM and GM (“Settlement Agreement”). A copy of the Court’s ruling
5 on that motion (“2013 Order”) is attached as Exhibit 3 to the moving papers. The Order
6 was not appealed, and therefore stands as the law of the case, indisputably confirming
7 termination of the Dealer Agreement on or about December 29, 2013.

8 As explained in detail in GM’s papers supporting issuance of the 2013 Order (Dkt.
9 Nos. 51, 52, 53, 104), the Settlement Agreement arose out of (a) GM’s attempt to
10 terminate the Dealer Agreement based on WCM’s repeated loss of its line of floor plan
11 credit beginning in 2010 and (2) WCM’s ensuing filing of a protest under Cal. Veh. Code
12 § 3060 with the California New Motor Vehicle Board, No. PR-2213-10 (“Protest 1”).
13 WCM and GM ultimately settled Protest 1 pursuant to the Settlement Agreement, which
14 was incorporated into a stipulated decision of the Board (“Board Decision 1”). These
15 documents provided in substance that if WCM again lost its flooring and either failed to
16 regain it on a timely basis or to close a GM-approved buy-sell transaction to an unrelated
17 purchaser within a specified time period, WCM would voluntarily terminate the Dealer
18 Agreement without filing any protest or instituting any other litigation to challenge that
19 termination. True and correct copies of the Settlement Agreement, Proposed Stipulated
20 Decision and Board Order adopting it are Exhibits A, B and C, respectively, to the
21 accompanying Oxford Declaration.

22 When WCM failed to satisfy the applicable conditions, GM sought to enforce the
23 Settlement Agreement and Board Decision 1, but WCM claimed that GM had failed to
24 provide proper notice to WCM’s counsel and succeeded in obtaining an August 22, 2013
25 Order of the Board (“Board Decision 2”) that required GM to provide additional notice
26 and gave WCM 80 days to either restore its floor plan credit line or submit a complete
27 buy-sell proposal to GM, failing which, the Board said, “Protestant’s franchise shall
28 terminate on the 81st day after the date of mailing to the parties and their counsel by U.S.

1 Postal Service Certified Mail a copy of the Board’s Order....” Board Decision 2, p. 18.
2 By so ordering, the Board clearly indicated its understanding that termination based on
3 failure to meet the agreed conditions under the Settlement Agreement, including but not
4 limited to those set forth in section 2.3, would be self-executing. A true and correct copy
5 of Board Decision 2 is Exhibit D to the accompanying Oxford Declaration.

6 WCM thereafter timely submitted a buy-sell proposal, and GM approved it on
7 November 29, 2013. A true and correct copy of GM’s approval letter is Exhibit E to the
8 Oxford Declaration. Under section 2.6 of the Settlement Agreement, however, WCM
9 upon receiving GM’s approval was required to close the buy-sell transaction within thirty
10 days, absent which the self-executing language of section 2,6 – the same language set
11 forth in section 2.3 – would result in automatic voluntary termination:

12 “2.6 If a GM-approved “buy-sell” transaction does not close within
13 thirty days of GM’s notifying WCM of the approval, then WCM agrees that its
14 Dealer Agreement *will terminate voluntarily* pursuant to Article 14.2 of the
15 Dealer Agreement...; upon such termination, WCM shall be entitled to
16 termination assistance pursuant to Article 15 of the Dealer Agreement with the
17 exception of Article 15.3. WCM agrees not to protest said voluntary
18 termination pursuant to section 3060 of the Vehicle Code or file any other
19 litigation of any nature whatsoever concerning termination of the Dealer
20 Agreement.”

21 (Emphasis added.).

22 As this Court found in the 2013 Order (p.7), “it is undisputed that [WCM] did not
23 satisfy the condition set forth in Section 2.6 of the Settlement Agreement which provides
24 that Debtor will voluntarily and without protest terminate the Dealer Agreement.” But
25 shortly before expiration of the 30-day period provided by Section 2.6 of the Settlement
26 Agreement, WCM filed this bankruptcy case.

27 GM then moved promptly for an order pursuant to section 362(j) that the automatic
28 stay did not bar termination of the Dealer Agreement under non-bankruptcy law as the

1 result of WCM's failure to close the approved buy-sell transaction. After full briefing,
2 including opposition filed on behalf of WCM, the Court granted GM's motion, stating as
3 follows:

4 "In this case, the Debtor and GM mutually and voluntarily entered in the
5 Settlement Agreement, by which *Debtor's failure to satisfy the condition of*
6 *Section 2.6 triggered a termination of the Dealer Agreement.* Debtor's failure to
7 seek to assume the Dealer Agreement prior to its termination precludes it from
8 arguing it should have an extension of time within which to meet the condition.

