

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re)	Chapter 11
)	
ROYAL AUTOMOTIVE COMPANY, et al.,)	Case No. 18-20218
)	
Debtors.)	(Jointly Administered)
)	
)	Judge Frank W. Volk

**DISCLOSURE STATEMENT ACCOMPANYING
DEBTORS’ JOINT CHAPTER 11 PLAN OF LIQUIDATION**

Royal Automotive Company and Royal Real Estate, LLC, the debtors and debtors in possession in these jointly administered chapter 11 cases (the “Debtors”), transmit this Disclosure Statement to the holders of claims against and equity interests in the Debtors in connection with the solicitation of acceptances or rejections of the Debtors’ Joint Chapter 11 Plan of Liquidation dated October 16, 2018 (the “Plan”). A copy of the Plan is attached as Exhibit A to this Disclosure Statement. Unless otherwise defined in this Disclosure Statement, capitalized terms used in this Disclosure Statement have the meanings ascribed to them in the Plan.

I. INTRODUCTION

The Plan seeks to bring the Debtors’ bankruptcy cases to a prompt conclusion.

As explained in more detail below, the Debtors’ sold their Subaru-franchised automobile dealership and related assets and properties to Dutch Miller Subaru, Inc. shortly after the commencement of their bankruptcy cases, and all of the Debtors’ other properties and assets have been or soon will be fully liquidated. In connection with the Dutch Miller sale, the Debtors began making distributions of the cash proceeds of assets to certain secured and priority creditors in connection with the sale.

In addition, the Debtors have initiated the procedures necessary to terminate Royal Automotive’s Employee Retirement Plan. Given the underfunded status of the Retirement Plan, the Debtors will be required to contribute roughly \$2 million to the Retirement Plan. The termination of the Retirement Plan, if successful, would eliminate at least \$2.8 million in secured claims against the Debtors and free up funds to allow the Debtors to seek to confirm and consummate their proposed Plan.

The Plan contemplates the final distributions of the remaining proceeds beginning immediately after the Bankruptcy Court approves the Plan.

Because the Debtors’ cash proceeds are not likely to pay all secured and priority

creditors in full, general unsecured creditors are not likely to receive any distributions under the Plan. The amount and timing of the distributions to be made are described in more detail below in Section II of the Disclosure Statement. Even so, however, the Debtors are soliciting acceptances or rejections of the Plan from general unsecured and all other creditors of the Debtors that are entitled to vote under the Bankruptcy Code.

The Plan will not become effective unless and until, among other things, the Bankruptcy Court “confirms” the Plan in accordance with the Bankruptcy Code. Confirmation of the Plan requires, among other things, “acceptance” of the Plan by one-half in number and two-thirds in dollar amount of at least one class of creditors who vote on the Plan. The Debtors submit this Disclosure Statement to the holders of claims in those classes, specifically in connection with its solicitation of the necessary acceptances of the Plan.

Your vote to accept the Plan is critical to confirmation of the Plan and expeditious distributions to creditors. A ballot for the acceptance or rejection of the Plan is enclosed with the Disclosure Statement transmitted to general unsecured creditors. **PLEASE COMPLETE THE BALLOT FULLY AND CAREFULLY AND RETURN THE COMPLETED BALLOT SO THAT IT IS RECEIVED ON OR BEFORE DECEMBER __, 2018 AT 5:00 P.M.** to:

BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
Attn: Jason Kittinger

Please note that not all recipients of this Disclosure Statement will receive a ballot. Only the holders of claims that are entitled to vote to accept or reject the Plan will receive a ballot. Other creditors and equity interest holders will not receive a ballot, as they are not entitled to vote to accept or reject the Plan.

On November __, 2018, after notice and a hearing, the Bankruptcy Court approved this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable the holders of claims against the Debtors to make an informed judgment whether to accept or reject the Plan. Each creditor entitled to vote to accept or reject the Plan should read this Disclosure Statement and the Plan in their entirety before voting on the Plan.

THE DEBTORS BELIEVE THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS AND THEIR CREDITORS AND URGE CREDITORS TO VOTE TO ACCEPT THE PLAN.

If you are a creditor entitled to vote to accept or reject the Plan and did not receive a ballot, received a damaged ballot, or lost your ballot, or if you have any questions concerning the Disclosure Statement, the Plan, or the procedures for voting on the Plan, please call Mr. Jason Kittinger at (304) 345-6555.

The hearing to confirm the Plan will be held on December __, 2018 at _____ .m. before the Honorable Frank W. Volk, Chief Judge of the United States Bankruptcy Court for the Southern District of West Virginia, at the Robert C. Byrd United States Courthouse, 6th Floor, Bankruptcy Courtroom A, 300 Virginia Street East, Charleston, West Virginia 25301. The confirmation hearing may be adjourned from time to time either by notice filed with the Court or as announced in Court on the date or adjourned date of the hearing.

The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed so that they are received on or before December __, 2018 at 5:00 p.m., Eastern time.

II. OVERVIEW OF THE PLAN

The following is a brief overview of the provisions of the Plan. The overview is qualified in its entirety by reference to the Plan, a copy of which is attached hereto as Exhibit A.

A. *Summary of Distributions Under the Plan*

Articles II, III, and IV of the Plan classify the various claims and equity interests of the Debtors effectively into six separate classes and specify the treatment of the claims and interests in each such class. The table below summarizes the treatment of the claims and interests in each class and provides an estimate of the amount of claims in each class as well as an estimated recovery for the holders of claims in each class, in each case, as of the expected Effective Date of the Plan.

