



AMERICAN
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2020 Virtual Winter Leadership Conference

Opportunities and Challenges Associated with Early-in-the- Case § 363 Sales

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Opportunities and Challenges Associated
with Early-Case 363 Sales

Moderator: Stephen D. Lerner

Panelists:
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Lead Time and Preparation

- Pre-packaged and pre-arranged sales
- Free-fall filings

Threats of the Unknown – Reliability of Information

- Notice to Creditors
 - Timing issues
 - Notice to known creditors
 - Unknown creditors and publication notice
- Understanding What is Being Sold
 - Due diligence concerns
 - **Conducting diligence virtually**
 - **What are the assets and liabilities?**
 - **Are there other issues, such as legacy costs or lawsuits that may exist?**
 - Due diligence risks with an expedited sale
- What constituencies are involved?
 - Timing of sale in conjunction with Committee formation and unsecured creditor involvement
 - Secured creditor involvement
 - Federal and state regulatory agencies (depending on the industry involved)

Threats of the Unknown – Reliability of Information and the Stalking Horse

- Role of a Stalking Horse Bidder
 - Has a stalking horse bidder been arranged and does a party exist willing to be a stalking horse bidder
 - In an early-case section 363 sale, does a party exist who is willing to be a stalking horse bidder?
 - In some circumstances, the sale may have been “shopped” before the filing and a stalking horse bidder put in place
 - In other circumstances, the assets may require a quick sale to preserve value
- Break-up Fees, Expense Reimbursements and Other Protections for the Stalking Horse Bidder
 - Standards for assessing stalking horse entitlements
 - Break-up Fees
 - Administrative Expense Standard
 - Modified Business Judgment Rule
 - Best Interest of the Estate
 - Expense Reimbursement
 - Bidding Protections
 - Are break-up fees a useful tool, or an added bankruptcy process cost?
 - Is the answer, “it depends?”
 - Increased estate costs
 - Could a potential stalking horse bidder’s due diligence increase asset value?

Threats of the Unknown – Bidding Procedures and the Bid Process

- Qualified Bid Issues
 - Generally, potential buyers must submit proof of ability to pay the purchase price to be a qualified bidder
 - The Debtors' professionals and the Committee often play a role in this process
 - Bidder diligence issues may exist with a fast-paced section 363 sale process
- Content of Qualified Bids
 - Bidding Procedures will set out requirements for a qualified bid, but the Debtor and Committee may have discretion to alter procedures in certain circumstances
- Bid Deadline/Auction Date
 - Virtual auctions and challenges during the pandemic
 - The Debtor may want a slower auction process to permit potential bidders to diligence the assets, while the stalking horse bidder and secured lenders may want a fast auction process
 - If a Debtor is running out of cash or does not have financing in place, there may be a conflict between running a fast process and permitting potential bidders to diligence the assets

Threats of the Unknown – Funding the Case and Executory Contract and Lease Treatment

- Considerations for Timing of Sale
- Case Funding
 - Does sufficient post-petition financing or cash exist to finalize the sale?
 - Does sufficient funding exist to provide due diligence opportunities to potential purchasers?
 - Impact of COVID on cash flow, sale timing and benchmarks
- Employee Issues
 - Consideration for paying employees/WARN Act issues
- Executory Contracts and Leases
 - Do potential purchasers have sufficient time to review executory contracts and leases
 - Court approval for post-sale assumption/rejection period
 - Payment of cure costs
 - Payment of post-petition contract and lease costs
- Assignment Issues

Threats of the Unknown – Preservation of Constituent Rights Post-Sale

- Role of the Committee
 - Look back rights, liens and other bidding requirements
 - Ensure a fair and open process and that bid protections do not result in chilling of bids
- Role of Secured Creditors
 - Credit bidding concerns and the secured creditor's "allowed claim"
 - Effect of "free and clear" sales on secured creditors
- Role of the Debtor and its Professionals
 - Running a fair and open process

Process Considerations

- Bid Protections/Fees – are they appropriate?
- Pandemic Impact on Value vs. Need for Expedited Process
- Stalking Horse
- Solicitation/Advertising
- Limitations and challenges to documenting the deal
 - Risks to buyers
 - Sale order limitations and language to address pandemic impact/challenges
- Practical impact on competitive bidding and potential risks
- *Sub rosa* plan issues
- Limitations when dealing with certain types of claims/obligations
- Impact of local rules

Faith in the Process

- Role of Management
 - Organizational structure and governance – who is the decision maker?
- Level of sophistication
 - Does management understand the assets, the business, the industry, etc.
 - Infrastructure and availability of information
 - Potential for sale/process infirmities
 - Use of Chief Restructuring Officer
- Expectations of management/board
- The Bad Actor
 - 11 U.S.C. § 1104
 - Impact on timing of sale, close and post-closing planning

Faith in the Process

- Interplay Among Professionals – Can an Early Case 363 Sale Process Be Achieved
 - The business lawyer vs. the litigator
 - Timing considerations
 - Experience and trust
 - Financial Advisors and Investment Banking Professionals
 - The need to market the assets/solicitation
 - What was done in advance of the chapter 11 filing?
 - Due diligence
 - What is available (and in what format)?
 - Is the information reliable?

Exiting the Chapter 11 Following an Early-Case Sale

- Whether to confirm, convert, or dismiss? Did “haste make waste?”
 - Challenges with Confirmation
 - Scope of Waivers and Exculpation
 - Liquidating Trusts
 - Conversion
 - Options with legacy obligations
 - Environmental
 - 28 U.S.C. § 959
 - Abandonment options
 - Mass Tort/Toxic Tort
 - Structured Dismissal
 - Finality of sale in face of extraordinary circumstances or material procedural impediments

Appendix

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re	: Chapter 11
Chrysler LLC, <i>et al.</i> ,	: Case No. 09-50002 (AJG)
Debtors.	: (Jointly Administered)
-----X	

**ORDER (I) AUTHORIZING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) AUTHORIZING
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH
AND RELATED PROCEDURES AND (III) GRANTING RELATED RELIEF**

This matter coming before the Court on the motions, dated May 3, 2009 and May 22, 2009 (Docket Nos. 190 and 1742) (collectively, the "Sale Motion")¹ filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (the "Sale Order"), pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 6004-1, 6006-1 and 9006-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York: (i) authorizing and approving the entry into, performance under and terms and conditions of the Master Transaction Agreement, dated as of April 30, 2009 (collectively with all related agreements, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, and as amended, the "Purchase Agreement"), substantially

¹ Unless otherwise stated, all capitalized terms not defined herein shall have the meanings given to them in the Sale Motion and the Bidding Procedures Order (as defined below).

in the form attached hereto as Exhibit A (without all of its voluminous exhibits), between and among Fiat S.p.A. ("Fiat"), New CarCo Acquisition, LLC (the "Purchaser"), a Delaware limited liability company formed by Fiat, and the Debtors,² whereby the Debtors have agreed to sell, and the Purchaser has agreed to purchase the "Purchased Assets" (as such term is defined in Section 2.06 of the Purchase Agreement), which Purchased Assets include, without limitation, the Assumed Agreements (as defined below), substantially all of the Debtors' tangible, intangible and operating assets related to the research, design, manufacturing, production, assembly and distribution of passenger cars, trucks and other vehicles (including prototypes) under brand names that include Chrysler, Jeep[®] or Dodge (the "Business"), certain of the facilities related thereto and all rights, intellectual property, trade secrets, customer lists, domain names, books and records, software and other assets used in or necessary to the operation of the Business or related thereto to the Purchaser (collectively, and including all actions taken or required to be taken in connection with the implementation and consummation of the Purchase Agreement, the "Sale Transaction"); (ii) authorizing and approving the sale by the Debtors of the Purchased Assets, free and clear of liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), liabilities, encumbrances, rights, remedies, restrictions and interests and encumbrances of any kind or nature whatsoever whether arising before or after the Petition

²

The following Debtors are "Sellers" under the Purchase Agreement: Alpha Holding, LP ("Alpha"), Chrysler, LLC; Chrysler Aviation Inc.; Chrysler Dutch Holding LLC; Chrysler Dutch Investment LLC; Chrysler Dutch Operating Group LLC; Chrysler Institute of Engineering; Chrysler International Corporation; Chrysler International Limited, L.L.C.; Chrysler International Services, S.A.; Chrysler Motors LLC; Chrysler Realty Company LLC; Chrysler Service Contracts Florida, Inc.; Chrysler Service Contracts Inc.; Chrysler Technologies Middle East Ltd.; Chrysler Transport Inc.; Chrysler Vans LLC; DCC 929, Inc.; Dealer Capital, Inc.; Global Electric Motorcars, LLC; NEV Mobile Service, LLC; NEV Service, LLC; Peapod Mobility LLC; TPF Asset, LLC; TPF Note, LLC; and Utility Assets LLC.

Date,³ whether at law or in equity, including all claims or rights based on any successor or transferee liability, all environmental claims, all change in control provisions, all rights to object or consent to the effectiveness of the transfer of the Purchased Assets to the Purchaser or to be excused from accepting performance by the Purchaser or performing for the benefit of the Purchaser under any Assumed Agreement and all rights at law or in equity (collectively, "Claims") (other than certain liabilities that are expressly assumed or created by the Purchaser, as set forth in the Purchase Agreement or as described herein (collectively, the "Assumed Liabilities")); (iii) authorizing the assumption and assignment to the Purchaser of certain executory contracts and unexpired leases of the Debtors (collectively, the "Assumed Agreements") in accordance with the Contract Procedures set forth in the Bidding Procedures Order, the Purchase Agreement and this Sale Order; (iv) authorizing and approving the entry into, performance under and terms and conditions of the UAW Retiree Settlement Agreement (as defined herein); and (v) granting other related relief; the Court having conducted a hearing on the Sale Motion on May 27, 2009 through May 29, 2009 (collectively, the "Sale Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; the Court having reviewed and considered, among other things, (i) the Sale Motion and the exhibits thereto, (ii) the Purchase Agreement attached hereto as Exhibit A, (iii) this Court's prior order (Docket No. 492), dated May 8, 2009 (the "Bidding Procedures Order") approving competitive bidding procedures for the Purchased Assets (the "Bidding Procedures"), (iv) all objections to the Sale Transaction filed in accordance with the Bidding Procedures Order or raised on the record at the Sale Hearing, (v) Memorandum of Law in Support of Sale Motion

³ As used herein, "Petition Date" refers to (a) April 30, 2009 for all of the Debtors other than Alpha and (b) May 19, 2009 for Alpha.

(Docket No. 191), (vi) Supplemental Memorandum of Law in Support of Sale Motion (Docket No. 2130), (vii) the Consolidated Reply to Objections to the Sale Motion (Docket Nos. 2155 and 2565), (viii) the Statement of the United States Department of the Treasury in Support of the Commencement of Chrysler LLC's Chapter 11 Case (Docket No. 69), (ix) the Statement of the Official Committee of Unsecured Creditors in Support of Debtors Motion for Order Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances (the "Creditors' Committee Statement"), and the related Memorandum of Law (Docket No. 1846 and 2147); (x) the Response to Various Objections Relating to Successor Liability Issues (Docket No. 2111); (xi) the Response of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America to Motion of the Debtors and Debtors in Possession for an Order Authorizing the Sale of Substantially All of the Debtors' Operating Assets and Other Relief (Docket No. 2085); (xii) the Supplemental Statement of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers Union of America, AFL-CIO in Support of Motion of the Debtors and Debtors in Possession for an Order Authorizing the Sale of Substantially All of the Debtors' Operating Assets and Other Relief and Response to Individual Retiree Statements Concerning Approval of UAW Retiree Settlement Agreement (Docket No. 2094) and (xiii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that due notice of the Sale Motion and the Bidding Procedures Order has been provided in accordance with the Bidding Procedures Order and that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors and other parties in interest; and upon the record of the Sale Hearing and these cases; and after due deliberation thereon; and good and sufficient cause

appearing therefore, including for the reasons set forth in the Court's Opinion dated May 31, 2009 (Docket No. 3073);

IT IS HEREBY FOUND AND DETERMINED THAT:

THE DEBTORS AND THESE CASES

A. As of the Petition Date and for a period of more than a year before the commencement of these chapter 11 cases, the Debtors worked with financial advisors and with their various constituencies to try to raise capital or implement a viable transaction that would allow them to continue the Debtors' operations. (See DX 20; May 27, 2009 Hearing Tr. (Testimony of Tom Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 87-92). The Debtors presented credible evidence that, as of the Petition Date, they had explored strategic alternatives for the Business over an extended period of time and had communicated with more than 15 parties about possible sales, mergers, combinations and alternatives regarding debt or equity capital investments or financing and had prepared standalone business plans in the event that strategic alternatives did not materialize or were insufficient. (See Id.). The Sale Transaction is the result of the Debtors' extensive efforts.

JURISDICTION, FINAL ORDER AND STATUTORY PREDICATES

B. This Court has jurisdiction over the Sale Motion, the Sale Transaction and the Purchase Agreements pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a), and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. Debtor Peapod Mobility LLC ("Peapod") is a New York limited liability company. Debtor Chrysler Realty Company LLC ("Chrysler Realty") is the owner of certain valuable real property located on

11th Avenue in New York, New York. Debtor Chrysler is the direct or indirect parent of Peapod, Chrysler Realty and each of the other Debtors.

C. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief sought in the Sale Motion and granted in this Sale Order include, without limitation, sections 105(a), 363(b), (f) and (m) and 365(a), (b) and (f) of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004 and 6006.

JUDICIAL NOTICE

E. Pursuant to Federal Rule of Evidence 201(c), incorporated into these proceedings pursuant to Bankruptcy Rule 9017, the Court takes judicial notice of the (1) March 30, 2009 Remarks by the President of the United States on the American Automotive Industry; (2) April 30, 2009 Remarks by the President of the United States on the Auto Industry; and (3) the fact of the publication of the Notice of Proposed Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and Final Sale Hearing Related Thereto in the national editions of *The New York Times* on May 12, 2009, *The Wall Street Journal* on May 12, 2009 and *USA Today* on May 13, 2009, and the worldwide edition of *The Financial Times* on May 13, 2009. (See DX 8; DX 18; DX 19).

SOUND BUSINESS PURPOSE

F. The Debtors seek to convey the Purchased Assets, including those related to the research, design, manufacture (at 16 domestic manufacturing facilities), assembly (at seven domestic assembly plants) and wholesale distribution of passenger cars and trucks under

the brand names Chrysler, Jeep[®] and Dodge, all of which are subject to Claims, including those held by the Debtors' prepetition secured lenders. (See DX 64, at §2.06).

G. In the second half of 2008, Chrysler began to experience an “unprecedented” loss of cash (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)). Currently, the Debtors are losing over \$100 million dollars per day. (See Deposition of Matthew Feldman, May 26, 2009, at 65:18-66:5). Unless the Sale Transaction is approved without delay, the Debtors' assets will continue to erode, and they will be forced to liquidate in the near term. (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Frank Ewasyshyn, May 24, 2009, at Exhibit 1, at 7-29)).

H. The Debtors have demonstrated, and the Purchase Agreement reflects, both (1) good, sufficient and sound business purposes and justifications for the immediate approval of the Purchase Agreement and the Sale Transaction (May 28, 2009 Hearing Tr. (Testimony James Chapman); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); and (2) compelling circumstances for the approval of the Purchase Agreement and the Sale Transaction outside of the ordinary course of the Debtors' business pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Sale Motion is not granted on an expedited basis (See May 28, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 9-27; Deposition of Frank Ewasyshyn, May 24, 2009, Exhibit 1, at 8-29). In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the proposed Sale Transaction, time is of the essence in (a) consummating the Sale Transaction, (b) preserving

the viability of the Debtors' businesses as going concerns and (c) minimizing the widespread and adverse economic consequences for the Debtors' estates, their creditors, employees, retirees, the automotive industry and the broader economy that would be threatened by protracted proceedings in these chapter 11 cases. (See DX 13; DX 14; May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Ronald Nardelli); May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of James Chapman); Deposition Tr. of Ronald Bloom, at 65; see generally DX 20).

I. The consummation of the Sale Transaction outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The Sale Transaction does not constitute a *sub rosa* plan of reorganization. (See DX 4; DX 5; DX 10; May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)).

J. Entry of an order approving the Purchase Agreement and all the provisions thereof is a necessary condition precedent to the Purchaser's consummation of the Sale Transaction, as set forth in the Purchase Agreement. (See DX 64, at § 8.02(q)).

K. The Purchase Agreement was not entered into, and none of the Debtors, the Purchaser or the Purchaser's present or contemplated owners, have entered into the Purchase Agreement or propose to consummate the Sale Transaction, for the purpose of hindering, delaying or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser nor the Purchaser's present or contemplated owners is entering into the Purchase Agreement, or proposing to consummate the Sale Transaction, fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under

the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing. (See DX 5; DX 6; DX 10; May 27, 2009 Hearing Tr. (Testimony of Altavilla)).

HIGHEST AND BEST OFFER

L. On May 8, 2009, this Court entered the Bidding Procedures Order approving Bidding Procedures for the Purchased Assets. The Bidding Procedures provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. No additional Qualifying Bids for the Purchased Assets were received by the Debtors. Therefore, the Purchaser's bid, as reflected in the Purchase Agreement, is the only Qualified Bid for the Purchased Assets and was designated as the Successful Bid pursuant to the Bidding Procedures Order (Docket No. 492). Likewise, no party came forward at the Sale Hearing with a bid or offer. As such, no Auction was conducted, and the Purchaser's bid, as reflected in the Purchase Agreement, was presented to the Court as the Successful Bid. (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)).

M. As demonstrated by the testimony and other evidence proffered or adduced prior to or at the Sale Hearing, and in light of the exigent circumstances presented and emergency nature of the relief requested (1) the Debtors have adequately marketed the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 87-92)); (2) the Purchased Assets are deteriorating rapidly in value and there are good business reasons to sell these assets outside of a plan of reorganization (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Frank Ewasyshyn, May 24, 2009, at Exhibit 1, at 7-29; Deposition of Matthew Feldman, May 26, 2009, at 65:21-66:5)); (3) the consideration

provided for in the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (4) the Sale Transaction, as a transfer of deteriorating assets, is an extraordinary, non-market transaction, the consideration for which exceeds what would have been obtainable in a transaction subject to ordinary market forces (See Deposition of Ronald Bloom, May 26, 2009, at 65:4-66:10); (5) the Sale Transaction is the only alternative to liquidation available to the Debtors (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (6) if the Sale Transaction is not approved and consummated, the Debtors will have no alternative but to cease operations and liquidate (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (7) the Sale Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including, without limitation, liquidation whether under chapter 11 or chapter 7 of the Bankruptcy Code (See DX; May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)); (8) no other party or group of parties has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo); May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (9) the consideration to be paid by the Purchaser under the Purchase Agreement exceeds the liquidation value of the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)) and (10) the consideration to be paid by the Purchaser under the Purchase Agreement constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the

United States, any state, territory or possession thereof or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to the foregoing. (See DX 14; DX 15; May 28, 2009 Hearing Tr. (Testimony of James Chapman); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)). The Debtors' determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment. (See May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of James Chapman); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)).

N. Neither the Purchaser nor Fiat have furnished the Debtors with a good faith deposit in connection with the Purchase Agreement. The Debtors submit that in light of the extensive prepetition negotiations culminating in the various complex agreements with the Debtors, the United States Department of the Treasury (the "U.S. Treasury"), the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") and other stakeholders, as well as Fiat's substantial investment of time and resources, the Purchaser's and Fiat's commitment to consummate the Fiat Transaction is clear without the need to provide a good faith deposit. See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 (Testimony of David Curson); May 28, 2009 (Testimony of Robert Nardelli); May 28, 2009 (Testimony of James Chapman); Deposition of Matthew Feldman, May 26, 2009, at 37:21-39:1)).

BEST INTEREST OF CREDITORS

O. Approval of the Purchase Agreement and the consummation of the Sale Transaction with the Purchaser at this time is in the best interests of the Debtors, their estates, creditors, employees, retirees and other parties in interest. (See DX 6; Creditors' Committee Statement, at ¶ 2, Docket No. 1846; May 28, 2009 Hearing Tr. (Testimony of David Curson)).

DESCRIPTION OF THE PURCHASER AND THE PURCHASER'S GOOD FAITH

P. The Purchaser is a newly formed Delaware limited liability company that as of the date of the Sale Hearing, is a wholly-owned subsidiary of Fiat. The Purchaser is not an "insider" of any of the Debtors, as that term is defined by section 101(31) of the Bankruptcy Code. (See DX 64, at Art. IV-A).

Q. Upon the closing of the Sale Transaction (the "Closing"), (1) Fiat will contribute to the Purchaser certain valuable technology and management expertise, (2) the U.S. Treasury and Export Development Canada ("EDC") will lend the Purchaser approximately \$8 billion in new financing and (3) the UAW Retiree Settlement Agreement, the entry into which is a condition to the UAW CBA (as defined below) and its assumption and assignment to Purchaser, will become effective. Following the making of the foregoing contributions to the Purchaser, Fiat, the VEBA (as defined below), the U.S. Treasury and EDC, through 7169931 Canada Inc., will hold 100% of the equity in the Purchaser. (DX 3; DX 64, Exhibit J, K).

R. The Purchaser is a person with whom the Debtors are associated within the meaning of section 525 of the Bankruptcy Code.

S. The Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtors and the Purchaser in good faith, without collusion and from arm's-length bargaining positions. The Purchaser has proceeded in good faith in all respects in connection with this proceeding, is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. None of the Debtors, the Purchaser nor the Purchaser's present or contemplated owners have engaged in any conduct that (1) would cause or permit the Purchase Agreement or any of the transactions contemplated thereby to be avoided; (2) would tend to hinder, delay or defraud creditors; or (3) impose costs and damages under section 363(n)

of the Bankruptcy Code. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 27, 2009 (Testimony of Robert Manzo); May 28, 2009 Hearing Tr. (Testimony of David Curson); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Matthew Feldman, May 26, 2009, at 37:21-39:1; Deposition Tr. of Ronald Bloom, at 87).

NOTICE OF THE SALE MOTION, AND THE CURE AMOUNTS

T. As evidenced by the affidavits and certificates of service filed with the Court, in light of the exigent circumstances of these cases and the wasting nature of the Debtors' temporarily idled facilities and assets and based upon the representations of counsel at the Sale Hearing and the testimony of the Debtors' claims and noticing agent, the Court finds that: (1) proper, timely, adequate and sufficient notice of the Sale Motion, the Bidding Procedures Order, the Sale Hearing and the UAW Retiree Settlement Agreement has been provided by the Debtors in accordance with the Bidding Procedures Order; (2) such notice, and the form and manner thereof, was good, sufficient, reasonable and appropriate under the exigent circumstances prevailing in these chapter 11 cases; and (3) no other or further notice of the Sale Motion, the Sale Transaction, the Bidding Procedures, the Sale Hearing or the UAW Retiree Settlement Agreement is or shall be required. (See DX 7; May 27, 2009 Hearing Tr. (Testimony of Daniel McElhinney)). In light of the need to grant the relief requested in the Sale Motion on an expedited basis to avoid any erosion in the going concern value of the Purchased Assets, a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including, but not limited to, the following:

- (i) counsel to the Official Committees of Unsecured Creditors appointed in these chapter 11 cases under section 1102 of the Bankruptcy Code (the "Creditors Committee");

(ii) the U.S. Treasury, a prepetition lender and the provider of the debtor in possession financing approved by this Court on a final basis on May 20, 2009 (the "DIP Financing Facility"), outside counsel to the U.S. Treasury and the Acting United States Attorney for the Southern District of New York;

(iii) counsel to EDC, a lender under the DIP Financing Facility;

(iv) counsel to the UAW;

(v) counsel to the Purchaser;

(vi) counsel to the administrative agent and collateral agent for the Debtors' prepetition secured First Lien Lenders (as defined below);

(vii) counsel to Cerberus;

(viii) counsel to Daimler;

(ix) parties who, in the past year, have expressed in writing to the Debtors an interest in acquiring the Purchased Assets;

(x) nondebtor parties (collectively, the "Non-Debtor Counterparties") to the Assumed Agreements;

(xi) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Purchased Assets or who are reflected as secured parties in lien searches conducted by the Debtors;

(xii) the Securities and Exchange Commission;

(xiii) the Internal Revenue Service;

(xiv) all applicable state attorneys general, local environmental enforcement agencies and local regulatory authorities;

(xv) all applicable state and local taxing authorities;

(xvi) the Office of the United States Trustee for the Southern District of New York;

(xvii) the Federal Trade Commission;

(xviii) the United States Attorney General/Antitrust Division of Department of Justice;

(xix) the Environmental Protection Agency;

(xx) the United States Attorney;

- (xxi) the Pension Benefit Guaranty Corporation;
- (xxii) applicable foreign regulatory authorities in non-U.S. countries in which the Debtors do business;
- (xxiii) all parties that filed objections to the Sale Motion;
- (xxiv) all entities that have requested notice in these chapter 11 cases under Bankruptcy Rule 2002;
- (xxv) the Debtors' retirees and surviving spouses represented by the UAW, including the members of the "Class" as defined in the UAW Retiree Settlement Agreement;
- (xxvi) all employees of the Debtors;
- (xxvii) all dealers with current agreements for the sale or leasing of Chrysler, Jeep or Dodge brand vehicles;
- (xxviii) any other party identified on the creditor matrix in these cases.

(See DX 7).

U. Additionally, the Debtors published notice of the Sale Transaction in the national editions of *USA Today*, *The Wall Street Journal* and *The New York Times*, as well as the worldwide edition of *The Financial Times*. (See DX 8). With regard to parties who have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, parties with potential contingent warranty claims against the Debtors), the Court finds that such publication notice was sufficient and reasonably calculated under the circumstances to reach such parties.

V. In accordance with the Contract Procedures as set forth in the Bidding Procedures Order, the Debtors have provided notice or shall provide notice (an "Assignment Notice") of their intent to assume and assign the Assumed Agreements and of the related proposed amounts ("Cure Costs") to cure prepetition and postpetition defaults under Assumed Agreements with each such Non-Debtor Counterparty. See Notices of Filing of Schedules of Designated Agreements (DX 16; DX 62; DX 63; Deposition of Scott Garberding, May 24, 2009,

Exhibit 1). The service and provision of the Assignment Notices that were served in accordance with the Bidding Procedures Order, was good, sufficient and appropriate under the circumstances and no further notice need be given with respect to the Cure Costs for the Assumed Agreements described by the Assignment Notices and the assumption and assignment of the Assumed Agreements. (See Affidavits of Service (Docket Nos. 1041, 1996, 1997, 1998, 2003, 2004, 2016, 2017, 2018, 2019, 2020, 2022, 2023, 2025, 2026, 2027, 2028, 2029, 2030, 2081 and 2108). All Non-Debtor Counterparties to the Assumed Agreements have had an opportunity to object to both the Cure Costs listed in the Assignment Notices and the assumption and assignment of the Assumed Agreements (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code). With respect to executory contracts or unexpired leases that are designated by the Debtors as Assumed Agreements pursuant to the Contract Procedures and Section 2.10 of the Purchase Agreement and for which responses to Assignment Notices are due after the entry of this Sale Order, the Contract Procedures provide all Non-Debtor Counterparties to such Assumed Agreements with the opportunity to object to both the Cure Costs identified in any Assignment Notice delivered to any such Non-Debtor Counterparty and the assumption and assignment of the applicable Assumed Agreement (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code).

SECTION 363(F) REQUIREMENTS MET FOR FREE AND CLEAR SALE

W. The Debtors may sell the Purchased Assets free and clear of all Claims because, in each case where a Claim is not an Assumed Liability, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Except as provided in this Sale Order, the assumption and assignment of each of the Assumed Agreements is also free and clear of all Claims other than the payment of the Cure Costs.

X. The Debtors are the sole and lawful owners of the Purchased Assets and no other person has any ownership right title or interest therein. The Debtors' non-Debtor affiliates have acknowledged and agreed to the sale and, as required by and in accordance with the Transition Services Agreement, transferred any legal, equitable or beneficial right, title or interest they may have in or to the Purchased Assets to the Purchaser. (See DX 64).

Y. The transfer of Purchased Assets constituting "Collateral" as defined under that certain Second Amended and Restated Collateral Trust Agreement (the "CTA"), dated as of January 2, 2009, among, *inter alia*, certain of the Debtors and their subsidiaries, JPMorgan Chase Bank, N.A. as both First Priority Agent ("First Priority Agent") and Second Priority Agent, the U.S. Treasury as Third Priority Agent and Wilmington Trust Company as Collateral Trustee (the "Collateral Trustee") has been consented to for purposes of section 363(f)(2) of the Bankruptcy Code, subject to and in accordance with that certain Consent to Sale and Liquidation of Collateral delivered by the First Priority Agent as "Controlling Party" under the CTA to the Debtors (the "First Priority Consent"), subject to the terms of the First Priority Consent, including, without limitation, to the indefeasible payment by the Purchaser immediately upon the sale of the Purchased Assets of \$2 billion in immediately available funds to the First Priority Agent to be applied as set forth in the First Priority Consent. The First Priority Consent binds all

parties holding debt under the First Lien Credit Agreement in their capacity as such (collectively, the "First Lien Lenders"). (See DX 55; DX 57).

Z. In addition, those holders of Claims who did object fall within one or more of the other subsections of sections 363(f) and 365 of the Bankruptcy Code as (1) the consideration received in exchange for the Purchased Assets is greater than the aggregate value of all liens on the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)), (2) there is a *bona fide* dispute with respect to certain of the Claims asserted (e.g., claims of certain dealers relating to the proposed rejection of their dealership agreements) (See May 28, 2009 Hearing Tr. (Testimony of Peter Grady); May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla)); or (3) such holders could be compelled in a legal or equitable proceeding to accept a money satisfaction of their Claims. The transfer of the Purchased Assets to the Purchaser under the Purchase Agreement will be a legal, valid and effective transfer of all of the legal, equitable and beneficial right, title and interest in and to the Purchased Assets free and clear of all Claims that are not Assumed Liabilities (including, specifically and without limitation, any products liability claims, environmental liabilities, employee benefit plans and any successor liability claims), except as otherwise provided in this Sale Order. All holders of Claims are adequately protected — and the Sale Transaction thus satisfies section 363(e) of the Bankruptcy Code — by having their Claims, if any, attach to the proceeds of the Sale Transaction ultimately attributable to the property against which they have a Claim or other specifically dedicated funds, in the same order of priority and with the same validity, force and effect that such Claim holder had prior to the Sale Transaction, subject to any rights, claims and defenses of the Debtors or their estates, as applicable, or as otherwise provided herein.

AA. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale Transaction, thus adversely affecting the Debtors, their estates, creditors, employees, retirees and other parties in interest if the sale of the Purchased Assets was not free and clear of all Claims other than Assumed Liabilities, or if the Purchaser would, or in the future could, be liable for any such Claims, including, without limitation and as applicable, certain liabilities (collectively, the "Excluded Liabilities") that expressly are not assumed by the Purchaser, as set forth in the Purchase Agreement or in this Sale Order. The Purchaser asserts that it will not consummate the Sale Transaction unless the Purchase Agreement specifically provides and this Court specifically orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, (a) any Claim other than (x) an Assumed Liability or (y) a Claim against any "Purchased Company" (as such term is defined in the Purchase Agreement) or (b) any successor liability for any of the Debtors. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla)).

BB. Without limiting the generality of the foregoing, the Purchase Agreement provides the Debtors with reasonably equivalent value and fair consideration (as those terms are defined in the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the Bankruptcy Code), and was not entered into for the purpose or, nor does it have the effect of, hindering, delaying or defrauding creditors of any of the Debtors under any applicable laws. Except for the Assumed Liabilities, the Sale Transaction shall not impose or result in the imposition of any liability or responsibility on Purchaser or its affiliates, successors or assigns or

any of their respective assets (including the Purchased Assets), and the transfer of the Purchased Assets to the Purchaser does not and will not subject the Purchaser or its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), to any liability for any Claims, including, without limitation, for any successor liability or any products liability for the sale of any vehicles by the Debtors or their predecessors or affiliates, except as expressly identified as an Assumed Liability.

ASSUMPTION AND ASSIGNMENT OF THE ASSUMED AGREEMENTS

CC. The assumption and assignment of the Assumed Agreements are integral to the Purchase Agreement, are in the best interests of the Debtors and their estates and represent the reasonable exercise of the Debtors' sound business judgment. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of David Curson); May 28, 2009 Hearing Tr. (Testimony of Peter Grady); May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); May 28, 2009 Hearing Tr. (Testimony of James Chapman)).

DD. With respect to each of the Assumed Agreements, the Debtors have met all requirements of section 365(b) of the Bankruptcy Code. Further, the Purchaser has provided all necessary adequate assurance of future performance under the Assumed Agreements in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla)). Accordingly, the Assumed Agreements can be assumed by the Debtors and assigned to the Purchaser, as provided for in the Contract Procedures set forth in the Bidding Procedures Order, the Sale Motion and the Purchase Agreement. The Contract Procedures are fair, appropriate and effective and, upon the payment by the Purchaser of all Cure Costs (which costs are the sole obligation of the Purchaser under the Purchase Agreement) and the payment of such other obligations assumed pursuant to this Sale Order and approval of the

assumption and assignment for a particular Assumed Agreement thereunder, the Debtors shall be forever released from any and all liability under the Assumed Agreement.

EE. The Purchaser has acknowledged that it will be required to comply with the National Traffic and Motor Vehicle Safety Act, as amended and recodified ("NTMVSA"), as applicable to the business of the Purchaser after the Closing Date. In addition, the Purchaser has agreed to assume as Assumed Liabilities under the Purchase Agreement and this Sale Order the Debtors' notification, remedy and other obligations under 49 U.S.C. §§ 30116 through 30120 of the NTMVSA relating to vehicles manufactured by the Debtors prior to the Closing Date that have a defect related to motor vehicle safety or do not to comply with applicable motor vehicle safety standards prescribed under the NTMVSA. The Purchaser shall not otherwise be liable for any failure by the Debtors to comply with the provisions of the NTMVSA.

FF. For the avoidance of doubt, and notwithstanding anything else in this Sale Order to the contrary:

- the Debtors are neither assuming nor assigning to the Purchaser the settlement agreement (the "2008 Settlement Agreement") between the Debtors, the UAW and certain of the Debtors' retirees, dated March 31, 2008, which was approved by the United States District Court for the Eastern District of Michigan on July 31, 2008, in the class action of *Int'l Union, UAW, et al. v. Chrysler, LLC*, Case No. 07-CV-14310 (E.D. Mich. filed Oct. 11, 2007) and established, among other things, an independent Voluntary Employee Beneficiary Association (the "VEBA") that would become responsible for retiree health care on behalf of current and future UAW retirees of the Debtors and their surviving spouses and eligible dependents (the "English Case VEBA") (DX 4; May 28, 2009 Hearing Tr. (Testimony of David Curson));
- the 2007 Chrysler-UAW National Agreement, including (1) the Production, Maintenance and Parts National Agreement, (2) the Engineering Office & Clerical National Agreement, (3) the Toledo Assembly Plant/Jeep Unit, Local 12 Agreement, (4) Daimler Chrysler Financial Services North America, LLC (Farmington) and (5) Daimler Chrysler Financial Services North America, LLC (Detroit), and all appendices, memoranda of understanding, supplemental agreements, local agreements and benefit plans, as modified effective April 30, 2009 (the "UAW CBA"), shall be assumed by the Debtors and assigned to the Purchaser pursuant to this Sale Order and section 365 of the Bankruptcy

Code. Assumption and assignment of the UAW CBA is integral to the Sale Transaction and the Purchase Agreement, is in the best interests of the Debtors and their estates, creditors, employees and retirees and represent the reasonable exercise of the Debtors' sound business judgment (See May 28, 2009 Hearing Tr. (Testimony of David Curson));

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of UAW-represented retirees of the Debtors under section 1114(c) of the Bankruptcy Code, and the Purchaser engaged in good faith negotiations in conjunction with the Sale Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the Sale Transaction and the assumption and assignment of the UAW CBA, the UAW and the Purchaser have entered into a Retiree Settlement Agreement (the "UAW Retiree Settlement Agreement"), which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser to the *English* Case VEBA. The Debtors, the Purchaser and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2) (See DX 4; May 28, 2009 Hearing Tr. (Testimony of David Curson)); and
- the Debtors' sponsorship of the Internal Existing VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the Purchase Agreement (See DX 64, at § 6.08).

VALIDITY OF THE TRANSFER

GG. As of the closing of the Sale Transaction (the "Closing"), the transfer of the Purchased Assets to the Purchaser will be a legal, valid and effective transfer of the Purchased Assets, and will vest the Purchaser with all right, title and interest of the Debtors in and to the Purchased Assets, free and clear of all Claims other than Assumed Liabilities.

HH. With the entry of this Sale Order, the Debtors (1) have full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtors; (2) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; (3) have taken all actions necessary to

authorize and approve the Purchase Agreement and the consummation by the Debtors of the transactions contemplated thereby; and (4) upon entry of this Sale Order, need no consents or approvals, other than those expressly provided for in the Purchase Agreement, which may be waived by the Purchaser, to consummate such transactions. (See DX 38; DX 64 at Art. IV-A).

II. To the extent that the right, title and interest of the Debtors in and to any of the Purchased Assets ultimately is transferred to the Purchaser after the Closing pursuant to a plan of reorganization confirmed in these chapter 11 cases, such transfer shall be deemed a transfer pursuant to section 1146 of the Bankruptcy Code and shall not be taxed under any law imposing a stamp, transfer or any other similar tax.

PERSONALLY IDENTIFIABLE INFORMATION

JJ. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as such term is defined by section 101(41A) of the Bankruptcy Code) in the operation of their businesses. The Debtors propose to sell certain assets containing personally identifiable information in a manner that is not in compliance with their current existing privacy policies. As such, in the Bidding Procedures Order, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and Alan Chapell, CIPP (the "Privacy Ombudsman") was appointed as a consumer privacy ombudsman under section 332 of the Bankruptcy Code on May 11, 2009 (Docket No. 594). The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on May 28, 2009 (Docket No. 2790) (the "Ombudsman Report") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the (1) facts, (2) exigent circumstances surrounding and (3) the conditions of the sale of personally identifiable information in connection with the

Sale Transaction, including as set forth in the Ombudsman Report. No showing has been made that the sale of personally identifiable information in connection with the Sale Transaction violates applicable non-bankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the Sale Transaction.

**NOW THEREFORE, IT IS HEREBY
ORDERED, ADJUDGED, AND DECREED THAT:**

GENERAL PROVISIONS

1. The Sale Motion is granted in its entirety and entry into and performance under and in respect of the Purchase Agreement and the Sale Transaction is approved, as set forth in this Sale Order.

2. The findings of fact and conclusions of law set forth in the Court's Opinion, dated May 31, 2009 (Docket No. 3073), as supplemented by the findings of fact stated above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

3. All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice, except as expressly provided herein. Attached hereto as Exhibit B is a summary schedule of filed objections and the treatment of each.

APPROVAL OF THE PURCHASE AGREEMENT

4. The Purchase Agreement, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved, subject to the terms and conditions of this Sale Order to the extent of any express conflict herewith. In the event of any direct conflict between the terms and conditions of the Purchase Agreement and those of this Sale Order as in effect at the Closing Date, the terms and conditions of this Sale Order shall govern, provided that no change to this Sale Order made after the Closing Date without the consent of the Purchaser shall affect the rights or obligations of the Purchaser arising out of or relating to the Purchase Agreement in any manner.

5. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under and comply with the terms of the Purchase Agreement and consummate the Sale Transaction, pursuant to and in accordance with the terms and conditions of the Purchase Agreement and this Sale Order.

6. The Debtors, as well as their affiliates, officers, employees and agents, are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, in substantially the same form as the Purchase Agreement attached hereto as Exhibit A, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions and execute such other documents as may be (a) reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession, the Purchased Assets (including, but not limited to, all necessary transition services to be provided to the Purchaser by the Debtors), (b) necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement and (c) as may be reasonably requested by Purchaser to implement the Purchase Agreement and

consummate the Sale Transaction in accordance with the terms thereof, all without further order of the Court.

7. This Sale Order and the Purchase Agreement shall be binding in all respects upon the Purchaser, the Debtors, their affiliates, any trustees appointed in the Debtors' cases (whether under chapter 11 or chapter 7 of the Bankruptcy Code), all creditors (whether known or unknown) of any Debtors, all interested parties and their successors and assigns, including, but not limited to, any party asserting a Claim and any Non-Debtor Counterparty to the Assumed Agreements. Nothing contained in any chapter 11 plan confirmed in these bankruptcy cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the Purchase Agreement or this Sale Order, and to the extent of any conflict or derogation between this Sale Order or the Purchase Agreement and such future plan or order, the terms of this Sale Order and the Purchase Agreement shall control to the extent of such conflict or derogation.

8. All amounts, if any, to be paid by Debtors' pursuant to the Purchase Agreement shall constitute administrative expenses pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code and shall be due and payable if and when any Debtors' obligations arise under the Purchase Agreement without further order of the Court.

TRANSFER OF PURCHASED ASSETS FREE AND CLEAR

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Purchased Assets in accordance with the terms of the Purchase Agreement. The Purchased Assets shall be transferred to the Purchaser, and upon consummation of the Purchase Agreement, such transfer (a) shall be a valid, legal, binding and effective transfer; (b) shall vest the Purchaser with all right, title and interest of the Debtors in the Purchased Assets; and (c) shall be free and clear of all Claims except for

Assumed Liabilities with all such Claims to attach to the proceeds of the Sale Transaction ultimately attributable to the Purchased Assets against or in which such Claims are asserted, or other specifically dedicated funds, in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

10. In connection with the transfer of the Purchased Assets to the Purchaser (a) the Debtors are authorized and directed to execute, deliver and perform their obligations under the First Priority Consent, including by indefeasibly paying, or causing the indefeasible payment of, immediately upon consummation of such transfer of the Purchased Assets, \$2 billion in immediately available funds to the First Priority Agent to be applied as set forth in the First Priority Consent; and (b) Wilmington Trust Company as Collateral Trustee under the CTA is authorized and directed to comply with the Direction Letter dated as of May 27, 2009 delivered to it by the First Priority Agent as "Controlling Party" under the CTA, including by executing and delivering such documents as are necessary to permit the transfer of the Purchased Assets free and clear of liens on the Purchased Assets held by Wilmington Trust Company as Collateral Trustee under the CTA.

11. Notwithstanding paragraph 15 below or anything to the contrary in this Sale Order or the Purchase Agreement, (a) any Purchased Asset that is subject to any mechanics', carriers', workers', repairers', shippers', marine cargo, construction, toolers', molders' or similar lien or any statutory lien on real and personal property for property taxes not yet due shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Petition Date (or becomes valid, perfected and enforceable after the Petition Date as permitted by section 546(b) or 362(b)(18) of the

Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "Continuing Lien") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights; *provided, however*, that nothing, in this Sale Order or the Purchase Agreement shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Sale Order or the Purchase Agreement shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or the type (or amount), if any, of required adequate protection.

12. Except as otherwise provided in the Purchase Agreement, all persons and entities (and their respective successors and assigns), including, but not limited to, all debt security holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, dealers, employees, trade creditors, litigation claimants and other creditors, holding Claims (whether legal or equitable, secured or unsecured, known or unknown, matured

or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated) except for Assumed Liabilities or Claims against any Purchased Company, arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Business prior to Closing or the transfer of the Purchased Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting such Claims against the Purchaser, its successors or assigns, its property or the Purchased Assets. No such persons or entities shall assert against the Purchaser or their successors in interest any Claim arising from, related to or in connection with the ownership, sale or operation of any Asset prior to the Closing, except for Assumed Liabilities.

13. This Sale Order (a) shall be effective as a determination that, as of the Closing, (i) no Claims other than (x) Assumed Liabilities relating to the Purchased Assets or (y) Claims against any Purchased Company, will be assertable against the Purchaser, its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all Claims and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and

instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

14. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Claims against or in the Debtors or the Purchased Assets shall not have delivered to the Debtors prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests that the person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then only with regard to Purchased Assets that are purchased by the Purchaser pursuant to the Purchase Agreement and this Sale Order (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets; and (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the applicable Purchased Assets other than the Assumed Liabilities. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office.

15. All persons or entities in possession of some or all of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of the Closing of the Sale Transaction.

16. Following the Closing of the Sale Transaction, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based

on or related to any such Claim, or based on any actions the Debtors may take in their chapter 11 cases.

17. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the Purchase Agreement and this Sale Order.

18. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale Transaction contemplated by the Purchase Agreement.

19. Notwithstanding anything else contained herein or in the Purchase Agreement, in connection with the purchase of the Debtors' brands and related Purchased Assets, the Purchaser, from and after the Closing, will recognize, honor and pay liabilities under Lemon Laws for additional repairs, refunds, partial refunds (monetary damages) or replacement of a defective vehicle (including reasonable attorneys' fees, if any, required to be paid under such Lemon Laws and necessarily incurred in obtaining those remedies), and for any regulatory obligations under such Lemon Laws arising now, including but not limited to cases resolved prepetition or in the future, on vehicles manufactured by the Debtors in the five years prior to the Closing (without extending any statute of limitations provided under such Lemon Laws), but in any event not including punitive, exemplary, special, consequential or multiple damages or penalties and not including any claims for personal injury or other consequential damages that may be asserted in relationship to such vehicles under the Lemon Laws. As used herein, "Lemon Law" means a federal or state statute, including, but not limited to, claims under the Magnuson-

Moss Warranty Act based on or in conjunction with a state breach of warranty claim, requiring a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty after a reasonable number of attempts as defined in the applicable statute. In connection with the foregoing, the Purchaser has agreed to continue addressing Lemon Law claims (to the extent that they are Assumed Liabilities) using the same or substantially similar procedural mechanisms previously utilized by the Debtors.

20. The Purchased Owned Real Property and PP&E (as such terms are defined in the Purchase Agreement) that, as of the Closing, are subject to existing statutory liens or any liens that may be created or perfected in accordance with section 362(b)(18) of the Bankruptcy Code shall be transferred to the Purchaser subject to (a) any applicable property taxes for the tax year 2009 (collectively, the "2009 Property Taxes") owed to state and local taxing authorities in the United States (collectively, the "Relevant Taxing Authorities") and (b) any liens related to such 2009 Property Taxes. The 2009 Property Taxes shall be paid by the Purchaser; however, as between the Purchaser and the Debtors such 2009 Property Taxes shall be prorated as of the Closing Date and settled upon receipt of the relevant property tax bills. The Relevant Taxing Authorities shall bill their 2009 Property Taxes to the Purchaser in the ordinary course, not as an expedited or jeopardy assessment.

21. The Debtors shall deposit designated funds in the amount of \$63 million in a dedicated escrow account (the "Tax Escrow") to satisfy sales and use taxes, Michigan business taxes and other taxes owed to the Relevant Taxing Authorities in respect of any of the Debtors (including predecessors of the Debtors) and not covered by paragraph 20 above, to the extent such taxes are (a) secured taxes or may become secured by liens that may be created or perfected in accordance with section 362(b)(18) of the Bankruptcy Code or (b) of the nature authorized to

be paid under the Order, Pursuant to Sections 105(a), 363(b), 507(a) and 541 of the Bankruptcy Code, Authorizing the Debtors and Debtors in Possession to Pay Certain Prepetition Taxes (Docket No. 355) to the extent such taxes were or may be asserted or assessed against individuals (collectively, the "Additional Taxes"). Any Claims for Additional Taxes shall attach to, and be satisfied from, the Tax Escrow.

22. (a) Notwithstanding any contrary provision of this Sale Order or the Purchase Agreement, the 61 Vehicles, as described and defined in the response of Wilmington Trust Company to the Sale Motion (Docket No. 1188), will be treated as Excluded Assets that will not be transferred to the Purchaser.

(b) Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, the Debtors' assumption and assignment to the Purchaser of all of the Debtors' right, title and interest in or under the Debtors' guaranteed depreciation program agreement and ancillary agreements related thereto (collectively, the "GDP Agreement") with Dollar Thrifty Automotive Group, Inc. and its affiliates (collectively, "DTAG") are hereby approved, and all requirements of section 365 of the Bankruptcy Code are hereby deemed satisfied as of the date of, and effective only upon, the Closing of the Sale Transaction. DTAG has consented to such assumption and assignment and agrees that, subject to payment of Cure Costs, such assumption and assignment shall not constitute an event of default thereunder or permit the termination thereof. The Debtors and DTAG shall confer in good faith to determine the amount of the Cure Costs to be paid under the GDP Agreement. If the Debtors and DTAG are unable to reach a resolution of such cure cost amount, either of such parties may apply to the Court for an order, upon notice and a hearing, determining the correct Cure Cost amount.

(c) All obligations of Chrysler LLC under the GMAC MAFA Term Sheet (the "GMAC Term Sheet") attached to the Purchase Agreement as Exhibit A, or if executed, the definitive GMAC Master Autofinance Agreement, which agreement shall be substantially on the same terms as the GMAC Term Sheet or the Annexes thereto, as well as any intellectual property licensing agreements entered into connection therewith and all the other agreements that are specified in the GMAC Term Sheet, including, without limitation, one or more repurchase agreements with substantially the same terms as set forth in Annex D to Exhibit A of the Purchase Agreement (collectively with the GMAC Term Sheet, the "GMAC MAFA Documents") shall be assigned by the Debtors to the Purchaser, and the Purchaser shall be deemed to have assumed the GMAC MAFA Documents, pursuant to this Sale Order and the Bidding Procedures Order, and each non-Debtor party to the GMAC MAFA Documents shall be deemed to have consented to such assumption and assignment. Assumption and assignment of the GMAC MAFA Documents are integral to the Sale Transaction and the Purchase Agreement, are in the best interests of the Debtors and their estates, creditors, employees and retirees and represent the reasonable exercise of the Debtors' sound business judgment.

(d) At the Purchaser's written election, to be made by notice to Chrysler Financial Services Americas LLC ("Chrysler Financial") no later than June 12, 2009, or such other date as the Purchaser and Chrysler Financial may agree, either: (i) (A) the vehicles related to unperformed or partially unperformed repurchase obligations arising from or related to agreements between the Debtors and dealers whose dealerships were terminated prepetition, or arising from or related to prepetition agreements between Chrysler Financial and the Debtors (collectively, the "Repurchased Vehicles"), and (B) the vehicles commonly referred to by Chrysler Financial and the Debtors as "conversion vehicles" that are currently in the possession

of entities that convert such vehicles into "conversion vehicles" (together with Repurchased Vehicles, the "Conversion and Repurchased Vehicles"), will be treated as "Excluded Assets" that will not be transferred to the Purchaser; or (ii) will be treated as Purchased Assets and the alleged liens in favor of Chrysler Financial or its affiliates on the Conversion and Repurchased Vehicles will be Continuing Liens to the extent they meet the requirements of subparagraphs 11(a)(i) through (iii) above.

(e) Chrysler Financial and its affiliates object to the sale to the Purchaser of any insurance policy, surety bond or related indemnity arrangement to the extent that it (i) is an executory contract to extend a financial accommodation or a personal services contract and therefore not assumable and assignable to the Purchaser pursuant to section 365(c)(1) or (c)(2) of the Bankruptcy Code or (ii) is property the sale of which is not permitted under state or contract law and that entitles Chrysler Financial and its affiliates to adequate protection pursuant to section 363(e) of the Bankruptcy Code or that may not be sold free and clear of the interests of Chrysler Financial and its affiliates pursuant to section 363(f) of the Bankruptcy Code. The parties reserve all rights (including, without limitation, any rights under the Contract Procedures and, in the case of the Purchaser, any rights against the Debtors pursuant to Sections 2.11 and 2.12 of the Purchase Agreement) and agree that no such policy, bond or arrangement shall be deemed to be transferred to Purchaser and that no liens, rights of setoff, equitable subrogation or equitable lien arising in favor of Chrysler Insurance Company, as insurer or surety, as against any Debtor's estate shall be terminated, diminished or affected by reason of any provision of the Purchase Agreement or this Sale Order until such objections are resolved by the Court.

23. Nothing in this Sale Order or in the Purchase Agreement releases, nullifies or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order.

APPROVAL OF UAW RETIREE SETTLEMENT AGREEMENT

24. The UAW Retiree Settlement Agreement, all transactions contemplated therein and all of the terms and conditions thereof are fair, reasonable and in the best interests of the retirees and are hereby approved. The Debtors, the Purchaser and the UAW are authorized to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and comply with the terms of the UAW Retiree Settlement Agreement pursuant to and in accordance with the terms and conditions of the UAW Retiree Settlement Agreement and this Sale Order. The Trust Amendments are hereby approved and the *English Case* VEBA Trust Agreement is reformed accordingly (as such terms are defined in the UAW Retiree Settlement Agreement).

ASSUMPTION AND ASSIGNMENT OF ASSUMED AGREEMENTS

25. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and in accordance with the Contract Procedures, the Debtors' assumption and assignment or other transfer to the Purchaser of all of the Debtors' right, title and interest in or under the Assumed Agreements are hereby approved, with only such exceptions as Purchaser may agree in writing, and all requirements of section 365 of the Bankruptcy Code are hereby deemed satisfied. For the avoidance of doubt, subject to the Contract Procedures (including the resolution of any Section 365 Objection and the issuance of a Confirmation Notice, as set forth in the Bidding Procedures Order), the Debtors shall be deemed to have assumed and assigned each of the Assumed Agreements as of the date of and effective only upon the Closing of the Sale Transaction and,

absent such Closing, each of the Assumed Agreements shall neither be deemed assumed nor assigned and shall in all respects be subject to subsequent assumption or rejection by the Debtors under the Bankruptcy Code.

26. Except as provided herein, the Debtors are hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code and the Contract Procedures to assume and assign, sell and otherwise transfer the Assumed Agreements of all of the Debtors' right, title or interest therein or thereunder to the Purchaser free and clear of all Claims, and to execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Agreements to the Purchasers.

27. In accordance with the Contract Procedures, the Assumed Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Agreement (including those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There shall be no rent accelerations, assignment fees, penalties, increases or any other fees charged to the Purchaser or the Debtors as a result of the assumption or assignment of the Assumed Agreements. No Assumed Agreement may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the transactions contemplated by the Purchase Agreement.

28. To the extent that the Purchaser exercises its right to exclude any Assumed Agreement from the Sale Transaction prior to the applicable Agreement Assumption Date, such Assumed Agreement shall (a) be deemed never to have been assumed by the Debtors or assigned

to the Purchaser and (b) remain subject to assumption, rejection or assignment by the Debtors at any time in the future.

29. Except as may be otherwise agreed to by the parties to an Assumed Agreement, the Cure Costs under the Assumed Agreements shall be paid by the Purchaser as soon as practicable and in no event later than ten days after the later of (a) the Closing of the Sale Transaction or (b) following the date on which such Assumed Agreement is deemed assumed and assigned in accordance with the Contract Procedures. With respect to Disputed Cure Costs, the Purchaser shall reserve sufficient funds to pay the full amount of any Disputed Cure Costs related to the Sale Transaction until such time as there is a resolution among the parties or a final order of this Court determining the correct Cure Costs. In addition to the Cure Costs (but without duplication), the Purchaser will assume and pay, in the ordinary course of business and as they come due, all amounts for goods delivered and services provided prepetition for which payment was not due as of the Petition Date and for postpetition goods delivered and services provided to the Debtors under each Assumed Agreement to the extent due and payable and not otherwise paid by the Debtors.

30. Payment of the Cure Costs shall be a full satisfaction of any and all defaults under the Assumed Agreements, whether monetary or non-monetary, and upon payment of the Cure Costs any default of the Debtors thereunder shall have been irrevocably cured. Upon the assumption and assignment of an Assumed Agreement under the Contract Procedures, the Debtors shall be released from any liability whatsoever arising under the Assumed Agreements and the Cure Costs and ongoing obligations under the Assumed Agreement shall be solely the obligation of the Purchaser. Except as otherwise provided in this Sale Order, each Non-Debtor Counterparty to an Assumed Agreement hereby is forever barred, estopped and

permanently enjoined from asserting against the Debtors or the Purchaser, their successors or assigns or the property of any of them, any default existing as of the date of the assumption of the Assumed Agreement.

31. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Agreement shall not be a waiver of such terms or conditions, or of the Debtors' and the Purchaser's rights to enforce every term and condition of the Assumed Agreements.

32. Upon the Agreement Assumption Date (or such earlier date as set forth in the Contract Procedures), the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assumed Agreements.

33. The assignments of each of the Assumed Agreements are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

34. In connection with the foregoing and consistent with the Contract Procedures, the Purchaser and the Creditors' Committee have agreed to the following: (a) no later than the second calendar day after the initial Section 365 Objection Deadline, the Purchaser will serve Confirmation Notices on the applicable Non-Debtor Counterparties; (b) no later than the second calendar day after the initial Section 365 Hearing, the Purchaser will serve additional Confirmation Notices on the applicable Non-Debtor Counterparties; (c) the Purchaser and the Creditors' Committee acknowledge that, if the Closing occurs prior to June 12, 2009, the terms of the Contract Procedures provide that the Assurance Letter procedure will not apply; and (d) paragraph 20 of the Bidding Procedures Order is clarified to provide that all Designated Agreements (rather than all contracts) that have not become Confirmed Contracts as of the Closing Date shall constitute "Excluded Contracts" for purposes of the Purchase Agreement

(without any requirement to update the Company Disclosure Letter) unless such Designated Agreements subsequently become Confirmed Contracts in accordance with the Contract Procedures. The failure of the Purchaser to deliver a Confirmation Notice with respect to any Non-Debtor Counterparty as contemplated in clause (a) and (b) of this paragraph 34, whether because the parties have not agreed to Cure Costs or otherwise, shall not preclude the ability of the Purchaser to deliver a Confirmation Notice to such Non-Debtor Counterparty after such time and prior to the "Final Designation Date" (as defined in the Bidding Procedures Order).

ADDITIONAL PROVISIONS

35. Except for the Assumed Liabilities expressly set forth in the Purchase Agreement or described therein or Claims against any Purchased Company, none of the Purchaser, its successors or assigns or any of their respective affiliates shall have any liability for any Claim that (a) arose prior to the Closing Date, (b) relates to the production of vehicles prior to the Closing Date or (c) otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the Purchase Agreement or any of the transactions or documents ancillary thereto or contemplated thereby or the acquisition of the Purchased Assets, to: (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Assumed Agreements from and after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, derivative or vicarious liabilities of any kind or character for any Claims, including, but not limited to, on any theory of successor or transferee liability, *de facto* merger or continuity, environmental, labor and employment,

products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.

36. The Purchaser (or its designee) is authorized and directed, in accordance with Section 5.20 of the Purchase Agreement, to substitute, backstop or replace, as the case may be, in a manner reasonably satisfactory to the Debtors, those letters of credit existing as of the Closing that secure future obligations of the Purchaser under an Assumed Agreement and are identified in writing by the Debtors as part of the Cure Costs. The Purchaser shall cause the originals of any such substituted or replaced letters of credit to be returned to the Debtors or the issuer thereof with no further drawings made thereunder.

37. The Purchaser is hereby granted a first priority lien and super-priority administrative claim over the proceeds of any tax refunds (including interest thereon), returns of withholding taxes or similar payments, and any proceeds of tax sharing, contribution or similar agreements (in each case, other than on refunds due to be paid to third parties pursuant to the Original Contribution Agreement, as defined in the Purchase Agreement) to secure the payment of all amounts due to the Purchaser from any of the Debtors under the tax indemnities in Article 9 of the Purchase Agreement.

38. Effective upon the Closing and except as otherwise set forth herein or provided by stipulations filed with or announced to the Court with respect to a specific matter, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Purchased Assets, with respect to any (a) Claim other than (i) Assumed Liabilities or (ii) Claims against any Purchased Company or (b) successor liability of the Purchaser for any of the Debtors, including,

without limitation, the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors as against the Purchaser or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (iii) creating, perfecting or enforcing any lien, claim, interest or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (iv) asserting any setoff, right of subrogation or recoupment of any kind (in the case of recoupment only, except as a defense for payment of an obligation other than an Assumed Agreement) for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (v) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof; or (vi) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets.

39. Except for the applicable Assumed Liabilities, the Purchaser shall not have any liability or other obligation of the Debtors or their affiliates arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Purchase Agreement, the Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to,

any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Debtors or their affiliates or any obligations of the Debtors or their affiliates arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing of the Sale Transaction.

40. Upon the Debtors' assignment of the Assumed Agreements to the Purchaser under the provisions of this Sale Order and any additional order contemplated by the Purchase Agreement, no default shall exist under any Assumed Agreement, and no counterparty to any Assumed Agreement shall be permitted to declare a default by the Purchaser under such Assumed Agreement or otherwise take action against the Purchaser as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the relevant Assumed Agreement.

41. For the avoidance of doubt:

- (a) with respect to each Excluded Contract, the Purchaser is not acquiring any right, title or interest in, to and under such Excluded Contract, including without limitation any claim, cause of action, right of recoupment or receivable (whether for money or property), and all rights of a Non-Debtor Counterparty against the Debtors arising under such Excluded Contract, including rights of setoff, are not modified or waived;
- (b) with respect to each Assumed Agreement, nothing in this Sale Order or the Purchase Agreement affects the contractual rights and remedies of a Non-Debtor Counterparty under such Assumed Agreement, including, without limitation, any right of setoff, recoupment, subrogation, indemnity rights and any defenses to performance, except to the extent such contractual rights and remedies result from the financial condition or bankruptcy of a Debtor or arise out of or relate to a default or failure to perform under such Assumed Agreement at or prior to the time of assumption and assignment;

- (c) with respect to Purchased Assets (whether Assumed Agreements or other Purchased Assets such as Claims and receivables), nothing in this Sale Order or the Purchase Agreement affects any other defense or right of the non-Debtor obligor under applicable law, *provided that* a non-Debtor obligor may not assert any setoff, recoupment or other right or defense to the extent (a) resulting from the financial condition or bankruptcy of a Debtor or arising out of or relating to a default or failure to perform under such Assumed Agreement at or prior to the time of assumption and assignment or (b) arising out of or relating to an Excluded Liability; and
- (d) with respect to leases, nothing in this Sale Order or the Purchase Agreement shall (a) affect the rights of any lessor of property leased by a Debtor under an unexpired lease except to the extent such unexpired lease becomes an Assumed Agreement in accordance with the Contract Procedures and applicable law, (b) sell to the Purchaser any leased property not owned by a Debtor or (c) with respect to leases that are Excluded Contracts, affect possessory or ownership rights as against any Debtor or the Purchaser.

42. The Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of Claims. The discrete consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of any Claims of any kind whatsoever.

43. While the Debtors' bankruptcy cases are pending, this Court shall retain jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith in all respects), to adjudicate disputes related to this Sale Order or the Purchase Agreement and to enter any orders under sections 105, 363 and/or 365 (or other relevant provisions) of the Bankruptcy Code with respect to the Assumed Agreements.

44. Nothing in this Sale Order or the Purchase Agreement releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental statutes or

regulations (or any associated liabilities for penalties, damages, cost recovery or injunctive relief) that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order. Notwithstanding the foregoing sentence, nothing in this Sale Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to entry of this Sale Order or for liabilities relating to off-site disposal of wastes by the Debtors prior to entry of this Sale Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

45. No bulk sales law, or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion and this Sale Order.

46. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction (including the assumption and assignment of the Assumed Agreements), unless such authorization is duly stayed pending such appeal.

47. The consideration provided by the Purchaser for the Purchased Assets constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the

United States, any state, territory or possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

48. The Sale Transaction may not be avoided under section 365(n) of the Bankruptcy Code.

49. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, their creditors, the Purchaser, the respective affiliates, successors and assigns of each, and any affected third parties, including, but not limited to, all persons asserting claims in the Purchased Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s), examiner(s) or receiver(s) under any chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee(s), examiner(s) or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, their shareholders or any trustee(s), examiner(s), or receiver(s).

50. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement and its exhibits and ancillary documents be authorized and approved in their entirety.

51. The Purchase Agreement may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not materially change the terms of the Purchase Agreement or modify the express terms of this Sale Order.

52. Each and every federal, state and local governmental agency, department or official is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

53. Subject to further order of the Court and consistent with the terms of the Purchase Agreement and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, the books, records and any other documentation, including tapes or other audio or digital recordings and data in or retrievable from computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' businesses.

54. Consistent with the terms of the Purchase Agreement and the Transition Services Agreement, the Debtors have agreed to transfer to the Purchaser (or one or more of its subsidiaries, as applicable) a substantial portion of the Debtors' cash management system maintained pursuant to an order of this Court (Docket No. 1303) entered on May 20, 2009, including, without limitation, several bank accounts maintained by the Debtors. Such cash management system assets, including such bank accounts, constitute Purchased Assets under the Purchase Agreement. Notwithstanding the foregoing transfers, the Debtors will maintain such bank accounts and a cash management system that is necessary to effect the orderly administration of the Debtors' chapter 11 estates, including any modifications thereof after the Closing, to ensure a reasonable accounting and segregation of the Debtors' cash. To the extent any funds of the Debtors that do not constitute Purchased Assets are held in accounts transferred to the Purchaser (or one or more of its subsidiaries), such funds shall be promptly returned to the appropriate Debtor, and such funds shall remain subject to any and all liens of the Debtors'

lienholders thereon. Likewise, to the extent that any funds that constitute Purchased Assets are held in accounts maintained by one or more Debtors after the Closing, such funds shall be promptly transferred to the Purchaser. The applicable Debtors and the Purchaser (and/or one or more of its subsidiaries, as applicable), may execute any agreement, assignment, novation, instrument or other document the parties deem necessary or appropriate to effectuate the transfers described in this paragraph, which is consistent with the general authority to the same provided in paragraph 6 hereof.

55. Those powers of attorney granted by Chrysler LLC and any of the other Debtors and any related documentation entered into by such entities for the purpose of (a) effectuating the transfers of such entities' interests in their non-debtor foreign affiliates to the Purchaser, Chrysler Motors LLC or their respective designees in connection with consummation of the Sale Transaction or (b) effectuating the transfers of interests in certain foreign affiliates to Chrysler LLC or any of the other Debtors prior to consummation of the Sale Transaction are hereby ratified and approved in all respects, regardless of whether such powers of attorney or other documentation were issued or entered into prior to or subsequent to the Petition Date.

56. The Debtors are hereby authorized and empowered, upon and in connection with the Closing, to change their corporate names and the caption of these chapter 11 cases, consistent with applicable law. The Debtors shall file a notice of change of case caption within one business day of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

57. As provided by Bankruptcy Rules 6004(h) and 6006(d), this Sale Order shall not be stayed for ten days after its entry and shall be effective as of 12:00 noon, Eastern Time, on Friday June 5, 2009, and the Debtors and the Purchaser are authorized to close the Sale

Transaction on or after 12:00 noon, Eastern Time, on Friday June 5, 2009.⁴ Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Sale Order becoming a Final Order.

58. Any amounts payable to the Purchaser shall be paid by the Debtors in the manner provided in the Purchase Agreement without further order of this Court, shall be an allowed administrative claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code, shall be protected as provided in the Bidding Procedures Order and shall not be altered, amended, discharged or affected by any plan proposed or confirmed in these cases without the prior written consent of the Purchaser.

59. This Court retains jurisdiction to interpret, implement and enforce the terms and provisions of this Sale Order including to compel delivery of the Purchased Assets, to protect the Purchaser against any Claims and to enter any orders under sections 105, 363 or 365 (or other applicable provisions) of the Bankruptcy Code to transfer the Purchased Assets and the Assumed Agreements to the Purchaser.

Dated: New York, New York
June 1, 2009

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

⁴ The Court considered the Debtor's request for a waiver of the stay imposed, pursuant to Bankruptcy Rules 6004(h) and 6006(d), objections filed to that request, and Debtors' modified request as of June 1, 2009, whereby Debtors' sought a waiver of the stay imposed to permit a closing to take place on Thursday, June 4, 2009 at 9:00 a.m. In their modified request, the Debtors reference the deposition testimony of Matthew Feldman, an advisor to the President's Auto Task Force, indicating that the Debtors are losing \$100 million a day, and the other exigent circumstances facing Chrysler, including the continuing deterioration of its asset value, its supply chain, and its going-concern value. The Court determines that a partial waiver of the stay is justified. Any request to further modify the stay should be made to the appellate court.

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

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EXHIBIT A
PURCHASE AGREEMENT

AMERICAN BANKRUPTCY INSTITUTE

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EXHIBIT B
SUMMARY SCHEDULE OF FILED OBJECTIONS

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

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EXECUTION VERSION

MASTER TRANSACTION AGREEMENT

among

FIAT S.p.A.,

NEW CARCO ACQUISITION LLC,

CHRYSLER LLC

and

the other SELLERS identified herein

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- A GMAC Master AutoFinance Agreement Term Sheet
- B [Reserved.]
- C Auburn Hills Agreement
- D CGI Indemnity Assignment Agreement
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- F Final Joint Restructuring Plan (including the Business Plan that has been incorporated into the Final Joint Restructuring Plan)
- G Master Industrial Agreement (including term sheets for the Joint Procurement Agreement, Master Product and Technology Agreement, Global Distribution Agreement and Information Technology Cooperation Agreement)
- H Operating LLC Agreement
- I Shareholder Agreement (including Voting Trust Agreement attached as an exhibit thereto)
- J Terms of UAW Active Labor Modifications
- K Form of UAW Retiree Settlement Agreement
- L Transition Services Agreement
- M Canada Loan Documents
- N U.S. Treasury Loan Documents
- O Management Services Agreement
- P Sale Order

MASTER TRANSACTION AGREEMENT dated as of April 30, 2009 (this "Agreement"), among FIAT S.p.A., a *Società per Azioni* organized under the laws of Italy ("Fiat"), NEW CARCO ACQUISITION LLC, a Delaware limited liability company and an indirect wholly-owned subsidiary of Fiat ("Purchaser"), CHRYSLER LLC, a Delaware limited liability company ("the Company"), and the Subsidiaries of the Company identified on the signature pages hereto (each of the Company and such Subsidiaries, a "Seller" or "Selling Group Member" and, collectively, "Sellers").

WHEREAS, the Company is, directly and through its Subsidiaries, engaged in the business of developing, manufacturing, distributing and selling a range of automotive products, mainly full-size, mid-size and compact cars, minivans, sport utility vehicles, parts and accessories, and of providing leasing and fleet-management services for retail and commercial customers, at various locations in the United States and around the world (such business, the "Company Business");

WHEREAS, Sellers have filed or will file voluntary petitions for relief (the "Petitions") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and the Sellers will be debtors in possession under the Bankruptcy Code;

WHEREAS, in accordance with the terms and conditions set forth herein, Purchaser wishes to purchase from the Sellers the Purchased Assets in accordance with sections 105, 363 and 365 of the Bankruptcy Code;

WHEREAS, Purchaser has entered into Equity Subscription Agreements with each of the VEBA Trust, the U.S. Treasury and Canada, each dated as of the date hereof (the "Equity Subscription Agreements"), pursuant to which Purchaser has agreed to issue, on the Closing Date, to (i) the VEBA Trust the Class A Membership Interests in Purchaser set forth in the Schedule of Members (the "Schedule of Members") to the Operating LLC Agreement attached as Exhibit H (the "VEBA LLC Interest"), (ii) the U.S. Treasury the Class A Membership Interests in Purchaser set forth in the Schedule of Members (the "UST LLC Interest"), (iii) Canada the Class A Membership Interests in Purchaser set forth in the Schedule of Members (the "Canada LLC Interest"), and together with the UST LLC Interest and the VEBA LLC Interest, the "Other LLC Interests");

WHEREAS, in exchange for the Purchased Assets, in accordance with the terms and conditions set forth herein, Purchaser (i) wishes to assume from the Sellers the Assumed Liabilities and (ii) pay to the Company cash consideration in the amount of \$2,000,000,000 (the "Cash Consideration");

WHEREAS, in accordance with the terms and conditions set forth herein, Fiat (i) desires to contribute or cause to be contributed to Purchaser, among other things, certain rights to Fiat technology, including Fiat Group Automobiles S.p.A. product platforms, Fiat Powertrain Technologies S.p.A. powertrains and other key technology, management services, access to international markets and other distribution enhancements under and pursuant to the terms and conditions of the Master Industrial Agreement, (ii) will retain through its wholly-owned Subsidiary Class B Membership Interests in Purchaser initially representing 20% of the total Membership Interests in Purchaser (by vote and value on a fully diluted basis), but that

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upon the occurrence of certain events set forth in the Operating LLC Agreement may increase up to a 35% Membership Interest in Purchaser (by vote and value on a fully diluted basis) and (iii) shall have options for Fiat or its designated Subsidiaries to purchase additional Membership Interests as set forth in the Operating LLC Agreement, such that Fiat may, directly or indirectly, own a 51% total Membership Interest in Purchaser (by vote and value on a fully diluted basis) upon full exercise of such options;

WHEREAS, Fiat and the Company desire to cooperate in (i) the development of joint purchasing programs; (ii) the sale of certain Fiat products into the United States, Canada and Mexico (the “NAFTA Region”) with the support of the Company’s distribution network; (iii) the sale of certain Company products outside the NAFTA Region through the Fiat distribution network; (iv) research and development activities; and (v) branding opportunities; and

WHEREAS, in connection with the transactions contemplated hereby, it is necessary to reorganize the ownership structure of the Company.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Sellers, Purchaser and Fiat hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Specific Definitions. As used in this Agreement, and unless the context requires a different meaning, the terms defined in the Definitions Addendum have the meanings specified or referred to therein.

ARTICLE II

CONTRIBUTION; CLOSING; PURCHASE AND SALE

Section 2.01 Closing Transactions. Subject to the terms and conditions of this Agreement, at the Closing, (A) Fiat and certain of its Affiliates, Purchaser, and the Sellers and their Affiliates shall enter into the Master Industrial Agreement and the other Transaction Agreements to which they are a party, (B) Purchaser will, and Fiat shall cause Purchaser to, issue the Other LLC Interests to the VEBA Trust, Canada (or its designee), and the U.S. Treasury (or its designee) pursuant to the Equity Subscription Agreements, (C) Purchaser will pay the Cash Consideration, (D) the Purchaser will issue the Closing Date VEBA Note and (E) Purchaser shall, and Fiat shall cause Purchaser to, purchase the Purchased Assets and assume the Assumed Liabilities from the Company.

Section 2.02 Closing. On the terms and subject to the conditions of this Agreement, at the Closing (as defined below), the Sellers, Fiat and the Purchaser shall take or cause to be taken the actions and make or cause to be made the transfers described in Section 2.01, Section 2.06, Section 2.07, Section 2.08 and Section 2.09. The “Closing” is to be held at the offices of Sullivan & Cromwell LLP, 1701 Pennsylvania Ave, N.W., Washington,

D.C. 20006-5805 at 10:00 a.m. Washington, D.C. time on the second Business Day following the satisfaction or waiver (in accordance with this Agreement) of the conditions to the obligations of the parties hereto set forth in Section 8.01 and Section 8.02 (other than those conditions that by their nature are to be satisfied at the Closing), or at such other place or at such other time or on such other date as Fiat and the Company may mutually agree upon in writing (the "Closing Date"). All the transactions set forth in Section 2.01, Section 2.06, Section 2.07, Section 2.08 and Section 2.09 will be considered to have taken place simultaneously on the Closing Date, and no such transaction will be considered to have been made until all steps taken at the Closing shall have been completed, except that the issuance of the Other LLC Interests to the VEBA Trust, the U.S. Treasury (or its designee) and Canada (or its designee) shall be deemed to occur immediately prior to any such transaction.

Section 2.03 Closing Deliveries by the Company. At the Closing, the Company shall deliver or cause to be delivered to Fiat the following:

- (a) stock certificates or similar documents representing all of the outstanding shares of capital stock or other equity interests of the Purchased Companies;
- (b) fully executed copies of the Third Party Transaction Agreements to which the Company or any of its Subsidiaries is a party;
- (c) counterparts of each Transaction Agreement and each Conveyance Document to which the Company or an Affiliate of the Company is a party executed by the Company and each such Affiliate a party thereto;
- (d) a certificate reasonably satisfactory in form and substance to Fiat of the Chief Executive Officer and Chief Financial Officer of the Company certifying as to the matters set forth in Section 8.02(a) and Section 8.02(f);
- (e) the same solvency certificate that is provided to U.S. Treasury under the U.S. Treasury Loan Documents;
- (f) a duly executed certificate with respect to each of the Sellers that none of the Sellers is a "foreign person" within the meaning of Section 1445 of the Code and the Treasury Regulations promulgated thereunder; and
- (g) any other documents or instruments reasonably requested by Fiat to consummate the transactions contemplated hereby, including any other documents or instruments contemplated to be delivered at the Closing under this Agreement.

Section 2.04 Closing Deliveries by Fiat. At the Closing, Fiat shall deliver or cause to be delivered to the Company the following:

- (a) fully executed copies of the Third Party Transaction Agreements to which Fiat or any of its Subsidiaries is a party;

(b) counterparts of the Master Industrial Agreement and each of the Transaction Agreements to which Fiat or any Subsidiary of Fiat is a party executed by Fiat and each Subsidiary of Fiat that is a party thereto;

(c) a certificate reasonably satisfactory in form and substance to the Company of Alfredo Altavilla or the Chief Executive Officer of Fiat certifying as to the matters set forth in Section 8.01(a); and

(d) any other documents or instruments reasonably requested by the Company to consummate the transactions contemplated hereby, including any other documents or instruments contemplated to be delivered at the Closing under this Agreement.

Section 2.05 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver or cause to be delivered to the Company the following:

(a) the Cash Consideration by wire transfer in immediately available funds to an account of the Company specified by the Company at least three Business Days prior to the Closing Date;

(b) evidence reasonably satisfactory in form and substance to the recipient thereof (or, in the case of the VEBA Trust, the UAW) of the issuance of the Other LLC Interests by Purchaser to the VEBA Trust, the U.S. Treasury (or its designee) and Canada (or its designee);

(c) evidence reasonably satisfactory in form and substance to UAW of the issuance of the Closing Date VEBA Note;

(d) fully executed copies of the Third Party Transaction Agreements to which Purchaser is a party;

(e) counterparts of each Conveyance Document, the Master Industrial Agreement and each Transaction Agreement to which Purchaser is a party executed by Purchaser;

(f) a certificate reasonably satisfactory in form and substance to Fiat of a duly authorized executive officer of Purchaser certifying as to the matters set forth in Section 8.01(a);

(g) documentation of the assumption of the Collective Bargaining Agreement, which documents will be reasonably satisfactory to the UAW, and the UAW Retiree Settlement Agreement executed by Purchaser;

(h) evidence of the filing of the Certificate of Amendment in accordance with Section 5.19(b); and

(i) any other documents or instruments reasonably requested by the Company to consummate the transactions contemplated hereby, including any other documents or instruments contemplated to be delivered at the Closing under this Agreement.