9 "For these reasons *the Court finds that the Dealer Agreement terminated*
10 *upon Dealer's failure to close the YTransport buy-sell transaction* and hereby
11 GRANTS GM's motion."

12 2013 Order, p. 10 (emphasis added). The basis for GM's motion, as the Court noted at
13 page 4 of the Order, was that "termination of the Dealer Agreement [was] not barred by
14 the automatic stay because the Dealer Agreement terminated by operation of non-
15 bankruptcy law and therefore ceased to be property of the estate," citing *In re Gull Ari,*
16 *Inc.*, 890 F.2d 1255, 1261-62 (1st Cir.1989) ("[W]hen a debtor's proprietary interest
17 expires by operation of an express condition, the Bankruptcy Code does not preserve that
18 interest and prevent termination").

19 For the same reason, the Trustee has no property of the estate to "abandon" to
20 WCM, as the debtor out-of-possession, inasmuch as the Dealer Agreement terminated
21 under non-bankruptcy law on or about December 29, 2013. That the Dealer Agreement
22 did, in fact, terminate under the Settlement Agreement and non-bankruptcy law was an
23 issue that the present parties explicitly litigated and that the Court resolved in the 2013
24 Order. That Order was not appealed. Thus, the 2013 Order has become the law of the
25 case and collaterally estops WCM from contesting that the Dealer Agreement did, in fact,
26 terminate in February 2013.

27 To be sure, termination under the Settlement Agreement entitled WCM to
28 "termination assistance" pursuant and subject to the terms and conditions of Article 15 of

1 the Dealer Agreement (a point that GM does not dispute). Specifically, WCM was
2 entitled to submit to GM within specified periods of time lists of Eligible Motor Vehicles
3 and other Eligible Items (such as returnable parts and special tools), and upon timely
4 submission thereof GM would have been obligated to repurchase all Eligible Items.

5 In this regard, however, Article 15.2.2 provided in pertinent part as follows:

6 ***“15.2.2 Dealer’s Responsibilities***

7 “General Motors obligation to purchase Eligible Items is subject to
8 Dealer fulfilling its responsibility under this subsection.

9 ***“Within fifteen days following the effective date of termination or***
10 ***expiration of this Agreement,*** Dealer will furnish General Motors with a list of
11 vehicle identification numbers and such other information as General Motors
12 may request pertaining to eligible Motor Vehicles. Dealer will deliver the
13 eligible Motor Vehicles to a destination determined by General Motors that
14 will be in a reasonable proximity to Dealer’s Premises.

15 ***“Within two months following the effective date of termination or***
16 ***expiration of this Agreement,*** Dealer will mail or deliver to General Motors a
17 complete an separate list of each of the Eligible Items other than Motor
18 Vehicles....”

19 (Emphasis added.) A true and correct copy of the Standard Provisions of the Dealer
20 Agreement containing these and other pertinent provisions is Exhibit F to the Oxford
21 Declaration.

22 Consistent with Article 15.2, GM on March 21, 2013 (after the Court’s 2013 Order
23 was no longer subject to appeal), sent a letter to WCM and its bankruptcy trustee, Mr.
24 Gill, inviting the submission of the lists and other information required by Article 15.2. A
25 true and correct copy of this letter is Exhibit G. Recent inquiry addressed to GM’s Dealer
26 Contractual Group in Detroit confirms that neither WCM nor Mr. Gill ever responded to
27 this letter. Oxford Decl., ¶ 6. As a result, WCM’s right to termination assistance under
28 Article 15 of the terminated Dealer Agreement expired well over a year ago. Therefore,

1 there is no longer any contractual right under the terminated Dealer Agreement that
2 constitutes property of the estate that the Trustee has any right to “abandon” to WCM..