In reviewing the table, creditors should bear in mind that the Bankruptcy Code requires certain treatment of certain claims and generally embodies the “absolute priority rule.” In accordance with the absolute priority rule, secured creditors are generally entitled to payment equal to the value of their collateral and secured and other creditors in “senior” classes must be paid in full before creditors in “junior” classes receive any distributions. As a result of these rules, senior and secured creditors may have recoveries of 100% while other “junior” and unsecured creditors receive substantially lower recoveries. Because general unsecured creditors will not be paid under the Plan, equity interest holders (the Debtors’ owners), whose rights are junior to all creditors, receive nothing under the Plan.

SUMMARY OF CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN

The table below assumes that Royal Automotive Company completes a standard termination of its employees’ Retirement Plan with an estimated contribution by it and Royal Real Estate of an aggregate amount of \$2,036,834 to the Retirement Plan.

The amount required to complete a standard termination, and consequently the amount of the Debtors’ required contribution to the Retirement Plan, remain subject to final determination by the administrators of the Retirement Plan. The Debtors expect to

have that final determination prior to the date of the hearing to consider confirmation of the Plan.

Class	Claim or Interest	Treatment	Estimated Claims	Estimated Recovery
--	Administrative Expense Claims	Pro rata payment of the Cash Distribution Pool	\$464,458	76%
--	Priority Tax Claims	Pro rata payment of the Cash Distribution Pool remaining after payment of senior priority claims	\$95,417 ¹	0%
1	Other Priority Claims	Pro rata payment of the Cash Distribution Pool after payment of senior priority claims	\$0	0%
2A	Secured Claims of United Bank (Royal Automotive)	Payment of cash equal to the difference between (A) the amount of its allowed claim and (B) the Case Funding Pool attributable to its claim	\$57,800	50%
2B	Secured Claims of Subaru Acceptance	Payment of cash equal to the difference between (A) the amount of its allowed claim and (B) the Case Funding Pool attributable to its claim	\$181,000	50%
2C	Secured Claims of GreatAmerica Financial	Satisfied pursuant to separate order	\$7,000	79%

¹ The IRS filed an alleged priority claim of \$323,318 shortly after the commencement of these cases. Royal believes that claim will be reduced to zero upon the standard termination of the Retirement Plan, as the other elements of the IRS's priority claim have been or will be otherwise satisfied upon the filing of the appropriate returns after the commencement of the Chapter 11 cases.

Class	Claim or Interest	Treatment	Estimated Claims	Estimated Recovery
2D	Secured Claims of Pension Benefit Guaranty Corp (Royal Automotive)	Satisfied in full through the standard termination of the Retirement Plan	\$1,914,737	n/a
2E	Secured Claims of the Internal Revenue Service	Payment of cash equal to the difference between (A) the amount of funds remaining in Royal Automotive's estate after funding of the pension plan and distributions on account of claims in Classes 2A, 2B, 2C, 2D, and 2F and (B) the Case Funding Pool attributable to its claim	\$5,209,150	0%
2F	Other Secured Claims (Royal Automotive)	Payment of cash equal to the difference between (A) the amount of its allowed claim and (B) the Case Funding Pool attributable to its claim	\$0.00	50%
3A	Secured Claims of United Bank (Royal Real Estate)	Payment of cash equal to the difference between (A) the amount of its allowed claim and (B) the Case Funding Pool attributable to it its claim	\$0	50%
3B	Secured Claims of Pension Benefit Guaranty Corp (Royal Real Estate)	Satisfied in full through the standard termination of the Retirement Plan	\$2,808,230	n/a

Class	Claim or Interest	Treatment	Estimated Claims	Estimated Recovery
3C	Other Secured Claims (Royal Real Estate)	Payment of cash equal to the difference between (A) the amount of its allowed claim and (B) the Case Funding Pool attributable to its claim	\$0.00	50%
4	General Unsecured Claims (Royal Automotive)	Paid a pro rata share of the funds remaining after the distributions to administrative, priority, and secured claims against Royal Automotive	\$522,601 ² \$3,282,235 ³	0%
5	General Unsecured Claims (Royal Real Estate)	Paid a pro rata share of the funds remaining after the distributions to administrative, priority, and secured claims against Royal Real Estate	\$1,628,627 ⁴ \$3,282,235 ⁵	0%
6	Equity Interests	No distributions	n/a	0%

B. Distributions to Priority Creditors

Certain priority claims have been paid during the pendency of the Chapter 11 cases. The Debtors project that their remaining administrative expense priority claims include up to approximately \$48,000 in accounts payable attributable to the Debtors’ postpetition operations, \$26,000 in the fees for the Debtors’ wind-down consultants, the consumer privacy ombudsman’s fees of \$14,960, professional fees totaling an estimated \$275,000, and United States Trustee fees estimated at approximately \$100,000.

² This figure represents the amount of the scheduled claims against Royal Automotive. See Case No. 18-20218, Doc 106 at *44.

³ This figure comprises the filed unsecured claims of the PBGC against Royal Automotive. In the event of a standard termination of the Retirement Plan, the PBGC’s unsecured claims against Royal Automotive will be extinguished.

⁴ This figure represents the amount of the scheduled claims against Royal Real Estate. See Case No. 18-20219, Doc 16 at *13.

⁵ This figure comprises the filed unsecured claims of the PBGC against Royal Real Estate. In the event of a standard termination of the Retirement Plan, the PBGC’s unsecured claims against Royal Real Estate will be extinguished.