Section 2.06 Purchase and Sale of Purchased Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from the Sellers, and the Sellers shall sell, transfer, convey and deliver to Purchaser, all of the Sellers' right, title and interest in, to and under the Purchased Assets as of immediately prior to the Closing, free and clear of all Liens other than those created by Purchaser and free and clear of any other interest in the Purchased Assets to the extent provided in the Sale Order. For all purposes of this Agreement, the term "Purchased Assets" shall mean all of the properties, assets and rights of Sellers (other than the Excluded Assets) existing as of the Closing, real or personal, tangible or intangible, including all of Sellers' right, title and interest in:

- (a) the Contracts to which any Selling Group Member is a party, including any insurance policies, except to the extent otherwise provided in the Sale Order ("Assumed Contracts");
- (b) trade and account receivables, including all accounts receivable owed to a Selling Group Member by another Selling Group Member or by a Purchased Company ("Trade Receivables");
- (c) (i) restricted or escrowed cash, cash equivalents or marketable securities relating to Assumed Liabilities, Assumed Contracts and Letters of Credit to be replaced under Section 5.20 and (ii) cash and cash equivalents listed on Schedule 2.06(c) ;
- (d) by quitclaim deed, owned real property ("Purchased Owned Real Property");
- (e) leasehold interests in real property leased or subleased ("Purchased Leased Real Property");
- (f) all PP&E, other than the PP&E physically located as of Closing at the Excluded Owned Real Property and the Excluded Leased Real Property, but including the PP&E described on Section 2.06(f) of the Company Disclosure Letter;
- (g) (i) subject to Section 2.14, the Equity Interests in the Subsidiaries of the Company listed on Section 2.06(g)(i) (other than the entities listed under the subheading "*Wholly Owned Subsidiaries – b. Purchased Companies which are not purchased entities*") of the Company Disclosure Letter (each, a "Purchased Entity"; the Purchased Entities and all of their Subsidiaries, other than Excluded Subsidiaries, the "Purchased Companies"), and (ii) the Equity Interests in the entities (other than Subsidiaries of the Company) listed on Section 2.06(g)(ii) of the Company Disclosure Letter;
- (h) Intellectual Property, subject to any rights previously granted to a third party in any of the foregoing to the extent such rights are preserved by the Sale Order;
- (i) all Inventory, wherever physically located, including new vehicles, service parts, precious metals, raw materials and work-in-process (the "Purchased Inventory");

(j) all defenses, counterclaims, rights of recovery, rights of setoff and rights of recoupment, in each case only to the extent primarily related to the Purchased Assets or the Assumed Liabilities;

(k) all Documents of whatever nature and wherever located that are related to the Company Business as currently conducted, including those in the possession or control of the Sellers;

(l) all Permits (and applications therefor) owned, held or maintained by Sellers and related to or useful in the Company Business as currently conducted and expected to be conducted by Purchaser after the Closing, in each case except to the extent provided in the Sale Order;

(m) any claim, right or interest of any of the Sellers in or to any refund, rebate, abatement or other recovery of Taxes, but only to the extent the Taxes to be refunded were paid with respect to the Purchased Assets or with respect to the Purchased Companies in respect of any taxable period (or portion thereof) beginning after the Closing Date, and any refund or other recovery of Conveyance Taxes;

(n) any claim, right or interest of any of the Purchased Companies in or to any refund, rebate, abatement or other recovery of Taxes for any taxable period, but not any such amount that is required to be paid by the Company to Daimler AG or an Affiliate of Daimler AG pursuant to the Original Contribution Agreement, or, if entered into pursuant to Section 5.11, the Tax Settlement Agreement;

(o) to the extent not included by Section 2.06(n), any rights or interests assigned to the Company or its Affiliates pursuant to (i) the Tax Indemnity Agreement to the extent such rights or interests are not superseded by the CGI Indemnity Assignment Agreement, and (ii) the Daimler Transactions, as such rights or interests may be modified by, and to the extent such rights or interests are not extinguished by, the Tax Settlement Agreement;

(p) all guarantees and warranties of third parties to the extent related to Purchased Assets or Assumed Liabilities, except to the extent provided in the Sale Order;

(q) the claims and causes of action listed on Section 2.06(q) of the Company Disclosure Letter; and

(r) any and all rights of any Selling Group Member or any Subsidiary of the Company related to or arising under any Benefit Plan listed on Section 2.06(r) of the Company Disclosure Letter (which such Section 2.06(r) shall include all Benefit Plans (other than the VEBA Trust) maintained for the benefit of any current or former employee or retiree of the Company or any of its Subsidiaries that is or was covered by any Collective Bargaining Agreement) ("Included Plans") and any assets held in trust to fund, and all insurance policies funding, any of the Liabilities under such Included Plans.

Section 2.07 Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers shall retain all of its

right, title and interest to, in and under the Excluded Assets. For all purposes of this Agreement, the term “Excluded Assets” shall mean:

- (a) the Contracts listed on Section 2.07(a) of the Company Disclosure Letter or deemed after the date hereof to be excluded pursuant to Section 2.10 (the “Excluded Contracts”);
- (b) cash, cash equivalents and marketable securities not included in the Purchased Assets by operation of Section 2.06(c);
- (c) the prepaid assets, financial assets and surety bonds listed on Section 2.07(c) of the Company Disclosure Letter;
- (d) all real property owned by Sellers and listed on Section 2.07(d) of the Company Disclosure Letter (the “Excluded Owned Real Property”);
- (e) all real property leased by Sellers and listed on Section 2.07(e) of the Company Disclosure Letter (the “Excluded Leased Real Property”);
- (f) the PP&E physically located as of Closing at the Excluded Owned Real Property and the Excluded Leased Real Property, excluding the PP&E described in Section 2.06(f) of the Company Disclosure Letter;
- (g) the Inventory described on Section 2.07(g) of the Company Disclosure Letter;
- (h) any Equity Interest in any direct or indirect Subsidiary of the Company that is not a Purchased Company, including the Sellers and any Excluded Subsidiary;
- (i) all of Sellers’ defenses, counterclaims, rights of recovery, rights of setoff and rights of recoupment that are not described in Section 2.06(j);
- (j) all Documents that contain or are: (A) confidential personnel and medical records pertaining to any employee other than a Transferred Employee; (B) other books and records that the Sellers are required by Law to retain or that the Sellers determine are necessary or advisable to retain including Tax Returns, financial statements and corporate or other entity filings; provided that Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the Purchased Assets or Assumed Liabilities; (C) any information management systems of Sellers that are subject to third party licensing restrictions that prohibit the transfer thereof; and (D) minute books, stock ledgers and stock certificates of Sellers;
- (k) all Permits that are not described in Section 2.06(l);
- (l) except as otherwise provided in this Agreement, any claim, right or interest of any of the Sellers in or to any refund, rebate, abatement or other recovery for Taxes that is not described in Section 2.06(m);

(m) all rights under Sellers' insurance policies and any refunds of premiums or claims due with respect to such insurance policies, to the extent such insurance policies are not Assumed Contracts;

(n) all of Sellers' rights under or pursuant to any warranties (express or implied), representations and guarantees made by third parties that are not described in Section 2.06(p);

(o) any rights, claims or causes of action of any Selling Group Member against third parties (including avoidance actions or similar causes of action arising under Sections 544 through 553 of the Bankruptcy Code) arising out of events or occurring on or prior to the Closing Date that are not described in Section 2.06(q);

(p) any and all rights of any Selling Group Member or any Subsidiary of the Company related to or arising under any Benefit Plan not listed on Section 2.06(r) of the Company Disclosure Letter ("Excluded Plans") and any assets held in trust to fund, and all insurance policies funding, any of the Liabilities under such Excluded Plans;

(q) any and all rights of the Sellers or their Affiliates under any Transaction Agreement or any Alliance Agreement; and

(r) those assets set forth on Section 2.07(r) of the Company Disclosure Letter, including the Viper Assets if (i) such assets are sold pursuant to Section 2.15(a)(i) or (ii) the Purchaser elects to exclude such assets pursuant to Section 2.15(b).

Section 2.08 Assumption of Liabilities. On the terms and subject to the conditions and limitations set forth in this Agreement, at the Closing, Purchaser shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, the Assumed Liabilities and no others. For purposes of this Agreement, "Assumed Liabilities" means (without duplication) each of the following Liabilities of Sellers existing as of immediately prior to the Closing:

(a) all Liabilities under Assumed Contracts, including leases relating to Purchased Leased Real Property, other than any Assumed Contract that becomes an Excluded Contract after the Closing Date pursuant to Section 2.10;

(b) all trade or account payables that would be required by GAAP (disregarding intercompany consolidation rules) to be reflected as such on a balance sheet of the Sellers as of the Closing, including all accounts payable due from a Selling Group Member to another Selling Group Member or to a Purchased Company, whether or not invoiced prior to Closing, excluding accounts payable to any supplier that is not a party to any Assumed Contract and any accounts payable that were not incurred in the ordinary course of the business of the Seller ("Trade Payables");

(c) all Environmental Liabilities present on the Purchased Owned Real Property and the Purchased Leased Real Property, but excluding the Environmental Liabilities described in Section 2.09(h);

(d) all Liabilities (excluding any Liabilities set forth in Section 2.09(d) hereof or any Liabilities with respect to any Excluded Plan that is not a health benefit plan) related to or arising out of the employment or termination of employment of (i) any current or former employee or retiree (and any dependents or beneficiaries thereof) of the Company or any of its Subsidiaries that is or was covered by any Collective Bargaining Agreement or (ii) any Transferred Employee not covered by (i), in each case whether arising prior to, on or after the Closing Date;

(e) any Liabilities to be expressly assumed by Purchaser or any of its Subsidiaries pursuant to ARTICLE VI hereof;

(f) any and all Liabilities or obligations of any Selling Group Member or Subsidiary of any Selling Group Member related to or arising under any Included Plan or any health benefit plan that is an Excluded Plan;

(g) all Liabilities pursuant to product warranties, product returns and rebates on vehicles sold by Sellers prior to the Closing;

(h) all Product Liability Claims arising from the sale after the Closing of Products or Inventory manufactured by Sellers or their Subsidiaries in whole or in part prior to the Closing;

(i) any Liabilities arising out of the claims and causes of action listed on Section 2.06(q) of the Company Disclosure Letter;

(j) all Conveyance Taxes applicable to the transfer of the Purchased Assets pursuant to this Agreement;

(k) the Cure Amounts related to the Assumed Contracts payable by Purchaser pursuant to Section 2.10;

(l) any Liabilities arising as a result of the operation of the Company Business after the Closing, including any Environmental Liabilities arising as a result of Purchaser's ownership or operation of the Purchased Assets after the Closing;

(m) [Reserved.]

(n) the Liabilities set forth on Section 2.08(n) of the Company Disclosure Letter.

Section 2.09 Excluded Liabilities. Purchaser shall not assume and shall be deemed not to have assumed, and Sellers shall be solely and exclusively liable with respect to, any Liabilities of Sellers other than the Assumed Liabilities (collectively, the "Excluded Liabilities"). For the avoidance of doubt, the Excluded Liabilities include the following:

(a) all Liabilities arising out of, or related to, any Excluded Assets;

(b) all Liabilities under Excluded Contracts;

(c) all Liabilities, other than Liabilities under Included Plans, related to or arising out of the employment of Company Employees who are not Transferred Employees (other than any current or former employee that is or was covered by any Collective Bargaining Agreement);

(d) all Liabilities of any Seller for workers' compensation claims against any Seller that relate to the period on or before the Closing Date, irrespective of whether such claims are made prior to, on or after the Closing Date;

(e) all Liabilities for expenses of the Sellers (i) for the negotiation and preparation of this Agreement, (ii) relating to the transactions contemplated hereby or (iii) incurred in connection with the commencement and continuance of the Bankruptcy Case (including Bankruptcy-Related Fees);

(f) except as otherwise provided herein and other than Taxes relating to the Purchased Assets for taxable periods (or portions thereof) beginning after the Closing Date, all Liabilities for Taxes of any Selling Group Member;

(g) any and all Liabilities or obligations of any Selling Group Member or Subsidiary of the Company related to or arising under any Excluded Plan that is not a health benefit plan;

(h) all Environmental Liabilities related to the Excluded Owned Real Property or the Excluded Owned Leased property, or any Environmental Liability relating to the ownership or operation of the Company Business or relating to any generation, transport, release or presence of any Hazardous Material on or from any Owned Real Property or Leased Real Property prior to or ongoing at Closing;

(i) all Product Liability Claims arising from the sale of Products or Inventory prior to the Closing;

(j) all Liabilities in strict liability, negligence, gross negligence or recklessness for acts or omissions arising prior to or ongoing at the Closing;

(k) all Liabilities of any Seller for (i) the litigation between certain of the Sellers and Faurecia Interior Systems, Inc. and its Affiliates (collectively, "Faurecia") in the Oakland County, Michigan Circuit Court, and (ii) any other claims that Faurecia may have or assert against any Seller that relate to the period on or before the Closing Date, irrespective of whether such claims are asserted prior to, on or after the Closing Date; and

(l) all Liabilities of any Seller for claims of any kind or nature whatsoever relating to Getrag Transmission Manufacturing, LLC, Getrag International GmbH or their respective Affiliates, including but not limited to the litigation between certain of the Sellers and Getrag Transmission Manufacturing, LLC and Getrag International GmbH in the Eastern District of Michigan (Case No. 08-14592), irrespective of whether such claims are asserted prior to, on or after the Closing Date.

For the avoidance of doubt, nothing herein shall be deemed to provide or require that Sellers will retain or be liable for any Liabilities of the Purchased Companies after the Closing.

Section 2.10 Excluded Contract Designations; Cure Amounts. At the Closing, or thereafter to the extent permitted by the Bidding Procedures Order, and pursuant to section 365 of the Bankruptcy Code, Sellers shall assume and assign to Purchaser, and Purchaser shall assume from Sellers, the Assumed Contracts. At any time prior to the deadline for rejecting contracts in the Bidding Procedures Order, Purchaser or Fiat may add to Section 2.07(a) of the Company Disclosure Letter any Contract to which a Selling Group Member is a party by giving reasonably detailed written notice thereof to Sellers, thereby designating such Contract an Excluded Contract. Notwithstanding the foregoing, Purchaser or Fiat may not designate any Collective Bargaining Agreement or the GMAC Master AutoFinance Agreement as an Excluded Contract under this Section 2.10 or otherwise. Notwithstanding, any other provision hereof, the Liabilities of Sellers under or related to any Contract, other than any Collective Bargaining Agreement, added to Section 2.07(a) of the Company Disclosure Letter under this Section 2.10 will constitute Excluded Liabilities. The amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Assumed Contracts (the “Cure Amounts”) shall be paid by Purchaser as and when finally determined by the Bankruptcy Court pursuant to the procedures set forth in the Bidding Procedures Order, and not by Sellers and Sellers shall have no liability therefor.

Section 2.11 Non-Assignment of Assets. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not effect the assignment or transfer of any Purchased Asset if (a) an attempted assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto (each such action, a “Necessary Consent”), would constitute a breach thereof or in any way adversely affect the rights of Purchaser thereunder and (b) the Bankruptcy Court shall not have entered an Order providing that such Necessary Consent is not required. In such event, Sellers and Purchaser will use their reasonable best efforts to obtain the Necessary Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Purchaser as Purchaser may reasonably request; *provided, however*, that Sellers shall not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or legal proceedings to obtain any such consent or approval. If such Necessary Consent is not obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of any Selling Group Member thereunder so that Purchaser would not in fact receive all such rights, such Selling Group Member and Purchaser will cooperate in a mutually agreeable arrangement, to the extent feasible and at no expense to such Selling Group Member, under which Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including subcontracting, sub-licensing, or sub-leasing to Purchaser, or under which such Selling Group Member would enforce for the benefit of Purchaser with Purchaser assuming such Selling Group Member’s obligations and any and all rights of such Selling Group Member against a third party thereto. Without limiting the foregoing, with respect to Intellectual Property licenses, if Sellers are permitted to sublicense only in exchange for a one-time fixed payment or an ongoing fee, Sellers shall notify Purchaser thereof and, only if Purchaser agrees in writing to be responsible to such

payment or fee, as applicable, Sellers shall sublicense whatever rights it is permitted to sublicense under the respective Intellectual Property licenses, subject to the payment or fee being paid by Purchaser.

Section 2.12 Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Purchaser shall execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to each Selling Group Member and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the transactions contemplated hereby.

Section 2.13 Consideration for the Purchased Assets. The aggregate consideration provided by Purchaser to the Sellers for the Purchased Assets shall be (i) the assumption of the Assumed Liabilities and (ii) the Cash Consideration.

Section 2.14 Designation of Purchased and Excluded Subsidiaries.

(a) At any time and from time to time prior to the earlier of June 30, 2009 and the fifth Business Day prior to the Closing, the Purchaser may with respect to national sales companies, designate any such company, and any Subsidiary thereof, as an Excluded Subsidiary; *provided, however*, if any such company is so designated, each of its Subsidiaries must also be designated as an Excluded Subsidiary.

(b) At any time and from time to time prior to May 18, 2009, the Purchaser may designate (A) Chrysler Canada Holding ULC, (B) Alpha Holding LP and (C) 3217923 Nova Scotia Company as Excluded Subsidiaries, in which case all direct Subsidiaries of Alpha Holding LP shall be Purchased Entities and all Subsidiaries of Alpha Holding LP shall be Purchased Companies and Alpha Holding LP shall execute and deliver this Agreement as a Seller.

Section 2.15 Viper. (a) Subject to Section 2.15(b) below, notwithstanding any provision of this Agreement to the contrary, (i) Seller may, at its option, sell Intellectual Property and Purchased Inventories that relate solely to Vehicle Production (as defined in the Transition Services Agreement) and are not necessary or useful in any other line of business (the "Viper Assets") prior to the Closing Date in an arm's-length transaction to a party other than Purchaser on terms and conditions reasonably acceptable to the Purchaser, *provided* that the right of the Seller to sell the Viper Assets shall terminate on June 8, 2009 if no binding written agreement to purchase the Viper Assets has been executed and delivered by a bona fide purchaser at such time, and (ii) in connection with any such sale, Seller and Purchaser, as applicable, shall grant to the purchaser of the Viper Assets on terms and conditions reasonably acceptable to the Purchaser a non-exclusive license of other Intellectual Property of the Seller necessary for Vehicle Production as currently conducted. The Purchaser shall at the request of the Seller work in good faith to facilitate such sale. If the sale of the Viper Assets is consummated prior the Closing Date, the Seller shall receive in trust for, segregate and convey to the Purchaser on the Closing

Date all right, title and interest in the proceeds of such sale, which proceeds shall constitute Purchased Assets for all purposes of this Agreement. If any commitment to purchase the Viper Assets is made prior to the Closing Date, but not consummated, the Purchased Assets shall include Seller's right, title and interest in the Viper Assets and in any agreement evidencing such commitment and any related or ancillary agreements entered into in connection therewith.

(b) Purchaser may at any time elect by written notice to Seller that it elects not to acquire some or all of the Viper Assets (or agreement or proceeds of sale) described in Section 2.15(a), in which case such Viper Assets (or agreement or proceeds) shall constitute Excluded Assets.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Company Disclosure Letter (it being understood that any information set forth in one section or subsection of the Company Disclosure Letter relating to representations and warranties shall be deemed to apply to and qualify the Section or subsection of this Agreement to which it corresponds in number and each other subsection of this ARTICLE III to the extent that it is readily apparent on its face that such information would be applicable to such other Section or subsection), subject to the entry of the Sale Order and the approval of this Agreement and the Transactions by the Bankruptcy Court, each Selling Group Member represents and warrants to Fiat and Purchaser, as of the date hereof or, if a representation or warranty is made as of a specified date, as of such date, as follows:

Section 3.01 Organization, Standing and Power. Each of the Company and its Significant Subsidiaries is duly organized and validly existing under the Laws of its jurisdiction of organization and, subject to the limitations imposed on the Sellers as a result of having filed a petition for relief under the Bankruptcy Code, has all requisite corporate, limited liability company or partnership power, as the case may be, and authority to own, lease or otherwise hold its properties and assets and to conduct its business as presently conducted. Each of the Company and its Significant Subsidiaries is duly qualified or licensed to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction where the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than where the failure to be so qualified, licensed or in good standing, individually or in the aggregate, has not had and would not be reasonably likely to have a Company Material Adverse Effect. The Company has made available to Fiat prior to the execution of this Agreement true and complete copies of the Constitutive Documents of the Company and its Significant Subsidiaries, in each case as in effect on the date of this Agreement.

Section 3.02 Subsidiaries. Section 3.02 of the Company Disclosure Letter lists each Subsidiary of the Company that is a Purchased Company and the jurisdiction of organization thereof. There are no shares of capital stock, options, profits interests, phantom equity awards or other similar obligations related to, or for which the payout is determined by reference to the value of any Purchased Company, or other equity interests or Rights in any Purchased Company issued, reserved for issuance or outstanding. All the outstanding shares of

capital stock of each Purchased Company have been duly authorized, validly issued and are fully paid and nonassessable and are owned, directly or indirectly, by Sellers free and clear of all Liens other than Permitted Liens. Sellers, directly or indirectly, have good and valid title to the outstanding stock and other equity interests of the Purchased Companies and, upon delivery by Sellers of the outstanding equity interests of the Purchased Companies (either directly, in the case of Purchased Entities, or indirectly by virtue of such Purchased Company being a Subsidiary of a Purchased Entity) at Closing, good and valid title to the outstanding stock and other equity interests of the Purchased Companies will pass to Purchaser (or, with respect to any Purchased Company that is not a Purchased Entity, the Purchased Entity with regard to which it is a Subsidiary will continue to have good and valid title to such outstanding stock and other equity interests). None of the Equity Interests in the Purchased Entities has been conveyed in violation of, and none of the Equity Interests in the Purchased Companies has been issued in violation of or will be subject to, (x) any preemptive or subscription rights, rights of first offer or first refusal or similar rights or (y) any voting trust, proxy or other agreement or understanding (including options or rights of first offer or first refusal) with respect to the voting, purchase, sale or other disposition thereof.

Section 3.03 [Reserved].

Section 3.04 Authority; Execution and Delivery; Enforceability. Each of the Company and the Significant Subsidiaries of the Company has all requisite power and authority to execute, deliver and perform the Transaction Agreements to which it is, or is specified to be, a party and to consummate the Transactions and comply with the provisions of the Transaction Agreements. The execution, delivery and performance by each of the Company and its Significant Subsidiaries of the Transaction Agreements to which it is, or is specified to be, a party and the consummation by each of the Company and its Significant Subsidiaries of the Transactions and compliance with the provisions of the Transaction Agreements have been or will be duly authorized by all requisite action on its part and the part of its equity holders, if required. The Transaction Agreements dated as of the date hereof to which the Company or any of its Significant Subsidiaries is, or is specified to be, a party has been duly executed and delivered by the Company and each applicable Significant Subsidiary, and each other Transaction Agreement to which the Company or any of its Significant Subsidiaries is, or is specified to be, a party will have been duly executed and delivered by the Company and each applicable Significant Subsidiary on or prior to Closing, and, assuming the due authorization, execution and delivery by each of the other parties other than the Company and its Significant Subsidiaries (or, in the case of any other Transaction Agreement, applicable parties thereto other than the Company and its Subsidiaries), the Transaction Agreement dated as of the date hereof to which the Company or any of its Significant Subsidiaries is, or is specified to be, a party constitutes, and each other Transaction Agreement to which it is, or is specified to be, a party will after the Closing constitute the legal, valid and binding obligation of the Company and its applicable Significant Subsidiaries, enforceable against the Company and each applicable Significant Subsidiary in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) (the "Bankruptcy and Equity Exception").

Section 3.05 Noncontravention; Consents.

(a) Except as set forth in Section 3.05(a) of the Company Disclosure Letter, the execution, delivery and performance by the Company and its Significant Subsidiaries of any Transaction Agreement to which it is, or is specified to be, a party do not, and the consummation of the Transactions and compliance with the provisions of such Transaction Agreements will not (A) conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any Person under any provision of (x) the Constitutive Documents of the Company and the Company's Significant Subsidiaries or (y) subject to the filings and other matters referred to in the immediately following Section 3.05(b), (1) any Contract to which the Company or any of its Subsidiaries is a party or by which any of their respective properties or assets is bound or (2) any Law or any Governmental Order, in each case applicable to the Company or any of its Subsidiaries or their respective properties or assets, other than, in the case of clause (y) above, any such conflicts, violations, defaults, rights, losses or entitlements, as individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect or (B) result in the creation of any Lien upon any of the properties or assets of the Company or any Company Subsidiary except for any Liens that individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect.

(b) No material consent, approval, license, permit, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity is required to be obtained or made by or with respect to the Company or any of its Subsidiaries in connection with the execution, delivery and performance by the Company or any of its Subsidiaries of any Transaction Agreement to which it is, or is specified to be, a party or the consummation by the Company of the Transactions or compliance with the provisions of such Transaction Agreements, except for (w) those consents, approvals, orders, authorizations, registrations, declarations, filings and notices not required if the Sale Order is entered or any other order is entered by the Bankruptcy Court, (x) compliance with and filings (if required) under (1) the HSR Act, (2) Council Regulation (EC) No. 139/2004 of the European Community of 20 January 2004, as amended (the "EC Merger Regulation"), (3) the Competition Act (Canada) and the Investment Canada Act of 1985 (Canada) (collectively, the "Canadian Investment Regulations"), (4) the Mexican Federal Law on Economic Competition, and (5) the filings and receipt, termination or expiration, as applicable, of such other approvals or waiting periods under any other Antitrust Laws as indicated in writing by Fiat, (y) the consents, approvals, orders, authorizations, registrations, declarations, filings and notices set forth in Section 3.05(b) of the Company Disclosure Letter and (z) such other consents, approvals, orders, authorizations, registrations, declarations, filings and notices the failure of which to be obtained or made, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect.

Section 3.06 Financial Statements. (a) Section 3.06(a) of the Company Disclosure Letter sets forth (i) the audited consolidated balance sheets of the Company at December 31, 2007, the audited consolidated statements of operations and statements of cash flows of the Company for the period from January 1, 2007 to August 3, 2007 (predecessor), and

the period from August 4, 2007 to December 31, 2007 (successor), and consolidated statements of member's interest and company equity (deficit) at December 31, 2007 and the notes related thereto (collectively, the "Audited Financial Statements") and (ii) the unaudited consolidated balance sheets of the Company at December 31, 2008 (the "Balance Sheet"), the unaudited consolidated statements of operations and statements of cash flows of the Company for the period from January 1, 2008 to December 31, 2008, and consolidated statements of member's interest and Company equity (deficit) of the Company at December 31, 2008 (collectively, the "2008 Financial Statements") and, together with the Audited Financial Statements, the "Financial Statements"). The Financial Statements (i) have been prepared in accordance with the books and records of the Company, (ii) were in accordance with GAAP (and with the Accounting Principles) applied on a consistent basis during the periods covered thereby, in substantial conformity with the requirements of Regulation S-X promulgated by the SEC (except in each case as described in the notes thereto and in the case of the 2008 Financial Statements, for the absence of footnotes), and (iii) fairly present (subject, in the case of the 2008 Financial Statements, to normal year-end adjustments) in all material respects the consolidated financial condition, results of operations and cash flows of the Company and its consolidated Subsidiaries as of the respective dates thereof and for the respective periods indicated therein. Except as set forth on or reserved against in the Balance Sheet, neither the Company nor any of its Subsidiaries has any material Liabilities required by GAAP to be set forth on a consolidated balance sheet of the Company and its consolidated Subsidiaries or in the notes thereto, except Liabilities that individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect.

(b) The Company maintains a system of internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and maintains records that (i) in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are made only in accordance with appropriate authorizations, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets. Section 3.06(b) of the Company Disclosure Letter describes (A) any significant deficiencies or material weaknesses in the design or operation of internal controls and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in internal control.

Section 3.07 Absence of Certain Events. Since September 30, 2008 through the date of this Agreement, except as set forth in Section 3.07 of the Company Disclosure Letter, there has not been:

(a) any declaration, setting aside or payment of any dividend or other distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to the Company or a Company Subsidiary without receipt of fair value) with respect to any limited liability company interests of or other equity interests in the Company or any repurchase for value by the Company of any Company Equity Interests or Rights of the Company;

(b) any split, combination or reclassification of any limited liability company interests of or other equity interests in the Company or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for Company Equity Interests or Rights of the Company;

(c) other than as is required by the terms of the Benefit Plans (in effect on the date hereof, made available to Fiat and set forth on Section 3.15(a) of the Company Disclosure Letter), Collective Bargaining Agreement or as may be required by applicable Law or pursuant to the Restructuring Transactions contemplated by Section 5.06 and, in each case, as may be permitted by the Troubled Assets Relief Program established by the U.S. Treasury under the Emergency Economic Stabilization Act of 2008 and modified by the American Recovery and Reinvestment Act of 2009 (the “TARP”) or under any enhanced restrictions on executive compensation agreed to by the Company and the U.S. Treasury, any (A) grant to any director or officer with the title of senior vice president level 98 and higher of the Company or any of its Subsidiaries (collectively, the “Company Key Personnel”) of any increase in compensation, except increases required under employment agreements in effect as of September 30, 2008, (B) granting to any Company Key Personnel of any increase in retention, change in control, severance or termination compensation or benefits, except as was required under any employment agreements in effect as of September 30, 2008, (C) adoption, termination of, entry into, or amendment or modification of, any Benefit Plan or any employment, retention, change in control, severance or termination agreement with any Company Key Personnel, or (D) other than in connection with the UAW Active Labor Modifications and the UAW Retiree Settlement Agreements, entry into or amendment, modification or termination of any Collective Bargaining Agreement or other Contract with any labor organization, union or association of the Company or any of its Subsidiaries;

(d) any material change in accounting methods, principles or practices by the Company or any of its Subsidiaries materially affecting the consolidated assets or Liabilities of the Company, except to the extent required by a change in GAAP, the Accounting Principles or applicable Law, including Tax Laws;

(e) any material election with respect to Taxes by the Company or any of its Significant Subsidiaries or settlement or compromise by the Company or any of its Significant Subsidiaries of any material Tax liability or refund;

(f) any sale, transfer, pledge or other disposition by the Company directly or by a Company Subsidiary of any portion of its assets or properties not in the Ordinary Course of Business and with a sale price or fair value in excess of \$50 million;

(g) aggregate capital expenditures in excess of \$50 million in a single project or group of related projects or capital expenditures in excess of \$125 million in the aggregate;

(h) any acquisition (including by merger, consolidation, combination or acquisition of Equity Interests or assets) of any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received

(including non-cash equity consideration) exceeds \$100 million, other than transactions solely among the Company and the Company Subsidiaries;

(i) any discharge or satisfaction of any Indebtedness in excess of \$25 million, other than the discharge or satisfaction of any Indebtedness when due in accordance with its terms;

(j) any alteration, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of the Company or any of its Significant Subsidiaries or any material joint venture to which any Significant Subsidiary of the Company is a party, or the adoption or alteration of a plan with respect to any of the foregoing (in each case other than pursuant to Section 5.06);

(k) any material amendment or modification adverse to the Company or any of the Company Subsidiaries of any material Affiliate Contract or Company Contract, or termination of any Affiliate Contract or Company Contract to the material adverse detriment of the Company or any of the Company Subsidiaries; or

(l) any event, development or circumstance involving, or any change in the financial condition, properties, assets, liabilities, business, or results of their operations or any circumstance, occurrence or development (including any adverse change with respect to any circumstance, occurrence or development existing on or prior to the end of the most recent fiscal year end) which, individually or in the aggregate, has had or would be reasonably likely to have a Company Material Adverse Effect;

(m) any commitment by the Company or any of its Subsidiaries to do any of the foregoing.

Section 3.08 Related Party Transactions.

(a) Section 3.08(a)(i) of the Company Disclosure Letter contains a true and complete list of all Contracts, transactions, Indebtedness, waivers, concessions, or other arrangements (including any direct or indirect ownership interest or other rights (including as a licensee) in any property or assets used in or necessary for use in the conduct of the business of the Company and its Subsidiaries and as proposed to be conducted under the Company's 2009 and 2010 Annual Operating Plan and the Final Joint Restructuring Plan) or acknowledgments (including any oral or written settlement agreement, settlement proposal or similar agreement or proposal relating to the Original Contribution Agreement or the transactions contemplated thereby) that (i) with respect to officers or directors of the Company and its Subsidiaries or other Persons, the Company would be required to disclose pursuant to Item 404 of Regulation S-K if the Company were subject to such requirements or (ii) that involve CG Investment Group, LLC ("CGI") or any Affiliate of CGI or Chrysler Holding LLC ("HoldCo"), including Cerberus Capital Management L.P., other than in the case of any such Affiliate, Contracts, transactions, Indebtedness or other arrangements on an Arm's Length Basis. There are no cost allocations between the Company and its Subsidiaries, on the one hand, and CGI or its Affiliates (other than the Company and its Subsidiaries), on the other hand, and the principles applied to such cost

allocation. Except as set forth in Section 3.08(a)(iii) of the Company Disclosure Letter, there are no shared expenses or services between the Company and its Subsidiaries, on the one hand, and CGI or its Affiliates (other than the Company and its Subsidiaries), on the other hand.

Section 3.09 Litigation. Except as set forth in Section 3.09(a) of the Company Disclosure Letter, there is no Action or group of Actions pending or, to the Knowledge of the Company, threatened in writing against or affecting the Company or any of its Subsidiaries that is reasonably likely to result in damages in excess of \$15 million nor, except as set forth in Section 3.09(b) of the Company Disclosure Letter, is there any Governmental Order outstanding against the Company or any of its Subsidiaries that, individually or in the aggregate, has had or would reasonably be likely to have a Company Material Adverse Effect.

Section 3.10 Contracts. (a) Section 3.10(a) of the Company Disclosure Letter sets forth a true and complete list, as of the date of this Agreement, and the Company has made available (except, as disclosed in Section 3.10(a) of the Company Disclosure Letter, or where prohibited by applicable confidentiality obligations or Antitrust Laws or other legal restrictions prohibiting the disclosure thereof) to Fiat true and complete copies (together with all material amendments and modifications thereto), of Contracts of the types described below to which the Company or any of its Subsidiaries is a party:

- (i) each Collective Bargaining Agreement and each other Contract with any labor organization, union or association of the Company or any of its Subsidiaries;
- (ii) each Contract containing a covenant not to compete (other than pursuant to any radius restriction contained in any lease, reciprocal easement or development, construction, operating or similar agreement) or other covenant restricting the development, design, manufacture, processing, installation, sale, marketing, distribution or provision or placement in the stream of commerce of the products and services of the Company or any of its Subsidiaries that, in either case, (i) materially limits the conduct of the business of the Company and its Subsidiaries, taken as a whole, as presently conducted or (ii) would bind or would purport to bind Purchaser or Fiat or their respective Subsidiaries after the Closing or would materially limit the conduct of the business of Fiat and its Subsidiaries or Purchaser and its Subsidiaries, in each case, taken as a whole;
- (iii) each Contract with payments in excess of \$50 million in any twelve-month period containing a “most favored nation” clause or other similar term providing preferential pricing or treatment to any party;
- (iv) each Contract with Daimler AG or any Subsidiary or Affiliate of Daimler AG with payments in excess of \$10 million in any twelve-month period;
- (v) each continuing Contract involving contract manufacturing arrangements or involving an exclusive purchasing obligation on the part of the Company or any of its Subsidiaries, which, in either case, involves an aggregate future liability for

the Company and its Subsidiaries in excess of \$50 million in any twelve-month period and is not terminable by the Company or its Subsidiaries by notice of not more than 30 days for a cost of less than \$5 million;

(vi) each Contract with respect to any Indebtedness of the Company or any of its Subsidiaries in excess of \$75 million;

(vii) each Contract under which (i) any Person other than the Company or any of its Subsidiaries has directly or indirectly guaranteed Indebtedness or other Liabilities of the Company or any of its Subsidiaries or (ii) the Company or any of its Subsidiaries has directly or indirectly guaranteed Indebtedness or other Liabilities of any Person, other than the Company or any of its Subsidiaries, in each case in excess of \$75 million;

(viii) each Contract under which the Company or any of its Subsidiaries has, directly or indirectly, made or committed to make any advance, loan, extension of credit or capital contribution to, or other investment in, any Person (other than the Company or any of its Subsidiaries and other than extensions of trade credit or dealer credit in the Ordinary Course of Business), in any such case which, individually, is in excess of \$25 million;

(ix) each Contract providing for indemnification of any Person with respect to any Liabilities relating to any former business of the Company, any of its Subsidiaries or any predecessor Person, except for indemnification Liabilities entered into in the Ordinary Course of Business, including indemnification obligations relating to personal injury, product liability, reimbursement of recall or campaign expenses, or intellectual property infringement indemnities;

(x) each pending Contract for the acquisition or sale of any properties or assets of the Company or any of its Subsidiaries in excess of \$50 million other than inventory sales in the Ordinary Course of Business;

(xi) each Contract with respect to any material joint venture, alliance, partnership or similar material arrangement to which the Company or any of its Subsidiaries is a party or by which any of them is bound;

(xii) each employment agreement between the Company or its Subsidiaries and Company Key Personnel;

(xiii) each lease under which the Company or its Subsidiaries leases in excess of 400,000 square feet of improvements or nine acres of real property; and

(xiv) any Contract not listed in clauses (i)-(xiii) above that would be a "material contract" (as such term is defined in item 601(b)(10) of Regulation S-K of the SEC) of the Company.

(b) All Contracts required to be listed in Section 3.10(a) of the Company Disclosure Letter (the “Company Contracts”) are valid, binding and in full force and effect and are enforceable by the Company or the applicable Subsidiary of the Company in accordance with their terms (subject to the Bankruptcy and Equity Exception), except for such failures to be valid, binding, in full force and effect or enforceable that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. The Company or the applicable Company Subsidiary has in all material respects performed the obligations required to be performed by it to date under the Company Contracts, and it is not (with or without the lapse of time or the giving of notice, or both) in breach or default thereunder, except for such noncompliance, breaches and defaults that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. No other party to any Company Contract is (with or without the lapse of time or the giving of notice, or both), to the Knowledge of the Company, in breach or default thereunder, except for such noncompliance, breaches and defaults that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. Since December 31, 2008, neither the Company nor any Company Subsidiary has received any written notice of the intention of any party to terminate any Company Contract.

Section 3.11 Compliance with Laws. Each of the Company and the Company Subsidiaries is in compliance with all Laws except for instances of possible noncompliance that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. Except as set forth in Section 3.11 of the Company Disclosure Letter or as, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect the Company and the Company Subsidiaries have conducted the Company Business in accordance with all Laws and Governmental Orders applicable to the Company or any Company Subsidiary, and neither the Company nor any Company Subsidiary is in violation of any such Law or Governmental Order. This Section 3.11 does not relate to matters with respect to Taxes, which are the subject of Section 3.16, environmental matters, which are the subject of Section 3.13 and employee and labor matters and Benefit Plans, which are the subject of Sections 3.14 and 3.15.

Section 3.12 Permits. Each of the Company and its Significant Subsidiaries validly holds, has in effect and has complied with the terms of all approvals, authorizations, certificates, franchises, licenses, permits and consents of Governmental Entities, including those required pursuant to Environmental Laws, necessary for it to conduct its business as presently conducted (collectively, “Permits”), and all such Permits are in full force and effect, except for such Permits the absence of or non-compliance with which, or the failure of which to be in full force and effect, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. During the past two years, none of the Company or any of its Significant Subsidiaries has received any written notice of any Action relating to the revocation or modification of any Permits the loss of which, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect.

Section 3.13 Environmental, Health and Safety Matters. Except as disclosed in Section 3.13 of the Company Disclosure Letter:

(a) the Company and each of its Subsidiaries are, and have been, in compliance with Environmental Laws, including the receipt of and compliance with all Environmental Permits except for any noncompliance that could not reasonably be expected to result in Environmental Liabilities in excess of \$5 million individually, and neither the Company nor any of its Subsidiaries (A) has received any Environmental Claim in writing that alleges that the Company or any of its Subsidiaries is in violation of, or has potential to have Liability under, any Environmental Law involving amounts in each case in excess of \$5 million individually, (B) has received within the last three (3) years any written request for information pursuant to Section 104(e) of the Comprehensive Environmental Response Compensation and Liability Act or any other Environmental Law, (C) is subject to any Environmental Liens on any properties or assets owned by it, or (D) is aware of any threatened Environmental Claims, which in each case are reasonably expected to involve amounts in excess of \$5 million;

(b) there have been no Releases of, or exposure to, any Hazardous Material that could reasonably be expected to form the basis of any Environmental Claim involving amounts in each case in excess of \$5 million individually, against the Company or any of its Subsidiaries or against any Person whose Liabilities for such Environmental Claims the Company or any of its Subsidiaries has, or may have, retained or assumed, either contractually or by operation of law;

(c) neither the Company nor any of its Subsidiaries is subject to any agreement that may require it to pay to, reimburse, guarantee, pledge, defend, indemnify or hold harmless any Person for or against any Environmental Liabilities arising from any Releases, or has retained, assumed, incurred or will incur, either contractually or by operation of Law, any Liabilities that could reasonably be expected to result in any Environmental Claim against the Company or any of its Subsidiaries involving amounts in each case in excess of \$5 million individually;

(d) neither the Company nor any of its Subsidiaries currently manufactures, distributes or sells any asbestos or asbestos containing products;

(e) no properties presently or formerly owned, leased or operated by either the Company or any Company Subsidiary, or any entity that is a predecessor to the Company or a Company Subsidiary, contain any landfills, surface impoundments, underground storage tanks or above-ground storage tanks, or otherwise store Hazardous Materials in a manner that would be reasonably expected to give rise to an Environmental Claim or Environmental Liability against the Company or any Company Subsidiary in each case in excess of \$5 million individually; and

(f) except as set forth in Section 3.13(e) of the Company Disclosure Letter, the Company and each Company Subsidiary has been and currently is in compliance with all Health and Safety Laws, except any failure to comply that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect, and to the Knowledge of the Company, no material investments that are not contemplated by the Business Plan are required by Health and Safety Laws in the next three years for the Company to remain in compliance with existing or foreseeable Health and Safety Laws.

Section 3.14 Employee and Labor Matters. Except as set forth in Section 3.14 of the Company Disclosure Letter, there is not any labor strike, work stoppage or lockout pending, or, to the Knowledge of the Company, threatened, in writing against or affecting the Company or any of its Subsidiaries. To the Knowledge of the Company, no union organizational campaign is in progress with respect to the employees of the Company or any of its Subsidiaries and no question concerning representation of such employees exists. Except as, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect or as set forth in Section 3.14 of the Company Disclosure Letter: (i) none of the Company or any of its Subsidiaries is engaged in any material unfair labor practice; (ii) there are not any unfair labor practice charges or complaints against the Company or any of its Subsidiaries pending, or, to the Knowledge of the Company, threatened, before the National Labor Relations Board; (iii) there are not any pending, or, to the Knowledge of the Company, threatened in writing, union grievances against the Company as to which there is a reasonable possibility of adverse determination; (iv) there are not any pending, or, to the Knowledge of the Company, threatened in writing, charges against the Company or any of its Subsidiaries or any of their current or former employees before the Equal Employment Opportunity Commission or any state or local agency responsible for the prevention of unlawful employment practices; and (v) neither the Company nor any Company Subsidiary has received written communication during the past five years of the intent of any Governmental Entity responsible for the enforcement of labor or employment laws to conduct an investigation of or affecting the Company or any of its Subsidiaries and, to the Knowledge of the Company, no such investigation is in progress.

Section 3.15 Benefit Plans.

(a) Section 3.15(a) of the Company Disclosure Letter lists all material Benefit Plans. For purposes of this Agreement, “Benefit Plan” shall mean each “employee pension benefit plan” (as defined in Section 3(2) of ERISA) (a “Pension Plan”), “employee welfare benefit plan” (as defined in Section 3(1) of ERISA), and each other plan, program, policy or arrangement (written or oral) relating to retirement or pension compensation or benefits, equity or equity based compensation, bonus, incentive or deferred compensation, retention, change in control, severance or fringe compensation or benefits, perquisites or any other employee compensation or benefits, in each case, sponsored, maintained or contributed to, or required to be maintained or contributed to, by the Company or any of its Subsidiaries or any ERISA Affiliate for the benefit of any Company Employees. The Company has made available to Fiat true, complete and correct copies of (A) each material Benefit Plan, (B) the three most recent annual reports on Form 5500 (including all schedules, auditor’s reports and attachments thereto) filed with the IRS with respect to each such Benefit Plan (if any such report was required by applicable Law), (C) the most recent actuarial or other financial report prepared with respect to such Benefit Plan, (D) each trust agreement and insurance or annuity contract or other funding or financing arrangement relating to such Benefit Plan and (E) to the extent not subject to confidentiality restrictions, any material written communications received by the Company or any of its Subsidiaries from any Governmental Entity relating to the Benefit Plans, including any communication from the Pension Benefit Guaranty Corporation (the “PBGC”) in respect of any Benefit Plan subject to Title IV of ERISA.

(b) Except as, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect, (A) each Benefit Plan has been administered in accordance with its terms, (B) each of the Company, its Subsidiaries and each Benefit Plan is in compliance with the applicable provisions of ERISA, the Code, all other applicable Laws (including Section 409A of the Code, the TARP or under any enhanced restrictions on executive compensation agreed to by the Company with the U.S. Treasury) and the terms of all applicable collective bargaining agreements, (C) there are no (i) to the Knowledge of the Company, investigations by any Governmental Entity, (ii) termination proceedings or other claims (except routine claims for benefits payable under the Benefit Plans) or (iii) Actions, in each case, against or involving any Benefit Plan or asserting any rights to or claims for benefits under any Benefit Plan that could give rise to any liability, and there are not any facts or circumstances that could give rise to any liability in the event of any such claim or Action, and (D) each Pension Plan (or similar plan under non-U.S. law) that is intended to be a tax-qualified plan under Section 401(a) of the Code (or similar provisions for tax-registered or tax-favored plans of non-U.S. jurisdictions) is qualified and any trust established in connection with any Benefit Plan which is intended to be exempt from taxation under Section 501(a) of the Code (or similar provisions for tax-registered or tax-favored plans of non-U.S. jurisdictions) is exempt from U.S. federal income taxes under Section 501(a) of the Code (or similar provisions under non-U.S. law). To the Knowledge of the Company, no circumstance and no fact or event exists that would be reasonably likely to adversely affect the qualified status of any Benefit Plan.

(c) None of the Pension Plans has failed to satisfy the minimum funding standards (as described in Section 302 of ERISA or Section 412 of the Code), whether or not waived, nor has any waiver of the minimum funding standards of Section 302 of ERISA or Section 412 of the Code been requested.

(d) Except as set forth in Section 3.15(d) of the Company Disclosure Letter, neither the Company nor any ERISA Affiliate has any actual or contingent liability (1) under any employee benefit plan subject to Title IV of ERISA other than the Benefit Plans (except for contributions not yet due) or (2) to the PBGC (except for the payment of premiums not yet due), which liability, in each case, has not been fully paid as of the date hereof, or, if applicable, which has not been accrued in accordance with GAAP except for any Liabilities that have not had or would not be reasonably likely to have a Company Material Adverse Effect. Except as set forth in Section 3.15(d) of the Company Disclosure Letter, neither the Company nor any ERISA Affiliate (or any of their predecessors) is, or within the last six years has been, required to contribute to any "multiemployer plan" (as defined in Section 3(37) of ERISA). The transactions contemplated by the Transaction Agreements will not cause Fiat and its Affiliates (other than the Purchaser and its Subsidiaries) to incur any liabilities or obligations under the Benefit Plans subject to Title IV of ERISA or Section 4980B of the Code.

(e) Except as set forth in Section 3.15(e) of the Company Disclosure Letter, neither the execution of this Agreement nor any of the other Transactions (alone or in conjunction with any other event, including termination of employment) will entitle any director, Company Key Personnel or any other Company Employee to any increase in compensation or benefits, any grant of severance, retention, change in control or other similar compensation or benefits, any acceleration of the time of payment or vesting of any compensation or benefits (including, for this purpose, any retention, stay bonus or other incentive plan, program,

arrangement or agreement for which CGI or any of its Affiliates, other than the Company or any Company Subsidiary, has full liability and responsibility as of the date of this Agreement and will retain such liability and responsibility upon consummation of the transactions contemplated by this Agreement) or will require the securing or funding of any compensation or benefits or limit the right of the Company, any of its Subsidiaries or Purchaser or any of its Affiliates to amend, modify or terminate any Benefit Plan.

(f) No amount or other entitlement currently in effect that could be received (whether in cash or property or the vesting of property) as a result of the Transactions (alone or in combination with any other event) by any person who is a “disqualified individual” (as defined in Treasury Regulation Section 1.280G-1) (each, a “Disqualified Individual”) with respect to the Company would be an “excess parachute payment” (as defined in Section 280G(b)(1) of the Code). No Disqualified Individual or Company Key Personnel is entitled to receive any additional payment (e.g., any tax gross-up or any other payment) from the Company or any Company Subsidiary in the event that the additional or excise tax required by Section 409A or 4999 of the Code, respectively, is imposed on such individual.

(g) Except as, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect, (A) each Benefit Plan that is intended or required to be registered under the Income Tax Act (Canada) and applicable provincial pension standards legislation is so registered, (B) no circumstance and no fact or event exists that would be reasonably likely to adversely affect the registered status of any Benefit Plan or that could reasonably be expected to result in the revocation of a Benefit Plan’s exemption from Canadian federal income taxation or the imposition of any penalty under the Income Tax Act (Canada), (C) each unregistered Canadian Benefit Plan has been administered in accordance with the Income Tax Act (Canada), (D) any deduction claimed under the Income Tax Act with respect to any contribution to a Canadian Benefit Plan is permitted under the Income Tax Act (Canada), and (E) all taxes under the Income Tax Act (Canada) in respect of trusts established in connection with unregistered Canadian Benefit Plans have been paid on or before their required due dates.

Section 3.16 Taxes. Except as set forth in Section 3.16 of the Company Disclosure Letter, or as would not reasonably be expected to have a Company Material Adverse Effect, (a) all Tax Returns required to have been filed by or with respect to any Purchased Company have been timely filed (taking into account any extension of time to file granted or obtained) and are correct and complete in all material respects, except for Tax Returns, the nonfiling of which is not material to any Purchased Company, (b) all material amounts of Tax required to be paid with respect to any Purchased Company (whether or not shown on any Tax Return) have been timely paid or are being contested in good faith by appropriate proceedings and have been reserved for on the Financial Statements, (c) no deficiency for any material amount of Tax has been asserted or assessed by a Governmental Entity in writing with respect to any Purchased Company that has not been satisfied by payment, settled or withdrawn, (d) there is no audit, claim or controversy currently asserted or threatened in writing with respect to any Purchased Company in respect of any material amount of Tax or failure to file any Tax Return, (e) no Purchased Company has agreed to any extension or waiver of the statute of limitations applicable to any material Tax Return, or agreed to any extension of time with respect to a material Tax assessment or deficiency, which period (after giving effect to such extension or

waiver) has not yet expired, (f) no Purchased Company is a party to or the subject of any ruling requests, private letter rulings, closing agreements, settlement agreements or similar agreements with any Governmental Entity for any periods for which the statute of limitations has not yet run, (g) no Purchased Company (A) has any liability for the Taxes of any Person (other than the Purchased Company), including as a transferee or successor, or pursuant to any contractual obligation (other than pursuant to any commercial agreement or contract not primarily related to Tax) or (B) is a party to or bound by any Tax sharing agreement, Tax allocation agreement or Tax indemnity agreement (other than Tax allocation or Tax sharing agreements which will be terminated prior to Closing and with respect to which no post-Closing Liabilities will exist), (h) each of the Purchased Companies has withheld or collected all material Taxes (such Taxes being material either individually or in the aggregate) required to have been withheld or collected and, to the extent required, has paid such Taxes to the proper Governmental Entity, (i) no Purchased Company will be required to make any material adjustments in taxable income for any tax period (or portion thereof) ending after the Closing Date pursuant to Section 481(a) or 263A of the Code or any similar provision of foreign, provincial, state, local or other law as a result of transactions or events occurring, or accounting methods employed, prior to the Closing, nor is any application pending with any Governmental Entity requesting permission for any changes in accounting methods that relate to the Purchased Companies, (j) the Assumed Liabilities were incurred through the ordinary course of operations of the Company Business, (k) there are no Tax liens on any of the Purchased Assets or the assets of any Purchased Company (other than Permitted Liens), (l) none of the Purchased Companies has been a “distributing corporation” or a “controlled corporation” in a distribution intended to qualify under Section 355(a) of the Code, (m) none of the Purchased Companies has participated in any “listed transactions” or “reportable transactions” within the meaning of Treasury Regulations Section 1.6011-4, (n) the Auburn Hills special purpose entity is treated as a disregarded entity for U.S. Federal income tax purposes, (o) there are no unpaid Taxes with respect to the Purchased Assets for which the Purchaser will have liability as a transferee or successor, and (p) for U.S. federal income tax purposes and all material relevant state and local income tax purposes, each of the Company and the Company Subsidiaries is, and as of the Closing Date will be, classified as either a partnership or a disregarded entity and is not, and as of the Closing Date will not be, treated as a corporation or as an association taxable as a corporation.

Section 3.17 Real Property. The Company and its Subsidiaries have good and insurable title to, or a valid leasehold interest in, all their respective material real property assets that are Purchased Assets (including indirectly through a Purchased Company), subject to (i) Permitted Liens and (ii) defects in title, easements, restrictive covenants, similar encumbrances or impediments, or Liens that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. Each of the Company and its Subsidiaries has complied with the terms of each lease, sublease, license or other Contract relating to real property to which it is a party, except any failure to comply that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect.

Section 3.18 Company Intellectual Property and IT Systems. (a) The Company and its Subsidiaries owns and controls, or otherwise possesses adequate rights to use all Intellectual Property material in the conduct of its business in substantially the same manner as conducted as of the date hereof. Section 3.18(a)(i) of the Company Disclosure Letter sets forth a

true and complete list as of the date hereof of (i) all Registered Intellectual Property owned by the Company and its Subsidiaries which is material to the conduct of the Company Business (excluding the Excluded Assets and Excluded Liabilities) and (ii) all Company Material Licenses. All such Intellectual Property that is material to the conduct of the business of the Company and its Subsidiaries taken as a whole is subsisting and in full force and effect, has not been adjudged invalid or unenforceable and has not been abandoned in whole or in part, except for such instances that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. Except as set forth in Section 3.18(a)(ii) of the Company Disclosure Letter, no such Intellectual Property that is material to the conduct of the business of such Person is the subject of any licensing or franchising agreement that prohibits or materially restricts the Company's or any of its Subsidiaries' conduct of business as presently conducted. The Company does not have Knowledge of any conflict with the rights of others to any Intellectual Property and, to the Company's Knowledge, neither the Company nor its Subsidiaries is now infringing or in conflict with any such Intellectual Property rights of others in any material respect and, to the Company's Knowledge, no other Person is now infringing or in conflict in any material respect with any such properties, assets and rights owned or used by or licensed to the Company or any of its Subsidiaries, except for such infringements and conflicts that individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. Except as set forth in Section 3.18(a)(iii) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries has received any written notice that it is violating or has violated the trademarks, patents, copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or other intellectual property rights of any third party, except for such matters which, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect.

(b) Each Company Material License now existing is the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms, except any unenforceability that, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. To the Company's Knowledge, no default thereunder by any such party has occurred, nor does any defense, offset, deduction, or counterclaim exist thereunder in favor of any such party which have had or would not be reasonably likely to have a Company Material Adverse Effect. Except as set forth in Section 3.18(b) of the Company Disclosure Letter, each Company Material License permits by its terms the transactions contemplated by this Agreement without material impairment of the License.

(c) Except as, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect, (i) the Company takes reasonable actions to maintain, enforce and police its material Intellectual Property; and (ii) the Company takes all reasonable actions to protect its material software, websites and other systems (and the information therein) from unauthorized access or use.

(d) Except as, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect, (i) there has not been any material malfunction with respect to any of the Company IT Systems of the Company or a Company Subsidiary since August 3, 2007 which has not been remedied or replaced in all

material respects, and (ii) the Company IT Systems constitute all of the IT Systems that are required for the operation of the Company Business as currently conducted and as contemplated to be conducted under the Final Joint Restructuring Plan.

Section 3.19 Company Products. (a) Except as set forth in Section 3.19(a) of the Company Disclosure Letter, since August 3, 2007, there has not been any material recall conducted by or on behalf of the Company or any of its Subsidiaries, or any investigation or inquiry by any Governmental Entity in the United States, Canada or a member of the European Union, that, to the Knowledge of the Company, individually or in the aggregate, have or would reasonably likely have a Company Material Adverse Effect concerning any product developed, designed, manufactured, processed, installed, sold, provided or placed in the stream of commerce by or on behalf of the Company or any of its Subsidiaries.

(b) As of the date of this Agreement, except as set forth in Section 3.19(b) of the Company Disclosure Letter (i) there are no material pending Actions for negligence, manufacturing negligence or improper workmanship, or material pending Actions in whole or in part premised upon product liability, against or otherwise naming as a party the Company, or any Company Subsidiary, or any predecessor in interest of any of the foregoing Persons, or, to the Company's Knowledge, (ii) threatened in writing or of which the Company has received written notice, that involve a product liability claim for personal injuries, property damage or losses resulting from the ownership, possession, or use of any product manufactured, sold or delivered by the Company, a Company Subsidiary, or a predecessor in interest of any of the foregoing Persons, which would reasonably be likely to result in a liability of the Company, or any Company Subsidiary of more than \$10 million. Except as set forth in Section 3.19(b) of the Company Disclosure Letter, neither the Company nor any Company Subsidiary nor any predecessor in interest of any of the foregoing Persons has received any reservation of rights or declination of coverage from any insurer regarding the matters set forth in Section 3.19(b) of the Company Disclosure Letter.

(c) To the Knowledge of the Company, no supplier has threatened in writing to cease the supply of products or services that could materially impair future production at a major production facility of the Company.

Section 3.20 [Reserved].

Section 3.21 Sufficiency of Assets. The tangible assets of the Company Business are in normal operating condition and repair, subject to ordinary wear and tear, and sufficient for the operation of such business as currently conducted, except where such instances of noncompliance with the foregoing, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect.

Section 3.22 Certain Business Practices. Each of the Company and its Subsidiaries is in compliance with the legal requirements under the Foreign Corrupt Practices Act, as amended, (15 U.S.C. §§ 78dd-1, et seq) (the "FCPA"), except for failures, whether individually or in the aggregate, to maintain books and records or internal controls as required thereunder that are not material. To the Company's Knowledge, since August 3, 2007, neither the Company, nor any Company Subsidiary, nor any director, officer, employee or agent thereof,

acting on its, his or her own behalf or on behalf of any of the foregoing Persons, has offered, promised, authorized the payment of, or paid, any money, or the transfer of anything of value, directly or indirectly, to or for the benefit of: (x) any employee, official, agent or other representative of any foreign government or department, agency or instrumentality thereof, or of any public international organization; or (y) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any act or decision of such recipient in the recipient's official capacity, or inducing such recipient to use his, her or its influence to affect any act or decision of such foreign government or department, agency or instrumentality thereof or of such public international organization, or securing any improper advantage, in the case of both (x) and (y) above in order to assist the Company or any Company Subsidiary to obtain or retain business for, or to direct business to, either the Company or any Company Subsidiary and under circumstances that would subject the Company or any Company Subsidiary to material liability under any applicable Laws of the United States (including the FCPA) or of any foreign jurisdiction where the Company or any Company Subsidiary does business relating to corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses.

Section 3.23 Brokers and Other Advisors. No broker, investment banker, financial advisor, counsel or other Person, other than those set forth on Section 3.23 of the Company Disclosure Letter, the fees and expenses of which will be paid by the Company is entitled to any broker's, finder's, financial advisor's or legal fee or commission in connection with the Transactions based upon arrangements made by or on behalf of the Company or any Affiliate of the Company.

Section 3.24 No Additional Representations. Except for the representations and warranties contained in this ARTICLE III, none of the Company, its Subsidiaries and any other Person acting on the Company's behalf makes any representation or warranty, express or implied, regarding the Company or any of its Subsidiaries, the Company Business or the Purchased Assets or the Assumed Liabilities.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF FIAT

Except as set forth in the Fiat Disclosure Letter (it being understood that any information set forth in one section or subsection of the Fiat Disclosure Letter relating to representations and warranties shall be deemed to apply to and qualify the Section or subsection of this Agreement to which it corresponds in number and each other subsection of this ARTICLE IV to the extent that it is readily apparent on its face that such information would be applicable to such other Section or subsection), Fiat represents and warrants to the Sellers, as of the date hereof or, if a representation or warranty is made as of a specified date, as of such date, as follows:

Section 4.01 Organization, Standing and Power. Each of Fiat and its Significant Subsidiaries is duly organized and validly existing under the Laws of its jurisdiction of organization and has all requisite corporate, limited liability company or partnership power and authority to own, lease or otherwise hold its properties and assets and to conduct its business as

presently conducted. Each of Fiat and its Significant Subsidiaries is duly qualified or licensed to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction where the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than where the failure to be so qualified, licensed or in good standing, individually or in the aggregate, has not had and would not be reasonably likely to have a Fiat Material Adverse Effect.

Section 4.02 Authority; Execution and Delivery; Enforceability. Each of Fiat and its Significant Subsidiaries has all requisite power and authority to execute, deliver and perform the Transaction Agreements to which it is, or is specified to be, a party and to consummate the Transactions and comply with the provisions of the Transaction Agreements. The execution, delivery and performance by each of Fiat and its Significant Subsidiaries of the Transaction Agreements to which it is, or is specified to be, a party and the consummation by each of Fiat and its Significant Subsidiaries of the Transactions and compliance with the provisions of the Transaction Agreements has been or will be duly authorized by all requisite action on its part and the part of its equity holders. The Transaction Agreements dated as of the date hereof to which Fiat or any of its Significant Subsidiaries is, or is specified to be, a party have been duly executed and delivered by Fiat and each applicable Significant Subsidiary, and each other Transaction Agreement to which Fiat or any of its Significant Subsidiaries is, or is specified to be, a party will have been duly executed and delivered by Fiat and each applicable Significant Subsidiary on or prior to Closing, and, assuming the due authorization, execution and delivery by each of the other parties hereto other than Fiat and its Significant Subsidiaries (or, in the case of any other Transaction Agreement applicable parties thereto other than Fiat and its Subsidiaries), each Transaction Agreement dated as of the date hereof to which Fiat or any of its Significant Subsidiaries is, or is specified to be, a party constitutes, and each other Transaction Agreement to which it is, or is specified to be, a party will after the Closing constitute, the legal, valid and binding obligation of Fiat and its applicable Subsidiaries, enforceable against Fiat and each applicable Significant Subsidiary in accordance with its terms, except as may be limited by the Bankruptcy and Equity Exception.

Section 4.03 Noncontravention; Consents.

(a) Except as set forth in Section 4.03(a) of the Fiat Disclosure Letter, the execution, delivery and performance by Fiat and its Significant Subsidiaries of each Transaction Agreement to which it is, or is specified to be, a party do not, and the consummation of the Transactions and compliance with the provisions of such Transaction Agreements will not conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any Person under any provision of (x) the Constitutive Documents of Fiat and its Significant Subsidiaries or (y) subject to the filings and other matters referred to in the immediately following Section 4.03(b), any Law or any Governmental Order, in each case applicable to Fiat or any of its Subsidiaries or their respective properties or assets, other than, in the case of clause (y) above, any such conflicts, violations, defaults, rights, losses or entitlements, individually or in the aggregate have not had and would not be reasonably likely to have a Fiat Material Adverse Effect.

(b) No material consent, approval, license, permit, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity is required to be obtained or made by or with respect to Fiat or any of its Subsidiaries in connection with the execution, delivery and performance by Fiat or any of its Subsidiaries of any Transaction Agreement to which it is, or is specified to be, a party or the consummation of the Transactions or compliance with the provisions of such Transaction Agreements, except for (w) those consents, approvals, orders, authorizations, registrations, declarations, filings and notices not required if the Sale Order is entered or any other Order is entered by the Bankruptcy Court, (x) compliance with and filings (if required) under (1) the HSR Act, (2) the EC Merger Regulation, (3) the Canadian Investment Regulations, (4) the Mexican Federal Law on Economic Competition, and (5) the filings and receipt, termination or expiration, as applicable, of such other approvals or waiting periods under any other Antitrust Laws as indicated in writing by Fiat, (y) the consents, approvals, orders, authorizations, registrations, declarations, filings and notices set forth in Section 4.03(b) of the Fiat Disclosure Letter and (z) such other consents, approvals, orders, authorizations, registrations, declarations, filings and notices the failure of which to be obtained or made, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect.

Section 4.04 Litigation. Except as set forth in Section 4.04 of the Fiat Disclosure Letter, there is no Action or group of Actions in federal or state courts pending or, to the Knowledge of Fiat, threatened in writing against or affecting Fiat or any of its Subsidiaries that would, individually or in the aggregate, have not had or would not be reasonably likely to have a Fiat Material Adverse Effect, nor is there any Governmental Order outstanding against Fiat or any of its Subsidiaries that would, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect.

Section 4.05 [Reserved].

Section 4.06 Distribution. Except as set forth on Section 4.06 of the Fiat Disclosure Letter, Fiat either directly or through one of its Affiliates holds all rights necessary for the distribution of its products as contemplated by the Final Joint Restructuring Plan, except as have not had or would not be reasonably likely to have a Fiat Material Adverse Effect.

Section 4.07 Suppliers. To Fiat's Knowledge, the benefits of any relationship with any of the suppliers of Fiat and its Subsidiaries contemplated to be provided to the Company under the Final Joint Restructuring Plan will continue following the Closing in substantially the same manner as prior to the date of this Agreement, except as has not had and would not reasonably be expected to have a Fiat Material Adverse Effect.

Section 4.08 Certain Business Practices. Each of Fiat and its Subsidiaries is in compliance with the legal requirements under the FCPA, except for failures, whether individually or in the aggregate, to maintain books and records or internal controls as required thereunder that are not material. To Fiat's Knowledge, since December 31, 2008, neither Fiat nor any of its Subsidiaries, nor any director, officer, employee or agent thereof, acting on its, his or her own behalf or on behalf of any of the foregoing Persons, has offered, promised, authorized the payment of, or paid, any money, or the transfer of anything of value, directly or indirectly, to or for the benefit of: (x) any employee, official, agent or other representative of any foreign

government or department, agency or instrumentality thereof, or of any public international organization; or (y) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any act or decision of such recipient in the recipient's official capacity, or inducing such recipient to use his, her or its influence to affect any act or decision of such foreign government or department, agency or instrumentality thereof or of such public international organization, or securing any improper advantage, in the case of both (x) and (y) above in order to assist Fiat or any of its Subsidiaries to obtain or retain business for, or to direct business to, either Fiat or any of its Subsidiaries and under circumstances that would subject Fiat or any of its Subsidiaries to material liability under any applicable Laws of the United States (including the FCPA) or of any foreign jurisdiction where Fiat or any of its Subsidiaries does business relating to corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses.

Section 4.09 Brokers and Other Advisors. No broker, investment banker, financial advisor, counsel or other Person, other than those set forth on Section 4.09 of the Fiat Disclosure Letter, the fees and expenses of which will be paid by Fiat, is entitled to any broker's, finder's, financial advisor's or legal fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Fiat.

Section 4.10 Fiat Intellectual Property and IT Systems.

(a) To the Knowledge of Fiat, Fiat owns and controls, or otherwise possesses adequate rights to use, all Intellectual Property used in the conduct of its business in substantially the same manner as conducted as of the date hereof, except where the failure to own and control or have the right to use, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect. Except as set forth in Section 4.10(a)(ii) of the Fiat Disclosure Letter, to Fiat's Knowledge, neither Fiat nor its Subsidiaries is now infringing any Intellectual Property rights of others in any respect, except for such infringements that individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect. Except as set forth in Section 4.10(a)(iii) of the Fiat Disclosure Letter, neither Fiat nor any of its Subsidiaries has received any written notice that it is violating or has violated the trademarks, patents, copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or other intellectual property rights of any third party, except for such matters which, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect.

(b) Each Fiat Material License now existing is the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms, except any unenforceability that, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect. To Fiat's Knowledge, no default thereunder by any such party has occurred, nor does any defense, offset, deduction, or counterclaim exist thereunder in favor of any such party which have had or would be reasonably likely to have a Fiat Material Adverse Effect.

(c) Except as, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect, (i) Fiat takes reasonable actions

to maintain, enforce and police its material Intellectual Property; and (ii) Fiat takes reasonable actions to protect its material software, websites and other systems (and the information therein) from unauthorized access or use.

(d) Except as, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect, the Fiat IT Systems constitute all of the IT Systems that are required for the operation of the Fiat's business as currently conducted and as contemplated to be conducted under the Final Joint Restructuring Plan.

(e) Except as set forth in Section 4.10(e) of the Fiat Disclosure Letter, (i) or as individually or in the aggregate have not had or would not have a Company Material Adverse Effect, Fiat has all rights necessary to grant the material Intellectual Property rights to be granted to the Purchaser under the Master Industrial Agreement and the agreements and transactions contemplated thereby and to enable the Purchaser to implement the technology licensed thereunder without any material restrictions or any infringement or violation of any material third-party rights and without the need to obtain any material third party consents; and (ii) the Intellectual Property rights to be granted under the Alliance Agreements, and the agreements and transactions contemplated thereby, together with the Intellectual Property of the Company to be assigned to Purchaser, constitute all Intellectual Property rights necessary to implement the Business Plan in all material respects.

Section 4.11 Wherewithal to Perform Obligations. Fiat has sufficient funds, personnel, property (including intellectual property), assets and other resources to undertake and perform its obligations under the Business Plan and the Transaction Agreements.

Section 4.12 No Additional Representations. Except for the representations and warranties contained in this Article IV, none of Fiat, its Affiliates and any other Person acting on Fiat's behalf makes any representation or warranty, express or implied, regarding Fiat or any of its Affiliates.

ARTICLE IV-A

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in the Purchaser Disclosure Letter (it being understood that any information set forth in one section or subsection of the Purchaser Disclosure Letter relating to representations and warranties shall be deemed to apply to and qualify the Section or subsection of this Agreement to which it corresponds in number and each other subsection of this Article IV-A to the extent that it is readily apparent on its face that such information would be applicable to such other Section or subsection), Purchaser represents and warrants to the Company, as of the date hereof or, if a representation or warranty is made as of a specified date, as of such date, as follows:

Section 4A.01 Organization, Standing and Power. Purchaser is limited liability company duly organized and validly existing under the Laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease or otherwise hold its properties and assets and to conduct its business as presently conducted. Purchaser is duly

qualified or licensed to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction where the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than where the failure to be so qualified, licensed or in good standing, individually or in the aggregate, has not had and would not be reasonably likely to have a Purchaser Material Adverse Effect. The Purchaser has made available prior to the execution of this Agreement true and complete copies of its Constitutive Documents as in effect on the date of this Agreement.

Section 4A.02 Authority; Execution and Delivery; Enforceability. Purchaser has all requisite power and authority to execute, deliver and perform the Transaction Agreements and the Alliance Agreements to which it is, or is specified to be, a party and to consummate the Transactions and comply with the provisions of the Transaction Agreements and the Alliance Agreements. The execution, delivery and performance by Purchaser of the Transaction Agreements and the Alliance Agreements to which it is, or is specified to be, a party and the consummation by Purchaser of the Transactions and compliance with the provisions of the Transaction Agreements and the Alliance Agreements has been or will be duly authorized by all requisite action on its part and the part of its equity holders. The Transaction Agreements dated as of the date hereof to which Purchaser is, or is specified to be, a party have been duly executed and delivered by Purchaser, and the Master Industrial Agreement and each other Transaction Agreement to which Purchaser is, or is specified to be, a party will have been duly executed and delivered by Purchaser on or prior to Closing, and, assuming the due authorization, execution and delivery by each of the other parties hereto other than Purchaser (or, in the case of any other Transaction Agreement or the Master Industrial Agreement, applicable parties thereto other than Purchaser), each Transaction Agreement dated as of the date hereof to which Purchaser is, or is specified to be, a party constitutes, and each other Transaction Agreement and Alliance Agreement to which it is, or is specified to be, a party will after the Closing constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as may be limited by the Bankruptcy and Equity Exception.

Section 4A.03 Noncontravention; Consents.

(a) Except as set forth in Section 4A.03(a) of the Purchaser Disclosure Letter, the execution, delivery and performance by Purchaser of each Transaction Agreement to which it is, or is specified to be, a party do not, and the consummation of the Transactions and compliance with the provisions of such Transaction Agreements will not (A) conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any Person under any provision of (x) the Constitutive Documents of Purchaser or (y) subject to the filings and other matters referred to in the immediately following Section 4A.03(b), (1) any Contract to which Purchaser is a party or by which any of its properties or assets is bound or (2) any Law or any Governmental Order, in each case applicable to Purchaser or its properties or assets, other than, in the case of clause (y) above, any such conflicts, violations, defaults, rights, losses, or entitlements, as individually or in the aggregate, have not had and would not be reasonably likely to have a Purchaser Material Adverse Effect or (B) result in the creation of any Lien upon any of the properties or assets of Purchaser except for any Liens that individually or in the aggregate, have not had and would not be reasonably likely to have a Purchaser Material Adverse Effect.

(b) No material consent, approval, license, permit, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity is required to be obtained or made by or with respect to Purchaser in connection with the execution, delivery and performance by Purchaser of any Transaction Agreement to which it is, or is specified to be, a party or the consummation by Purchaser of the issuance of the Transactions or compliance with the provisions of such Transaction Agreements, except for (w) those consents, approvals, orders, authorizations, registrations, declarations, filings and notices not required if the Sale Order is entered or any other Order is entered by the Bankruptcy Court, (x) compliance with and filings (if required) under (1) the HSR Act, (2) the EC Merger Regulation (or any relevant member states of the European Union), (3) the Canadian Investment Regulations, (4) the Mexican Federal Law on Economic Competition, and (5) the filings and receipt, termination or expiration, as applicable, of such other approvals or waiting periods under any other Antitrust Laws as indicated in writing by Fiat, (y) the consents, approvals, orders, authorizations, registrations, declarations, filings and notices set forth in Section 4A.03(b) of the Purchaser Disclosure Letter and (z) such other consents, approvals, orders, authorizations, registrations, declarations, filings and notices the failure of which to be obtained or made, individually or in the aggregate, have not had and would not be reasonably likely to have a Purchaser Material Adverse Effect.

Section 4A.04 Litigation. There is no Action or group of Actions pending or, to the Knowledge of Purchaser, threatened in writing against or affecting Purchaser, nor is there any Governmental Order outstanding against Purchaser.

Section 4A.05 Non-Operation of Purchaser. Purchaser is a newly formed limited liability company with (i) no operations or activities prior to the Closing Date other than those related to its formation and the execution of and performance under the Master Industrial Agreement and the Transaction Agreements to which it is a party and (ii) no assets or Liabilities other than its rights and obligations under the Master Industrial Agreement and the Transaction Agreements to which it is a party. Purchaser has no Subsidiaries.

Section 4A.06 Capitalization; Issuance of Equity Interests. As of the date of this Agreement, Fiat Group Automobiles S.p.A., a wholly-owned Subsidiary of Fiat ("Fiat Sub"), is the sole member of the Purchaser. Immediately following the Closing, (i) the only members of Purchaser shall be Purchaser, the VEBA Trust, the U.S. Treasury, Canada and Fiat Sub or their respective designees, and (ii) (A) the VEBA Trust (or its designee) will be the record and beneficial owner of the VEBA LLC Interest, (B) the U.S. Treasury (or its designee) will be the record and beneficial owner of the UST LLC Interest, (C) Canada (or its designee) will be the record and beneficial owner of the Canada LLC Interests, (D) Fiat Sub will be the record and beneficial owner of 100% of the total Class B Membership Interests of Purchaser (20.0000% of the total Membership Interests in Purchaser), and (E) there will be no other issued or outstanding Equity Interests of Purchaser.

Section 4A.07 Brokers and Other Advisors. No broker, investment banker, financial advisor, counsel or other Person, other than those set forth on Section 4A.07 of the Purchaser Disclosure Letter, the fees and expenses of which will be paid by Purchaser, is entitled to any broker's, finder's, financial advisor's or legal fee or commission in connection with the issuance of the Equity Interests of Purchaser or any of the other Transactions based upon arrangements made by or on behalf of Purchaser.

Section 4A.08 No Additional Representations. Except for the representations and warranties contained in this Article IV-A, neither Purchaser nor any other Person acting on Purchaser's behalf makes any representation or warranty, express or implied, regarding Purchaser.

ARTICLE V

ADDITIONAL AGREEMENTS

Section 5.01 Conduct of Business of the Company Prior to the Closing.

(a) The Company covenants and agrees that, except as (x) described in Section 5.01(a) of the Company Disclosure Letter, (y) otherwise expressly contemplated by the Transaction Agreements or (z) to the extent solely related to the Excluded Assets or the Excluded Liabilities, between the date hereof and the Closing, the Company shall and shall cause each Company Subsidiary to (i) conduct the Company Business in the ordinary course of business, recognizing and taking account the distressed state of global credit markets and of the auto industry and the auto finance industry and the liquidity position and other financial circumstances of the Company, (ii) use their commercially reasonable efforts to preserve in all material respects the present relationships of the Company and its Subsidiaries with their respective customers, suppliers and others having significant business dealings with them and (iii) not take any action that would reasonably be likely to materially prevent or delay the Transactions, and (iv) not take any action to cause any of the Company representations and warranties set forth in Article III to be untrue in any material respect as of any such date when such representation or warranty is made or deemed to be made.

(b) Without limiting the generality of the provisions of Section 5.01(a), except (x) as described in Section 5.01(b) of the Company Disclosure Letter, (y) as otherwise expressly contemplated by this Agreement or (z) to the extent solely related to the Excluded Assets or the Excluded Liabilities, without the consent of Fiat (which shall not unreasonably be withheld, delayed or conditioned), between the date hereof and the Closing, the Company shall not and the Company shall cause its Subsidiaries not to:

(i) declare, make, set aside or pay any dividends or distributions (whether in cash, securities or other property or by allocation of additional Indebtedness to the Company or any Company Subsidiary without receipt of fair value), other than dividends and distributions made or paid by any Company Subsidiary solely to either the Company or a wholly-owned Company Subsidiary that is its direct parent (but not to the Company) and dividends and distributions of Excluded Assets;

(ii) amend the Constitutive Documents of any Purchased Company, except as otherwise required by Law, or effect a split or reclassification or other adjustment of Equity Interests of any Purchased Company or a recapitalization thereof (in each case other than pursuant to Section 5.06);

(iii) [Reserved];

(iv) make any material election with respect to Taxes of any Purchased Company or settle or compromise any material Tax liability of any Purchased Company;

(v) take any action over which the Company has granted approval rights to the U.S. Treasury under any agreements or through any understandings, in each case, whether written or oral, including Sections 7 and 8 of the Loan and Security Agreement, without obtaining the prior approval of such action from the U.S. Treasury;

(vi) acquire (including by merger, consolidation, combination or acquisition of Equity Interests or assets) any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the ordinary course of business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeds \$50 million, other than transactions solely among the Company and the Company Subsidiaries;

(vii) issue, sell, pledge, dispose of or encumber (except for Permitted Liens described in clauses (a) and (b) of the definition thereof), or authorize the issuance, sale, pledge, disposition or encumbrance of, except to the Company or any of the Company Subsidiaries, any Equity Interest of any Purchased Company, or any Equity Interest of, or similar interest in, a joint venture or similar arrangement to which the Company or any Company Subsidiary is a party which is a Purchased Asset hereunder, in each case (other than with respect to any Equity Interests of the Company), with a sale price in excess of \$25 million;

(viii) sell, pledge, dispose of or encumber any assets of the Company and the Company Subsidiaries not in the Ordinary Course of Business and with a sale price in excess of \$25 million;

(ix) discharge or satisfy any Indebtedness in excess of \$25 million, other than the discharge or satisfaction of any Indebtedness when due in accordance with its originally scheduled terms;

(x) other than as is required by the terms of a Benefit Plan (in effect on the date hereof, made available to Fiat and set forth on Section 3.15(a) of the Company Disclosure Letter), Collective Bargaining Agreement or as may be required by Applicable Law or pursuant to the Restructuring Transactions contemplated by Section 5.06 or the TARP or under any enhanced restrictions on executive compensation agreed to by the Company and the U.S. Treasury, (A) increase the compensation or benefits of any Company Employee (except for increases in salary or wages in the Ordinary Course of Business with respect to employees who are not directors or officers), (B) grant any severance or termination pay to any Company Employee not provided under any Benefit Plan, (C) establish, adopt, enter into, amend or terminate any Benefit Plan (including any change to any actuarial or other assumption used to calculate funding obligations with respect to any Benefit Plan or change to the manner in which contributions to any Benefit

Plan are made or the basis on which such contributions are determined), (D) grant any awards under any Benefit Plan (including any equity or equity-based awards), (E) increase or promise to increase or provide for the funding under any Benefit Plan, (F) forgive any loans to Company Employees or (G) exercise any discretion to accelerate the time of payment or vesting of any compensation or benefits under any Benefit Plan;

(xi) alter, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of the any Purchased Company or any material joint venture to which any Significant Subsidiary of the Company is a party which is a Purchased Asset hereunder, or adopt or approve a plan with respect to any of the foregoing;

(xii) amend or otherwise modify materially adversely to the Company or any of the Company Subsidiaries to any material Affiliate Contract or Company Contract, or terminate any Affiliate Contract or Company Contract to the material adverse detriment of the Company or any of the Company Subsidiaries;

(xiii) enter into any agreement or arrangement that limits or otherwise restricts or that would reasonably be expected to, after the Closing, restrict or limit in any material respects (A) Purchaser, Fiat or any of their respective Subsidiaries or any successor thereto or (B) any Affiliates of the Purchaser or Fiat or any successor thereto, in the case of each of clause (A) or (B), from engaging or competing in any line of business or in any geographic area;

(xiv) enter into any purchase orders, commitments or agreements, in each case for capital expenditures, exceeding \$100 million in the aggregate in connection with any single project or group of related projects;

(xv) enter into any Affiliate Contract, other than (A) as set forth in Section 5.01(b)(xv) of the Company Disclosure Letter or (B) in the Ordinary Course of Business;

(xvi) open or reopen any major production facility other than as currently proposed in the Final Joint Restructuring Plan; or

(xvii) agree to take any of the actions referred to in any of clauses (i) through (xvi) above.