3 The citation of a second protest filed by WCM prior to bankruptcy (“Protest 2”) is a
4 red herring. On October 3, 2013, prior to the bankruptcy filing GM sent WCM a second,
5 “back up” termination notice based on grounds entirely different from the loss of flooring
6 that prompted the first termination notice and that was the subject of Protest 1 and the
7 Settlement Agreement. The second termination notice, a true and correct copy of which is
8 attached as Exhibit H, grounded termination on WCM’s failure to conduct customary
9 business operations for seven consecutive business days, a violation of an entirely
10 different provision of the Dealer Agreement, Article 14.5.3 (Exhibit F, p. 27), known in
11 the vernacular as the “going dark” clause. In response, WCM filed Protest 2, No. PR-
12 2348-12. This protest and the termination notice that prompted it were entirely
13 independent of the Settlement Agreement. After the bankruptcy filing GM and WCM
14 both realized that this Court’s ruling on the issue of termination under the Settlement
15 Agreement might moot Protest 2, since there obviously is no right to protest termination
16 of a Dealer Agreement that already has been terminated in accordance with a stipulated
17 Board Decision (Exhibits A, B, C). The parties therefore stipulated to the stay of Protest 2
18 pending this Court’s ruling. A copy of the stipulation is Exhibit 1 to the moving papers.
19 When this Court subsequently ruled in favor of termination, and after WCM did not
20 appeal that ruling, termination of the Dealer Agreement was confirmed and Protest 2 did,
21 in fact, become entirely moot; by no stretch can this empty protest be cited as evidence
22 that WCM is still an authorized Chevrolet dealership.

23 For all the foregoing reasons, GM respectfully requests that the Court deny the
24 motion to compel the Trustee to abandon “property” that no longer exists and therefore is
25 no longer part of the estate.

26 DATED: October 24, 2014

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

27
28 By: [s] Gregory R. Oxford
Attorneys for General Motors LLC

Exhibit Q



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: West Covina Motors, Inc.,
Debtor.

Case No.: 2:12-bk-52197-ER
Chapter: 7

**ORDER DENYING
EMERGENCY MOTION TO
COMPEL TRUSTEE TO
ABANDON INTEREST IN
PROPERTY OF THE ESTATE
[D.E. 472]**

Date: October 28, 2014
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

An emergency hearing regarding the debtor's *Motion to Compel the Trustee to Abandon Interest in Property of the Estate* ("Motion") [D.E. 472] took place at the above-captioned time and place. For the reasons stated on the record and as set forth in the Final Ruling, attached below and incorporated by reference, the Motion is DENIED.

IT IS SO ORDERED.

###

Date: October 28, 2014

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles
United States Bankruptcy Judge

FINAL RULING

Pleadings Filed and Reviewed:

- 1) Motion to Compel Trustee to Abandon Interest in Property of Estate ("Motion") [D.E. 472]
- 2) Motion to Expedite Hearing [D.E. 473]
 - a) Order Setting Hearing on Shortened Notice [D.E. 474, amended at 476]
- 3) Opposition to Motion to Compel Trustee to Abandon Interest in Property of Estate Filed by Interested Party General Motors, LLC ("Opposition") [D.E. 478]
 - a) Declaration in Support of Opposition [D.E. 479]
- 4) Supplemental Memorandum of Law Re "The Law of the Case" Doctrine in Support of GM's Opposition to Motion for Order Compelling Trustee to Abandon Estate's Alleged Interest in Terminated General Motors Agreement Filed by Interested Party General Motors LLC [D.E. 482]
- 5) Reply Filed by West Covina Motors, Inc. [D.E. 483]
- 6) Declaration of Michael L. Flory Filed by Interested Party General Motors LLC [D.E. 484]
- 7) Notice of Errata re Exhibit to Reply Filed by Debtor West Covina Motors, Inc. [D.E. 485]
- 8) The City of West Covina's Notice of Joinder and Joinder in West Covina Motors, Inc.'s Emergency Motion to Compel the Trustee to Abandon the Chevrolet Dealer Agreement and Franchise [D.E. 486]

Summary of Facts and Pleadings

West Covina Motors, Inc. ("WCM"), debtor out of possession, commenced this bankruptcy on December 28, 2012 as a voluntary chapter 11 case. On March 4, 2013, on motion of the City of West Covina, the case was converted to chapter 7.

On October 23, 2014, WCM moved this Court for an order compelling the chapter 7 trustee ("Trustee") to abandon the estate's interest in a Chevrolet franchise and the Chevrolet Dealer Sales and Service Agreement between General Motors, LLC ("GM") and the Debtor ("Dealer Agreement"). In her attached declaration, counsel for WCM represents that the Trustee and secured creditor CorePointe Captial Finance, LLC consent to the granting of the relief requested in this Motion. Declaration of Susan I. Montgomery ¶ 3. The Court granted WCM's application for an order setting this hearing on shortened notice. Further oppositions and replies may be made orally at the hearing.