In addition, Royal has accrued \$95,417 in priority tax claims, consisting of local business and occupancy taxes totaling \$27,000 and personal property taxes for 2017 and 2018 totaling approximately \$78,000. The IRS has also asserted a priority tax claim of \$323,318, thus bringing the total shown in the table to \$418,734 in asserted priority tax claims. Royal believes, however, that the IRS will have no priority tax claim upon consummation of a standard termination of the Retirement Plan.

The Debtors do not believe they have any other creditors holding claims entitled to priority under the Bankruptcy Code.

The Plan provides for the distribution to the holders of priority claims on pro rata and absolute priority bases. In accordance with the priorities established under Section 507(a) of the Bankruptcy Code, administrative expenses are prior in right of payment to other priority claims, including priority tax claims, and will be paid out of the funds remaining in the Debtors' estates after satisfaction of secured claims on a pro rata basis until they are paid in full.

As shown in the table above, the Debtors project that their remaining funds after terminating the Retirement Plan and paying secured claims will not suffice to pay administrative expenses in full. Instead, the Debtors project that administrative expense creditors will receive only 76% payment on account of their administrative expense claims.

In the event, however, that funds remain after the payment of administrative expenses and secured claims, the holders of other priority claims, including priority tax claims, will be paid on a pro rata basis according to their priority under Section 507(a) of the Bankruptcy Code.

C. Distributions to Secured Creditors

The Plan gives effect to the various priorities of the Debtors' secured creditors in the assets of the two Debtors. In order to fund the administrative expenses of the Debtors' Chapter 11 cases and in recognition of the fact that the commencement and prosecution of the Debtors' Chapter 11 cases provided funds from which to pay the Debtors' secured creditors, first and foremost, the Plan provides for the Debtors' estates' fifty-fifty sharing of the distributions to secured creditors. In that regard, the Debtors seek the consent of their secured creditors to such a sharing but reserve their rights under section 506(c) to charge the secured creditors' collateral.

United Bank. As of the commencement of the Debtors' Chapter 11 cases, United Bank held valid, perfected, first-priority liens in all or substantially all the Debtors' assets securing the Debtors' obligations to United Bank totaling approximately \$4.6 million in the aggregate. In connection with the sale of those assets during the pendency of the Debtors' cases, the Debtors paid United Bank's secured claim in full. However, pursuant to an agreement with the Pension Benefit Guaranty Corporation which held subordinate liens in the same property and assets, the Bank agreed to carve out roughly \$57,800 in prepetition attorneys' fees from the Debtors' payments. Those funds remain in the

Debtors' estates and United Bank, in sum and substance, retains a secured claim in that claim in that amount and a valid, perfected, first-priority lien in those \$57,800 in sale proceeds pursuant to the Bankruptcy Court's order approving the sale.

The Plan proposes to pay United Bank \$28,900 on account of its secured claim, with the remaining \$28,900 to which it would otherwise be entitled being transferred to the Debtors to fund distributions to administrative expense and other priority creditors.

Subaru Acceptance Corp. As of the commencement date, Subaru Acceptance Corporation asserted a valid, perfected, first-priority purchase money security interest in eight cars that Royal Automotive acquired through financing provided by a predecessor in interest of Subaru Acceptance, owned, and used as loaner cars in connection with its dealership business. Those cars were valued at \$181,000 in connection with the sale of the dealership, and Subaru Acceptance has accepted that figure as the value of the eight cars.

The Plan treats Subaru Acceptance's asserted secured claim as being secured by a valid, perfected, first-priority purchase money security interest in the eight cars. The Plan proposes to pay Subaru Acceptance \$90,500 on account of its secured claim against Royal Automotive with the remaining \$90,500 to which it would otherwise be entitled being transferred to the Debtors to fund distributions to administrative expense and other priority creditors.

GreatAmerica Financial. Prior to the commencement of the Debtors' Chapter 11 cases, Royal Automotive entered into an equipment lease financing with GreatAmerica Financial Corporation with respect to the purchase of an alignment machine used in Royal's service department. As of the commencement date, Royal Automotive still owed GreatAmerica \$6,415.58. GreatAmerica claimed that it was owed slightly in excess of \$7,000, inclusive of postpetition interest and other charges.

Pursuant to a separate order of the Court, Royal compromised and settled the GreatAmerica claim and paid it \$5,500 on account of its claim, roughly 79% of the amounts owing.

Pension Benefit Guaranty Corp. The Pension Benefit Guaranty Corporation (PBGC) holds contingent claims against the Debtors relating to the underfunding of the Retirement Plan as described below. The PBGC has proofs of claim totaling approximately \$5.2 million, of which approximately \$2.8 million comprises alleged secured claims against the Debtors.

Dating back to 2013, the PBGC filed notices of lien against both of the Debtors and, as of the commencement date, asserted blanket liens on all the Debtors' assets to secure its claims. In connection with a refinancing of the United Bank debt, the PBGC generally agreed to subordinate its liens and claims to the liens and claims of United

Bank.⁶ In addition, if and to the extent that Subaru Acceptance holds purchase money security interests in its collateral, the Debtors believe those liens are senior to the PBGC's blanket lien.

As discussed below, the Debtors are pursuing a standard termination of the Retirement Plan. In the event the Debtors consummate a standard termination of the Retirement Plan, the PBGC has advised the Debtors, and the Debtors believe, that the PBGC would be left with no remaining claims against the Debtors.

United States Internal Revenue Service. As described in more detail below, as the Retirement Plan continued to experience significant underfunding, the United States Internal Revenue Service (IRS) imposed steep excise taxes on Royal Automotive. By the time the Debtors commenced their Chapter 11 cases, the IRS's claim had climbed to nearly \$5.6 million.