(c) Notwithstanding anything to the contrary in Section 5.01, the Company (and the Company Subsidiaries) shall not be restricted from entering into agreements contemplated to be entered into as part of the Daimler Transactions.

Section 5.02 Access to Company Information.

(a) From the date hereof until the Closing or until the date this Agreement is terminated pursuant to ARTICLE X before the Closing, upon reasonable notice, the Company and each Company Subsidiary and each of their respective officers, directors,

employees, agents, representatives, accountants and counsel shall (i) afford Fiat and its authorized representatives reasonable access to the Company Key Personnel (and employees of the Company and such Company Subsidiary identified by such Company Key Personnel), offices, properties and other facilities, and books, Contracts and records (including any document retention policies of the Company), and use its reasonable efforts to afford access to accountants of the Company and each Company Subsidiary and (ii) prepare and furnish to the officers, employees, and authorized agents and representatives of Fiat such additional financial and operating data and other information regarding the Company Business (and regular reports thereon) as Fiat may from time to time reasonably request; *provided, however*, that any such access or furnishing of information shall be conducted during normal business hours and in such a manner as not to materially interfere with the normal operations of the Company Business. In furtherance of the foregoing, following the expiration or termination of any applicable mandatory waiting periods (and any extension thereof) or (as the case may be) following the communication to the notifying parties of a decision approving the transaction pursuant to the applicable Antitrust Laws of the United States, Canada, the European Union (or any relevant states of the European Union), and Mexico, the Company shall provide office space at the Company's headquarters in Auburn Hills, Michigan for a reasonable number of representatives of Fiat, together with customary administrative support, so as to enable such representatives to facilitate the development of the Transaction Agreements and to plan for an efficient execution of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary in this Agreement, neither the Company nor any Company Subsidiary shall be required to disclose any information to Fiat if such disclosure would, in the Company's reasonable determination, contravene any applicable Law, fiduciary duty or binding agreements of the Company or any Company Subsidiary thereof entered into prior to the date hereof, including (i) any document or information that is subject to the terms of a confidentiality agreement with a third party (in which case, to the extent requested by Fiat, the Company will use its commercially reasonable efforts to seek such amendment or an appropriate waiver as may be required to avoid such contravention) or (ii) such portions of documents or information which are covered by attorney-client privilege. If any material is withheld pursuant to the preceding sentence, such party shall inform the other party as to the general nature of what is being withheld. The Company shall provide to Fiat, at the same time and in the same format, complete copies of all information or documents provided by the Company to any Person pursuant to, or in connection with, the discussions and/or negotiations with the U.S. Treasury, any unions or third-party lenders of the Company. All information disclosed pursuant to this Section 5.02 shall be subject to Section 5.04.

(b) Until the Closing, as soon as available and in any event within 20 Business Days after the end of each fiscal month of the Company, the Company shall deliver to Fiat financial reports that include the categories of accounts and adjustments detailed in the forms of monthly reports set forth in Section 5.02(b)(i) of the Company Disclosure Letter. Until the Closing and within 30 Business Days after the end of each fiscal quarter of the Company, the Company shall deliver to Fiat unaudited financial reports for such fiscal quarter that include the categories of accounts and adjustments detailed in the forms of quarterly reports set forth in Section 5.02(b)(ii) of the Company Disclosure Letter. Each of the foregoing quarterly reports shall be prepared in accordance with GAAP (and with the Accounting Principles) and shall in all material respects fairly present the financial information reported therein, the combined financial condition as of the dates thereof and the combined statements of operations and comprehensive

income cash flows of the Company for the periods covered thereby (subject to absence of notes and year-end adjustments).

(c) As promptly as practicable, the Company will use its commercially reasonable efforts to deliver to Fiat the unaudited combined balance sheet of the Company as of March 31, 2009 and the related unaudited combined statements of operations and comprehensive income and cash flows of the Company for the fiscal quarter ended March 31, 2009, with comparative statements of the Company as of December 31, 2008.

Section 5.03 Access to Fiat Information. From the date hereof until the Closing or until the date this Agreement is terminated pursuant to ARTICLE X before the Closing, upon reasonable notice, Fiat, Purchaser and any of their respective Affiliates, and each of their respective officers, directors, employees, agents, representatives, accountants and counsel shall afford the Company and its authorized representatives reasonable access to the Fiat Key Personnel (and employees of Fiat, Purchaser or such Affiliate of Fiat or Purchaser identified by such Fiat Key Personnel), technical, engineering, and testing data, and such other information to the extent necessary to implement the Business Plan or any Alliance Agreement in each case in connection with matters concerning the Transactions. Notwithstanding anything to the contrary in this Agreement, none of Fiat, Purchaser nor any Affiliate of Fiat or Purchaser shall be required to disclose any information to the Company if such disclosure would, in Fiat's reasonable determination, contravene any applicable Law, fiduciary duty or binding agreements of Fiat, Purchaser or any of their respective Affiliates entered into prior to the date hereof, including (i) any information that is subject to the terms of a confidentiality agreement with a third party (in which case, to the extent reasonably requested by the Company, Fiat or Purchaser will or will cause such Affiliate to use its commercially reasonable efforts to seek such amendment or an appropriate waiver as may be required to avoid such contravention) or (ii) such portions of documents or information (A) which are covered by attorney-client privilege, or (B) relating to pricing or other matters that are highly sensitive if the exchange of such documents (or portions thereof) or information, as determined by counsel for the party being asked to disclose such document or information, might reasonably result in antitrust difficulties for such party (or any of its Affiliates). If any material is withheld pursuant to the preceding sentence, such party shall inform the other party as to the general nature of what is being withheld. All information disclosed pursuant to this Section 5.03 shall be subject to Section 5.04.

Section 5.04 Confidentiality. (a) The terms of the letter agreement between Fiat and the Company dated as of January 18, 2009 (the "Confidentiality Agreement") are hereby incorporated herein by reference and shall continue in full force and effect until the Closing, at which time the Confidentiality Agreement and the obligations of any party under this Section 5.04 shall terminate, and Purchaser hereby agrees to be bound by the terms of the Confidentiality Agreement as if it were an original party thereto; provided, however, that the Confidentiality Agreement shall terminate only in respect of that portion of the Confidential Information (as defined in the Confidentiality Agreement) exclusively relating to the transactions contemplated by the Transaction Agreements. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall nonetheless continue in full force and effect, and Purchaser shall continue to be bound by the terms of the Confidentiality Agreement as if it were an original party thereto. Nothing provided pursuant to this Section 5.04 shall in any way amend or diminish any party's obligations under the Confidentiality Agreement.

(b) Notwithstanding the foregoing or any other provision of this Agreement, either Fiat or the Company may provide to representatives of labor organizations representing Company Employees notice of the transactions contemplated by this Agreement, a copy of this Agreement, and such additional information, documents and materials (the “Information”) as it determines is reasonably necessary to satisfy any legal or contractual obligations related to collective bargaining or its relationship with any labor organization but only in the event that either of the following occurs: (x) the other party gives its prior written consent to such disclosure (which consent shall not be unreasonably withheld, conditioned or delayed after the notifying party’s request); or (y) to comply with a determination by the U.S. Treasury, court or agency of competent jurisdiction. In either case, the notifying party shall, to the extent reasonably practicable and permitted by Law, use commercially reasonable efforts to procure a confidentiality agreement with respect to the Information in form and substance reasonably satisfactory to the other party.

(c) No investigation or notice provided to any party pursuant to this Section 5.04 or the Confidentiality Agreement shall affect any representation or warranty in this Agreement of any party hereto or any condition to the obligations of the parties hereto.

Section 5.05 Regulatory and Other Authorizations; Notices and Consents.

(a) Each of Fiat, Purchaser and the Company shall, and shall cause each of their respective Affiliates to, use its best efforts to promptly obtain all waivers, authorizations, consents, orders and approvals of all Governmental Entities and officials which may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, the Alliance Agreements and the Transaction Agreements as promptly as reasonably practicable and will cooperate fully with each other in promptly seeking to obtain all such waivers, authorizations, consents, orders and approvals (such that the Closing will occur no later than the 35th day following the date hereof (the “Target Closing Date”)).

(b) Fiat, Purchaser and the Company agree to make, as promptly as practicable, their respective filings (if required) pursuant to the applicable Antitrust Laws of the United States, Canada, the European Union (or any relevant member states of the European Union), and Mexico with respect to the Transactions, and to supply as promptly as practicable to the appropriate Governmental Entities any additional information and documentary material that may be required pursuant to the Antitrust Laws of the United States, Canada, the European Union (or any relevant member states of the European Union), and Mexico (such that the Closing will occur no later than the Target Closing Date):

(i) File notification pursuant to the HSR Act as promptly as practicable, and in any event within five Business Days of the date hereof.

(ii) If the European Commission confirms that it considers the transaction contemplated under this Agreement to be a concentration within the terms of Article 3 of the EC Merger Regulation, submit to the European Commission a draft request pursuant to Article 7(3) of the EC Merger Regulation within seven days of the date hereof; submit to the European Commission the formal request pursuant to Article 7(3) of the EC Merger Regulation as promptly as practicable thereafter; and submit the

Form CO to the European Commission pursuant to the EC Merger Regulation as promptly as practicable thereafter.

(iii) If the European Commission confirms that it considers the transaction contemplated under this Agreement not to be a concentration within the terms of Article 3 of the EC Merger Regulation, file a notification pursuant to the applicable Antitrust Laws in Germany and (if applicable) Austria as soon as practicable after the European Commission has so confirmed.

(iv) File an application for an Advance Ruling Certificate pursuant to the Competition Act (Canada) as promptly as practicable, and in any event within five days of the date hereof. Furthermore, file an Application for Review pursuant to the Investment Canada Act as promptly as practicable, and in any event within 10 days of the date hereof, and, if deemed advisable by Fiat, the Purchaser, and the Company, prepare and file a notification pursuant to Part IX of the Competition Act (Canada) and file a request for a notice from the Canadian Minister of Industry pursuant to Paragraph 16(2)(a) of the Investment Canada Act as promptly as practicable.

(v) File notification pursuant to the Mexican Federal Law on Economic Competition as promptly as practicable, and in any event within six days following the date hereof, and interface with the Federal Competition Commission within two days of the date of filing notification to advocate that they do not issue a stop order and resolve the matter as soon as practicable and within such time that, under the applicable laws of Mexico, Closing can occur by the Target Closing Date.

(c) Fiat will provide to the Company within one day of the date hereof a list of the jurisdictions where it will submit filings and notifications pursuant to applicable Antitrust Laws. Fiat, Purchaser and the Company agree to make as promptly as practicable, and in any event within five Business Days of the date hereof their respective filings and notifications as may be required under any other applicable Antitrust Laws of any jurisdictions in which Fiat intends to file notification (with the exception of China, Japan, Macedonia, Russia, Serbia, Turkey and Ukraine), and to supply as promptly as practicable to the appropriate Governmental Entities any additional information and documentary material that may be required pursuant to the Antitrust Laws of such jurisdictions (such that the Closing will occur no later than the Target Closing Date).

(d) Fiat, Purchaser and the Company shall each furnish to the other such necessary information and reasonable assistance as such other parties may request in connection with its preparation of any filing or submission that is necessary under the requirements of any Antitrust Law.

(e) Fiat, Purchaser and the Company each agree, to the extent permitted by Law, promptly to notify the other of any communication it or any of its Affiliates receives from any Governmental Entity relating to the Transactions and permit the other party to review in advance any proposed substantive communication by such party to any Governmental Entity. None of Fiat, Purchaser, nor the Company shall agree to participate in any meeting with any Governmental Entity in respect of any filings, investigation (including any settlement of the

investigation), litigation or other inquiry unless it consults with the other parties in advance and, to the extent permitted by such Governmental Entity, gives the other parties the opportunity to attend and participate at such meeting; provided, however, in the event one or more of the parties is prohibited by applicable Law or such Governmental Entity from participating in or attending any such meeting, then the party who participates in such meeting shall keep the other parties apprised with respect thereto to the extent permitted by Law. To the extent permitted by Law, Fiat, Purchaser and the Company will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods, including under the HSR Act, including, to the extent reasonably practicable, providing to the other parties in advance of submission drafts of all filings, submissions, correspondence or other written communications, providing the other parties with an opportunity to comment on the drafts, and, where practicable, incorporating such comments, if any, into the final documents. To the extent permitted by applicable Law, Fiat, Purchaser and the Company will provide each other with copies of all correspondence, filings or written communications between them or any of their representatives, on the one hand, and any Governmental Entity or members of its staff, on the other hand, with respect to the Transaction Agreements and the Transactions.

(f) None of Fiat, Purchaser, the Company or their respective Affiliates shall be required to pay any fees or other payments to any Governmental Entities in order to obtain any such authorization, consent, order or approval (other than normal filing fees and administrative fees that are imposed by Law on Fiat or Purchaser), and in the event that any fees in addition to normal filing fees imposed by Law may be required to obtain any such authorization, consent, order or approval, such fees shall be for the account of Purchaser. Notwithstanding anything to the contrary herein, none of Fiat, the Company or Purchaser shall be required to agree to any divestiture, sale or license (including any License) of or Lien on any properties, assets or businesses by Fiat, Purchaser, the Company or any of their respective Affiliates of any business, assets or property of Fiat, Purchaser, the Company or any of their respective Affiliates, or the imposition of any limitation on the ability of any of the foregoing to conduct their respective businesses or to own or exercise control of their respective assets and properties.

(g) In the event that the Antitrust Laws of a particular jurisdiction (a “Delayed Jurisdiction”) would prevent a closing from occurring with respect to such Delayed Jurisdiction by the Target Closing Date, Fiat and the Company shall cooperate fully and use their reasonable best efforts to develop a suitable plan which will (i) permit the Closing to occur on or as promptly as practicable following the Target Closing Date with respect to all jurisdictions other than the Delayed Jurisdictions and (ii) construct an appropriate mechanic to effect a closing in the Delayed Jurisdiction as soon as practicable following the date on which a closing in any such Delayed Jurisdiction is permitted under the applicable Antitrust Law. Fiat and the Company shall cooperate fully and use their best efforts to amend this Agreement and execute and deliver such other documents as appropriate to give effect to such subsequent closing with respect to the Delayed Jurisdictions (and, if necessary, provide appropriate support and transition arrangements with respect to such Delayed Jurisdictions as may be appropriate or required by the applicable Governmental Entity). With respect to the business and assets being purchased by the Company pursuant to the Deferred Closing Agreement, Fiat and the Company agree to cooperate

fully and use their reasonable best efforts to provide appropriate support and transition arrangements with respect to such business and assets as may be appropriate or required by the applicable Governmental Entity. Nothing in this Section 5.05(g) shall require Fiat or the Company to take any action which would materially and adversely affect Fiat or the Company, as the case may be.

(h) Should the VEBA Trust be required to complete any filing or notification under any Antitrust Law, the VEBA Trust shall have the same rights as afforded Fiat, Purchaser, and the Company under this Section 5.05 provided that the VEBA Trust undertake the same obligations required of Fiat, Purchaser, and the Company in this Section 5.05. In any jurisdiction in which Fiat has or will complete any filing or notification under any Antitrust Law Fiat shall cause the VEBA Trust to be included as a filing party in its filing (without cost or expense to the VEBA Trust).

Section 5.06 Restructuring Transactions. Notwithstanding Section 5.01, the Company shall, and shall cause the Company Subsidiaries, to use reasonable efforts to (i) transfer the Purchased Assets or Assumed Liabilities to one or more Subsidiaries of the Purchaser at the Closing as the Purchaser may, at least 10 days before the Closing, designate in writing to the Company (provided, for the avoidance doubt, that the Purchased Assets shall be transferred to the Purchaser, in the absence of such designation, as provided under the other provisions of this Agreement); (ii) facilitate the transfer of the property subject to the Auburn Hills Agreement or the entity in which such property is held, including causing such property or entity to be transferred to the Company or a Company Subsidiary (in each case as designated in writing by the Purchaser at least 10 days before the Closing and in accordance with the terms of the Auburn Hills Agreement) in advance of the transfer of such property or such entity to the Purchaser (or one or more Subsidiaries of the Purchaser as the Purchaser may, at least 10 days before the Closing, designate in writing to the Company); (iii) set off intercompany receivables and intercompany payables owed by one Purchased Company to another Purchased Company in advance of the Closing (each such transaction described in clauses (i), (ii) and (iii), a “Restructuring Transaction”). Each Restructuring Transaction shall be implemented in a manner reasonably satisfactory to Fiat, and the Company shall regularly consult with Fiat regarding the manner and the status of the implementation of Restructuring Transactions (including providing Fiat with copies of all material agreements or documents executed in connection with such transactions). The Company and Fiat agree to cooperate to arrange each Restructuring Transaction in a tax efficient manner, provided that neither Fiat nor the holders of the equity interest in the Company are required by this Section 5.06 to bear material adverse tax consequences not adequately compensated by the other party (taking into account compensation already provided under other provisions of this Agreement, including Section 7.05) as a result of being a party to any Restructuring Transaction, unless written consent, by Fiat in the case of Fiat or by CGI in the case of the holders of equity interests in the Company, is given.

Section 5.07 Daimler Transactions. Notwithstanding Section 5.01, the Company shall, and shall cause the Company Subsidiaries to, use reasonable best efforts to cause the proposed parties thereto to enter into the CGI Indemnity Assignment Agreement and the Daimler Agreement (the “Daimler Transactions”).

Section 5.08 GMAC Master AutoFinance Agreement. Fiat and Purchaser will use their reasonable best efforts to cause the proposed parties to the GMAC Master AutoFinance Agreement to enter into the GMAC Master AutoFinance Agreement with the terms and conditions set forth on Exhibit A hereto as promptly as possible after the date hereof, but in any event prior to the Closing Date.

Section 5.09 Notifications. Until the Closing or until the date this Agreement is terminated pursuant to ARTICLE X, the Company, Purchaser and Fiat shall promptly give the other parties reasonably detailed written notice of any fact, change, condition, circumstance or occurrence or non-occurrence of any event of which it obtains Company Knowledge, Purchaser Knowledge or Fiat Knowledge, as applicable, that will or is reasonably likely to result in any of the conditions set forth in ARTICLE VIII of this Agreement relating to a representation or covenant of such notifying party or a condition to the Closing under this Agreement of the other parties relating to the notifying party becoming incapable of being satisfied.

Section 5.10 Further Action. (a) Subject to Section 5.05, the Company, Purchaser and Fiat shall use all reasonable best efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable under applicable Law, and to execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the "reasonable best efforts" of the parties shall include such parties' agreement to reasonably cooperate in good faith with the other parties in obtaining, and taking such action as may be reasonably necessary to obtain, the agreement of any Governmental Entity to approve, or not to seek an injunction against or otherwise oppose, the transactions contemplated by the Transaction Agreements; *provided, however*, that none of Fiat, Purchaser, the Company nor their respective Affiliates shall be required to agree to any divestiture, sale or license (including any License) of or Lien on any properties, assets or businesses by Fiat, Purchaser, the Company or any of their respective Affiliates of any business, assets or property of Fiat, Purchaser, the Company or any of their respective Affiliates, or the imposition of any limitation on the ability of any of the foregoing to conduct their respective businesses or to own or exercise control of their respective assets and properties.

(b) The parties shall negotiate the forms, terms and conditions of the Transaction Agreements, to the extent the forms thereof are not attached to this Agreement, on the basis of the respective term sheets attached to this Agreement, in good faith, with such Transaction Agreements to set forth terms on an Arm's Length Basis and incorporate usual and customary provisions for similar agreements.

(c) If the parties have not executed any Transaction Agreement by the Closing Date, the parties shall use their best efforts to negotiate and execute such Transaction Agreement by September 30, 2009. If the parties do not execute any Transaction Agreement or the Alliance Agreements on or before September 30, 2009, the parties shall submit the items remaining in dispute for resolution to the chief executive officer of Fiat and a natural person with sufficient technical expertise to resolve the disputed items and who is appointed by the Company's non-Fiat Independent Directors (as such term is used in the Operating LLC Agreement) for such purpose (the "Resolution Committee"); *provided, however*, to the extent

any item is set forth in a term sheet attached to this Agreement, then such term sheet shall be deemed to be agreed to by the parties and shall not be the subject of review by the Resolution Committee. The parties shall instruct the Resolution Committee to resolve any such dispute within 30 days after such submission. If the Resolution Committee is unable to resolve the dispute, the Resolution Committee shall designate a third person to make the final determination with respect to the disputed matter. The determination of the Resolution Committee shall be binding upon the parties, and the parties shall promptly execute such Transaction Agreement or Alliance Agreement following such determination. During the period following the Closing Date until any such Transaction Agreement is executed, the parties shall, and shall cause their Affiliates to, provide the products or services that are the subject matter of such Transaction Agreement. Pricing for services, to the extent not covered by a provision of a term sheet or Transaction Agreement, shall be variable cost plus 5%. The respective term sheet for the subject matter to be covered by such Transaction Agreement shall govern the parties' rights and obligations with respect to such subject matter until the respective Transaction Agreement has been executed.

(d) Prior to the Closing, Fiat shall cause Purchaser to comply with the terms of this Agreement and to fulfill all of its obligations hereunder.

(e) At the Closing, Purchaser shall assume the Collective Bargaining Agreement and shall enter into the UAW Retiree Settlement Agreement and Purchaser shall not be entitled to assert the condition in Sections 8.02(d) by refusing to take such actions.

Section 5.11 Tax Settlement Agreement. Notwithstanding Section 5.01, the Company shall, and shall cause any relevant Company Subsidiary to, use reasonable best efforts to enter into a tax settlement agreement prior to the Closing in respect of the subject matter of the term sheet entered into by the Company and certain of its Affiliates and Daimler AG and certain of its Affiliates, dated April 17, 2009 (the "Tax Settlement Agreement"). The Tax Settlement Agreement shall be in a form and shall contain terms satisfactory to Fiat and shall not be entered into without the prior written consent of Fiat. The Company shall regularly consult with Fiat regarding the nature and status of the negotiations of the Tax Settlement Agreement, shall promptly provide Fiat with copies of all drafts thereof and shall permit Fiat to comment on all such draft agreements.

Section 5.12 [Reserved].

Section 5.13 [Reserved.].

Section 5.14 [Reserved].

Section 5.15 Actions by Affiliates of Fiat, Purchaser and the Company. Each of the Company, Purchaser and Fiat shall ensure that each of their respective Affiliates takes all actions reasonably necessary to be taken by such Affiliate in order to fulfill the obligations of the Company, Purchaser or Fiat, as the case may be, under this Agreement.

Section 5.16 Compliance Remediation. Except with respect to the Excluded Assets, prior to the Closing, the Company shall use commercially reasonable efforts to, and shall use commercially reasonable best efforts to cause the Company Subsidiaries to use their

commercially reasonable efforts to cure in all material respects any one or more instances of non-compliance with Laws or Governmental Orders, failures to possess or maintain Permits, or defaults under Permits, referred to in Section 3.12 of the Company Disclosure Letter, such that the representations and warranties set forth in Section 3.12 of this Agreement, after giving effect to such cures, would be true and correct in all material respects on a prospective basis without regard to the exceptions to such representations and warranties set forth in Section 3.12 of the Company Disclosure Letter.

Section 5.17 No Other Representations or Warranties.

(a) Investigation by Fiat and Purchaser, No Other Representations or Warranties. Each of Fiat and Purchaser acknowledges and agrees that it has made its own inquiry and investigation into, and, based thereon, has formed an independent judgment concerning the Company and its Subsidiaries and their respective businesses and operations, and each of Fiat and Purchaser has requested such documents and information from the Company as it considers material in determining whether to enter into this Agreement and to consummate the Transactions. Each of Fiat and Purchaser acknowledges and agrees that it has had a full and fair opportunity to ask questions of and receive answers from the Company in determining whether to enter into this Agreement and to consummate the Transactions.

(b) Investigation by the Company, No Other Representations or Warranties. The Company acknowledges and agrees that it has made its own inquiry and investigation into, and, based thereon, has formed an independent judgment concerning Fiat and its Subsidiaries and their respective businesses and operations, and the Company has requested such documents and information from Fiat as it considers material in determining whether to enter into this Agreement and to consummate the Transactions. The Company acknowledges and agrees that it has had a full and fair opportunity to ask questions of and receive answers from Fiat in determining whether to enter into this Agreement and to consummate the Transactions.

Section 5.18 Bankruptcy Court Matters.

(a) Bankruptcy Court Filings. On or before the first Business Day after the date hereof, Sellers shall file with the Bankruptcy Court the Petitions. On or before the third Business Day after the date hereof, Sellers shall file with the Bankruptcy Court a motion seeking entry of the Sale Order and the Bidding Procedures Order (the "Sale Motion"), and Sellers shall thereafter pursue diligently the entry of the Sale Order and the Bidding Procedures Order. Sellers shall use reasonable efforts to comply (or obtain an order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the Sale Order and the Bidding Procedures Order, including serving on all required Persons in the Bankruptcy Case (including (i) all Persons who are known to possess or assert a Lien against any of the Purchased Assets, (ii) all Governmental Entities, (iii) all members of the Class and the Covered Group (each as defined in the UAW Retiree Settlement Agreement) and (iv) all other Persons required by any order of the Bankruptcy Court (including any omnibus notice or case management order entered in the Bankruptcy Case)), notice of the Sale Motion, the hearing to approve the Sale Motion and the objection deadline in accordance with rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure, the Bidding Procedures Order or other orders of the

Bankruptcy Court, including any applicable local rules of the Bankruptcy Court. Purchaser and Fiat agree that they will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and the Bidding Procedures Order and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. In the event the Sale Order or the Bidding Procedures Order is appealed, Sellers, Purchaser and Fiat shall use their respective reasonable efforts to defend such appeal. Sellers shall not file any motion in the Bankruptcy Case relating to or affecting the Purchased Assets, Sellers’ ability or their obligations under this Agreement for the timely consummation of the transactions contemplated hereby without providing to each of Purchaser’s and UAW’s counsel a reasonable opportunity to review and consult.

(b) Competing Transactions. Notwithstanding anything to the contrary contained in Section 5.04(a) hereto, the Confidentiality Agreement or the Exclusivity Agreement, dated as of January 16, 2009, by and among the Company, Fiat, Chrysler Holding LLC and Cerberus Capital Management L.P., from and after April 30, 2009 (“the Petition Date”) until the date of the auction contemplated by the Bidding Procedures Order (the “Auction Date”), Sellers will be permitted to cause their respective representatives and Affiliates to initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person with respect to any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of a material portion of the Purchased Assets to a purchaser or purchasers other than Purchaser or effecting any other transaction (including a plan of reorganization or liquidation) the consummation of which would be substantially inconsistent with the transactions herein contemplated (a “Competing Transaction”) to the extent, but only to the extent, that the Company determines in good faith that so doing is permitted or required by the Bidding Procedures Order. Following the Auction Date, Sellers will not participate in any discussions with, or furnish any information to, any Person with respect to any Competing Transaction regardless of the terms thereof.

Section 5.19 Name Change.

(a) At least two (2) Business Day prior to the Closing, Sellers will deliver to Fiat duly and properly authorized and executed evidence as to the amendment of such Sellers’ Constitutive Documents, in each case, effective upon the Closing, changing each Selling Group Member’s name to another name which does not include the Chrysler Name. After the Closing, each Selling Group Member shall discontinue the use of its current name (and any other trade names currently utilized by any of Sellers) and shall not subsequently change its name to (or otherwise use or employ) any name which includes the Chrysler Name.

(b) On or prior to the Closing Date, Purchaser shall file or cause to be filed with the Secretary of State of the State of Delaware a Certificate of Amendment to the Certificate of Formation of Purchaser (the “Certificate of Amendment”), in form and substance reasonably acceptable to the Company, to change the name of Purchaser from “New CarCo Acquisition LLC” to “Chrysler LLC” effective as of the Closing.

Section 5.20 Letters of Credit. No later than thirty days after the Closing Date, (a) Purchaser or its designee shall substitute or replace, as the case may be, in a manner reasonably satisfactory to Sellers, those of the letters of credit of Sellers existing as of the Closing Date that (i) secure future obligations of the Sellers under an Assumed Contract and (ii) were identified in writing by Sellers to Purchaser as part of the cure costs payable by Purchaser in connection with the election by Purchase to have an agreement treated as an Assumed Contract in accordance with the contract procedures specified in the Bidding Procedures Order and (b) Purchaser shall cause the originals of such letters of credit to be returned to Sellers or the issuer thereof with no further drawings made thereunder.

ARTICLE VI

EMPLOYEE MATTERS

Section 6.01 Transfer of Employment. Effective as of the Closing Date, Purchaser or one of its Subsidiaries shall make an offer of employment to each employee (including, any employee on disability (long term or short term) or on leave of absence) of the Company or any Company Subsidiary (other than a Purchased Company, the employees of which shall continue such service) (an “Applicable Employee”). Each offer of employment to an Applicable Employee shall provide for (i) employment in an identical geographic location as in effect with respect to each such Applicable Employee immediately prior to the Closing Date (or within 50 miles of such location), (ii) base salary or hourly wage rates initially at least equal to such Applicable Employee’s base salary or hourly wage rate in effect immediately prior to the Closing Date and (iii) employee benefits that are not less favorable in the aggregate than the benefits provided under the employee pension and welfare benefit plans, contracts and arrangements listed on Section 3.15(a) of the Company Disclosure Letter. For Transferred Employees who are not covered by a Collective Bargaining Agreement, Purchaser agrees and acknowledges that it shall maintain the compensation and benefits contemplated by clauses (ii) and (iii) of the immediately preceding sentence until at least the first anniversary of the Closing Date. Notwithstanding the foregoing, if any Applicable Employee is on disability (long term or short term) or on leave of absence on the Closing Date, such offer of employment shall be effective upon the return of any such Applicable Employee to active employment at the termination of such disability or leave of absence only if the Applicable Employee returns to active employment within the time period permitted under the applicable disability or leave of absence policy, unless otherwise required by Law or by the terms of any Collective Bargaining Agreement. Each employee of a Purchased Company and each Applicable Employee who accepts employment with Purchaser or one of its Subsidiaries and commences working for Purchaser or one of its Subsidiaries on the Closing Date shall become a “Transferred Employee”. Notwithstanding anything herein to the contrary and except as provided in an employment contract with any Company Employee or as required by the terms of an Included Plan, offers of employment to Company Employees whose employment rights are subject to a Collective Bargaining Agreement as of the Closing Date shall be in accordance with the applicable terms and conditions of such Collective Bargaining Agreement and the Purchaser’s obligations under the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 141, et. seq. To the extent such offer of employment by Purchaser or its Subsidiaries is not accepted, Sellers shall, as

soon as practicable following the Closing Date, terminate the employment of all such Applicable Employees. Nothing in this Section 6.01 shall prohibit Purchaser or any of its Subsidiaries from terminating the employment of any Transferred Employee after the Closing Date, subject to the terms and conditions of any Collective Bargaining Agreement. It is understood that the intent of this Section 6.01 is to provide a seamless transition from the Company to Purchaser of any employee subject to a Collective Bargaining Agreement. For a period commencing on the Closing Date and ending on the first anniversary of the Closing Date, Purchaser further agrees and acknowledges that it shall provide to each Transferred Employee who is not covered by a Collective Bargaining Agreement and whose employment is involuntarily terminated by Purchaser or its Subsidiaries on or prior to the first anniversary of the Closing Date, severance benefits that are not less than the severance benefits such Transferred Employee would have received under the Company's plans, contracts and arrangements listed on Section 3.15(a) of the Company Disclosure Letter.

Section 6.02 Prior Service Credit. Purchaser shall, and shall cause its applicable Subsidiary to, take all actions necessary such that Transferred Employees shall be credited for their actual and credited service with the Company, the Company Subsidiaries, and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual (except in the case of a defined benefit pension plan sponsored by Purchaser or any of its Subsidiaries in which Transferred Employees may commence participation after the Closing), in any employee benefit plans covering Transferred Employees after the Closing to the same extent as such Transferred Employee was entitled immediately prior to the Closing Date to credit for such service under any similar Benefit Plan; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such Transferred Employee or the funding for any such benefit. Such benefits shall not be subject to any exclusion for any pre-existing conditions to the extent such conditions were satisfied by such Transferred Employees as of the Closing Date, and credit shall be provided for any deductible or out-of-pocket amounts paid by such Transferred Employee during the plan year in which the Closing Date occurs.

Section 6.03 Labor Negotiations. Prior to the Closing Date, the Company shall update Fiat on a current basis (but not less frequently than once weekly) regarding any substantive negotiations or discussions between the UAW (or any other labor union) and the Company and the Company Subsidiaries in connection with active bargaining over the terms and conditions for any successor Collective Bargaining Agreement or VEBA Trust and/or the extension or amendment of an existing Collective Bargaining Agreement or VEBA Trust.

Section 6.04 Employee Communications. Prior to the Closing Date, prior to making any material written or oral communications to the Company Employees pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement, the Company shall provide Fiat with a copy of the intended communication (or, in the case of any oral communication, an accurate description of the intended communication (including any talking points, handouts or presentation materials)), Fiat shall have a reasonable period of time to review and comment on the communication, and Fiat and the Company or such Company Subsidiary (as appropriate) shall cooperate in providing any such mutually agreeable communication.

Section 6.05 No Third Party Beneficiaries. Nothing contained herein, express or implied (i) shall be construed to establish, amend or modify any Benefit Plan or any other benefit plan, program, agreement or arrangement of the Company, Purchaser or any of their Subsidiaries, (ii) is intended to confer or shall confer upon any Company Employee or Transferred Employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, (iii) is intended to confer or shall confer upon any individual or any legal representative of any individual (including employees, retirees, or dependents or beneficiaries of employees or retirees and including collective bargaining agents or representatives) any right as a third-party beneficiary of this Agreement, or (iv) shall be deemed to confer upon any such individual or legal representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal representative shall be entitled to look only to the express terms of any such plans, program or arrangement for his or her rights thereunder. Nothing herein is intended to override the terms and conditions of any Collective Bargaining Agreement.

Section 6.06 Assumption of Included Plans. As of the Closing Date, Purchaser or one of its Subsidiaries shall assume and maintain the Included Plans for the benefit of the Transferred Employees and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Subsidiaries as the sponsor of such plans. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement assumed by Purchaser or one of its Subsidiaries pursuant to Section 6.07 hereof, Purchaser and its Subsidiaries may, in its sole discretion, amend, suspend or terminate any such plan at any time in accordance with its terms.

Section 6.07 Assumption of Collective Bargaining Agreement. The Purchaser agrees to, or to cause one of its Subsidiaries to, assume all rights, liabilities and obligations of the Sellers (including, without limitation, liabilities for wages, benefits, and other compensation, unfair labor practices, grievances, arbitrations, and contractual violations) under each Collective Bargaining Agreement. Furthermore, with respect to each Collective Bargaining Agreement, Purchaser agrees to (a) recognize the union which is a party to such Collective Bargaining Agreement as the exclusive collective bargaining representative for the Transferred Employees covered under the terms of the Collective Bargaining Agreement, (b) employ all Transferred Employees covered by such Collective Bargaining Agreement with full recognition of all seniority rights, (c) negotiate with the appropriate union over the terms of any successor collective bargaining agreement upon expiration of the Collective Bargaining Agreement and upon timely demand by such union, (d) with the agreement of the appropriate union or otherwise as provided by law and to the extent necessary, adopt, effective as of the Closing Date, benefit plans of the Purchaser or its Subsidiaries specified in or covered by the Collective Bargaining Agreement as required to be provided to the Transferred Employees covered by such Collective Bargaining Agreement and (e) otherwise abide by all the terms and conditions of each such Collective Bargaining Agreement. For the avoidance of doubt, the provisions of this Section 6.07 are not intended to (i) give, and shall not be construed as giving, any union or Transferred Employee any enhanced or additional rights or (ii) otherwise restrict the rights that Purchaser and its Affiliates have, under the terms of any Collective Bargaining Agreement.

Section 6.08 Assumption of Existing Internal VEBA. Purchaser agrees, or agrees to cause one of its Subsidiaries to, effective as of the Closing Date, assume from the Company sponsorship of the voluntary employees' beneficiary association trust between the Company and State Street Bank and Trust Company (as successor to Chase Manhattan Bank) dated as of January 29, 2001 that is funded and maintained by the Company ("Existing Internal VEBA") and, in connection therewith, Purchaser shall, or shall cause one of its Subsidiaries to, (i) succeed to all of the rights, title and interest (including the rights of the Company, if any, as plan sponsor, plan administrator or employer) under the Existing Internal VEBA, (ii) assume any responsibility, obligation or liability relating to, the Existing Internal VEBA and each contract, agreement or arrangement established thereunder or relating thereto, and (iii) to operate the Existing Internal VEBA in accordance with, and to otherwise comply with the Purchaser's obligations under, the UAW Retiree Settlement Agreement between the Purchaser and the UAW, effective as of the Closing and subject to approval by a court having jurisdiction over this matter, including, without limitation, the obligation to direct the trustee of the Existing Internal VEBA to transfer the UAW's share of assets in the Existing Internal VEBA to the VEBA Trust. The parties shall cooperate in the execution of any documents, the adoption of any corporate resolutions or the taking of any other reasonable actions to effectuate such sponsorship and succession with respect to the Existing Internal VEBA and the transfer of each of the contracts, agreements and arrangements established thereunder or relating thereto.

Section 6.09 Certain Liabilities and Indemnification. The Purchaser or its Subsidiaries (as appropriate) shall indemnify and hold Fiat and its Affiliates (other than the Purchaser and its Subsidiaries) harmless against liabilities or obligations arising as a result of Fiat or its Affiliates (other than the Purchaser and its Subsidiaries) being treated, on the Closing Date, as a "single employer" with the Purchaser or any of its Subsidiaries under Section 414 of the Code or Section 4001 of ERISA solely as a result of the transactions contemplated by the Transaction Agreements, under any Benefit Plan as in effect on the Closing Date, including any Included Plan, providing retirement benefits subject to Title IV of ERISA or providing any post-retirement welfare benefits. Notwithstanding any other provision of any of the Transaction Agreements to the contrary, Purchaser agrees that it will not, and will cause each of its Subsidiaries not to, take any action that would cause the VEBA Trust to be treated as a "single employer" with the Purchaser or any of its Subsidiaries under Section 414 of the Code or Section 4001 of ERISA. The indemnification provided in this Section 6.09 shall be subject to the provisions of ARTICLE IX, except for the limitations set forth in Section 9.04(b) thereof.

Section 6.10 TARP Covenant. From and after the date hereof until such time as all amounts under the U.S. Treasury Loan Documents have been paid in full, subject to any applicable order of the Bankruptcy Court, each of the Sellers and Purchaser shall, and shall cause each of their respective Subsidiaries to, take all necessary action to ensure that its employee benefit plans, contracts and agreements comply in all respects with the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7001 of Division B, Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time, any guidance issued by a regulatory authority thereunder and any other applicable Law in effect currently or in the future.

ARTICLE VII

TAX MATTERS

Section 7.01 [Reserved].

Section 7.02 [Reserved].

Section 7.03 Preparation of Tax Returns. (a) The Company shall prepare and file (or cause the Purchased Companies to prepare and file) all Tax Returns required to be filed with respect to the Purchased Companies before the Closing in a manner consistent with past practices with respect to the Purchased Companies, and shall provide Purchaser prompt opportunity for review and comment with respect to any such returns required to be filed on or after the date of this Agreement.

(b) All Tax Returns of any Purchased Companies required to be filed after the Closing, and all Tax Returns of the Purchaser, shall be prepared and filed at the direction of the Tax Matters Member, subject to the provisions of the Operating LLC Agreement.

Section 7.04 Tax Cooperation and Exchange of Information. The Sellers, Purchaser and Fiat shall provide each other with such cooperation and information as any of them reasonably may request of the others in filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes or participating in or conducting any audit or other proceeding in respect of Taxes with respect to the Purchased Assets or Purchased Companies. The Sellers, Purchaser and Fiat shall make themselves (and their respective employees) reasonably available on a mutually convenient basis to provide such cooperation, including explanations of any documents or information provided under this Section 7.04. Notwithstanding anything to the contrary herein, Purchaser shall retain all Tax Returns, work papers and all material records or other documents in its possession (or in the possession of its Affiliates) relating to Tax matters for any taxable period that includes the date of the Closing and for all prior taxable periods until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Any information obtained under this Section 7.04 shall be kept confidential, except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting an audit or other proceeding.

Section 7.05 Conveyance Taxes. Purchaser shall be liable for any and all Conveyance Taxes which become payable in connection with the transactions contemplated by this Agreement. Fiat, Purchaser and the Sellers agree to cooperate reasonably in the filing of any Tax Returns in respect of Conveyance Taxes, in the remittance of Conveyance Taxes, in the execution and delivery of all instruments and certificates necessary to comply with applicable Conveyance Taxes and to enable the parties to reduce and/or obtain refunds of the amount of Conveyance Taxes payable in connection with the transfers described in this Agreement.

Section 7.06 Tax Covenants. From the date of this Agreement to and including the Closing Date, except to the extent relating to an Excluded Asset or Excluded Liability, none

of the Company and the Purchased Companies shall, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld, and shall not be withheld if not resulting in any Tax impact on Purchaser or any of the equity holders of Purchaser after the Closing Date), (a) make, change, or terminate any material Tax elections (including elections with respect to the use of Tax accounting methods) of any of the Purchased Companies, (b) settle any claim or assessment for Taxes that could be reasonably expected to result in adverse consequence on any of Fiat, Purchaser, or the Purchased Companies following the Closing Date, except to the extent that a party other than the Company or an Affiliate of the Company has full authority over the settlement of such claim or assessment pursuant to the terms of the Original Contribution Agreement, or, if entered into pursuant to Section 5.11, the Tax Settlement Agreement, (c) agree to an extension of the statute of limitations with respect to the assessment or collection of the Taxes of any of the Purchased Companies, or (d) make or surrender any claim for a refund of a material amount of the Taxes of any of the Purchased Companies, except to the extent required to surrender such refund to another party pursuant to the terms of the Original Contribution Agreement, or, if entered into pursuant to Section 5.11, the Tax Settlement Agreement.

Section 7.07 Miscellaneous. (a) For Tax purposes, the parties agree to treat any payment made by the Company under any indemnity provisions contained in this Agreement or for any breach of representations, warranties, covenants or agreements as reductions of the amounts paid by Purchaser under this Agreement.

(b) For purposes of this ARTICLE VII, all references to Fiat, Purchaser, the Sellers and Affiliates include successors and predecessors.

(c) Notwithstanding any provision in this Agreement to the contrary, the covenants and agreements of the parties contained in this ARTICLE VII shall survive until the expiration of the applicable statute of limitations for the relevant taxable period.

(d) Any Tax sharing agreement or arrangement (other than the Original Contribution Agreement or the Tax Settlement Agreement) between CGI, Daimler AG or any of their respective Affiliates (other than the Purchased Companies), on the one hand, and any of the Purchased Companies, on the other hand, shall be terminated as of the applicable Closing Date, and no payments shall be permitted to be made on or after the Closing Date.

Section 7.08 Purchase Price Allocation. The Purchaser and the Company shall as soon as practicable after the Closing work together in good faith to attempt to mutually agree on a statement allocating the purchase price among the Purchased Assets (the "Allocation Statement") which statement shall be prepared in accordance with Section 1060 of the Code. If the parties both agree on the Allocation Statement within 90 days after the Closing (or such longer period as they may agree to in writing), then Purchaser and the Company shall file all Tax Returns (including Form 8594) consistent with, and shall take no tax position inconsistent with the Allocation Statement. If the Purchaser and the Company are unable to mutually agree on the Allocation Statement as provided in this Section 7.08, then the Purchaser and the Company shall have no obligation to be consistent with their respective reporting of allocations of the purchase price among the Purchased Assets.

Section 7.09 Pre-Paid Property Taxes. The Company shall be entitled to retain the value of, and Purchaser shall pay to the Company promptly after the Closing, the amount of any pre-paid real estate or personal property Taxes as of the Closing that relate to Purchased Assets and that are attributable to periods after the Closing.

ARTICLE VIII

CONDITIONS TO THE CLOSING

Section 8.01 Conditions to the Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver, at or prior to the Closing, of each of the following conditions; provided, however, that in no event may any Seller waive the condition contained in Section 8.01(b) (as it relates to the Antitrust Laws in the United States), 8.01(i) or 8.01(m):

(a) Representations, Warranties and Covenants. (i) The representations and warranties of each of Fiat and Purchaser contained in this Agreement shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (except for representations and warranties that expressly speak only as of a specific date or time which need only be true and correct as of such date or time) except for such failures of representations and warranties to be true and correct (without giving effect to any materiality or Fiat Material Adverse Effect or Purchaser Material Adverse Effect qualification or standard contained in any such representations and warranties) which, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect or a Purchaser Material Adverse Effect, as applicable, and (ii) the covenants and agreements contained in this Agreement to be complied with by Fiat or Purchaser on or before the Closing shall have been complied with in all material respects. The Company shall have received a certificate from each of Fiat and Purchaser signed by a duly authorized executive officer of such party with respect to the matters set forth in this Section 8.01(a).

(b) Governmental Approvals. All mandatory waiting periods (and any extensions thereof) prescribed by the Antitrust Laws of the United States, Canada, the European Union (or any relevant member states of the European Union), and Mexico shall have expired or been terminated; all other notices, reports and other filings required to be made by Fiat, Purchaser, the Company or any of their respective Affiliates with, and all other Permits required to be obtained by Fiat, Purchaser, the Company or any of their respective Affiliates from, any Governmental Entity of the United States, Canada, the European Union (or any relevant member states of the European Union), Mexico, or any other jurisdictions in which Fiat intends to file notification (with the exception of China, Japan, Macedonia, Russia, Serbia, Turkey and Ukraine) in connection with the execution and delivery of this Agreement and the consummation of the transaction contemplated by this Agreement shall have been made or obtained (as the case may be), and/or a decision approving the transaction or permitting closing in advance of a decision approving the transaction shall have been communicated to the notifying parties (as the case may be); provided that, if following the Target Closing Date, (i) such periods shall have expired or been terminated, or (ii) a decision approving the transaction or a decision permitting closing in advance of a decision approving the transaction, shall have been communicated to the

notifying parties, with respect (in each case) to the United States, Canada, the European Union (or any relevant member states of the European Union), and Mexico, this condition shall be deemed to have been satisfied and the Closing shall occur with respect to such jurisdictions for which such periods have expired or been terminated or for which such a decision has been communicated (as the case may be), in accordance with Section 5.05(g).

(c) No Order. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Law or Governmental Order (whether temporary, preliminary or permanent) that has the effect of making the transactions contemplated by this Agreement or the Transaction Agreements illegal or otherwise prohibiting the consummation of such transactions

(d) Consents. Fiat or Purchaser, as applicable, shall have (i) obtained all consents or approvals listed in Section 8.01(d)(i) of the Company Disclosure Letter and any other consent or approval of any Person whose consent or approval shall be required under any Contract as a result of the Transactions unless the failure to obtain such consent or approval, individually or in the aggregate, have not had and would not be reasonably likely to have a Fiat Material Adverse Effect or Purchaser Material Adverse Effect, as applicable, and (ii) sent all notices listed in Section 8.01(d)(ii) of the Company Disclosure Letter.

(e) [Reserved].

(f) [Reserved].

(g) U.S. Treasury Funding. The U.S. Treasury Loan Documents shall have been entered into on terms consistent with Section 8.01(g) of the Company Disclosure Letter and otherwise on terms and in a form reasonably satisfactory to Fiat, and the initial financing contemplated thereby shall have been provided to Purchaser at the Closing.

(h) Canada Loan Funding. The Canada Loan Documents shall have been entered into on terms consistent with Section 8.01(h) of the Company Disclosure Letter and otherwise on terms and in a form reasonably satisfactory to Fiat, and the initial financing contemplated thereby shall have been provided to Purchaser at the Closing.

(i) Collective Bargaining Agreement. The Collective Bargaining Agreement shall have been assumed by Purchaser and be in full force and effect.

(j) Master Industrial Agreement. The Master Industrial Agreement shall have been duly authorized, executed and delivered by all parties thereto (other than the Company).

(k) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall be in full force and effect as entered and shall not have been modified, vacated or subject to stay pending appeal or otherwise.

(l) Closing Deliveries. The Company shall have received the deliveries from Fiat and Purchaser required by Section 2.04 and Section 2.05.

(m) UAW Retiree Settlement Agreement. The UAW Retiree Settlement Agreement shall have been executed and delivered by the UAW and Purchaser, shall be in full force and effect and shall have been approved by the Bankruptcy Court as part of the Sale Order.

Section 8.02 Conditions to the Obligations of Fiat and Purchaser. The obligations of each of Fiat and Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver, at or prior to the Closing, of each of the following conditions; provided, however, that in no event may Fiat or Purchaser waive the condition contained in Section 8.02(b) (with respect to the Antitrust Laws of the United States) or 8.02(d):

(a) Representations, Warranties and Covenants. The representations and warranties of the Company contained in this Agreement shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (except for representations and warranties that expressly speak only as of a specific date or time which need only be true and correct as of such date or time) except for such failures of representations and warranties to be true and correct (without giving effect to any materiality or Company Material Adverse Effect qualification or standard contained in any such representations and warranties) which, individually or in the aggregate, have not had and would not be reasonably likely to have a Company Material Adverse Effect. Fiat shall have received a certificate from the Company signed by a duly authorized executive officer with respect to the matters set forth in Section 8.02(a).

(b) Governmental Approvals. All mandatory waiting periods (and any extensions thereof) prescribed by the Antitrust Laws of the United States, Canada, the European Union (or any relevant member states of the European Union), and Mexico shall have expired or been terminated; all other notices, reports and other filings required to be made by Fiat, Purchaser, the Company or any of their respective Affiliates with, and all other Permits required to be obtained by Fiat, Purchaser, the Company or any of their respective Affiliates from, any Governmental Entity of the United States, Canada, the European Union (or any relevant member states of the European Union), Mexico, or any other jurisdictions in which Fiat intends to file notification (with the exception of China, Japan, Macedonia, Russia, Serbia, Turkey and Ukraine) in connection with the execution and delivery of this Agreement and the consummation of the transaction contemplated by this Agreement shall have been made or obtained (as the case may be), and/or a decision approving the transaction or permitting closing in advance of a decision approving the transaction shall have been communicated to the notifying parties (as the case may be); *provided* that, if following the Target Closing Date, (i) such periods shall have expired or been terminated, or (ii) a decision approving the transaction or a decision permitting closing in advance of a decision approving the transaction, shall have been communicated to the notifying parties, with respect (in each case) to the United States, Canada, the European Union (or any relevant member states of the European Union), and Mexico, this condition shall be deemed to have been satisfied and the Closing shall occur with respect to such jurisdictions for which such periods have expired or been terminated or for which such a decision has been communicated (as the case may be), in accordance with Section 5.05(g).

(c) No Order. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Law or Governmental Order (whether temporary, preliminary or permanent) that has the effect of making the transactions contemplated by this Agreement or the Transaction Agreements illegal or otherwise prohibiting the consummation of such transactions.

(d) UAW Retiree Settlement Agreement. The UAW Retiree Settlement Agreement shall have been executed and delivered by the UAW, shall be in full force and effect and shall have been approved by the Bankruptcy Court as part of the Sale Order.

(e) Material Adverse Effect. From the date hereof until the Closing, there has been no Company Material Adverse Effect.

(f) Resolutions. Fiat shall have received on the Closing Date a certificate signed on behalf of the Company by a duly authorized executive officer of the Company certifying a true and correct copy of the resolutions of the Board of Managers of the Company approving the Restructuring Transactions and the other Transactions.

(g) [Reserved].

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) U.S. Treasury Funding. The U.S. Treasury Loan Documents shall have been entered into on terms consistent with Section 8.01(g) of the Company Disclosure Letter and otherwise on terms and in a form reasonably satisfactory to Fiat, and the initial financing contemplated thereby shall have been provided to Purchaser at the Closing.

(m) Canada Loan Funding. The Canada Loan Documents shall have been entered into on terms consistent with Section 8.01(h) of the Company Disclosure Letter and otherwise on terms and in a form reasonably satisfactory to Fiat, and the initial financing contemplated thereby shall have been provided to Purchaser at the Closing.

(n) [Reserved].

(o) Necessary Consents. Except to the extent such failure to assign would not, individually or in the aggregate have a Company Material Adverse Effect, the Sellers shall have obtained all Necessary Consents to effect the assignment or transfer of Purchased Assets.

(p) Master Industrial Agreement. The Master Industrial Agreement shall have been duly authorized, executed and delivered by all parties thereto (other than Fiat and Purchaser).

(q) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall be in full force and effect as so entered and shall not have been modified, vacated, or subject to stay pending appeal or otherwise.

(r) Closing Deliveries. Fiat shall have received the deliveries from the Company required by Section 2.03.

ARTICLE IX

INDEMNIFICATION RESULT

Section 9.01 Survival of Representations and Warranties. None of the representations and warranties contained in this Agreement or in the certificates delivered pursuant to Section 8.01(a) and Section 8.02(a) shall survive the Closing other than (a) the representations and warranties made pursuant to Section 3.01, Section 3.02, Section 3.04, Section 4.01, Section 4.02, Section 4A.01, Section 4A.02, Section 4A.05 and Section 4A.06 (the "Fundamental Representations"), which shall survive until the Administrative Bar Date, and (b) and the representations and warranties made pursuant to Section 3.16 shall survive until the later of 90 days after the expiration of the applicable statutes of limitations for the Taxes in question (taking into account any extensions or waivers thereof); *provided*, that any claims made with reasonable specificity by the party seeking to be indemnified within the time periods set forth in this Section 9.01 shall survive until such claims are finally and fully resolved. All covenants and agreements contained herein shall terminate at the Closing, except for those covenants and agreements that by their terms are to be performed in whole or in part after the Closing, which shall remain in full force and effect until performed in accordance with their terms, and ARTICLE VII, which shall survive indefinitely.

Section 9.02 Indemnification by the Company. The Purchaser and its equity holders, officers, directors, employees, agents, successors and assigns (each, a "Fiat Indemnified Party") shall be indemnified and held harmless by the Company for and against all losses, damages, claims, costs and expenses, interest, awards, judgments and penalties (including reasonable attorneys' and consultants' fees and expenses) suffered or incurred by them (hereinafter, a "Loss"), arising out of or resulting from (i) the breach of any Fundamental Representation or representation in Section 3.16 made by the Company contained in this Agreement, or (ii) the breach of any covenant or agreement by the Company contained in Article VII; *provided, however*, no such indemnity shall apply to a breach of the fourth sentence of Section 3.02 to the extent such representation is related to the outstanding stock or other equity interests of Purchased Entities that are subject to the Sale Order. Notwithstanding anything to the contrary contained in this Agreement, solely for purposes of this Article IX, the determination of whether there has been any breach of any representation in Section 3.16 made by the Company shall be determined without regard to any materiality, Company Material Adverse Effect, standard or qualification set forth therein.

Section 9.03 Indemnification by Fiat and the Purchaser. The Company and its Affiliates, officers, directors, employees, agents, successors and assigns (each, a "Company Indemnified Party") shall be indemnified and held harmless by Fiat or the Purchaser, as the case

may be, for and against any and all Losses arising out of or resulting from the breach of any Fundamental Representations made by Fiat or Purchaser contained in this Agreement.

Section 9.04 Limits on Indemnification. (a) No claim may be asserted nor may any Action be commenced against any party for breach of any representation, warranty, covenant or agreement contained herein, unless written notice of such claim or action is received by such party describing in reasonable detail, to the extent known to such party, the facts and circumstances with respect to the subject matter of such claim or Action.

(b) Notwithstanding anything to the contrary contained in this Agreement, except with respect to claims based on fraud, intentional misrepresentation or willful breach: (i) an Indemnifying Party shall not be liable for any claim for indemnification pursuant to Section 9.02 or Section 9.03, unless and until the aggregate amount of indemnifiable Losses that may be recovered from the Indemnifying Party equals or exceeds \$25 million, after which the Indemnifying Party shall be liable for all indemnifiable Losses incurred, (ii) no Losses may be claimed under Section 9.02 or Section 9.03 by any Indemnified Parties or shall be reimbursable by or shall be included in calculating the aggregate Losses set forth in clause (i) above other than Losses in excess of \$5 million resulting from any single claim or aggregated claims arising out of the same facts, events or circumstances, and (iii) no party hereto shall have any liability under any provision of this Agreement for any punitive, incidental, or consequential (including any measure of Losses that would result from the application of a multiplier) damages relating to the breach or alleged breach of this Agreement (except to the extent such damages are payable in connection with a Third Party Claim).

(c) For all purposes of this ARTICLE IX, "Losses" shall be calculated net of any actual insurance recoveries paid to the Indemnified Party or its Affiliates in connection with the facts giving rise to the right of indemnification through insurance policies of the Company and the Company Subsidiaries.

(d) Notwithstanding anything to the contrary contained in this Agreement, solely for purposes of this ARTICLE IX, (1) the determination of whether there has been any breach of any representation or warranty contained in ARTICLE III, ARTICLE IV or ARTICLE IV-A of this Agreement shall be determined without regard to any materiality, Company Material Adverse Effect, Purchaser Material Adverse Effect or Fiat Material Adverse Effect standard or qualification set forth therein and (2) the determination of the amount of any Losses for which an Indemnified Party shall be entitled to indemnification under this ARTICLE IX by reason of any such breach referred to in clause (1) shall be determined without regard to any materiality, Company Material Adverse Effect, Purchaser Material Adverse Effect or Fiat Material Adverse Effect standard or qualification set forth therein.

(e) Notwithstanding anything to the contrary contained in this Agreement, the Company's liability for a claim of indemnification based on a breach of a representation in Section 3.16 shall not exceed the aggregate amount of refunds of Taxes (including interest thereon) received by the Sellers after the Closing Date, other than refunds required to be paid to the other parties pursuant to the terms of the original Contribution Agreement, or if entered into pursuant to Section 5.11, the Tax Settlement Agreement..

Section 9.05 Notice of Loss; Third Party Claims. (a) An Indemnified Party shall give the Indemnifying Party notice, in accordance with Section 11.01, of any matter which an Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement, stating the amount of the Loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises.

(b) If an Indemnified Party shall receive notice of any Action, audit, claim, demand or assessment (each, a “Third Party Claim”) against it which may give rise to a claim for Loss under this ARTICLE IX, within 30 days of the receipt of such notice, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim; *provided, however,* that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this ARTICLE IX, except to the extent that such failure results in a material detriment to the Indemnifying Party and shall not relieve the Indemnifying Party from any other Liability that it may have to any Indemnified Party other than under this ARTICLE IX. The Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within 30 days of the receipt of such notice from the Indemnified Party; *provided, however,* that, if there exists or there is reasonably likely to exist a conflict of interest that would make it inappropriate, in the reasonable judgment of the Indemnified Party, after consultation with counsel, for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel at the expense of the Indemnifying Party, and shall be entitled to retain local counsel at the expense of the Indemnifying Party in any relevant jurisdiction, with the consent of the Indemnifying Party (not to be unreasonably withheld or delayed). If the Indemnifying Party elects to undertake any such defense against a Third Party Claim, the Indemnified Party may participate in such defense at its own expense. The Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party’s expense, all witnesses, pertinent records, materials and information in the Indemnified Party’s possession or under the Indemnified Party’s control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnified Party is conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party’s expense, all such witnesses, pertinent records, materials and information in the Indemnifying Party’s possession or under the Indemnifying Party’s control relating thereto as is reasonably required by the Indemnified Party. If the Indemnifying Party elects to direct the defense of any such claim or proceeding, the Indemnified Party shall not pay, or permit to be paid, any part of such Third Party Claim unless the Indemnifying Party consents in writing to such payment or unless the Indemnifying Party withdraws from the defense of such Third Party Claim or unless a final judgment from which no appeal may be taken by or on behalf of the Indemnifying Party is entered against the Indemnified Party for such Third Party Claim. No Third Party Claim may be settled prior to a final judgment thereon and no appeal may be foregone by any party conducting the defense against such Third Party Claim pursuant to this Section 9.05 without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), unless the Indemnified Party and its Affiliates are released in full in connection with such settlement.

Section 9.06 Remedies. Each party hereto acknowledges and agrees that (a) following the Closing, the indemnification provisions of Section 9.02 and Section 9.03 shall be the sole and exclusive remedies for any breach of the representations and warranties in this Agreement, and (b) anything herein to the contrary notwithstanding, no breach of any representation, warranty, covenant or agreement contained herein of any of the parties shall give rise to any right of any party hereto, after the consummation of the transactions contemplated by this Agreement, to rescind this Agreement or any of the transactions contemplated hereby. Each party, after becoming aware of any event which could reasonably be expected to give rise to any Losses that have or could give rise to a right of such party to indemnification under this ARTICLE IX, shall take all commercially reasonable steps to mitigate such Losses.

ARTICLE X

TERMINATION, AMENDMENT AND WAIVER

Section 10.01 Termination. This Agreement shall be terminated at any time prior to the Closing Date, notwithstanding any requisite approval of this Agreement, as follows:

(a) automatically, if the U.S. Treasury Loan Documents (or binding commitment letters and term sheets in respect thereof) have not been executed and delivered by the US Treasury in the form presented prior to the date hereof by May 18, 2009, or if the Canada Loan Documents (or binding commitment letters and term sheets in respect thereof) have not been executed and delivered by Export Development Canada in the form presented prior to the date hereof by May 18, 2009, in each case unless Fiat agrees in writing to extend such date;

(b) by mutual written consent of each of the Company and Fiat;

(c) automatically, if the Closing Date shall not have occurred on or before June 15, 2009 (the "End Date"); provided that termination shall not occur automatically if either the Company or Fiat elects in its sole discretion to extend the End Date by 30 days if such party has not obtained the authorizations, consents, orders and approvals of Governmental Entities required pursuant to Section 5.05(a) and Section 5.05(b) and all other conditions to Closing have been or are capable of being timely satisfied;

(d) by the Company, upon a breach of any representation, warranty, covenant or agreement on the part of Fiat or Purchaser set forth in this Agreement, or if any representation or warranty of Fiat or Purchaser shall have become untrue, in either case such that the conditions set forth in Section 8.01 are not capable of being satisfied on or before the End Date; provided, that the Company shall not have the right to terminate this Agreement if the Company is then in material breach of any of its representations, warranties or covenants contained in this Agreement;

(e) by Fiat, upon a breach of any representation, warranty, covenant or agreement on the part of the Sellers set forth in this Agreement, or if any representation or warranty of the Sellers shall have become untrue, in either case such that the conditions set forth in Section 8.02 are not capable of being satisfied on or before the End Date; *provided*, that Fiat shall not have the right to terminate this Agreement if Fiat or Purchaser is then in material breach of any of its representations, warranties or covenants contained in this Agreement; or

(f) by either Fiat or the Company, if any Governmental Entity shall have issued a Governmental Order or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such Governmental Order or other action shall have become final and nonappealable.

(g) automatically, if any Selling Group Member shall enter into a Contract with respect to a Competing Transaction or if the Bankruptcy Court shall enter an order approving a Competing Transaction;

(h) automatically, if the Sellers consummate a Competing Transaction;

(i) by Fiat, if the Sellers do not file the Petitions and the Sale Motion with the Bankruptcy Court on or before May 5, 2009;

(j) automatically, if the Bidding Procedure Order is not entered by May 15, 2009, unless Fiat agrees in writing to extend such date or if, after the Bidding Procedures Order is entered, the Sale Order authorizing this Agreement is not entered by the End Date unless Fiat agrees in writing to extend that date; or

(k) automatically at 11:59 pm on the third business day (or such later time to which Fiat may consent to extend such date in writing) after the Debtors file any notice of designation of a Lead Bid and/or Secondary Bid with the Bankruptcy Court (as such terms as defined in the Bid Procedures Order), unless either of the following has occurred prior to the end of such period:

(i) the Debtors shall have filed a notice with the Court prior to such time stating that the Debtors have rejected any and all Lead Bids and/or Secondary Bids; or

(ii) the condition in Section 8.02(q) has been fulfilled.

Section 10.02 Effect of Termination; Break-Up Fee. (a) In the event of termination of this Agreement pursuant to Section 10.01 hereof, except for Section 5.04, Section 10.02 and ARTICLE XI, which shall survive any such termination, this Agreement shall forthwith become void and there shall be no liability under this Agreement on the part of any party hereto or any of their respective officers or directors and all rights and obligations of each party hereto shall cease; *provided, however*, that nothing herein shall relieve any party from liability for any material breach.

(b) In the event that that a Person other than Purchaser is selected as the Successful Bidder (as defined in the Bidding Procedures Order), then the Company shall pay to Fiat or an entity designated by Fiat, upon termination of this Agreement, a fee (the "Break-Up Fee") of \$35 million by wire transfer of immediately available funds to an account designated by Fiat.

Section 10.03 Amendment. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.

Section 10.04 Waiver. At any time, any party hereto may (a) extend the time for the performance of any obligation or other act of any other party hereto, (b) waive any inaccuracy in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any agreement or condition contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person or by facsimile and confirmed by overnight courier service to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.01):

if to Fiat (or Purchaser on or prior to the Closing Date):

Fiat S.p.A.
Via Nizza n. 250
10125 Torino
Italy
Attention: Chief Executive Officer

with a copy to:

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
United States of America
Attention: Scott D. Miller
Fax: +1 (212) 558-3588

if to the Company or any other Selling Group Member:

Chrysler LLC (or, if after the Closing Date, to the Company's new name adopted pursuant to Section 5.19(a))
1000 Chrysler Drive
Auburn Hills, MI 48326
United States of America
Attention: Chief Executive Officer
Fax: +1 (248) 512-1771

with a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
United States of America
Attention: Marc Weingarten
Richard A. Presutti
Tel: +1 (212) 756-2000
Fax: +1 (212) 593-5955

if to Purchaser after the Closing Date:

Chrysler LLC
1000 Chrysler Drive
Auburn Hills, MI 48326
United States of America
Attention: Chief Executive Officer
Fax: +1 (248) 512-1771

with a copy to the other parties and any Person required to be copied on notice to such other parties at the addresses set forth above.

Section 11.02 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Transactions be consummated as originally contemplated to the fullest extent possible.

Section 11.03 Entire Agreement; Assignment. This Agreement (together with all Exhibits hereto, Company Disclosure Letters and Fiat Disclosure Letters), the other Transaction Agreements and the Alliance Agreements constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof. Neither this Agreement nor any of the rights, obligations hereunder shall be assigned (except by operation of Law or to a successor-in-interest in connection with the transfer of all or substantially all of a party's business to a Person which assumes all of its obligations hereunder).

Section 11.04 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective permitted successors and assigns; *provided*, that for all purposes the VEBA Trust, the UAW, US Treasury and Canada shall be express third-party beneficiaries of this Agreement. Subject to the preceding sentence, nothing herein, express or implied (including the provisions of ARTICLE IX relating to

indemnified parties), is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement. Notwithstanding anything contained in this Agreement or any other Transaction Agreement to the contrary, the Sellers' obligations under this Agreement and the other Transaction Agreements to which any of them is a party are subject to the entry of an order by the Bankruptcy Court of this Agreement or such other Transaction Agreement, as the case may be. Upon the entry of an order approving this Agreement or any other Transaction Agreement by the Bankruptcy Court, all amounts payable by any Seller under this Agreement, whether pursuant to ARTICLE VII, ARTICLE IX, Section 10.02 or otherwise shall constitute an administrative expense of the estate of such Seller, allowed under Section 5.03(b) of the Bankruptcy Code., and with the priority established by Section 5.07(a)(2) of the Bankruptcy Code.

Section 11.05 Expenses. Except as otherwise specified in this Agreement (including Section 10.02), all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be borne by the party incurring such costs and expenses, whether or not the Closing shall have occurred. Purchaser shall only be responsible for its own costs and expenses and shall not be responsible for the costs and expenses of any other party.

Section 11.06 Public Announcements. No party to this Agreement shall make, or cause to be made, any press release or public announcement in respect of this Agreement or the transactions contemplated by this Agreement, any other Transaction Agreement, or otherwise communicate with any news media without the prior written consent of Fiat and the Company unless otherwise required by Law or applicable stock exchange regulation (in which case the disclosing party shall give the other parties reasonable prior notice under the circumstances of the proposed timing and contents of the disclosure required to be made thereunder and reasonable opportunity to comment), and the parties to this Agreement shall cooperate as to the timing and contents of any such press release, public announcement or communication.

Section 11.07 Currency. Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars.

Section 11.08 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (subject to any mandatory provisions of the LLC Act), excluding (to the extent permissible by law) any rule of law that would cause the application of the laws of a jurisdiction other than the State of New York.

Section 11.09 Consent to Jurisdiction.

(a) Without limiting any party's right to appeal any order of the Bankruptcy Court, each party hereby irrevocably (1) submits to the exclusive jurisdiction of the Bankruptcy Court, for the purpose of any action or proceeding arising out of or relating to this Agreement, and (2) each party hereto hereby irrevocably agrees that all claims in respect to such action or proceeding may be heard and determined exclusively in the Bankruptcy Court and (3)

agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from the Bankruptcy Court, including a motion to dismiss on the grounds of forum non conveniens. Each of the parties hereto agrees that a final judgment in any action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law; *provided, however*, that if the Bankruptcy Case has closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County for the resolution of any such claim or dispute.

(b) Each of the parties hereto irrevocably consents to the service of the summons and complaint and any other process in any action or proceeding relating to the transactions contemplated by this Agreement, on behalf of itself or its property, by personal delivery of copies of such process to such party. Such service shall be in lieu of any other potentially applicable requirement of service, including, without limitation, the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters. Nothing in this Section 11.09 shall affect the right of any party to serve legal process in any other manner permitted by law.

Section 11.10 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Section 11.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF.

Section 11.12 Interpretation. In this Agreement, unless the context otherwise requires, references:

(a) to the Recitals, Articles, Sections, Exhibits or Schedules are to a Recital, Article or Section of, or Exhibit or Schedule to, this Agreement;

(b) to any agreement (including this Agreement), contract, statute or regulation are to the agreement, contract, statute or regulation as amended, modified, supplemented or replaced from time to time, and to any section of any statute or regulation are to any successor to the section;

(c) to any Governmental Entity include any successor to that Governmental Entity;

(d) to this Agreement are to this Agreement and the exhibits and schedules to it, taken as a whole;

(e) the table of contents and headings contained herein are for reference purposes only and do not limit or otherwise affect any of the provisions of this Agreement;

(f) whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation”;

(g) whenever the words “herein” or “hereunder” are used in this Agreement, they will be deemed to refer to this Agreement as a whole and not to any specific Section, unless otherwise indicated;

(h) the terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa;

(i) the terms “dollars” and “\$” shall mean dollars of the United States of America; and

(j) (i) this Agreement is the result of negotiations between the parties hereto and shall not be deemed or construed as having been drafted by any one party, (ii) each of the parties hereto and its counsel have reviewed and negotiated the terms and provisions of this Agreement and have contributed to its preparation, (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement, and (iv) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

Section 11.13 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner or equity holder of Sellers, Purchaser or Fiat shall have any liability for any obligations or liabilities of Sellers, Purchaser or Fiat under this Agreement or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby, other than liability of Daimler AG or an Affiliate of Daimler AG.

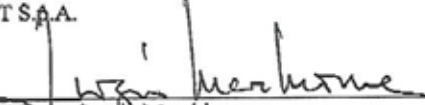
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW

AMERICAN BANKRUPTCY INSTITUTE

04-30 09-50002-241g Doc 3232-1 Filed 06/04/09 Entered 06/04/09 20:07:06 Exhibit 4/ 6
Purchase Agreement of 2098 of 160

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

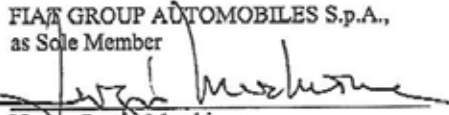
FIAT S.p.A.

By: 

Name: Sergio Marchionne
Title: Chief Executive Officer

NEW CARCO ACQUISITION LLC

By: FIAT GROUP AUTOMOBILES S.p.A.,
as Sole Member

By: 

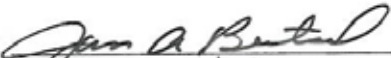
Name: Sergio Marchionne
Title: Chief Executive Officer

[Signature Page to Master Transaction Agreement]

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

09-50002-1.jpg Doc 3032-1 Filed 06/04/09 Entered 06/04/09 20:40:02 Exhibits -
Purchase Agreement Page 80 of 160

CHRYSLER LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER AVIATION INC.

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER INTERNATIONAL
CORPORATION

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

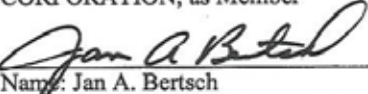
Signature Page to Master Transaction Agreement

AMERICAN BANKRUPTCY INSTITUTE

09-50002-211g Doc 322-1 Filed 06/04/09 Entered 06/04/09 20:44:02 Exhibit A -
Purchase Agreement of 209 of 160

CHRYSLER INTERNATIONAL LIMITED,
L.L.C.

By: CHRYSLER INTERNATIONAL
CORPORATION, as Member

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER INTERNATIONAL SERVICES,
S.A.

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER MOTORS LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

Signature Page to Master Transaction Agreement

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

09-50002-1, Doc 332-1 Filed 06/04/09 Entered 06/04/09 20:40:02 Exhibits -
Purchase Agreement Page 82 of 160

CHRYSLER REALTY COMPANY LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER SERVICE CONTRACTS
FLORIDA, INC.

By: _____
Name: Byron Babbish
Title: Assistant Secretary

CHRYSLER SERVICE CONTRACTS INC.

By: _____
Name: Byron Babbish
Title: Assistant Secretary

Signature Page to Master Transaction Agreement

AMERICAN BANKRUPTCY INSTITUTE

09-50002-211g Doc 3232-1 Filed 06/04/09 Entered 06/04/09 20:44:02 Exhibit A -
Purchase Agreement Page 88 of 160

CHRYSLER REALTY COMPANY LLC

By: _____
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER SERVICE CONTRACTS
FLORIDA, INC.

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

CHRYSLER SERVICE CONTRACTS INC.

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

Signature Page to Master Transaction Agreement

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

09-50002-1, Doc 332-1 Filed 06/04/09 Entered 06/04/09 20:40:02 Exhibits -
Purchase Agreement of 2003 of 160

CHRYSLER TECHNOLOGIES MIDDLE
EAST LTD.

By: Jan A. Bertsch
Name: Jan A. Bertsch
Title: Senior Vice President

CHRYSLER TRANSPORT, INC.

By: Jan A. Bertsch
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER VANS LLC

By: Jan A. Bertsch
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

Signature Page to Master Transaction Agreement

AMERICAN BANKRUPTCY INSTITUTE

09-50002-211g Doc 322-1 Filed 06/04/09 Entered 06/04/09 20:44:02 Exhibit A -
Purchase Agreement of 209 of 160

DCC 929, INC.

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

DEALER CAPITAL, INC.

By: _____
Name: Byron Babbish
Title: Assistant Secretary

GLOBAL ELECTRIC MOTORCARS, LLC

By: _____
Name: Byron Babbish
Title: Assistant Secretary

Signature Page to Master Transaction Agreement

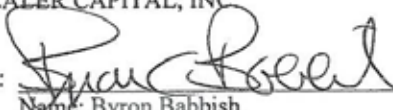
2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

09-50002-1.jpg Doc 3032-1 Filed 06/04/09 Entered 06/04/09 23:07:02 Exhibit A -
Purchase Agreement Page 85 of 160

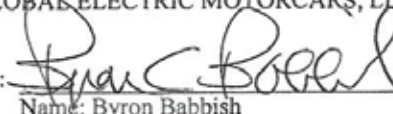
DCC 929, INC.

By: _____
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

DEALER CAPITAL, INC

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

GLOBAL ELECTRIC MOTORCARS, LLC

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

Signature Page to Master Transaction Agreement

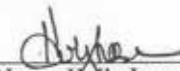
AMERICAN BANKRUPTCY INSTITUTE

09-50002-211g Doc 322-1 Filed 06/04/09 Entered 06/04/09 20:44:02 Exhibit A -
Purchase Agreement of 209 of 160

NEV MOBILE SERVICE, LLC

By: 
Name: Holly Leese
Title: Assistant Secretary

NEV SERVICE, LLC

By: 
Name: Holly Leese
Title: Assistant Secretary

PEAPOD MOBILITY LLC

By: _____
Name: Byron Babbish
Title: Assistant Secretary

Signature Page to Master Transaction Agreement

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

09-50002-1, Doc 3232-1 Filed 06/04/09 Entered 06/04/09 20:40:02 Exhibits -
Purchase Agreement Page 88 of 160

NEV MOBILE SERVICE, LLC

By: _____
Name: Holly Leese
Title: Assistant Secretary

NEV SERVICE, LLC

By: _____
Name: Holly Leese
Title: Assistant Secretary

PEAPOD MOBILITY LLC

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

Signature Page to Master Transaction Agreement

AMERICAN BANKRUPTCY INSTITUTE

09-50002-211g Doc 3232-1 Filed 06/04/09 Entered 06/04/09 20:44:02 Exhibit A -
Purchase Agreement of 209 of 160

TPF ASSET, LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

TPF NOTE, LLC

By: 
Name: Jan A. Bertsch
Title: President and Treasurer

UTILITY ASSETS LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

Signature Page to Master Transaction Agreement

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

09-50002-1, Doc 3032-1 Filed 06/04/09 Entered 06/04/09 20:47:02 Exhibits -
Purchase Agreement of 2009 of 160

CHRYSLER DUTCH HOLDING LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER DUTCH INVESTMENT LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER DUTCH OPERATING GROUP
LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

Signature Page to Master Transaction Agreement

AMERICAN BANKRUPTCY INSTITUTE

09-50002-211g Doc 322-1 Filed 06/04/09 Entered 06/04/09 20:44:02 Exhibit A -
Purchase Agreement of 2090 of 160

CHRYSLER INSTITUTE OF ENGINEERING

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

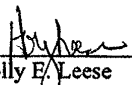
Signature Page to Master Transaction Agreement

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

09-50002-1, Filed 06/04/09 Entered 06/04/09 20:44:02 Exhibits -
09-50002-1, Dec 30, 2014 Filed 06/04/09 Entered 06/04/09 20:44:02 Exhibits -
Purchase Agreement of 2091 of 160

IN WITNESS WHEREOF, the party below has caused this Agreement to be executed as
of May 19, 2009 by its respective officer thereunto duly authorized.

ALPHA HOLDING LP

By: 
Name: Holly E. Leese
Title: Secretary

Signature Page to Master Transaction Agreement

DEFINITIONS ADDENDUM

DEFINED TERMS

“Accounting Principles” means GAAP applied on a basis consistent with the accounting principles, methods and policies used by the Company and the Company Subsidiaries, which principles, methods and policies are set forth on Section 1.01 of the Company Disclosure Letter (provided, that in the event of a conflict between GAAP and such accounting principles, methods and policies, GAAP shall prevail).