Prior to filing its petition, WCM and GM entered into a settlement agreement that provided, in part, that WCM would agree to the termination of the Dealer Agreement if WCM has not transferred the Dealer Agreement to a new dealer approved by GM by December 31, 2012. If such termination were to occur, GM, on the occurrence of certain conditions, would make termination assistance payments to WCM, as required under the Dealer Agreement. In an order issued on February 14, 2013, this Court confirmed that the automatic stay did not bar the non-bankruptcy termination and that Dealer Agreement had terminated pursuant to non-bankruptcy law. D.E. 150 ("2013 Order").

Additionally, prior to commencement of this case, WCM had filed protestations with the New Motor Vehicle Board ("NMVB") regarding the termination of the Dealer Agreement. GM

and WCM stipulated to stay the proceedings before the NMVB. Pursuant to the order approving the stipulation staying the NMVB proceedings, either party could give 5 days-notice of its intention to vacate the stay and recommence the proceedings. At this time, neither party has served a five day notice to vacate and the stay remains in effect.

On May 13, 2014, GM sent notice to NMVB of its intention to establish a new Chevrolet franchise in West Covina. WCM asserts that although notice was served on other dealerships in the West Covina area, it was not served.

On October 22, 2014, counsel for WCM spoke with counsel to the Trustee regarding GM's intention to establish a new franchise and WCM's desire to restart the proceedings before the NMVB. The Trustee advised WCM's counsel that the Trustee has decided, in his business judgment, not to proceed before the NMVB and consents to the abandonment of the Estate's interest in the Dealer Agreement and the Franchise. Montgomery Decl. ¶ 3.

In the Motion, WCM argues that, pursuant to 11 U.S.C. § 554(b), the Court should issue an order compelling the abandonment of this estate property. WCM asserts that relief is proper as the Dealer Agreement and the Estate's interest in the Chevrolet franchise "is highly questionable" and represents that the Trustee, in his business judgment, "does not want to expend any additional assets of the bankruptcy estate pursuing actions before the NMVB." Motion, 3:27-4:2.

On October 24, 2014, General Motors, LLC ("GM") filed a written opposition. GM contends that the nature of the Debtor's interest in the Dealer Agreement was previously before this Court in the context of GM's motion pursuant to 11 U.S.C. § 362(j) for an order confirming that the automatic stay did not bar the termination of Dealership Agreement pursuant to the parties stipulation. GM asserts that the 2013 Order confirmed that the automatic stay did not bar the termination pursuant to nonbankruptcy law and is binding on the parties here. GM cites the "heart" of the 2013 Order:

[T]ermination of the Dealer Agreement [was] not barred by the automatic stay because the Dealer Agreement terminated by operation of non-bankruptcy law and therefore ceased to be property of the estate, citing *In re Gull Ari, Inc.*, 890 F.2d 1255, 1261-62 (1st Cir.1989) ("[W]hen a debtor's proprietary interest expires by operation of an express condition, the Bankruptcy Code does not preserve that interest and prevent termination"). [Opposition, 4:12-18 (citing 2013 Order, 10)].

Based on these assertions, and the Court's 2013 Order, GM contends that the Trustee has nothing with regard to the Dealer Agreement to abandon from the estate.

GM continues that the Trustee has nothing to abandon in regard to the "termination assistance" GM was required to provide WCM under the Settlement Agreement. Section 15.2.2 of the Settlement Agreement, the section on which GM relies, states:

General Motors obligation to purchase Eligible Items is subject to Dealer fulfilling its responsibility under this subsection. Within fifteen days following the effective date of termination or expiration of this Agreement, Dealer will furnish General Motors with a list of vehicle identification numbers and such other information as General Motors may request pertaining to eligible Motor Vehicles. Dealer will deliver the eligible Motor Vehicles to a destination determined by General Motors that will be in a reasonable proximity to Dealer's Premises. Within two months following the effective date of termination or expiration of this Agreement, Dealer will mail or deliver to General Motors a complete and separate list of each of the Eligible Items other than Motor Vehicles[.]

GM contends that, consistent with its obligations under this provision, it sent WCM and the Trustee a letter inviting submission of the information required by Section 15.2.2, and that neither WCM or the Trustee did this. Accordingly, GM concludes that WCM is no longer entitled to termination assistance and there is nothing, in this regard, for the Trustee to abandon. [Note 1].

Findings of Fact and Conclusions of Law

11 U.S.C. § 554 provides, in relevant part, the following:

- (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
- (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The Court notes that, by its terms, 11 U.S.C. § 554 only permits the Trustee, or a party in interest through court order, to abandon property that is *property of the estate*. Section 551(a), in addition to other provisions, defines property of the estate:

The commencement of a case . . . creates an estate. Such estate is comprised of [subject to certain inapplicable exceptions] all . . . legal or equitable interests of the debtor in property as of the commencement of the case.