Just prior to the commencement of the Debtors' Chapter 11 cases, the IRS filed a notice of lien against all the property of Royal Oldsmobile Company.⁷ Based upon that notice of lien, the IRS has filed a proof of claim against Royal Automotive Company, asserting a secured claim for \$5,209,150.14. It also asserts an unsecured claim totaling \$372,744.54, relating principally to the Retirement Plan, of which \$323,317.91 is claimed as a priority tax claim and \$49,426.63 is claimed as a general unsecured claim. The IRS has asserted no claim against Royal Real Estate.

If the Debtors prove able to complete a standard termination of the Retirement Plan, Royal Automotive believes that the IRS's claim will be reduced substantially.

Inasmuch as the IRS's claim was the last-filed secured claim, all the other secured claims against Royal Automotive are senior in right of payment to the IRS. After funding the standard termination of the Retirement Plan and satisfying the prior secured claims of United Bank and Subaru Acceptance, the Debtors do not believe that Royal Automotive will have any funds remaining and, accordingly, do not expect to distribute any property on account of the IRS's secured claim.

D. Distributions to General Unsecured Creditors

The Plan separately classifies the unsecured creditors of Royal Automotive and Royal Real Estate. The unsecured creditors of Royal Automotive consist principally of its vendors, suppliers, and other entities with whom Royal Automotive has done business. The unsecured creditors of Royal Real Estate consist of Richard F. Smith and the Estate of Rebecca Smith from whom Royal Real Estate purchased its real property and to whom it issued notes in 1997 in an original principal amount aggregating \$2,500,000. Royal Real Estate, which has not made payments due under the notes for several years, still

⁶ The Debtors believe that the PBGC has asserted that its subordination did not extend to United Bank's prepetition claim for attorneys' fees, the basis for its request that the Debtors withhold payment of the \$57,800 from the sale proceeds referenced above.

⁷ Royal Automotive reserves the right to object to the IRS's secured claim on the grounds that its notice of lien failed to identify the proper name of its debtor.

owes more than \$1.6 million on account of those notes.

As noted in the table above, the PBGC also asserts substantial unsecured claims against both Debtors.

Unsecured creditors are junior in right of payment to (a) secured claims in all property that is subject to liens and (b) all administrative expense and priority claims. Given the extent of the secured, administrative expense and priority claims against the Debtors and the projected costs of a standard termination of the Retirement Plan, the Debtors do not believe that any funds will remain for distribution to unsecured creditors of either Debtor. Nonetheless, the Plan does provide for a *pro rata* distribution from each Debtor's respective estate of any funds that do remain after satisfying those obligations to unsecured creditors.

E. Extinguishment of Equity Interests

The holders of the equity interests in the Debtors will receive nothing in connection with the plan,

E. Winding Up of Debtor's Case and Affairs

In addition to providing for the distribution of the Debtors' property to creditors, the Plan generally winds up the affairs of the Debtors and the Debtors' Chapter 11 cases.

1. Rejection of Contracts and Leases

In connection with winding up the Debtors' affairs, the Plan provides for the rejection of any and all remaining unexpired leases and executory contracts.

In accordance with the Bankruptcy Code, any damages resulting from the rejection of any unexpired lease and executory contract constitute a prepetition general unsecured claim. Any and all such claims will be treated as a claim in Class 4 (claims against Royal Automotive) or 5 (claims against Royal Real Estate), as the case may be.

Please note that the rejection of executory contracts includes the rejection of the Debtors' indemnification obligations under their articles of incorporation, bylaws, and operating agreements and any compensation or employee benefit plans.

The rejection of the compensation and employee benefit plans will have no effect on the right of retirees and participants under the Retirement Plan. Neither the Plan nor the Debtors' bankruptcy cases will affect the rights or interests of any retirees or participants of the Retirement Plan.

2. Abandonment of Property

The Plan also provides for the abandonment of any property of the Debtors' estates that remain after the distributions of cash to creditors. The Debtors know of no other property of the estate and thus believe that there will be no property abandoned

pursuant to the Plan.

3. Dissolution of Debtors

Upon full consummation of the Plan, Royal Automotive Company and Royal Real Estate, LLC will cease to exist and be dissolved.

F. Conditions to Effectiveness of the Plan

In addition to the entry of an order of the Bankruptcy Court confirming the Plan, the Plan is conditioned upon the successful consummation of a standard termination of the Retirement Plan. The Debtors have previously moved for and obtained Bankruptcy Court authority to fund the standard termination of the Plan. Nonetheless, as the total costs of a standard termination remain uncertain at this time, there is no assurance that the Retirement Plan will have sufficient assets to effect a standard termination.

III. GENERAL INFORMATION

The following provides a brief background of the Debtors and brief summary of the Debtors' Chapter 11 cases to assist creditors in understanding the Debtors' assets, the Plan, and the distributions under the Plan.

History of the Debtors and Events Leading to the Bankruptcy

Richard F. Smith founded Royal Automotive in 1969 as an Oldsmobile franchise dealership under the name Royal Oldsmobile Company. It later acquired a Jeep franchise as well.

In 1984, Mr. Smith and his wife, Rebecca, acquired the Debtors' former Patrick Street Plaza property and operated the dealership at that location. The Smiths later transferred ownership of that property to Royal Real Estate, an LLC then owned by the Smiths' four children, in 1997, taking notes for the purchase price totaling \$2,500,000.

Mr. Smith later transferred his interests in the dealership to his four children.

At this time, three of the Smiths' children—Kelly F. Smith, the Debtors' principal manager, Gail Huggins, and Christa Knott—still hold the equity interests in each of the Debtors.