“Action” means any claim, action, suit, arbitration, inquiry or proceeding.

“Administrative Bar Date” means the date set by the Bankruptcy Court as the last day upon which administrative expense claims may be filed in the Bankruptcy Case.

“Affiliate” of any Person means another Person that directly or indirectly (including through one or more intermediaries) controls, is controlled by, or is under common control with, such first Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise. For purposes of this definition, Purchaser shall not be an “Affiliate” of any Selling Group Member or Fiat.

“Affiliate Contract” means a Contract between the Company or a Subsidiary thereof, on the one hand, and an Affiliate of the Company (including any Financial Services Companies), on the other hand.

“Alliance Agreements” means the (A) Master Industrial Agreement, (B) Operating LLC Agreement, and (C) Shareholder Agreement, including any related annexes or term sheets relating to each of the foregoing, as the case may be.

“Antitrust Laws” shall mean the Sherman Act, the Clayton Act, the HSR Act, the EC Merger Regulation, the Canadian Investment Regulations, the Mexican Federal Law on Economic Competition, in each case as amended, and all other federal, provincial, state and foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other Laws that (a) are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or the lessening of competition through merger or acquisition or (b) involve foreign investment review by Governmental Entities.

“Arms-Length Basis” means a transaction between two Persons that is carried out on terms no less favorable than the terms on which the transaction would be carried out by unrelated or unaffiliated parties, acting as a willing buyer and a willing seller, each acting in his own self-interest.

“Auburn Hills Agreement” means the Auburn Hills Agreement to be executed on or prior to the Closing, consistent with the form of agreement attached hereto as Exhibit C.

“Bankruptcy Case” means, collectively, the bankruptcy cases initiated by the filing of the Petitions.

“Bankruptcy-Related Fees” means any fees and expenses (including out of pocket expenses) incurred by or otherwise due from (whether or not billed) a Selling Group Member or any Subsidiary of a Selling Group Member related to the Bankruptcy Case, and regardless of when incurred or accrued, including the fees and expenses for any of the following: (i) counsel for the Company or any of its controlled Affiliates; (ii) financial advisors to the Company or any of its controlled Affiliates; (iii) counsel for the Committee of Unsecured Creditors; (iv) consultants, financial advisors, and/or accountants for the Committee of Unsecured Creditors; (v) any claims, noticing, and/or balloting agent or agents; (vi) any professional retained in the Bankruptcy Case; and (viii) the members of the Committee of Unsecured Creditors. For the avoidance of doubt, Bankruptcy-Related Fees do not include any fees and expenses incurred by Purchaser.

“Bidding Procedures Order” means an order of the Bankruptcy Court that is in form and substance reasonably acceptable to Fiat, US Treasury, Canada and the UAW that, among other things, finds, authorizes, directs and provides for (i) a sale process to approve this Agreement and the sale and assignment to Purchaser of the Purchased Assets and the Assumed Agreements or to such person (the “Successful Bidder”) as may submit and have accepted a higher and better qualified overbid submitted and accepted in accordance with the Bidding Procedures Order; (ii) the scheduling of a hearing to approve the foregoing and enter the Sale Order by no later than May 28, 2009 or such later date as may be agreed to by Purchaser in writing; (iii) the approval and authorization of the form, scope, timing and sufficiency of notice to all interested parties (including retirees, governmental entities and regulatory agencies, creditors, and counterparties to Assumed Agreements) and of publication notice of the hearing and of the bidding procedures and the procedures for the assumption and assignment of Assumed Contracts and request for approval of the Sale Order; (iv) the authorization and direction to the Sellers to comply with their obligations and undertakings in Articles V, VI and VII of this Agreement; (v) the establishment of criteria for a qualifying overbid, including (A) that the overbid includes an assumption of the UAW Active Labor Modifications and the GMAC Master AutoFinance Agreement, and execution of the UAW Retiree Settlement Agreement and (B) the requirement that the cash portion of such overbid exceed the cash portion of the Purchaser's bid by at least 5% (the “Minimum Initial Overbid Amount”) and be accompanied by an executed Purchase Agreement substantially similar to this Agreement and a good faith 10% deposit, forfeitable if the overbid is approved and the overbidder fails to close; (vi) the approval of payment of the Break-Up Fee to Fiat in accordance with Section 10.02(b); and containing such other terms and conditions as may be acceptable to Fiat and the Sellers.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in Torino, Italy or the City of New York.

“Business Plan” means the Business Plan that is included as part of the Final Joint Restructuring Plan.

“Canada” means the Canada Development Investment Corporation.

“Canada Loan Documents” means the Canada Loan Documents, substantially in the form attached hereto as Exhibit M.

“CGI Indemnity Assignment Agreement” means the indemnity assignment agreement to be executed by CGI and the Company substantially in the form of Exhibit D.

“Chrysler Name” means “Chrysler”, either alone or in combination with other words, graphics or designs, including all rights in said term as a trade name, trade mark, corporate name, service mark and domain name, and any confusingly similar variation, derivative or translation thereof.

“Class A Membership Interest” has the meaning set forth in the Operating LLC Agreement.

“Class B Membership Interest” has the meaning set forth in the Operating LLC Agreement.

“Closing Date VEBA Note” means the note to be issued by Purchaser to VEBA under the related indenture.

“Code” means the Internal Revenue Code of 1986, as amended through the date hereof.

“Collective Bargaining Agreement” means any written or oral agreement, understanding or mutually recognized past practice between the Company or any Company Subsidiary, and any labor organization with respect to the Company Employees, including, without limitation, the UAW Active Labor Modifications, but excluding the Company’s agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated October 12, 2007, between the Company and the UAW, the Settlement Agreement, dated March 30, 2008, between the Company and the UAW, as well as the Memorandum of Understanding Post-Retirement Medical Care, dated April 29, 2009, between the Company and the UAW.

“Company Disclosure Letter” means the schedule dated as of the date of this Agreement delivered by the Company to Fiat.

“Company Employees” means (a) each employee, officer or director of the Company or any Company Subsidiary (including (i) any current, former or retired employees or directors, (ii) employees or officers on long or short term disability, military or other leave of absence and (iii) employees on layoff status or with recall rights); (b) each consultant or other service provider of the Company or any Company Subsidiary who is a former employee, officer or director of the Company or any Company Subsidiary; and (c) each individual recognized under any Collective Bargaining Agreement as being employed by or having rights to employment by the Company or any Company Subsidiary. For the avoidance of doubt, Company Employees include all employees, whether or not Transferred Employees.

“Company IT Systems” means all IT Systems which are used or held for use in connection with the operation of the Company Business.

“Company Material Adverse Effect” means (a) a material adverse effect on the Purchased Assets or Assumed Liabilities, or the business, financial condition or results of operations of the Company Business (excluding for the avoidance of doubt, the Excluded Assets and Excluded Liabilities), taken as a whole or (b) any event that prevents or materially delays, or would be reasonably expected to prevent or materially delay, consummation by the Company or any Company Subsidiary, as applicable, of the Transactions or the performance by the Company or any Company Subsidiary of any of its material obligations under the Transaction Agreements and the Alliance Agreements; *provided*, that none of the effects or consequences of the following shall constitute a Company Material Adverse Effect: (i) any change or development in the United States financial, credit or securities markets, (ii) general economic or business conditions, (iii) political conditions, (iv) the implementation of the Business Plan, (v) the effects of a bankruptcy or insolvency of General Motors Corporation (including any supplier disruption caused thereby), (vi) the bankruptcy or insolvency of Sellers, or any actions or omissions by any person in connection therewith or (vii) general economic or industry conditions affecting the North American automobile manufacturing industry except to the extent that Sellers are disproportionately affected thereby.

“Company Subsidiary” means each Subsidiary of the Company.

“Computer Software” means any and all computer programs, including operating system and applications software, implementations of algorithms, program interfaces, and databases whether in source code or object code and all documentation, including user manuals, relating to the foregoing.

“Constitutive Documents” means, with respect to any juridicial Person, such Person’s articles or certificate of association, incorporation, formation or organization, bylaws, limited liability company agreement, partnership agreement or other constitutive document or documents, each in currently effective form as amended or updated from time to time.

“Contracts” means all written contracts, leases, licenses, arrangements, notes, bonds, mortgages, indentures, franchise agreements, insurance agreements and arrangements, instruments, commitments, undertakings and other agreements and binding obligations (including any amendments and other modifications thereto), whether written or, with respect to third parties only, oral, to which the Company, Purchaser, Fiat or any of their respective Subsidiaries is a party thereof or by which any of their respective businesses, properties or assets is bound.

“Control” (including the terms “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract or otherwise.

“Conveyance Documents” means instruments and documents necessary to convey the Purchased Assets to Purchaser as required hereunder and to evidence the assumption by Purchaser of the Assumed Liabilities as required hereunder, including appropriate quitclaim

deeds, bills of sale, assignments, assumptions and stock powers. The Conveyance Documents will not require any Seller to make any representation, warranty or covenant not also contained herein and will not require any Seller to indemnify or otherwise hold harmless any Person after the Closing.

“Conveyance Taxes” means any transfer, documentary, sales, use, stamp, registration and similar taxes, any conveyance fees, any recording charges and any similar fees and charges (including penalties and interest in respect thereof) imposed upon the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities or the conveyance of the property subject to the Auburn Hills Agreement, or the documents effectuating such transfers, in each case, pursuant to this Agreement.

“Copyright Licenses” shall mean all Contracts providing for the grant of any right to reproduce, publicly display, publicly perform, distribute, create derivative works of or otherwise exploit any works covered by any Copyright.

“Copyrights” shall mean all domestic and foreign copyrights, whether registered or unregistered, including, without limitation, all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship (including, without limitation, all marketing materials, all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof), and all reissues, renewals, restorations, extensions or revisions thereof.

“Daimler Agreement” means the consent and acknowledgement letter to be executed by the DC Contributors (as defined in the Original Contribution Agreement) on or prior to the Closing, which shall be substantially in the form attached hereto as Exhibit E, as it may be hereafter amended.

“Deferred Closing Agreement” means the Asset Purchase Agreement by and among Fiat, Purchaser, the Company and certain of its subsidiaries identified as Sellers therein executed as of the date hereof.

“Documents” means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.) and other similar materials to the extent related to the Company Business as presently conducted, in each case whether or not in electronic form.

“EDC Loan Agreement” means the Loan Agreement, dated as of March 30, 2009, by and among Chrysler Canada Inc., certain guarantors party thereto, and Export Development Canada, substantially in the form attached hereto as Exhibit M.

“Environmental Claim” means any and all written complaints, summons, citations, directives, orders, claims, litigation, investigations, notices of violation, judgments, administrative, regulatory or judicial actions, suits, demands or proceedings, or written notices of noncompliance or violation by any Governmental Entity or Person involving or alleging potential liability, or any claim or cause of action, whether such claim is known or unknown or asserted or unasserted, arising out of or resulting from any violation of Environmental Law or the presence or Release of Hazardous Materials from or relating to: (a) any assets, properties or businesses of the Company or any Company Subsidiary or any entity that is a predecessor to the Company or a Company Subsidiary; (b) any adjoining properties or businesses; or (c) any facilities receiving or handling Hazardous Materials generated by the Company or any Company Subsidiary or any entity that is a predecessor to the Company or a Company Subsidiary.

“Environmental Law” means any applicable federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, consent decree or judgment, in each case in existence at the date hereof, relating to the management of, or Release or Remedial Actions involving, Hazardous Materials, the exposure of humans to Hazardous Materials, pollution, or the protection of human health and the environment, including surface water, groundwater, ambient air, surface or subsurface soil, natural resources or wildlife habitat.

“Environmental Liabilities” means any monetary obligations, losses, liabilities (including strict liability), damages, punitive damages, consequential damages, treble damages, natural resource damages, costs and expenses (including all reasonable out-of-pocket fees, disbursements and expenses of counsel, out-of-pocket expert and consulting fees and out-of-pocket costs for environmental site assessments, remedial investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of a Release or threatened Release of Hazardous Materials, the presence of Hazardous Materials in violation of Environmental Laws or any Environmental Claim filed by any Governmental Entity or any third party that relates to any violation of, or liability under, Environmental Laws, any Remedial Actions, or any Releases or threatened Releases of Hazardous Materials from or onto (a) any property or facility presently or formerly owned by the Company, or any Company Subsidiary or any entity that is a predecessor to the Company or a Company Subsidiary, or (b) any facility which received Hazardous Materials generated by the Company or any Company Subsidiary or any entity that is a predecessor to the Company or a Company Subsidiary.

“Environmental Lien” means any Lien in favor of any Governmental Entity authorized under any Environmental Law as a result of an Environmental Claim requiring a deed restriction, covenant, easement, land use restriction or similar encumbrance filed or recorded in accordance with Environmental Law.

“Environmental Permit” means any permit, approval, license or other authorization required under or issued pursuant to any applicable Environmental Law.

“Equity Interests” means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, options, or

rights for the purchase or other acquisition from such Person of such shares (or such other ownership or profits interests), and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is part of the same controlled group, or under common control with, or part of an affiliated service group that includes any of the Sellers, within the meaning of Code Section 414(b), (c), (m), or (o) or ERISA Section 4001(a)(14).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Subsidiary” means any direct or indirect Subsidiary of a Seller that has been designated as such by the Purchaser in accordance with Section 2.14.

“Fiat Disclosure Letter” means the schedule, dated as of the date hereof, delivered by Fiat to the Company in connection with this Agreement.

“Fiat IT Systems” means all IT Systems which are used or held for use in connection with the operation of the Fiat Business.

“Fiat Key Personnel” means Giorgio Fossati, Roberto Russo and Silvia Verneti.

“Fiat Material Adverse Effect” means (a) a material adverse effect on the business, financial condition, or results of operations of Fiat and its Affiliates, taken as a whole or (b) any event that prevents or materially delays, or would be reasonably expected to prevent or materially delay, consummation by Fiat or an Affiliate of Fiat, as applicable, of the Transactions or the performance by Fiat or an Affiliate of Fiat, as applicable, of any of its material obligations under the Transaction Agreements and the Alliance Agreements; *provided* any change or development in Italy or the United States financial, credit or securities markets, general economic or business conditions, or political or regulatory conditions shall not be considered when determining whether a Fiat Material Adverse Effect shall have occurred. Notwithstanding the proviso to clauses (a) and (b) of the preceding sentence, if an event described in the proviso to such clauses has had a disproportionate effect on the business, financial condition, or results of operations of Fiat or any Affiliate of Fiat, as applicable, taken as a whole, relative to other major European participants in the auto industry, then, the incremental impact of such event on Fiat relative to other major European participants in the auto industry shall be taken into account for purposes of determining whether a Fiat Material Adverse Effect has occurred or is reasonably expected to occur.

“Final Joint Restructuring Plan” means the Final Joint Restructuring Plan (including the Business Plan incorporated therein) in the form attached hereto as Exhibit F.

“Financial Services Company” means FinCo Intermediate HoldCo LLC and each of its Subsidiaries.

“GAAP” means United States generally accepted accounting principles in effect from time to time applied consistently throughout the periods involved, as amended.

“GMAC Master AutoFinance Agreement” means the Master AutoFinance Agreement to be executed by GMAC LLC and the Company on or prior to the Closing, which agreement shall be substantially on the same terms as the term sheet attached hereto as Exhibit A.

“Governmental Entity” any supranational, national, Federal, provincial, state or local government (whether domestic or foreign), any court of competent jurisdiction or any administrative, regulatory or other governmental agency, commission, arbitral body or authority (whether domestic or foreign, including private arbitrators or arbitral panels to the extent empowered to issue binding decisions).

“Governmental Order” means any order, writ, ruling, judgment, injunction, decree, stipulation, determination or award entered by, or with, or issued by any Governmental Entity.

“Hazardous Material” means (a) any petroleum, petroleum product, by-product or breakdown product, radioactive material, asbestos-containing material or polychlorinated biphenyl; (b) any chemical, material or substance defined, listed, regulated or otherwise classified as toxic or hazardous, as a pollutant or contaminant, or as hazardous waste, medical waste, biohazardous or infectious waste or special waste or solid waste under any applicable Environmental Law; (c) any substance exhibiting a hazardous waste characteristic including corrosivity, ignitability, toxicity or reactivity as well as any explosive material; or (d) any other material that is regulated pursuant to any Environmental Law due to a potential to impair human health including material containing asbestos, lead, mold, manganese or silica.

“Health and Safety Laws” means the Occupational Safety and Health Act of 1970, as amended, together with all other applicable Laws (including rules, regulations, codes, common law, plans, injunctions, judgments, Orders, decrees, rulings and charges thereunder) of any Governmental Entity concerning public health and safety, or employee health and safety.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Indebtedness” of any Person means, without duplication, (a) all indebtedness of such Person (including, in the case of the Company or a Company Subsidiary, intercompany loans between such Person, on the one hand, and either CGI or Daimler AG or an Affiliate of either of CGI or Daimler AG (other than the Company or a Company Subsidiary), on the other hand), whether secured or unsecured, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all indebtedness of such Person for the deferred purchase price of property or services, excluding trade accounts payable, (d) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all indebtedness of such Person secured by a purchase money mortgage or other

Lien to secure all or part of the purchase price of the property subject to such mortgage or Lien, (f) all the obligations of such Person under leases which shall have been or are required to be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable as a lessee, (g) all obligations of such Person in respect of unreimbursed amounts under drawn letters of credit, (h) all direct or indirect guarantees by such Person of Indebtedness of others, (i) all Indebtedness of others which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a creditor against loss, and (j) all interest, fees, penalties (including prepayment penalties or premiums) and other expenses owed (in connection with the repayment thereof) by such Person with respect to the indebtedness or obligations referred to in any of clauses (a) through (i) above.

“Indemnified Party” means a Fiat Indemnified Party or a Company Indemnified Party, as the case may be.

“Indemnifying Party” means the Company pursuant to Section 9.02 and Fiat or the Purchaser pursuant to Section 9.03, as the case may be.

“Intellectual Property” shall mean (a) Patents, Trademarks, domain names and Copyrights, (b) confidential and proprietary information, including trade secrets, know-how and inventions, (c) registrations and applications for registration of the foregoing, and (d) any goodwill associated with the foregoing..

“Inventory” means any and all inventory, supplies, finished goods and goods-in-transit of Sellers or any of their Subsidiaries.

“IRS” means the Internal Revenue Service of the United States.

“IT Systems” means all Computer Software and all electronic data processing, data communication lines, telecommunication lines, firmware, hardware, Internet websites and other information technology equipment.

“Knowledge” means (i) with respect to the Company, the actual knowledge after reasonable inquiry of any of the Persons set forth in Section 1.01 of the Company Disclosure Letter, (ii) with respect to Fiat, the actual knowledge after reasonable inquiry of any of the Persons set forth in Section 1.01 of the Fiat Disclosure Letter and (iii) with respect to Purchaser, the actual knowledge after reasonable inquiry of any of the Persons set forth in Section 1.01 of the Purchaser Disclosure Letter.

“Law” means any federal, national, international, supranational, state, provincial, local or similar (including of any jurisdiction within or outside the United States) statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

“Liabilities” means any and all debts, liabilities and obligations of any kind whatsoever, whether asserted or unasserted, accrued or fixed, contingent or absolute, determined or determinable, or otherwise, including those arising under any Law, Action or Governmental Order and those arising under any Contract.

“Licenses” means Copyright Licenses, Trademark Licenses and Patent Licenses.

“Liens” means any mortgages, deeds of trust, deeds to secure debt, pledges, liens (including liens imposed by Law, such as, but not limited to, mechanics liens), claims, security or other interests (including any reversionary interests), conditional and installment sale agreements or other title retention agreements, options to purchase or lease real property, charges, easements and other conditions, covenants, zoning and any other restrictions, encumbrances or other matters affecting title of any kind.

“LLC Act” means Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time.

“Loan and Security Agreement” means the Loan and Security Agreement by and between the Company, as Borrower, and U.S. Treasury, as Lender, dated as of December 31, 2008.

“Management Services Agreement” means the Management Services Agreement, to be executed on or prior to the Closing, which is substantially in the form attached hereto as Exhibit O.

“Master Industrial Agreement” means the Master Industrial Agreement, including any related annexes or term sheets (or the definitive agreements for the matters set forth in such term sheets) to be executed on or prior to the Closing, substantially in the form attached hereto as Exhibit G.

“Material Licenses” means all Licenses that are, individually or in the aggregate, material to the implementation of the Business Plan.

“Membership Interest” has the meaning set forth in the Operating LLC Agreement.

“Operating LLC Agreement” means the Amended and Restated Operating LLC Agreement of Purchaser to be executed at the Closing, which is substantially in the form attached hereto as Exhibit H.

“Ordinary Course of Business” means the conduct of the Company Business in accordance with Company’s normal day-to-day customs, practices and procedures, consistent with past customs, practices and procedures.

“Original Contribution Agreement” means the Contribution Agreement, dated as of May 14, 2007, among CGI, DaimlerChrysler North America Finance Corporation, DaimlerChrysler Holding Corporation and DaimlerChrysler AG.

“Patent Licenses” shall mean all Contracts providing for the grant of any right to manufacture, use, lease, or sell any invention, design, idea, concept, method, technique, or process covered by any Patent.

“Patents” shall mean all domestic and foreign letters patent, design patents, utility patents, industrial designs, and all intellectual property rights in inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how,

formulae, and other general intangibles of like nature, all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office, or in any similar office or agency of the United States or any other country or any political subdivision thereof), and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Permitted Liens” means (a) statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings (*provided* that, only to the extent that such liens relate to a period ending on or before December 31, 2008, the full amount of any such contested liability is accrued or reserved for as a liability in the audited consolidated balance sheet of the Company at December 31, 2008), (b) mechanics’, carriers’, workers’, repairers’ and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of Purchaser, the Company or any Company Subsidiary, or Fiat or any Subsidiary of Fiat, as applicable, or the validity or amount of which is being contested in good faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers’ compensation, unemployment insurance or other social security legislation), (c) zoning, entitlement, conservation restriction and other land use and environmental regulations by one or more Governmental Entities which do not materially interfere with the present use of the assets of Purchaser, the Company and the Company Subsidiaries, or of Fiat and its Subsidiaries, as applicable, (d) all covenants, conditions, restrictions, easements, encroachments, charges, rights-of-way, liens, encumbrances and any similar matters of record affecting title to real property owned or leased by Purchaser, the Company or any of the Company Subsidiaries or Fiat and its Subsidiaries, as applicable, which do not materially interfere with the present use of such property, (e) any subleases, licenses, sublicenses or occupancy agreements affecting any real property owned or leased by the Company or any of Purchaser, the Company Subsidiaries or Fiat and its Subsidiaries, as applicable, (f) survey exceptions and matters as to real property of Purchaser, the Company and the Company Subsidiaries or Fiat and its Subsidiaries, as applicable, which would be disclosed by an accurate survey or inspection of such real property and do not materially impair the occupancy or current use of such real property, (g) prior to the Closing, liens arising under the Prepetition Credit Facilities, U.S. Treasury Loan Documents, the Supplier Support Credit Agreement, EDC Loan Agreement, the Canadian Loan Documents and Warranty Commitment Program, and (h) following the Closing, liens arising under the U.S. Treasury Loan Documents, the Canada Loan Documents, the Supplier Support Credit Agreement, EDC Loan Agreement and the Warranty Commitment Program.

“Person” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“Prepetition Credit Facilities” means (i) the Amended and Restated First Lien Credit Agreement, dated as of November 29, 2007, among the Company, Carco Intermediate Holdco II LLC, the lenders party thereto, and JPMorgan Chase Bank, N.A., as administrative agent, and others and (ii) the Second Lien Term Loan Agreement, dated as of August 3, 2007,

among the Company, Carco Intermediate Holdco II LLC, the lenders party thereto, and JPMorgan Chase Bank, N.A., as administrative agent, and others.

“PP&E” means all machinery, equipment, furniture, buildings, structures, fixtures, furnishings, vehicles, leasehold improvements and other tangible personal property (other than Inventory), including, without limitation, all such artwork, desks, chairs, tables, computer and computer-related hardware and equipment, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies and any such property that is leased to Sellers.

“Products” means any and all products developed, designed, manufactured, marketed or sold in connection with the Company Business, including all parts and components of the foregoing manufactured or licensed by any Selling Group Member.

“Product Liability Claim” means any Action or action taken or otherwise sponsored by a customer arising out of, or otherwise relating to in any way in respect of claims for personal injury, wrongful death or property damage resulting from exposure to, or any other warranty claims, refunds, rebates, property damage, product recalls, defective material claims, merchandise returns and/or any similar claims, or any other claim or cause of action, whether such claim is known or unknown or asserted or unasserted with respect to, Products or items purchased, sold, consigned, marketed, stored, delivered, distributed or transported by the Company Business, any Selling Group Member or any of its Subsidiaries, whether such claims or causes of action are known or unknown or asserted or unasserted.

“Purchaser Disclosure Letter” means the schedule, dated as of the date hereof, delivered by Purchaser to the Company in connection with this Agreement.

“Purchaser Material Adverse Effect” means any event that prevents or materially delays, or would be reasonably expected to prevent or materially delay, consummation by Purchaser of the transactions contemplated hereby or the performance by Purchaser of any of its material obligations under this Agreement, any Alliance Agreement or any Transaction Agreement.

“Registered” means issued by, registered with, renewed by or the subject of a pending application before, any Governmental Entity or Internet domain name registrar.

“Regulation S-K” means Regulation S-K under the Securities Act and the Exchange Act.

“Regulations” means the Treasury regulations promulgated under the Code, as in effect on the date hereof.

“Release” means any actual or threatened release, spill, emission, leaking, dumping, abandonment, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration in, into, onto or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

“Remedial Action” means (a) all actions taken to clean up, remove, remediate, contain, treat, monitor, assess, evaluate, neutralize or in any other way address Hazardous Materials in the indoor or outdoor environment; (b) all actions taken to prevent or minimize a Release or threatened Release of Hazardous Materials so such Hazardous Materials do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; or (c) all actions taken to perform pre-remedial studies and investigations and post-remedial operation and maintenance activities.

“Rights” means, with respect to any Person, securities or obligations convertible into or exercisable or exchangeable for, or giving any other Person any right to subscribe for or acquire, or any options, calls, warrants, performance awards, units, dividend equivalent awards, deferred rights, “phantom” stock or other equity or equity-based rights or commitments relating to, or any stock appreciation right or other instrument the value of which is determined in whole or in part by reference to the market price of or value for or which has the right to vote with, shares of capital stock or other voting securities or equity interests of such first Person.

“Sale Order” means an order of the Bankruptcy Court substantially in the form attached as Exhibit P with such changes as may be approved by the Purchaser, Fiat, the US Treasury, Canada and UAW, such approval in the case of ministerial or other immaterial changes not to be unreasonably withheld or delayed, provided that notwithstanding the foregoing nothing in the Sale Order shall alter or amend this Agreement (for the avoidance of doubt, including all exhibits thereto) or the underlying commercial understanding reflected herein (and therein), that, among other things, finds and provides that (i) the Purchased Assets sold to Purchaser pursuant to this Agreement shall be transferred to Purchaser free and clear of all Liens (other than Liens created by Purchaser) and all liabilities, causes of action, obligations, demands, guaranties, rights, restrictions, remedies, claims and matters of any kind or nature whatsoever, whether at law or in equity, including without limitation, free and clear of any rights or claims based on theories of transferee or successor liability under any applicable law, statute, rule, regulation, common law or equitable principle of any nation or government or any state, province, municipality, territory or political subdivision thereof or located therein, whether arising before or after the filing of the Petitions and whether imposed by agreement, understanding, law, equity, regulation, custom or otherwise, save and excepting only those liabilities expressly assumed by Purchaser in writing under this Agreement; (ii) Purchaser has acted in “good faith” within the meaning of and is entitled to the protections of Section 363(m) of the Bankruptcy Code; (iii) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm’s length bargaining positions; (iv) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof, as provided in Section 11.09(a) hereof, and over any claims against Purchaser that are not Assumed Liabilities hereunder; (v) this Agreement and the transactions contemplated hereby may be specifically enforced against and binding upon, and not subject to rejection or avoidance by, the Sellers or their estates or any chapter 7 or chapter 11 trustee of the Sellers or other representative of their respective estates; (vi) the Assumed Contracts have been properly assumed and assigned to Purchaser, with only such exceptions as Purchaser may agree in writing; (vii) the UAW Retiree Settlement Agreement is approved in all respects, and (viii) a super-priority administrative lien on the proceeds of any tax refunds (including interest thereon), returns of withholding or similar payments, and any proceedings of tax sharing, contribution or similar agreements exist to secure the payment of tax indemnities due under this Agreement,

other than refunds required to be paid to other parties pursuant to the terms of the Original Contribution Agreement, or if entered into pursuant to Section 5.11, the Tax Settlement Agreement.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Shareholder Agreement” means the Shareholder Agreement to be executed on or prior to the Closing, which is substantially in the form attached hereto as Exhibit I.

“Significant Subsidiary” means (A) with respect to the Company, the Subsidiaries of the Company set forth in Section 1.01 of the Company Disclosure Letter and each Subsidiary of the Company that is or will be a party to a Transaction Agreement, including each of the Sellers under this Agreement, and (B) with respect to Fiat, the Subsidiaries of Fiat set forth in Section 1.01 of the Fiat Disclosure Letter and each Subsidiary of Fiat that is or will be a party to a Transaction Agreement.

“Subsidiary” of any Person means another Person, an amount of the voting securities, other voting rights or voting partnership interests of which are sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, more than 50% of the equity interests of which) is owned directly or indirectly by such first Person. For purposes of this Agreement, Purchaser shall not be a “Subsidiary” of the Company.

“Supplier Support Credit Agreement” means the Credit Agreement, dated as of April 7, 2009, by and between Chrysler Receivables SPV LLC and the United States Department of Treasury.

“Tax” or “Taxes” means any and all taxes of any kind including any similar charges, levies or other similar assessments or Liabilities, including income, gross receipts, ad valorem, premium, value-added, consumption, excise, real estate, real property, personal property, sales, use, transfer, withholding, employment, unemployment insurance, social security, business license, business organization, environmental, workers compensation, profits, severance, stamp, occupation, windfall profits, customs, duties, payroll, franchise taxes or other taxes (together with any and all interest, penalties and additions to tax imposed with respect thereto) imposed by any Government Authority, or which are payable to any Government Authority.

“Tax Indemnity Agreement” means the Tax Indemnity Assignment and Assumption Agreement, dated as of April 29, 2009, between CGI and the Company.

“Tax Returns” means any and all returns, reports and forms (including elections, declarations, amendments, schedules, information returns or attachments thereto) required to be filed with a Governmental Entity with respect to Taxes.

“Third Party Transaction Agreements” means the (A) GMAC Master AutoFinance Agreement, (B) Auburn Hills Agreement, (C) CGI Indemnity Assignment

Agreement, (D) Daimler Agreement, (E) UAW Retiree Settlement Agreement, (F) U.S. Treasury Loan Documents and (G) Canada Loan Documents, including any related annexes or term sheets relating to each of the foregoing, as the case may be; provided, however, for the purposes of the closing conditions set forth in Sections 8.01 and 8.02, Third Party Transaction Agreements shall not include the agreements set forth in clause (A), (B), (C) or (D).

“Trademark Licenses” shall mean all licenses, contracts or other agreements, whether written or oral, providing for the grant of any right concerning any Trademark.

“Trademarks” shall mean all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a’s, Internet domain names, trade styles, designs, logos and other source or business identifiers and all general intangibles of like nature, all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by such marks.

“Transaction Agreements” means this Agreement and the other agreements and instruments to be executed and delivered in connection with this Agreement, including the (A) GMAC Master AutoFinance Agreement, (B) Auburn Hills Agreement, (C) CGI Indemnity Assignment Agreement, (D) Daimler Agreement, (E) Master Industrial Agreement, (F) Operating LLC Agreement, (G) Shareholder Agreement, (H) the UAW Retiree Settlement Agreement, (I) U.S. Treasury Loan Documents, (J) Canada Loan Documents, (K) Transition Services Agreement and (L) Management Services Agreement, including any related annexes or term sheets relating to each of the foregoing, as the case may be; provided, however for purposes of the closing conditions set forth in Sections 8.01 and 8.02, Transaction Agreements shall not include the agreements set forth in the clauses (A), (B), (C) or (D).

“Transition Services Agreement” means the Transition Services Agreement between the Company and Purchaser, in the form attached as Exhibit Q hereto.

“Transactions” means the transactions contemplated by the Transaction Agreements.

“UAW” means The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

“UAW Active Labor Modifications” means the modifications to the Collective Bargaining Agreement which are consistent with the term sheet attached hereto as Exhibit J, which modifications have been ratified by the UAW membership.

“UAW Retiree Settlement Agreement” means the Retiree Settlement Agreement to be executed at the Closing substantially in the form attached hereto as Exhibit K.

“U.S. Treasury” means the U.S. Department of the Treasury.

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“U.S. Treasury Loan Documents” means the U.S. Treasury Loan Documents to be executed on or prior to the Closing, substantially in the form attached hereto as Exhibit N.

“VEBA Trust” means the trust fund established pursuant to the Settlement Agreement, dated March 30, 2008, as amended, supplemented, replaced or otherwise altered from time to time, between the Company, the UAW, and certain class representatives, on behalf of the class of plaintiffs in the class action of Int’l Union, UAW, et al. v. Chrysler, LLC, Case No. 07-74730 (E.D. Mich. filed Oct. 11, 2007).

“Warranty Commitment Program” means the program established by the United States Department of the Treasury to ensure that the limited warranty obligations of the Company and its Subsidiaries with respect to vehicles sold from March 30, 2009 through June 30, 2009 are honored, as more fully described in the Administration Agreement between Chrysler Warranty SPV LLC, Chrysler LLC, Chrysler Motors LLC, Chrysler Canada, Inc., Chrysler de Mexico S.A. de C.V., and Chrysler International Corporation dated as of April 29, 2009, and any comparable program established by the Canadian government with respect to vehicles sold in Canada.

OTHER DEFINITIONS. Terms not in the Definitions Addendum may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning indicated throughout this Agreement. The following terms have the meanings set forth in the Sections set forth below:

<u>Definition</u>	<u>Section</u>
2008 Financial Statements	Section 3.06(a)
Agreement	Preamble
Allocation Statement	Section 7.08
Applicable Employee	Section 6.01
Assumed Contracts	Section 2.06(a)
Assumed Liabilities	Section 2.08
Auction Date	Section 5.18(b)
Audited Financial Statements	Section 3.06
Balance Sheet	Section 3.06
Bankruptcy and Equity Exception	Section 3.04
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Benefit Plan	Section 3.15
Break-Up Fee	Section 10.2(b)
Canadian Investment Regulations	Section 3.05
Canadian LLC Interest	Recitals
Cash Consideration	Recitals
Certificate of Amendment	Section 5.19(b)
CGI	Section 3.08
Closing	Section 2.02
Closing Date	Section 2.02
Company	Preamble
Company Business	Recitals
Company Contracts	Section 3.10
Company Key Personnel	Section 3.07(c)
Company Indemnified Party	Section 9.03
Competing Transaction	Section 5.18(b)
Confidentiality Agreement	Section 5.04
Cure Amounts	Section 2.10
Daimler Transactions	Section 5.07
Delayed Jurisdiction	Section 5.05(g)
Disqualified Individual	Section 3.15
EC Merger Regulation	Section 3.05
End Date	Section 10.01(c)
Equity Subscription Agreement	Recitals
Excluded Assets	Section 2.07
Excluded Contracts	Section 2.07(a)
Excluded Leased Real Property	Section 2.07(e)
Excluded Liabilities	Section 2.09

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<u>Definition</u>	<u>Section</u>
Excluded Owned Real Property	Section 2.07(d)
Excluded Plans	Section 2.07(r)
Existing Internal VEBA	Section 6.08
Faurecia	Section 2.09(k)
FCPA	Section 3.22
Fiat	Preamble
Fiat Indemnified Party	Section 9.02
Fiat Sub	Section 4A.06
Financial Statements	Section 3.06
Fundamental Representations	Section 9.01
HoldCo	Section 3.08
Included Plans	Section 2.06(r)
Information	Section 5.04
Loss	Section 9.04(c)
Minimum Initial Overbid Amount	Defined Terms
NAFTA Region	Recitals
Necessary Consent	Section 2.11
Ordinary Course of Business	Defined Terms
Other LLC Interest	Recitals
Pension Plan	Section 3.15
Permits	Section 3.12
Petitions	Recitals
Petition Date	Section 5.18(b)
Purchased Assets	Section 2.06
Purchased Companies	Section 2.06(g)
Purchased Entity	Section 2.06(g)
Purchased Inventory	Section 2.06(i)
Purchased Leased Real Property	Section 2.06(e)
Purchased Owned Real Property	Section 2.06(d)
Purchaser	Preamble
Restructuring Transactions	Section 5.06
Resolution Committee	Section 5.10
Sale Motion	Section 5.18(a)
Schedule of Members	Recitals
Sellers	Preamble
Selling Group Member	Preamble
Successful Bidder	Defined Terms
Target Closing Date	Section 5.05(a)
TARP	Section 3.07(c)
Tax Settlement Agreement	Section 5.11
Third Party Claim	Section 9.05
Trade Payables	Section 2.08(b)
Trade Receivables	Section 2.06(b)
Transferred Employee	Section 6.01
UST LLC Interest	Recitals

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Definition

VEBA LLC Interest

Viper Assets

Section

Recitals

Section 2.15(a)

EXECUTION COPY

**AMENDMENT NO. 1 TO
 MASTER TRANSACTION AGREEMENT**

This AMENDMENT NO. 1, dated as of May 31, 2009 (this “Amendment”), to the Master Transaction Agreement, dated as of April 30, 2009 (the “MTA”), among Fiat S.p.A., a *Società per Azioni* organized under the laws of Italy (“Fiat”), New CarCo Acquisition LLC, a Delaware limited liability company (“Purchaser”), Chrysler LLC, a Delaware limited liability company (the “Company”) and the Subsidiaries of the Company identified on the signature pages thereto (each of the Company and such Subsidiaries, a “Seller” or “Selling Group Member” and, collectively, “Sellers”). All capitalized terms used but not defined herein have the meanings set forth in the MTA.

WHEREAS, Fiat, Purchaser and Sellers wish to amend the MTA to, among other things, allow Purchaser to use the name “Chrysler Group LLC,” to prohibit certain Subsidiaries of Sellers from using the “Chrysler” name following the Closing Date, to change the location of the Closing, to change the deadline for Purchaser to make certain designations and to make the other changes set forth herein, all as more fully set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Section 2.02 of the MTA shall be amended to replace the phrase “Sullivan & Cromwell LLP, 1701 Pennsylvania Ave, N.W., Washington, D.C. 20006-5805 at 10:00 a.m. Washington D.C. time on the second Business Day following” starting on the fourth line thereof with “Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281 on the Business Day of”.
2. Section 2.03(a) of the MTA shall be amended to add after the term “Purchased Companies” on the second line thereof:

“except for such stock certificates or similar documents representing all of the outstanding shares of capital stock or other equity interests of the Designated Purchased Companies”
3. Section 2.03(c) of the MTA shall be amended to add after the term “a party thereto” on the third line thereof:

“except for such counterparts to each Conveyance Document to which the Company or an Affiliate of the Company is a party in connection with the delivery of the stock certificates or similar documents representing all of the outstanding shares of capital stock or other equity interests of the Designated Purchased Companies.”
4. Section 2.03(d) of the MTA shall be amended in its entirety to read as follows:

“(d) a certificate reasonably satisfactory in form and substance to Fiat of the Chief Executive Officer and Chief Financial Officer of the

Company certifying as to the matters set forth in Section 8.02(a) and a certificate reasonably satisfactory in form and substance to Fiat of the Secretary of the Company certifying as to the matters set forth in Section 8.02(f);”

5. Section 2.03(e) of the MTA shall be amended in its entirety to read as follows:

“(e) A certificate signed by an appropriate executive officer of the Company with respect to the matters set forth in Section 7.01 (which, for the avoidance of doubt, will be deemed to be a representation under Article III hereof, but such representation will not be considered a Fundamental Representation or a representation made pursuant to Section 3.16 for any purposes hereof);”

6. Section 2.04(b) of the MTA shall be amended in its entirety to read as follows:

“(b) counterparts of each Conveyance Document, the Master Industrial Agreement and each Transaction Agreement to which Purchaser or its designee is a party executed by Purchaser or its designee, as applicable; except for such counterparts to each Conveyance Document to which Purchaser or its designee is a party in connection with the delivery of the stock certificates or similar documents representing all of the outstanding shares of capital stock or other equity interests of the Designated Purchased Companies.”

7. Section 2.06(b) of the MTA shall be amended in its entirety to read as follows:

“(b) trade and account receivables, including all accounts receivable owed to a Selling Group Member by a Purchased Company, excluding accounts receivable owed to a Selling Group Member by another Selling Group Member (“Trade Receivables”);”

8. The MTA shall be amended to add a new Section 2.06(s) thereto as follows:

“(s) all of the deposit accounts and securities accounts of the Sellers and each Purchased Company, and all cash, cash equivalents, securities and other investment property therein, other than as provided in Section 2.07(b) and Section 2.07(t).”

9. Section 2.07(b) of the MTA shall be amended in its entirety to read as follows:

“(b) restricted or escrowed cash, cash equivalents or marketable securities relating to Excluded Liabilities, Excluded Contracts and Letters of Credit which are not to be replaced under Section 5.20;”

10. Section 2.07(r) of the MTA shall be amended in its entirety to read as follows:

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“(r) those assets set forth on Section 2.07(r) of the Company Disclosure Letter;”

11. The MTA shall be amended to add a new Section 2.07(s), immediately following Section 2.07(r). Section 2.07(s) shall read:

“(s) trade and account receivables that are excluded from or not described in Section 2.06(b); and”

12. The MTA shall be amended to add a new Section 2.07(t), immediately following Section 2.07(s) added pursuant to Section 11 above. Section 2.07(t) shall read

“(t) the deposit accounts listed on Section 2.07(t) of the Company Disclosure Schedule and the cash and cash equivalents therein, but only to the extent of the amount set forth on Section 2.07(t) of the Company Disclosure Letter.”

13. Section 2.08(b) of the MTA shall be amended in its entirety to read as follows:

“(b) all trade or account payables that would be required by GAAP (disregarding intercompany consolidation rules) to be reflected as such on a balance sheet of the Sellers as of the Closing, including all accounts payable due from a Selling Group Member to a Purchased Company, whether or not invoiced prior to Closing, excluding accounts payable due from a Selling Group Member to another Selling Group Member, and excluding accounts payable to any supplier that is not a party to any Assumed Contract and any accounts payable that were not incurred in the ordinary course of the business of the Seller (“Trade Payables”);”

14. Section 2.08(g) of the MTA shall be amended to insert the following between the word “warranties” on the first line thereof and the comma on the first line thereof:

“(including extended services contracts purchased from one of the Debtors)”.

15. The MTA shall be amended to add a new Section 2.08(o), immediately following Section 2.08(n). Section 2.08(o) shall read:

“(o) Liabilities for additional repairs, refund or replacement of a defective vehicle (including reasonable attorneys fees, if any, required to be paid under such Lemon Laws and necessarily incurred in obtaining those remedies), whether for claims, causes of action, or regulatory obligations arising now or in the future, under Lemon Laws on vehicles manufactured by the Sellers in the five (5) years prior to the Closing (without extending any statute of limitations provided under such Lemon Laws), but, in any event, not including punitive, exemplary, special, consequential or multiple damages or penalties and not including any claims for personal injury or other consequential damages that may be asserted in relationship to such vehicles under the Lemon Laws; and”

16. The MTA shall be amended to add a new Section 2.08(p) immediately following new Section 2.08(o) (pursuant to Section 15 hereof) as follows:

“(p) the Liabilities assumed by the Purchaser pursuant to Section 2.09(d), but only to the extent assumed as described therein.”
17. Section 2.09(d) of the MTA shall be amended by adding the following text immediately prior to the semi-colon appearing at the end thereof:

“, except for claims arising in a State in which Purchaser has specifically agreed with such State to assume such Liabilities and Purchaser has notified the Sellers in writing of such fact.”
18. Section 2.12 of the MTA shall be amended to add the following between the word “Agreement” on the sixth line thereof and the second appearance of the word “and” on the sixth line thereof:

“(including any right or interest that Sellers possess or are entitled to possess in the Purchased Owned Real Property)”.
19. Section 2.15 of the MTA shall be amended and restated in its entirety to read as follows:

“Section 2.15 Viper. Purchaser agrees to purchase, and the Sellers agree to sell, Intellectual Property and Purchased Inventories that relate solely to vehicle production of the Chrysler Dodge Viper SRT10 vehicle models and are not necessary or useful in any other line of business (the “Viper Assets”) on the Closing Date, as if the Viper Assets were being purchased and sold as Purchased Assets pursuant to Section 2.06. For the purposes of this Section 2.15, vehicle production means the production and sale of Chrysler Dodge Viper SRT10 vehicle models, engines and accessories (including related non-core Viper branded merchandise (including toy vehicle replicas, clothing and video games) and marine engines based on the Chrysler Dodge Viper SRT10 V-10 engine, as conducted by the Sellers prior to the Closing.”
20. The MTA shall be amended to a new Section 2.16 immediately following Section 2.15. Section 2.16 shall read:

“Section 2.16 Deferral of Certain Purchased Company Closings. Notwithstanding anything in this Article II to the contrary, Purchaser and the Company shall mutually agree for delivery of the stock certificates or similar documents representing all of the outstanding shares of capital stock or other equity interests of the Purchased Companies that are not organized under the laws of any State of the United States or the District of Columbia or the countries of Mexico or Canada (or any state, province or territory thereof), which such Purchased Companies shall be mutually agreed upon by each of Purchaser and the Company at any time prior to the Closing (such Purchased Companies, the “Designated Purchased

Companies” and such stock certificates or similar documents, the “Transfer Documents”). The Transfer Documents shall be delivered to Purchaser or its designee by the relevant Seller on an alternative date after the Closing Date (the “Second Date”). The Second Date shall not be less than four (4) nor more than eight (8) Business Days following the Closing Date and shall be specified by the Purchaser within three (3) Business Days of the Closing Date. Following the actions required to be taken by this Section 2.16 on the Second Date, the Purchaser and the Sellers shall comply with Section 2.12 as if the Second Date transactions occurred at the Closing. Notwithstanding the foregoing, subject to the terms and conditions of this Agreement and unless otherwise specified by Purchaser and the Company at any time prior to the Closing, the Transfer Documents representing the equity interests of each of Chrysler Chile Importadora Limitada and Chrysler Group Taiwan Sales Limited (which shall also be considered Designated Purchased Companies for purposes of Sections 2.03 and 2.04) shall be delivered to Purchaser or its designee by the relevant Seller within the later of (x) five (5) local business days (with a “local business day” being a day other than a Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in the applicable jurisdiction of Chile or Taiwan) or (y) unless waived by Purchaser, the minimum period required under applicable Law, in each case, after the filings under Antitrust Laws (including any foreign investment filings) have been made in Chile and Taiwan, respectively.”

21. The MTA shall be amended to add a new Section 2.17 immediately following Section 2.16. Section 2.17 shall read:

“Section 2.17 Kenosha Plant Offer Right. At any time prior to July 31, 2009 (the “Option Period”), Purchaser shall have the right to make an offer (the “Offer”) to the Sellers to acquire (directly or through a Subsidiary of Purchaser designated by Purchaser in the Offer Notice (as defined below)) all of the Sellers’ right, interest and title to the Chrysler Kenosha Engine Plant, located at 5555 30th Avenue, Kenosha, WI 53144 (the “Kenosha Plant Interest”) from the Sellers by providing written notice to the Company (the “Offer Notice”), which Offer Notice shall contain the material terms and conditions of the Offer, including the purchase price and form of consideration for the Kenosha Plant Interest, any conditions to closing such sale, and any post-closing obligations. Promptly after receipt of the Offer Notice, the Sellers shall file with the Bankruptcy Court a motion seeking entry of a sale order and bidding procedures order for the sale of the Kenosha Plant, with the proposed form of bidding procedures order and proposed sale order attached to such motion agreed in advance by Purchaser and the Company, and thereafter the Sellers shall pursue diligently the entry of such sale order and bidding procedures order so that the sale of the Kenosha Plant Interest may be consummated in the shortest period legally permissible. The provisions of Section 5.18 of this Agreement (other than the first two sentences and the last sentence of

subsection (a) thereof) shall apply mutatis mutandi to such Bankruptcy Court sale process, except that (i) the Sale Order, Bidding Procedures Order and Sale Motion shall instead refer to the sale order, bidding procedures order and motion described above, (ii) the Purchased Assets shall instead refer to the Kenosha Plant Interest and (iii) members of the Class and the Covered Group shall not be required to receive notice. During the Option Period, Sellers will not sell or transfer, or enter into any written or oral Contract to sell or transfer, the Kenosha Plant Interest to any Person other than Purchaser or its designated Subsidiary.

22. Section 5.05(c) of the MTA shall be amended to add the following immediately before the word “China” in the parenthetical on the sixth line thereof:

“Chile and Taiwan,”

23. Section 5.05(e) of the MTA shall be amended to add the following sentence at the end thereof:

“For the avoidance of doubt, the provisions of this Section 5.05(e) shall apply only to communications or meetings with any Governmental Entity, relating to filings or notifications made by Fiat, Purchaser and the Company pursuant to the applicable Antitrust Laws, as described in Sections 5.05(b) and 5.05(c).”

24. Section 5.06 of the MTA shall be amended as follows:

- (a) to replace the phrase “at least 10 days” on the fourth line thereof with “at least one (1) Business Day”;

- (b) to amend and restate clause (ii) in the first sentence thereof to read as follows:

“(ii) facilitate the contribution of the Equity Interests in Auburn Hills Mezzanine LLC from Chrysler Holdings LLC to the Company on or prior to the Closing Date in accordance with the Auburn Hills Agreement and transfer the Equity Interests in Auburn Hills Mezzanine LLC to Purchaser at the Closing as if such Equity Interests were Purchased Assets hereunder (provided, that such Equity Interests will only be considered Purchased Assets for purposes of transferring such Equity Interests to Purchaser at the Closing, and not for any other purposes hereof, including any of the representations and warranties made in Article III hereof);”; and

- (c) to add the following at the end thereof:

“Notwithstanding anything to the contrary in this Agreement or whether a transaction is expressly contemplated by this Agreement, the parties hereby agree to undertake any additional restructuring transactions (such additional restructuring transactions undertaken pursuant to this sentence, the “Additional Restructuring Transactions”) that the parties agree are

necessary and appropriate to carry out the Transactions, including the following potential transactions if agreed by the parties, or such alternatives as the Parties may agree upon (provided, however, that no Additional Restructuring Transactions shall be undertaken without the consent of both the Company and the Purchaser):

(x) on the Closing Date, prior to the Closing of the other Transactions to occur on the Closing Date, the Company shall transfer all of the shares of Chrysler Canada Holding ULC to a Luxembourg société à responsabilité limitée to be formed or acquired ("Newco Lux SARL"), which shall be treated as disregarded from its owner for U.S. income tax purposes, in exchange for all of the shares and debt of Newco Lux SARL and thereafter, the Company may transfer the shares and/or the debt of Newco Lux SARL to Chrysler International Corporation; and/or

(y) (1) prior to the Closing, Chrysler Mexico Investment Holdings Cooperatie will borrow 10 Mexican pesos from Chrysler Mexico Holding S de RL De C.V., contribute such pesos to a newly formed limited liability company (provided that such limited liability company shall not have filed by the Closing any election to be treated as a corporation for U.S. tax purposes) which will be wholly-owned by Chrysler Mexico Investment Holdings Cooperatie, and the newly formed limited liability company shall contribute the 10 pesos to Chrysler Mexico Holding S de RL De C.V. in exchange for a single equity quota in Chrysler Mexico Holding S de RL De C.V.; (2) prior to the Closing, Chrysler Mexico Holding S de RL De C.V. will redeem the single equity quota held by Chrysler LLC in Chrysler Mexico Holding S de RL De C.V.; and (3) Chrysler Mexico Investment Holdings Cooperatie will file an election to be treated as a corporation for United States federal income tax purposes, which election will be effective on the day of the Closing."

25. Section 5.19(a) of the MTA shall be amended as follows:

(a) to delete the phrase "At least two (2) Business Days prior to the Closing," on the first line thereof, and replace it with the following:

"(i) On or prior to the Closing Date,"; and

(b) to add the following between the word "Name" and the period on the seventh line thereof:

"and (ii) except with respect to those entities described in paragraph (b) below, on or prior to the Closing Date, Sellers will deliver to Fiat duly and properly authorized and executed evidence as to the amendment of the Constitutive Documents of each of Sellers' direct and indirect Subsidiaries that is not a Purchased Company, in each case, effective upon the Closing, changing such Subsidiary's name to another name which does not include

the Chrysler Name. Sellers shall cause each such Subsidiary after the Closing to discontinue the use of its current name (and any other trade names currently utilized by any such Subsidiary or any name that includes the Chrysler Name) and not to subsequently change its name to (or otherwise use or employ) any name which includes the Chrysler Name.”

26. Section 5.19(b) of the MTA shall be amended and restated in its entirety to read as follows:

“(b) Notwithstanding paragraph (a) above, Sellers shall not be required to cause:

- (i) any entity listed on Schedule 2.4(b) of the Deferred Closing Agreement to change its name to a name that does not include the Chrysler Name or otherwise discontinue use of the Chrysler Name on or prior to the Closing Date, and may permit any such Subsidiary to use the Chrysler Name after the Closing Date;
- (ii) any of the Marketing Investment Dealerships (“MIDs”) identified in item 4 of Section 2.07(r) of the Company Disclosure Letter to change its name to a name that does not include the Chrysler Name or otherwise discontinue use of the Chrysler Name on or prior to the Closing Date and may permit each such MID to continue to use the Chrysler Name after the Closing Date; provided, that in the event that Purchaser sends written notice to the Company that it does not intend to acquire any such MID, Sellers shall cause each such MID that Purchaser identifies that it will not acquire in such notice to change its name to a name that does not include the Chrysler Name as promptly as reasonably possible (but in any event within sixty (60) days) after receipt of such notice and to discontinue use of the Chrysler Name upon the effectiveness of such name change, and Sellers shall deliver to Purchaser duly and properly authorized evidence as to the amendment of the Constitutive Documents of each such MID within two (2) Business Days after the effectiveness of each such name change; or
- (iii) any of Chrysler de Venezuela S.A. (a/k/a Chrysler Motors de Venezuela S.A.), Lone Star Chrysler Jeep Dodge, Inc. and Long Beach Chrysler Jeep Dodge, Inc. to change its name to a name that does not include the Chrysler Name or otherwise discontinue use of the Chrysler Name on or prior to the Closing Date and may permit each such entity to continue to use the Chrysler Name after the Closing Date; provided, that Sellers shall cause each such entity to change its name to a name that does not include the Chrysler Name as promptly as reasonably possible after the Closing Date and to discontinue use of the Chrysler Name upon

the effectiveness of such name change, and Sellers shall deliver to Purchaser duly and properly authorized evidence as to the amendment of the Constitutive Documents of each such entity within two (2) Business Days after the effectiveness of each such name change.”

27. The MTA shall be amended to add a new Section 5.19(c) immediately following Section 5.19(b). Section 5.19(c) shall read:

“(c) On or prior to the Closing Date, Purchaser shall file or cause to be filed with the Secretary of State of the State of Delaware a Certificate of Amendment to the Certificate of Formation of Purchaser (the “Certificate of Amendment”), in form and substance reasonably acceptable to the Company, to change the name of Purchaser from “New CarCo Acquisition LLC” to “Chrysler Group LLC” effective as of the Closing Date.”

28. Section 6.01 of the MTA shall be amended by inserting between the word “Letter” on the last line thereof and the period on the last line thereof the following:

“(other than a plan, contract or arrangement that is not an Included Plan)”.

29. Section 6.05 of the MTA shall be amended and restated in its entirety to read as follows:

“Section 6.05 No Modification of Employment Terms or Benefits; No Third Party Beneficiaries. Nothing contained herein, express or implied (i) shall be construed to establish, amend or modify any Benefit Plan or any other benefit plan, program, agreement or arrangement of the Company, Purchaser or any of their Subsidiaries, (ii) is intended to confer or shall confer upon any Company Employee or Transferred Employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, (iii) is intended to confer or shall confer upon any Company Employee or Transferred Employee (or any dependent, beneficiary or legal representative thereof, except for the VEBA Trust and the UAW as provided in Section 11.04) any right as a third-party beneficiary of this Agreement, or (iv) shall be deemed to confer upon any such individual or legal representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal representative shall be entitled to look only to the express terms of any such plans, program or arrangement for his or her rights thereunder. Nothing herein is intended to override the terms and conditions of any Collective Bargaining Agreement.”

30. Section 7.01 of the MTA shall be amended in its entirety to read as follows:

“Section 7.01 Purchaser Tax Indemnity. Purchaser shall indemnify and hold harmless the directors, officers, and employees (such individuals of the aftermentioned entities, the “Individuals”) of the Company and its Subsidiaries (the “Primary Obligors”) from and against any and all Taxes of the Primary

Obligors that (a) are imposed in connection with the purchase of the Company Business under this Master Transaction Agreement and (b) the nonpayment of which by the Primary Obligor would result in a Tax for which any Individual is personally liable ("Personal Liability Taxes"). If and to the extent that an Individual is required by a Governmental Entity to pay such Personal Liability Taxes, Purchaser shall be required, if the Individual so requests, to provide to the Individual the funds required to pay such Personal Liability Taxes, plus an amount necessary to pay any Taxes imposed on any amount provided to or paid on behalf of an Individual hereunder, at such time and in such amounts as is sufficient to permit the relevant Individual to pay such Personal Liability Taxes, provided that (i) Purchaser shall have the right to review and approve (which approval shall not be unreasonably withheld, delayed or conditioned) all Tax Returns filed by the Individual with respect to such Personal Liability Taxes, (ii) in addition to Purchaser's rights under Section 7.3, Purchaser shall have the right to review and approve (which approval shall not be unreasonably withheld, delayed or conditioned), at least five (5) Business Days before the filing of such returns, all Tax Returns filed by the Company or its Subsidiaries with respect to any Tax the nonpayment of which by the Company or its Subsidiaries would result in a Personal Liability Tax, (iii) if there is an audit, challenge, assessment or reassessment, or other contest by a Governmental Entity with respect to Personal Liability Taxes, Purchaser shall be entitled to control the conduct of such audit, challenge, objections to assessment or reassessment, or other contest, and (iv) the Purchaser shall be entitled to any refund of such Personal Liability Taxes to the extent that it has paid such Taxes on behalf of such Individual. Purchaser shall have the right to determine whether or not to contest any assertion of liability for Personal Liability Taxes made by a Governmental Entity. In the event Purchaser elects to contest such assertion, Purchaser shall be liable for all costs related thereto, including the payment of any Taxes, deposits or provision of security to a Governmental Entity that may be required so that the Individual will not be required to pay any sums in respect of the Personal Liability Taxes or the contest thereof. If Purchaser elects not to contest such assertion, Purchaser shall immediately pay all Personal Liability Taxes as soon as they become due and payable."

31. Section 7.08 of the MTA shall be amended as follows:
- (a) the "t" in the word "The" at the beginning thereof shall be lowercased and the following shall be inserted as the beginning of the first sentence thereof:
 "Solely for Tax purposes,"; and
 - (b) the following shall be inserted between the word "Code" on the fourth line thereof and the period on the fourth line thereof:
 "(and if relevant or applicable, similar provisions under foreign, state or local law)".

32. The MTA shall be amended to add a new Section 7.10, immediately following Section 7.09. Section 7.10 shall read:

“Section 7.10 Receipt of Tax Refunds. To clarify the treatment of any refund, rebate, abatement or other recovery of Taxes (a “Tax Refund”), the parties agree that (i) to the extent that, after the Closing, any Seller or Subsidiary of the Seller receives any Tax Refund that is described in Section 2.06(m), the Seller or such Subsidiary, as the case may be, shall pay such refund over to the Purchaser and (ii) to the extent that, after the Closing, the Purchaser or any Subsidiary of the Purchaser receives any Tax Refund that is described in Section 2.07(l), the Purchaser or such Subsidiary, as the case may be, shall pay such refund over to the Seller. Receipt of a Tax Refund shall occur when the party receives cash proceeds of such Tax Refund or, as a result of such Tax Refund enjoys a reduction in tax liabilities which are currently due and payable.”
33. Notwithstanding Sections 8.01(l), 8.02(p) and 8.02(r) of the MTA, the parties hereby agree that none of the Master Technology and Product Sharing Agreement, the Joint Procurement Agreement, the Global Distribution Agreement and the Information Technology Cooperation Agreement (as each term is defined in the Master Industrial Agreement) under the Master Industrial Agreement shall be executed or delivered as of the Closing Date, but Fiat and Purchaser shall use their best efforts to execute and deliver such agreements in accordance with, and subject to, Section 5.10(c) of the MTA.
34. Section 9.04(e) of the MTA shall be amended by deleting the second period appearing at the end thereof and inserting the following between the words “Tax Settlement Agreement” on the sixth line thereof and the period:

“or Purchaser or its designee pursuant to this Agreement”
35. The following new defined term “Lemon Law” shall be added in the Definitions Addendum to the MTA, immediately after the defined term “Law”:

““Lemon Law” means a federal or state statute requiring a manufacturer to provide a consumer remedy (limited to additional repairs, refund or replacement for a defective vehicle and attorneys fees in obtaining those remedies) when the manufacturer is unable to conform the vehicle to the warranty after a reasonable number of attempts as defined in the applicable statute.”
36. The definition of the term “Product Liability Claim” in the Definitions Addendum to the MTA shall be amended to delete from the first two lines thereof the following phrase: “or action taken or otherwise sponsored by a customer”.
37. The definition of the terms “Tax” and “Taxes” in the Definitions Addendum to the MTA shall be amended as follows:

- (a) to add the phrase “fines,” immediately before the word “penalties” in the parenthetical in the seventh line thereof; and
 - (b) to delete the term “Government Authority” each time it appears therein and replace it with the term “Governmental Entity”.
- 38. The Company Disclosure Letter shall be amended to amend and restate Section 2.06 and 2.07 thereof and replace them in their entirety with Sections 2.06 and 2.07 attached as Annex A hereto.
- 39. Section 3.16 of the Company Disclosure Letter shall be amended to delete in its entirety item 1 listed on the second page of such Section 3.16 on the Company Disclosure Letter under the heading “Sections 3.07(e) and 3.16(a), (b), (c), (d), (e), (f), (h) and (i)” and to replace it with the following:
 - “1. The Company is at various stages of examination at the federal, state and foreign levels for tax years 1994 and forward with respect to which certain Tax deficiencies have been asserted by Governmental Entities. The Company has recorded reserves for material amounts of Tax. It is the practice of the Company to voluntarily agree in advance of expiration to an extension or waiver of the statute of limitations for a mutually agreed period of time.”
- 40. Except as expressly provided herein, all of the terms and provisions in the MTA are and shall remain in full force and effect, on the terms and subject to the conditions set forth therein. This Amendment does not constitute, directly or by implication, an amendment or waiver of any provision of the MTA, or any other right, remedy, power or privilege of any party to the MTA, except as expressly set forth herein.
- 41. This Amendment shall be binding upon and inure solely to the benefit of the parties hereto and their respective permitted successors and permitted assigns; *provided*, that for all purposes the VEBA Trust, the UAW, US Treasury and Canada shall be express third-party beneficiaries of this Amendment. Subject to the preceding sentence, nothing herein, express or implied, is intended to or shall be deemed to confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever.
- 42. This Amendment may not be amended except by an instrument in writing signed by each of the parties hereto. At any time, any party hereto may (a) extend the time for the performance of any obligation or other act of any other party hereto and (b) waive compliance with any agreement or condition contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby.
- 43. This Amendment shall be governed by and construed in accordance with the laws of the State of New York, excluding (to the extent permissible by law) any rule of law that would cause the application of the laws of a jurisdiction other than the State of New York.

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44. Without limiting any party's right to appeal any order of the Bankruptcy Court, each party hereby irrevocably (i) submits to the exclusive jurisdiction of the Bankruptcy Court, for the purpose of any action or proceeding arising out of or relating to this Amendment, and (ii) each party hereto hereby irrevocably agrees that all claims in respect to such action or proceeding may be heard and determined exclusively in the Bankruptcy Court and (iii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from the Bankruptcy Court, including a motion to dismiss on the grounds of forum non conveniens. Each of the parties hereto agrees that a final judgment in any action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law; provided, however, that if the Bankruptcy Case has closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County for the resolution of any such claim or dispute. Each of the parties hereto irrevocably consents to the service of the summons and complaint and any other process in any action or proceeding relating to the transactions contemplated by this Amendment, on behalf of itself or its property, by personal delivery of copies of such process to such party. Such service shall be in lieu of any other potentially applicable requirement of service, including, without limitation, the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters. Nothing in this Section 44 shall affect the right of any party to serve legal process in any other manner permitted by law.
45. This Amendment may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.
46. If any term or other provision of this Amendment is invalid, illegal or incapable of being enforced by any rule of Law, or public policy, then to the maximum extent permitted by Law, all other conditions and provisions of this Amendment shall nevertheless remain in full force and effect.

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Purchase Agreement Pg 125 of 160

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

FIAT S.p.A.

By: 
Name: Roberto Russo
Title: General Counsel

NEW CARCO ACQUISITION LLC

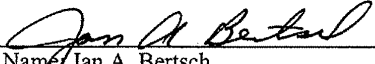
By: 
Name: Giorgio Fossati
Title: Vice President and Secretary

[Signature Page to Amendment to MTA]

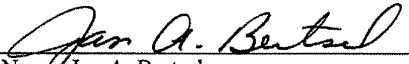
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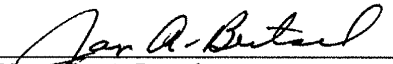
CHRYSLER LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER AVIATION INC.

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER INTERNATIONAL
CORPORATION

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

[Signature Page to Amendment to MTA]

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CHRYSLER INTERNATIONAL LIMITED,
L.L.C.

By: CHRYSLER INTERNATIONAL
CORPORATION, as Member

By: Jan A. Bertsch
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER INTERNATIONAL SERVICES,
S.A.

By: Jan A. Bertsch
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER MOTORS LLC

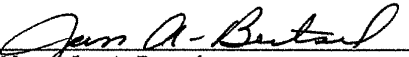
By: Jan A. Bertsch
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

[Signature Page to Amendment to MTA]

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Purchase Agreement Page 128 of 160

CHRYSLER REALTY COMPANY LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER SERVICE CONTRACTS
FLORIDA, INC.

By: _____
Name: Byron Babbish
Title: Assistant Secretary

CHRYSLER SERVICE CONTRACTS INC.

By: _____
Name: Byron Babbish
Title: Assistant Secretary

[Signature Page to Amendment to MTA]

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09-50002-ajg Doc 362-1 Filed 06/24/09 Entered 06/24/09 20:07:02 Exhibits -
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CHRYSLER REALTY COMPANY LLC

By: _____
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER SERVICE CONTRACTS
FLORIDA, INC.

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

CHRYSLER SERVICE CONTRACTS INC.

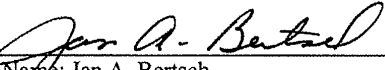
By:  _____
Name: Byron Babbish
Title: Assistant Secretary

[Signature Page to Amendment to MTA]

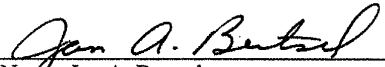
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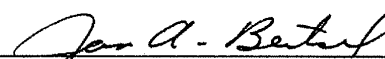
CHRYSLER TECHNOLOGIES MIDDLE
EAST LTD.

By: 
Name: Jan A. Bertsch
Title: Senior Vice President

CHRYSLER TRANSPORT, INC.

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER VANS LLC

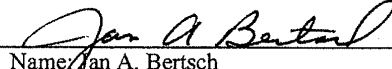
By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

[Signature Page to Amendment to MTA]

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DCC 929, INC.

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

DEALER CAPITAL, INC.

By: _____
Name: Byron Babbish
Title: Assistant Secretary

GLOBAL ELECTRIC MOTORCARS, LLC

By: _____
Name: Byron Babbish
Title: Assistant Secretary

[Signature Page to Amendment to MTA]

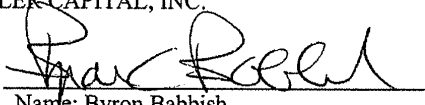
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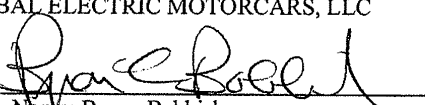
DCC 929, INC.

By: _____
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

DEALER CAPITAL, INC.

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

GLOBAL ELECTRIC MOTORCARS, LLC

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

[Signature Page to Amendment to MTA]

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Purchase Agreement 13 of 160

NEV MOBILE SERVICE, LLC

By: _____

Name: Holly E. Leese
Title: Assistant Secretary

NEV SERVICE, LLC

By: _____

Name: Holly E. Leese
Title: Assistant Secretary

PEAPOD MOBILITY LLC

By: _____

Name: Byron Babbish
Title: Assistant Secretary

[Signature Page to Amendment to MTA]

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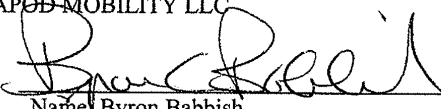
NEV MOBILE SERVICE, LLC

By: _____
Name: Holly E. Leese
Title: Assistant Secretary

NEV SERVICE, LLC

By: _____
Name: Holly E. Leese
Title: Assistant Secretary

PEAPOD MOBILITY LLC

By:  _____
Name: Byron Babbish
Title: Assistant Secretary

[Signature Page to Amendment to MTA]

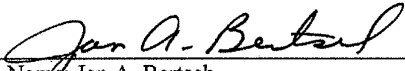
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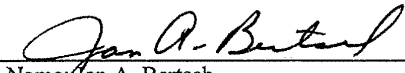
TPF ASSET, LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

TPF NOTE, LLC

By: 
Name: Jan A. Bertsch
Title: President and Treasurer

UTILITY ASSETS LLC

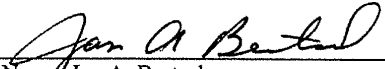
By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

[Signature Page to Amendment to MTA]

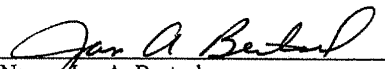
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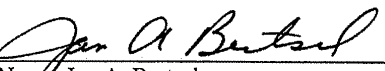
CHRYSLER DUTCH HOLDING LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER DUTCH INVESTMENT LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

CHRYSLER DUTCH OPERATING GROUP
LLC

By: 
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

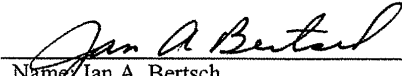
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CHRYSLER INSTITUTE OF ENGINEERING

By:


Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

ALPHA HOLDING LP

By:

Name: Holly E. Leese
Title: Secretary

[Signature Page to Amendment to MTA]

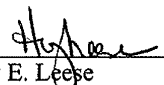
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Purchase Agreement 18 of 160

CHRYSLER INSTITUTE OF ENGINEERING

By: _____
Name: Jan A. Bertsch
Title: Senior Vice President and Treasurer

ALPHA HOLDING LP

By:  _____
Name: Holly E. Leese
Title: Secretary

[Signature Page to Amendment to MTA]

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**Annex A
Company Disclosure Letter**

[see attachment]

ARTICLE II COMPANY DISCLOSURE LETTER

TO

MASTER TRANSACTION AGREEMENT

among

FIAT S.p.A.,

NEW CARCO ACQUISITION LLC,

CHRYSLER LLC

and

the other SELLERS identified therein

Dated as of April 30, 2009, as amended May 31, 2009

AMERICAN BANKRUPTCY INSTITUTE

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SECTION 2.06

PURCHASE AND SALE OF PURCHASED ASSETS

Section 2.06(c)

1. Cash collateral held by JPMorgan Chase Bank, N.A. securing financing under the A&R First Lien Credit Agreement, as amended, and the Second Lien Term Loan Agreement, dated as of August 3, 2007, among CarCo Intermediate HoldCo II LLC, Chrysler LLC, the several banks and other financial institutions or entities from time to time parties thereto, Goldman Sachs Credit Partners L.P. and Citibank, N.A. as syndication agents, and JPMorgan Chase Bank, N.A. as administrative agent.

Section 2.06(f)

1. Paint shop located at the following location:

Address	Type of Property	Owner
550 S. College Avenue Assembly Plant Newark, Delaware 19713	Manufacturing	Chrysler LLC

2. ~~Equipment~~ PP&E (excluding buildings and land) located at the following locations:

Address	Type of Property	Owner
6700 Lynch Road Component Plant Detroit, Michigan 48234	Manufacturing	Chrysler LLC
6490 & 6334 Lynch Road Detroit, Michigan 48234	Warehouse	Chrysler LLC
2171 Hitzert Court JIT Center Fenton, Missouri 63026	Warehouse	Chrysler LLC
1050 Dodge Drive Assembly Plant Fenton, Missouri 63026	Manufacturing	Chrysler LLC
1001 North Highway Drive Assembly Plant Fenton, Missouri 63026	Manufacturing	Chrysler LLC

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3. Equipment PP&E (excluding buildings and land) and data center located at the following location:

Address	Type of Property	Owner
38111 Van Dyke Assembly Plant Sterling Heights, Michigan 48312	Manufacturing	Chrysler LLC

4. Training center assets at the following locations, to the extent the associated leases are Excluded Contracts:

Address	Type of Property	Lessee
3421 East Harbor <u>Harbour</u> Drive Suite 300 Phoenix, Arizona 85034	Flex	Chrysler Motors LLC
5141 East Santa Ana Avenue <u>Street</u> <u>Suite B</u> Ontario, California 91761	Flex	Chrysler Motors LLC
5720 Stonebridge <u>Stoneridge</u> Drive <u>Building E Suite 400</u> Pleasanton, California 94588	Flex	Chrysler Motors LLC
14155 East 42nd Avenue <u>Building B,</u> <u>Suite 50</u> Denver, Colorado 80239	Flex	Chrysler Motors LLC
8351 Parkline Boulevard Suite 500 Orlando, Florida 32809	Flex	Chrysler Motors LLC
1000 Cobb Place Boulevard Suites 370 & 390 <u>Kennesaw Kennesaw</u> , Georgia 30144	Flex	Chrysler Motors LLC
1980 High Grove Lane Naperville, Illinois 60540	Flex	Chrysler Motors LLC
10105 Marshall Drive Lenexa, Kansas 66215	Flex	Chrysler Motors LLC
8955 Henkels Lane, <u>Suite 500</u> Annapolis Junction, Maryland 20701	Flex	Chrysler Motors LLC
105 Forbes Boulevard Mansfield, Massachusetts 02048	Flex	Chrysler Motors LLC
2367 <u>E.</u> Walton Boulevard Auburn Hills, Michigan 48326	Flex	Chrysler Motors LLC
16305 36th Ave., Suite 600 Plymouth, MN 55446	Flex	Chrysler Motors LLC
3187 Riverport Tech Center Drive Maryland Heights, Missouri 63043	Flex	Chrysler Motors LLC
370 Summit Point Drive, Suite 3, Henrietta, New York 14467	Flex	Chrysler Motors LLC
One Ramland Road, Suite 135, Orangeburg, New York 10962	Flex	Chrysler Motors LLC

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Address	Type of Property	Lessee
10420 Harris Oaks Boulevard, Suite H Charlotte, North Carolina 28269	Flex	Chrysler Motors LLC
2828 East Kemper Road ~~Building B~~ Cincinnati, Ohio 45241	Flex	Chrysler Motors LLC
19701 South West ~~Southwest~~ 95th Place, Tualatin, Oregon 97062	Flex	Chrysler Motors LLC
425 Technology Drive, Suite 100 Malvern, Pennsylvania 19355	Flex	Chrysler Motors LLC
203/205 Overlook Drive Sewickley, Pennsylvania 15143	Flex	Chrysler Motors LLC
8370 Wolf Lake ~~Boulevard Drive, Suite~~ ~~101~~ , Bartlett, Tennessee 38133	Flex	Chrysler Motors LLC
8100 Jetstar Drive, Suite 175 Irving, Texas ~~75244~~ 75063	Flex	Chrysler Motors LLC
533 Northpark Central Drive Suite 170 Houston, Texas 77073	Leased	Chrysler Motors LLC
~~Virginia Center~~ 1011 Technology Park Drive Suite 1011 Glen Allen, Virginia ~~23060~~ 23059	Flex	Chrysler Motors LLC
700 Walnut Ridge Drive, ~~Suite 100~~ , Hartland, Wisconsin 53029	Flex	Chrysler Motors LLC

5. The following equipment at Alternative Engine Technologies Group facility (37200 Amrhein Road, E. Building, Livonia, Michigan 48150):

- Injector flow stand
- Surface grinder
- Misc. machine & metal shop equipment

6. All dies and tools located at the Twinsburg, Ohio plant (2000 East Aurora Road, Stamping Plant, Twinsburg, Ohio 44087)

7. The following equipment at the Twinsburg, Ohio plant (2000 East Aurora Road, Stamping Plant, Twinsburg, Ohio 44087):

- DR/DS - Box Side Inner
- PM/MK - Xmember Front Floor & Rear Closure
- RTRM - Sliding door RH, Sliding Door LH, BSA Inner Rear, Reinf Liftgate Opng, Cowl Plenum Upper Front Door
- CS - Old Pacifica Tools
- HB - Front Door, Rear Door, Hood, Liftgate, Cowl, Cowlbar, B Pillar, Dash, Rear Closure

8. The following equipment at Jeep/Truck Engineering (PROC) facility (14250 Plymouth Road, Detroit, Michigan 48227)

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- Axle Dyno, Press machine, Magnaflux, assy equip.
- Dyno Controls
- 4-Post Shaker
- Alignment Rack
- Bridgeport & Lathe
- NVH Lab Equipment
- Bed Plate
- Machine Shop Equipment
- Vehicle Lift
- IT/data center equipment

9. The following equipment at the Detroit Axle facilities (6334, 6490 and 6700 Lynch Road, Detroit, Michigan 48234), but only to the extent it relates to KA and KK models:

<u>Equipment</u>	<u>QTY</u>	<u>Brass Tag</u>
<u>NVH EQUIPMENT</u>		=
<u>Veritec Tester</u>	<u>1</u>	<u>AAA203974</u>
<u>ASSEMBLY EQUIPMENT</u>		=
<u>WK Final Assembly Line</u>	<u>1</u>	<u>AAA199861 & AAA173062</u>
<u>ACRO 6 - press & weld</u>	<u>1</u>	<u>AAA203069</u>
<u>KA/KK Diff Ass'y Line</u>	<u>1</u>	<u>see below</u>
<u>ABB Diff Line OPS 100A-140 & 340</u>		<u>AAA258439</u>
<u>ABB Diff Line OPS 150A-180B</u>		<u>AAA258440</u>
<u>ABB Diff Line OPS 190-220</u>		<u>AAA258441</u>
<u>ABB Diff Line OPS 250A-310</u>		<u>AAA258442</u>
<u>ABB Diff Line OPS 510-600</u>		<u>AAA258443</u>
<u>ABB Diff Line OPS 10-90B</u>		<u>AAA258444</u>
<u>Cross Line</u>	<u>1</u>	<u>AAA198996</u>
<u>GEAR DIVISION EQUIPMENT</u>		=
<u>Gear Set Tester</u>	<u>1</u>	<u>AAA202539</u>
<u>Gear Set Lappers</u>	<u>1</u>	<u>AAA202538</u>
<u>Gear Set Lappers</u>	<u>1</u>	<u>AAA202537</u>
<u>Pinion Hard Turn</u>	<u>1</u>	<u>AAA258563</u>
<u>Gear Hard Turn</u>	<u>1</u>	<u>AAA161184</u>
<u>Pinion Shot Peen</u>	<u>1</u>	<u>AAA263957</u>
<u>Pinion Straightening</u>	<u>1</u>	<u>AAA016328</u>
<u>Pinion Annealer</u>	<u>1</u>	<u>AAA066449</u>
<u>Heat Treat Quench Press</u>	<u>2</u>	<u>AAA190431, AAA190432</u>
<u>Heat Treat</u>		
<u>Pinion Green Cutting</u>	<u>1</u>	<u>AAA204217</u>
<u>Gear Green Cutting</u>	<u>1</u>	<u>AAA204216</u>
<u>Ring Gear Blanking</u>	<u>1</u>	<u>AAA082608</u>

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<u>Gear Drill and Tap</u>	<u>1</u>	<u>AAA044824, AAA052486</u>
<u>Pinion Blanking</u>	<u>1</u>	<u>AAA142624</u>
<u>Spline- Thread Rolling</u>	<u>1</u>	<u>31-002919R / 31002985</u>
<u>Case Machininig</u>	<u>1</u>	<u>AAA249414</u>
<u>P-Machine CMM</u>	<u>1</u>	<u>AAA243381</u>
<u>Test Block</u>	<u>1</u>	<u>AAA193254</u>

Section 2.06(g)(i)**1.** Wholly-owned subsidiaries

a. Purchased Entities:

<u>Name</u>	<u>Jurisdiction of Organization</u>
1. Bessemer Chrysler Jeep Dodge, Inc.	Delaware
2. Downriver Dodge, Inc.	Delaware
3. La Brea Avenue Motors, Inc.	Delaware
4. Autodie LLC	Delaware
5. Chrysler de Venezuela LLC	Delaware
6. Chrysler International Holding LLC	Delaware
7. Chrysler Receivables SPV ~~Investment Holdings~~ LLC	Delaware
8. <u>Chrysler Receivables SPV LLC</u>	<u>Delaware</u>
9. Chrysler Warranty SPV LLC	Delaware
10. The Chrysler Foundation	Michigan
11. Chrysler Jeep International S.A.	Belgium
12. ~~Chrysler Canada Holding ULC~~ <u>0847574 B.C. Unlimited Liability Company</u>	Canada
13. Chrysler Cayman Investments Ltd.	Cayman Islands
14. Chrysler Chile Importadora, LLC	Chile
15. Chrysler Group Egypt Limited	Egypt
16. Chrysler International GmbH	Germany
17. Chrysler Holding (Austria) GmbH	Germany
18. Chrysler Korea Ltd.	Korea
19. CNI C.V.	Netherlands

b. Purchased Companies which are not Purchased Entities:

<u>Name</u>	<u>Jurisdiction of Organization</u>
1. Alpha Holding LP	Delaware
2. ~~Chrysler Investment Holdings~~ LLC	Delaware
3. ~~3217923 Nova Scotia Company~~	Canada
4. ~~0847574 B.C. Unlimited Liability Company~~	Canada
5. Chrysler Canada Inc.	Canada
6. 2813017 Canada Inc.	Canada
7. 2813025 Canada Inc.	Canada
8. 2813009 Canada Inc.	Canada

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<u>Name</u>	<u>Jurisdiction of Organization</u>
9. Chrysler Lease Receivables 1 Inc.	Canada
10. Chrysler Lease Receivables 2 Inc.	Canada
11. Chrysler Lease Receivables Unlimited Partnership	Canada
12. Chrysler Receivables 1 Inc.	Canada
13. Chrysler Receivables 2 Inc.	Canada
14. Chrysler Receivables Partnership	Canada
15. Chrysler "Vienna" BmbH	Germany
16. Chrysler Austria Gesellschaft mbH	Germany
17. Chrysler Management Austria GmbH	Germany
18. AC Austro Car Handelsgesellschaft mbH & Co Management	Germany
19. Chrysler India Automotive Private Limited ¹	India
20. Chrysler Mexico Holding, S. de R.L. de C.V. ²	Mexico
21. Fundacion Chrysler de Mexico, I.A.P.	Mexico
22. Inmuebles Chrysler de Mexico, S.A. de C.V.	Mexico
23. Operadora G.C., S.A. de C.V.	Mexico
24. Chrysler Mexico Investment Holdings Cooperatie U.A.	Netherlands
25. Chrysler Netherlands Distribution B.V.	Netherlands
26. Chrysler Netherlands Holding Cooperatie U.A. ³	Netherlands

- c. ~~To~~ The Equity Interests in the extent that following National Sales Companies ("NSCs") are not designated as Excluded Subsidiaries pursuant to Section 2.14 of the Agreement, the ~~Equity Interests in the following NSCs:~~

<u>Name</u>	<u>Jurisdiction of Organization</u>
1. Chrysler Argentina S.R.L.	Argentina
2. Chrysler Australia Pty Ltd.	Australia
3. Chrysler Belgium Luxembourg NV/SA	Belgium
4. CJD do Brasil Comercio de Veiculos Ltda.	Brazil
5. Chrysler Colombia Ltda.	Colombia
6. Chrysler Czech Republic s.r.o.	Czech Republic
7. Chrysler Danmark ApS	Denmark
8. Chrysler France S.A.S	France
9. Chrysler Deutschland GmbH	Germany
10. Chrysler & Jeep Vertriebsgesellschaft mbH	Germany
11. Chrysler Italia S.r.l.	Italy
12. Chrysler Nederland B.V.	Netherlands
13. Chrysler New Zealand Limited	New Zealand

¹ 0.01% owned by Chrysler Dutch Operating Group LLC, a Selling Group Member.