As this Court noted in the 2013 Order, not all property of the estate remains property of the estate in perpetuity. The First Circuit explains:

[W]e need not decide the issue of whether a carrier's proprietary interest in an arrival or departure slot constitutes "property of the estate" within the meaning of the Bankruptcy Code. *See* 11 U.S.C. § 362(a)(3); 11 U.S.C. § 541. Even if a carrier's interest in a slot rises to the level of "property of the estate," *the interest would cease to be "property of the estate" when the*

interest expired by force of regulation. A carrier's interest in a slot is analogous to a debtor's interest in a lease which ceases to be "property of the estate" when the interest terminates at the expiration of the stated term of such lease during the bankruptcy case. [*In re Gull Air, Inc.*, 890 F.2d 1255, 1261 n.8 (1st Cir. 1989) (emphasis added)].

Where property ceases to be property of the estate, 11 U.S.C. § 554 does not provide authority for abandonment.

The Court agrees with GM that the issue of whether the bankruptcy estate has an interest in the Dealer Agreement has been decided against WCM. This Court, in the 2013 Order, held that the "Debtor did not satisfy the condition set forth in Section 2.6 of the Settlement Agreement, which provide[d] that the Debtor will voluntarily and without protest terminate the Dealer Agreement." 2013 Order, 7 (citing *In re Gull Ari, Inc.*, 890 F.2d 1255, 1261–62 (1st Cir.1989)). This Court found that "the Dealer Agreement terminated upon Debtor's failure to close the YTransport buy-sell transaction[.]" 2013 Order, 10. Implicit in the Court's decision was that the Dealer Agreement had, at the time that it terminated upon its own terms, ceased to be property of the estate. WCM did not appeal this decision nor did it move for reconsideration of this Order, and it is now binding on the parties as law of the case. *In re Tsurukawa*, 287 B.R. 515, 518 n.2 (B.A.P. 9th Cir. 2002) ("[T]he law of the case doctrine generally precludes reconsideration of an issue that has already been decided by the same court.").

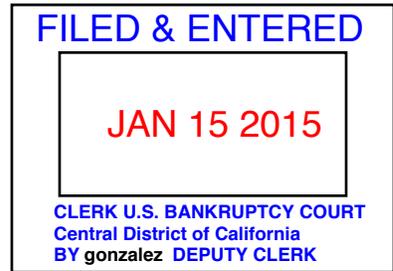
Based on the Court's prior conclusion that the Dealer Agreement ceased to be property of the estate when it terminated by its own terms, the Court finds that it cannot now be abandoned. The Debtor cannot challenge this Court's prior decision now.

The availability of termination assistance is not an issue separate from termination, it is another side of the same coin. WCM's right to termination assistance ceased by operation of non-bankruptcy law, pursuant to the agreement's terms, and it is also not property of the estate. Section 15.2.2, reproduced in relevant part above, limited GM's obligation to provide termination assistance. As a condition precedent to GM's obligation to provide termination assistance, WCM was required to perform certain tasks by 15 days and certain other tasks by 2 months after termination of the Dealer Agreement. Based on the present record, WCM's failed to undertake these required, conditions precedent. Upon the failure of these conditions precedent, GM's obligation to provide termination assistance ceased as to both the Debtor and the bankruptcy estate by the operation of non-bankruptcy law. For analogous reasons to the Dealer Agreement, the termination assistance is no longer property of the estate, and not proper subject matter for abandonment.

For these reasons, WCM's motion is denied. The Motion requests relief which the court cannot grant.

Exhibit R

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CHANGES MADE BY COURT
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
WEST COVINA MOTORS, INC.,
Debtor.

Case No.: Case 2:12-bk-52197-ER
Chapter 7

**ORDER DENYING MOTION FOR
ENFORCEMENT OF PRIOR
ORDERS DETERMINING THAT
DEBTOR AND ITS ESTATE HAVE
NO REMAINING INTEREST IN
TERMINATED GM DEALER
SALES AND SERVICE
AGREEMENT**

Date: January 13, 2015
Time: 10:00 a.m.
Courtroom 1568
Honorable Ernest M. Robles

1 For the reasons set forth in the attached tentative ruling, the Court hereby DENIES the
2 Motion of General Motors LLC for Enforcement of Prior Orders Determining that Debtor and Its
3 Estate Have No Remaining Interest in Terminated GM Dealer Sales and Service Agreement.