The Royal Automotive Retirement Plan and Its Effect on the Debtors

In connection with its founding, Royal Automotive established its employee Retirement Plan on January 1, 1970. During the early years of the Retirement Plan, the plan performed well. The plan was fully funded, and Royal Automotive made all the required contributions thereto.

Beginning in 2004, a string of events began to adversely affect Royal Automotive's operations and its ability to fund the Retirement Plan.

In 2004, General Motors discontinued the Oldsmobile brand, Royal Automotive's main source of income. The discontinuance of the Oldsmobile franchise resulted not only in the loss of new car sales but also the associated warranty work. Royal Automotive's business income dropped drastically.

In response to the loss of the Oldsmobile business, Royal Automotive froze its retirement plan in 2005. From that point on, it added no additional participants to the plan, thus ensuring that the plan incurred no future retirement obligations.

During this time, Royal Automotive also sought to increase sales by acquiring a Subaru franchise to capitalize on the growing popularity of the Subaru brand.

But Royal Automotive's operations took a further hit during the crisis that affected the entire automotive industry from 2008 to 2010. The 2008 stock market crash and the resulting sharp reduction in interest rates in the same timeframe also severely damaged the Retirement Plan, increasing the monies required to maintain the necessary funding level.

Between the increased contribution requirements and its historically low operating income, Royal Automotive proved unable to maintain the required contribution levels to its Retirement Plan.

Then, Chrysler Corporation, the maker of Jeeps, filed its bankruptcy case in 2009. In the Chrysler bankruptcy, Royal was able to acquire a Chrysler franchise, at no additional cost, to add to its Jeep and Subaru franchises. Although Chrysler quickly reorganized through a bankruptcy sale, the damage had been done to both Chrysler and Jeep sales. Royal Automotive's revenues and income dropped again, and it was unable to make up any missed contributions.

Beginning in 2013, the PBGC began filing notices of liens against Royal Automotive and Royal Real Estate, taking liens in substantially all the Debtors' property. Further adding to Royal Automotive's financial woes, the Internal Revenue Service imposed heavy penalties upon it in the form of "excise taxes" relating to the Retirement Plan's underfunding.

Without other options, Royal Automotive sold its Chrysler and Jeep franchises in 2015, using a majority of the sale proceeds to fund the Retirement Plan and improve the funding levels. Still, the Retirement Plan remained significantly underfunded. And the application of the majority of the sale proceeds to the Retirement Plan hindered Royal Automotive's ability to operate at full capacity.

Throughout the period of the Retirement Plan's underfunding, the IRS issued annual notices of claim asserting additional excise taxes, together with interest thereon.

The Efforts to Sell the Dealership

To finally address its mounting financial issues particularly to the PBGC and the IRS, Royal Automotive determined to sell its assets and use the net proceeds to fund and

then terminate the Retirement Plan. To that end, the Debtors' entered into a term sheet with Dutch Miller Chevrolet of Charleston, Inc. in August 2016.

Over the next year and a half, the Debtors sought to deal with retirement plan obligations and the ever-expanding liability to the IRS, seeking negotiated resolutions with both the PBGC and the IRS.

During this time, Royal and Dutch Miller repeatedly extended the term sheet, which had initially provided for a December 31, 2016 termination.

But the Debtors were ultimately unable to negotiate or complete resolutions with either the PBGC or the IRS, evidenced most significantly by the IRS's formal rejection of Royal Automotive's offer in compromise in January 2018. Even after January 2018, Royal Automotive sought to resolve matters with both the PBGC and the IRS, including appealing the IRS's rejection of its offer in compromise.

The Filing of the IRS Liens

On March 19, 2018, the IRS filed a notice of lien with respect to its excise tax claims, which had then risen to more than \$5.2 million.

The IRS's filing of the notice of lien scuttled any hope of the Debtors' consummating a sale outside of bankruptcy. In order to preserve the value of Dutch Miller's proposed acquisition for all creditors, the Debtors determined to commence these Chapter 11 cases in order to effect a sale of their dealership to Dutch Miller free and clear of liens, claims, and encumbrances, including the recently perfected liens of the IRS.

The Debtors' Chapter 11 Cases

After negotiating, documenting, and signing an asset purchase agreement with the Debtors and a debtor-in-possession financing agreement with United Bank designed to provide the Debtors with funding to operate pending the Dutch Miller sale, the Debtors commenced their Chapter 11 cases on May 2, 2018.

On the first day of their cases, the Debtors filed a number of standard first-day motions. These motions sought to allow the Debtors to continue to operate their businesses without interruption while the Debtors sought approval of and consummated the sale of their assets to Dutch Miller subject to an auction process. In accordance with various orders entered with respect to their first-day motions, the Debtors continued to perform their obligations to customers, pay their employees, pay certain critical vendors, maintain their existing bank accounts, and maintain and pay for their existing insurance. To provide funding for those obligations and to finance the contemplated ongoing acquisition of new and used vehicles in connection with the operation of the dealership, the Debtors also sought and obtained approval of up to \$1.9 million financing provided by United Bank.

Sale of the Debtors' Assets to Dutch Miller

On the same day they filed for bankruptcy, the Debtors also filed a motion to approve the sale of their assets to Dutch Miller Subaru, subject to an auction to be conducted pursuant to and in accordance with a sale procedures order entered by the Court. The Court entered the sale procedure order on May 21, 2018.

Unfortunately, however, no competing bidders came forward to indicate any interest in submitting a competing bid for the Debtors' assets, and the Debtors proceeded with a hearing to obtain approval of the sale to Dutch Miller. The Court entered an order approving the sale to Dutch Miller on June 14, 2018.