² 0.01% owned by the Company.

³ 1.00% owned by CNI C.V.

<u>Name</u>	<u>Jurisdiction of Organization</u>
14. Chrysler Polska sp. zo.o.	Poland
15. Chrysler South East Asia Pte. Ltd.	Singapore
16. Chrysler South Africa (Pty) Limited	South Africa
17. Chrysler España S.L.	Spain
18. Chrysler Sweden AB	Sweden
19. Chrysler Switzerland GmbH	Switzerland
20. Chrysler UK Limited	United Kingdom
21. Banbury Road Motors Limited	United Kingdom
22. Chrysler UK Pension Trustees Limited	United Kingdom

2. Subsidiaries partially owned by non-Chrysler entities

a. Purchased Entities:

i. Marketing Investment Dealership Subsidiaries:

<u>Name</u>	<u>Jurisdiction of Organization</u>
1. McKinney Dodge, Inc.	Delaware
2. Stateline Chrysler Jeep Dodge, Inc.	Delaware
3. Superstition Springs Chrysler Jeep, Inc.	Delaware

ii. Other Subsidiaries:

<u>Name</u>	<u>Jurisdiction of Organization</u>
1. Chrysler Group Taiwan Sales Ltd.	Taiwan

b. Purchased Companies which are not Purchased Entities:

<u>Name</u>	<u>Jurisdiction of Organization</u>
1. Chrysler de Mexico S.A. de C.V.	Mexico

Section 2.06(g)(ii)

1. The Equity Interests in entities that are not Subsidiaries of the Company:

Joint Ventures:

Jurisdiction of

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<u>Name</u>	<u>Organization</u>
1. Global Engine Alliance LLC	Delaware
2. Global Engine Asset Company LLC	Delaware
3. Global Engine Manufacturing Alliance LLC	Delaware
4. HP Devco, Inc.	Michigan
5. Arab American Vehicles Company	Egypt

Section 2.06(q)

- 1. 5--All of Sellers' claims and causes of action (including avoidance actions or similar causes of action arising under Sections 544 through 553 of the Bankruptcy Code) against suppliers that are parties to Assumed Contracts (a) to the extent arising under or relating to an Assumed Contract or (b) subject to Section 2.07(i) of the Master Transaction Agreement, against any party to an Assumed Contract that (1) is a supplier, dealer or joint venture partner with whom the Purchaser and/or its subsidiaries expects to have an ongoing commercial relationship and (2) is not a current or former Affiliate, officer, director, manager, member or employee of any Selling Group Member.**

Section 2.06(r)

[Intentionally Omitted]

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SECTION 2.07

EXCLUDED ASSETS

Section 2.07(a)

Real Property Leases

Address	Type of Property	Lessee	Lessor
20000 Conner Avenue Assembly Plant Detroit, Michigan 48234	Manufacturing	American Tower	Chrysler LLC

Real Property Subleases

Address	Type of Property	Lessee	Lessor
9303 West Jefferson Detroit, Michigan 48209	Warehouse	Martin Transportation Systems, Inc.	Chrysler Motors LLC
1960 Technology Drive Building A - 1 st & 2 nd Floors Troy, Michigan 48084	Office	BMW Hybrid Technology Corp.	Chrysler LLC
1960 Technology Drive Building B, C and D Troy, Michigan 48084	Flex	BMW Hybrid Technology Corp.	Chrysler LLC

Equipment Leases

COUNTERPARTY	DESCRIPTION
UB Bancorp	Scrubbers, personnel carriers, fork trucks, tuggers, fire truck, ambulance & burden carriers.
CIT Group	Fork truck batteries.
CCA Financial	Battery charges, battery washer, tow tractors and disabled vehicle mover.
Atel Capital	Fork truck & tow tractors batteries/chargers.
Atel Capital	Battery watering system/charger, water tanks and MTC double stacking units.
First Fleet	Tow tractors.
Wells Fargo	Fork trucks.
Affinity Resources	Fork trucks.
MB Financial	Rico fork trucks.

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COUNTERPARTY	DESCRIPTION
CIT Group	Tow tractors.
MB Financial	Genie man lifts.
MB Financial	Cranes.
MB Financial	Fork trucks.
MB Financial	Tuggers.
AFG	Fork trucks.
Manufacturing Leasing	Fork trucks and personnel carrier.
Manufacturing Leasing	Chargers.
Manufacturing Leasing	Fork truck batteries.
Manufacturing Leasing	Fork trucks and personnel carriers.
Alexander Capital Cap.	Battery pack.
Capricorn International	Fork truck batteries.
Guaranty	Personnel carrier.
Sentry	Personnel carriers.
Atel Capital	Fork trucks and tow tractors.
Optimal Leasing	Fork trucks.
First Bank of HP	Scrubbers.
Bank Financial	Battery chargers.
MB Financial	Fork trucks.
MB Financial	Fork trucks.
MB Financial	Fork trucks/personnel carriers.
Wells Fargo	Tow tractor.
Wells Fargo	Personnel carrier/tow tractor.
CIT Leasing	Riding sweeper.
CIT Leasing	Fork trucks, scrubber and personnel carriers.
HSH-Norbank AG	Carriers.
Alexander Capital	Booms.
Bank Financial	Battery washers.
Capricorn International	Battery changers.
LaSalle Leasing	Fork trucks
CCA Financial	Fork trucks.
ICX	Fork trucks.
CSA Financial	Fork trucks.
CSA Financial	SGVs.
CSA Financial	SGVs.
CCA Financial	Fork trucks.
UPS Capital	5-ton fork trucks.
First Fleet	Fork trucks and batteries.
First Fleet	Tow tractors and batteries.
First Fleet	Fork trucks and walkers.
First Fleet	Diesel tow tractors.
First Fleet	Fork trucks.

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COUNTERPARTY	DESCRIPTION
CIT Group	Self guided tugger vehicles.
ICX	Fork trucks.
Jasper Truck Sales	Trailer spotter.
NES	Boom.
NES	Boom.
NES	Fork truck.
Renaissance Capital	Fork trucks.
Renaissance Capital	Fork trucks.
Renaissance Capital	Fork trucks.

IT Agreements

1. Hosted Services Agreement between DaimlerChrysler Corporation and Interliant, Inc., now known as NaviSite, Inc., dated December 21, 2001, effective November 1, 2001.

Supplier Agreements

See Annex 2.07(a)-A.

Agreements with the UAW

1. Settlement Agreement, dated March 30, 2008, between the Company and the UAW
2. Memorandum of Understanding Post-Retirement Medical Care, dated October 12, 2007, between the Company and the UAW
3. Memorandum of Understanding Post-Retirement Medical Care, dated April 29, 2009, between the Company and the UAW

Other

1. All derivatives and commodity, foreign exchange and fuel positions
2. All directors and officers liability insurance policies

Provided, however, notwithstanding Section 2.07(q) of the Agreement, Excluded Assets shall not include (i) any Transaction Agreement or Alliance Agreement to which a Seller is not a

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party, (ii) the Auburn Hills Agreement, (iii) the CGI Indemnity Assignment Agreement and (iv) the Daimler Agreement.

Section 2.07(c)

1. Any collateral, deposit or other prepaid asset provided in connection with an Excluded Contract, any other Excluded Asset or an Excluded Liability.
2. All derivatives and commodity, foreign exchange and fuel positions.
3. Surety bonds associated with Excluded Assets or Excluded Liabilities.

Section 2.07(d)

Address	Type of Property	Owner
103 Wynn Drive Component Plant Huntsville, Alabama 35801	Manufacturing	Chrysler LLC
500 S. College Avenue Distribution Center Newark, Delaware 19713	Warehouse	Chrysler Motors LLC
550 S. College Avenue Assembly Plant Newark, Delaware 19713	Manufacturing	Chrysler LLC
1100 South Tibbs Avenue Indianapolis, Indiana 46241	Land	Chrysler Motors LLC
500 S. Warman Avenue Indianapolis, Indiana 46222	Land	Chrysler Motors LLC
2301 Featherstone Road Auburn Hills, Michigan 48326	Office	Chrysler LLC
University Drive & High Meadow Circle Auburn Hills, Michigan 48326	Land	Chrysler LLC
~~20000 Conner Avenue Assembly Plant Detroit, Michigan 48234~~	~~Manufacturing~~	~~Chrysler LLC~~
20300 Mound Road Former Power Train Plan Detroit, Michigan 48234	Vehicle/Trailer Parking	Chrysler LLC
6700 Lynch Road Component Plant Detroit, Michigan 48234	Manufacturing	Chrysler LLC

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Address	Type of Property	Owner
14250 Plymouth Road Detroit, Michigan 48227	Flex	Chrysler LLC
12311 Mark Twain Detroit, Michigan 48227	Warehouse	Chrysler LLC
8 Mile and Mound Mt. Elliot Land Warren, Michigan 48091	Land	Chrysler LLC
38111 Van Dyke Assembly Plant Sterling Heights, Michigan 48312	Manufacturing	Chrysler LLC
1050 Dodge Drive Assembly Plant Fenton, Missouri 63026	Manufacturing	Chrysler LLC
1001 North Highway Drive Assembly Plant Fenton, Missouri 63026	Manufacturing	Chrysler LLC
6600 New Venture Gear Drive East Syracuse, New York 13057	Manufacturing	Chrysler LLC
1000 Jeep Parkway Toledo, Ohio 43657	Land	Chrysler LLC
2000 East Aurora Road Stamping Plant Twinsburg, Ohio 44087	Manufacturing	Chrysler LLC
State Hwy 67 Ballinger, Texas 76821	Manufacturing	Chrysler LLC
5555 30 th Avenue Power Train Plant Kenosha, Wisconsin 53144	Manufacturing	Chrysler LLC

Section 2.07(e)

Address	Type of Property	Lessee
11705 Vallye Blvd El Monte, California 91732-3037	Dealer	Chrysler Realty Company LLC
370 South Kiley Blvd San Jose, California 95129	Dealer	Chrysler Realty Company LLC
735 Dillingham Blvd Honolulu, Hawaii 96817-4560	Dealer	Chrysler Realty Company LLC
735 Dillingham Blvd Honolulu, Hawaii 96817-4560	Dealer	Chrysler Realty Company LLC

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Address	Type of Property	Lessee
2207 West Station Street AME Kankakee, Illinois 60901	Warehouse	Chrysler LLC
9850 Indianapolis Highland, Indiana 46322-2637	Dealer	Chrysler Realty Company LLC
4848 Veterans Memorial Blvd Metairie, Louisiana 70006-5221	Dealer	Chrysler Realty Company LLC
9303 West Jefferson Detroit, Michigan 48209	Warehouse	Chrysler Motors LLC
6490 & 6334 Lynch Road Detroit, Michigan 48234	Warehouse	Chrysler LLC
~~37200 Amrhein Road E-Building Livonia, Michigan 48150~~	~~Flex~~	~~Chrysler LLC~~
4300 Lapeer Road Marshalling Center Orion Township, Michigan 48359	Vehicle/Trailer Parking	Chrysler LLC
5.18 Acres off Jefferson Avenue Trenton, Michigan 48183	Vehicle/Trailer Parking	Chrysler LLC
1.59 Acres off Jefferson Avenue Trenton, Michigan 48183	Vehicle/Trailer Parking	Chrysler LLC
1960 Technology Drive Building A - 1 st & 2 nd Floors Troy, Michigan 48084	Office	Chrysler LLC
1960 Technology Drive Building B, C and D Troy, Michigan 48084	Flex	Chrysler LLC
16305 36th Avenue, Suite 600 Plymouth, Minnesota 55446	Flex	Chrysler Motors LLC
2171 Hitzert Court JIT Center Fenton, Missouri 63026	Warehouse	Chrysler LLC
2185 Walden Ave Cheekatowaga, New York 14225	Dealer	Chrysler Realty Company LLC
203/205 Overlook Drive Sewickley, Pennsylvania 15143	Flex	Chrysler Motors LLC
533 Northpark Central Drive, Suite 170 Houston, Texas 77073	Flex	Chrysler Motors LLC
2960 I-30 East Mesquite, Texas 75149	Dealer	Chrysler Realty Company LLC

Section 2.07(g)

NYI 4181473v1

1. Vehicles owned by Sellers for use by, or lease to, employees under Sellers' company car programs, **but excluding S-0, S-1 and S-2 test vehicles.**

Section 2.07(r)

1. Collateral securing (a) surety bonds, (b) insurance policies not included in the Purchased Assets, (c) ~~workers compensation or self insurance obligations,~~ (d) obligations under supply agreements that are not Assumed Contracts, (**ed**) obligations under the items identified on Schedule 2.07(c) and (~~fe~~) letters of credit securing any of the items described in the preceding clauses (a) - (**ed**).

2. ~~Except as provided in Section 2.15 of the Agreement, the "Acquired Assets," as such term is defined in the Acquisition Agreement located in the Viper Assets folder of the Merrill DataSite data room for Project Capitol 2009 (the "Viper Assets"). The "Viper Assets" shall include the Trademarks located in the Viper Assets of the Merrill DataSite data room for Project Capitol 2009, but shall not include any rights to use any Trademark incorporating (a) the word "Dodge" or any translation of the word "Dodge" or (b) any graphical representation of a shield outline similar to the shield outline of any "Dodge Ram's Head" logo other than, and/or independent of, the Viper logos located in the Viper Assets folder of the Merrill DataSite data room for Project Capitol 2009.~~

2. **The equity interests of Chrysler Canada Holding ULC, 3217923 Nova Scotia Company ULC, and, if the Additional Restructuring Transactions pursuant to clause (x) of Section 5.06 of the Agreement, as amended, occur, the equity and debt of Newco Lux SARL.**

3. The Equity Interests in the following Marketing Investment Dealerships:

<u>Name</u>	<u>Jurisdiction of Organization</u>
Baum Boulevard Chrysler Jeep Dodge, Inc.	Delaware
Chrysler Dodge of Fox Lake, Inc.	Delaware
Chrysler Jeep Dodge of Dayton, Inc.	Delaware
El Monte Chrysler Jeep Dodge, Inc.	Delaware
Lone Star Chrysler Jeep Dodge, Inc.	Delaware
Long Beach Chrysler Jeep Dodge, Inc.	Delaware
Lowell Chrysler Jeep Dodge, Inc.	Delaware
Shakopee Dodge, Inc.	Delaware
Stoneridge Chrysler Jeep Dodge, Inc.	Delaware

4. The Equity Interests in the following Marketing Investment Dealerships will be retained by Sellers, subject to subsequent transfer to Purchaser as and if so agreed between Purchaser and the Company:

<u>Name</u>	<u>Jurisdiction of Organization</u>
Action Chrysler Jeep Dodge Inc.	Delaware
Alhambra Chrysler Jeep Dodge, Inc.	Delaware
Dade City Chrysler Jeep Dodge, Inc.	Delaware
Des Plaines Chrysler Jeep Dodge, Inc.	Delaware
Grapevine Chrysler Jeep Dodge, Inc.	Delaware
Gulfgate Dodge, Inc.	Delaware
South Charlotte Chrysler Jeep Dodge, Inc.	Delaware
Stone Mountain Chrysler Jeep Dodge, Inc.	Delaware

5. The Equity Interests in the following:

<u>Name</u>	<u>Jurisdiction of Formation</u> <u>Organization</u>
Chrysler Motors de Venezuela S.A. <u>(a/k/a Chrysler Motors de Venezuela S.A.)</u>	Venezuela
Chrysler Asia Pacific Investment Limited	China
Chrysler Group (China) Sales Limited	China
Chrysler (Hong Kong) Automotive Limited	Hong Kong
Chrysler Japan Co., Ltd.	Japan
Chrysler Japan Retail Ltd.	Japan
Chrysler Russia SAO*	Russia
Chrysler Balkans d.o.o Beograd	Serbia
Chrysler Jeep Ticaret A.S.	Turkey

* Entity was transferred from Daimler AG to Chrysler Holding LLC on March 31, 2009. 100% of the Equity Interests in the entity are expected to be transferred from Chrysler Holding LLC to the Company and a designated Subsidiary of the Company and, subject to the receipt of regulatory approval from the Russian antitrust authority, will become a Subsidiary of the Company and a designated Subsidiary of the Company.

6. The Equity Interests in Bonsol Holding S.a.r.l. [Newco Lux SARL].

Section 2.07(t)

6. To the extent designated as Excluded Subsidiaries pursuant to Section 2.14 of Agreement, the Equity Interests in the following NSCs:

<u>Name</u>	<u>Jurisdiction of Organization</u>
1. Chrysler Argentina S.R.L.	Argentina

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<u>Name</u>	<u>Jurisdiction of Organization</u>
2. Chrysler Australia Pty Ltd.	Australia
3. Chrysler Belgium-Luxembourg NV/SA	Belgium
4. CJD do Brasil Comercio de Veiculos Ltda.	Brazil
5. Chrysler Colombia Ltda.	Colombia
6. Chrysler Czech Republic s.r.o.	Czech Republic
7. Chrysler Danmark ApS	Denmark
8. Chrysler France S.A.S	France
9. Chrysler Deutschland GmbH	Germany
10. Chrysler & Jeep Vertriebsgesellschaft mbH	Germany
11. Chrysler Italia S.r.l.	Italy
12. Chrysler Nederland B.V.	Netherlands
13. Chrysler New Zealand Limited	New Zealand
14. Chrysler Polska sp. zo.o.	Poland
15. Chrysler South East Asia Pte. Ltd.	Singapore
16. Chrysler South Africa (Pty) Limited	South Africa
17. Chrysler España S.L.	Spain
18. Chrysler Sweden AB	Sweden
19. Chrysler Switzerland GmbH	Switzerland
20. Chrysler UK Limited	United Kingdom
21. Banbury Road Motors Limited	United Kingdom
22. Chrysler UK Pension Trustees Limited	United Kingdom
<u>See Annex 2.07(t)-A</u>	

SECTION 2.08

ASSUMPTION OF LIABILITIES

Section 2.08(n)

1. Liabilities under incentive programs offered to dealers and consumers prior to the Closing, other than incentives to dealers who operate under agreements that are not Assumed Contracts.
2. Liabilities under residual value guarantees and rebate bonuses offered to fleet customers for GDP vehicles prior to the Closing.
3. Liabilities under dealer support programs, including payment of dealer floorplan financing costs during vehicle transit times, offered to dealers prior to the Closing, other than those owed to dealers who operate under agreements that are not Assumed Contracts.
4. Liabilities for credits, deposits or other prepayments in respect of Assumed Contracts or Assumed Liabilities.
5. Liabilities in respect of commercial claims made by suppliers that are parties to Assumed Contracts, regardless of whether such claims are in respect of Assumed Contracts or prior commercial arrangements.
6. Liabilities under employee car vouchers provided by Sellers to Sellers' employees prior to the Closing.
7. At least \$500,000,000 of debt under the loan agreement among the U.S. Treasury, as lender, Chrysler Holding LLC, as borrower, and certain of its subsidiaries, as guarantors, dated as of December 31, 2008.
8. The guarantees listed on Annex 2.08(n)-A.

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Chrysler Accounts to remain
in Oldco

Annex 2.07(t)-A

Company	Account Bank	Account Number	Currency	Purpose	Max Balance at Closing (thousands)	Comments
1. Retained by Oldco permanently						
Chrysler LLC	Comerica Bank	Intentionally omitted	USD	Local Receipts	0	
Chrysler LLC	Comerica Bank	Intentionally omitted	USD	Payroll-Hry-Sal-Mgt Bands 89-93	125	
Chrysler LLC	Comerica Bank	Intentionally omitted	USD	Cash Collateral	0	\$2 million collateral to be released Monday
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Investments	0	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Escrow - Utilities Assurance	1,200	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Chrysler Corp - Securities	NA	valueless securities
Chrysler LLC	Keybank National Association	Intentionally omitted	USD	Oldco Wind-down	260,000	
Chrysler LLC	Keybank National Association	Intentionally omitted	USD	Oldco Wind-down	0	
Chrysler LLC	Keybank National Association	Intentionally omitted	USD	Oldco Wind-down	30,000	Subject to reduction equal to any professional fees paid between the petition date and the closing date
Chrysler LLC	Keybank National Association	Intentionally omitted	USD	Cash Collateral - Tarrant County	0	
Chrysler LLC	Wells Fargo	Intentionally omitted	USD	District Clerk	625	
2. The following restricted cash accounts, which only contain cash collateral securing letters of credit or surety bonds relating to potential Assumed Contracts and Assumed Liabilities, will initially be retained by the Company. The cash contained therein (including any accrued interest following Closing), to the extent it is collateral for a letter of credit or surety bond securing an Assumed Contract or Assumed Liability, will be treated as follows: (i) Purchaser will be entitled to promptly receive within three Business Days the cash securing such letter of credit or surety bond if Purchaser arranges for the replacement, renewal or return (undrawn) of such letter of credit or surety bond; or (ii) failing the replacement, renewal or return of such letter of credit or surety bond, the full amount of such letter of credit or surety bond will be applied as a reduction in any Cure Amounts (associated with the assumption of the applicable Assumed Contract) or reduction of the amount of the Assumed Liability (in accordance with any settlement agreement or other Contract relating to the settlement of such Assumed Liability that has been approved by the Purchaser) and the beneficiary of such letter of credit or surety bond will be entitled to draw such instrument.						
Chrysler LLC	Fifth Third Bancorp	Intentionally omitted	USD	Cash Collateral - Letter of Credit	20,000	Secures LCs for surety bonds, workers comp, insurance
Chrysler LLC	Fifth Third Bancorp	Intentionally omitted	USD	Cash Collateral - Letter of Credit	129,000	Secures LCs for surety bonds, workers comp, insurance
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Cash Collateral - Letter of Credit	19,700	Secures LCs for workers comp
3. Closed Accounts						
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Chrysler Investments I	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Chrysler Investments II	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Chrysler Investments III	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Chrysler Investments IV	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Chrysler Investments V	CLOSED	
Chrysler LLC	Charter One Bank	Intentionally omitted	USD	Escrow - Blue Water	CLOSED	
Chrysler LLC	BlackRock	Intentionally omitted	USD	Investments	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Dealer Incentives	CLOSED	
Chrysler LLC	Goldman Sachs & Co.	Intentionally omitted	USD	Investments	CLOSED	
Chrysler LLC				Custody account for Tipton	CLOSED	
Chrysler LLC	Harris Bank	Intentionally omitted	USD	Infrastructure Funding	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Investments	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Investments	CLOSED	
Chrysler International Corporation	JPMorgan Chase Bank	Intentionally omitted	PLN	Concentration	CLOSED	
Chrysler International Corporation	JPMorgan Chase Bank	Intentionally omitted	EUR	Concentration	CLOSED	
Chrysler International Corporation	JPMorgan Chase Bank	Intentionally omitted	EUR	Concentration	CLOSED	
Chrysler International Corporation	JPMorgan Chase Bank	Intentionally omitted	EUR	Concentration	CLOSED	
Chrysler International Corporation	JPMorgan Chase Bank	Intentionally omitted	EUR	Concentration	CLOSED	
Chrysler International Corporation	JPMorgan Chase Bank	Intentionally omitted	EUR	Concentration	CLOSED	
Chrysler International Corporation	JPMorgan Chase Bank	Intentionally omitted	THB	Concentration	CLOSED	
Chrysler LLC	Comerica Bank	Intentionally omitted	USD	Benefits-Sedgwick / S&A	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Cash Collateral	CLOSED	
Chrysler LLC	JPMorgan Chase Bank	Intentionally omitted	USD	Escrow - DCFS	CLOSED	

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Exhibit

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

TREATMENT OF OBJECTIONS TO SALE MOTION¹

1. RETIREE AND SEPARATED EMPLOYEE OBJECTIONS

(A) NON-BARGAINING UNIT EMPLOYEES

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
N/A	Amato, Mark A.	Overruled
1077	Beverman, Gerald L.	Overruled
1152	Czarnecki, Tamara L.	Overruled
1094	Di Mambro, Piero	Overruled
1098	Dykstra, Timothy P.	Overruled
1086	Luss, Fred V.	Overruled
1079	Madden, Timothy J.	Overruled
1416	McAlear, Thomas C.	Overruled
1219	Miller, Claude W.	Overruled
1414	Miltz, Donald C.	Overruled

¹

All terms used but not defined herein have the meaning given to them in the Sale Order.

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1195 2398	National Chrysler Retirement Organization	Overruled
N/A	Ozormoor, Joseph T.	Overruled
1223	Robison, David A. and Marilyn J.	Overruled
1090	Taravella, Christopher A.	Overruled
1075	Vollmer, Eugene F	Overruled

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(B) UAW-AFFILIATED RETIREES

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
N/A	Adkins, Rodney	Overruled
N/A	Artis, Terry Joe	Overruled
1367	Brasili, Charles G., Pewitt, Rosalind, Stopak, Judith, Zimeyzyk, Thomas	Overruled
N/A	Gaddy, Thomas E.	Overruled
N/A	Gole, Anthony E.	Overruled
1076	Hazlett, Luke J.	Overruled
1348	KTP [Objection Signed "KTP" without further detail]	Overruled
1356	Michetti, Timothy	Overruled
N/A	Nadolny, Timothy	Overruled

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2. DEALER OBJECTIONS²

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1529	Affected Dealers	Overruled
1818	Century Dodge, Inc.	Overruled
N/A	Buhler Dodge Incorporated	Overruled
1651	Crain CDJ, LLC	Overruled
1071	Certain Affected Dealers	Overruled
933	Chrysler National Dealer Council	Overruled
1045	Committee of Chrysler Affected Dealers ³	Overruled
1488	Committee of Chrysler Affected Dealers	Overruled
1671	Crain CDJ, LLC	Overruled

² To the extent any dealer objection raises a bona fide dispute relating to the rejection of Dealership Agreements, each objection as to that issue is preserved and deferred to the Rejection Hearing currently scheduled to commence on June 3, 2009.

³ The requested continuance of the Sale Motion and the Dealer Rejection Motion [Docket No. 1045] was denied at the telephonic hearing held on May 19, 2009.

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1544	Des Moines Chrysler	Overruled
1922	Don Drennen Chrysler-Jeep, Inc.	Overruled
1151	Jim Boast Dodge, Inc d/b/a Bob Boast Dodge	Overruled
1186	JJF Management Services, Inc.	Overruled
1603	Johnson County Motors, L.C. (d/b/a McGurk-Meyers Chrysler)	Overruled
1141	Joinder of Conti Causeway Ford d/b/a Causeway Jeep	Overruled
1456	Liccardi Motors, Inc. d/b/a Liccardi Chrysler Dodge	Overruled
1614	Liccardi Motors, Inc. d/b/a Liccardi Chrysler Dodge	Overruled
1822	Livonia Chrysler Jeep, Inc.	Overruled
1464	Mike Pile Autoplex, Inc., now known as Mike Pile Auto Group, Ltd. d/b/a Mike Pile Jeep-Eagle	Overruled
1548	Millerstown Chrysler, Inc.	Overruled
1189	Performance Dodge, LLC John Cullen Dodge, LLC Quality Jeep Chrysler, Inc. Wallace Chrysler Jeep LLC Golden Motors Inc.	Overruled
1536	St. Pete Jeep Eagle, Inc.	Overruled

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1288	Wayne Dodge, Inc.	Overruled

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3. TORT AND CONSUMER OBJECTIONS **(A) LEMON LAW/WARRANTY**

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1092	Ad Hoc Committee Seeking Fairness for Warranty and Lemon Law Claimants	Withdrawn (Docket No. 2916)
1840	State of Ohio	Withdrawn (Docket No. 2816)
1201	The Lemberg Claimants (Michelle Simmons, Dikel Ith Ashley Cassell)	Resolved

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(B) TORT PLAINTIFFS' OBJECTIONS – GENERAL

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1192	Ad Hoc Committee of Consumer-Victims of Chrysler LLC (the " <u>Consumer Objection</u> ")	Overruled
1777	Ad Hoc Committee of Consumer-Victims of Chrysler LLC (Corrected version of Consumer Objection listed above)	Overruled
1294	Bruce M. Abrahamson BMA Trust, dated 2-18-08 Dynasty International	Overruled
1976	Connecticut State - Office of the Attorney General	Overruled
1366	Freeland, Bradford Steven and Cynthia Gail	Overruled
1120	John Bussian, Intervenors, and a Class of Similarly Situated Persons	Overruled
992	Kathy Profitt	Overruled
1175	Patricia Pascale (the " <u>Pascale Objection</u> ")	Overruled
2149	Brief in support of Pascale Objection	Overruled
2522	Ronnie Eugene Denton, as administrator of the estate of Vicki Lynn Denton, and Ronnie Denton and Leslie Denton, as permanent guardians of minor Dalton Brett Denton	Overruled
2524	Ronnie Eugene Denton, as administrator of the estate of Vicki Lynn Denton, and Ronnie Denton and Leslie Denton, as permanent guardians of minor Dalton Brett Denton	Overruled
1231	Terry Martin Proposed Lead Class Action Plaintiff	Overruled
1197	Tort Claimants and Consumer Organizations	Overruled

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4. STATE AND LOCAL GOVERNMENT OBJECTIONS

(A) TAXES

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1165	Carrollton-Farmers Branch Independent School District.	Withdrawn (Docket No. 2099)
1221	City of Auburn Hills, Michigan.	Resolved
1220	City of Milwaukee.	Resolved
1359	Collector of Revenue for St. Louis County, Missouri.	Withdrawn (Docket No. 2387)
1213	County of Denton, Texas, City of Waco, and Waco Independent School District.	Resolved
1194	Department of Treasury of The State of Michigan.	Withdrawn (Docket No. 2954)
1163	Grapevine-Colleyville ISD, City of Grapevine, Ennis ISD, City of Ennis, Richardson ISD, Fort Worth ISD, Keller ISD, City of Katy, Harris-Ft. Bend Counties MUD #4, Spring ISD, Magnolia ISD, Willis ISD, Montgomery County MUD #46, Montgomery County MUD # 47, Montgomery County MUD #60, Montgomery County MUD #6, Montgomery County MUD #18, Lubbock CAD, City of Greenville, Greenville ISD, Houston County, Houston County Hospital District, Tyler ISD, Hidalgo County, and Hidalgo County Drainage District #1.	Withdrawn (Docket No. 2095)
1206	(a) Coppell, Coppell ISD, Dallas County, DeSoto, DeSoto ISD, Irving ISD, Richardson, Tarrant County, Bexar County, McLennan County, Harris County, Houston CAD, Orange County, Cy-Fair ISD, Katy ISD, Fort Bend County, Jasper County and Montgomery County, and (b) the City of Memphis.	Resolved
N/A	Orange County Tax Collector [Informal Objection].	Resolved
N/A	Howard County [Informal Objection].	Resolved

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(B) WORKERS' COMPENSATION

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1394	Illinois Workers' Compensation Commission	Resolved
752	Ohio Bureau of Workers Compensation	Resolved
313	State of Michigan Workers' Compensation Agency and Funds Administration	Resolved

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5. SUPPLIER AND PRODUCTION-RELATED OBJECTIONS

(A) STATUTORY LIENS

Docket No.	Objecting Party	Treatment
1088	Advanced Tooling Systems, Inc	Resolved
1376	Advanced Tooling Systems, Inc	Resolved
1379	Advanced Tooling Systems, Inc	Resolved
1158	Angelo Iafrate Construction Company	Resolved
1124	Brembo North America, Inc	Withdrawn (Docket No. 2123)
1133	Citation Corporation	Resolved
1027	Competition Engineering, Inc	Resolved
1592	Continental Structural Plastics , Inc.	Resolved
1609	Detroit Technologies, Inc.	Resolved
1011	Eclipse Tool & Die, Inc	Resolved
1082	Engineered Tooling Systems, Inc.	Resolved
1382	Engineered Tooling Systems, Inc.	Resolved
1130	Exco Engineering, A Division of Exco Technology, Ltd	Withdrawn (Docket No. 2612)

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Docket No.	Objecting Party	Treatment
1155	Experi-Metal, Inc.	Resolved
1149	Freudenberg-Nok General Partnership	Resolved
1202	Getrag Corporation	Resolved
871	Getrag Corporation, Grupto Antolin, Kautex, Tower	Resolved
1002	Hanson International	Resolved
1243	Höegh Autoliners Holdings AS	Drawn (Docket No. 2763)
1299	Höegh Autoliners Holdings AS (Amended Response)	Drawn (Docket No. 2763)
1024	International Tooling Solutions, LLC	Resolved
1179	J.L. French LLC and Nelson Metal Products LLC	Drawn (Docket No. 2392)
1173	PPG Industries, Inc.	Drawn (Docket No. 2408)
1204	Kautex, Inc.	Resolved
1128	Key Plastics, LLC	Resolved
1981	L&W, Inc. (d/b/a L&W Engineering Co.)	Resolved
1103	Leon Plastics Inc.	Drawn (Docket No. 2575)

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1211	Mahle Industries, Inc. Shape Corp. GHSP, Inc.	Resolved
1182	Meridian Automotive Systems, Inc.	Resolved
867	Meridian Automotive Systems, Inc.	Resolved
1025	Murphy Company	Resolved
1183	Magna International, Inc and its Subsidiaries	Resolved
1228	Panasonic Automotive Systems Company of America	Resolved
1191	Robert Bosch LLC	Resolved
1023	Sachs Electric Company Mcgraw Electric Company	Resolved
1007	STM MFG., Inc	Resolved
1205	Tower Automotive, Inc.	Resolved
1018	Wolverine Tool & Engineering, Inc	Resolved

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(B) RIGHT TO SETOFF AND/OR RECOUPMENT

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1187	Active Burgess Mould & Design, Inc., BASF Corp., Midwest Mold, LLC and Kongsberg Automotive, Inc., Pintura y ensambles de Mexico, S.A. de C.V., Nugar, S.A. de C.V., Pintura Estampado y Montaje, S.A. de C/V. and CIE Automotive USA, Inc.	Withdrawn by Kongsberg Automotive, Inc. only (Docket No. 2792); Withdrawn by Active Burgess Mould & Design, Inc., BASF Corporation, Midwest Mold, LLC, and Kongsberg Automotive, Inc., Pintura y Ensambles de Mexico, S.A. de C.V., Nugar, S.A. de C.V., Pintura Estampado y Montaje, S.A. de C.V., and CIE Automotive USA, Inc. (Docket No. 2919); overruled with respect to remaining objecting parties
1158	Angelo Iafrate Construction Company	Resolved
1124	Brembo North America, Inc	Withdrawn (Docket No. 2123)
1218	Bridgestone Americas Tire Operations, LLC	Resolved
1133	Citation Corporation	Resolved
1592	Continental Structural Plastics , Inc.	Resolved
1609	Detroit Technologies, Inc.	Resolved
1155	Experi-Metal, Inc.	Resolved

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1149	Freudenberg-Nok General Partnership	Resolved
1202	Getrag Corporation	Resolved
871	Getrag Corporation, Grupto Antolin, Kautex, Tower	Resolved
1299	Höegh Autoliners Holdings AS	Withdrawn (Docket No. 2763)
1243	Höegh Autoliners Holdings AS	Withdrawn (Docket No. 2763)
1204	Kautex, Inc.	Resolved
1128	Key Plastics, LLC	Resolved
1981	L&W, Inc. (d/b/a L&W Engineering Co.)	Resolved
1183	Magna International, Inc and its Subsidiaries	Resolved
1211	Mahle Industries, Inc. Shape Corp. GHSP, Inc.	Resolved
867	Meridian Automotive Systems, Inc.	Resolved
1182	Meridian Automotive Systems, Inc.	Resolved
1160	Mitsubishi Motors North America, Inc.	Resolved
1228	Panasonic Automotive Systems Company of America	Resolved

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1032	Peer Bearing Co. and SFK USA, Inc.	Withdrawn (Docket No. 1850)
1173	PPG Industries, Inc.	Withdrawn (Docket No. 2408)
1191	Robert Bosch LLC	Resolved
1039	Steel Technologies, Inc and Affiliates	Resolved
1203	Timken Company, Harman Becker Automotive Systems, Inc And Affiliated Companies And Superior Industries, Inc.	Resolved
1205	Tower Automotive, Inc.	Resolved

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(C) OBJECTIONS IMPROPERLY ASSERTED AS SALE OBJECTIONS

Docket No.	Objecting Party	Treatment
1187	Active Burgess Mould & Design, Inc., BASF Corp., Midwest Mold, LLC and Kongsberg Automotive, Inc., Pintura y ensambles de Mexico, S.A. de C.V., Nugar, S.A. de C.V., Pintura Estampado y Montaje, S.A. de C/V. and CIE Automotive USA, Inc.	Withdrawn by Kongsberg Automotive, Inc. only (Docket No. 2752); overruled with respect to other objecting parties
1158	Angelo Iafrate Construction Company	Resolved
1124	Brembo North America, Inc	Withdrawn (Docket No. 2123)
293	Bridgestone Americas Tire Operations, LLC	Resolved
1133	Citation Corporation	Resolved
1592	Continental Structural Plastics , Inc.	Referred to Section 365 Hearing
1567	Createc Corporation	Withdrawn (Docket No. 3019)
1034	Cummins Inc, and Diesel Recon	Resolved
1609	Detroit Technologies, Inc.	Referred to Section 365 Hearing
1155	Experi-Metal, Inc.	Resolved
1193	Fire Defense Equipment Co., Inc.	Withdrawn (Docket No. 2015)
1542	Flex-N-Gate Corporation	Withdrawn (Docket No. 2848)

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Docket No.	Objecting Party	Treatment
1149	Freudenberg-Nok General Partnership	Resolved
1635	General Products Corporation	Deferred to Section 365 Hearing
871	Getrag Corporation, Grupto Antolin, Kautex, Tower	Resolved
1279	Gibraltar Industries, Inc.	Withdrawn (Docket No. 1627)
1128	Key Plastics, LLC	Resolved
1981	L&W, Inc. (d/b/a L&W Engineering Co.)	Deferred to Section 365 Hearing
1103	Leon Plastics Inc.	Withdrawn (Docket No. 2575)
1183	Magna International, Inc and its Subsidiaries	Resolved
867	Meridian Automotive Systems, Inc.	Resolved
1228	Panasonic Automotive Systems Company of America	Resolved
1032	Peer Bearing Co. and SFK USA, Inc.	Withdrawn (Docket No. 1850)
1523	Pilkington North America, Inc.	Withdrawn (Docket No. 2980)
328	Plast-O-Foam, L.L.C., Flight Systems Automotive Group, L.L.C. and BASF Corporation	Resolved
1450	Shuert Industries, Inc.	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1198	Superior Acquisition, Inc.	Withdrawn (Docket No. 2014)
1342	Superior Acquisition, Inc. d/ba/ Superior Electric Great Lakes Company	Withdrawn (Docket No. 2014)
1240	Tenneco Inc. and certain of its affiliates	Deferred to Section 365 Hearing
1253	ZF Friedrichshafen AG, on behalf of itself, its affiliates, subsidiaries and joint ventures	Deferred to Section 365 Hearing

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(D) DUE PROCESS OBJECTIONS

Docket No.	Objecting Party	Treatment
1187	Active Burgess Mould & Design, Inc., BASF Corp., Midwest Mold, LLC and Kongsberg Automotive, Inc., Pintura y ensambles de Mexico, S.A. de C.V., Nugar, S.A. de C.V., Pintura Estampado y Montaje, S.A. de C/V. and CIE Automotive USA, Inc.	Withdrawn by Kongsberg Automotive, Inc. only (Docket No. 2792); overruled with respect to other objecting parties.
1123	Bank Financial FSB, As Assignee of Capricorn International Group, LLC and Affinity Resources	Resolved
1124	Brembo North America, Inc	Withdrawn (Docket No. 2123)
1218	Bridgestone Americas Tire Operations, LLC	Resolved
1133	Citation Corporation	Resolved
1034	Cummins Inc, and Diesel Recon	Resolved
1130	Exco Engineering, A Division of Exco Technology, Ltd	Withdrawn (Docket No. 2612)
1155	Experi-Metal, Inc.	Resolved
1149	Freudenberg-Nok General Partnership	Resolved
1199	Hitachi Capital America Corp.	Resolved
1243	Höegh Autoliners Holdings AS	Resolved
1128	Key Plastics, LLC	Resolved
1103	Leon Plastics Inc.	Withdrawn (Docket No. 2575)

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1160	Mitsubishi Motors North America, Inc.	Resolved
1514	Ohio Module Manufacturing Co. LLC	Resolved
1173	PPG Industries, Inc.	Withdrawn (Docket No. 2408)
1039	Steel Technologies, Inc and Affiliates	Resolved

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(E) OBJECTIONS REGARDING ASSUMPTION AND ASSIGNMENT OF LEASES

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1187	Bank Financial FSB, As Assignee of Capricorn International Group, LLC and Affinity Resources	Overruled
1123	Hitachi Capital America Corp.	Resolved
1514	Ohio Module Manufacturing Co., LLC	Resolved

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6. CURE AND ASSUMPTION OBJECTIONS

(A) CURE OBJECTIONS IMPROPERLY CATEGORIZED AS SALE OBJECTIONS

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1793	AT&T Corp.	Deferred to Section 365 Hearing
1670	Auto Meter Products, Inc.	Deferred to Section 365 Hearing
1556	AVIBANK Manufacturing, Inc.	Deferred to Section 365 Hearing
1853	BAE Systems Resolution Inc.	Withdrawn (Docket No. 2846)
1868	BASF Corporation and BASF Catalysts, LLC	Deferred to Section 365 Hearing
1942	BRC Rubber & Plastics, Inc	Deferred to Section 365 Hearing
1601	Cadillac Rubber & Plastics, Inc. d/b/a Avon Automotive	Withdrawn (Docket No. 2826)
1743	Canadian Pacific Railway Company	Deferred to Section 365 Hearing
1567	Createc Corporation	Deferred to Section 365 Hearing
1602	Denso International America, Inc.	Deferred to Section 365 Hearing
1505	E.I. du Pont de Nemours and Company	Deferred to Section 365 Hearing
1937	Fleet Car Lease, Inc.	Withdrawn (Docket No. 2809)
1838	Freudenberg-Nok General Partnership	Deferred to Section 365 Hearing

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Docket No.	Objecting Party	Treatment
1890	Garmin USA, Inc.	Withdrawn (Docket No. 2982)
1655	GECOM Corporation	Deferred to Section 365 Hearing
1279	Gibraltar Industries, Inc.	Withdrawn (Docket No. 1627)
1930	Guardian Automotive Products, Inc.	Deferred to Section 365 Hearing
1930	Guardian Industries Corp	Deferred to Section 365 Hearing
1813	Hayes Lemmerze International, Inc.	Deferred to Section 365 Hearing
1458	Hazen Transport, Inc.	Deferred to Section 365 Hearing
1882	Hirata Corporation of America	Deferred to Section 365 Hearing
1715	Hirschvogel, Inc.	Deferred to Section 365 Hearing
1871	Honeywell International Inc.	Deferred to Section 365 Hearing
1638	Ingersoll Machine Tools, Inc.	Deferred to Section 365 Hearing
1849	Key Plastics LLC	Deferred to Section 365 Hearing
1904	Keykert USA, Inc.	Deferred to Section 365 Hearing
1608	Kuka GA f/k/a IWKA AG, et al.	Deferred to Section 365 Hearing

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Docket No.	<u>Objecting Party</u>	<u>Treatment</u>
1981	L&W, Inc. d/b/a L&W Engineering Company	Deferred to Section 365 Hearing
1625	Mahle Argentina S.A.	Deferred to Section 365 Hearing
1918	Mayco International, LLC	Deferred to Section 365 Hearing
1718	Methode Electronics, Inc.	Deferred to Section 365 Hearing
1946	Mid West Fabricating Company	Deferred to Section 365 Hearing
1552	Mid-West Forge Corporation	Deferred to Section 365 Hearing
1797	Miniature Precision Components, Inc.	Withdrawn (Docket No. 16-116)
1561	NSS Technologies, Inc.	Deferred to Section 365 Hearing
1465	Palmer Moving & Storage Co.	Deferred to Section 365 Hearing
1666	Pyeong HWA Automotive Co., Ltd.	Deferred to Section 365 Hearing
1757	RCO Engineering, Inc.	Deferred to Section 365 Hearing
1893	Reliable Carriers, Inc.	Deferred to Section 365 Hearing
1620	Richard Tool & Die Corporation	Withdrawn (Docket No. 16-83)
1694	Rudolph Libbe, Inc.	Withdrawn (Docket No. 16-59)

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1924	Savannah Dodge, Inc.	Deferred to Section 365 Hearing
Not docketed	Select 1 Transport, Inc.	Deferred to Section 365 Hearing
1952	Shape Corporation	Deferred to Section 365 Hearing
1637	Sharp Model Company	Deferred to Section 365 Hearing
1450	Shuert Industries, Inc.	Deferred to Section 365 Hearing
1930	SRG Global, Inc.	Deferred to Section 365 Hearing
1835	Superior Cam, Inc.	Deferred to Section 365 Hearing
1886	The Crown Group, Incorporated	Deferred to Section 365 Hearing
1760	Vitro Automotriz, S.A. DE C.V.	Deferred to Section 365 Hearing
1668	Wackenhut Corporation	Deferred to Section 365 Hearing
1708	Worthington Industries and its related entity the Worthington Steel Company	Withdrawn (Docket 2922)
Not docketed	W.W. Grainger, Inc.	Deferred to Section 365 Hearing

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(B) PURE CURE OBJECTIONS

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
Not docketed	A.D. Transport Express, Inc.	Deferred to Section 365 Hearing
1741	AGC Automotive Americas Co.	Deferred to Section 365 Hearing
1906	Allevard Sogefi USA Inc.	Deferred to Section 365 Hearing
1876	Allied Automotive Group, Inc.	Withdrawn (Docket No. 2953)
1944	Alpine Electronics of America, Inc.	Withdrawn (Docket No. 2949)
1713	Altair Engineering, Inc.	Deferred to Section 365 Hearing
1571	Ametek, Inc.	Deferred to Section 365 Hearing
1782	Ancira Motor Company D/B/A Ancira Chrysler Jeep Dodge	Deferred to Section 365 Hearing
1674	Anderson-Cook, Inc. D/B/A Mra Industries, Inc.	Deferred to Section 365 Hearing
1658	Angelo Iafrate Construction Company	Deferred to Section 365 Hearing
1652	Applied Manufacturing Technologies	Deferred to Section 365 Hearing
1772	Arrow Racing Engines	Deferred to Section 365 Hearing
1781	ATC Drivetrain, Inc.	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
Not docketed	ATEL Leasing Corporation	Deferred to Section 365 Hearing
1654	Atlas Tool, Inc.	Withdrawn (Docket No. 2870)
1670	Auto Meter Products, Inc.	Deferred to Section 365 Hearing
1826	AZ Automotive Corporation	Deferred to Section 365 Hearing
1657	BBI Enterprises Group, Inc.	Deferred to Section 365 Hearing
1568	Behr America, Inc.	Deferred to Section 365 Hearing
1877	Bridgestone Americas Tire Operations, LLC	Deferred to Section 365 Hearing
1796	Broadway Lone Star, Ltd.	Deferred to Section 365 Hearing
1728	Brose Fahrzeugteile Gmbh & Co.	Withdrawn (Docket No. 3117)
1547	Bruss North America, Inc.	Deferred to Section 365 Hearing
1785	Burgess-Norton Manufacturing Company	Deferred to Section 365 Hearing
1723	Cadillac Products Automotive Co.	Deferred to Section 365 Hearing
1733	Canadian National Railway	Deferred to Section 365 Hearing
1690	Carman Dodge, Inc.	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1845	Cascade Engineering, Inc.	Deferred to Section 365 Hearing
1615	Cassens Transport Company, Cassens Transport Ltd., Auto Releasing, Inc. and Kenosha Releasing, Inc.	Withdrawn (Docket No. 3024)
1824	Central Transport International, Inc.	Deferred to Section 365 Hearing
1575	CEVA Freight Management	Deferred to Section 365 Hearing
1576	CEVA Freight Management	Deferred to Section 365 Hearing
1938 1941	CEVA Logistics Canada	Deferred to Section 365 Hearing
1938 1941	CEVA Logistics U.S., Inc.	Deferred to Section 365 Hearing
1734	Citation Corporation	Deferred to Section 365 Hearing
1921	CJ&M Transport, Inc.	Deferred to Section 365 Hearing
1592 1929	Continental Structural Plastics, Inc.	Deferred to Section 365 Hearing
1502	Correct Industries, LLC f/k/a Cooper Industries, Inc.	Deferred to Section 365 Hearing
1891	Cooper-Standard Automotive	Deferred to Section 365 Hearing
1951	Corvac Composites, LLC	Deferred to Section 365 Hearing
2044	Creative Liquid Coatings	Withdrawn (Docket No. 3084)

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1948	Daimler AG and its affiliates	Deferred to Section 365 Hearing
1609	Detroit Technologies, Inc.	Deferred to Section 365 Hearing
1843	Don-A-Vee Chrysler Jeep	Deferred to Section 365 Hearing
1659	Dow Chemical Company	Deferred to Section 365 Hearing
1600	Dura Automotive Systems, Inc.	Deferred to Section 365 Hearing
1582	Dura Mold, Inc.	Deferred to Section 365 Hearing
1831	Dürr Ecoclean Inc.	Deferred to Section 365 Hearing
1905	Dynetics, Inc.	Deferred to Section 365 Hearing
1524	E.R. Wagner Manufacturing Co.	Withdrawn (Docket No. 2804)
1621	East Penn Manufacturing Co.	Withdrawn (Docket No. 2947)
1938 1941	EGL Eagle Global Logistics, LP,	Deferred to Section 365 Hearing
1711	Environmental Quality Company, The	Deferred to Section 365 Hearing
1885	Exel Inc.	Deferred to Section 365 Hearing
1636	ExxonMobil Oil Corporation f/k/a Mobil Oil Corporation	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1750	FAA Torrance CPJ, Inc. d/b/a South Bay Chrysler Jeep Dodge and Sonic - Frank Parra Autoplex, LP d/b/a Frank Parra Chrysler Jeep Dodge	Deferred to Section 365 Hearing
1506	Findlay Industries Inc	Deferred to Section 365 Hearing
1542	Flex-N-Gate Corporation	Withdrawn (Docket No. 2848)
1789	Florida East Coast Railway, L.L.C.	Deferred to Section 365 Hearing
1939	Florissant Dodge Sales, Inc.	Deferred to Section 365 Hearing
1453	Fluid Routing Solutions, Inc.	Deferred to Section 365 Hearing
1731	Foster Electric (U.S.A.) Inc.	Deferred to Section 365 Hearing
Not docketed	Fourteenth Avenue Cartage Co., Inc.	Deferred to Section 365 Hearing
1672	Future Die Cast and Engineering, Inc.	Deferred to Section 365 Hearing
1673	General Electric Capital Corporation	Deferred to Section 365 Hearing
1590	General Electric Company	Deferred to Section 365 Hearing
1635	General Products Corporation	Deferred to Section 365 Hearing
1983	Gestamp Toluca Sa de CV and Gestamp Mason, LLC f/k/a SSAB Hard Tech, Inc.	Withdrawn (Docket No. 2934)
1990	Getrag Getriebe-Und Zahnradfabrik Hermann Hagenmeyer GmbH & Cie KG	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
Not docketed	Global Steering Systems, LLC	Deferred to Section 365 Hearing
1759	Grupo Antolin North America Inc.	Deferred to Section 365 Hearing
1653	Hilite Industries, Inc.	Deferred to Section 365 Hearing
1949	Honeywell International Inc.	Deferred to Section 365 Hearing
1740	Horton, Inc.	Deferred to Section 365 Hearing
1660	Howard Ternes Packaging Co. d/b/a Ternes Procurement Services	Withdrawn (Docket No. 2937)
1848	Huntington Beach Chrysler Jeep, Inc.	Deferred to Section 365 Hearing
1774	Illinois Tool Works Inc.	Deferred to Section 365 Hearing
1888	Insight Network Logistics LLC	Deferred to Section 365 Hearing
1699	Insight Network Logistics, LLC	Deferred to Section 365 Hearing
1934	Integrated Manufacturing & Assembly LLC	Deferred to Section 365 Hearing
1717	International Automotive Components Group North America Inc.	Deferred to Section 365 Hearing
1958	International Crankshaft, Inc. and Sumitomo Metal USA Inc.	Deferred to Section 365 Hearing
1758 1889	Intra Corporation	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1881	Johnson Matthey PLC and Johnson Matthey Inc.	Deferred to Section 365 Hearing
1933	"K" Line America, Inc.	Deferred to Section 365 Hearing
1626	Katayama American Co. Inc.	Deferred to Section 365 Hearing
1626	Katayama Kogyo	Deferred to Section 365 Hearing
1933	Kawasaki Kisen Kaisha, Ltd	Deferred to Section 365 Hearing
1749	Keller Group, Inc.	Withdrawn (Docket No. 2995)
1752	Kumho Tires USA, Inc.	Deferred to Section 365 Hearing
1934	Lear Corporation	Deferred to Section 365 Hearing
1828	Logistics Insight Corporation and Mohican Transport Division of LINC Ontario Limited	Deferred to Section 365 Hearing
1808	Lone Star Ih-10, Ltd.	Deferred to Section 365 Hearing
1554	Luk Gmbh & Co	Deferred to Section 365 Hearing
1730	Mackie Moving Systems Inc	Deferred to Section 365 Hearing
1874	Maersk Line	Deferred to Section 365 Hearing
1907	Maersk Line	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1896	Martin Transportation Systems, Inc.	Deferred to Section 365 Hearing
1915	Material Science Corporation	Withdrawn (Docket No. 2802)
1676	Meridian Automotive Systems, Inc.	Withdrawn (Docket No. 3030)
1744	Metzeler Automotive Profile Systems, now known as Henniges Automotive Holdings, Inc.	Deferred to Section 365 Hearing
1911	Mitsubishi Electric Automotive America, Inc.	Deferred to Section 365 Hearing
1913	Mitsubishi Heavy Industries America, Inc.	Deferred to Section 365 Hearing
1691	Mitsubishi Motors Corporation	Deferred to Section 365 Hearing
1692	Mitsubishi Motors North America, Inc.	Deferred to Section 365 Hearing
1887	Mitsuboshi Belting Ltd. and MBL (USA) Corporation	Withdrawn (Docket No. 2900)
1727	Moore Medical LLC	Deferred to Section 365 Hearing
1915	MSC Laminates Composites, Inc.	Withdrawn (Docket No. 2802)
1686	MSX International Technical Services	Deferred to Section 365 Hearing
1925	Mt. Clemens Dodge, Inc.	Deferred to Section 365 Hearing
1851	Napa Associates, LLC	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1854	Napa Chrysler Inc.	Deferred to Section 365 Hearing
1664	National Logistics Management Co. a/k/a National Logistics Management, Inc.	Deferred to Section 365 Hearing
1903	National Material of Mexico S. de R.L. de C.V.	Deferred to Section 365 Hearing
1571	NewAge Testing Instruments, Inc.	Deferred to Section 365 Hearing
1992	Nitto Denko Automotive, Inc.	Withdrawn (Docket No. 2993)
1994	NTN Bearing Corporation of America	Deferred to Section 365 Hearing
1837	Oiles America Corporation	Deferred to Section 365 Hearing
1802	Omron Automotive Electronics, Inc.	Deferred to Section 365 Hearing
1661	Panasonic Automotive Systems Company of America f/k/a Matsushita Electric Corp. of America	Deferred to Section 365 Hearing
1719	PGW, LLC	Deferred to Section 365 Hearing
1523	Pilkington North America, Inc.	Deferred to Section 365 Hearing
2011	Pompano Motor Company d/b/a Eddie Accardi Jeep Chrysler and Eddie Accardi Jeep Chrysler Dodge, Inc. d/b/a Accardi-Milrot Jeep Chrysler Dodge	Deferred to Section 365 Hearing
1644	Prefix Corporation	Deferred to Section 365 Hearing
1518	Prestige Stamping Inc	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1806	Ranger Transportation, Inc. (Landstar Systems, Inc.)	Deferred to Section 365 Hearing
1857	Reseda Dodge Sales, Inc.	Deferred to Section 365 Hearing
1508	Rush Trucking Corporation	Deferred to Section 365 Hearing
1780	RWD Technologies, LLC	Deferred to Section 365 Hearing
1554	Schaeffler Group USA Inc	Deferred to Section 365 Hearing
1841	Shaver Automotive Group, Inc.	Deferred to Section 365 Hearing
1583	Sierra Mountain Express, Inc.	Scheduled for Section 365 Hearing
1761	SKF USA Inc. and Peer Bearing Company	Withdrawn (Docket No. 1850)
1855	SKF USA Inc. and Peer Bearing Company	Deferred to Section 365 Hearing
1677	SL America Corporation	Deferred to Section 365 Hearing
1746	Soundwich, Inc.	Withdrawn (Docket No. 2994)
1953	SPX Corporation and SPX Filtran LLC	Deferred to Section 365 Hearing
1901	Stillwater Designs, Inc.	Deferred to Section 365 Hearing
1902	Strattec Power Access LLC	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1900	Strattec Security Corporation	Deferred to Section 365 Hearing
1873	Sumitomo Corporation of American	Deferred to Section 365 Hearing
1852	Summit Polymers, Inc.	Deferred to Section 365 Hearing
1980	Superior Industries International, Inc.	Deferred to Section 365 Hearing
1563	Supreme Auto Transport, Inc.	Deferred to Section 365 Hearing
1945	Tenneco, Inc.	Deferred to Section 365 Hearing
1991	Textron, Inc. entities (multiple)	Deferred to Section 365 Hearing
1916	The Pasha Group	Withdrawn (Docket No. 3137)
1775	Transform Automotive, Inc.	Deferred to Section 365 Hearing
Not docketed	Trelleborg YSH, Inc.	Deferred to Section 365 Hearing
1624	Trico Products Corporation	Deferred to Section 365 Hearing
1938 1941	ULC	Deferred to Section 365 Hearing
1704	Ultra Manufacturing Ltd.	Deferred to Section 365 Hearing
1820	United Parcel Services of America, Inc.	Deferred to Section 365 Hearing

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<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1494	United Road Services	Deferred to Section 365 Hearing
1709	Visiocorp USA Inc.	Deferred to Section 365 Hearing
2013	Visteon Corporation	Deferred to Section 365 Hearing
1769	Waggoners Trucking	Deferred to Section 365 Hearing
1892	Waggoners Trucking	Deferred to Section 365 Hearing
1842	Yasunaga Corporation	Deferred to Section 365 Hearing
1844	Yazaki North America, Inc.	Deferred to Section 365 Hearing

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7. MISCELLANEOUS OBJECTIONS

<u>Docket No.</u>	<u>Objecting Party</u>	<u>Treatment</u>
1208	Chrysler Financial Services Americas LLC	Resolved
1954	Chrysler Financial Services Americas LLC	Resolved
204	Chrysler Non-Tarp Lenders	Overruled
286	First Supplemental Objection of The Chrysler Non-Tarp Lenders	Overruled
1259	Indiana State Teachers Retirement Fund, Indiana State Police Pension Fund, And Indiana Major Move Construction	Overruled
1643	Riches, Jonathan Lee d/b/a/ Irving Picard	Overruled
1188	Wilmington Trust Company	Resolved
2559	Automobile Plant GAZ	Overruled

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
	:	
In re	:	Chapter 11 Case No.
	:	
GENERAL MOTORS CORP., <i>et al.</i> ,	:	09-50026 (REG)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		

**ORDER (I) AUTHORIZING SALE OF ASSETS PURSUANT
TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT
WITH NGMCO, INC., A U.S. TREASURY-SPONSORED PURCHASER;
(II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION
WITH THE SALE; AND (III) GRANTING RELATED RELIEF**

Upon the motion, dated June 1, 2009 (the “**Motion**”), of General Motors Corporation (“**GM**”) and its affiliated debtors, as debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105, 363, and 365 of title 11, United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) for, among other things, entry of an order authorizing and approving (A) that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, by and among GM and its Debtor subsidiaries (collectively, the “**Sellers**”) and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC (the “**Purchaser**”), a purchaser sponsored by the United States Department of the Treasury (the “**U.S. Treasury**”), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as amended, the “**MPA**”), a copy of which is annexed hereto as Exhibit “A” (excluding the exhibits and schedules thereto); (B) the sale of the Purchased Assets¹ to the

¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Motion or the MPA.

Purchaser free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability; (C) the assumption and assignment of the Assumable Executory Contracts; (D) the establishment of certain Cure Amounts; and (E) the UAW Retiree Settlement Agreement (as defined below); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with this Court's Order, dated June 2, 2009 (the "**Sale Procedures Order**"), and it appearing that no other or further notice need be provided; and a hearing having been held on June 30 through July 2, 2009, to consider the relief requested in the Motion (the "**Sale Hearing**"); and upon the record of the Sale Hearing, including all affidavits and declarations submitted in connection therewith, and all of the proceedings had before the Court; and the Court having reviewed the Motion and all objections thereto (the "**Objections**") and found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors, their estates and creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein [and in the Court's Decision dated July 5, 2009 \(the "Decision"\)](#) constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

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B. To the extent any of the following findings of fact [or Findings of Fact in the Decision](#) constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law [or Conclusions of Law in the Decision](#) constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion, the MPA, and the 363 Transaction pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, and 6006.

E. As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court, in light of the exigent circumstances of these chapter 11 cases and the wasting nature of the Purchased Assets and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the 363 Transaction, the procedures for assuming and assigning the Assumable Executory Contracts as described in the Sale Procedures Order and as modified herein (the "**Modified Assumption and Assignment Procedures**"), the UAW Retiree

Settlement Agreement, and the Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), and 6006(c) and in compliance with the Sale Procedures Order; (ii) such notice was good and sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, about the Sale Procedures, the sale of the Purchased Assets, the 363 Transaction, and the assumption and assignment of the Assumable Executory Contracts, and to reach all UAW-Represented Retirees about the UAW Retiree Settlement Agreement and the terms of that certain Letter Agreement, dated May 29, 2009, between GM, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the “UAW”), and Stember, Feinstein, Doyle & Payne, LLC (the “UAW Claims Agreement”) relating thereto; and (iii) no other or further notice of the Motion, the 363 Transaction, the Sale Procedures, the Modified Assumption and Assignment Procedures, the UAW Retiree Settlement Agreement, the UAW Claims Agreement, and the Sale Hearing or any matters in connection therewith is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, potential contingent warranty claims against the Debtors), the Publication Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. On June 1, 2009, this Court entered the Sale Procedures Order approving the Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. The Debtors received no bids under the Sale Procedures for the Purchased Assets. Therefore, the Purchaser’s bid was designated as the Successful Bid pursuant to the Sale Procedures Order.

G. As demonstrated by (i) the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, in light of the exigent circumstances presented, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the MPA constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (d) the 363 Transaction is a sale of deteriorating assets and the only alternative to liquidation available for the Debtors; (e) if the 363 Transaction is not approved, the Debtors will be forced to cease operations altogether; (f) the failure to approve the 363 Transaction promptly will lead to systemic failure and dire consequences, including the loss of hundreds of thousands of auto-related jobs; (g) prompt approval of the 363 Transaction is the only means to preserve and maximize the value of the Debtors' assets; (h) the 363 Transaction maximizes fair value for the Debtors' parties in interest; (i) the Debtors are receiving fair value for the assets being sold; (j) the 363 Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including liquidation under chapters 7 or 11 of the Bankruptcy Code; (k) no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; (l) the consideration to be paid by the Purchaser under the MPA exceeds the liquidation value of the Purchased Assets; and (m) the Debtors' determination that the MPA constitutes the highest or best offer for the Purchased Assets and that the 363 Transaction represents a better alternative for the Debtors' parties in interest than an immediate liquidation constitute valid and sound exercises of the Debtors' business judgment.

H. The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest.

I. Approval of the MPA and consummation of the 363 Transaction at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets pursuant to the 363 Transaction prior to, and outside of, a plan of reorganization and for the immediate approval of the MPA and the 363 Transaction because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the 363 Transaction, time is of the essence in (i) consummating the 363 Transaction, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, their creditors, employees, the automotive industry, and the national economy that would be threatened by protracted proceedings in these chapter 11 cases.

K. The consideration provided by the Purchaser pursuant to the MPA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The 363 Transaction must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

M. The MPA was not entered into and none of the Debtors, the Purchaser, or the Purchasers' present or contemplated owners have entered into the MPA or propose to consummate the 363 Transaction for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser, nor the Purchaser's present or contemplated owners is entering into the MPA or proposing to consummate the 363 Transaction fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

N. In light of the extensive prepetition negotiations culminating in the MPA, the Purchaser's commitment to consummate the 363 Transaction is clear without the need to provide a good faith deposit.

O. Each Debtor (i) has full corporate power and authority to execute the MPA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MPA, (iii) has taken all corporate action necessary to authorize and approve the MPA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly provided for in the MPA which may be waived by the Purchaser, to consummate such transactions.

P. The consummation of the 363 Transaction outside of a plan of reorganization pursuant to the MPA neither impermissibly restructures the rights of the Debtors' creditors, allocates or distributes any of the sale proceeds, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The 363 Transaction does not constitute a *sub rosa* plan of reorganization. The 363 Transaction in no way dictates distribution of the Debtors' property to creditors and does not impinge upon any chapter 11 plan that may be confirmed.

Q. The MPA and the 363 Transaction were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, and advisors, has engaged in any conduct that would cause or permit the MPA to be avoided under 11 U.S.C. § 363(n).

R. The Purchaser is a newly-formed Delaware corporation that, as of the date of the Sale Hearing, is wholly-owned by the U.S. Treasury. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

S. Neither the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, or advisors is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

T. Upon the Closing of the 363 Transaction, the Debtors will transfer to the Purchaser substantially all of its assets. In exchange, the Purchaser will provide the Debtors with (i) cancellation of billions of dollars in secured debt; (ii) assumption by the Purchaser of a portion of the Debtors' business obligations and liabilities that the Purchaser will satisfy; and (iii) no less than 10% of the Common Stock of the Purchaser as of the Closing (100% of which the

Debtors' retained financial advisor values at between \$38 billion and \$48 billion) and warrants to purchase an additional 15% of the Common Stock of the Purchaser as of the Closing, the combination of which the Debtors' retained financial advisor values at between \$7.4 billion and \$9.8 billion (which amount, for the avoidance of doubt, does not include any amount for the Adjustment Shares).

U. The Purchaser, not the Debtors, has determined its ownership composition and capital structure. The Purchaser will assign ownership interests to certain parties based on the Purchaser's belief that the transfer is necessary to conduct its business going forward, that the transfer is to attain goodwill and consumer confidence for the Purchaser and to increase the Purchaser's sales after completion of the 363 Transaction. The assignment by the Purchaser of ownership interests is neither a distribution of estate assets, discrimination by the Debtors on account of prepetition claims, nor the assignment of proceeds from the sale of the Debtors' assets. The assignment of equity to the New VEBA (as defined in the UAW Retiree Settlement Agreement) and 7176384 Canada Inc. is the product of separately negotiated arm's-length agreements between the Purchaser and its equity holders and their respective representatives and advisors. Likewise, the value that the Debtors will receive on consummation of the 363 Transaction is the product of arm's-length negotiations between the Debtors, the Purchaser, the U.S. Treasury, and their respective representatives and advisors.

V. The U.S. Treasury and Export Development Canada ("EDC"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "**Existing UST Loan Agreement**"), the Secretary of the Treasury, in

consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is “necessary to promote financial market stability,” and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et seq. (“EESA”). The U.S. Treasury’s extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

W. The DIP Facility and the Existing UST Loan Agreement are loans and shall not be recharacterized. The Court has already approved the DIP Facility. The Existing UST Loan Agreement bears the undisputed hallmarks of a loan, not an equity investment.

Among other things:

(i) The U.S. Treasury structured its prepetition transactions with GM as (a) a loan, made pursuant to and governed by the Existing UST Loan Agreement, in addition to (b) a separate, and separately documented, equity component in the form of warrants;

(ii) The Existing UST Loan Agreement has customary terms and covenants of a loan rather than an equity investment. For example, the Existing UST Loan Agreement contains provisions for repayment and pre-payment, and provides for remedies in the event of a default;

(iii) The Existing UST Loan Agreement is secured by first liens (subject to certain permitted encumbrances) on GM’s and the guarantors’ equity interests in most of their domestic subsidiaries and certain of their foreign subsidiaries (limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries), intellectual property, domestic real estate (other than manufacturing plants or facilities) inventory that was not pledged to other lenders, and cash and cash equivalents in the United States;

(iv) The U.S. Treasury also received junior liens on certain additional collateral, and thus, its claim for recovery on such collateral under the Existing UST Loan Agreement is, in part, junior to the claims of other creditors;

(v) the Existing UST Loan Agreement requires the grant of security by its terms, as well as by separate collateral documents, including: (a) a guaranty and

security agreement, (b) an equity pledge agreement, (c) mortgages and deeds of trust, and (d) an intellectual property pledge agreement;

(vi) Loans under the Existing UST Loan Agreement are interest-bearing with a rate of 3.00% over the 3-month LIBOR with a LIBOR floor of 2.00%. The Default Rate on this loan is 5.00% above the non-default rate.

(vii) The U.S. Treasury always treated the loans under the Existing UST Loan Agreement as debt, and advances to GM under the Existing Loan Agreement were conditioned upon GM's demonstration to the United States Government of a viable plan to regain competitiveness and repay the loans.

(viii) The U.S. Treasury has acted as a prudent lender seeking to protect its investment and thus expressly conditioned its financial commitment upon GM's meaningful progress toward long-term viability.

Other secured creditors of the Debtors also clearly recognized the loans under the Existing UST Loan Agreement as debt by entering into intercreditor agreements with the U.S. Treasury in order to set forth the secured lenders' respective prepetition priority.

X. This Court has previously authorized the Purchaser to credit bid the amounts owed under both the DIP Facility and the Existing UST Loan Agreement and held the Purchaser's credit bid to be, for all purposes, a "Qualified Bid" under the Sale Procedures Order.

Y. The Debtors, the Purchaser, and the UAW, as the exclusive collective bargaining representative of the Debtors' UAW-represented employees and the authorized representative of the persons in the Class and the Covered Group (as described in the UAW Retiree Settlement Agreement) (the "**UAW-Represented Retirees**") under section 1114(c) of the Bankruptcy Code, engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of "retiree benefits" within the meaning of section 1114(a) of the Bankruptcy Code and related matters. Conditioned upon the consummation of the 363 Transaction and the approval of the Bankruptcy Court granted in this Order, the Purchaser and the UAW will enter into that certain Retiree Settlement Agreement, dated as of the Closing Date (the "**UAW Retiree Settlement Agreement**"), which is Exhibit D to the MPA, which resolves

issues with respect to the provision of certain retiree benefits to UAW-Represented Retirees as described in the UAW Retiree Settlement Agreement. As set forth in the UAW Retiree Settlement Agreement, the Purchaser has agreed to make contributions of cash, stock, and warrants of the Purchaser to the New VEBA (as defined in the UAW Retiree Settlement Agreement), which will have the obligation to fund certain health and welfare benefits for the UAW-Represented Retirees. The New VEBA will also be funded by the transfer of assets from the Existing External VEBA and the assets in the UAW Related Account of the Existing Internal VEBA (each as defined in the UAW Retiree Settlement Agreement). GM and the UAW, as the authorized representative of the UAW-Represented Retirees, as well as the representatives for the class of plaintiffs in a certain class action against GM (the “**Class Representatives**”), through class counsel, Stemper, Feinstein, Doyle and Payne LLC (“**Class Counsel**”), negotiated in good faith the UAW Claims Agreement, which requires the UAW and the Class Representatives to take actions to effectuate the withdrawal of certain claims against the Debtors, among others, relating to retiree benefits in the event the 363 Transaction is consummated and the Bankruptcy Court approves, and the Purchaser becomes fully bound by, the UAW Retiree Settlement Agreement, subject to reinstatement of such claims to the extent of any adverse impact to the rights or benefits of UAW-Represented Retirees under the UAW Retiree Settlement Agreement resulting from any reversal or modification of the 363 Transaction, the UAW Retiree Settlement Agreement, or the approval of the Bankruptcy Court thereof, the foregoing as subject to the terms of, and as set forth in, the UAW Claims Agreement.

Z. Effective as of the Closing of the 363 Transaction, the Debtors will assume and assign to the Purchaser the UAW Collective Bargaining Agreement and all liabilities thereunder. The Debtors, the Purchaser, the UAW and Class Representatives intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings

incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2).

AA. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims (for purposes of this Order, the term “claim” shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers’ or the Purchaser’s interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers’ predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability.

BB. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the

Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, and (ii) non-Debtor parties to the Assumable Executory Contracts who did not object, or who withdrew their Objections, to the 363 Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, and encumbrances, and (ii) non-Debtor parties to the Assumable Executory Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the 363 Transaction ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the MPA, no such liens or encumbrances shall attach to the proceeds of the 363 Transaction.

CC. Under the MPA, GM is transferring all of its right, title, and interest in the Memphis, TN SPO Warehouse and the White Marsh, MD Allison Transmission Plant (the “**TPC Property**”) to the Purchaser pursuant to section 363(f) of the Bankruptcy Code free and clear of all liens (including, without limitation, the TPC Liens (as hereinafter defined)), claims, interests, and encumbrances (other than Permitted Encumbrances). For purposes of this Order, “**TPC Liens**” shall mean and refer to any liens on the TPC Property granted or extended pursuant to the TPC Participation Agreement and any claims relating to that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the “**TPC Participation Agreement**”), dated as of June 30, 2004, among GM, as Lessee, Wilmington Trust Company, a Delaware corporation, not in its individual capacity except as expressly stated herein but solely as Owner Trustee (the “**TPC Trustee**”) under GM Facilities Trust No. 1999-I (the “**TPC Trust**”), as Lessor, GM, as Certificate Holder, Hannover Funding Company LLC, as

CP Lender, Wells Fargo Bank Northwest, N.A., as Agent, Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator, and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, collectively, as Purchasers (collectively, with CP Lender, Agent and Administrator, the “**TPC Lenders**”), together with the Operative Documents (as defined in the TPC Participation Agreements (the “**TPC Operative Documents**”).

DD. The Purchaser would not have entered into the MPA and would not consummate the 363 Transaction (i) if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the “**Retained Liabilities**”), other than, in each case, the Assumed Liabilities. The Purchaser will not consummate the 363 Transaction unless this Court expressly orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in the Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Hearing or in the MPA.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection

with the consummation of the 363 Transaction, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Purchased Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Purchased Contracts and liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

FF. For the avoidance of doubt, and notwithstanding anything else in this

Order to the contrary:

- The Debtors are neither assuming nor assigning to the Purchaser the agreement to provide certain retiree medical benefits specified in (i) the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (ii) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (together, the “**VEBA Settlement Agreement**”);
- at the Closing, and in accordance with the MPA, the UAW Collective Bargaining Agreement, and all liabilities thereunder, shall be assumed by the Debtors and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. Assumption and assignment of the UAW Collective Bargaining Agreement is integral to the 363 Transaction and the MPA, are in the best interests of the Debtors and their estates, creditors, employees, and retirees, and represent the exercise of the Debtors' sound business judgment, enhances the value of the Debtors' estates, and does not constitute unfair discrimination;
- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the “authorized representative” of the UAW-Represented Retirees under section 1114(c) of the Bankruptcy Code, GM, and the Purchaser engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the 363 Transaction, the UAW and the Purchaser have entered into the UAW Retiree Settlement Agreement, which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser (as referenced in paragraph Y herein). The New VEBA will also be funded by the transfer of the UAW Related Account from the Existing Internal VEBA and the assets of the Existing External VEBA to the New VEBA (each as defined in the UAW Retiree Settlement Agreement). The Debtors, the

Purchaser, and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2);

- the Debtors' sponsorship of the Existing Internal VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the MPA.