4 The objection filed by West Covina Motors to the form of order [D.E. 507] is overruled.
5 IT IS SO ORDERED.

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24 Date: January 15, 2015



Ernest M. Robles
United States Bankruptcy Judge

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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 13, 2015

Hearing Room 1568

10:00 AM

2:12-52197 West Covina Motors, Inc.

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#7.00 Hearing
RE: [490] Motion Notice of Motion and Motion for Enforcement of Prior Orders
Determining that Debtor and its Estate Have No Remaining Interest in
Terminated GM Dealer Sales and Service Agreement

fr: 1-6-15

Docket 490

Tentative Ruling:

1/12/2015: For the reasons set forth below, Motion DENIED.

Pleadings Filed and Reviewed:

- 1) Motion for Enforcement of Prior Orders Determining that Debtor and Its Estate Have No Remaining Interest in Terminated GM Dealer Sales and Service Agreement [D.E. 490]
 - a) Memorandum of points and authorities ("Motion") [D.E. 491]
 - b) Declaration of Gregory R. Oxford in Support of Motion for Enforcement of Prior Orders [D.E. 492]
- 2) Opposition to Motion for Enforcement of Prior Orders Determining that Debtor and Its Estate Have No Remaining Interest in Terminated GM Dealer Sales and Service Agreement ("Opposition") [D.E. 494]
- 3) Reply to Motion Notice of Motion and Motion for Enforcement of Prior Orders Determining that Debtor and its Estate Have No Remaining Interest in Terminated GM Dealer Sales and Service Agreement ("Reply") [D.E. 497]
- 4) Sur-Reply Re GM Motion to Enforce Orders and Confirmation Termination of Chevrolet Franchise [D.E. 498]

Summary of Facts and Pleadings

1. Background

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West Covina Motors, Inc. ("WCM"), debtor out of possession, commenced this bankruptcy on December 28, 2012 as a voluntary chapter 11 case. On March 4, 2013, on motion of the City of West Covina, the Court converted the case to chapter 7.

Before the New Motor Vehicle Board ("NMVB"), WCM commenced two protests against General Motors, LLC ("GM"). Both of the protests arose out of a Chevrolet franchise and the Chevrolet Dealer Sales and Service Agreement between GM and the Debtor ("Dealer Agreement"). In resolving the first protest, the parties reached and the NMVB approved a stipulated decision. Interpreting the stipulated decision, this Court found that the automatic stay did not prevent the automatic termination of the Dealer Agreement and that the Dealer Agreement had in fact terminated. D.E. 150. Additionally, according to WCM, there was a separate, second protest related to GM's "Second Notice of Termination" — that the parties stayed pending resolution of matters before this Court. It is this second protest that forms the basis of WCM renewed protest against GM and forms the basis of GM's requested relief here. A more detailed history of the Dealer Agreement and challenges to it before the NMVB can be found in the Court's 2013 Order. D.E. 150.

On October 23, 2014, WCM moved this Court for an order compelling the chapter 7 trustee ("Trustee") to abandon the estate's interest in the Dealer Agreement to the Debtor. The Court declined to compel abandonment based on its prior orders:

The Court agrees with GM that the issue of whether the bankruptcy estate has an interest in the Dealer Agreement has been decided against WCM. This Court, in the 2013 Order, held that the "Debtor did not satisfy the condition set forth in Section 2.6 of the Settlement Agreement, which provide[d] that the Debtor will voluntarily and without protest terminate the Dealer Agreement." 2013 Order, 7 (citing *In re Gull Ari, Inc.*, 890 F.2d 1255, 1261–62 (1st Cir.1989)). This Court found that "the Dealer Agreement terminated upon Debtor's failure to close the YTransport buy-sell transaction[.]" 2013 Order, 10. Implicit in the Court's decision was that the Dealer Agreement had, at the time that it terminated upon its own terms, ceased to be property of the estate. WCM did not appeal this decision nor did it move for reconsideration of this Order, and it is now binding on the parties as law of the case. *In re Tsurukawa*, 287

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B.R. 515, 518 n.2 (B.A.P. 9th Cir. 2002) ("[T]he law of the case doctrine generally precludes reconsideration of an issue that has already been decided by the same court."). Based on the Court's prior conclusion that the Dealer Agreement ceased to be property of the estate when it terminated by its own terms, the Court finds that it cannot now be abandoned. The Debtor cannot challenge this Court's prior decision now. [D.E. 487, 6].

After issuance of this Order ("2014 Order"), WCM notified the NMVB that it was attempting to abate the stay of the second protest before that body. At a recent status conference before the NMVB, GM stated that it intended to come before this Court to attempt to prevent WCM from further prosecuting these issues. On December 2, 2014, GM filed this Motion requesting enforcement of this Court's orders and related injunctive relief.