The Debtors consummated the sale to Dutch Miller on June 15, 2018, with Royal Automotive selling the dealership and dealership assets (vehicles, parts, etc.) and Royal Real Estate conveying the premises on which Royal Automotive operated the dealership to Dutch Miller Subaru. The sale generated the following net proceeds after payment of the various obligations relating to the sale and other orders of the Bankruptcy Court:

Debtor	Royal Automotive	Royal Real Estate
Purchase Price	\$4,634,425 ⁸	\$2,300,000
Deductions or Credits	\$2,134,017 ⁹	(\$19,608) ¹⁴
	\$680,578 ¹⁰	(26) ¹⁵
	\$327,121 ¹¹	(\$1,466,177) ¹⁶
	\$34,582 ¹²	
	\$44,727 ¹³	
Net Proceeds	\$1,413,400	\$814,188

Since the closing of the sale, the Debtors have focused their efforts on terminating the Retirement Plan, winding down their business, and pursuing confirmation of the Plan.

In connection therewith, the Debtors employed two former Royal Automotive employees, both members of the Smith family, as consultants to oversee the winddown

⁸ Includes post-closing adjustment to parts inventory of \$66,377.

⁹ Payoff of United Bank prepetition floorplan loan.

¹⁰ Payoff of United Bank postpetition floorplan loan.

¹¹ Cure obligations paid to Subaru of America for prepetition defaults under franchise agreement.

¹² Payoff of prepetition sales taxes owing to the State of West Virginia.

¹³ Payoff of prepetition personal property taxes owing to Kanawha County.

¹⁴ Credit for 2018 real estate taxes due during the period of Royal Real Estate's ownership of the property.

¹⁵ Recording fee.

¹⁶ Payoff of United Bank mortgage on dealership premises owned by Royal Real Estate.

and to use the net proceeds of sale, all of which constitute the collateral of the Debtors remaining secured creditors, to fund the winddown.

Termination of the Retirement Plan

As of the commencement of the Debtors' Chapter 11 cases, the Retirement Plan had assets of approximately \$4,486,369 and liabilities, in the form of obligations to retirees and plan participants, having a present value of approximately \$5,157,476.¹⁷ Under applicable law, the Debtors are jointly and severally liable for the full amount of the underfunding.

To facilitate the termination of the Retirement Plan, Royal Automotive, as the plan's sponsor, amended the retirement plan to provide for lump sum distributions to participants and update the plan to conform with current regulations. Both of those actions contributed to a reduction in the costs associated with terminating the plan.

In connection with its termination, the Retirement Plan expects to make lump sum distributions to certain retirees and plan participants equal, in general, to the present value of their future benefits. The Retirement Plan will have to purchase annuities to fund the Retirement Plan's ongoing obligation to certain other retirees and plan participants. The Retirement Plan's administrator estimates that the total cost of terminating the Retirement Plan will amount to approximately \$2,036,000.

In light of the bankruptcy filing, however, the Debtors had two options for dealing with the Retirement Plan. They may fund and pay to the Retirement Plan the full amount of the underfunding, thus enabling the Retirement Plan to perform a standard termination as set forth above. Alternatively, the Debtors may proceed with a distress or PBGC-initiated termination of the Retirement Plan. In that case, the PBGC would assume the obligations to retirees and plan participants under the Retirement Plan and assert secured claims against the Debtors totaling more than \$2.8 million and unsecured claims of a roughly equal amount.

In an effort to maximize distributions to creditors in these bankruptcy cases, the Debtors have determined to commit, and the Bankruptcy Court has approved the commitment of, as much as \$2.15 million of their remaining resources as available to fund and pursue a standard termination of the Retirement Plan. Assuming the Debtors are able to terminate the Retirement Plan with the Debtors' contribution of \$2.036 million, a standard termination of the Retirement Plan would save the Debtors' estates nearly \$800,000 over a distress or PBGC-initiated termination.

The Debtors believe based upon the Retirement Plan's estimates that the requested funding amount will more than cover the costs of a standard termination of the Retirement Plan. It bears emphasis, however, that the Retirement Plan has simply estimated the underfunding and the actual costs of terminating the plan and the resultant underfunding have not yet been fully determined. Pending the determination of the

¹⁷ It bears emphasis that this figure does not fully reflect the underfunding of the Retirement Plan or the costs of a standard termination thereof.

actual costs of terminating the Retirement Plan, there can be no assurances that the Retirement Plan will have sufficient funds to fully fund a standard termination of the Retirement Plan.

Having liquidated their assets in full and provided sufficient funding for a standard termination of the Retirement Plan, the Debtors seek to bring this case to a successful resolution by providing for the distribution of the Debtors' remaining assets to their creditors in accordance with the priorities established under the Bankruptcy Code.

IV. CONFIRMATION AND CONSUMMATION OF THE PLAN

The Bankruptcy Code specifies the following steps that must be undertaken to confirm and consummate a Chapter 11 plan.

A. Solicitation of Votes

Under the Bankruptcy Code, at least one impaired class of claims must vote to accept the Plan. Classes 1, 2A, 2B, 2E, 2F, 3A, 3C, 4 and 5 of the Plan are impaired and, therefore, entitled to vote to accept or reject the Plan. Accordingly, the Debtors are soliciting the acceptances of the holders of claims in those Classes pursuant to this Disclosure Statement and the enclosed ballot.

Solicitation of acceptances of the Plan will end on November __, 2018. That is the last day upon which creditors may submit ballots accepting or rejecting the Plan. Ballots must be received at the offices of Bailey & Glasser LLP on or before 5:00 p.m. on November __, 2018.