GG. The Debtors have (i) cured and/or provided adequate assurance of cure (through the Purchaser) of any default existing prior to the date hereof under any of the Purchased Contracts that have been designated by the Purchaser for assumption and assignment under the MPA, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation through the Purchaser to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code. The Modified Assumption and Assignment Procedures are fair, appropriate, and effective and, upon the payment by the Purchaser of all Cure Amounts (as hereinafter defined) and approval of the assumption and assignment for a particular Purchased Contract thereunder, the Debtors shall be forever released from any and all liability under the Purchased Contracts.

HH. The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein. The Debtors' non-Debtor Affiliates have acknowledged and agreed to the 363 Transaction and, as required by, and in accordance with, the MPA and the Transition Services Agreement, transferred any legal, equitable, or beneficial right, title, or interest they may have in or to the Purchased Assets to the Purchaser.

II. The Debtors currently maintain certain privacy policies that govern the use of “personally identifiable information” (as defined in section 101(41A) of the Bankruptcy Code) in conducting their business operations. The 363 Transaction may contemplate the transfer of certain personally identifiable information to the Purchaser in a manner that may not be consistent with certain aspects of their existing privacy policies. Accordingly, on June 2, 2009, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and such ombudsman was appointed on June 10, 2009. The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on July 1, 2009 (Docket No. 2873) (the “**Ombudsman Report**”) and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the facts, including the exigent circumstances surrounding the conditions of the sale of personally identifiable information in connection with the 363 Transaction. No showing has been made that the sale of personally identifiable information in connection with the 363 Transaction in accordance with the provisions of this Order violates applicable nonbankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the 363 Transaction.

JJ. Pursuant to Section 6.7(a) of the MPA, GM offered Wind-Down Agreements and Deferred Termination Agreements (collectively, the “**Deferred Termination Agreements**”) in forms prescribed by the MPA to franchised motor vehicle dealers, including dealers authorized to sell and service vehicles marketed under the Pontiac brand (which is being discontinued), dealers authorized to sell and service vehicles marketed under the Hummer, Saturn and Saab brands (which may or may not be discontinued depending on whether the brands are sold to third parties) and dealers authorized to sell and service vehicles marketed

under brands which will be continued by the Purchaser. The Deferred Termination Agreements were offered as an alternative to rejection of the existing Dealer Sales and Service Agreements of these dealers pursuant to section 365 of the Bankruptcy Code and provide substantial additional benefits to dealers which enter into such agreements. Approximately 99% of the dealers offered Deferred Termination Agreements accepted and executed those agreements and did so for good and sufficient consideration.

KK. Pursuant to Section 6.7(b) of the MPA, GM offered Participation Agreements in the form prescribed by the MPA to dealers identified as candidates for a long term relationship with the Purchaser. The Participation Agreements provide substantial benefits to accepting dealers, as they grant the opportunity for such dealers to enter into a potentially valuable relationship with the Purchaser as a component of a reduced and more efficient dealer network. Approximately 99% of the dealers offered Participation Agreements accepted and executed those agreements.

LL. This Order constitutes approval of the UAW Retiree Settlement Agreement and the compromise and settlement embodied therein.

MM. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order to the full extent to which those rules provide, but that its Order should not become effective instantaneously. Thus the Court will shorten, but not wholly eliminate, the periods set forth in Fed.R.Bankr.P. 6004(h) and 6006, and expressly directs entry of judgment as set forth in accordance with the provisions of Paragraph 70 below.

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the MPA and the 363 Transaction is approved.

2. All Objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such Objections, are overruled on the merits other than a continuing Objection (each a “**Limited Contract Objection**”) that does not contest or challenge the merits of the 363 Transaction and that is limited to (a) contesting a particular Cure Amount(s) (a “**Cure Objection**”), (b) determining whether a particular Assumable Executory Contract is an executory contract that may be assumed and/or assigned under section 365 of the Bankruptcy Code, and/or (c) challenging, as to a particular Assumable Executory Contract, whether the Debtors have assumed, or are attempting to assume, such contract in its entirety or whether the Debtors are seeking to assume only part of such contract. A Limited Contract Objection shall include, until resolved, a dispute regarding any Cure Amount that is subject to resolution by the Bankruptcy Court, or pursuant to the dispute resolution procedures established by the Sale Procedures Order or pursuant to agreement of the parties, including agreements under which an objection to the Cure Amount was withdrawn in connection with a reservation of rights under such dispute resolution procedures. Limited Contract Objections shall not constitute objections to the 363 Transaction, and to the extent such Limited Contract Objections remain continuing objections to be resolved before the Court, the hearing to consider each such Limited Contract Objection shall be adjourned to August 3, 2009 at 9:00a.m. (the “**Limited Contract Objection Hearing**”).

Within two (2) business days of the entry of this Order, the Debtors shall serve upon each of the counterparties to the remaining Limited Contract Objections a notice of the Limited Contract Objection Hearing. The Debtors or any party that withdraws, or has withdrawn, a Limited

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Contract Objection without prejudice shall have the right, unless it has agreed otherwise, to schedule the hearing to consider a Limited Contract Objection on not less than fifteen (15) days notice to the Debtors, the counterparties to the subject Assumable Executory Contracts, the Purchaser, and the Creditors' Committee, or within such other time as otherwise may be agreed by the parties.

Approval of the MPA

3. The MPA, all transactions contemplated thereby, and all the terms and conditions thereof (subject to any modifications contained herein) are approved. If there is any conflict between the MPA, the Sale Procedures Order, and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the MPA and consummate the 363 Transaction pursuant to, and in accordance with, the terms and provisions of the MPA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the MPA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the MPA and effectuate the 363 Transaction, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the MPA.

6. This Order and the MPA shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including

rights or claims based on any successor or transferee liability, all non-Debtor parties to the Assumable Executory Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MPA or this Order.

Transfer of Purchased Assets Free and Clear

7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims

based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined [\(with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible\)](#) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents

and instruments necessary and appropriate to consummate the transactions contemplated by the MPA.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. On the Closing of the 363 Transaction, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest, is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance (other than Permitted Encumbrances), or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Sellers or the Purchased Assets (other than Permitted Encumbrances) shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (a) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which

shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets.

13. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the 363 Transaction.

14. Following the Closing of the 363 Transaction, no holder of any lien, claim, encumbrance, or other interest (other than Permitted Encumbrances) shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their chapter 11 cases.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the MPA and this Order; *provided, however*, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the 363 Transaction contemplated by the MPA.

17. From and after the Closing, the Purchaser shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety

Code, and similar Laws, in each case, to the extent applicable in respect of motor vehicles, vehicles, motor vehicle equipment, and vehicle parts manufactured or distributed by the Sellers prior to the Closing.

18. Notwithstanding anything to the contrary in this Order or the MPA, (a) any Purchased Asset that is subject to any mechanic's, materialman's, laborer's, workmen's, repairman's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings, or any lien for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable, or delinquent (or which may be paid without interest or penalties) shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Commencement Date (or becomes valid, perfected and enforceable after the Commencement Date as permitted by section 546(b) or 362(b)(18) of the Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "**Continuing Lien**") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights, *provided, however*, that nothing, in this Order or the MPA shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in

the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Order or the MPA shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection.

Approval of the UAW Retiree Settlement Agreement

19. The UAW Retiree Settlement Agreement, the transactions contemplated therein, and the terms and conditions thereof, are fair, reasonable, and in the best interests of the retirees, and are approved. The Debtors, the Purchaser, and the UAW are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and to comply with the terms of the UAW Retiree Settlement Agreement, including the obligation of the Purchaser to reimburse the UAW for certain expenses relating to the 363 Transaction and the transition to the New VEBA arrangements. The amendments to the Trust Agreement (as defined in the UAW Retiree Settlement Agreement) set forth on Exhibit E to the UAW Retiree Settlement Agreement, are approved, and the Trust Agreement is reformed accordingly.

20. In accordance with the terms of the UAW Retiree Settlement Agreement, (I) as of the Closing, there shall be no requirement to amend the Pension Plan as set forth in section 15 of the Henry II Settlement (as such terms are defined in the UAW Retiree Settlement Agreement); (II) on the later of December 31, 2009, or the Closing of the 363 Transaction (the "**Implementation Date**"), (i) the committee and the trustees of the Existing External VEBA (as defined in the UAW Retiree Settlement Agreement) are directed to transfer to the New VEBA all assets and liabilities of the Existing External VEBA and to terminate the Existing External

VEBA within fifteen (15) days thereafter, as provided under Section 12.C of the UAW Retiree Settlement Agreement, (ii) the trustee of the Existing Internal VEBA is directed to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA within ten (10) business days thereafter as provided in Section 12.B of the UAW Retiree Settlement Agreement, and, upon the completion of such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date (each as defined in the UAW Retiree Settlement Agreement); and (III) all obligations of the Purchaser and the Sellers to provide Retiree Medical Benefits to members of the Class and Covered Group shall be governed by the UAW Retiree Settlement Agreement, and, in accordance with section 5.D of the UAW Retiree Settlement Agreement, all provisions of the Purchaser's Plan relating to Retiree Medical Benefits for the Class and/or the Covered Group shall terminate as of the Implementation Date or otherwise be amended so as to be consistent with the UAW Retiree Settlement Agreement (as each term is defined in the UAW Retiree Settlement Agreement), and the Purchaser shall not thereafter have any such obligations as set forth in Section 5.D of the UAW Retiree Settlement Agreement.

Approval of GM's Assumption of the UAW Claims Agreement

21. Pursuant to section 365 of the Bankruptcy Code, GM's assumption of the UAW Claims Agreement is approved, and GM, the UAW, and the Class Representatives are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Claims Agreement and comply with the terms of the UAW Claims Agreement.

Assumption and Assignment to the Purchaser of Assumable Executory Contracts

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon (a) the Closing of the 363 Transaction, (b) the occurrence of the Assumption Effective Date, and (c) the resolution of any relevant Limited Contract Objections, other than a Cure Objection, by order of this Court overruling such objection or upon agreement of the parties, the Debtors' assumption and assignment to the Purchaser of each Assumable Executory Contract (including, without limitation, for purposes of this paragraph 22) the UAW Collective Bargaining Agreement) is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

23. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Assumption Effective Date, as provided by, and in accordance with, the Sale Procedures Order, the Modified Assumption and Assignment Procedures, and the MPA, those Assumable Executory Contracts that have been designated by the Purchaser for assumption pursuant to sections 6.6 and 6.31 of the MPA and that are not subject to a Limited Contract Objection other than a Cure Objection, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems may be necessary to assign and transfer such Assumable Executory Contracts and Assumed Liabilities to the Purchaser. The Purchaser shall Promptly Pay (as defined below) the following (the "**Cure Amount**"): (a) all amounts due under such Assumable Executory Contract as of the Commencement Date as reflected on the website established by the Debtors (the "**Contract Website**"), which is referenced and is accessible as set forth in the Assumption and Assignment

Notice or as otherwise agreed to in writing by an authorized officer of the parties (for this purpose only, Susanna Webber shall be deemed an authorized officer of the Debtors) (the “**Prepetition Cure Amount**”), less amounts, if any, paid after the Commencement Date on account of the Prepetition Cure Amount (such net amount, the “**Net Prepetition Cure Amount**”), plus (b) any such amount past due and owing as of the Assumption Effective Date, as required under the Modified Assumption and Assignment Procedures, exclusive of the Net Prepetition Cure Amount. For the avoidance of doubt, all of the Debtors’ rights to assert credits, chargebacks, setoffs, rebates, and other claims under the Purchased Contracts are purchased by and assigned to the Purchaser as of the Assumption Effective Date. As used herein, “**Promptly Pay**” means (i) with respect to any Cure Amount (or portion thereof, if any) which is undisputed, payment as soon as reasonably practicable, but not later than five (5) business days after the Assumption Effective Date, and (ii) with respect to any Cure Amount (or portion thereof, if any) which is disputed, payment as soon as reasonably practicable, but not later than five (5) business days after such dispute is resolved or such later date upon agreement of the parties and, in the event Bankruptcy Court approval is required, upon entry of a final order of the Bankruptcy Court. On and after the Assumption Effective Date, the Purchaser shall (i) perform any nonmonetary defaults that are required under section 365(b) of the Bankruptcy Code; *provided* that such defaults are undisputed or directed by this Court and are timely asserted under the Modified Assumption and Assignment Procedures, and (ii) pay all undisputed obligations and perform all obligations that arise or come due under each Assumable Executory Contract in the ordinary course. Notwithstanding any provision in this Order to the contrary, the Purchaser shall not be obligated to pay any Cure Amount or any other amount due with respect to any Assumable Executory Contract before such amount becomes due and payable under the applicable payment terms of such Contract.

24. The Debtors shall make available a writing, acknowledged by the Purchaser, of the assumption and assignment of an Assumable Executory Contract and the effective date of such assignment (which may be a printable acknowledgment of assignment on the Contract Website). The Assumable Executory Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the MPA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumable Executory Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumable Executory Contracts after such assumption and assignment to the Purchaser. Except as may be contested in a Limited Contract Objection, each Assumable Executory Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code and the Debtors may assume each of their respective Assumable Executory Contracts in accordance with section 365 of the Bankruptcy Code. Except as may be contested in a Limited Contract Objection other than a Cure Objection, the Debtors may assign each Assumable Executory Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumable Executory Contract that prohibit or condition the assignment of such Assumable Executory Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumable Executory Contract, constitute unenforceable antiassignment provisions which are void and of no force and effect in connection with the transactions contemplated hereunder. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumable Executory Contract have been satisfied, and, pursuant to section 365(k) of the Bankruptcy Code, the

Debtors are hereby relieved from any further liability with respect to the Assumable Executory Contracts, including, without limitation, in connection with the payment of any Cure Amounts related thereto which shall be paid by the Purchaser. At such time as provided in the Sale Procedures Order and the MPA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract. With respect to leases of personal property that are true leases and not subject to recharacterization, nothing in this Order or the MPA shall transfer to the Purchaser an ownership interest in any leased property not owned by a Debtor. Any portion of any of the Debtors' unexpired leases of nonresidential real property that purport to permit the respective landlords thereunder to cancel the remaining term of any such leases if the Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, the Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

25. Except in connection with any ongoing Limited Contract Objection, each non-Debtor party to an Assumable Executory Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or the Purchaser, their successors or assigns, or their respective property, any default arising prior to, or existing as of, the Commencement Date, or, against the Purchaser, any counterclaim, defense, or setoff (other than defenses interposed in connection with, or related to, credits, chargebacks, setoffs, rebates, and other claims asserted by the Sellers or the Purchaser in its capacity as assignee), or other claim asserted or assertable against the Sellers and (b) imposing or charging against the Debtors, the

Purchaser, or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Sellers' assumption and assignment to the Purchaser of the Assumable Executory Contracts. The validity of such assumption and assignment of the Assumable Executory Contracts shall not be affected by any dispute between the Sellers and any non-Debtor party to an Assumable Executory Contract.

26. Except as expressly provided in the MPA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities other than certain Cure Amounts as provided in the MPA, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, and their estates.

27. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumable Executory Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumable Executory Contracts.

28. The authority hereunder for the Debtors to assume and assign an Assumable Executory Contract to the Purchaser includes the authority to assume and assign an Assumable Executory Contract, as amended.

29. Upon the assumption by a Debtor and the assignment to the Purchaser of any Assumable Executory Contract and the payment of the Cure Amount in full, all defaults under the Assumable Executory Contract shall be deemed to have been cured, and any counterparty to such Assumable Executory Contract shall be prohibited from exercising any rights or remedies against any Debtor or non-Debtor party to such Assumable Executory Contract based on an asserted default that occurred on, prior to, or as a result of, the Closing, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code.

30. The assignments of each of the Assumable Executory Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

31. Entry by GM into the Deferred Termination Agreements with accepting dealers is hereby approved. Executed Deferred Termination Agreements represent valid and binding contracts, enforceable in accordance with their terms.

32. Entry by GM into the Participation Agreements with accepting dealers is hereby approved and the offer by GM of entry into the Participation Agreements and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any Participation Agreement governing the obligations of Purchaser and its dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case by case basis in an appropriate forum other than this Court.

33. Nothing contained in the preceding two paragraphs shall impact the authority of any state or of the federal government to regulate Purchaser subsequent to the Closing.

34. Notwithstanding any other provision in the MPA or this Order, no assignment of any rights and interests of the Debtors in any federal license issued by the Federal Communications Commission (“FCC”) shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

TPC Property

35. The TPC Participation Agreement and the other TPC Operative Documents are financing transactions secured to the extent of the TPC Value (as hereinafter defined) and shall be Retained Liabilities.

36. As a result of the Debtors' interests in the TPC Property being transferred to the Purchaser free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances), including, without limitation, the TPC Lenders' Liens and Claims, pursuant to section 363(e) of the Bankruptcy Code, the TPC Lenders shall have an allowed secured claim in a total amount equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "**TPC Value**"), as determined at a valuation hearing conducted by this Court or by mutual agreement of the Debtors, the Purchaser, and the TPC Lenders (such claim, the "**TPC Secured Claim**"). Either the Debtors, the Purchaser, the TPC Lenders, or the Creditors' Committee may file a motion with this Court to determine the TPC Value on twenty (20) days notice.

37. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the TPC Secured Claim and for the sole benefit of the TPC Lenders, at the Closing or as soon as commercially practicable thereafter, but in any event not later than five (5) business days after the Closing, the Purchaser shall place \$90,700,000 (the "**TPC Escrow Amount**") in cash into an interest-bearing escrow account (the "**TPC Escrow Account**") at a financial institution selected by the Purchaser and acceptable to the other parties (the "**Escrow Bank**"). Interest earned on the TPC Escrow Amount from the date of deposit through the date of the disposition of the proceeds of such account (the "**TPC Escrow Interest**") will follow principal, such that interest earned on the amount of cash deposited into the TPC Escrow Account equal to the TPC Value shall be paid to the TPC Lenders and interest earned on the balance of the TPC Escrow Amount shall be paid to the Purchaser.

38. Promptly after the determination of the TPC Value, an amount of cash equal to the TPC Secured Claim plus the TPC Lenders' pro rata share of the TPC Escrow Interest shall be released from the TPC Escrow Account and paid to the TPC Lenders (the "**TPC**

Payment”) without further order of this Court. If the TPC Value is less than \$90,700,000, the TPC Lenders shall have, in addition to the TPC Secured Claim, an aggregate allowed unsecured claim against GM’s estate equal to the lesser of (i) \$45,000,000 and (ii) the difference between \$90,700,000 and the TPC Value (the “**TPC Unsecured Claim**”).

39. If the TPC Value exceeds \$90,700,000, the TPC Lenders shall be entitled to assert a secured claim against GM’s estate to the extent the TPC Lenders would have an allowed claim for such excess under section 506 of the Bankruptcy Code (the “**TPC Excess Secured Claim**”); *provided, however*, that any TPC Excess Secured Claim shall be paid from the consideration of the 363 Transaction as a secured claim thereon and shall not be payable from the proceeds of the Wind-Down Facility; *and provided further, however*, that the Debtors, the Creditors’ Committee, and all parties in interest shall have the right to contest the allowance and amount of the TPC Excess Secured Claim under section 506 of the Bankruptcy Code (other than to contest the TPC Value as previously determined by the Court). All parties’ rights and arguments respecting the determination of the TPC Secured Claim are reserved; *provided, however*, that in consideration of the settlement contained in these paragraphs, the TPC Lenders waive any legal argument that the TPC Lenders are entitled to a secured claim equal to the face amount of their claim under section 363(f)(3) or any other provision of the Bankruptcy Code solely as a matter of law, including, without limitation, on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders’ secured claims in order to transfer, or as a result of the transfer of, the TPC Property to the Purchaser. After the TPC Payment is made, any funds remaining in the TPC Escrow Account plus the Purchasers’ pro rata share of the TPC Escrow Interest shall be released and paid to the Purchaser without further order of this Court. Upon the receipt of the TPC Payment by the TPC Lenders, other than any right to payment from GM on account of the TPC Unsecured Claim and the TPC Excess Secured Claim, the TPC

Lenders' Claims relating to the TPC Property shall be deemed fully satisfied and discharged, including, without limitation, any claims the TPC Lenders might have asserted against the Purchaser relating to the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents. For the avoidance of doubt, any and all claims of the TPC Lenders arising from or in connection with the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents shall be payable solely from the TPC Escrow Account or GM and shall be nonrecourse to the Purchaser.

40. The TPC Lenders shall not be entitled to payment of any fees, costs, or expenses (including legal fees) except to the extent that the TPC Value results in a TPC Excess Secured Claim and is thereby oversecured under the Bankruptcy Code and such claim is allowed by the Court as a secured claim under section 506 of the Bankruptcy Code.

41. In connection with the foregoing, and pursuant to Section 11.2 of the TPC Trust Agreement, GM, as the sole Certificate Holder and Beneficiary under the TPC Trust, together with the consent of GM as the Lessee, effective as of the date of the Closing, (a) exercises its election to terminate the TPC Trust and (b) in connection therewith, assumes all of the obligations of the TPC Trust and TPC Trustee under or contemplated by the TPC Operative Documents to which the TPC Trust or TPC Trustee is a party and all other obligations of the TPC Trust or TPC Trustee incurred under the TPC Trust Agreement (other than obligations set forth in clauses (i) through (iii) of the second sentence of Section 7.1 of the TPC Trust Agreement).

42. As a condition precedent to the 363 Transaction, in connection with the termination of the TPC Trust, effective as of the date of the Closing, all of the assets of the TPC Trust (the "**TPC Trust Assets**") shall be distributed to GM, as sole Certificate Holder and beneficiary under the TPC Trust, including, without limitation, the following:

(i) Industrial Development Revenue Real Property Note (General Motors Project) Series 1999-I, dated November 18, 1999, in the principal amount of \$21,700,000, made by the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, to PVV Southpoint 14, LLC, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds (the “**TPC Tennessee Ground Lease**”);

(ii) Real Property Lease Agreement dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Lessor, and PVV Southpoint 14, LLC, as Lessee, recorded as JW1262 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Real Property Lease dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1267 in the records of the Shelby County Register of Deeds;

(iii) Deed of Trust dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Grantor, in favor of Mid-South Title Corporation, as Trustee, for the benefit of PVV Southpoint 14, LLC, Beneficiary, recorded as JW1263 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(iv) Assignment of Rents and Lease dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Assignor, and PVV Southpoint 14, LLC, as Assignee, recorded as JW1264 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(v) The Tennessee Master Lease (as defined in the TPC Participation Agreement);

(vi) A certain tract of land being known and designated as Lot 1, as shown on a Subdivision Plat entitled “Final Plat – Lot 1, Whitmarsh Associates, LLC Property,” which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Maryland, together with a certain tract of land being known and designated as “1.1865 Acre of Highway Widening,” as shown on a Subdivision Plat entitled “Final Plat – Lot 1, Whitmarsh Associates, LLC Property,” which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Baltimore, Maryland, saving and excepting from the above described property all that land conveyed to the State of Maryland to the use of the State Highway Administration of the Department of Transportation dated November 24, 2003, and

recorded among the Land Records of Baltimore County in Liber 19569, folio 074, Maryland, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way, including, without limitation, those easements benefiting Parcel 1 set forth in the Declaration and Agreement Respecting Easements, Restrictions and Operations, between the TPC Trust, GM, and Whitemarsh Associates, LLC, recorded among the Land Records of Baltimore County in Liber 14019, folio 430, as amended (collectively, the “**Maryland Property**”);

(vii) alternatively to the transfer of a direct interest in the Maryland Property pursuant to item (vi) above, if such documents are still extant, the following interests shall be transferred: (a) Ground Lease Agreement dated as of September 8, 1999, between the TPC Trustee of the TPC Trust, as lessor, and Maryland Economic Development Corporation, as lessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 565, (b) Sublease Agreement dated as of September 8, 1999, between the Maryland Economic Development Corporation, as sublessor, and the TPC Trustee of the TPC Trust, as sublessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 589, together with (c) all agreements, loan agreements, notes, rights, obligations, and interests held by the TPC Trustee of the TPC Trust and/or issued by the TPC Trustee of the TPC Trust in connection therewith; and

(viii) The Maryland Master Lease (as defined in the TPC Participation Agreement).

43. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the leasehold interest of the TPC Trustee of the TPC Trust under the TPC Tennessee Ground Lease and the lessor’s interest under the Tennessee Master Lease shall be held by GM, as are the lessor’s and lessee’s interests under the Tennessee Master Lease, and as permitted by the TPC Trust Agreement, the Tennessee Master Lease shall hereby be terminated, and GM shall succeed to all rights of the lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

44. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the Maryland Property, the lessor’s and lessee’s interests under the Maryland Master Lease shall be held by GM, and as permitted by the TPC Trust Agreement, the Maryland Master Lease shall hereby be terminated, and GM shall succeed to all rights of the

lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

45. All of the TPC Trust Assets and the TPC Property are Purchased Assets under the MPA and shall be transferred by GM pursuant thereto to the Purchaser free and clear of all liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including, without limitation, any liens, claims, encumbrances, and interests of the TPC Lenders. To the extent any of the TPC Trust Assets are executory contracts and unexpired leases, they shall be Assumable Executory Contracts, which shall be assumed by GM and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code and the Sale Procedures Order.

Additional Provisions

46. Except for the Assumed Liabilities expressly set forth in the MPA, none of the Purchaser, its present or contemplated members or shareholders, its successors or assigns, or any of their respective affiliates or any of their respective agents, officials, personnel, representatives, or advisors shall have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the MPA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims,

including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

47. Effective upon the Closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or

the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. Notwithstanding the foregoing, a relevant taxing authority's ability to exercise its rights of setoff and recoupment are preserved.

48. Except for the Assumed Liabilities, or as expressly permitted or otherwise specifically provided for in the MPA or this Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Sellers arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided in this Order and the MPA, the Purchaser shall not be liable for any claims against the Sellers or any of their predecessors or Affiliates, and the Purchaser shall have no successor, transferee, or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Sellers or any obligations of the Sellers arising prior to the Closing.

49. The Purchaser has given fair and substantial consideration under the MPA for the benefit of the holders of liens, claims, encumbrances, or other interests. The consideration provided by the Purchaser for the Purchased Assets under the MPA is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

50. The consideration provided by the Purchaser for the Purchased Assets under the MPA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

51. If there is an Agreed G Transaction (determined no later than the due date, with extensions, of GM's tax return for the taxable year in which the 363 Transaction occurs), (i) the MPA shall, and hereby does, constitute a "plan" of GM and the Purchaser solely for purposes of sections 368 and 354 of the Tax Code, and (ii) the 363 Transaction, as set forth in the MPA, and the subsequent liquidation of the Sellers, are intended to constitute a tax reorganization of GM pursuant to section 368(a)(1)(G) of the Tax Code.

52. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated, and that the conveyances described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

53. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the MPA.

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

Sellers' obligations under state "lemon law" statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.

57. Subject to further Court order and consistent with the terms of the MPA and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, (a) the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business, and (b) the cash management system maintained by the Debtors prior to the Closing, as such system may be necessary to effect the orderly administration of the Debtors' estates.

58. The Debtors are authorized to take any and all actions that are contemplated by or in furtherance of the MPA, including transferring assets between subsidiaries and transferring direct and indirect subsidiaries between entities in the corporate structure, with the consent of the Purchaser.

59. Upon the Closing, the Purchaser shall assume all liabilities of the Debtors arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Debtor, except for workers' compensation claims against the Debtors with respect to Employees residing in or employed in, as the case may be as defined by applicable law, the states of Alabama, Georgia, New Jersey, and Oklahoma.

60. During the week after Closing, the Purchaser shall send an e-mail to the Debtors' customers for whom the Debtors have usable e-mail addresses in their database, which will provide information about the Purchaser and procedures for consumers to opt out of being

contacted by the Purchaser for marketing purposes. For a period of ninety (90) days following the Closing Date, the Purchaser shall include on the home page of GM's consumer web site (www.gm.com) a conspicuous disclosure of information about the Purchaser, its procedures for consumers to opt out of being contacted by the Purchaser for marketing purposes, and a notice of the Purchaser's new privacy statement. The Debtors and the Purchaser shall comply with the terms of established business relationship provisions in any applicable state and federal telemarketing laws. The Dealers who are parties to Deferred Termination Agreements shall not be required to transfer personally identifying information in violation of applicable law or existing privacy policies.

61. Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

62. Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in

section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.

63. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order.

64. The Debtors shall comply with their tax obligations under 28 U.S.C. § 960, except to the extent that such obligations are Assumed Liabilities.

65. Notwithstanding anything contained in their respective organizational documents or applicable state law to the contrary, each of the Debtors is authorized and directed, upon and in connection with the Closing, to change their respective names, and any amendment to the organizational documents (including the certificate of incorporation) of any of the Debtors to effect such a change is authorized and approved, without Board or shareholder approval. Upon any such change with respect to GM, the Debtors shall file with the Court a notice of change of case caption within two (2) business days of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

66. The terms and provisions of the MPA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, and advisors.

67. The failure to specifically include any particular provisions of the MPA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MPA be authorized and approved in its entirety, except as modified herein.

68. The MPA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification,

amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on appropriate notice.

69. The provisions of this Order are nonseverable and mutually dependent on each other.

70. As provided in Fed.R.Bankr.P. 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry, and instead shall be effective as of 12:00 noon, EDT, on Thursday, July 9, 2009. The Debtors and the Purchaser are authorized to close the 363 Transaction on or after 12:00 noon on Thursday, July 9. Any party objecting to this Order must exercise due diligence in filing any appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Order becoming a Final Order.

Deleted: Pursuant to Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the 363 Transaction immediately upon entry of this Order.

71. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets, and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation

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Agreements, stockholder agreements or other documents concerning the corporate governance of
the Purchaser, and documents governed by foreign law, which disputes shall be adjudicated as

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necessary under applicable law in any other court or administrative agency of competent
jurisdiction.

Dated: New York, York
July 5, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

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Exhibit A

AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

WGM_TRAILER

EXECUTION COPY

AMENDED AND RESTATED

MASTER SALE AND PURCHASE AGREEMENT

BY AND AMONG

GENERAL MOTORS CORPORATION,

SATURN LLC,

SATURN DISTRIBUTION CORPORATION

AND

CHEVROLET-SATURN OF HARLEM, INC.,

as Sellers

AND

NGMCO, INC.,

as Purchaser

DATED AS OF

JUNE 26, 2009

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Exhibit Z	VEBA Note Term Sheet

AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT (this "Agreement"), dated as of June 26, 2009, is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, on June 1, 2009 (the "Petition Date"), the Parties entered into that certain Master Sale and Purchase Agreement (the "Original Agreement"), and, in connection therewith, Sellers filed voluntary petitions for relief (the "Bankruptcy Cases") under Chapter 11 of Title 11, U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, pursuant to Sections 363 and 365 of the Bankruptcy Code, Sellers desire to sell, transfer, assign, convey and deliver to Purchaser, and Purchaser desires to purchase, accept and acquire from Sellers all of the Purchased Assets (as hereinafter defined) and assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities (as hereinafter defined), in each case, in accordance with the terms and subject to the conditions set forth in this Agreement and the Bankruptcy Code;

WHEREAS, on the Petition Date, Purchaser entered into equity subscription agreements with each of Canada, Sponsor and the New VEBA (each as hereinafter defined), pursuant to which Purchaser has agreed to issue, on the Closing Date (as hereinafter defined), the Canada Shares, the Sponsor Shares, the VEBA Shares, the VEBA Note and the VEBA Warrant (each as hereinafter defined);

WHEREAS, pursuant to the equity subscription agreement between Purchaser and Canada, Canada has agreed to (i) contribute on or before the Closing Date an amount of Indebtedness (as hereinafter defined) owed to it by General Motors of Canada Limited ("GMCL"), which results in not more than \$1,288,135,593 of such Indebtedness remaining an obligation of GMCL, to Canada immediately following the Closing (the "Canadian Debt Contribution") and (ii) exchange immediately following the Closing the \$3,887,000,000 loan to be made by Canada to Purchaser for additional shares of capital stock of Purchaser;

WHEREAS, the transactions contemplated by this Agreement are in furtherance of the conditions, covenants and requirements of the UST Credit Facilities (as hereinafter defined) and are intended to result in a rationalization of the costs, capitalization and capacity with respect to the manufacturing workforce of, and suppliers to, Sellers and their Subsidiaries (as hereinafter defined);

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, prior to the Closing (as hereinafter defined), engage in one or more related transactions (the "Holding Company Reorganization") generally designed to reorganize

Purchaser and one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Purchaser into a holding company structure that results in Purchaser becoming a direct or indirect, wholly-owned Subsidiary of a newly-formed Delaware corporation (“Holding Company”); and

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, direct the transfer of the Purchased Assets on its behalf by assigning its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties (as hereinafter defined) hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below or in the Sections referred to below:

“Adjustment Shares” has the meaning set forth in **Section 3.2(c)(i)**.

“Advisory Fees” has the meaning set forth in **Section 4.20**.

“Affiliate” has the meaning set forth in Rule 12b-2 of the Exchange Act.

“Affiliate Contract” means a Contract between a Seller or a Subsidiary of a Seller, on the one hand, and an Affiliate of such Seller or Subsidiary of a Seller, on the other hand.

“Agreed G Transaction” has the meaning set forth in **Section 6.16(g)(i)**.

“Agreement” has the meaning set forth in the Preamble.

“Allocation” has the meaning set forth in **Section 3.3**.

“Alternative Transaction” means the sale, transfer, lease or other disposition, directly or indirectly, including through an asset sale, stock sale, merger or other similar transaction, of all or substantially all of the Purchased Assets in a transaction or a series of transactions with one or more Persons other than Purchaser (or its Affiliates).

“Ancillary Agreements” means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Novation Agreement, the Government Related Subcontract Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the

Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

“Antitrust Laws” means all Laws that (i) are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or the lessening of competition through merger or acquisition or (ii) involve foreign investment review by Governmental Authorities.

“Applicable Employee” means all (i) current salaried employees of Parent and (ii) current hourly employees of any Seller or any of its Affiliates (excluding Purchased Subsidiaries and any dealership) represented by the UAW, in each case, including such current salaried and current hourly employees who are on (a) long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence or (b) layoff status or who have recall rights.

“Arms-Length Basis” means a transaction between two Persons that is carried out on terms no less favorable than the terms on which the transaction would be carried out by unrelated or unaffiliated Persons, acting as a willing buyer and a willing seller, and each acting in his own self-interest.

“Assignment and Assumption Agreement” has the meaning set forth in **Section 7.2(c)(v)**.

“Assignment and Assumption of Harlem Lease” has the meaning set forth in **Section 7.2(c)(xiii)**.

“Assignment and Assumption of Real Property Leases” has the meaning set forth in **Section 7.2(c)(xii)**.

“Assignment and Assumption of Willow Run Lease” has the meaning set forth in **Section 6.27(e)**.

“Assumable Executory Contract” has the meaning set forth in **Section 6.6(a)**.

“Assumable Executory Contract Schedule” means Section 1.1A of the Sellers’ Disclosure Schedule.

“Assumed Liabilities” has the meaning set forth in **Section 2.3(a)**.

“Assumed Plans” has the meaning set forth in **Section 6.17(e)**.

“Assumption Effective Date” has the meaning set forth in **Section 6.6(d)**.

“Bankruptcy Avoidance Actions” has the meaning set forth in **Section 2.2(b)(xi)**.

“Bankruptcy Cases” has the meaning set forth in the Recitals.

“Bankruptcy Code” has the meaning set forth in the Recitals.

“Bankruptcy Court” has the meaning set forth in the Recitals.

“Benefit Plans” has the meaning set forth in **Section 4.10(a)**.

“Bidders” has the meaning set forth in **Section 6.4(c)**.

“Bids” has the meaning set forth in **Section 6.4(c)**.

“Bill of Sale” has the meaning set forth in **Section 7.2(c)(iv)**.

“Business Day” means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York, New York.

“CA” has the meaning set forth in **Section 6.16(g)(i)**.

“Canada” means 7176384 Canada Inc., a corporation organized under the Laws of Canada, and a wholly-owned subsidiary of Canada Development Investment Corporation, and its successors and assigns.

“Canada Affiliate” has the meaning set forth in **Section 9.22**.

“Canada Shares” has the meaning set forth in **Section 5.4(c)**.

“Canadian Debt Contribution” has the meaning set forth in the Recitals.

“Claims” means all rights, claims (including any cross-claim or counterclaim), investigations, causes of action, choses in action, charges, suits, defenses, demands, damages, defaults, assessments, rights of recovery, rights of set-off, rights of recoupment, litigation, third party actions, arbitral proceedings or proceedings by or before any Governmental Authority or any other Person, of any kind or nature, whether known or unknown, accrued, fixed, absolute, contingent or matured, liquidated or unliquidated, due or to become due, and all rights and remedies with respect thereto.

“Claims Estimate Order” has the meaning set forth in **Section 3.2(c)(i)**.

“Closing” has the meaning set forth in **Section 3.1**.

“Closing Date” has the meaning set forth in **Section 3.1**.

“Collective Bargaining Agreement” means any collective bargaining agreement or other written or oral agreement, understanding or mutually recognized past practice with respect to Employees, between any Seller (or any Subsidiary thereof) and any labor organization or other Representative of Employees (including the UAW Collective Bargaining Agreement, local agreements, amendments, supplements and letters and memoranda of understanding of any kind).

“Common Stock” has the meaning set forth in **Section 5.4(b)**.

“Confidential Information” has the meaning set forth in **Section 6.24**.

“Confidentiality Period” has the meaning set forth in **Section 6.24**.

“Continuing Brand Dealer Agreement” means a United States dealer sales and service Contract related to one or more of the Continuing Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers’ Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers’ Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

“Continuing Brands” means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Buick, Cadillac, Chevrolet and GMC.

“Contracts” means all purchase orders, sales agreements, supply agreements, distribution agreements, sales representative agreements, employee or consulting agreements, leases, subleases, licenses, product warranty or service agreements and other binding commitments, agreements, contracts, arrangements, obligations and undertakings of any nature (whether written or oral, and whether express or implied).

“Copyright Licenses” means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to reproduce, publicly display, publicly perform, distribute, create derivative works of or otherwise exploit any works covered by any Copyright.

“Copyrights” means all domestic and foreign copyrights, whether registered or unregistered, including all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship (including all compilations of information or marketing materials created by or on behalf of any Seller), acquired, owned or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof) and all reissues, renewals, restorations, extensions and revisions thereof.

“Cure Amounts” means all cure amounts payable in order to cure any monetary defaults required to be cured under Section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Purchaser of the Purchased Contracts.

“Damages” means any and all Losses, other than punitive damages.

“Dealer Agreement” has the meaning set forth in **Section 4.17**.

“Deferred Executory Contract” has the meaning set forth in **Section 6.6(c)**.

“Deferred Termination Agreements” has the meaning set forth in **Section 6.7(a)**.

“Delayed Closing Entities” has the meaning set forth in **Section 6.35**.

“Delphi” means Delphi Corporation.

“Delphi Motion” means the motion filed by Parent with the Bankruptcy Court in the Bankruptcy Cases on June 20, 2009, seeking authorization and approval of (i) the purchase, and guarantee of purchase, of certain assets of Delphi, (ii) entry into certain agreements in connection with the sale of substantially all of the remaining assets of Delphi to a third party, (iii) the assumption of certain Executory Contracts in connection with such sale, (iv) entry into an agreement with the PBGC in connection with such sale and (v) entry into an alternative transaction with the successful bidder in the auction for the assets of Delphi.

“Delphi Transaction Agreements” means (i) either (A) the MDA, the SPA, the Loan Agreement, the Operating Agreement, the Commercial Agreements and any Ancillary Agreements (in each case, as defined in the Delphi Motion), which any Seller is a party to, or (B) in the event that an Acceptable Alternative Transaction (as defined in the Delphi Motion) is consummated, any agreements relating to the Acceptable Alternative Transaction, which any Seller is a party to, and (ii) in the event that the PBGC Agreement is entered into at or prior to the Closing, the PBGC Agreement (as defined in the Delphi Motion) and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each of the agreements described in clauses (i) or (ii) hereof may be amended from time to time.

“DIP Facility” means that certain Secured Superpriority Debtor-in-Possession Credit Agreement entered into or to be entered into by Parent, as borrower, certain Subsidiaries of Parent listed therein, as guarantors, Sponsor, as lender, and Export Development Canada, as lender.

“Discontinued Brand Dealer Agreement” means a United States dealer sales and service Contract related to one or more of the Discontinued Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers’ Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers’ Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

“Discontinued Brands” means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Hummer, Saab, Saturn and Pontiac.

“Disqualified Individual” has the meaning set forth in **Section 4.10(f)**.

“Employees” means (i) each employee or officer of any of Sellers or their Affiliates (including (a) any current, former or retired employees or officers, (b) employees or officers on long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence and (c) employees on layoff status or with recall rights); (ii) each consultant or other service provider of any of Sellers or their Affiliates who is a former employee, officer or director of any of Sellers or their Affiliates; and (iii) each individual recognized under any Collective Bargaining Agreement as being employed by or having rights to

employment by any of Sellers or their Affiliates. For the avoidance of doubt, Employees includes all employees of Sellers or any of their Affiliates, whether or not Transferred Employees.

“Employment-Related Obligations” means all Liabilities arising out of, related to, in respect of or in connection with employment relationships or alleged or potential employment relationships with Sellers or any Affiliate of Sellers relating to Employees, leased employees, applicants, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, whether filed or asserted before, on or after the Closing. “Employment-Related Obligations” includes Claims relating to discrimination, torts, compensation for services (and related employment and withholding Taxes), workers’ compensation or similar benefits and payments on account of occupational illnesses and injuries, employment Contracts, Collective Bargaining Agreements, grievances originating under a Collective Bargaining Agreement, wrongful discharge, invasion of privacy, infliction of emotional distress, defamation, slander, provision of leave under the Family and Medical Leave Act of 1993, as amended, or other similar Laws, car programs, relocation, expense-reporting, Tax protection policies, Claims arising out of WARN or employment, terms of employment, transfers, re-levels, demotions, failure to hire, failure to promote, compensation policies, practices and treatment, termination of employment, harassment, pay equity, employee benefits (including post-employment welfare and other benefits), employee treatment, employee suggestions or ideas, fiduciary performance, employment practices, the modification or termination of Benefit Plans or employee benefit plans, policies, programs, agreements and arrangements of Purchaser, including decisions to provide plans that are different from Benefit Plans, and the like. Without limiting the generality of the foregoing, with respect to any Employees, leased employees, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, “Employment-Related Obligations” includes payroll and social security Taxes, contributions (whether required or voluntary) to any retirement, health and welfare or similar plan or arrangement, notice, severance or similar payments required under Law, and obligations under Law with respect to occupational injuries and illnesses.

“Encumbrance” means any lien (statutory or otherwise), charge, deed of trust, pledge, security interest, conditional sale or other title retention agreement, lease, mortgage, option, charge, hypothecation, easement, right of first offer, license, covenant, restriction, ownership interest of another Person or other encumbrance.

“End Date” has the meaning set forth in **Section 8.1(b)**.

“Environment” means any surface water, groundwater, drinking water supply, land surface or subsurface soil or strata, ambient air, natural resource or wildlife habitat.

“Environmental Law” means any Law in existence on the date of the Original Agreement relating to the management or Release of, or exposure of humans to, any Hazardous Materials; or pollution; or the protection of human health and welfare and the Environment.

“Equity Incentive Plans” has the meaning set forth in **Section 6.28**.

“Equity Interest” means, with respect to any Person, any shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, options or rights for the purchase or other acquisition from such Person of such shares (or such other ownership or profits interests) and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting.

“Equity Registration Rights Agreement” has the meaning set forth in **Section 7.1(c)**.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is part of the same controlled group, or under common control with, or part of an affiliated service group that includes any Seller, within the meaning of Section 414(b), (c), (m) or (o) of the Tax Code or Section 4001(a)(14) of ERISA.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Assets” has the meaning set forth in **Section 2.2(b)**.

“Excluded Cash” has the meaning set forth in **Section 2.2(b)(i)**.

“Excluded Continuing Brand Dealer Agreements” means all Continuing Brand Dealer Agreements, other than those that are Assumable Executory Contracts.

“Excluded Contracts” has the meaning set forth in **Section 2.2(b)(vii)**.

“Excluded Entities” has the meaning set forth in **Section 2.2(b)(iv)**.

“Excluded Insurance Policies” has the meaning set forth in **Section 2.2(b)(xiii)**.

“Excluded Personal Property” has the meaning set forth in **Section 2.2(b)(vi)**.

“Excluded Real Property” has the meaning set forth in **Section 2.2(b)(v)**.

“Excluded Subsidiaries” means, collectively, the direct Subsidiaries of Sellers included in the Excluded Entities and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

“Executory Contract” means an executory Contract or unexpired lease of personal property or nonresidential real property.

“Executory Contract Designation Deadline” has the meaning set forth in **Section 6.6(a)**.

“Existing Internal VEBA” has the meaning set forth in **Section 6.17(h)**.

“Existing Saginaw Wastewater Facility” has the meaning set forth in **Section 6.27(b)**.

“Existing UST Loan and Security Agreement” means the Loan and Security Agreement, dated as of December 31, 2008, between Parent and Sponsor, as amended.

“FCPA” has the meaning set forth in **Section 4.19**.

“Final Determination” means (i) with respect to U.S. federal income Taxes, a “determination” as defined in Section 1313(a) of the Tax Code or execution of an IRS Form 870-AD and, (ii) with respect to Taxes other than U.S. federal income Taxes, any final determination of Liability in respect of a Tax that, under applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise, including the expiration of a statute of limitations or a period for the filing of Claims for refunds, amended Tax Returns or appeals from adverse determinations.

“Final Order” means (i) an Order of the Bankruptcy Court or any other court or adjudicative body as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending, or (ii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such Order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such Order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that no Order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such Order.

“FSA Approval” has the meaning set forth in **Section 6.34**.

“G Transaction” has the meaning set forth in **Section 6.16(g)(i)**.

“GAAP” means the United States generally accepted accounting principles and practices as in effect from time to time, consistently applied throughout the specified period.

“GMAC” means GMAC LLC.

“GM Assumed Contracts” has the meaning set forth in the Delphi Motion.

“GMCL” has the meaning set forth in the Recitals.

“Governmental Authority” means any United States or non-United States federal, national, provincial, state or local government or other political subdivision thereof, any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

“Government Related Subcontract Agreement” has the meaning set forth in **Section 7.2(c)(vii)**.

“Harlem” has the meaning set forth in the Preamble.

“Hazardous Materials” means any material or substance that is regulated, or can give rise to Claims, Liabilities or Losses, under any Environmental Law or a Permit issued pursuant to any Environmental Law, including any petroleum, petroleum-based or petroleum-derived product, polychlorinated biphenyls, asbestos or asbestos-containing materials, lead and any noxious, radioactive, flammable, corrosive, toxic, hazardous or caustic substance (whether solid, liquid or gaseous).

“Holding Company” has the meaning set forth in the Recitals.

“Holding Company Reorganization” has the meaning set forth in the Recitals.

“Indebtedness” means, with respect to any Person, without duplication: (i) all obligations of such Person for borrowed money (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (ii) all obligations of such Person to pay amounts evidenced by bonds, debentures, notes or similar instruments (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (iii) all obligations of others, of the types set forth in clauses (i)-(ii) above that are secured by any Encumbrance on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, but only to the extent so secured; (iv) all unreimbursed reimbursement obligations of such Person under letters of credit issued for the account of such Person; (v) obligations of such Person under conditional sale, title retention or similar arrangements or other obligations, in each case, to pay the deferred purchase price for property or services, to the extent of the unpaid purchase price (other than trade payables and customary reservations or retentions of title under Contracts with suppliers, in each case, in the Ordinary Course of Business); (vi) all net monetary obligations of such Person in respect of interest rate, equity and currency swap and other derivative transaction obligations; and (vii) all guarantees of or by such Person of any of the matters described in clauses (i)-(vi) above, to the extent of the maximum amount for which such Person may be liable pursuant to such guarantee.

“Intellectual Property” means all Patents, Trademarks, Copyrights, Trade Secrets, Software, all rights under the Licenses and all concepts, ideas, know-how, show-how, proprietary information, technology, formulae, processes and other general intangibles of like nature, and other intellectual property to the extent entitled to legal protection as such, including products under development and methodologies therefor, in each case acquired, owned or licensed by a Seller.

“Intellectual Property Assignment Agreement” has the meaning set forth in **Section 7.2(c)(viii)**.

“Intercompany Obligations” has the meaning set forth in **Section 2.2(a)(iv)**.

“Inventory” has the meaning set forth in **Section 2.2(a)(viii)**.

“IRS” means the United States Internal Revenue Service.

“Key Subsidiary” means any direct or indirect Subsidiary (which, for the avoidance of doubt, shall only include any legal entity in which a Seller, directly or indirectly, owns greater than 50% of the outstanding Equity Interests in such legal entity) of Sellers (other than trusts) with assets (excluding any Intercompany Obligations) in excess of Two Hundred and Fifty Million Dollars (\$250,000,000) as reflected on Parent’s consolidated balance sheet as of March 31, 2009 and listed on Section 1.1C of the Sellers’ Disclosure Schedule.

“Knowledge of Sellers” means the actual knowledge of the individuals listed on Section 1.1D of the Sellers’ Disclosure Schedule as to the matters represented and as of the date the representation is made.

“Law” means any and all applicable United States or non-United States federal, national, provincial, state or local laws, rules, regulations, directives, decrees, treaties, statutes, provisions of any constitution and principles (including principles of common law) of any Governmental Authority, as well as any applicable Final Order.

“Landlocked Parcel” has the meaning set forth in **Section 6.27(c)**.

“Leased Real Property” means all the real property leased or subleased by Sellers, except for any such leased or subleased real property subject to any Contracts designated as Excluded Contracts.

“Lemon Laws” means a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.

“Liabilities” means any and all liabilities and obligations of every kind and description whatsoever, whether such liabilities or obligations are known or unknown, disclosed or undisclosed, matured or unmatured, accrued, fixed, absolute, contingent, determined or undeterminable, on or off-balance sheet or otherwise, or due or to become due, including Indebtedness and those arising under any Law, Claim, Order, Contract or otherwise.

“Licenses” means the Patent Licenses, the Trademark Licenses, the Copyright Licenses, the Software Licenses and the Trade Secret Licenses.

“Losses” means any and all Liabilities, losses, damages, fines, amounts paid in settlement, penalties, costs and expenses (including reasonable and documented attorneys’, accountants’, consultants’, engineers’ and experts’ fees and expenses).

“LSA Agreement” means the Amended and Restated GM-Delphi Agreement, dated as of June 1, 2009, and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each such agreement may be amended from time to time.

“Master Lease Agreement” has the meaning set forth in **Section 7.2(c)(xiv)**.

“Material Adverse Effect” means any change, effect, occurrence or development that, individually or in the aggregate, has or would reasonably be expected to have a material adverse effect on the Purchased Assets, Assumed Liabilities or results of operations of Parent and its

Purchased Subsidiaries, taken as a whole; provided, however, that the term “Material Adverse Effect” does not, and shall not be deemed to, include, either alone or in combination, any changes, effects, occurrences or developments: (i) resulting from general economic or business conditions in the United States or any other country in which Sellers and their respective Subsidiaries have operations, or the worldwide economy taken as a whole; (ii) affecting Sellers in the industry or the markets where Sellers operate (except to the extent such change, occurrence or development has a disproportionate adverse effect on Parent and its Subsidiaries relative to other participants in such industry or markets, taken as a whole); (iii) resulting from any changes (or proposed or prospective changes) in any Law or in GAAP or any foreign generally accepted accounting principles; (iv) in securities markets, interest rates, regulatory or political conditions, including resulting or arising from acts of terrorism or the commencement or escalation of any war, whether declared or undeclared, or other hostilities; (v) resulting from the negotiation, announcement or performance of this Agreement or the DIP Facility, or the transactions contemplated hereby and thereby, including by reason of the identity of Sellers, Purchaser or Sponsor or any communication by Sellers, Purchaser or Sponsor of any plans or intentions regarding the operation of Sellers’ business, including the Purchased Assets, prior to or following the Closing; (vi) resulting from any act or omission of any Seller required or contemplated by the terms of this Agreement, the DIP Facility or the Viability Plans, or otherwise taken with the prior consent of Sponsor or Purchaser, including Parent’s announced shutdown, which began in May 2009; and (vii) resulting from the filing of the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by any Subsidiary of Parent) or from any action approved by the Bankruptcy Court (or any other court in connection with any such other proceedings).

“New VEBA” means the trust fund established pursuant to the Settlement Agreement.

“Non-Assignable Assets” has the meaning set forth in **Section 2.4(a)**.

“Non-UAW Collective Bargaining Agreements” has the meaning set forth in **Section 6.17(m)(i)**.

“Non-UAW Settlement Agreements” has the meaning set forth in **Section 6.17(m)(ii)**.

“Notice of Intent to Reject” has the meaning set forth in **Section 6.6(b)**.

“Novation Agreement” has the meaning set forth in **Section 7.2(c)(vi)**.

“Option Period” has the meaning set forth in **Section 6.6(b)**.

“Order” means any writ, judgment, decree, stipulation, agreement, determination, award, injunction or similar order of any Governmental Authority, whether temporary, preliminary or permanent.

“Ordinary Course of Business” means the usual, regular and ordinary course of business consistent with the past practice thereof (including with respect to quantity and frequency) as and to the extent modified in connection with (i) the implementation of the Viability Plans; (ii) Parent’s announced shutdown, which began in May 2009; and (iii) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of

Parent), in the case of clause (iii), to the extent such modifications were approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any such other proceedings), or in furtherance of such approval.

“Organizational Document” means (i) with respect to a corporation, the certificate or articles of incorporation and bylaws or their equivalent; (ii) with respect to any other entity, any charter, bylaws, limited liability company agreement, certificate of formation, articles of organization or similar document adopted or filed in connection with the creation, formation or organization of a Person; and (iii) in the case of clauses (i) and (ii) above, any amendment to any of the foregoing other than as prohibited by **Section 6.2(b)(vi)**.

“Original Agreement” has the meaning set forth in the Recitals.

“Owned Real Property” means all real property owned by Sellers (including all buildings, structures and improvements thereon and appurtenances thereto), except for any such real property included in the Excluded Real Property.

“Parent” has the meaning set forth in the Preamble.

“Parent Employee Benefit Plans and Policies” means all (i) “employee benefit plans” (as defined in Section 3(3) of ERISA) and all pension, savings, profit sharing, retirement, bonus, incentive, health, dental, life, death, accident, disability, stock purchase, stock option, stock appreciation, stock bonus, other equity, executive or deferred compensation, hospitalization, post-retirement (including retiree medical or retiree life, voluntary employees’ beneficiary associations, and multiemployer plans (as defined in Section 3(37) of ERISA)), severance, retention, change in control, vacation, cafeteria, sick leave, fringe, perquisite, welfare benefits or other employee benefit plans, programs, policies, agreements or arrangements (whether written or oral), including those plans, programs, policies, agreements and arrangements with respect to which any Employee covered by the UAW Collective Bargaining Agreement is an eligible participant, (ii) employment or individual consulting Contracts and (iii) employee manuals and written policies, practices or understandings relating to employment, compensation and benefits, and in the case of clauses (i) through (iii), sponsored, maintained, entered into, or contributed to, or required to be maintained or contributed to, by Parent.

“Parent SEC Documents” has the meaning set forth in **Section 4.5(a)**.

“Parent Shares” has the meaning set forth in **Section 3.2(a)(iii)**.

“Parent Warrant A” means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit A**.

“Parent Warrant B” means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit B**.

“Parent Warrants” means collectively, Parent Warrant A and Parent Warrant B.

“Participation Agreement” has the meaning set forth in **Section 6.7(b)**.

“Parties” means Sellers and Purchaser together, and “Party” means any of Sellers, on the one hand, or Purchaser, on the other hand, as appropriate and as the case may be.

“Patent Licenses” means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to manufacture, use, lease, or sell any invention, design, idea, concept, method, technique or process covered by any Patent.

“Patents” means all inventions, patentable designs, letters patent and design letters patent of the United States or any other country and all applications (regular and provisional) for letters patent or design letters patent of the United States or any other country, including applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, and all reissues, divisions, continuations, continuations in part, revisions, reexaminations and extensions or renewals of any of the foregoing.

“PBGC” has the meaning set forth in **Section 4.10(a)**.

“Permits” has the meaning set forth in **Section 2.2(a)(xi)**.

“Permitted Encumbrances” means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic’s, materialmen’s, laborer’s, workmen’s, repairmen’s, carrier’s liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways

abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

“Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity.

“Personal Information” means any information relating to an identified or identifiable living individual, including (i) first initial or first name and last name; (ii) home address or other physical address, including street name and name of city or town; (iii) e-mail address or other online contact information (e.g., instant messaging user identifier); (iv) telephone number; (v) social security number or other government-issued personal identifier such as a tax identification number or driver's license number; (vi) internet protocol address; (vii) persistent identifier (e.g., a unique customer number in a cookie); (viii) financial account information (account number, credit or debit card numbers or banking information); (ix) date of birth; (x) mother's maiden name; (xi) medical information (including electronic protected health information as defined by the rules and regulations of the Health Information Portability and Privacy Act, as amended); (xii) digitized or electronic signature; and (xiii) any other information that is combined with any of the above.

“Personal Property” has the meaning set forth in **Section 2.2(a)(vii)**.

“Petition Date” has the meaning set forth in the Recitals.

“PLR” has the meaning set forth in **Section 6.16(g)(i)**.

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

“Preferred Stock” has the meaning set forth in **Section 5.4(b)**.

“Privacy Policy” means, with respect to any Person, any written privacy policy, statement, rule or notice regarding the collection, use, access, safeguarding and retention of Personal Information or “Personally Identifiable Information” (as defined by Section 101(41A) of the Bankruptcy Code) of any individual, including a customer, potential customer, employee or former employee of such Person, or an employee of any of such Person’s automotive or parts dealers.

“Product Liabilities” has the meaning set forth in **Section 2.3(a)(ix)**.

“Promark UK Subsidiaries” has the meaning set forth in **Section 6.34**.

“Proposed Rejectable Executory Contract” has the meaning set forth in **Section 6.6(b)**.

“Purchase Price” has the meaning set forth in **Section 3.2(a)**.

“Purchased Assets” has the meaning set forth in **Section 2.2(a)**.

“Purchased Contracts” has the meaning set forth in **Section 2.2(a)(x)**.

“Purchased Subsidiaries” means, collectively, the direct Subsidiaries of Sellers included in the Transferred Entities, and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

“Purchased Subsidiaries Employee Benefit Plans” means any (i) defined benefit or defined contribution retirement plan maintained by any Purchased Subsidiary and (ii) severance, change in control, bonus, incentive or any similar plan or arrangement maintained by a Purchased Subsidiary for the benefit of officers or senior management of such Purchased Subsidiary.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Assumed Debt” has the meaning set forth in **Section 2.3(a)(i)**.

“Purchaser Expense Reimbursement” has the meaning set forth in **Section 8.2(b)**.

“Purchaser Material Adverse Effect” has the meaning set forth in **Section 5.3(a)**.

“Purchaser’s Disclosure Schedule” means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Purchaser immediately prior to the execution of the Original Agreement.

“Quitclaim Deeds” has the meaning set forth in **Section 7.2(c)(x)**.

“Receivables” has the meaning set forth in **Section 2.2(a)(iii)**.

“Rejectable Executory Contract” has the meaning set forth in **Section 6.6(b)**.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, discarding, burying, abandoning or disposing into the Environment of Hazardous Materials that is prohibited under, or reasonably likely to result in a Liability under, any applicable Environmental Law.

“Relevant Information” has the meaning set forth in **Section 6.16(g)(ii)**.

“Relevant Transactions” has the meaning set forth in **Section 6.16(g)(i)**.

“Ren Cen Lease” has the meaning set forth in **Section 6.30**.

“Representatives” means all officers, directors, employees, consultants, agents, lenders, accountants, attorneys and other representatives of a Person.

“Required Subdivision” has the meaning set forth in **Section 6.27(a)**.

“Restricted Cash” has the meaning set forth in **Section 2.2(a)(ii)**.

“Retained Liabilities” has the meaning set forth in **Section 2.3(b)**.

“Retained Plans” means any Parent Employee Benefit Plan and Policy that is not an Assumed Plan.

“Retained Subsidiaries” means all Subsidiaries of Sellers and their respective direct and indirect Subsidiaries, as of the Closing Date, other than the Purchased Subsidiaries.

“Retained Workers’ Compensation Claims” has the meaning set forth in **Section 2.3(b)(xii)**.

“RHI” has the meaning set forth in **Section 6.30**.

“RHI Post-Closing Period” has the meaning set forth in **Section 6.30**.

“S Distribution” has the meaning set forth in the Preamble.

“S LLC” has the meaning set forth in the Preamble.

“Saginaw Landfill” has the meaning set forth in **Section 6.27(b)**.

“Saginaw Metal Casting Land” has the meaning set forth in **Section 6.27(b)**.

“Saginaw Nodular Iron Land” has the meaning set forth in **Section 6.27(b)**.

“Saginaw Service Contracts” has the meaning set forth in **Section 6.27(b)**.

“Sale Approval Order” has the meaning set forth in **Section 6.4(b)**.

“Sale Hearing” means the hearing of the Bankruptcy Court to approve the Sale Procedures and Sale Motion and enter the Sale Approval Order.

“Sale Procedures and Sale Motion” has the meaning set forth in **Section 6.4(b)**.

“Sale Procedures Order” has the meaning set forth in **Section 6.4(b)**.

“SEC” means the United States Securities and Exchange Commission.

“Secured Real Property Encumbrances” means all Encumbrances related to the Indebtedness of Sellers, which is secured by one or more parcels of the Owned Real Property, including Encumbrances related to the Indebtedness of Sellers under any synthetic lease arrangements at the White Marsh, Maryland GMPT - Baltimore manufacturing facility and the Memphis, Tennessee (SPO - Memphis) facility.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Seller” or “Sellers” has the meaning set forth in the Preamble.

“Seller Group” means any combined, unitary, consolidated or other affiliated group of which any Seller or Purchased Subsidiary is or has been a member for federal, state, provincial, local or foreign Tax purposes.

“Seller Key Personnel” means those individuals described on Section 1.1E of the Sellers’ Disclosure Schedule.

“Seller Material Contracts” has the meaning set forth in **Section 4.16(a)**.

“Sellers’ Disclosure Schedule” means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Sellers to Purchaser immediately prior to the execution of this Agreement, as updated and supplemented pursuant to **Section 6.5**, **Section 6.6** and **Section 6.26**.

“Series A Preferred Stock” has the meaning set forth in **Section 5.4(b)**.

“Settlement Agreement” means the Settlement Agreement, dated February 21, 2008 (as amended, supplemented, replaced or otherwise altered from time to time), among Parent, the UAW and certain class representatives, on behalf of the class of plaintiffs in the class action of

Int'l Union, UAW, et al. v. General Motors Corp., Civil Action No. 07-14074 (E.D. Mich. filed Sept. 9, 2007).

“Shared Executory Contracts” has the meaning set forth in **Section 6.6(d)**.

“Software” means all software of any type (including programs, applications, middleware, utilities, tools, drivers, firmware, microcode, scripts, batch files, JCL files, instruction sets and macros) and in any form (including source code, object code, executable code and user interface), databases and associated data and related documentation, in each case owned, acquired or licensed by any Seller.

“Software Licenses” means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to use, modify, reproduce, distribute or create derivative works of any Software.

“Sponsor” means the United States Department of the Treasury.

“Sponsor Affiliate” has the meaning set forth in **Section 9.22**.

“Sponsor Shares” has the meaning set forth in **Section 5.4(c)**.

“Straddle Period” means a taxable period that includes but does not end on the Closing Date.

“Subdivision Master Lease” has the meaning set forth in **Section 6.27(a)**.

“Subdivision Properties” has the meaning set forth in **Section 6.27(a)**.

“Subsidiary” or “Subsidiaries” means, with respect to any Person, any corporation, limited liability company, partnership or other legal entity (in each case, other than a joint venture if such Person is not empowered to control the day-to-day operations of such joint venture) of which such Person (either alone or through or together with any other Subsidiary) owns, directly or indirectly, more than fifty percent (50%) of the Equity Interests, the holder of which is entitled to vote for the election of the board of directors or other governing body of such corporation, limited liability company, partnership or other legal entity.

“Superior Bid” has the meaning set forth in **Section 6.4(d)**.

“TARP” means the Troubled Assets Relief Program established by Sponsor under the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7001 of Division B, Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time and any guidance issued by a regulatory authority thereunder and other related Laws in effect currently or in the future in the United States.

“Tax” or “Taxes” means any federal, state, provincial, local, foreign and other income, alternative minimum, accumulated earnings, personal holding company, franchise, capital stock,

net worth or gross receipts, income, alternative or add-on minimum, capital, capital gains, sales, use, ad valorem, franchise, profits, license, privilege, transfer, withholding, payroll, employment, social, excise, severance, stamp, occupation, premium, goods and services, value added, property (including real property and personal property taxes), environmental, windfall profits or other taxes, customs, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Authority, including any transferee, successor or secondary liability for any such tax and any Liability assumed by Contract or arising as a result of being or ceasing to be a member of any affiliated group or similar group under state, provincial, local or foreign Law, or being included or required to be included in any Tax Return relating thereto.

“Tax Code” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“Taxing Authority” means, with respect to any Tax, the Governmental Authority thereof that imposes such Tax and the agency, court or other Person or body (if any) charged with the interpretation, administration or collection of such Tax for such Governmental Authority.

“Tax Return” means any return, report, declaration, form, election letter, statement or other information filed or required to be filed with any Governmental Authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof.

“Trademark Licenses” means all Contracts naming any Seller as licensor or licensee and providing for the grant of any right concerning any Trademark together with any goodwill connected with and symbolized by any such Trademark or Trademark Contract, and the right to prepare for sale or lease and sell or lease any and all products, inventory or services now or hereafter owned or provided by any Seller or any other Person and now or hereafter covered by such Contracts.

“Trademarks” means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers, and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof) and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks.

“Trade Secrets” means all trade secrets or Confidential Information, including any confidential technical and business information, program, process, method, plan, formula, product design, compilation of information, customer list, sales forecast, know-how, Software, and any other confidential proprietary intellectual property, and all additions and improvements to, and books and records describing or used in connection with, any of the foregoing, in each case, owned, acquired or licensed by any Seller.

“Trade Secret Licenses” means all Contracts naming a Seller as licensee or licensor and providing for the grant of any rights with respect to Trade Secrets.

“Transfer Taxes” means all transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the transactions contemplated hereby and not otherwise exempted under the Bankruptcy Code, including relating to the transfer of the Transferred Real Property.

“Transfer Tax Forms” has the meaning set forth in **Section 7.2(c)(xi)**.

“Transferred Employee” has the meaning set forth in **Section 6.17(a)**.

“Transferred Entities” means all of the direct Subsidiaries of Sellers and joint venture entities or other entities in which any Seller has an Equity Interest, other than the Excluded Entities.

“Transferred Equity Interests” has the meaning set forth in **Section 2.2(a)(v)**.

“Transferred Real Property” has the meaning set forth in **Section 2.2(a)(vi)**.

“Transition Services Agreement” has the meaning set forth in **Section 7.2(c)(ix)**.

“Transition Team” has the meaning set forth in **Section 6.11(c)**.

“UAW” means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

“UAW Active Labor Modifications” means the modifications to the UAW Collective Bargaining Agreement, as agreed to in the 2009 Addendum to the 2007 UAW-GM National Agreement, dated May 17, 2009, the cover page of which is attached hereto as **Exhibit C** (the 2009 Addendum without attachments), which modifications were ratified by the UAW membership on May 29, 2009.

“UAW Collective Bargaining Agreement” means any written or oral Contract, understanding or mutually recognized past practice between Sellers and the UAW with respect to Employees, including the UAW Active Labor Modifications, but excluding the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between Parent and the UAW, and the Settlement Agreement. For purpose of clarity, the term “UAW Collective Bargaining Agreement” includes all special attrition programs, divestiture-related memorandums of understanding or implementation agreements relating to any unit or location where covered UAW-represented employees remain and any current local agreement between Parent and a UAW local relating to any unit or location where UAW-represented employees are employed as of the date of the Original Agreement. For purposes of clarity, nothing in this definition extends the coverage of the UAW-GM National Agreement to any Employee of S LLC, S Distribution, Harlem, a Purchased Subsidiary or one of Parent’s Affiliates; nothing in this Agreement creates a direct employment relationship with a Purchased Subsidiary’s employee or an Affiliate’s Employee and Parent.

“UAW Retiree Settlement Agreement” means the UAW Retiree Settlement Agreement to be executed prior to the Closing, substantially in the form attached hereto as **Exhibit D**.

“Union” means any labor union, organization or association representing any employees (but not including the UAW) with respect to their employment with any of Sellers or their Affiliates.

“United States” or “U.S.” means the United States of America, including its territories and insular possessions.

“UST Credit Bid Amount” has the meaning set forth in **Section 3.2(a)(i)**.

“UST Credit Facilities” means (i) the Existing UST Loan and Security Agreement and (ii) those certain promissory notes dated December 31, 2008, April 22, 2009, May 20, 2009, and May 27, 2009, issued by Parent to Sponsor as additional compensation for the extensions of credit under the Existing UST Loan and Security Agreement, in each case, as amended.

“UST Warrant” means the warrant issued by Parent to Sponsor in consideration for the extension of credit made available to Parent under the Existing UST Loan and Security Agreement.

“VEBA Shares” has the meaning set forth in **Section 5.4(c)**.

“VEBA Note” has the meaning set forth in **Section 7.3(g)(iv)**.

“VEBA Warrant” means warrants to acquire 15,151,515 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit E**.

“Viability Plans” means (i) Parent’s Restructuring Plan for Long-Term Viability, dated December 2, 2008; (ii) Parent’s 2009-2014 Restructuring Plan, dated February 17, 2009; (iii) Parent’s 2009-2014 Restructuring Plan: Progress Report, dated March 30, 2009; and (iv) Parent’s Revised Viability Plan, all as described in Parent’s Registration Statement on Form S-4 (Reg. No 333-158802), initially filed with the SEC on April 27, 2009, in each case, as amended, supplemented and/or superseded.

“WARN” means the Workers Adjustment and Retraining Notification Act of 1988, as amended, and similar foreign, state and local Laws.

“Willow Run Landlord” means the Wayne County Airport Authority, or any successor landlord under the Willow Run Lease.

“Willow Run Lease” means that certain Willow Run Airport Lease of Land dated October 11, 1985, as the same may be amended, by and between the Willow Run Landlord, as landlord, and Parent, as tenant, for certain premises located at the Willow Run Airport in Wayne and Washtenaw Counties, Michigan.

“Willow Run Lease Amendment” has the meaning set forth in **Section 6.27(e)**.

“Wind Down Facility” has the meaning set forth in **Section 6.9(b)**.

Section 1.2 Other Interpretive Provisions. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement refer to this Agreement as a whole (including the Sellers’ Disclosure Schedule) and not to any particular provision of this Agreement, and all Article, Section, Sections of the Sellers’ Disclosure Schedule and Exhibit references are to this Agreement unless otherwise specified. The words “include”, “includes” and “including” are deemed to be followed by the phrase “without limitation.” The meanings given to terms defined herein are equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to “Dollars” or “\$” are deemed references to lawful money of the United States. Unless otherwise specified, references to any statute, listing rule, rule, standard, regulation or other Law (a) include a reference to the corresponding rules and regulations and (b) include a reference to each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time, and to any section of any statute, listing rule, rule, standard, regulation or other Law, including any successor to such section. Where this Agreement states that a Party “shall” or “will” perform in some manner or otherwise act or omit to act, it means that the Party is legally obligated to do so in accordance with this Agreement.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets; Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, other than as set forth in **Section 6.30**, **Section 6.34** and **Section 6.35**, at the Closing, Purchaser shall (a) purchase, accept and acquire from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, free and clear of all Encumbrances (other than Permitted Encumbrances), Claims and other interests, the Purchased Assets and (b) assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities.

Section 2.2 Purchased and Excluded Assets.

(a) The “Purchased Assets” shall consist of the right, title and interest that Sellers possess and have the right to legally transfer in and to all of the properties, assets, rights, titles and interests of every kind and nature, owned, leased, used or held for use by Sellers (including indirect and other forms of beneficial ownership), whether tangible or intangible, real, personal or mixed, and wherever located and by whomever possessed, in each case, as the same may exist as of the Closing, including the following properties, assets, rights, titles and interests (but, in every case, excluding the Excluded Assets):

(i) all cash and cash equivalents, including all marketable securities, certificates of deposit and all collected funds or items in the process of collection at Sellers’ financial institutions through and including the Closing, and all bank deposits, investment accounts and lockboxes related thereto, other than the Excluded Cash and Restricted Cash;

(ii) all restricted or escrowed cash and cash equivalents, including restricted marketable securities and certificates of deposit (collectively, "Restricted Cash") other than the Restricted Cash described in **Section 2.2(b)(ii)**;

(iii) all accounts and notes receivable and other such Claims for money due to Sellers, including the full benefit of all security for such accounts, notes and Claims, however arising, including arising from the rendering of services or the sale of goods or materials, together with any unpaid interest accrued thereon from the respective obligors and any security or collateral therefor, other than intercompany receivables (collectively, "Receivables");

(iv) all intercompany obligations ("Intercompany Obligations") owed or due, directly or indirectly, to Sellers by any Subsidiary of a Seller or joint venture or other entity in which a Seller or a Subsidiary of a Seller has any Equity Interest;

(v) (A) subject to **Section 2.4**, all Equity Interests in the Transferred Entities (collectively, the "Transferred Equity Interests") and (B) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Transferred Entity;

(vi) all Owned Real Property and Leased Real Property (collectively, the "Transferred Real Property");

(vii) all machinery, equipment (including test equipment and material handling equipment), hardware, spare parts, tools, dies, jigs, molds, patterns, gauges, fixtures (including production fixtures), business machines, computer hardware, other information technology assets, furniture, supplies, vehicles, spare parts in respect of any of the foregoing and other tangible personal property (including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit) that does not constitute Inventory (collectively, "Personal Property"), including the Personal Property located at the Excluded Real Property and identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule;

(viii) all inventories of vehicles, raw materials, work-in-process, finished goods, supplies, stock, parts, packaging materials and other accessories related thereto (collectively, "Inventory"), wherever located, including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit or that is classified as returned goods;

(ix) (A) all Intellectual Property, whether owned, licensed or otherwise held, and whether or not registrable (including any Trademarks and other Intellectual Property associated with the Discontinued Brands), and (B) all rights

and benefits associated with the foregoing, including all rights to sue or recover for past, present and future infringement, misappropriation, dilution, unauthorized use or other impairment or violation of any of the foregoing, and all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing;

(x) subject to **Section 2.4**, all Contracts, other than the Excluded Contracts (collectively, the “Purchased Contracts”), including, for the avoidance of doubt, (A) the UAW Collective Bargaining Agreement and (B) any Executory Contract designated as an Assumable Executory Contract as of the applicable Assumption Effective Date;

(xi) subject to **Section 2.4**, all approvals, Contracts, authorizations, permits, licenses, easements, Orders, certificates, registrations, franchises, qualifications, rulings, waivers, variances or other forms of permission, consent, exemption or authority issued, granted, given or otherwise made available by or under the authority of any Governmental Authority, including all pending applications therefor and all renewals and extensions thereof (collectively, “Permits”), other than to the extent that any of the foregoing relate exclusively to the Excluded Assets or Retained Liabilities;

(xii) all credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(xiii) all Claims (including Tax refunds) relating to the Purchased Assets or Assumed Liabilities, including the Claims identified on Section 2.2(a)(xiii) of the Sellers’ Disclosure Schedule and all Claims against any Taxing Authority for any period, other than Bankruptcy Avoidance Actions and any of the foregoing to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xiv) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium), including Tax books and records and Tax Returns used or held for use in connection with the ownership or operation of the Purchased Assets or Assumed Liabilities, including the Purchased Contracts, customer lists, customer information and account records, computer files, data processing records, employment and personnel records, advertising and marketing data and records, credit records, records relating to suppliers, legal records and information and other data;

(xv) all goodwill and other intangible personal property arising in connection with the ownership, license, use or operation of the Purchased Assets or Assumed Liabilities;

(xvi) to the extent provided in **Section 6.17(e)**, all Assumed Plans;

(xvii) all insurance policies and the rights to the proceeds thereof, other than the Excluded Insurance Policies;

(xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period; and

(xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability.

(b) Notwithstanding anything to the contrary contained in this Agreement, Sellers shall retain all of their respective right, title and interest in and to, and shall not, and shall not be deemed to, sell, transfer, assign, convey or deliver to Purchaser, and the Purchased Assets shall not, and shall not be deemed to, include the following (collectively, the “Excluded Assets”):

(i) cash or cash equivalents in an amount equal to \$950,000,000 (the “Excluded Cash”);

(ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities;

(iii) all Receivables (other than Intercompany Obligations) exclusively related to any Excluded Assets or Retained Liabilities;

(iv) all of Sellers’ Equity Interests in (A) S LLC, (B) S Distribution, (C) Harlem and (D) the Subsidiaries, joint ventures and the other entities in which any Seller has any Equity Interest and that are identified on Section 2.2(b)(iv) of the Sellers’ Disclosure Schedule (collectively, the “Excluded Entities”);

(v) (A) all owned real property set forth on **Exhibit F** and such additional owned real property set forth on Section 2.2(b)(v) of the Sellers’ Disclosure Schedule (including, in each case, any structures, buildings or other improvements located thereon and appurtenances thereto) and (B) all real property leased or subleased that is subject to a Contract designated as an “Excluded Contract” (collectively, the “Excluded Real Property”);

(vi) all Personal Property that is (A) located at the Transferred Real Property and identified on Section 2.2(b)(vi) of the Sellers’ Disclosure Schedule, (B) located at the Excluded Real Property, except for those items identified on Section 2.2(a)(vii) of the Sellers’ Disclosure Schedule or (C) subject to a Contract

designated as an Excluded Contract (collectively, the “Excluded Personal Property”);

(vii) (A) all Contracts identified on Section 2.2(b)(vii) of the Sellers’ Disclosure Schedule immediately prior to the Closing, (B) all pre-petition Executory Contracts designated as Rejectable Executory Contracts, (C) all pre-petition Executory Contracts (including, for the avoidance of doubt, the Delphi Transaction Agreements and GM Assumed Contracts) that have not been designated as or deemed to be Assumable Executory Contracts in accordance with **Section 6.6** or **Section 6.31**, or that are determined, pursuant to the procedures set forth in the Sale Procedures Order, not to be assumable and assignable to Purchaser, (D) all Collective Bargaining Agreements not set forth on the Assumable Executory Contract Schedule and (E) all non-Executory Contracts for which performance by a third-party or counterparty is substantially complete and for which a Seller owes a continuing or future obligation with respect to such non-Executory Contracts (collectively, the “Excluded Contracts”), including any accounts receivable arising out of or in connection with any Excluded Contract; it being understood and agreed by the Parties hereto that, notwithstanding anything to the contrary herein, in no event shall the UAW Collective Bargaining Agreement be designated or otherwise deemed or considered an Excluded Contract;

(viii) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium) relating exclusively to the Excluded Assets or Retained Liabilities, and any books, records and other materials that any Seller is required by Law to retain;

(ix) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Seller and each Excluded Entity;

(x) all Claims against suppliers, dealers and any other third parties relating exclusively to the Excluded Assets or Retained Liabilities;

(xi) all of Sellers’ Claims under this Agreement, the Ancillary Agreements and the Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 551 (inclusive), 553, 558 and any other applicable provisions of the Bankruptcy Code, and any related Claims and actions arising under such sections by operation of Law or otherwise, including any and all proceeds of the foregoing (the “Bankruptcy Avoidance Actions”), but in all cases, excluding all rights and Claims identified on Section 2.2(b)(xi) of the Sellers’ Disclosure Schedule;

(xii) all credits, deferred charges, prepaid expenses, deposits and advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating exclusively to the Excluded Assets or Retained Liabilities;

(xiii) all insurance policies identified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule and the rights to proceeds thereof (collectively, the "Excluded Insurance Policies"), other than any rights to proceeds to the extent such proceeds relate to any Purchased Asset or Assumed Liability;

(xiv) all Permits, to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xv) all Retained Plans; and

(xvi) those assets identified on Section 2.2(b)(xvi) of the Sellers' Disclosure Schedule.