2. Motion

In its Motion, and based on the 2014 Order and 2013 Order, GM argues that the Court's previous findings and orders preclude WCM from pursuing its protest before the NMVB. GM asserts that the issues that this Court determined relate to its core jurisdiction and are binding on the parties. GM contends that WCM is acting contrary to both of this Court's prior related orders and must be enjoined. GM asserts that this Court has ruled twice that WCM retains no interest in the Dealer Agreement. Alternatively, GM argues that any claim or right, if any such right remains, vested in the Chapter 7 trustee.

3. Opposition

WCM opposes this motion on several grounds. WCM contends that, pursuant to California Vehicle Code sections 3060 and 3061, the NMVB is the sole entity that can determine whether or not a franchise agreement has terminated. Opposition, 3: 13-23. Based on these code sections, WCM concludes that this Court could not make a final determination as to the termination of the Dealer Agreement. WCM contends that, since GM did not exhaust its administrative remedies, the question of whether the Dealer Agreement had terminated is not ripe for judicial resolution.

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Similarly, WCM avers that this Court does not have jurisdiction, under *Stern v. Marshall*, to make final determinations as to the Dealer Agreement. To the extent that that this Court purported to do that, WCM believes that any such decision was beyond this Court's authority.

Additionally, WCM argues that this Court has not determined whether the Dealer Agreement has terminated: "Just because the estate no longer had an interest in the franchise, however, does not mean that the franchise was terminated" (Opposition, 5:17-18); "WCM's interest in the franchise has now been effectively abandoned to WCM" (Opposition, 6:4-5).

Finally, WCM contends that this Court does not have jurisdiction to enjoin WCM's principals or attorneys from seeking review of the NMVB.

4. Reply

On January 1, 2015, GM timely replied. Fundamentally, GM asserts that the Opposition mischaracterizes the procedural history of this issue and reiterates that this Court has repeatedly held that the Dealer Agreement terminated on its own terms.

In response to WCM's assertions related to the exhaustion of administrative remedies, GM submits that it has already exhausted the administrative procedures required. GM asserts that the Dealer Agreement terminated pursuant to a decision of the NMVB that this Court interpreted. There is no more that is required. Regarding this Court's jurisdiction, GM avers that this is outside of the limitations of *Stern* because all of the issues herein are core matters. The two orders interpreting the Dealer Agreement involved whether the asset was property of the estate.

In opposition to WCM's position that this Court lacks jurisdiction over it and its counsel, GM notes that WCM submitted to the jurisdiction of this Court when it filed its motion compelling the trustee to abandon the estate's interest in the Dealer Agreement.

Finally, GM reasserts that, even if some interest in the Dealer Agreement has survived (which it did not), that interest vests in the trustee, not WCM. The Trustee is the only party, then, with standing to proceed.

5. Sur-Reply

On January 8, 2015, WCM filed an unauthorized sur-reply. WCM reiterates its position that GM has not exhausted its administrative remedies. Specifically,

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WCM contends that GM mischaracterizes the parties' staying of the second protest before the NMVB and that WCM's renewed protest is not moot. As it asserts that the second protest is not moot, WCM concludes that GM has not exhausted administrative remedies and that the matters that were before this Court were not ripe for judicial determination.

Findings of Fact and Conclusions of Law

1. Interpretation of Prior Orders

"[T]he Bankruptcy Court plainly ha[s] jurisdiction to interpret . . . its own prior orders." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009). Although this Court will not recapitulate the entirety of its prior thorough rulings, it clarifies some misstatements regarding its prior orders. As an initial matter, neither WCM nor GM appealed the 2013 Order or the 2014 Order and the findings and conclusions therein are binding on the parties as law of the case.

This Court has issued two lengthy decisions regarding the Dealer Agreement and concluded twice that it terminated pursuant to its terms and ceased to be property of the estate. The Court first concluded that the automatic stay did not bar the termination of the Dealer Agreement and that it had terminated pursuant to its own terms. D.E. 150. Significantly later, the Court determined that—as the Dealer Agreement had terminated—it ceased to be property of the estate and that there was nothing to abandon.