B. Hearing to Confirm Plan

The Bankruptcy Code requires the Bankruptcy Court, after notice to creditors and other parties in interest, to hold a hearing to consider confirmation of the plan.

The hearing to consider confirmation of the Plan will be held on December __, 2018 at _____.m. before the Honorable Frank W. Volk, Chief Judge of the United States Bankruptcy Court for the Southern District of West Virginia, at the Robert C. Byrd United States Courthouse, 6th Floor, Bankruptcy Courtroom A, 300 Virginia Street East, Charleston, West Virginia 25301. The confirmation hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the confirmation hearing.

The Bankruptcy Code affords creditors and other parties in interest the opportunity to object to confirmation of a plan. Any objection to confirmation must be made in writing and specify in detail all grounds for the objection. Any such objection must be filed with the Bankruptcy Court and served on the following parties, in each case so that the objection is received on or before December __, 2018 at 5:00 p.m. Eastern time:

BAILEY & GLASSER LLP
Attorneys for the Debtors
209 Capitol Street
Charleston, West Virginia 25301
Attn: Marc R. Weintraub and Kevin W. Barrett

OFFICE OF THE UNITED STATES TRUSTEE
300 Virginia Street East
Room 2025 (2nd Floor)
Charleston, West Virginia 25301

C. Requirements to Confirm Plan

Section 1129 of the Bankruptcy Code specifies the requirements for confirmation of a Chapter 11 plan. Insofar as is pertinent to the Plan, section 1129 requires that

- (1) the plan and the plan proponent comply with the Bankruptcy Code;
- (2) the plan proponent proposed the plan in good faith and not by any means forbidden by law;
- (3) payments made by the plan proponent and debtor for services or for costs and expenses in connection with the case and the plan are subject to the approval of the Bankruptcy Court as reasonable;
- (4) the proponent has disclosed the identity, affiliations, and in certain cases compensation of individuals serving after confirmation for the debtor's successor under the plan;
- (5) each holder of a claim or interest in any impaired class has either accepted the plan or will receive or retain property having a value that is not less than the amount the holder would receive in a Chapter 7 liquidation;
- (6) the plan provides for the payment, in full, in cash of priority claims and secured claims;
- (7) at least one impaired class of claim accepts the plan;
- (8) all fees payable to the United States Trustee have been paid or the plan provides for the payment of all fees; and
- (9) as to any non-accepting impaired class, the plan does not discriminate unfairly and is fair and equitable.

The Debtors believe that the Plan complies with each of the applicable provisions of section 1129.

1. Acceptance

Under the Bankruptcy Code, the holders of claims and equity interests in “impaired” classes are entitled to vote to accept or reject the Plan, and a Chapter 11 plan must receive the affirmative vote of at least one impaired class of claims.

Under the Plan, the holders of claims in Classes 1, 2A, 2B, 2E, 2F, 3A, 3C, 4 and 5 are impaired and entitled to vote to accept or reject the Plan.

Pursuant to separate orders, the Debtors submit that the Secured Claims in Classes 2C, 2D, and 3B have been or will be satisfied in full.

The Debtors believe that there are no other secured claims in Classes 2F and 3C or that all other secured claims classified in Classes 2F and 3C have been paid or otherwise satisfied in full during the pendency of the Chapter 11 case. Accordingly, the Debtors do not believe that there are any claims remaining in Classes 2F and 3C. Nevertheless, in order to assure confirmation of the Plan, the Plan provides for distributions to the holders of any claims in Classes 2F and 3C and the Debtors are soliciting votes to accept or reject the Plan from the holders of claims in such Classes.

Similarly, Classes 4 and 5, the classes containing all outstanding general unsecured claims against the Debtors, are “impaired.” Although the Debtors expect that no distributions will be made to holders of claims in those Classes, the Debtors are nonetheless soliciting votes to accept or reject the Plan from the holders of claims in those Classes.

Class 6, the class consisting of all equity interests in the Debtors, is “impaired” under the Plan. By virtue of the “absolute priority rule,” the holders of the Debtors’ equity interests will receive no distributions on account of their equity interests since creditors will not be paid in full. Although they are “impaired,” holders of equity interests are not entitled to vote to accept or reject the plan. Instead, the Bankruptcy Code conclusively presumes the Debtors’ equity holders reject the Plan because they will receive nothing under the Plan.

The Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by the holders of at least two-thirds in dollar amount and more than one-half in number of the claims of that class that timely vote to accept or reject a plan. The amount of a claim entitled to vote is the allowed amount of the claim.

In this case, each ballot will reflect the allowed amount of the claim according to the greater of (1) Debtors’ books and records and (2) the filed amount of any proof(s) of claim, and such amount shall be determinative of the amount of the claim for purposes of voting. If a creditor holds more than one claim in a class, the creditor’s claims in that class will be aggregated and treated as one claim in the class.

So long as at least one class votes to accept the Plan as determined in accordance with the Bankruptcy Code, the Debtors intend to seek nonconsensual confirmation of the Plan with respect to any impaired class that rejects the Plan.

2. Nonconsensual Confirmation

Nonconsensual confirmation requires that the Debtors establish that the Plan does not discriminate unfairly and is fair and equitable as to the dissenting classes. The requirements for nonconsensual confirmation are set forth in section 1129(b) of the Bankruptcy Code. The Debtors believe that the Plan will satisfy the requirements for nonconsensual confirmation thereunder.