Section 2.3 Assumed and Retained Liabilities.

(a) The "Assumed Liabilities" shall consist only of the following Liabilities of Sellers:

(i) \$7,072,488,605 of Indebtedness incurred under the DIP Facility, to be restructured pursuant to the terms of **Section 6.9** (the "Purchaser Assumed Debt");

(ii) all Liabilities under each Purchased Contract;

(iii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) any Purchased Subsidiary or (B) any joint venture or other entity in which a Seller or a Purchased Subsidiary has any Equity Interest (other than an Excluded Entity);

(iv) all Cure Amounts under each Assumable Executory Contract that becomes a Purchased Contract;

(v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Case through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes), in each case, other than (1) Liabilities of the type described in

Section 2.3(b)(iv), Section 2.3(b)(vi) and Section 2.3(b)(ix), (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this **Section 2.3(a)**;

(vi) all Transfer Taxes payable in connection with the sale, transfer, assignment, conveyance and delivery of the Purchased Assets pursuant to the terms of this Agreement;

(vii) (A) all Liabilities arising under express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws;

(viii) all Liabilities arising under any Environmental Law (A) relating to conditions present on the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), which arise directly out of accidents, incidents or other distinct and discreet occurrences that happen on or after the Closing Date and arise from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(x) all Liabilities of Sellers arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Seller, except for Retained Workers' Compensation Claims;

(xi) all Liabilities arising out of, relating to, in respect of, or in connection with the use, ownership or sale of the Purchased Assets after the Closing;

(xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** and (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

(xiii) (A) all Employment-Related Obligations and (B) Liabilities under any Assumed Plan, in each case, relating to any Employee that is or was covered by the UAW Collective Bargaining Agreement, except for Retained Workers Compensation Claims;

(xiv) all Liabilities of Sellers underlying any construction liens that constitute Permitted Encumbrances with respect to Transferred Real Property; and

(xv) those other Liabilities identified on Section 2.3(a)(xv) of the Sellers' Disclosure Schedule.

(b) Each Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability of any Seller, whether occurring or accruing before, at or after the Closing, other than the Assumed Liabilities. In furtherance and not in limitation of the foregoing, and in all cases with the exception of the Assumed Liabilities, neither Purchaser nor any of its Affiliates shall assume, or be deemed to have assumed, any Indebtedness, Claim or other Liability of any Seller or any predecessor, Subsidiary or Affiliate of any Seller whatsoever, whether occurring or accruing before, at or after the Closing, including the following (collectively, the "Retained Liabilities"):

(i) all Liabilities arising out of, relating to, in respect of or in connection with any Indebtedness of Sellers (other than Intercompany Obligations and the Purchaser Assumed Debt), including those items identified on Section 2.3(b)(i) of the Sellers' Disclosure Schedule;

(ii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) another Seller, (B) any Excluded Subsidiary or (C) any joint venture or other entity in which a Seller or an Excluded Subsidiary has an Equity Interest (other than a Transferred Entity);

(iii) all Liabilities arising out of, relating to, in respect of or in connection with the Excluded Assets, other than Liabilities otherwise retained in this **Section 2.3(b)**;

(iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third-party Claims related to Hazardous Materials that were or are located at or that migrated or may migrate from any Transferred Real Property, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A),

(B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(v) except for Taxes assumed in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, all Liabilities with respect to any (A) Taxes arising in connection with Sellers' business, the Purchased Assets or the Assumed Liabilities and that are attributable to a Pre-Closing Tax Period (including any Taxes incurred in connection with the sale of the Purchased Assets, other than all Transfer Taxes), (B) other Taxes of any Seller and (C) Taxes of any Seller Group, including any Liability of any Seller or any Seller Group member for Taxes arising as a result of being or ceasing to be a member of any Seller Group (it being understood, for the avoidance of doubt, that no provision of this Agreement shall cause Sellers to be liable for Taxes of any Purchased Subsidiary for which Sellers would not be liable absent this Agreement);

(vi) all Liabilities for (A) costs and expenses relating to the preparation, negotiation and entry into this Agreement and the Ancillary Agreements (and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, which, for the avoidance of doubt, shall not include any Transfer Taxes), including Advisory Fees, (B) administrative fees, professional fees and all other expenses under the Bankruptcy Code and (C) all other fees and expenses associated with the administration of the Bankruptcy Cases;

(vii) all Employment-Related Obligations not otherwise assumed in **Section 2.3(a)** and **Section 6.17**, including those arising out of, relating to, in respect of or in connection with the employment, potential employment or termination of employment of any individual (other than any Employee that is or was covered by the UAW Collective Bargaining Agreement) (A) prior to or at the Closing (including any severance policy, plan or program that exists or arises, or may be deemed to exist or arise, as a result of, or in connection with, the transactions contemplated by this Agreement) or (B) who is not a Transferred Employee arising after the Closing and with respect to both clauses (A) and (B) above, including any Liability arising out of, relating to, in respect of or in connection with any Collective Bargaining Agreement (other than the UAW Collective Bargaining Agreement);

(viii) all Liabilities arising out of, relating to, in respect of or in connection with Claims for infringement or misappropriation of third party intellectual property rights;

(ix) all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date;

(x) all Liabilities to third parties for death, personal injury, other injury to Persons or damage to property, in each case, arising out of asbestos exposure;

(xi) all Liabilities to third parties for Claims based upon Contract, tort or any other basis;

(xii) all workers' compensation Claims with respect to Employees residing in or employed in, as the case may be as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(xiii) all Liabilities arising out of, relating to, in respect of or in connection with any Retained Plan;

(xiv) all Liabilities arising out of, relating to, in respect of or in connection with any Assumed Plan or Purchased Subsidiaries Employee Benefit Plan, but only to the extent such Liabilities result from the failure of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan to comply in all respects with TARP or such Liability related to any changes to or from the administration of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan prior to the Closing Date;

(xv) the Settlement Agreement, except as provided with respect to Liabilities under Section 5A of the UAW Retiree Settlement Agreement; and

(xvi) all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers.

Section 2.4 Non-Assignability.

(a) If any Contract, Transferred Equity Interest (or any interest therein), Permit or other asset, which by the terms of this Agreement, is intended to be included in the Purchased Assets is determined not capable of being assigned or transferred (whether pursuant to Sections 363 or 365 of the Bankruptcy Code) to Purchaser at the Closing without the consent of another party thereto, the issuer thereof or any third party (including a Governmental Authority) ("Non-Assignable Assets"), this Agreement shall not constitute an assignment thereof, or an attempted assignment thereof, unless and until any such consent is obtained. Subject to **Section 6.3**, Sellers shall use reasonable best efforts, and Purchaser shall use reasonable best efforts to cooperate with Sellers, to obtain the consents necessary to assign to Purchaser the Non-Assignable Assets before, at or after the Closing; provided, however, that neither Sellers nor Purchaser shall be required to make any expenditure, incur any Liability, agree to any modification to any Contract or forego or alter any rights in connection with such efforts.

(b) To the extent that the consents referred to in **Section 2.4(a)** are not obtained by Sellers, except as otherwise provided in the Ancillary Documents to which one or more Sellers is a party, Sellers' sole responsibility with respect to such Non-Assignable Assets shall be to use reasonable best efforts, at no cost to Sellers, to (i) provide to Purchaser the benefits of any Non-Assignable Assets; (ii) cooperate in any

reasonable and lawful arrangement designed to provide the benefits of any Non-Assignable Assets to Purchaser without incurring any financial obligation to Purchaser; and (iii) enforce for the account of Purchaser and at the cost of Purchaser any rights of Sellers arising from any Non-Assignable Asset against such party or parties thereto; provided, however, that any such efforts described in clauses (i) through (iii) above shall be made only with the consent, and at the direction, of Purchaser. Without limiting the generality of the foregoing, with respect to any Non-Assignable Asset that is a Contract of Leased Real Property for which a consent is not obtained on or prior to the Closing Date, Purchaser shall enter into a sublease containing the same terms and conditions as such lease (unless such lease by its terms prohibits such subleasing arrangement), and entry into and compliance with such sublease shall satisfy the obligations of the Parties under this **Section 2.4(b)** until such consent is obtained.

(c) If Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b)**, Purchaser shall perform, on behalf of the applicable Seller, for the benefit of the issuer thereof or the other party or parties thereto, the obligations (including payment obligations) of the applicable Seller thereunder or in connection therewith arising from and after the Closing Date and if Purchaser fails to perform to the extent required herein, Sellers, without waiving any rights or remedies that they may have under this Agreement or applicable Laws, may (i) suspend their performance under **Section 2.4(b)** in respect of the Non-Assignable Asset that is the subject of such failure to perform unless and until such situation is remedied, or (ii) perform at Purchaser's sole cost and expense, in which case, Purchaser shall reimburse Sellers' costs and expenses of such performance immediately upon receipt of an invoice therefor. To the extent that Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b)**, Purchaser shall indemnify, defend and hold Sellers harmless from and against any and all Liabilities relating to such Non-Assignable Asset and arising from and after the Closing Date (other than such Damages that have resulted from the gross negligence or willful misconduct of Sellers).

(d) For the avoidance of doubt, the inability of any Contract, Transferred Equity Interest (or any other interest therein), Permit or other asset, which by the terms of this Agreement is intended to be included in the Purchased Assets to be assigned or transferred to Purchaser at the Closing shall not (i) give rise to a basis for termination of this Agreement pursuant to **ARTICLE VIII** or (ii) give rise to any right to any adjustment to the Purchase Price.

ARTICLE III CLOSING; PURCHASE PRICE

Section 3.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on the date that falls at least three (3) Business Days following the satisfaction and/or waiver of all conditions to the Closing set forth in **ARTICLE VII** (other than any of such conditions that by its nature is to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or on such other date as the Parties mutually agree, at the offices of Jenner & Block LLP, 919 Third Avenue, New York City, New York 10022-3908, or at such other place or such other date as the Parties may agree in

writing. The date on which the Closing actually occurs shall be referred to as the “Closing Date,” and except as otherwise expressly provided herein, the Closing shall for all purposes be deemed effective as of 9:00 a.m., New York City time, on the Closing Date.

Section 3.2 Purchase Price.

(a) The purchase price (the “Purchase Price”) shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less \$8,022,488,605 of Indebtedness under the DIP Facility (such amount, the “UST Credit Bid Amount”);

(ii) the UST Warrant (which the Parties agree has a value of no less than \$1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the “Parent Shares”) and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

(b) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (i) offset, pursuant to Section 363(k) of the Bankruptcy Code, the UST Credit Bid Amount against Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility; (ii) transfer to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the UST Warrant; and (iii) issue to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the Parent Shares and the Parent Warrants.

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the “Claims Estimate Order”), which Order may be the Order confirming Sellers’ Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers’ estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers’ estates exceed \$35,000,000,000, then Purchaser will, within five (5) days of entry of the Claims Estimate Order, issue 10,000,000 additional shares of Common Stock (the “Adjustment Shares”) to Parent, as an adjustment to the Purchase Price.

(ii) The number of Adjustment Shares shall be adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization,

merger, consolidation, reorganization or similar transaction with respect to the Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares.

(iii) At the Closing, Purchaser shall have authorized and, thereafter, shall reserve for issuance the Adjustment Shares that may be issued hereunder.

Section 3.3 Allocation. Following the Closing, Purchaser shall prepare and deliver to Sellers an allocation of the aggregate consideration among Sellers and, for any transactions contemplated by this Agreement that do not constitute an Agreed G Transaction pursuant to **Section 6.16**, Purchaser shall also prepare and deliver to the applicable Seller a proposed allocation of the Purchase Price and other consideration paid in exchange for the Purchased Assets, prepared in accordance with Section 1060, and if applicable, Section 338, of the Tax Code (the “Allocation”). The applicable Seller shall have thirty (30) days after the delivery of the Allocation to review and consent to the Allocation in writing, which consent shall not be unreasonably withheld, conditioned or delayed. If the applicable Seller consents to the Allocation, such Seller and Purchaser shall use such Allocation to prepare and file in a timely manner all appropriate Tax filings, including the preparation and filing of all applicable forms in accordance with applicable Law, including Forms 8594 and 8023, if applicable, with their respective Tax Returns for the taxable year that includes the Closing Date and shall take no position in any Tax Return that is inconsistent with such Allocation; provided, however, that nothing contained herein shall prevent the applicable Seller and Purchaser from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation, and neither the applicable Seller nor Purchaser shall be required to litigate before any court, any proposed deficiency or adjustment by any Taxing Authority challenging such Allocation. If the applicable Seller does not consent to such Allocation, the applicable Seller shall notify Purchaser in writing of such disagreement within such thirty (30) day period, and thereafter, the applicable Seller shall attempt in good faith to promptly resolve any such disagreement. If the Parties cannot resolve a disagreement under this **Section 3.3**, such disagreement shall be resolved by an independent accounting firm chosen by Purchaser and reasonably acceptable to the applicable Seller, and such resolution shall be final and binding on the Parties. The fees and expenses of such accounting firm shall be borne equally by Purchaser, on the one hand, and the applicable Seller, on the other hand. The applicable Seller shall provide Purchaser, and Purchaser shall provide the applicable Seller, with a copy of any information described above required to be furnished to any Taxing Authority in connection with the transactions contemplated herein.

Section 3.4 Prorations.

(a) The following prorations relating to the Purchased Assets shall be made:

(i) Except as provided in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, in the case of Taxes with respect to a Straddle Period, for purposes of Retained Liabilities, the portion of any such Tax that is allocable to Sellers with respect to any Purchased Asset shall be:

(A) in the case of Taxes that are either (1) based upon or related to income or receipts, or (2) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), other than Transfer Taxes, equal to the amount that would be payable if the taxable period ended on the Closing Date; and

(B) in the case of Taxes imposed on a periodic basis, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire Straddle Period (after giving effect to amounts which may be deducted from or offset against such Taxes) (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction, the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period.

In the case of any Tax based upon or measured by capital (including net worth or long-term debt) or intangibles, any amount thereof required to be allocated under this clause (i) shall be computed by reference to the level of such items on the Closing Date. All determinations necessary to effect the foregoing allocations shall be made in a manner consistent with prior practice of the applicable Seller, Seller Group member, or Seller Subsidiary.

(ii) All charges for water, wastewater treatment, sewers, electricity, fuel, gas, telephone, garbage and other utilities relating to the Transferred Real Property shall be prorated as of the Closing Date, with Sellers being liable to the extent such items relate to the Pre-Closing Tax Period, and Purchaser being liable to the extent such items relate to the Post-Closing Tax Period.

(b) If any of the foregoing proration amounts cannot be determined as of the Closing Date due to final invoices not being issued as of the Closing Date, Purchasers and Sellers shall prorate such items as and when the actual invoices are issued to the appropriate Party. The Party owing amounts to the other by means of such prorations shall pay the same within thirty (30) days after delivery of a written request by the paying Party.

Section 3.5 Post-Closing True-up of Certain Accounts.

(a) Sellers shall promptly reimburse Purchaser in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including wire and similar transfers of funds, written or initiated by Sellers prior to the Closing in respect of any obligations that would have constituted Retained Liabilities at the Closing, and that clear or settle in accounts maintained by Purchaser (or its Affiliates) at or following the Closing.

(b) Purchaser shall promptly reimburse Sellers in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including

wire and similar transfers of funds, written or initiated by Sellers following the Closing in respect of any obligations that would have constituted Assumed Liabilities at the Closing, and that clear or settle in accounts maintained by Sellers (or their Affiliates) at or following the Closing.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as disclosed in the Parent SEC Documents or in the Sellers' Disclosure Schedule, each Seller represents and warrants severally, and not jointly, to Purchaser as follows:

Section 4.1 Organization and Good Standing. Each Seller and each Purchased Subsidiary is duly organized and validly existing under the Laws of its jurisdiction of organization. Subject to the limitations imposed on Sellers as a result of having filed the Bankruptcy Cases, each Seller and each Purchased Subsidiary has all requisite corporate, limited liability company, partnership or similar power, as the case may be, and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each Seller and each Purchased Subsidiary is duly qualified or licensed or admitted to do business, and is in good standing in (where such concept is recognized under applicable Law), the jurisdictions in which the ownership of its property or the conduct of its business requires such qualification or license, in each case, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Material Adverse Effect. Sellers have made available to Purchaser prior to the execution of this Agreement true and complete copies of Sellers' Organizational Documents, in each case, as in effect on the date of this Agreement.

Section 4.2 Authorization; Enforceability. Subject to the entry and effectiveness of the Sale Approval Order, each Seller has the requisite corporate or limited liability company power and authority, as the case may be, to (a) execute and deliver this Agreement and the Ancillary Agreements to which such Seller is a party; (b) perform its obligations hereunder and thereunder; and (c) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which such Seller is a party. Subject to the entry and effectiveness of the Sale Approval Order, this Agreement constitutes, and each Ancillary Agreement, when duly executed and delivered by each Seller that is a party thereto, shall constitute, a valid and legally binding obligation of such Seller (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of Purchaser), enforceable against such Seller in accordance with its respective terms and conditions, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.3 Noncontravention; Consents.

(a) Subject, in the case of clauses (i), (iii) and (iv), to the entry and effectiveness of the Sale Approval Order, the execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by such Seller of the

transactions contemplated hereby and thereby, do not (i) violate any Law to which the Purchased Assets are subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of such Seller; (iii) result in a material breach or constitute a material default under, or create in any Person the right to terminate, cancel or accelerate any material obligation of such Seller pursuant to any material Purchased Contract (including any material License); or (iv) result in the creation or imposition of any Encumbrance, other than a Permitted Encumbrance, upon the Purchased Assets, except for any of the foregoing in the case of clauses (i), (iii) and (iv), that would not reasonably be expected to have a Material Adverse Effect.

(b) Subject to the entry and effectiveness of the Sale Approval Order, no consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority (other than the Bankruptcy Court) is required by any Seller for the consummation by each Seller of the transactions contemplated by this Agreement or by the Ancillary Agreements to which such Seller is a party or the compliance by such Seller with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority, the failure of which to be received or made would not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Subsidiaries. Section 4.4 of the Sellers' Disclosure Schedule identifies each Purchased Subsidiary and the jurisdiction of organization thereof. There are no Equity Interests in any Purchased Subsidiary issued, reserved for issuance or outstanding. All of the outstanding shares of capital stock, if applicable, of each Purchased Subsidiary have been duly authorized, validly issued, are fully paid and nonassessable and are owned, directly or indirectly, by Sellers, free and clear of all Encumbrances other than Permitted Encumbrances. Sellers, directly or indirectly, have good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries and, upon delivery by Sellers to Purchaser of the outstanding Equity Interests of the Purchased Subsidiaries (either directly or indirectly) at the Closing, good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries will pass to Purchaser (or, with respect to any Purchased Subsidiary that is not a direct Subsidiary of a Seller, the Purchased Subsidiary with regard to which it is a Subsidiary will continue to have good and valid title to such outstanding Equity Interests). None of the outstanding Equity Interests in the Purchased Subsidiaries has been conveyed in violation of, and none of the outstanding Equity Interests in the Purchased Subsidiaries has been issued in violation of (a) any preemptive or subscription rights, rights of first offer or first refusal or similar rights or (b) any voting trust, proxy or other Contract (including options or rights of first offer or first refusal) with respect to the voting, purchase, sale or other disposition thereof.

Section 4.5 Reports and Financial Statements; Internal Controls.

(a) (i) Parent has filed or furnished, or will file or furnish, as applicable, all forms, documents, schedules and reports, together with any amendments required to be made with respect thereto, required to be filed or furnished with the SEC from April 1, 2007 until the Closing (the "Parent SEC Documents"), and (ii) as of their respective

filing dates, or, if amended, as of the date of the last such amendment, the Parent SEC Documents complied or will comply in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the Parent SEC Documents contained or will contain any untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(b) (i) The consolidated financial statements of Parent included in the Parent SEC Documents (including all related notes and schedules, where applicable) fairly present or will fairly present in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries, as at the respective dates thereof, and (ii) the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(c) Parent maintains a system of internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for inclusion in the Parent SEC Documents in accordance with GAAP and maintains records that (i) in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent and its consolidated Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are made only in accordance with appropriate authorizations and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets. There are no (A) material weaknesses in the design or operation of the internal controls of Parent or (B) to the Knowledge of Sellers, any fraud, whether or not material, that involves management or other employees of Parent or any Purchased Subsidiary who have a significant role in internal control.

Section 4.6 Absence of Certain Changes and Events. From January 1, 2009 through the date hereof, except as otherwise contemplated, required or permitted by this Agreement, there has not been:

(a) (i) any declaration, setting aside or payment of any dividend or other distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value) with

respect to any Equity Interests in any Seller or any Key Subsidiary or any repurchase for value of any Equity Interests or rights of any Seller or any Key Subsidiary (except for dividends and distributions among its Subsidiaries) or (ii) any split, combination or reclassification of any Equity Interests in Sellers or any issuance or the authorization of any issuance of any other Equity Interests in respect of, in lieu of or in substitution for Equity Interests of Sellers;

(b) other than as is required by the terms of the Parent Employee Benefit Plans and Policies, the Settlement Agreement, the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement or as may be required by applicable Law, in each case, as may be permitted by TARP or under any enhanced restrictions on executive compensation agreed to by Parent and Sponsor, any (i) grant to any Seller Key Personnel of any increase in compensation, except increases required under employment Contracts in effect as of January 1, 2009, or as a result of a promotion to a position of additional responsibility, (ii) grant to any Seller Key Personnel of any increase in retention, change in control, severance or termination compensation or benefits, except as required under any employment Contracts in effect as of January 1, 2009, (iii) other than in the Ordinary Course of Business, adoption, termination of, entry into or amendment or modification of, in a material manner, any Benefit Plan, (iv) adoption, termination of, entry into or amendment or modification of, in a material manner, any employment, retention, change in control, severance or termination Contract with any Seller Key Personnel or (v) entry into or amendment, modification or termination of any Collective Bargaining Agreement or other Contract with any Union of any Seller or Purchased Subsidiary;

(c) any material change in accounting methods, principles or practices by any Seller, Purchased Subsidiary or Seller Group member or any material joint venture to which any Seller or Purchased Subsidiary is a party, in each case, materially affecting the consolidated assets or Liabilities of Parent, except to the extent required by a change in GAAP or applicable Law, including Tax Laws;

(d) any sale, transfer, pledge or other disposition by any Seller or any Purchased Subsidiary of any portion of its assets or properties not in the Ordinary Course of Business and with a sale price or fair value in excess of \$100,000,000;

(e) aggregate capital expenditures by any Seller or any Purchased Subsidiary in excess of \$100,000,000 in a single project or group of related projects or capital expenditures in excess of \$100,000,000 in the aggregate;

(f) any acquisition by any Seller or any Purchased Subsidiary (including by merger, consolidation, combination or acquisition of any Equity Interests or assets) of any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeded \$100,000,000;

(g) any discharge or satisfaction of any Indebtedness by any Seller or any Purchased Subsidiary in excess of \$100,000,000, other than the discharge or satisfaction of any Indebtedness when due in accordance with its terms;

(h) any alteration, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Seller or any Key Subsidiary or any material joint venture to which any Seller or any Key Subsidiary is a party, or the adoption or alteration of a plan with respect to any of the foregoing;

(i) any amendment or modification to the material adverse detriment of any Key Subsidiary of any material Affiliate Contract or Seller Material Contract, or termination of any material Affiliate Contract or Seller Material Contract to the material adverse detriment of any Seller or any Key Subsidiary, in each case, other than in the Ordinary Course of Business;

(j) any event, development or circumstance involving, or any change in the financial condition, properties, assets, liabilities, business, or results of operations of Sellers or any circumstance, occurrence or development (including any adverse change with respect to any circumstance, occurrence or development existing on or prior to the end of the most recent fiscal year end) of Sellers that has had or would reasonably be expected to have a Material Adverse Effect; or

(k) any commitment by any Seller, any Key Subsidiary (in the case of clauses (a), (g) and (h) above) or any Purchased Subsidiary (in the case of clauses (b) through (f) and clauses (h) and (j) above) to do any of the foregoing.

Section 4.7 Title to and Sufficiency of Assets.

(a) Subject to the entry and effectiveness of the Sale Approval Order, at the Closing, Sellers will obtain good and marketable title to, or a valid and enforceable right by Contract to use, the Purchased Assets, which shall be transferred to Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The tangible Purchased Assets of each Seller are in normal operating condition and repair, subject to ordinary wear and tear, and sufficient for the operation of such Seller's business as currently conducted, except where such instances of noncompliance with the foregoing would not reasonably be expected to have a Material Adverse Effect.

Section 4.8 Compliance with Laws; Permits.

(a) Each Seller and each Purchased Subsidiary is in compliance with and is not in default under or in violation of any applicable Law, except where such non-compliance, default or violation would not reasonably be expected to have a Material Adverse Effect. Notwithstanding anything contained in this **Section 4.8(a)**, no representation or warranty shall be deemed to be made in this **Section 4.8(a)** in respect of

the matters referenced in **Section 4.5**, **Section 4.9**, **Section 4.10**, **Section 4.11** or **Section 4.13**, each of which matters is addressed by such other Sections of this Agreement.

(b) (i) Each Seller has all Permits necessary for such Seller to own, lease and operate the Purchased Assets and (ii) each Purchased Subsidiary has all Permits necessary for such entity to own, lease and operate its properties and assets, except in each case, where the failure to possess such Permits would not reasonably be expected to have a Material Adverse Effect. All such Permits are in full force and effect, except where the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect.

Section 4.9 Environmental Laws. Except as would not reasonably be expected to have a Material Adverse Effect, to the Knowledge of Sellers, (a) each Seller and each Purchased Subsidiary has conducted its business on the Transferred Real Property in compliance with all applicable Environmental Laws; (b) none of the Transferred Real Property currently contains any Hazardous Materials, which could reasonably be expected to give rise to an undisclosed Liability under applicable Environmental Laws; (c) as of the date of this Agreement, no Seller or Purchased Subsidiary has received any currently unresolved written notices, demand letters or written requests for information from any Governmental Authority indicating that such entity may be in violation of any Environmental Law in connection with the ownership or operation of the Transferred Real Property; and (d) since April 1, 2007, no Hazardous Materials have been transported in violation of any applicable Environmental Law, or in a manner reasonably foreseen to give rise to any Liability under any Environmental Law, from any Transferred Real Property as a result of any activity of any Seller or Purchased Subsidiary. Except as provided in **Section 4.8(b)** with respect to Permits under Environmental Laws, Purchaser agrees and understands that no representation or warranty is made in respect of environmental matters in any Section of this Agreement other than this **Section 4.9**.

Section 4.10 Employee Benefit Plans.

(a) Section 4.10 of the Sellers' Disclosure Schedule sets forth all material Parent Employee Benefit Plans and Policies and Purchased Subsidiaries Employee Benefit Plans (collectively, the "Benefit Plans"). Sellers have made available, upon reasonable request, to Purchaser true, complete and correct copies of (i) each material Benefit Plan, (ii) the three (3) most recent annual reports on Form 5500 (including all schedules, auditor's reports and attachments thereto) filed with the IRS with respect to each such Benefit Plan (if any such report was required by applicable Law), (iii) the most recent actuarial or other financial report prepared with respect to such Benefit Plan, if any, (iv) each trust agreement and insurance or annuity Contract or other funding or financing arrangement relating to such Benefit Plan and (v) to the extent not subject to confidentiality restrictions, any material written communications received by Sellers or any Subsidiaries of Sellers from any Governmental Authority relating to a Benefit Plan, including any communication from the Pension Benefit Guaranty Corporation (the "PBGC"), in respect of any Benefit Plan, subject to Title IV of ERISA.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Benefit Plan has been administered in accordance with its terms, (ii) each

of Sellers, any of their Subsidiaries and each Benefit Plan is in compliance with the applicable provisions of ERISA, the Tax Code, all other applicable Laws (including Section 409A of the Tax Code, TARP or under any enhanced restrictions on executive compensation agreed to by Sellers with Sponsor) and the terms of all applicable Collective Bargaining Agreements, (iii) there are no (A) investigations by any Governmental Authority, (B) termination proceedings or other Claims (except routine Claims for benefits payable under any Benefit Plans) or (C) Claims, in each case, against or involving any Benefit Plan or asserting any rights to or Claims for benefits under any Benefit Plan that could give rise to any Liability, and there are not any facts or circumstances that could give rise to any Liability in the event of any such Claim and (iv) each Benefit Plan that is intended to be a Tax-qualified plan under Section 401(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is qualified and any trust established in connection with any Benefit Plan that is intended to be exempt from taxation under Section 501(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is exempt from United States federal income Taxes under Section 501(a) of the Tax Code (or similar provisions under non-United States law). To the Knowledge of Sellers, no circumstance and no fact or event exists that would be reasonably expected to adversely affect the qualified status of any Benefit Plan.

(c) None of the Parent Employee Benefit Plans and Policies or any material Purchased Subsidiaries Employee Benefit Plans that is an “employee pension benefit plan” (as defined in Section 3(2) of ERISA) has failed to satisfy, as applicable, the minimum funding standards (as described in Section 302 of ERISA or Section 412 of the Tax Code), whether or not waived, nor has any waiver of the minimum funding standards of Section 302 of ERISA or Section 412 of the Tax Code been requested.

(d) No Seller or any ERISA Affiliate of any Seller (including any Purchased Subsidiary) (i) has any actual or contingent Liability (A) under any employee benefit plan subject to Title IV of ERISA other than the Benefit Plans (except for contributions not yet due), (B) to the PBGC (except for the payment of premiums not yet due), which Liability, in each case, has not been fully paid as of the date hereof, or, if applicable, which has not been accrued in accordance with GAAP or (C) under any “multiemployer plan” (as defined in Section 3(37) of ERISA), or (ii) will incur withdrawal Liability under Title IV of ERISA as a result of the consummation of the transactions contemplated hereby, except for Liabilities with respect to any of the foregoing that would not reasonably be expected to have a Material Adverse Effect.

(e) Neither the execution of this Agreement or any Ancillary Agreement nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event, including termination of employment) will entitle any member of the board of directors of Parent or any Applicable Employee who is an officer or member of senior management of Parent to any increase in compensation or benefits, any grant of severance, retention, change in control or other similar compensation or benefits, any acceleration of the time of payment or vesting of any compensation or benefits (but not including, for this purpose, any retention, stay bonus or other incentive plan, program, arrangement that is a Retained Plan) or will require the securing or funding of any

compensation or benefits or limit the right of Sellers, any Subsidiary of Sellers or Purchaser or any Affiliates of Purchaser to amend, modify or terminate any Benefit Plan. Any new grant of severance, retention, change in control or other similar compensation or benefits to any Applicable Employee, and any payout to any Transferred Employee under any such existing arrangements, that would otherwise occur as a result of the execution of this Agreement or any Ancillary Agreement (alone or in conjunction with any other event, including termination of employment), has been waived by such Applicable Employee or otherwise cancelled.

(f) No amount or other entitlement currently in effect that could be received (whether in cash or property or the vesting of property) as a result of the actions contemplated by this Agreement and the Ancillary Agreements (alone or in combination with any other event) by any Person who is a “disqualified individual” (as defined in Treasury Regulation Section 1.280G-1) (each, a “Disqualified Individual”) with respect to Sellers would be an “excess parachute payment” (as defined in Section 280G(b)(1) of the Tax Code). No Disqualified Individual or Applicable Employee is entitled to receive any additional payment (e.g., any Tax gross-up or any other payment) from Sellers or any Subsidiaries of Sellers in the event that the additional or excise Tax required by Section 409A or 4999 of the Tax Code, respectively is imposed on such individual.

(g) All individuals covered by the UAW Collective Bargaining Agreement are either Applicable Employees or employed by a Purchased Subsidiary.

(h) Section 4.10(h) of the Sellers’ Disclosure Schedule lists all non-standard individual agreements currently in effect providing for compensation, benefits and perquisites for any current and former officer, director or top twenty-five (25) most highly paid employee of Parent and any other such material non-standard individual agreements with non-top twenty-five (25) employees.

Section 4.11 Labor Matters. There is not any labor strike, work stoppage or lockout pending, or, to the Knowledge of Sellers, threatened in writing against or affecting any Seller or any Purchased Subsidiary. Except as would not reasonably be expected to have a Material Adverse Effect: (a) none of Sellers or any Purchased Subsidiary is engaged in any material unfair labor practice; (b) there are not any unfair labor practice charges or complaints against Sellers or any Purchased Subsidiary pending, or, to the Knowledge of Sellers, threatened, before the National Labor Relations Board; (c) there are not any pending or, to the Knowledge of Sellers, threatened in writing, union grievances against Sellers or any Purchased Subsidiary as to which there is a reasonable possibility of adverse determination; (d) there are not any pending, or, to the Knowledge of Sellers, threatened in writing, charges against Sellers or any Purchased Subsidiary or any of their current or former employees before the Equal Employment Opportunity Commission or any state or local agency responsible for the prevention of unlawful employment practices; (e) no union organizational campaign is in progress with respect to the employees of any Seller or any Purchased Subsidiary and no question concerning representation of such employees exists; and (f) no Seller nor any Purchased Subsidiary has received written communication during the past five (5) years of the intent of any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation of or

affecting Sellers or any Subsidiary of Sellers and, to the Knowledge of Sellers, no such investigation is in progress.

Section 4.12 Investigations; Litigation. (a) To the Knowledge of Sellers, there is no investigation or review pending by any Governmental Authority with respect to any Seller that would reasonably be expected to have a Material Adverse Effect, and (b) there are no actions, suits, inquiries or proceedings, or to the Knowledge of Sellers, investigations, pending against any Seller, or relating to any of the Transferred Real Property, at law or in equity before, and there are no Orders of or before, any Governmental Authority, in each case that would reasonably be expected to have a Material Adverse Effect.

Section 4.13 Tax Matters. Except as would not reasonably be expected to have a Material Adverse Effect, (a) all Tax Returns required to have been filed by, with respect to or on behalf of any Seller, Seller Group member or Purchased Subsidiary have been timely filed (taking into account any extension of time to file granted or obtained) and are correct and complete in all respects, (b) all amounts of Tax required to be paid with respect to any Seller, Seller Group member or Purchased Subsidiary (whether or not shown on any Tax Return) have been timely paid or are being contested in good faith by appropriate proceedings and have been reserved for in accordance with GAAP in Parent's consolidated audited financial statements, (c) no deficiency for any amount of Tax has been asserted or assessed by a Taxing Authority in writing relating to any Seller, Seller Group member or Purchased Subsidiary that has not been satisfied by payment, settled or withdrawn, (d) there are no audits, Claims or controversies currently asserted or threatened in writing with respect to any Seller, Seller Group member or Purchased Subsidiary in respect of any amount of Tax or failure to file any Tax Return, (e) no Seller, Seller Group member or Purchased Subsidiary has agreed to any extension or waiver of the statute of limitations applicable to any Tax Return, or agreed to any extension of time with respect to a Tax assessment or deficiency, which period (after giving effect to such extension or waiver) has not yet expired, (f) no Seller, Seller Group member or Purchased Subsidiary is a party to or the subject of any ruling requests, private letter rulings, closing agreements, settlement agreements or similar agreements with any Taxing Authority for any periods for which the statute of limitations has not yet run, (g) no Seller, Seller Group member or Purchased Subsidiary (A) has any Liability for Taxes of any Person (other than any Purchased Subsidiary), including as a transferee or successor, or pursuant to any contractual obligation (other than pursuant to any commercial Contract not primarily related to Tax), or (B) is a party to or bound by any Tax sharing agreement, Tax allocation agreement or Tax indemnity agreement (in every case, other than this Agreement and those Tax sharing, Tax allocation or Tax indemnity agreements that will be terminated prior to Closing and with respect to which no post-Closing Liabilities will exist), (h) each of the Purchased Subsidiaries and each Seller and Seller Group member has withheld or collected all Taxes required to have been withheld or collected and, to the extent required, has paid such Taxes to the proper Taxing Authority, (i) no Seller, Seller Group member or Purchased Subsidiary will be required to make any adjustments in taxable income for any Tax period (or portion thereof) ending after the Closing Date, including pursuant to Section 481(a) or 263A of the Tax Code or any similar provision of foreign, provincial, state, local or other Law as a result of transactions or events occurring, or accounting methods employed, prior to the Closing, nor is any application pending with any Taxing Authority requesting permission for any changes in accounting methods that relate to any Seller, Seller Group member or Purchased Subsidiary, (j) the Assumed Liabilities were incurred through the

Ordinary Course of Business, (k) there are no Tax Encumbrances on any of the Purchased Assets or the assets of any Purchased Subsidiary (other than Permitted Encumbrances for which appropriate reserves have been established (and to the extent that such liens relate to a period ending on or before December 31, 2008, the amount of any such Liability is accrued or reserved for as a Liability in accordance with GAAP in the audited consolidated balance sheet of Sellers at December 31, 2008)), (l) none of the Purchased Subsidiaries or Sellers has been a “distributing corporation” or a “controlled corporation” in a distribution intended to qualify under Section 355(a) of the Tax Code, (m) none of the Purchased Subsidiaries, Sellers or Seller Group members has participated in any “listed transactions” or “reportable transactions” within the meaning of Treasury Regulations Section 1.6011-4, (n) there are no unpaid Taxes with respect to any Seller, Seller Group member or Purchased Asset for which Purchaser will have liability as a transferee or successor and (o) the most recent financial statements contained in the Parent SEC Documents reflect an adequate reserve for all Taxes payable by Sellers, the Purchased Subsidiaries and the members of all Seller Groups for all taxable periods and portions thereof through the date of such financial statements.

Section 4.14 Intellectual Property and IT Systems.

(a) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and each Purchased Subsidiary owns, controls, or otherwise possesses sufficient rights to use, free and clear of all Encumbrances (other than Permitted Encumbrances) all Intellectual Property necessary for the conduct of its business in substantially the same manner as conducted as of the date hereof; and (ii) all Intellectual Property owned by Sellers that is necessary for the conduct of the business of Sellers and each Purchased Subsidiary as conducted as of the date hereof is subsisting and in full force and effect, has not been adjudged invalid or unenforceable, has not been abandoned or allowed to lapse, in whole or in part, and to the Knowledge of Sellers, is valid and enforceable.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, all necessary registration, maintenance and renewal fees in connection with the Intellectual Property owned by Sellers have been paid and all necessary documents and certificates in connection with such Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or applicable foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining or renewing such Intellectual Property.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, no Intellectual Property owned by Sellers is the subject of any licensing or franchising Contract that prohibits or materially restricts the conduct of business as presently conducted by any Seller or Purchased Subsidiary or the transfer of such Intellectual Property.

(d) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the Intellectual Property or the conduct of Sellers’ and the Purchased Subsidiaries’ businesses does not infringe, misappropriate, dilute, or otherwise violate or conflict with the trademarks, patents, copyrights, inventions, trade secrets, proprietary

information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any Person; (ii) to the Knowledge of Sellers, no other Person is now infringing or in conflict with any Intellectual Property owned by Sellers or Sellers' rights thereunder; and (iii) no Seller or any Purchased Subsidiary has received any written notice that it is violating or has violated the trademarks, patents, copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any third party.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, no holding, decision or judgment has been rendered by any Governmental Authority against any Seller, which would limit, cancel or invalidate any Intellectual Property owned by Sellers.

(f) No action or proceeding is pending, or to the Knowledge of Sellers, threatened, on the date hereof that (i) seeks to limit, cancel or invalidate any Intellectual Property owned by Sellers or such Sellers' ownership interest therein; and (ii) if adversely determined, would reasonably be expected to have a Material Adverse Effect.

(g) Except as would not reasonably be expected to have a Material Adverse Effect, Sellers and the Purchased Subsidiaries have taken reasonable actions to (i) maintain, enforce and police their Intellectual Property; and (ii) protect their material Software, websites and other systems (and the information therein) from unauthorized access or use.

(h) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and Purchased Subsidiary has taken reasonable steps to protect its rights in, and confidentiality of, all the Trade Secrets, and any other confidential information owned by such Seller or Purchased Subsidiary; and (ii) to the Knowledge of Sellers, such Trade Secrets have not been disclosed by Sellers to any Person except pursuant to a valid and appropriate non-disclosure, license or any other appropriate Contract that has not been breached.

(i) Except as would not reasonably be expected to have a Material Adverse Effect, there has not been any malfunction with respect to any of the Software, electronic data processing, data communication lines, telecommunication lines, firmware, hardware, Internet websites or other information technology equipment of any Seller or Purchased Subsidiary since April 1, 2007, which has not been remedied or replaced in all respects.

(j) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the consummation of the transactions contemplated by this Agreement will not cause to be provided or licensed to any third Person, or give rise to any rights of any third Person with respect to, any source code that is part of the Software owned by Sellers; and (ii) Sellers have implemented reasonable disaster recovery and back-up plans with respect to the Software.

Section 4.15 Real Property. Each Seller owns and has valid title to the Transferred Real Property that is Owned Real Property owned by it and has valid leasehold or

subleasehold interests, as the case may be, in all of the Transferred Real Property that is Leased Real Property leased or subleased by it, in each case, free and clear of all Encumbrances, other than Permitted Encumbrances. Each of Sellers and the Purchased Subsidiaries has complied with the terms of each lease, sublease, license or other Contract relating to the Transferred Real Property to which it is a party, except any failure to comply that would not reasonably be expected to have a Material Adverse Effect.

Section 4.16 Material Contracts.

(a) Except for this Agreement, the Parent Employee Benefit Plans and Policies, except as filed with, or disclosed or incorporated in, the Parent SEC Documents or except as set forth on Section 4.16 of the Sellers' Disclosure Schedule, as of the date hereof, no Seller is a party to or bound by (i) any "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC); (ii) any non-compete or exclusivity agreement that materially restricts the operation of Sellers' core business; (iii) any asset purchase agreement, stock purchase agreement or other agreement entered into within the past six years governing a material joint venture or the acquisition or disposition of assets or other property where the consideration paid or received for such assets or other property exceeded \$500,000,000 (whether in cash, stock or otherwise); (iv) any agreement or series of related agreements with any supplier of Sellers who directly support the production of vehicles, which provided collectively for payments by Sellers to such supplier in excess of \$250,000,000 during the 12-month period ended December 31, 2008; (v) any agreement or series of related agreements with any supplier of Sellers who does not directly support the production of vehicles, which, provided collectively for payments by Sellers to such supplier in excess of \$100,000,000 during the 12-month period ended April 30, 2009; (vi) any Contract relating to the lease or purchase of aircraft; (vii) any settlement agreement where a Seller has paid or may be required to pay an amount in excess of \$100,000,000 to settle the Claims covered by such settlement agreement; (viii) any material Contract that will, following the Closing, as a result of transactions contemplated hereby, be between or among a Seller or any Retained Subsidiary, on the one hand, and Purchaser or any Purchased Subsidiary, on the other hand (other than the Ancillary Agreements); and (ix) agreements entered into in connection with a material joint venture (all Contracts of the type described in this **Section 4.16(a)** being referred to herein as "Seller Material Contracts").

(b) No Seller is in breach of or default under, or has received any written notice alleging any breach of or default under, the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Seller Material Contract or material License is in breach of or default under the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Seller Material Contract or material License is a valid, binding and enforceable obligation of such Seller that is party thereto and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws

relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.17 Dealer Sales and Service Agreements for Continuing Brands. Parent is not in breach of or default under the terms of any United States dealer sales and service Contract for Continuing Brands other than any Excluded Continuing Brand Dealer Agreement (each, a "Dealer Agreement"), where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Dealer Agreement is in breach of or default under the terms of such Dealer Agreement, where such breach or default would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Dealer Agreement is a valid and binding obligation of Parent and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.18 Sellers' Products.

(a) To the Knowledge of Sellers, since April 1, 2007, neither Sellers nor any Purchased Subsidiary has conducted or decided to conduct any material recall or other field action concerning any product developed, designed, manufactured, sold, provided or placed in the stream of commerce by or on behalf of any Seller or any Purchased Subsidiary.

(b) As of the date hereof, there are no material pending actions for negligence, manufacturing negligence or improper workmanship, or material pending actions, in whole or in part, premised upon product liability, against or otherwise naming as a party any Seller, Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, or to the Knowledge of Sellers, threatened in writing or of which Seller has received written notice that involve a product liability Claim resulting from the ownership, possession or use of any product manufactured, sold or delivered by any Seller, any Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, which would reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of Sellers and except as would not reasonably be expected to have a Material Adverse Effect, no supplier to any Seller has threatened in writing to cease the supply of products or services that could impair future production at a major production facility of such Seller.

Section 4.19 Certain Business Practices. Each of Sellers and the Purchased Subsidiaries is in compliance with the legal requirements under the Foreign Corrupt Practices Act, as amended (the "FCPA"), except for such failures, whether individually or in the aggregate, to maintain books and records or internal controls as required thereunder that are not

material. To the Knowledge of Sellers, since April 1, 2007, no Seller or Purchased Subsidiary, nor any director, officer, employee or agent thereof, acting on its, his or her own behalf or on behalf of any of the foregoing Persons, has offered, promised, authorized the payment of, or paid, any money, or the transfer of anything of value, directly or indirectly, to or for the benefit of: (a) any employee, official, agent or other representative of any foreign Governmental Authority, or of any public international organization; or (b) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any act or decision of such recipient in the recipient's official capacity, or inducing such recipient to use his, her or its influence to affect any act or decision of such foreign government or department, agency or instrumentality thereof or of such public international organization, or securing any improper advantage, in the case of both clause (a) and (b) above, in order to assist any Seller or any Purchased Subsidiary to obtain or retain business for, or to direct business to, any Seller or any Purchased Subsidiary and under circumstances that would subject any Seller or any Purchased Subsidiary to material Liability under any applicable Laws of the United States (including the FCPA) or of any foreign jurisdiction where any Seller or any Purchased Subsidiary does business relating to corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses.

Section 4.20 Brokers and Other Advisors. No broker, investment banker, financial advisor, counsel (other than legal counsel) or other Person is entitled to any broker's, finder's or financial advisor's fee or commission (collectively, "Advisory Fees") in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sellers or any Affiliate of any Seller.

Section 4.21 Investment Representations.

(a) Each Seller is acquiring the Parent Shares for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Each Seller agrees that it shall not transfer any of the Parent Shares, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Each Seller is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Each Seller understands that the acquisition of the Parent Shares to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Each Seller and its officers have experience as an investor in the Equity Interests of companies such as the ones being transferred pursuant to this Agreement and each Seller acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Parent Shares to be acquired by it pursuant to the transactions contemplated by this Agreement.

(d) Each Seller further understands and acknowledges that the Parent Shares have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Parent Shares may not be sold, transferred, offered

for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Each Seller acknowledges that the offer and sale of the Parent Shares has not been accomplished by the publication of any advertisement.

Section 4.22 No Other Representations or Warranties of Sellers. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN THIS **ARTICLE IV**, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26**, AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF THEM OR OTHER COMMUNICATIONS BETWEEN THEM OR ANY OF THEIR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, OR ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (C) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

Section 5.1 Organization and Good Standing. Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of

incorporation. Purchaser has the requisite corporate power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 5.2 Authorization; Enforceability.

(a) Purchaser has the requisite corporate power and authority to (i) execute and deliver this Agreement and the Ancillary Agreements to which it is a party; (ii) perform its obligations hereunder and thereunder; and (iii) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party.

(b) This Agreement constitutes, and each of the Ancillary Agreements to which Purchaser is a party, when duly executed and delivered by Purchaser, shall constitute, a valid and legally binding obligation of Purchaser (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of each Seller that is a party thereto and the other applicable parties thereto), enforceable against Purchaser in accordance with its respective terms and conditions, except as may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 5.3 Noncontravention; Consents.

(a) The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by Purchaser of the transactions contemplated hereby and thereby, do not (i) violate any Law to which Purchaser or its assets is subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of Purchaser; or (iii) create a breach, default, termination, cancellation or acceleration of any obligation of Purchaser under any Contract to which Purchaser is a party or by which Purchaser or any of its assets or properties is bound or subject, except for any of the foregoing in the cases of clauses (i) and (iii), that would not reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby or thereby or to perform any of its obligations under this Agreement or any Ancillary Agreement to which it is a party (a "Purchaser Material Adverse Effect").

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required by Purchaser for the consummation by Purchaser of the transactions contemplated by this Agreement or the Ancillary Agreements to which it is a party or the compliance by Purchaser with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Governmental Authority, the failure of which to be received

or made would not, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect.

Section 5.4 Capitalization.

(a) As of the date hereof, Sponsor holds beneficially and of record 1,000 shares of common stock, par value \$0.01 per share, of Purchaser, which constitutes all of the outstanding capital stock of Purchaser, and all such capital stock is validly issued, fully paid and nonassessable.

(b) Immediately following the Closing, the authorized capital stock of Purchaser (or, if a Holding Company Reorganization has occurred prior to the Closing, Holding Company) will consist of 2,500,000,000 shares of common stock, par value \$0.01 per share ("Common Stock"), and 1,000,000,000 shares of preferred stock, par value \$0.01 per share ("Preferred Stock"), of which 360,000,000 shares of Preferred Stock are designated as Series A Fixed Rate Cumulative Perpetual Preferred Stock, par value \$0.01 per share (the "Series A Preferred Stock").

(c) Immediately following the Closing, (i) Canada or one or more of its Affiliates will hold beneficially and of record 58,368,644 shares of Common Stock and 16,101,695 shares of Series A Preferred Stock (collectively, the "Canada Shares"), (ii) Sponsor or one or more of its Affiliates collectively will hold beneficially and of record 304,131,356 shares of Common Stock and 83,898,305 shares of Series A Preferred Stock (collectively, the "Sponsor Shares") and (iii) the New VEBA will hold beneficially and of record 87,500,000 shares of Common Stock and 260,000,000 shares of Series A Preferred Stock (collectively, the "VEBA Shares"). Immediately following the Closing, there will be no other holders of Common Stock or Preferred Stock.

(d) Except as provided under the Parent Warrants, VEBA Warrants, Equity Incentive Plans or as disclosed on the Purchaser's Disclosure Schedule, there are and, immediately following the Closing, there will be no outstanding options, warrants, subscriptions, calls, convertible securities, phantom equity, equity appreciation or similar rights, or other rights or Contracts (contingent or otherwise) (including any right of conversion or exchange under any outstanding security, instrument or other Contract or any preemptive right) obligating Purchaser to deliver or sell, or cause to be issued, delivered or sold, any shares of its capital stock or other equity securities, instruments or rights that are, directly or indirectly, convertible into or exercisable or exchangeable for any shares of its capital stock. There are no outstanding contractual obligations of Purchaser to repurchase, redeem or otherwise acquire any shares of its capital stock or to provide funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any other Person. There are no voting trusts, shareholder agreements, proxies or other Contracts or understandings in effect with respect to the voting or transfer of any of the shares of Common Stock to which Purchaser is a party or by which Purchaser is bound. Except as provided under the Equity Registration Rights Agreement or as disclosed in the Purchaser's Disclosure Schedule, Purchaser has not granted or agreed to grant any holders of shares of Common Stock or securities

convertible into shares of Common Stock registration rights with respect to such shares under the Securities Act.

(e) Immediately following the Closing, (i) all of the Canada Shares, the Parent Shares and the Sponsor Shares will be duly and validly authorized and issued, fully paid and nonassessable, and will be issued in accordance with the registration or qualification provisions of the Securities Act or pursuant to valid exemptions therefrom and (ii) none of the Canada Shares, the Parent Shares or the Sponsor Shares will be issued in violation of any preemptive rights.

Section 5.5 Valid Issuance of Shares. The Parent Shares, Adjustment Shares and the Common Stock underlying the Parent Warrants, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement and the related warrant agreement, as applicable, will be (a) validly issued, fully paid and nonassessable and (b) free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities Laws and Encumbrances created by or imposed by Sellers. Assuming the accuracy of the representations of Sellers in **Section 4.21**, the Parent Shares, Adjustment Shares and Parent Warrants will be issued in compliance with all applicable federal and state securities Laws.

Section 5.6 Investment Representations.

(a) Purchaser is acquiring the Transferred Equity Interests for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Purchaser agrees that it shall not transfer any of the Transferred Equity Interests, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Purchaser is an “Accredited Investor” as defined in Rule 501(a) promulgated under the Securities Act.

(c) Purchaser understands that the acquisition of the Transferred Equity Interests to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Purchaser and its officers have experience as an investor in Equity Interests of companies such as the ones being transferred pursuant to this Agreement and Purchaser acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Transferred Equity Interests to be acquired by it pursuant to the transactions contemplated hereby.

(d) Purchaser further understands and acknowledges that the Transferred Equity Interests have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Transferred Equity Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Purchaser acknowledges that the offer and sale of the Transferred Equity Interests has not been accomplished by the publication of any advertisement.

Section 5.7 Continuity of Business Enterprise. It is the present intention of Purchaser to directly, or indirectly through its Subsidiaries, continue at least one significant historic business line of each Seller, or use at least a significant portion of each Seller's historic business assets in a business, in each case, within the meaning of Treas. Reg. § 1.368-1(d).

Section 5.8 Integrated Transaction. Sponsor has contributed, or will, prior to the Closing, contribute the UST Credit Facilities, a portion of the DIP Facility that is owed as of the Closing and the UST Warrant to Purchaser solely for the purposes of effectuating the transactions contemplated by this Agreement.

Section 5.9 No Other Representations or Warranties of Sellers. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN **ARTICLE IV**, PURCHASER FURTHER HEREBY ACKNOWLEDGES AND AGREES THAT SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26**, AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF IT OR OTHER COMMUNICATIONS BETWEEN IT OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION OR (C) ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (D) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE VI COVENANTS

Section 6.1 Access to Information.

(a) Sellers agree that, until the earlier of the Executory Contract Designation Deadline and the termination of this Agreement, Purchaser shall be entitled, through its Representatives or otherwise, to have reasonable access to the executive officers and Representatives of Sellers and the properties and other facilities, businesses, books, Contracts, personnel, records and operations (including the Purchased Assets and Assumed Liabilities) of Sellers and their Subsidiaries, including access to systems, data, databases for benefit plan administration; provided however, that no such investigation or examination shall be permitted to the extent that it would, in Sellers' reasonable determination, require any Seller, any Subsidiary of any Seller or any of their respective Representatives to disclose information subject to attorney-client privilege or in conflict with any confidentiality agreement to which any Seller, any Subsidiary of any Seller or any of their respective Representatives are bound (in which case, to the extent requested by Purchaser, Sellers will use reasonable best efforts to seek an amendment or appropriate waiver, or necessary consents, as may be required to avoid such conflict, or restructure the form of access, so as to permit the access requested); provided further, that notwithstanding the notice provisions in **Section 9.2** hereof, all such requests for access to the executive officers of Sellers shall be directed, prior to the Closing, to the Chief Financial Officer of Parent or his designee, and following the Closing, to the Chief Restructuring Officer of Parent or his or her designee. If any material is withheld pursuant to this **Section 6.1(a)**, Seller shall inform Purchaser in writing as to the general nature of what is being withheld and the reason for withholding such material.

(b) Any investigation and examination contemplated by this **Section 6.1** shall be subject to restrictions set forth in **Section 6.24** and under applicable Law. Sellers shall cooperate, and shall cause their Subsidiaries and each of their respective Representatives to cooperate, with Purchaser and its Representatives in connection with such investigation and examination, and each of Purchaser and its Representatives shall use their reasonable best efforts to not materially interfere with the business of Sellers and their Subsidiaries. Without limiting the generality of the foregoing, subject to **Section 6.1(a)**, such investigation and examination shall include reasonable access to Sellers' executive officers (and employees of Sellers and their respective Subsidiaries identified by such executive officers), offices, properties and other facilities, and books, Contracts and records (including any document retention policies of Sellers) and access to accountants of Sellers and each of their respective Subsidiaries (provided that Sellers and each of their respective Subsidiaries, as applicable, shall have the right to be present at any meeting between any such accountant and Purchaser or Representative of Purchaser, whether such meeting is in person, telephonic or otherwise) and Sellers and each of their respective Subsidiaries and their Representatives shall prepare and furnish to Purchaser's Representatives such additional financial and operating data and other information as Purchaser may from time to time reasonably request, subject, in each case, to the confidentiality restrictions outlined in this **Section 6.1**. Notwithstanding anything contained herein to the contrary, Purchaser shall consult with Sellers prior to conducting

any environmental investigations or examinations of any nature, including Phase I and Phase II site assessments and any environmental sampling in respect of the Transferred Real Property.

Section 6.2 Conduct of Business.

(a) Except as (i) otherwise expressly contemplated by or permitted under this Agreement, including the DIP Facility; (ii) disclosed on Section 6.2 of the Sellers' Disclosure Schedule; (iii) approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent); or (iv) required by or resulting from any changes to applicable Laws, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, Sellers shall and shall cause each Purchased Subsidiary to (A) conduct their operations in the Ordinary Course of Business, (B) not take any action inconsistent with this Agreement or with the consummation of the Closing, (C) use reasonable best efforts to preserve in the Ordinary Course of Business and in all material respects the present relationships of Sellers and each of their Subsidiaries with their respective customers, suppliers and others having significant business dealings with them, (D) not take any action to cause any of Sellers' representations and warranties set forth in **ARTICLE IV** to be untrue in any material respect as of any such date when such representation or warranty is made or deemed to be made and (E) not take any action that would reasonably be expected to materially prevent or delay the Closing.

(b) Subject to the exceptions contained in clauses (i) through (iv) of **Section 6.2(a)**, each Seller agrees that, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), such Seller shall not, and shall not permit any of the Key Subsidiaries (and in the case of clauses (i), (ix), (xiii) or (xvi), shall not permit any Purchased Subsidiary) to:

(i) take any action with respect to which any Seller has granted approval rights to Sponsor under any Contract, including under the UST Credit Facilities, without obtaining the prior approval of such action from Sponsor;

(ii) issue, sell, pledge, create an Encumbrance or otherwise dispose of or authorize the issuance, sale, pledge, Encumbrance or disposition of any Equity Interests of the Transferred Entities, or grant any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any such Equity Interests;

(iii) declare, set aside or pay any dividend or make any distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value with respect to any Equity Interest of Seller or any Key Subsidiary), except for dividends and distributions among the Purchased Subsidiaries;

(iv) directly or indirectly, purchase, redeem or otherwise acquire any Equity Interests or any rights to acquire any Equity Interests of any Seller or Key Subsidiary;

(v) materially change any of its financial accounting policies or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as permitted by GAAP, a SEC rule, regulation or policy or applicable Law, or as modified by Parent as a result of the filing of the Bankruptcy Cases;

(vi) adopt any amendments to its Organizational Documents or permit the adoption of any amendment of the Organizational Documents of any Key Subsidiary or effect a split, combination or reclassification or other adjustment of Equity Interests of any Purchased Subsidiary or a recapitalization thereof;

(vii) sell, pledge, lease, transfer, assign or dispose of any Purchased Asset or permit any Purchased Asset to become subject to any Encumbrance, other than a Permitted Encumbrance, in each case, except in the Ordinary Course of Business or pursuant to a Contract in existence as of the date hereof (or entered into in compliance with this **Section 6.2**);

(viii) (A) incur or assume any Indebtedness for borrowed money or issue any debt securities, except for Indebtedness for borrowed money incurred by Purchased Subsidiaries under existing lines of credit (including through the incurrence of Intercompany Obligations) to fund operations of Purchased Subsidiaries and Indebtedness for borrowed money incurred by Sellers under the DIP Facility or (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, except for Indebtedness for borrowed money among any Seller and Subsidiary or among the Subsidiaries;

(ix) discharge or satisfy any Indebtedness in excess of \$100,000,000 other than the discharge or satisfaction of any Indebtedness when due in accordance with its originally scheduled terms;

(x) other than as is required by the terms of a Parent Employee Benefit Plan and Policy (in effect on the date hereof and set forth on Section 4.10 of the Sellers' Disclosure Schedule), any Assumed Plan (in effect on the date hereof) the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement, the Settlement Agreement, the UAW Retiree Settlement Agreement or as may be required by applicable Law or TARP or under any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor, (A) increase the compensation or benefits of any Employee of Sellers or any Purchased Subsidiary (except for increases in salary or wages in the Ordinary Course of Business with respect to Employees who are not current or former directors or officers of Sellers or Seller Key Personnel), (B) grant any severance or termination pay to any Employee of Sellers or any Purchased

Subsidiary except for severance or termination pay provided under any Parent Employee Benefit Plan and Policy or as the result of a settlement of any pending Claim or charge involving a Governmental Authority or litigation with respect to Employees who are not current or former officers or directors of Sellers or Seller Key Personnel), (C) establish, adopt, enter into, amend or terminate any Benefit Plan (including any change to any actuarial or other assumption used to calculate funding obligations with respect to any Benefit Plan or any change to the manner in which contributions to any Benefit Plan are made or the basis on which such contributions are determined), except where any such action would reduce Sellers' costs or Liabilities pursuant to such plan, (D) grant any awards under any Benefit Plan (including any equity or equity-based awards), (E) increase or promise to increase or provide for the funding under any Benefit Plan, (F) forgive any loans to Employees of Sellers or any Purchased Subsidiary (other than as part of a settlement of any pending Claim or charge involving a Governmental Authority or litigation in the Ordinary Course of Business or with respect to obligations of Employees whose employment is terminated by Sellers or a Purchased Subsidiary in the Ordinary Course of Business, other than Employees who are current or former officers or directors of Sellers or Seller Key Personnel or directors of Sellers or a Purchased Subsidiary) or (G) exercise any discretion to accelerate the time of payment or vesting of any compensation or benefits under any Benefit Plan;

(xi) modify, amend, terminate or waive any rights under any Affiliate Contract or Seller Material Contract (except for any dealer sales and service Contracts or as contemplated by **Section 6.7**) in any material respect in a manner that is adverse to any Seller that is a party thereto, other than in the Ordinary Course of Business;

(xii) enter into any Seller Material Contract other than as contemplated by **Section 6.7**;

(xiii) acquire (including by merger, consolidation, combination or acquisition of Equity Interests or assets) any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeds \$100,000,000;

(xiv) alter, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Key Subsidiary, or adopt or approve a plan with respect to any of the foregoing;

(xv) enter into any Contract that limits or otherwise restricts or that would reasonably be expected to, after the Closing, restrict or limit in any material respect (A) Purchaser or any of its Subsidiaries or any successor thereto or (B) any Affiliates of Purchaser or any successor thereto, in the case of each of

clause (A) or (B), from engaging or competing in any line of business or in any geographic area;

(xvi) enter into any Contracts for capital expenditures, exceeding \$100,000,000 in the aggregate in connection with any single project or group of related projects;

(xvii) open or reopen any major production facility; and

(xviii) agree, in writing or otherwise, to take any of the foregoing actions.

Section 6.3 Notices and Consents.

(a) Sellers shall and shall cause each of their Subsidiaries to, and Purchaser shall use reasonable best efforts to, promptly give all notices to, obtain all material consents, approvals or authorizations from, and file all notifications and related materials with, any third parties (including any Governmental Authority) that may be or become necessary to be given or obtained by Sellers or their Affiliates, or Purchaser, respectively, in connection with the transactions contemplated by this Agreement.

(b) Each of Purchaser and Parent shall, to the extent permitted by Law, promptly notify the other Party of any communication it or any of its Affiliates receives from any Governmental Authority relating to the transactions contemplated by this Agreement and permit the other Party to review in advance any proposed substantive communication by such Party to any Governmental Authority. Neither Purchaser nor Parent shall agree to participate in any material meeting with any Governmental Authority in respect of any significant filings, investigation (including any settlement of the investigation), litigation or other inquiry unless it consults with the other Party in advance and, to the extent permitted by such Governmental Authority, gives the other Party the opportunity to attend and participate at such meeting; provided, however, in the event either Party is prohibited by applicable Law or such Governmental Authority from participating in or attending any such meeting, then the Party who participates in such meeting shall keep the other Party apprised with respect thereto to the extent permitted by Law. To the extent permitted by Law, Purchaser and Parent shall coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Party may reasonably request in connection with the foregoing, including, to the extent reasonably practicable, providing to the other Party in advance of submission, drafts of all material filings, submissions, correspondences or other written communications, providing the other Party with an opportunity to comment on the drafts, and, where practicable, incorporating such comments, if any, into the final documents. To the extent permitted by applicable Law, Purchaser and Parent shall provide each other with copies of all material correspondences, filings or written communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement or the transactions contemplated by this Agreement.

(c) None of Purchaser, Parent or their respective Affiliates shall be required to pay any fees or other payments to any Governmental Authorities in order to obtain any authorization, consent, Order or approval (other than normal filing fees and administrative fees that are imposed by Law on Purchaser), and in the event that any fees in addition to normal filing fees imposed by Law may be required to obtain any such authorization, consent, Order or approval, such fees shall be for the account of Purchaser.

(d) Notwithstanding anything to the contrary contained herein, no Seller shall be required to make any expenditure or incur any Liability in connection with the requirements set forth in this **Section 6.3**.

Section 6.4 Sale Procedures; Bankruptcy Court Approval.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or better competing Bids with respect to an Alternative Transaction. Nothing contained herein shall be construed to prohibit Sellers and their respective Affiliates and Representatives from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Alternative Transaction but only to the extent that Sellers determine in good faith that such actions are permitted or required by the Sale Procedures Order.

(b) On the Petition Date, Sellers filed with the Bankruptcy Court the Bankruptcy Cases under the Bankruptcy Code and a motion (and related notices and proposed Orders) (the "Sale Procedures and Sale Motion"), seeking entry of (i) the sale procedures order, in the form attached hereto as **Exhibit H** (the "Sale Procedures Order"), and (ii) the sale approval order, in the form attached hereto as **Exhibit I** (the "Sale Approval Order"). The Sale Approval Order shall declare that if there is an Agreed G Transaction, (A) this Agreement constitutes a "plan" of Parent and Purchaser solely for purposes of Sections 368 and 354 of the Tax Code and (B) the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers, are intended to constitute a reorganization of Parent pursuant to Section 368(a)(1)(G) of the Tax Code. To the extent reasonably practicable, Sellers shall consult with and provide Purchaser and the UAW a reasonable opportunity to review and comment on material motions, applications and supporting papers prepared by Sellers in connection with this Agreement prior to the filing or delivery thereof in the Bankruptcy Cases.

(c) Purchaser acknowledges that Sellers may receive bids ("Bids") from prospective purchasers (such prospective purchasers, the "Bidders") with respect to an Alternative Transaction, as provided in the Sale Procedures Order. All Bids (other than Bids submitted by Purchaser) shall be submitted with two copies of this Agreement marked to show changes requested by the Bidder.

(d) If Sellers receive any Bids, Sellers shall have the right to select, and seek final approval of the Bankruptcy Court for, the highest or otherwise best Bid or Bids from the Bidders (the "Superior Bid"), which will be determined in accordance with the Sale Procedure Order.

(e) Sellers shall use their reasonable best efforts to obtain entry of the Sale Approval Order on the Bankruptcy Court's docket as soon as practicable, and in no event no later than July 10, 2009.

(f) Sellers shall use reasonable best efforts to comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the transactions contemplated by this Agreement, including serving on all required Persons in the Bankruptcy Cases (including all holders of Encumbrances and parties to the Purchased Contracts), a notice of the Sale Procedures and Sale Motion, the Sale Hearing and the objection deadline in accordance with Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (as modified by Orders of the Bankruptcy Court), the Sale Procedures Order or other Orders of the Bankruptcy Court, including General Order M-331 issued by the Bankruptcy Court, and any applicable local rules of the Bankruptcy Court.

(g) Sellers shall provide Purchaser with a reasonable opportunity to review and comment on all motions, applications and supporting papers prepared by Sellers in connection with this Agreement (including forms of Orders and of notices to interested parties) prior to the filing or delivery thereof in the Bankruptcy Cases. All motions, applications and supporting papers prepared by Sellers and relating to the approval of this Agreement (including forms of Orders and of notices to interested parties) to be filed or delivered on behalf of Sellers shall be reasonably acceptable in form and substance to Purchaser. Sellers shall provide written notice to Purchaser of all matters that are required to be served on Sellers' creditors pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. In the event the Sale Procedures Order and the Sale Approval Order is appealed, Sellers shall use their reasonable best efforts to defend such appeal.

(h) Purchaser agrees, to the extent reasonably requested by Sellers, to cooperate with and assist Sellers in seeking entry of the Sale Procedures Order and the Sale Approval Order by the Bankruptcy Court, including attending all hearings on the Sale Procedures and Sale Motion.

Section 6.5 Supplements to Purchased Assets. Purchaser shall, from the date hereof until the Executory Contract Designation Deadline, have the right to designate in writing additional Personal Property it wishes to designate as Purchased Assets if such Personal Property is located at a parcel of leased real property where the underlying lease has been designated as a Rejectable Executory Contract pursuant to **Section 6.6** following the Closing.

Section 6.6 Assumption or Rejection of Contracts.

(a) The Assumable Executory Contract Schedule sets forth a list of Executory Contracts entered into by Sellers that Sellers may assume and assign to Purchaser in accordance with this **Section 6.6(a)** (each, an "Assumable Executory Contract"). Any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule and Section 6.6(a)(ii) of the Sellers' Disclosure Schedule shall automatically be designated as an

Assumable Executory Contract and deemed to be set forth on the Assumable Executory Contract Schedule. Purchaser may, until the Executory Contract Designation Deadline, designate in writing any additional Executory Contract it wishes to designate as an Assumable Executory Contract and include on the Assumable Executory Contract Schedule, or any Assumable Executory Contract it no longer wishes to designate as an Assumable Executory Contract and remove from the Assumable Executory Contract Schedule; provided, however, that (i) Purchaser may not designate as an Assumable Executory Contract any (A) Rejectable Executory Contract, unless Sellers have consented to such designation in writing or (B) Contract that has previously been rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, and (ii) Purchaser may not remove from the Assumable Executory Contract Schedule (v) the UAW Collective Bargaining Agreement, (w) any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule or Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, (x) any Contract that has been previously assumed by Sellers pursuant to Section 365 of the Bankruptcy Code, (y) any Deferred Termination Agreement (or the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) or (z) any Participation Agreement (or the related Continuing Brand Dealer Agreement). Except as otherwise provided above, for each Assumable Executory Contract, Purchaser must determine, prior to the Executory Contract Designation Deadline, the date on which it seeks to have the assumption and assignment become effective, which date may be the Closing Date or a later date (but not an earlier date). The term "Executory Contract Designation Deadline" shall mean the date that is thirty (30) calendar days following the Closing Date, or if such date is not a Business Day, the next Business Day, or if mutually agreed upon by the Parties, any later date up to and including the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization. For the avoidance of doubt, the Executory Contract Designation Deadline may be extended by mutual agreement of the Parties with respect to any single unassumed and unassigned Executory Contract, groups of unassumed and unassigned Executory Contracts or all of the unassumed and unassigned Executory Contracts.

(b) Sellers may, until the Closing, provide written notice (a "Notice of Intent to Reject") to Purchaser of Sellers' intent to designate any Executory Contract (that has not been designated as an Assumable Executory Contract) as a Rejectable Executory Contract (each a "Proposed Rejectable Executory Contract"). Following receipt of a Notice of Intent to Reject, Purchaser shall as soon as reasonably practicable, but in no event later than fifteen (15) calendar days following receipt of a Notice of Intent to Reject (the "Option Period"), provide Sellers written notice of Purchaser's designation of one or more Proposed Rejectable Executory Contracts identified in such Notice of Intent to Reject as an Assumable Executory Contract. Each Proposed Rejectable Executory Contract that has not been designated by Purchaser as an Assumable Executory Contract during the applicable Option Period shall automatically, without further action by Sellers, be designated as a Rejectable Executory Contract. A "Rejectable Executory Contract" is an Executory Contract that Sellers may, but are not obligated to, reject pursuant Section 365 of the Bankruptcy Code.

(c) Immediately following the Closing, each Executory Contract entered into by Sellers and then in existence that has not previously been designated as an Assumable

Executory Contract, a Rejectable Executory Contract or a Proposed Rejectable Executory Contract, and that has not otherwise been assumed or rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, shall be deemed to be an Executory Contract subject to subsequent designation by Purchaser as an Assumable Executory Contract or a Rejectable Executory Contract (each a “Deferred Executory Contract”).

(d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the “Assumption Effective Date”) that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers’ Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers’ Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers’ Disclosure Schedule. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers’ Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers’ Disclosure Schedule (the “Shared Executory Contracts”), without the prior written consent of Purchaser.

(e) From and after the Closing and during the applicable period specified below, Purchaser shall be obligated to pay or cause to be paid all amounts due in respect of Sellers’ performance (i) under each Proposed Rejectable Executory Contract, during the pendency of the applicable Option Period under such Proposed Rejectable Executory Contract, (ii) under each Deferred Executory Contract, for so long as such Contract remains a Deferred Executory Contract, (iii) under each Assumable Executory Contract,

as long as such Contract remains an Assumable Executory Contract and (iv) under each GM Assumed Contract, until the applicable Assumption Effective Date. At and after the Closing and until such time as any Shared Executory Contract is either (y) rejected by Sellers pursuant to the provision set forth in this **Section 6.6** or (z) assumed by Sellers and subsequently modified with Purchaser's consent so as to no longer be applicable to the affected Owned Real Property, Purchaser shall reimburse Sellers as and when requested by Sellers for Purchasers' and its Affiliates' allocable share of all costs and expenses incurred under such Shared Executory Contract.

(f) Sellers and Purchaser shall comply with the procedures set forth in the Sale Procedures Order with respect to the assumption and assignment or rejection of any Executory Contract pursuant to, and in accordance with, this **Section 6.6**.

(g) No designation of any Executory Contract for assumption and assignment or rejection in accordance with this **Section 6.6** shall give rise to any right to any adjustment to the Purchase Price.

(h) Without limiting the foregoing, if, following the Executory Contract Designation Deadline, Sellers or Purchaser identify an Executory Contract that has not previously been identified as a Contract for assumption and assignment, and such Contract is important to Purchaser's ability to use or hold the Purchased Assets or operate its businesses in connection therewith, Sellers will assume and assign such Contract and assign it to Purchaser without any adjustment to the Purchase Price; provided that Purchaser consents and agrees at such time to (i) assume such Executory Contract and (ii) and discharge all Cure Amounts in respect hereof.

Section 6.7 Deferred Termination Agreements; Participation Agreements.

(a) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into short-term deferred voluntary termination agreements in substantially the form attached hereto as **Exhibit J-1** (in respect of all Saturn Discontinued Brand Dealer Agreements), **Exhibit J-2** (in respect of all Hummer Discontinued Brand Dealer Agreements) and **Exhibit J-3** (in respect of all non-Saturn and non-Hummer Discontinued Brand Dealer Agreements and all Excluded Continuing Brand Dealer Agreements) that will, when executed by the relevant dealer counterparty thereto, modify the respective Discontinued Brand Dealer Agreements and selected Continuing Brand Dealer Agreements (collectively, the "Deferred Termination Agreements"). For the avoidance of doubt, (i) each Deferred Termination Agreement, and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement modified thereby, will automatically be an Assumable Executory Contract hereunder upon valid execution of such Deferred Termination Agreement by the parties thereto and (ii) all Discontinued Brand Dealer Agreements that are not modified by a Deferred Termination Agreement, and all Continuing Brand Dealer Agreements that are not modified by either a Deferred Termination Agreement or a Participation Agreement, will automatically be a Rejectable Executory Contract hereunder.

(b) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into agreements, substantially in the form attached hereto as **Exhibit K** that will modify all Continuing Brand Dealer Agreements (other than the Continuing Brand Dealer Agreements that are proposed to be modified by Deferred Termination Agreements) (the "Participation Agreements"). For the avoidance of doubt, (i) all Participation Agreements, and the related Continuing Brand Dealer Agreements, will automatically be Assumable Executory Contracts hereunder upon valid execution of such Participation Agreement and (ii) all Continuing Brand Dealer Agreements that are proposed to be modified by a Participation Agreement and are not modified by a Participation Agreement will be offered Deferred Termination Agreements pursuant to **Section 6.7(a)**.

Section 6.8 [Reserved]

Section 6.9 Purchaser Assumed Debt; Wind Down Facility.

(a) Purchaser shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of the Purchaser Assumed Debt so as to be assumed by Purchaser immediately prior to the Closing. Purchaser shall use reasonable best efforts to enter into definitive financing agreements with respect to the Purchaser Assumed Debt so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of \$950,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at LIBOR plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof), and to be subject to mandatory repayment from the proceeds of asset sales (other than the sale of Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

Section 6.10 Litigation and Other Assistance. In the event and for so long as any Party is actively contesting or defending against any action, investigation, charge, Claim or demand by a third party in connection with any transaction contemplated by this Agreement, the other Parties shall reasonably cooperate with the contesting or defending Party and its counsel in such contest or defense, make available its personnel and provide such testimony and access to its books, records and other materials as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party; provided, however, that no Party shall be required to provide the contesting or defending party with any access to its books, records or materials if such access would violate the attorney-client privilege or conflict with any confidentiality obligations to which the non-contesting or defending Party is subject. In addition, the Parties agree to cooperate in connection with the making or filing of claims, requests for information, document retrieval and other activities in connection with any

and all Claims made under insurance policies specified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule to the extent any such Claim relates to any Purchased Asset or Assumed Liability. For the avoidance of doubt, this **Section 6.10** shall not apply to any action, investigation, charge, Claim or demand by any of Sellers or their Affiliates, on the one hand, or Purchaser or any of its Affiliates, on the other hand.

Section 6.11 Further Assurances.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use their reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all actions necessary, proper or advisable to consummate and make effective as promptly as practicable, the transactions contemplated by this Agreement in accordance with the terms hereof and to bring about the satisfaction of all other conditions to the other Parties' obligations hereunder; provided, however, that nothing in this Agreement shall obligate Sellers or Purchaser, or any of their respective Affiliates, to waive or modify any of the terms and conditions of this Agreement or any documents contemplated hereby, except as expressly set forth herein. The Parties acknowledge that Sponsor's acquisition of interest is a sovereign act and that no filings should be made by Sponsor or Purchaser in non-United States jurisdictions.

(b) The Parties shall negotiate the forms, terms and conditions of the Ancillary Agreements, to the extent the forms thereof are not attached to this Agreement, on the basis of the respective term sheets attached to this Agreement, in good faith, with such Ancillary Agreements to set forth terms on an Arms-Length Basis and incorporate usual and customary provisions for similar agreements.