The Court *did not*, as WCM contends, "effectively abandon" the estate's interest to WCM. Rather, in denying WCM's motion for order compelling abandonment of the estate's interest, if any, in the Dealer Agreement, the Court found that WCM was bound by its *unappealed and final determination* that the Dealer Agreement had terminated. D.E. 487, 6 ("Implicit in the Court's decision was that the Dealer Agreement had, at the time that it terminated upon its own terms, ceased to be property of the estate. WCM did not appeal this decision nor did it move for reconsideration of this Order, and it is now binding on the parties as law of the case. *In re Tsurukawa*, 287 B.R. 515, 518 n.2 (B.A.P. 9th Cir. 2002) ('[T]he law of the case doctrine generally precludes reconsideration of an issue that has already been decided

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by the same court.')."). WCM did not appeal *this second* decision and it is now binding on the parties.

Similarly, the Court did not find, as WCM characterizes, "that the Bankruptcy Court had no role in the termination of the franchise." Opposition, 2:19–20. To the contrary, this Court reached the question of whether the Dealer Agreement had terminated and concluded that it terminated pursuant to its own terms. [D.E. 487, 6].

The Court rejects WCM's contention that these decisions were outside of the scope of jurisdiction of the Bankruptcy Court. The Court has authority to determine what is and what is not property of the estate, even when this determination includes interpreting state law. *See* 28 U.S.C. § 157(b)(2)(A); *In re Salander-O'Reilly Galleries, LLC*, 475 B.R. 9, 29 (S.D.N.Y. 2012); *BankUnited Fin. Corp. v. FDIC (In re Bank United Fin. Corp.)*, 462 B.R. 885, 893–94 (Bankr.S.D.Fla.2011) ("[W]hat is or is not property of a bankruptcy estate is an issue that stems from the bankruptcy itself, one that can only arise in a bankruptcy proceeding, since the concept of what is property of a bankruptcy estate does not exist outside of a bankruptcy case."). All of this Court's relevant decisions were determinations of whether the Dealer Agreement was property of the estate or whether certain actions were barred by the automatic stay. These decisions are both core matters squarely within this Court's jurisdiction.

Many of WCM's arguments have been decided against it. As to these issues, WCM's proper course of action was to move for reconsideration or to appeal this Court's Orders. It has not and this Court's decisions are now binding on it.

2. Abstention

The Court notes that there is significant procedural history before the NMVB. The parties have not clearly set forth that procedural posture (or have set forth conflicting accounts of that procedural posture). With the exception of clarifying its Orders to the extent stated above and setting forth the basis for its jurisdiction to make those determinations, the Court will abstain from deciding the other issues raised by the parties. To the extent that GM effectively seeks to enjoin proceedings now pending before the NMVB based on this Court's Orders, this Court finds no authority

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to do so.

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28 U.S.C. § 1334(c)(1) permits abstention in the discretion of the court:

Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

The Ninth Circuit has established factors to consider to determine whether or not abstention is proper on a given proceeding. *In re Tucson Estates, Inc.*, 912 F.2d 1162 (1990). The *Tuscon Estates* factors are:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties. *Id.* at 1167.

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"No single factor is dispositive, and the decision does not turn on a counting of the number of factors on each side. Rather, a court must consider each of the factors and the evidence relating thereto, and weigh its importance in the decision on discretionary remand." *In re Lazar*, 200 B.R. 358, 373 (Bankr. C.D. Cal. 1996).

Here, to the extent that the factors are relevant, they favor abstention. Efficient administration of this case requires that the Court abstain: this Court has issued its orders and the NMVB can interpret those orders according to its own rules and procedures. As the Court has held that the Dealer Agreement has terminated and is not property of the estate and could not be abandoned to any party, the Court exercises its discretion to no longer entertain these issues. The Estate has nothing to gain. As WCM contends, state law issues (interpretation of the California Vehicle Code, ect.) now predominate over other issues. Further, there is a pending action before the NMVB. To the extent that this Court's rulings dictate, and as GM acknowledges, GM can move for dismissal of that action on lack of standing or any other ground and the NMVB can make its own conclusions. As this Court has found that the Dealer Agreement terminated on its own terms and is no longer property of the estate, the issues raised are remote from the bankruptcy proceeding.

For these reasons, GM's Motion is DENIED. The Court will not enjoin the actions of WCM, its principals, or its counsel for pursuing whatever rights that it may have in light of this Court's prior determinations. GM shall lodge an appropriate order within 7 days.

REVISED SUBMISSION PROCEDURE

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact David Riley or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is

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required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

West Covina Motors, Inc.

Represented By
Martin J Brill
Todd M Arnold
Krikor J Meshefejian
Susan I Montgomery
Michael D Frischer

Movant(s):

General Motors LLC

Represented By
Gregory R Oxford

Trustee(s):

David A Gill (TR)

Represented By
John N Tedford
David A Gill (TR)
Kevin Meek