3. Best Interests Test

The Bankruptcy Code requires that a plan be “in the best interests” of all non-accepting holders. This so-called “best interests test” requires that all non-accepting holders receive or retain property having a value that is not less than the amount the holder would receive in a Chapter 7 liquidation.

The Debtors submit that this Chapter 11 plan of liquidation allows creditors to recover more than they would receive in a liquidation under Chapter 7. In a Chapter 7 case, a trustee would be elected or appointed to liquidate the Debtors’ remaining assets and distribute their proceeds to creditors.

Given the magnitude of the secured claims against each of the Debtors, the Debtors believe that the only classes that would receive any distributions of assets in a liquidation under Chapter 7 are the secured claims against the Debtors, and therefore that the only relevant Classes for applying the best interests test are the impaired priority and secured claims in Classes 1, 2 and 3 of the Plan. Inasmuch the Plan represents a waterfall plan giving effect to the secured claims and priorities of the various secured and priorities claimants, the Debtors submit that the Plan satisfies the best interests test.

Under Chapter 7, a trustee would need to be appointed, take time to organize, and have to, at a minimum, investigate the Debtors’ assets and claims before finalizing matters and making distributions to creditors. This would result in significant delay in distributions to creditors.

The process involved in prosecuting a Chapter 7 case would also generate additional expenses and claims, some of which would be entitled to priority over all claims in the Chapter 11 case. The trustee would be entitled to compensation and reimbursement of expenses on a priority basis. In addition, the trustee would employ new attorneys and professionals on a priority basis to assist the trustee and these new attorneys and professionals would require time to organize and investigate the Debtors’ property and assets. These costs alone, if and to the extent funded through the use of cash collateral, would substantially reduce the expected distributions to creditors.

The Debtors also doubt that a Chapter 7 trustee might even attempt to perform a standard termination of the Retirement Plan. In that event, the distributions to Classes 2D and 3B, the claims of the PBGC would receive a fractional recovery on account of its \$2.8 million in claims, eating up the entirety of the Debtors’ remaining assets after satisfaction of the prior claims of United Bank and Subaru Acceptance and leaving nothing for recovery by any other creditors, including administrative and priority

creditors.

The Debtors also note that the trustee would have the right to seek to charge the collateral of the PBGC, Subaru Acceptance, and certain other secured creditors under section 506(c) of the Bankruptcy Code, thereby reducing the distributions to such creditors.

The Debtors will be prepared, if necessary, to present more detailed analysis and evidence that the Plan satisfies the “best interests” test at the hearing to consider confirmation of the Plan.

D. Effective Date of Plan

The Effective Date of the Plan will be the day after each of the two conditions to the effectiveness of the Plan, including consummation of a standard termination of the Retirement Plan, have been satisfied. On that day, the Debtors and the Disbursing Agent will consummate the Plan. The Disbursing Agent will make or begin making all distributions to the holders of administrative, priority, and other creditors.

V. ALTERNATIVES TO CONFIRMATION OF THE PLAN

If the Plan is not confirmed and consummated, the Debtors’ alternatives include (i) liquidation under Chapter 7 of the Bankruptcy Code and (ii) the preparation and presentation of an alternative Chapter 11 plan or plans.

A. Liquidation under Chapter 7

If no Chapter 11 plan may be confirmed, the Debtors Chapter 11 cases may be converted to a case under Chapter 7 of the Bankruptcy Code. As noted above in Section IV.C.4, the Debtors believe that the Plan provides for a greater recovery to creditors in a more expeditious timeframe than would a case under Chapter 7.

B. Alternative Plan

If the Plan is not confirmed, the Debtors or any other party in interest could attempt to formulate a different plan. The Debtors have, however, explored various other alternatives in connection with the formulation and development of the Plan. The Debtors do not believe that it is likely that parties may develop another Chapter 11 plan and certainly not one that will result in greater distributions to creditors. In addition, remaining in Chapter 11 and seeking to develop and confirm another Chapter 11 plan would serve only to delay distributions to creditors and generate additional and unnecessary expenses and claims, some of which would be entitled to priority. As a result, the distributions to creditors would be substantially reduced as well as substantially delayed.

VI. TAX CONSEQUENCES OF THE PLAN TO HOLDERS OF CLAIMS

Each creditor is urged to consult its own tax advisor as to the consequences of the Plan to it under Federal and applicable state, local and foreign tax laws.

VII. CONCLUSION AND RECOMMENDATION

The Debtors believe that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of claim. In addition, other alternatives would involve significant delay, uncertainty and substantial additional administrative costs. The Debtors, therefore, urge holders of claims in Classes 1, 2A, 2B, 2E, 2F, 3A, 3C, 4 and 5 to vote to accept the Plan and to evidence such acceptance by returning their ballots so that they are timely received no later than 5:00 p.m. on December __, 2018.

Dated: October 16, 2018

ROYAL AUTOMOTIVE COMPANY

By: /s/ Kelly F. Smith

Name: Kelly F. Smith

Title: President and Chief Executive Officer

ROYAL REAL ESTATE, LLC

By: /s/ Kelly F. Smith

Name: Kelly F. Smith

Title: Manager

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*Attorneys for Royal Automotive Company
and Royal Real Estate, LLC*

CERTIFICATE OF SERVICE

I certify that on October 16, 2018, a copy of the foregoing pleading was filed via the Court's CM/ECF system which caused notification and service of same upon the parties registered to receive ECF notifications in this case.

/s/ Marc R. Weintraub

Marc R. Weintraub

EXHIBIT A

CHAPTER 11 PLAN OF LIQUIDATION

[FINAL VERSION TO BE INSERTED PRIOR TO SOLICITATION]