(c) Until the Closing, Sellers shall maintain a team of appropriate personnel (each such team, a "Transition Team") to assist Purchaser and its Representatives in connection with Purchaser's efforts to complete prior to the Closing the activities described below. Sellers shall use their reasonable best efforts to cause the Transition Team to (A) meet with Purchaser and its Representatives on a regular basis at such times as Purchaser may reasonably request and (B) take such action and provide such information, including background and summary information, as Purchaser and its Representatives may reasonably request in connection with the following activities:

(i) evaluation and identification of all Contracts that Purchaser may elect to designate as Purchased Contracts or Excluded Contracts, consistent with its rights under this Agreement;

(ii) evaluation and identification of all assets and entities that Purchaser may elect to designate as Purchased Assets or Excluded Assets, consistent with its rights under this Agreement;

(iii) maintaining and obtaining necessary governmental consents, permits, authorizations, licenses and financial assurance for operation of the business by Purchaser following the Closing;

(iv) obtaining necessary third party consents for operation of the business by Purchaser following the Closing;

(v) implementing the optimal structure for Purchaser and its subsidiaries to acquire and hold the Purchased Assets and operate the business following the Closing;

(vi) implementing the assumption of all Assumed Plans and otherwise satisfying the obligations of Purchaser as provided in **Section 6.17** with respect to Employment Related Obligations; and

(vii) such other transition matters as Purchaser may reasonably determine are necessary for Purchaser to fulfill its obligations and exercise its rights under this Agreement.

Section 6.12 Notifications.

(a) Sellers shall give written notice to Purchaser as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE IV** being or becoming untrue or inaccurate in any material respect as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case, as of such date), (ii) the failure by Sellers to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Sellers under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.2** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Sellers' representations or warranties, a failure to perform any of the covenants or agreements of Sellers or a failure to have satisfied the conditions to the obligations of Sellers under this Agreement. Such notice shall be in form of a certificate signed by an executive officer of Parent setting forth the details of such event and the action which Parent proposes to take with respect thereto.

(b) Purchaser shall give written notice to Sellers as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE V** being or becoming untrue or inaccurate in any material respect with respect to Purchaser as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case as of such date), (ii) the failure by Purchaser to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Purchaser under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.3** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Purchaser's representations or warranties, a failure to perform any of the covenants or agreements of Purchaser or a failure to have satisfied the conditions to the obligations of Purchaser under this Agreement. Such notice shall be in a form of a certificate signed by

an executive officer of Purchaser setting forth the details of such event and the action which Purchaser proposes to take with respect thereto.

Section 6.13 Actions by Affiliates. Each of Purchaser and Sellers shall cause their respective controlled Affiliates, and shall use their reasonable best efforts to ensure that each of their respective other Affiliates (other than Sponsor in the case of Purchaser) takes all actions reasonably necessary to be taken by such Affiliate in order to fulfill the obligations of Purchaser or Sellers, as the case may be, under this Agreement.

Section 6.14 Compliance Remediation. Except with respect to the Excluded Assets or Retained Liabilities, prior to the Closing, Sellers shall use reasonable best efforts to, and shall use reasonable best efforts to cause their Subsidiaries to use their reasonable best efforts to, cure in all material respects any instances of non-compliance with Laws or Orders, failures to possess or maintain Permits or defaults under Permits.

Section 6.15 Product Certification, Recall and Warranty Claims.

(a) From and after the Closing, Purchaser shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by Seller.

(b) From and after the Closing, Purchaser shall be responsible for the administration, management and payment of all Liabilities arising under (i) express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (ii) Lemon Laws. In connection with the foregoing clause (ii), (A) Purchaser shall continue to address Lemon Law Claims using the same procedural mechanisms previously utilized by the applicable Sellers and (B) for avoidance of doubt, Purchaser shall not assume Liabilities arising under the law of implied warranty or other analogous provisions of state Law, other than Lemon Laws, that provide consumer remedies in addition to or different from those specified in Sellers' express warranties.

(c) For the avoidance of doubt, Liabilities of the Transferred Entities arising from or in connection with products manufactured or sold by the Transferred Entities remain the responsibility of the Transferred Entities and shall be neither Assumed Liabilities nor Retained Liabilities for the purposes of this Agreement.

Section 6.16 Tax Matters; Cooperation.

(a) Prior to the Closing Date, Sellers shall prepare and timely file (or cause to be prepared and timely filed) all Tax Returns required to be filed prior to such date (taking into account any extension of time to file granted or obtained) that relate to Sellers, the Purchased Subsidiaries and the Purchased Assets in a manner consistent with

past practices (except as otherwise required by Law), and shall provide Purchaser prompt opportunity for review and comment and shall obtain Purchaser's written approval prior to filing any such Tax Returns. After the Closing Date, at Purchaser's election, Purchaser shall prepare, and the applicable Seller, Seller Subsidiary or Seller Group member shall timely file, any Tax Return relating to any Seller, Seller Subsidiary or Seller Group member for any Pre-Closing Tax Period or Straddle Period due after the Closing Date or other taxable period of any entity that includes the Closing Date, subject to the right of the applicable Seller to review any such material Tax Return. Purchaser shall prepare and file all other Tax Returns required to be filed after the Closing Date in respect of the Purchased Assets. Sellers shall prepare and file all other Tax Returns relating to the Post-Closing Tax Period of Sellers, subject to the prior review and approval of Purchaser, which approval may be withheld, conditioned or delayed with good reason. No Seller or Seller Group member shall be entitled to any payment or other consideration in addition to the Purchase Price with respect to the acquisition or use of any Tax items or attributes by Purchaser, any Purchased Subsidiary or Affiliates thereof. At Purchaser's request, any Seller or Seller Group member shall designate Purchaser or any of its Affiliates as a substitute agent for the Seller Group for Tax purposes. Purchaser shall be entitled to make all determinations, including the right to make or cause to be made any elections with respect to Taxes and Tax Returns of Sellers, Seller Subsidiaries, Seller Groups and Seller Group members with respect to Pre-Closing Tax Periods and Straddle Periods and with respect to the Tax consequences of the Relevant Transactions (including the treatment of such transactions as an Agreed G Transaction) and the other transactions contemplated by this Agreement, including (i) the "date of distribution or transfer" for purposes of Section 381(b) of the Tax Code, if applicable; (ii) the relevant Tax periods and members of the Seller Group and the Purchaser and its Affiliates; (iii) whether the Purchaser and/or any of its Affiliates shall be treated as a continuation of Seller Group; and (iv) any other determinations required under Section 381 of the Tax Code. Purchaser shall have the sole right to represent the interests, as applicable, of any Seller, Seller Group member or Purchased Subsidiary in any Tax proceeding in connection with any Tax Liability or any Tax item for any Pre-Closing Tax Period, Straddle Period or other Tax period affecting any such earlier Tax period. After the Closing, Purchaser shall have the right to assume control of any PLR or CA request filed by Sellers or any Affiliate thereof, including the right to represent Sellers and their Affiliates and to direct all professionals acting on their behalf in connection with such request, and no settlement, concession, compromise, commitment or other agreements in respect of such PLR or CA request shall be made without Purchaser's prior written consent.

(b) All Taxes required to be paid by any Seller or Seller Group member for any Pre-Closing Tax Period or any Straddle Period shall be timely paid. To the extent a Party hereto is liable for a Tax pursuant to this Agreement and such Tax is paid or payable by another Party or such other Party's Affiliates, the Party liable for such Tax shall make payment in the amount of such Tax to the other Party no later than three (3) days prior to the due date for payment of such Tax, unless a later time for payment is agreed to in writing by such other Party. To the extent that any Seller or Seller Group member receives or realizes the benefit of any Tax refund, abatement or credit that is a Purchased Asset, such Seller or Seller Group member receiving the benefit shall transfer

an amount equal to such refund, abatement or credit to Purchaser within fourteen (14) days of receipt or realization of the benefit.

(c) Purchaser and Sellers shall provide each other with such assistance and non-privileged information relating to the Purchased Assets as may reasonably be requested in connection with any Tax matter, including the matters contemplated by this **Section 6.16**, the preparation of any Tax Return or the performance of any audit, examination or other proceeding by any Taxing Authority, whether conducted in a judicial or administrative forum. Purchaser and Sellers shall retain and provide to each other all non-privileged records and other information reasonably requested by the other and that may be relevant to any such Tax Return, audit, examination or other proceeding.

(d) After the Closing, at Purchaser's election, Purchaser shall exercise exclusive control over the handling, disposition and settlement of any inquiry, examination or proceeding (including an audit) by a Governmental Authority (or that portion of any inquiry, examination or proceeding by a Governmental Authority) with respect to Sellers, any Subsidiary of Sellers or any Seller Group, provided that to the extent any such inquiry, examination or proceeding by a Governmental Authority could materially affect the Taxes due or payable by Sellers, Purchaser shall control the handling, disposition and settlement thereof, subject to reasonable consultation rights of Sellers. Each Party shall notify the other Party (or Parties) in writing promptly upon learning of any such inquiry, examination or proceeding. The Parties and their Affiliates shall cooperate with each other in any such inquiry, examination or proceeding as a Party may reasonably request. Neither Parent nor any of its Affiliates shall extend, without Purchaser's prior written consent, the statute of limitations for any Tax for which Purchaser or any of its Affiliates may be liable.

(e) Notwithstanding anything contained herein, Purchaser shall prepare and Sellers shall timely file all Tax Returns required to be filed in connection with the payment of Transfer Taxes.

(f) From the date of this Agreement to and including the Closing Date, except to the extent relating solely to an Excluded Asset or Retained Liability, no Seller, Seller Group member or Purchased Subsidiary shall, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed, and shall not be withheld if not resulting in any Tax impact on Purchaser or any Purchased Asset), (i) make, change, or terminate any material election with respect to Taxes (including elections with respect to the use of Tax accounting methods) of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture to which any Seller or Purchased Subsidiary is a party, (ii) settle or compromise any Claim or assessment for Taxes (including refunds) that could be reasonably expected to result in any adverse consequence on Purchaser or any Purchased Asset following the Closing Date, (iii) agree to an extension of the statute of limitations with respect to the assessment or collection of the Taxes of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture of which any Seller or Purchased Subsidiary is a party or (iv) make or surrender any Claim for a refund of a material amount of the Taxes of any of

Sellers or Purchased Subsidiaries or file an amended Tax Return with respect to a material amount of Taxes.

(g)

(i) Purchaser shall treat the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers (such transactions, collectively, the “Relevant Transactions”), as a reorganization pursuant to Section 368(a)(1)(G) of the Tax Code with any actual or deemed distribution by Parent qualifying solely under Sections 354 and 356 of the Tax Code but not under Section 355 of the Tax Code (a “G Transaction”) if (x) the IRS issues a private letter ruling (“PLR”) or executes a closing agreement (“CA”), in each case reasonably acceptable to Purchaser, confirming that the Relevant Transactions shall qualify as a G Transaction for U.S. federal income Tax purposes, or (y) Purchaser determines to treat the Relevant Transactions as so qualifying (clause (x) or (y), an “Agreed G Transaction”). In connection with the foregoing, Sellers shall use their reasonable best efforts to obtain a PLR or execute a CA with respect to the Relevant Transactions at least seven (7) days prior to the Closing Date. At least three (3) days prior to the Closing Date, Purchaser shall advise Parent in writing as to whether Purchaser has made a determination regarding the treatment of the Relevant Transactions for U.S. federal income Tax purposes and, if applicable, the outcome of any such determination.

(ii) On or prior to the Closing Date, Sellers shall deliver to Purchaser all information in the possession of Sellers and their Affiliates that is reasonably related to the determination of whether the Relevant Transactions constitute an Agreed G Transaction (“Relevant Information”), and, after the Closing, Sellers shall promptly provide to Purchaser any newly produced or obtained Relevant Information. For the avoidance of doubt, the Parties shall cooperate in taking any actions and providing any information that Purchaser determines is necessary or appropriate in furtherance of the intended U.S. federal income Tax treatment of the Relevant Transactions and the other transactions contemplated by this Agreement.

(iii) If Purchaser has not determined as of the Closing Date whether to treat the Relevant Transactions as an Agreed G Transaction, Purchaser shall make such determination in accordance with this **Section 6.16** prior to the due date (including validly obtained extensions) for filing the corporate income Tax Return for Parent’s U.S. affiliated group (as defined in Section 1504 of the Tax Code) for the taxable year in which the Closing Date occurs, and shall convey such decision in writing to Parent, which decision shall be binding on Parent.

(iv) If the Relevant Transactions constitute an Agreed G Transaction under this **Section 6.16**: (A) Sellers shall use their reasonable best efforts, and Purchaser shall use reasonable best efforts to assist Sellers, to effectuate such treatment and the Parties shall not take any action or position inconsistent with, or

fail to take any necessary action in furtherance of, such treatment (subject to **Section 6.16(g)(vi)**); (B) the Parties agree that this Agreement shall constitute a “plan” of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code; (C) the board of directors of Parent and Purchaser shall, by resolution, approve the execution of this Agreement and expressly recognize its treatment as a “plan” of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code, and the treatment of the Relevant Transactions as a G Transaction for federal income Tax purposes; (D) Sellers shall provide Purchaser with a statement setting forth the adjusted Tax basis of the Purchased Assets and the amount of net operating losses and other material Tax attributes of Sellers and any Purchased Subsidiary that are available as of the Closing Date and after the close of any taxable year of any Seller or Seller Group member that impacts the numbers previously provided, all based on the best information available, but with no Liability for any errors or omissions in information; and (E) Sellers shall provide Purchaser with an estimate of the cancellation of Indebtedness income that Sellers and any Seller Group member anticipate realizing for the taxable year that includes the Closing Date, and shall provide revised numbers after the close of any taxable year of any Seller or Seller Group member that impacts this number.

(v) If the Relevant Transactions do not constitute an Agreed G Transaction under this **Section 6.16**, the Parties hereby agree, and Sellers hereby consent, to treat the sale of the Purchased Assets by Parent as a taxable asset sale for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**. In addition, the Parties hereby agree, and Sellers hereby consent, to treat the sales of the Purchased Assets by S Distribution and Harlem as taxable asset sales for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**.

(vi) No Party shall take any position with respect to the Relevant Transactions that is inconsistent with the position determined in accordance with this **Section 6.16**, unless, and then only to the extent, otherwise required to do so by a Final Determination.

(vii) Each Seller shall liquidate, as determined for U.S. federal income Tax purposes and to the satisfaction of Purchaser, no later than December 31, 2011, and each such liquidation may include a distribution of assets to a “liquidating trust” within the meaning of Treas. Reg. § 301.7701-4, the terms of which shall be satisfactory to Purchaser.

(viii) Effective no later than the Closing Date, Purchaser shall be treated as a corporation for federal income Tax purposes.

Section 6.17 Employees; Benefit Plans; Labor Matters.

(a) *Transferred Employees.* Effective as of the Closing Date, Purchaser or one of its Affiliates shall make an offer of employment to each Applicable Employee. Notwithstanding anything herein to the contrary and except as provided in an individual employment Contract with any Applicable Employee or as required by the terms of an Assumed Plan, offers of employment to Applicable Employees whose employment rights are subject to the UAW Collective Bargaining Agreement as of the Closing Date, shall be made in accordance with the applicable terms and conditions of the UAW Collective Bargaining Agreement and Purchaser's obligations under the Labor Management Relations Act of 1974, as amended. Each offer of employment to an Applicable Employee who is not covered by the UAW Collective Bargaining Agreement shall provide, until at least the first anniversary of the Closing Date, for (i) base salary or hourly wage rates initially at least equal to such Applicable Employee's base salary or hourly wage rate in effect as of immediately prior to the Closing Date and (ii) employee pension and welfare benefits, Contracts and arrangements that are not less favorable in the aggregate than those listed on Section 4.10 of the Sellers' Disclosure Schedule, but not including any Retained Plan, equity or equity-based compensation plans or any Benefit Plan that does not comply in all respects with TARP. For the avoidance of doubt, each Applicable Employee on layoff status, leave status or with recall rights as of the Closing Date, shall continue in such status and/or retain such rights after Closing in the Ordinary Course of Business. Each Applicable Employee who accepts employment with Purchaser or one of its Affiliates and commences working for Purchaser or one of its Affiliates shall become a "Transferred Employee." To the extent such offer of employment by Purchaser or its Affiliates is not accepted, Sellers shall, as soon as practicable following the Closing Date, terminate the employment of all such Applicable Employees. Nothing in this **Section 6.17(a)** shall prohibit Purchaser or any of its Affiliates from terminating the employment of any Transferred Employee after the Closing Date, subject to the terms and conditions of the UAW Collective Bargaining Agreement. It is understood that the intent of this **Section 6.17(a)** is to provide a seamless transition from Sellers to Purchaser of any Applicable Employee subject to the UAW Collective Bargaining Agreement. Except for Applicable Employees with non-standard individual agreements providing for severance benefits, until at least the first anniversary of the Closing Date, Purchaser further agrees and acknowledges that it shall provide to each Transferred Employee who is not covered by the UAW Collective Bargaining Agreement and whose employment is involuntarily terminated by Purchaser or its Affiliates on or prior to the first anniversary of the Closing Date, severance benefits that are not less favorable than the severance benefits such Transferred Employee would have received under the applicable Benefit Plans listed on Section 4.10 of the Sellers' Disclosure Schedule. Purchaser or one of its Affiliates shall take all actions necessary such that Transferred Employees shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual (except in the case of a defined benefit pension plan sponsored by Purchaser or any of its Affiliates in which Transferred Employees may commence participation after the Closing that is not an Assumed Plan), in any employee benefit plans (excluding equity compensation plans or programs) covering Transferred Employees after the Closing to the same extent as such Transferred Employee was

entitled as of immediately prior to the Closing Date to credit for such service under any similar employee benefit plans, programs or arrangements of any of Sellers or any Affiliate of Sellers; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such Transferred Employee or the funding for any such benefit. Such benefits shall not be subject to any exclusion for any pre-existing conditions to the extent such conditions were satisfied by such Transferred Employees under a Parent Employee Benefit Plan as of the Closing Date, and credit shall be provided for any deductible or out-of-pocket amounts paid by such Transferred Employee during the plan year in which the Closing Date occurs.

(b) *Employees of Purchased Subsidiaries.* As of the Closing Date, those employees of Purchased Subsidiaries who participate in the Assumed Plans, may, subject to the applicable Collective Bargaining Agreement, for all purposes continue to participate in such Assumed Plans, in accordance with their terms in effect from time to time. For the avoidance of any doubt, Purchaser shall continue the employment of any current Employee of any Purchased Subsidiary covered by the UAW Collective Bargaining Agreement on the terms and conditions of the UAW Collective Bargaining Agreement in effect immediately prior to the Closing Date, subject to its terms; provided, however, that nothing in this Agreement shall be construed to terminate the coverage of any UAW-represented Employee in an Assumed Plan if such Employee was a participant in the Assumed Plan immediately prior to the Closing Date. Further provided, that nothing in this Agreement shall create a direct employment relationship between Parent or Purchaser and an Employee of a Purchased Subsidiary or an Affiliate of Parent.

(c) *No Third Party Beneficiaries.* Nothing contained herein, express or implied, (i) is intended to confer or shall confer upon any Employee or Transferred Employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, (ii) except as set forth in **Section 9.11**, is intended to confer or shall confer upon any individual or any legal Representative of any individual (including employees, retirees, or dependents or beneficiaries of employees or retirees and including collective bargaining agents or representatives) any right as a third-party beneficiary of this Agreement or (iii) shall be deemed to confer upon any such individual or legal Representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal Representative shall be entitled to look only to the express terms of any such plans, program or arrangement for his or her rights thereunder. Nothing herein is intended to override the terms and conditions of the UAW Collective Bargaining Agreement.

(d) *Plan Authority.* Nothing contained herein, express or implied, shall prohibit Purchaser or its Affiliates, as applicable, from, subject to applicable Law and the terms of the UAW Collective Bargaining Agreement, adding, deleting or changing providers of benefits, changing, increasing or decreasing co-payments, deductibles or other requirements for coverage or benefits (e.g., utilization review or pre-certification requirements), and/or making other changes in the administration or in the design, coverage and benefits provided to such Transferred Employees. Without reducing the obligations of Purchaser as set forth in **Section 6.17(a)**, no provision of this Agreement

shall be construed as a limitation on the right of Purchaser or its Affiliates, as applicable, to suspend, amend, modify or terminate any employee benefit plan, subject to the terms of the UAW Collective Bargaining Agreement. Further, (i) no provision of this Agreement shall be construed as an amendment to any employee benefit plan, and (ii) no provision of this Agreement shall be construed as limiting Purchaser's or its Affiliate's, as applicable, discretion and authority to interpret the respective employee benefit and compensation plans, agreements arrangements, and programs, in accordance with their terms and applicable Law.

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies.* As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (the "Assumed Plans"), for the benefit of the Transferred Employees and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(f) *UAW Collective Bargaining Agreement.* Parent shall assume and assign to Purchaser, as of the Closing, the UAW Collective Bargaining Agreement and all rights and Liabilities of Parent relating thereto (including Liabilities for wages, benefits and other compensation, unfair labor practices, grievances, arbitrations and contractual obligations). With respect to the UAW Collective Bargaining Agreement, Purchaser agrees to (i) recognize the UAW as the exclusive collective bargaining representative for the Transferred Employees covered by the terms of the UAW Collective Bargaining Agreement, (ii) offer employment to all Applicable Employees covered by the UAW Collective Bargaining Agreement with full recognition of all seniority rights, (iii) negotiate with the UAW over the terms of any successor collective bargaining agreement upon the expiration of the UAW Collective Bargaining Agreement and upon timely

demand by the UAW, (iv) with the agreement of the UAW or otherwise as provided by Law and to the extent necessary, adopt or assume or replace, effective as of the Closing Date, employee benefit plans, policies, programs, agreements and arrangements specified in or covered by the UAW Collective Bargaining Agreement as required to be provided to the Transferred Employees covered by the UAW Collective Bargaining Agreement, and (v) otherwise abide by all terms and conditions of the UAW Collective Bargaining Agreement. For the avoidance of doubt, the provisions of this **Section 6.17(f)** are not intended to (A) give, and shall not be construed as giving, the UAW or any Transferred Employee any enhanced or additional rights or (B) otherwise restrict the rights that Purchaser and its Affiliates have, under the terms of the UAW Collective Bargaining Agreement.

(g) *UAW Retiree Settlement Agreement.* Prior to the Closing, Purchaser and the UAW shall have entered into the UAW Retiree Settlement Agreement.

(h) *Assumption of Existing Internal VEBA.* Purchaser or one of its Affiliates shall, effective as of the Closing Date, assume from Sellers the sponsorship of the voluntary employees' beneficiary association trust between Sellers and State Street Bank and Trust Company dated as of December 17, 1997, that is funded and maintained by Sellers ("Existing Internal VEBA") and, in connection therewith, Purchaser shall, or shall cause one of its Affiliates to, (i) succeed to all of the rights, title and interest (including the rights of Sellers, if any) as plan sponsor, plan administrator or employer) under the Existing Internal VEBA, (ii) assume any responsibility or Liability relating to the Existing Internal VEBA and each Contract established thereunder or relating thereto, and (iii) to operate the Existing Internal VEBA in accordance with, and to otherwise comply with the Purchaser's obligations under, the New UAW Retiree Settlement Agreement between Purchaser and the UAW, effective as of the Closing and subject to approval by a court having jurisdiction over this matter, including the obligation to direct the trustee of the Existing Internal VEBA to transfer the UAW's share of assets in the Existing Internal VEBA to the New VEBA. The Parties shall cooperate in the execution of any documents, the adoption of any corporate resolutions or the taking of any other reasonable actions to effectuate such succession of the settlor rights, title, and interest with respect to the Existing Internal VEBA. For avoidance of doubt, Purchaser shall not assume any Liabilities relating to the Existing Internal VEBA except with respect to such Contracts set forth in Section 6.17(h) of the Sellers' Disclosure Schedule.

(i) *Wage and Tax Reporting.* Sellers and Purchaser agree to apply, and cause their Affiliates to apply, the standard procedure for successor employers set forth in Revenue Procedure 2004-53 for wage and employment Tax reporting.

(j) *Non-solicitation.* Sellers shall not, for a period of two (2) years from the Closing Date, without Purchaser's written consent, solicit, offer employment to or hire any Transferred Employee.

(k) *Cooperation.* Purchaser and Sellers shall provide each other with such records and information as may be reasonably necessary, appropriate and permitted under applicable Law to carry out their obligations under this **Section 6.17**; provided, that all

records, information systems data bases, computer programs, data rooms and data related to any Assumed Plan or Liabilities of such, assumed by Purchaser, shall be transferred to Purchaser.

(l) *Union Notifications.* Purchaser and Sellers shall reasonably cooperate with each other in connection with any notification required by Law to, or any required consultation with, or the provision of documents and information to, the employees, employee representatives, the UAW and relevant Governmental Authorities and governmental officials concerning the transactions contemplated by this Agreement, including any notice to any of Sellers' retired Employees represented by the UAW, describing the transactions contemplated herein.

(m) *Union-Represented Employees (Non-UAW).*

(i) Effective as of the Closing Date, Purchaser or one of its Affiliates shall assume the collective bargaining agreements, as amended, set forth on Section 6.17(m)(i) of the Sellers' Disclosure Schedule (collectively, the "Non-UAW Collective Bargaining Agreements") and make offers of employment to each current employee of Parent who is covered by them in accordance with the applicable terms and conditions of such Non-UAW Collective Bargaining Agreements, such assumption and offers conditioned upon (A) the non-UAW represented employees' ratification of the amendments thereto (including termination of the application of the Supplemental Agreements Covering Health Care Program to retirees and the reduction to retiree life insurance coverage) and (B) Bankruptcy Court approval of Settlement Agreements between Purchaser and such Unions and Proposed Memorandum of Understanding Regarding Retiree Health Care and Life Insurance between Sellers and such Unions, as identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule and satisfaction of all conditions stated therein. Each such non-UAW hourly employee on layoff status, leave status or with recall rights as of the Closing Date shall continue in such status and/or retain such rights after the Closing in the Ordinary Course of Business, subject to the terms of the applicable Non-UAW Collective Bargaining Agreement. Other than as set forth in this **Section 6.17(m)**, no non-UAW collective bargaining agreement shall be assumed by Purchaser.

(ii) Section 6.17(m)(ii) of the Sellers' Disclosure Schedule sets forth agreements relating to post-retirement health care and life insurance coverage for non-UAW retired employees (the "Non-UAW Settlement Agreements"), including those agreements covering retirees who once belonged to Unions that no longer have any active employees at Sellers. Conditioned on both the approval of the Bankruptcy Court and the non-UAW represented employees' ratification of the amendments to the applicable Non-UAW Collective Bargaining Agreement providing for such coverage as described in **Section 6.17(m)(i)** above, Purchaser or one of its Affiliates shall assume and enter into the agreements identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule. Except as set forth in those agreements identified on Section 6.17(m)(i) and Section 6.17(m)(ii) of the Sellers' Disclosure Schedule, Purchaser shall not assume any Liability to provide

post-retirement health care or life insurance coverage for current or future hourly non-UAW retirees.

(iii) Other than as expressly set forth in this **Section 6.17(m)**, Purchaser assumes no Employment-Related Obligations for non-UAW hourly Employees. For the avoidance of doubt, (A) the provisions of **Section 6.17(f)** shall not apply to this **Section 6.17(m)** and (B) the provisions of this **Section 6.17(m)** are not intended to (y) give, and shall not be construed as giving, any non-UAW Union or the covered employee or retiree of any Non-UAW Collective Bargaining Agreement any enhanced or additional rights or (z) otherwise restrict the rights that Purchaser and its Affiliates have under the terms of the Non-UAW Collective Bargaining Agreements identified on Section 6.17(m)(i) of the Sellers' Disclosure Schedule.

Section 6.18 TARP. From and after the date hereof and until such time as all amounts under the UST Credit Facilities have been paid in full, forgiven or otherwise extinguished or such longer period as may be required by Law, subject to any applicable Order of the Bankruptcy Court, each of Sellers and Purchaser shall, and shall cause each of their respective Subsidiaries to, take all necessary action to ensure that it complies in all material respects with TARP or any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor prior to the Closing.

Section 6.19 Guarantees; Letters of Credit. Purchaser shall use its reasonable best efforts to cause Purchaser or one or more of its Subsidiaries to be substituted in all respects for each Seller and Excluded Entity, effective as of the Closing Date, in respect of all Liabilities of each Seller and Excluded Entity under each of the guarantees, letters of credit, letters of comfort, bid bonds and performance bonds (a) obtained by any Seller or Excluded Entity for the benefit of the business of Sellers and their Subsidiaries and (b) which is assumed by Purchaser as an Assumed Liability. As a result of such substitution, each Seller and Excluded Entity shall be released of its obligations of, and shall have no Liability following the Closing from, or in connection with any such guarantees, letters of credit, letters of comfort, bid bonds and performance bonds.

Section 6.20 Customs Duties. Purchaser shall reimburse Sellers for all customs-related duties, fees and associated costs incurred by Sellers on behalf of Purchaser with respect to periods following the Closing, including all such duties, fees and costs incurred in connection with co-loaded containers that clear customs intentionally or unintentionally under any Seller's importer or exporter identification numbers and bonds or guarantees with respect to periods following the Closing.

Section 6.21 Termination of Intellectual Property Rights. Each Seller agrees that any rights of any Seller, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests and including transfers resulting from this **Section 6.21**), whether owned or licensed, shall terminate as of the Closing. Before and after the Closing, each Seller agrees to use its reasonable best efforts to cause the Retained Subsidiaries to do the following, but only to the extent that such Seller can do so

without incurring any Liabilities to such Retained Subsidiaries or their equity owners or creditors as a result thereof: (a) enter into a written Contract with Purchaser that expressly terminates any rights of such Retained Subsidiaries, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests), whether owned or licensed; and (b) assign to Purchaser or its designee(s): (i) all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks, in each case, that are owned by such Retained Subsidiaries and that contain or are confusingly similar with (whether in whole or in part) any of the Trademarks; and (ii) all other intellectual property owned by such Retained Subsidiaries. Nothing in this **Section 6.21** shall preserve any rights of Sellers or the Retained Subsidiaries, or any third parties, that are otherwise terminated or extinguished pursuant to this Agreement or applicable Law, and nothing in this **Section 6.21** shall create any rights of Sellers or the Retained Subsidiaries, or any third parties, that do not already exist as of the date hereof. Notwithstanding anything to the contrary in this **Section 6.21**, Sellers may enter into (and may cause or permit any of the Purchased Subsidiaries to enter into) any of the transactions contemplated by Section 6.2 of the Sellers' Disclosure Schedule.

Section 6.22 Trademarks.

(a) At or before the Closing (i) Parent shall take any and all actions that are reasonably necessary to change the corporate name of Parent to a new name that bears no resemblance to Parent's present corporate name and that does not contain, and is not confusingly similar with, any of the Trademarks; and (ii) to the extent that the corporate name of any Seller (other than Parent) or any Retained Subsidiary resembles Parent's present corporate name or contains or is confusingly similar with any of the Trademarks, Sellers (including Parent) shall take any and all actions that are reasonably necessary to change such corporate names to new names that bear no resemblance to Parent's present corporate name, and that do not contain and are not confusingly similar with any of the Trademarks.

(b) As promptly as practicable following the Closing, but in no event later than ninety (90) days after the Closing (except as set forth in this **Section 6.22(b)**), Sellers shall cease, and shall cause the Retained Subsidiaries to cease, using the Trademarks in any form, whether by removing, permanently obliterating, covering, or otherwise eliminating all Trademarks that appear on any of their assets, including all signs, promotional or advertising literature, labels, stationery, business cards, office forms and packaging materials. During such time period, Sellers and the Retained Subsidiaries may continue to use Trademarks in a manner consistent with their usage of the Trademarks as of immediately prior to the Closing, but only to the extent reasonably necessary for them to continue their operations as contemplated by the Parties as of the

Closing. If requested by Purchaser within a reasonable time after the Closing, Sellers and Retained Subsidiaries shall enter into a written agreement that specifies quality control of such Trademarks and their underlying goods and services. For signs and the like that exist as of the Closing on the Excluded Real Property, if it is not reasonably practicable for Sellers or the Retained Subsidiaries to remove, permanently obliterate, cover or otherwise eliminate the Trademarks from such signs and the like within the time period specified above, then Sellers and the Retained Subsidiaries shall do so as soon as practicable following such time period, but in no event later than one-hundred eighty (180) days following the Closing.

(c) From and after the date of this Agreement and, until the earlier of the Closing or termination of this Agreement, each Seller shall use its reasonable best efforts to protect and maintain the Intellectual Property owned by Sellers that is material to the conduct of its business in a manner that is consistent with the value of such Intellectual Property.

(d) At or prior to the Closing, Sellers shall provide a true, correct and complete list setting forth all worldwide patents, patent applications, trademark registrations and applications and copyright registrations and applications included in the Intellectual Property owned by Sellers.

Section 6.23 Preservation of Records. The Parties shall preserve and keep all books and records that they own immediately after the Closing relating to the Purchased Assets, the Assumed Liabilities and Sellers' operation of the business related thereto prior to the Closing for a period of six (6) years following the Closing Date or for such longer period as may be required by applicable Law, unless disposed of in good faith pursuant to a document retention policy. During such retention period, duly authorized Representatives of a Party shall, upon reasonable notice, have reasonable access during normal business hours to examine, inspect and copy such books and records held by the other Parties for any proper purpose, except as may be prohibited by Law or by the terms of any Contract (including any confidentiality agreement); provided that to the extent that disclosing any such information would reasonably be expected to constitute a waiver of attorney-client, work product or other legal privilege with respect thereto, the Parties shall take all reasonable best efforts to permit such disclosure without the waiver of any such privilege, including entering into an appropriate joint defense agreement in connection with affording access to such information. The access provided pursuant to this **Section 6.23** shall be subject to such additional confidentiality provisions as the disclosing Party may reasonably deem necessary.

Section 6.24 Confidentiality. During the Confidentiality Period, Sellers and their Affiliates shall treat all trade secrets and all other proprietary, legally privileged or sensitive information related to the Transferred Entities, the Purchased Assets and/or the Assumed Liabilities (collectively, the "Confidential Information"), whether furnished before or after the Closing, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it is or was furnished, as confidential, preserve the confidentiality thereof, not use or disclose to any Person such Confidential Information and instruct their Representatives who have had access to such information to keep confidential such Confidential Information. The "Confidentiality Period"

shall be a period commencing on the date of the Original Agreement and (a) with respect to a trade secret, continuing for as long as it remains a trade secret and (b) for all other Confidential Information, ending four (4) years from the Closing Date. Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Sellers, any of their Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed, including any applicable requirements of the SEC or any other Governmental Authority responsible for securities Law regulation and compliance or any stock market or stock exchange on which any Seller's securities are listed.

Section 6.25 Privacy Policies. At or prior to the Closing, Purchaser shall, or shall cause its Subsidiaries to, establish Privacy Policies that are substantially similar to the Privacy Policies of Parent and the Purchased Subsidiaries as of immediately prior to the Closing, and Purchaser or its Affiliates, as applicable, shall honor all "opt-out" requests or preferences made by individuals in accordance with the Privacy Policies of Parent and the Purchased Subsidiaries and applicable Law; provided that such Privacy Policies and any related "opt-out" requests or preferences are delivered or otherwise made available to Purchaser prior to the Closing, to the extent not publicly available.

Section 6.26 Supplements to Sellers' Disclosure Schedule. At any time and from time to time prior to the Closing, Sellers shall have the right to supplement, modify or update Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule (a) to reflect changes and developments that have arisen after the date of the Original Agreement and that, if they existed prior to the date of the Original Agreement, would have been required to be set forth on such Sellers' Disclosure Schedule or (b) as may be necessary to correct any disclosures contained in such Sellers' Disclosure Schedule or in any representation and warranty of Sellers that has been rendered inaccurate by such changes or developments. No supplement, modification or amendment to Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule shall without the prior written consent of Purchaser, (i) cure any inaccuracy of any representation and warranty made in this Agreement by Sellers or (ii) give rise to Purchaser's right to terminate this Agreement unless and until this Agreement shall be terminable by Purchaser in accordance with **Section 8.1(f)**.

Section 6.27 Real Property Matters.

(a) Sellers and Purchaser acknowledge that certain real properties (the "Subdivision Properties") may need to be subdivided or otherwise legally partitioned in accordance with applicable Law (a "Required Subdivision") so as to permit the affected Owned Real Property to be conveyed to Purchaser separate and apart from adjacent Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule contains a list of the Subdivision Properties that was determined based on the current list of Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule may be updated at any time prior to the Closing to either (i) add additional Subdivision Properties or (ii) remove any Subdivision Properties, which have been determined to not require a Required Subdivision or for which a Required Subdivision has been obtained. Purchaser shall pay for all costs incurred to complete all Required Subdivisions. Sellers shall cooperate in good faith with Purchaser in connection with the completion with all Required

Subdivisions, including executing all required applications or other similar documents with Governmental Authorities. To the extent that any Required Subdivision for a Subdivision Property is not completed prior to Closing, then at Closing, Sellers shall lease to Purchaser only that portion of such Subdivision Property that constitutes Owned Real Property pursuant to the Master Lease Agreement (Subdivision Properties) substantially in the form attached hereto as Exhibit L (the "Subdivision Master Lease"). Upon completion of a Required Subdivision affecting an Owned Real Property that is subject to the Subdivision Master Lease, the Subdivision Master Lease shall be terminated as to such Owned Real Property and such Owned Real Property shall be conveyed to Purchaser by Quitclaim Deed for One Dollar (\$1.00) in stated consideration.

(b) Sellers and Purchaser acknowledge that the Saginaw Nodular Iron facility in Saginaw, Michigan (the "Saginaw Nodular Iron Land") contains a wastewater treatment facility (the "Existing Saginaw Wastewater Facility") and a landfill (the "Saginaw Landfill") that currently serve the Owned Real Property commonly known as the GMPT - Saginaw Metal Casting facility (the "Saginaw Metal Casting Land"). The Saginaw Nodular Iron Land has been designated as an Excluded Real Property under Section 2.2(b)(v) of the Sellers' Disclosure Schedule. At the Closing (or within sixty (60) days after the Closing with respect to the Saginaw Landfill), Sellers shall enter into one or more service agreements with one or more third party contractors (collectively, the "Saginaw Service Contracts") to operate the Existing Saginaw Wastewater Facility and the Saginaw Landfill for the benefit of the Saginaw Metal Casting Land. The terms and conditions of the Saginaw Service Contracts shall be mutually acceptable to Purchaser and Sellers; provided that the term of each Saginaw Service Contract shall not extend beyond December 31, 2012, and Purchaser shall have the right to terminate any Saginaw Service Contract upon prior written notice of not less than forty-five (45) days. At any time during the term of the Saginaw Service Contracts, Purchaser may elect to purchase the Existing Saginaw Wastewater Facility, the Saginaw Landfill, or both, for One Dollar (\$1.00) in stated consideration; provided that (i) Purchaser shall pay all costs and fees related to such purchase, including the costs of completing any Required Subdivision necessary to effectuate the terms of this **Section 6.27(b)**, (ii) Sellers shall convey title to the Existing Saginaw Wastewater Facility, the Saginaw Landfill and/or such other portion of the Saginaw Nodular Iron Land as is required by Purchaser to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill, including lagoons, but not any other portion of the Saginaw Nodular Iron Land, to Purchaser by quitclaim deed and (iii) Sellers shall grant Purchaser such easements for utilities over the portion of the Saginaw Nodular Iron Land retained by Sellers as may be required to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill.

(c) Sellers and Purchaser acknowledge that access to certain Excluded Real Property owned by Sellers or other real properties owned by Excluded Entities and certain Owned Real Property that may hereafter be designated as Excluded Real Property on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (a "Landlocked Parcel") is provided over land that is part of the Owned Real Property. To the extent that direct access to a public right-of-way is not obtained for any Landlocked Parcel by the Closing, then at Closing, Purchaser, in its sole election, shall for each such Landlocked Parcel either (i) grant an access easement over a mutually agreeable portion of the adjacent

Owned Real Property for the benefit of the Landlocked Parcel until such time as the Landlocked Parcel obtains direct access to the public right-of-way, pursuant to the terms of a mutually acceptable easement agreement, or (ii) convey to the owner of the affected Landlocked Parcel by quitclaim deed such portion of the adjacent Owned Real Property as is required to provide the Landlocked Parcel with direct access to a public right-of-way.

(d) At and after Closing, Sellers and Purchasers shall cooperate in good faith to investigate and resolve all issues reasonably related to or arising in connection with Shared Executory Contracts that involve the provision of water, water treatment, electricity, fuel, gas, telephone and other utilities to both Owned Real Property and Excluded Real Property.

(e) Parent shall use reasonable best efforts to cause the Willow Run Landlord to execute, within thirty (30) days after the Closing, or at such later date as may be mutually agreed upon, an amendment to the Willow Run Lease which extends the term of the Willow Run Lease until December 31, 2010 with three (3) one-month options to extend, all at the current rental rate under the Willow Run Lease (the “Willow Run Lease Amendment”). In the event that the Willow Run Lease Amendment is approved and executed by the Willow Run Landlord, then Purchaser shall designate the Willow Run Lease as an Assumable Executory Contract and Parent and Purchaser, or one of its designated Subsidiaries, shall enter into an assignment and assumption of the Willow Run Lease substantially in the form attached hereto as **Exhibit M** (the “Assignment and Assumption of Willow Run Lease”).

Section 6.28 Equity Incentive Plans. Within a reasonable period of time following the Closing, Purchaser, through its board of directors, will adopt equity incentive plans to be maintained by Purchaser for the benefit of officers, directors, and employees of Purchaser that will provide the opportunity for equity incentive benefits for such persons (“Equity Incentive Plans”).

Section 6.29 Purchase of Personal Property Subject to Executory Contracts. With respect to any Personal Property subject to an Executory Contract that is nominally an unexpired lease of Personal Property, if (a) such Contract is recharacterized by a Final Order of the Bankruptcy Court as a secured financing or (b) Purchaser, Sellers and the counterparty to such Contract agree, then Purchaser shall have the option to purchase such personal property by paying to the applicable Seller for the benefit of the counterparty to such Contract an amount equal to the amount, as applicable (i) of such counterparty’s allowed secured Claim arising in connection with the recharacterization of such Contract as determined by such Order or (ii) agreed to by Purchaser, Sellers and such counterparty.

Section 6.30 Transfer of Riverfront Holdings, Inc. Equity Interests or Purchased Assets; Ren Cen Lease. Notwithstanding anything to the contrary set forth in this Agreement, in lieu of or in addition to the transfer of Sellers’ Equity Interest in Riverfront Holdings, Inc., a Delaware corporation (“RHI”), Purchaser shall have the right at the Closing or at any time during the RHI Post-Closing Period, to require Sellers to cause RHI to transfer good and marketable title to, or a valid and enforceable right by Contract to use, all or any portion of the assets of RHI

to Purchaser. Purchaser shall, at its option, have the right to cause Sellers to postpone the transfer of Sellers' Equity Interest in RHI and/or title to the assets of RHI to Purchaser up until the earlier of (i) January 31, 2010 and (ii) the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization (the "RHI Post-Closing Period"); provided, however, that (a) Purchaser may cause Sellers to effectuate said transfers at any time and from time to time during the RHI-Post Closing Period upon at least five (5) Business Days' prior written notice to Sellers and (b) at the closing, RHI, as landlord, and Purchaser, or one of its designated Subsidiaries, as tenant, shall enter into a lease agreement substantially in the form attached hereto as **Exhibit N** (the "Ren Cen Lease") for the premises described therein.

Section 6.31 Delphi Agreements. Notwithstanding anything to the contrary in this Agreement, including **Section 6.6**:

(a) Subject to and simultaneously with the consummation of the transactions contemplated by the MDA or of an Acceptable Alternative Transaction (in each case, as defined in the Delphi Motion), (i) the Delphi Transaction Agreements shall, effective immediately upon and simultaneously with such consummation, (A) be deemed to be Assumable Executory Contracts and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the date of such consummation.

(b) The LSA Agreement shall, effective at the Closing, (i) be deemed to be an Assumable Executory Contract and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the Closing Date. To the extent that any such agreement is not an Executory Contract, such agreement shall be deemed to be a Purchased Contract.

Section 6.32 GM Strasbourg S.A. Restructuring. The Parties acknowledge and agree that General Motors International Holdings, Inc., a direct Subsidiary of Parent and the direct parent of GM Strasbourg S.A., may, prior to the Closing, dividend its Equity Interest in GM Strasbourg S.A. to Parent, such that following such dividend, GM Strasbourg S.A. will become a wholly-owned direct Subsidiary of Parent. Notwithstanding anything to the contrary in this Agreement, the Parties further acknowledge and agree that following the consummation of such restructuring at any time prior to the Closing, GM Strasbourg S.A. shall automatically, without further action by the Parties, be designated as an Excluded Entity and deemed to be set forth on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule.

Section 6.33 Holding Company Reorganization. The Parties agree that Purchaser may, with the prior written consent of Sellers, reorganize prior to the Closing such that Purchaser may become a direct or indirect, wholly-owned Subsidiary of Holding Company on such terms and in such manner as is reasonably acceptable to Sellers, and Purchaser may assign all or a portion of its rights and obligations under this Agreement to Holding Company (or one or more newly formed, direct or indirect, wholly-owned Subsidiaries of Holding Company) in accordance with **Section 9.5**. In connection with any restructuring effected pursuant to this **Section 6.33**, the Parties further agree that, notwithstanding anything to the contrary in this Agreement (a) Parent shall receive securities of Holding Company with the same rights and

privileges, and in the same proportions, as the Parent Shares and the Parent Warrants, in each case, in lieu of the Parent Shares and Parent Warrants, as Purchase Price hereunder, (b) Canada, New VEBA and Sponsor shall receive securities of Holding Company with the same rights and privileges, and in the same proportions, as the Canada Shares, VEBA Shares, VEBA Warrant and Sponsor Shares, as applicable, in each case, in connection with the Closing and (c) New VEBA shall receive the VEBA Note issued by the same entity that becomes the obligor on the Purchaser Assumed Debt.

Section 6.34 Transfer of Promark Global Advisors Limited and Promark Investment Trustees Limited Equity Interests. Notwithstanding anything to the contrary set forth in this Agreement, in the event approval by the Financial Services Authority (the “FSA Approval”) of the transfer of Sellers’ Equity Interests in Promark Global Advisors Limited and Promark Investments Trustees Limited (together, the “Promark UK Subsidiaries”) has not been obtained as of the Closing Date, Sellers shall, at their option, have the right to postpone the transfer of Sellers’ Equity Interests in the Promark UK Subsidiaries until such time as the FSA Approval is obtained. If the transfer of Sellers’ Equity Interests in the Promark UK Subsidiaries is postponed pursuant to this **Section 6.34**, then (a) Sellers and Purchaser shall effectuate the transfer of Sellers’ Equity Interests in the Promark UK Subsidiaries no later than five (5) Business Days following the date that the FSA Approval is obtained and (b) Sellers shall enter into a transitional services agreement with Promark Global Advisors, Inc. in the form provided by Promark Global Advisors, Inc., which shall include terms and provisions regarding: (i) certain transitional services to be provided by Promark Global Advisors, Inc. to the Promark UK Subsidiaries, (ii) the continued availability of director and officer liability insurance for directors and officers of the Promark UK Subsidiaries and (iii) certain actions on the part of the Promark UK Subsidiaries to require the prior written consent of Promark Global Advisors, Inc., including changes to employee benefits or compensation, declaration of dividends, material financial transactions, disposition of material assets, entry into material agreements, changes to existing business plans, changes in management and the boards of directors of the Promark UK Subsidiaries and other similar actions.

Section 6.35 Transfer of Equity Interests in Certain Subsidiaries. Notwithstanding anything to the contrary set forth in this Agreement, the Parties may mutually agree to postpone the transfer of Sellers’ Equity Interests in those Transferred Entities as are mutually agreed upon by the Parties (“Delayed Closing Entities”) to a date following the Closing.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1 Conditions to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver (to the extent permitted by applicable Law), prior to or at the Closing, of each of the following conditions:

- (a) The Bankruptcy Court shall have entered the Sale Approval Order and the Sale Procedures Order on terms acceptable to the Parties and reasonably acceptable to the UAW, and each shall be a Final Order and shall not have been vacated, stayed or

reversed; provided, however, that the conditions contained in this **Section 7.1(a)** shall be satisfied notwithstanding the pendency of an appeal if the effectiveness of the Sale Approval Order has not been stayed.

(b) No Order or Law of a United States Governmental Authority shall be in effect that declares this Agreement invalid or unenforceable or that restrains, enjoins or otherwise prohibits the consummation of the transactions contemplated by this Agreement.

(c) Sponsor shall have delivered, or caused to be delivered to Sellers and Purchaser an equity registration rights agreement, substantially in the form attached hereto as **Exhibit O** (the "Equity Registration Rights Agreement"), duly executed by Sponsor.

(d) Canada shall have delivered, or caused to be delivered to Sellers and Purchaser the Equity Registration Rights Agreement, duly executed by Canada.

(e) The Canadian Debt Contribution shall have been consummated.

(f) The New VEBA shall have delivered, or caused to be delivered to Sellers and Purchaser, the Equity Registration Rights Agreement, duly executed by the New VEBA.

(g) Purchaser shall have received (i) consents from Governmental Authorities, (ii) Permits and (iii) consents from non-Governmental Authorities, in each case with respect to the transactions contemplated by this Agreement and the ownership and operation of the Purchased Assets and Assumed Liabilities by Purchaser from and after the Closing, sufficient in the aggregate to permit Purchaser to own and operate the Purchased Assets and Assumed Liabilities from and after the Closing in substantially the same manner as owned and operated by Sellers immediately prior to the Closing (after giving effect to (A) the implementation of the Viability Plans; (B) Parent's announced shutdown, which began in May 2009; and (C) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent).

(h) Sellers shall have executed and delivered definitive financing agreements restructuring the Wind Down Facility in accordance with the provisions of **Section 6.9(b)**.

Section 7.2 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Purchaser waive the conditions contained in **Section 7.2(d)** or **Section 7.2(e)**:

(a) Each of the representations and warranties of Sellers contained in **ARTICLE IV** of this Agreement shall be true and correct (disregarding for the purposes of such determination any qualification as to materiality or Material Adverse Effect) as of

the Closing Date as if made on the Closing Date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Material Adverse Effect.

(b) Sellers shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by Sellers prior to or at the Closing.

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser:

(i) a certificate executed as of the Closing Date by a duly authorized representative of Sellers, on behalf of Sellers and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.2(a)** and **Section 7.2(b)** have been satisfied;

(ii) the Equity Registration Rights Agreement, duly executed by Parent;

(iii) stock certificates or membership interest certificates, if any, evidencing the Transferred Equity Interests (other than in respect of the Equity Interests held by Sellers in RHI, Promark Global Advisors Limited, Promark Investments Trustees Limited and the Delayed Closing Entities, which the Parties agree may be transferred following the Closing in accordance with **Section 6.30**, **Section 6.34** and **Section 6.35**), duly endorsed in blank or accompanied by stock powers (or similar documentation) duly endorsed in blank, in proper form for transfer to Purchaser, including any required stamps affixed thereto;

(iv) an omnibus bill of sale, substantially in the form attached hereto as **Exhibit P** (the "Bill of Sale"), together with transfer tax declarations and all other instruments of conveyance that are necessary to effect transfer to Purchaser of title to the Purchased Assets, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(v) an omnibus assignment and assumption agreement, substantially in the form attached hereto as **Exhibit Q** (the "Assignment and Assumption Agreement"), together with all other instruments of assignment and assumption that are necessary to transfer the Purchased Contracts and Assumed Liabilities to Purchaser, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(vi) a novation agreement, substantially in the form attached hereto as **Exhibit R** (the "Novation Agreement"), duly executed by Sellers and the appropriate United States Governmental Authorities;

(vii) a government related subcontract agreement, substantially in the form attached hereto as **Exhibit S** (the “Government Related Subcontract Agreement”), duly executed by Sellers;

(viii) an omnibus intellectual property assignment agreement, substantially in the form attached hereto as **Exhibit T** (the “Intellectual Property Assignment Agreement”), duly executed by Sellers;

(ix) a transition services agreement, substantially in the form attached hereto as **Exhibit U** (the “Transition Services Agreement”), duly executed by Sellers;

(x) all quitclaim deeds or deeds without warranty (or equivalents for those parcels of Owned Real Property located in jurisdictions outside of the United States), in customary form, subject only to Permitted Encumbrances, conveying the Owned Real Property to Purchaser (the “Quitclaim Deeds”), duly executed by the appropriate Seller;

(xi) all required Transfer Tax or sales disclosure forms relating to the Transferred Real Property (the “Transfer Tax Forms”), duly executed by the appropriate Seller;

(xii) an assignment and assumption of the leases and subleases underlying the Leased Real Property, in substantially the form attached hereto as **Exhibit V** (the “Assignment and Assumption of Real Property Leases”), together with such other instruments of assignment and assumption that are necessary to transfer the leases and subleases underlying the Leased Real Property located in jurisdictions outside of the United States, each duly executed by Sellers; provided, however, that if it is required for the assumption and assignment of any lease or sublease underlying a Leased Real Property that a separate assignment and assumption for such lease or sublease be executed, then a separate assignment and assumption of such lease or sublease shall be executed in a form substantially similar to **Exhibit V** or as otherwise required to assume or assign such Leased Real Property;

(xiii) an assignment and assumption of the lease in respect of the premises located at 2485 Second Avenue, New York, New York, substantially in the form attached hereto as **Exhibit W** (the “Assignment and Assumption of Harlem Lease”), duly executed by Harlem;

(xiv) an omnibus lease agreement in respect of the lease of certain portions of the Excluded Real Property that is owned real property, substantially in the form attached hereto as **Exhibit X** (the “Master Lease Agreement”), duly executed by Parent;

(xv) *[Reserved]*;

(xvi) the Saginaw Service Contracts, if required, duly executed by the appropriate Seller;

(xvii) any easement agreements required under **Section 6.27(c)**, duly executed by the appropriate Seller;

(xviii) the Subdivision Master Lease, if required, duly executed by the appropriate Sellers;

(xix) a certificate of an officer of each Seller (A) certifying that attached to such certificate are true and complete copies of (1) such Seller's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of such Seller, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which such Seller is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(e)**, and (B) certifying as to the incumbency of the officer(s) of such Seller executing this Agreement and the Ancillary Agreements to which such Seller is a party;

(xx) a certificate in compliance with Treas. Reg. §1.1445-2(b)(2) that each Seller is not a foreign person as defined under Section 897 of the Tax Code;

(xxi) a certificate of good standing for each Seller from the Secretary of State of the State of Delaware;

(xxii) their written agreement to treat the Relevant Transactions and the other transactions contemplated by this Agreement in accordance with Purchaser's determination in **Section 6.16**;

(xxiii) payoff letters and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements), each in a form reasonably satisfactory to the Parties and duly executed by the holders of the secured Indebtedness; and

(xxiv) all books and records of Sellers described in **Section 2.2(a)(xiv)**.

(d) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by the applicable Sellers and assigned to Purchaser, and shall be in full force and effect.

(e) The UAW Retiree Settlement Agreement shall have been executed and delivered by the UAW and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

(f) The Canadian Operations Continuation Agreement shall have been executed and delivered by the parties thereto in the form previously distributed among them.

Section 7.3 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Sellers waive the conditions contained in **Section 7.3(h)** or **Section 7.3(i)**:

(a) Each of the representations and warranties of Purchaser contained in **ARTICLE V** of this Agreement shall be true and correct (disregarding for the purpose of such determination any qualification as to materiality or Purchaser Material Adverse Effect) as of the Closing Date as if made on such date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Purchaser Material Adverse Effect.

(b) Purchaser shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers:

(i) Parent Warrant A (including the related warrant agreement), duly executed by Purchaser;

(ii) Parent Warrant B (including the related warrant agreement), duly executed by Purchaser;

(iii) a certificate executed as of the Closing Date by a duly authorized representative of Purchaser, on behalf of Purchaser and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.3(a)** and **Section 7.3(b)** are satisfied;

(iv) stock certificates evidencing the Parent Shares, duly endorsed in blank or accompanied by stock powers duly endorsed in blank, in proper form for transfer, including any required stamps affixed thereto;

(v) the Equity Registration Rights Agreement, duly executed by Purchaser;

(vi) the Bill of Sale, together with all other documents described in **Section 7.2(c)(iv)**, each duly executed by Purchaser or its designated Subsidiaries;

(vii) the Assignment and Assumption Agreement, together with all other documents described in **Section 7.2(c)(v)**, each duly executed by Purchaser or its designated Subsidiaries;

(viii) the Novation Agreement, duly executed by Purchaser or its designated Subsidiaries;

(ix) the Government Related Subcontract Agreement, duly executed by Purchaser or its designated Subsidiary;

(x) the Intellectual Property Assignment Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xi) the Transition Services Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xii) the Transfer Tax Forms, duly executed by Purchaser or its designated Subsidiaries, to the extent required;

(xiii) the Assignment and Assumption of Real Property Leases, together with all other documents described in **Section 7.2(c)(xii)**, each duly executed by Purchaser or its designated Subsidiaries;

(xiv) the Assignment and Assumption of Harlem Lease, duly executed by Purchaser or its designated Subsidiaries;

(xv) the Master Lease Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xvi) *[Reserved]*;

(xvii) the Subdivision Master Lease, if required, duly executed by Purchaser or its designated Subsidiaries;

(xviii) any easement agreements required under **Section 6.27(c)**, duly executed by Purchaser or its designated Subsidiaries;

(xix) a certificate of a duly authorized representative of Purchaser (A) certifying that attached to such certificate are true and complete copies of (1) Purchaser's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of Purchaser, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Purchaser is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(g)**, and (B) certifying as to the incumbency of the officer(s) of Purchaser executing this Agreement and the Ancillary Agreements to which Purchaser is a party; and

(xx) a certificate of good standing for Purchaser from the Secretary of State of the State of Delaware.

(d) *[Reserved]*

(e) Purchaser shall have filed a certificate of designation for the Preferred Stock, substantially in the form attached hereto as **Exhibit Y**, with the Secretary of State of the State of Delaware.

(f) Purchaser shall have offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (iii) transferred to Sellers the UST Warrant and (iv) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(g) Purchaser shall have delivered, or caused to be delivered, to Canada, Sponsor and/or the New VEBA, as applicable:

(i) certificates representing the Canada Shares, the Sponsor Shares and the VEBA Shares in accordance with the applicable equity subscription agreements in effect on the date hereof;

(ii) the Equity Registration Rights Agreement, duly executed by Purchaser;

(iii) the VEBA Warrant (including the related warrant agreement), duly executed by Purchaser; and

(iv) a note, in form and substance consistent with the terms set forth on **Exhibit Z** attached hereto, to the New VEBA (the "**VEBA Note**").

(h) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by Purchaser, and shall be in full force and effect.

(i) The UAW Retiree Settlement Agreement shall have been executed and delivered, shall be in full force and effect, and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

ARTICLE VIII TERMINATION

Section 8.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to the Closing Date as follows:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by either Sellers or Purchaser, if (i) the Closing shall not have occurred on or before August 15, 2009, or such later date as the Parties may agree in writing, such date not to be later than September 15, 2009 (as extended, the “End Date”), and (ii) the Party seeking to terminate this Agreement pursuant to this **Section 8.1(b)** shall not have breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the failure of the transactions contemplated hereby to close on or before such date;

(c) by either Sellers or Purchaser, if the Bankruptcy Court shall not have entered the Sale Approval Order by July 10, 2009;

(d) by either Sellers or Purchaser, if any court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued a Final Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement or the sale of a material portion of the Purchased Assets;

(e) by Sellers, if Purchaser shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, and such breach or failure to perform has not been cured by the End Date, provided that (i) Sellers shall have given Purchaser written notice, delivered at least thirty (30) days prior to such termination, stating Sellers’ intention to terminate this Agreement pursuant to this **Section 8.1(e)** and the basis for such termination and (ii) Sellers shall not have the right to terminate this Agreement pursuant to this **Section 8.1(e)** if Sellers are then in material breach of any its representations, warranties, covenants or other agreements set forth herein;

(f) by Purchaser, if Sellers shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in **Section 7.2(a)** or **Section 7.2(b)** to be fulfilled, (ii) cannot be cured by the End Date, provided that (i) Purchaser shall have given Sellers written notice, delivered at least thirty (30) days prior to such termination, stating Purchaser’s intention to terminate this Agreement pursuant to this **Section 8.1(f)** and the basis for such termination and (iii) Purchaser shall not have the right to terminate this Agreement pursuant to this **Section 8.1(f)** if Purchaser is then in material breach of any its representations, warranties, covenants or other agreements set forth herein; or

(g) by either Sellers or Purchaser, if the Bankruptcy Court shall have entered an Order approving an Alternative Transaction.

Section 8.2 Procedure and Effect of Termination.

(a) If this Agreement is terminated pursuant to **Section 8.1**, this Agreement shall become null and void and have no effect, and all obligations of the Parties hereunder shall terminate, except for those obligations of the Parties set forth this **Section 8.2** and **ARTICLE IX**, which shall remain in full force and effect; provided that nothing

herein shall relieve any Party from Liability for any material breach of any of its representations, warranties, covenants or other agreements set forth herein. If this Agreement is terminated as provided herein, all filings, applications and other submissions made pursuant to this Agreement shall, to the extent practicable, be withdrawn from the agency or other Person to which they were made.

(b) If this Agreement is terminated by Sellers or Purchaser pursuant to **Section 8.1(a)** through **Section 8.1(d)** or **Section 8.1(g)** or by Purchaser pursuant to **Section 8.1(f)**, Sellers, severally and not jointly, shall reimburse Purchaser for its reasonable, out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Purchaser in connection with this Agreement and the transactions contemplated hereby (the "Purchaser Expense Reimbursement"). The Purchaser Expense Reimbursement shall be paid as an administrative expense Claim of Sellers pursuant to Section 503(b)(1) of the Bankruptcy Code.

(c) Except as expressly provided for in this **Section 8.2**, any termination of this Agreement pursuant to **Section 8.1** shall be without Liability to Purchaser or Sellers, including any Liability by Sellers to Purchaser for any break-up fee, termination fee, expense reimbursement or other compensation as a result of a termination of this Agreement.

(d) If this Agreement is terminated for any reason, Purchaser shall, and shall cause each of its Affiliates and Representatives to, treat and hold as confidential all Confidential Information, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it was furnished. For purposes of this **Section 8.2(d)**, Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Purchaser, any of its Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed.

ARTICLE IX MISCELLANEOUS

Section 9.1 Survival of Representations, Warranties, Covenants and Agreements and Consequences of Certain Breaches. The representations and warranties of the Parties contained in this Agreement shall be extinguished by and shall not survive the Closing, and no Claims may be asserted in respect of, and no Party shall have any Liability for any breach of, the representations and warranties. All covenants and agreements contained in this Agreement, including those covenants and agreements set forth in **ARTICLE II** and **ARTICLE VI**, shall survive the Closing indefinitely.

Section 9.2 Notices. Any notice, request, instruction, consent, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) upon delivery when personally delivered; (b) on the delivery date after having been sent by a nationally or internationally recognized overnight courier service (charges prepaid); (c) at the time received

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when sent by registered or certified mail, return receipt requested, postage prepaid; or (d) at the time when confirmation of successful transmission is received (or the first Business Day following such receipt if the date of such receipt is not a Business Day) if sent by facsimile, in each case, to the recipient at the address or facsimile number, as applicable, indicated below:

If to any Seller: General Motors Corporation
300 Renaissance Center
Tower 300, 25th Floor, Room D55
M/C 482-C25-D81
Detroit, Michigan 48265-3000
Attn: General Counsel
Tel.: 313-667-3450
Facsimile: 248-267-4584

With copies to: Jenner & Block LLP
330 North Wabash Avenue
Chicago, Illinois 60611-7603
Attn: Joseph P. Gromacki
Michael T. Wolf
Tel.: 312-222-9350
Facsimile: 312-527-0484

and

Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Harvey R. Miller
Stephen Karotkin
Raymond Gietz
Tel.: 212-310-8000
Facsimile: 212-310-8007

If to Purchaser: NGMCO, Inc.
c/o The United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington D.C. 20220
Attn: Chief Counsel Office of Financial Stability
Facsimile: 202-927-9225

With a copy to: Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attn: John J. Rapisardi
R. Ronald Hopkinson
Tel.: 212-504-6000
Facsimile: 212-504-6666

provided, however, if any Party shall have designated a different addressee and/or contact information by notice in accordance with this **Section 9.2**, then to the last addressee as so designated.

Section 9.3 Fees and Expenses; No Right of Setoff. Except as otherwise provided in this Agreement, including **Section 8.2(b)**, Purchaser, on the one hand, and each Seller, on the other hand, shall bear its own fees, costs and expenses, including fees and disbursements of counsel, financial advisors, investment bankers, accountants and other agents and representatives, incurred in connection with the negotiation and execution of this Agreement and each Ancillary Agreement and the consummation of the transactions contemplated hereby and thereby. In furtherance of the foregoing, Purchaser shall be solely responsible for (a) all expenses incurred by it in connection with its due diligence review of Sellers and their respective businesses, including surveys, title work, title inspections, title searches, environmental testing or inspections, building inspections, Uniform Commercial Code lien and other searches and (b) any cost (including any filing fees) incurred by it in connection with notarization, registration or recording of this Agreement or an Ancillary Agreement required by applicable Law. No Party nor any of its Affiliates shall have any right of holdback or setoff or assert any Claim or defense with respect to any amounts that may be owed by such Party or its Affiliates to any other Party (or Parties) hereto or its or their Affiliates as a result of and with respect to any amount that may be owing to such Party or its Affiliates under this Agreement, any Ancillary Agreement or any other commercial arrangement entered into in between or among such Parties and/or their respective Affiliates.

Section 9.4 Bulk Sales Laws. Each Party hereto waives compliance by the other Parties with any applicable bulk sales Law.

Section 9.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations provided by this Agreement may be assigned or delegated by any Party (whether by operation of law or otherwise) without the prior written consent of the other Parties, and any such assignment or delegation without such prior written consent shall be null and void; provided, however, that, without the consent of Sellers, Purchaser may assign or direct the transfer on its behalf on or prior to the Closing of all, or any portion, of its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser; provided, further, that no such assignment or delegation shall relieve Purchaser of any of its obligations under this Agreement. Subject to the preceding sentence and except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 9.6 Amendment. This Agreement may not be amended, modified or supplemented except upon the execution and delivery of a written agreement executed by a duly authorized representative or officer of each of the Parties.

Section 9.7 Waiver. At any time prior to the Closing, each Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties; (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant hereto; or (c) waive compliance with any of the agreements or conditions contained herein (to the extent permitted by Law). Any such waiver or extension by a Party (i) shall be valid only if, and to the extent, set forth in a written instrument signed by a duly authorized representative or officer of the Party to be bound and (ii) shall not constitute, or be construed as, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement. The failure in any one or more instances of a Party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said Party of any breach of any of the terms, covenants or conditions of this Agreement shall not be construed as a subsequent waiver of, or estoppel with respect to, any other terms, covenants, conditions, rights or privileges, but the same will continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 9.8 Severability. Whenever possible, each term and provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law. If any term or provision of this Agreement, or the application thereof to any Person or any circumstance, is held to be illegal, invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be legal, valid and enforceable, the intent and purpose of such illegal, invalid or unenforceable provision and (b) the remainder of this Agreement or such term or provision and the application of such term or provision to other Persons or circumstances shall remain in full force and effect and shall not be affected by such illegality, invalidity or unenforceability, nor shall such invalidity or unenforceability affect the legality, validity or enforceability of such term or provision, or the application thereof, in any jurisdiction.

Section 9.9 Counterparts; Facsimiles. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

Section 9.10 Headings. The descriptive headings of the Articles, Sections and paragraphs of, and Schedules and Exhibits to, this Agreement, and the table of contents, table of Exhibits and table of Schedules contained in this Agreement, are included for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit, modify or affect any of the provisions hereof.

Section 9.11 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective permitted successors and

assigns; provided, that (a) for all purposes each of Sponsor, the New VEBA, and Canada shall be express third-party beneficiaries of this Agreement and (b) for purposes of **Section 2.2(a)(x)** and **(xvi)**, **Section 2.2(b)(vii)**, **Section 2.3(a)(x)**, **(xii)**, **(xiii)** and **(xv)**, **Section 2.3(b)(xv)**, **Section 4.6(b)**, **Section 4.10**, **Section 5.4(c)**, **Section 6.2(b)(x)**, **(xv)** and **(xvii)**, **Section 6.4(a)**, **Section 6.4(b)**, **Section 6.6(a)**, **(d)**, **(f)** and **(g)**, **Section 6.11(c)(i)** and **(vi)**, **Section 6.17**, **Section 7.1(a)** and **(f)**, **Section 7.2(d)** and **(e)** and **Section 7.3(g)**, **(h)** and **(i)**, the UAW shall be an express third-party beneficiary of this Agreement. Subject to the preceding sentence, nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to any Person, other than the Parties, their Affiliates and their respective permitted successors or assigns, any legal or equitable Claims, benefits, rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.12 Governing Law. The construction, interpretation and other matters arising out of or in connection with this Agreement (whether arising in contract, tort, equity or otherwise) shall in all respects be governed by and construed (a) to the extent applicable, in accordance with the Bankruptcy Code, and (b) to the extent the Bankruptcy Code is not applicable, in accordance with the Laws of the State of New York, without giving effect to rules governing the conflict of laws.

Section 9.13 Venue and Retention of Jurisdiction. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein); provided, however, that this **Section 9.13** shall not be applicable in the event the Bankruptcy Cases have closed, in which case the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein).

Section 9.14 Waiver of Jury Trial. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

Section 9.15 Risk of Loss. Prior to the Closing, all risk of loss, damage or destruction to all or any part of the Purchased Assets shall be borne exclusively by Sellers.

Section 9.16 Enforcement of Agreement. The Parties agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the

Parties shall, without the posting of a bond, be entitled, subject to a determination by a court of competent jurisdiction, to an injunction or injunctions to prevent any such failure of performance under, or breaches of, this Agreement, and to enforce specifically the terms and provisions hereof and thereof, this being in addition to all other remedies available at law or in equity, and each Party agrees that it will not oppose the granting of such relief on the basis that the requesting Party has an adequate remedy at law.

Section 9.17 Entire Agreement. This Agreement (together with the Ancillary Agreements, the Sellers' Disclosure Schedule and the Exhibits) contains the final, exclusive and entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the Parties with respect to the subject matter hereof and thereof. Neither this Agreement nor any Ancillary Agreement shall be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any Party with respect to the transactions contemplated hereby or thereby other than those expressly set forth herein or therein, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

Section 9.18 Publicity. Prior to the first public announcement of this Agreement and the transactions contemplated hereby, Sellers, on the one hand, and Purchaser, on the other hand, shall consult with each other regarding, and share with each other copies of, their respective communications plans, including draft press releases and related materials, with regard to such announcement. Neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party or Parties, as applicable, which approval shall not be unreasonably withheld, conditioned or delayed, unless, in the sole judgment of the Party intending to make such release, disclosure is otherwise required by applicable Law, or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Sellers list securities; provided, that the Party intending to make such release shall use reasonable best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party or Parties, as applicable, with respect to the text thereof; provided, further, that, notwithstanding anything to the contrary contained in this section, no Party shall be prohibited from publishing, disseminating or otherwise making public, without the prior written approval of the other Party or Parties, as applicable, any materials that are derived from or consistent with the materials included in the communications plan referred to above. In an effort to coordinate consistent communications, the Parties shall agree upon procedures relating to all press releases and public announcements concerning this Agreement and the transactions contemplated hereby.

Section 9.19 No Successor or Transferee Liability. Except where expressly prohibited under applicable Law or otherwise expressly ordered by the Bankruptcy Court, upon the Closing, neither Purchaser nor any of its Affiliates or stockholders shall be deemed to (a) be the successor of Sellers; (b) have, de facto, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) other than as set forth in this Agreement, be liable for any acts or omissions of Sellers in the conduct of Sellers' business or arising under or related to the Purchased Assets. Without limiting

the generality of the foregoing, and except as otherwise provided in this Agreement, neither Purchaser nor any of its Affiliates or stockholders shall be liable for any Claims against Sellers or any of their predecessors or Affiliates, and neither Purchaser nor any of its Affiliates or stockholders shall have any successor, transferee or vicarious Liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to Sellers' business or any obligations of Sellers arising prior to the Closing, except as provided in this Agreement, including Liabilities on account of any Taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Sellers' business prior to the Closing.

Section 9.20 Time Periods. Unless otherwise specified in this Agreement, an action required under this Agreement to be taken within a certain number of days or any other time period specified herein shall be taken within the applicable number of calendar days (and not Business Days); provided, however, that if the last day for taking such action falls on a day that is not a Business Day, the period during which such action may be taken shall be automatically extended to the next Business Day.

Section 9.21 Sellers' Disclosure Schedule. The representations and warranties of Sellers set forth in this Agreement are made and given subject to the disclosures contained in the Sellers' Disclosure Schedule. Inclusion of information in the Sellers' Disclosure Schedule shall not be construed as an admission that such information is material to the business, operations or condition of the business of Sellers, the Purchased Assets or the Assumed Liabilities, taken in part or as a whole, or as an admission of Liability of any Seller to any third party. The specific disclosures set forth in the Sellers' Disclosure Schedule have been organized to correspond to Section references in this Agreement to which the disclosure may be most likely to relate; provided, however, that any disclosure in the Sellers' Disclosure Schedule shall apply to, and shall be deemed to be disclosed for, any other Section of this Agreement to the extent the relevance of such disclosure to such other Section is reasonably apparent on its face.

Section 9.22 No Binding Effect. Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement shall (i) be binding on or create any obligation on the part of Sponsor, the United States Government or any branch, agency or political subdivision thereof (a "Sponsor Affiliate") or the Government of Canada, or any crown corporation, agency or department thereof (a "Canada Affiliate") or (ii) require Purchaser to initiate any Claim or other action against Sponsor or any Sponsor Affiliate or otherwise attempt to cause Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate to comply with or abide by the terms of this Agreement. No facts, materials or other information received or action taken by any Person who is an officer, director or agent of Purchaser by virtue of such Person's affiliation with or employment by Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate shall be attributed to Purchaser for purposes of this Agreement or shall form the basis of any claim against such Person in their individual capacity.

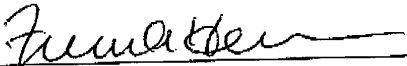
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IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be
executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: 
Name: Frederick A. Henderson
Title: President and Chief Executive
Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

SIGNATURE PAGE TO THE AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

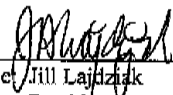
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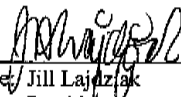
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By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By:  _____
Name: Jill Lajdzak
Title: President

SATURN DISTRIBUTION CORPORATION

By:  _____
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Title: President

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Title: President

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Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
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2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

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IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By:  _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

SIGNATURE PAGE TO THE AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

**FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND
PURCHASE AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of June 30, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (the "Purchase Agreement"); and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) **Section 2.3(a)(v)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Cases through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases, to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include all of Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes and other Liabilities mentioned in the Bankruptcy Court's Order - Docket No. 174), in each case, other than (1) Liabilities of the type described in **Section 2.3(b)(iv)**, **Section 2.3(b)(vi)**, **Section 2.3(b)(ix)** and **Section 2.3(b)(xii)**, (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as

a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this **Section 2.3(a)**;

(b) **Section 2.3(a)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(c) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, (A) the states set forth on Exhibit G and (B) if the State of Michigan (1) fails to authorize Purchaser and its Affiliates operating within the State of Michigan to be a self-insurer for purposes of administering workers' compensation Claims or (2) requires Purchaser and its Affiliates operating within the State of Michigan to post collateral, bonds or other forms of security to secure workers' compensation Claims, the State of Michigan (collectively, "Retained Workers' Compensation Claims");

(d) **Section 6.6(d)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement)

designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. As soon as reasonably practicable following a determination that an Executory Contract shall be designated as an Assumable Executory Contract hereunder, Sellers shall use reasonable best efforts to notify each third party to such Executory Contract of their intention to assume and assign such Executory Contract in accordance with the terms of this Agreement and the Sale Procedures Order. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

Section 3. Effectiveness of Amendment. Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

Section 4. Ratification of Purchase Agreement; Incorporation by Reference. Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

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Section 5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

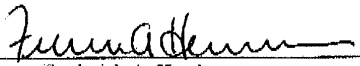
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Pg 115 of 132

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: 
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

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Pg 116 of 132

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GENERAL MOTORS CORPORATION

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Name: Frederick A. Henderson
Title: President and Chief Executive
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By: _____
Name: Jill Lajdzak
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Title: President

NGM CO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

AMERICAN BANKRUPTCY INSTITUTE

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Pg 117 of 132

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive
Officer

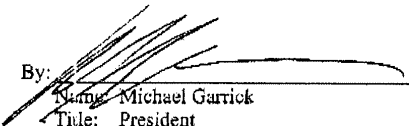
SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
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By:  _____
Name: Michael Garrick
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NGMCO, INC.

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Name: Sadiq Malik
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2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

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IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

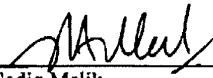
SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
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CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By:  _____
Name: Sadiq Malik
Title: Vice President and Treasurer

**SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND
PURCHASE AGREEMENT**

THIS SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of July 5, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended, the "Purchase Agreement");

WHEREAS, Sellers and Purchaser have entered into that certain First Amendment to Amended and Restated Master and Purchase Agreement; and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) The following new definition of "Advanced Technology Credits" is hereby included in **Section 1.1** of the Purchase Agreement:

"Advanced Technology Credits" has the meaning set forth in **Section 6.36**.

(b) The following new definition of "Advanced Technology Projects" is hereby included in **Section 1.1** of the Purchase Agreement:

"Advanced Technology Projects" means development, design, engineering and production of advanced technology vehicles and components, including the vehicles known as "the Volt", "the Cruze" and components, transmissions and systems for vehicles employing hybrid technologies.

(c) The definition of "Ancillary Agreements" is hereby amended and restated in its entirety to read as follows:

“Ancillary Agreements” means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

(d) The following new definition of “Excess Estimated Unsecured Claim Amount” is hereby included in **Section 1.1** of the Purchase Agreement:

“Excess Estimated Unsecured Claim Amount” has the meaning set forth in **Section 3.2(c)(i)**.

(e) The definition of “Permitted Encumbrances” is hereby amended and restated in its entirety to read as follows:

“Permitted Encumbrances” means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic’s, materialmen’s, laborer’s, workmen’s, repairmen’s, carrier’s liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use

of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

(f) The following new definition of "Purchaser Escrow Funds" is hereby included in **Section 1.1** of the Purchase Agreement:

"Purchaser Escrow Funds" has the meaning set forth in **Section 2.2(a)(xx)**.

(g) **Section 2.2(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all credits, Advanced Technology Credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(h) **Section 2.2(a)(xviii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period;

(i) **Section 2.2(a)(xix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability; and

(j) A new **Section 2.2(a)(xx)** is hereby added to the Purchase Agreement to read as follows:

(xx) all cash and cash equivalents, including all marketable securities, held in (1) escrow pursuant to, or as contemplated by that certain letter agreement dated as of June 30, 2009, by and between Parent, Citicorp USA, Inc., as Bank Representative, and Citibank, N.A., as Escrow Agent or (2) any escrow established in contemplation or for the purpose of the Closing, that would otherwise constitute a Purchased Asset pursuant to **Section 2.2(a)(i)** (collectively, "Purchaser Escrow Funds");

(k) **Section 2.2(b)(i)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(i) cash or cash equivalents in an amount equal to \$1,175,000,000 (the "Excluded Cash");

(l) **Section 2.2(b)(ii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities, which for the avoidance of doubt, shall not be deemed to include Purchaser Escrow Funds;

(m) **Section 2.3(a)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(viii) all Liabilities arising under any Environmental Law (A) relating to the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(n) **Section 2.3(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** or (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

(o) **Section 2.3(b)(iv)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third party Claims related to Hazardous Materials that were or are located at or that were Released into the Environment from Transferred Real Property prior to the Closing, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property, except as provided under Section 18.2(e) of the Master Lease Agreement or as provided under the "Facility Idling Process" section of Schedule A of the Transition Services Agreement; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A), (B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(p) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(q) **Section 3.2(a)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less \$8,247,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than \$1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

For the avoidance of doubt, immediately following the Closing, the only indebtedness for borrowed money (or any guarantees thereof) of Sellers and their Subsidiaries to Sponsor, Canada and Export Development Canada is amounts under the Wind Down Facility.

(r) **Section 3.2(c)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed \$35,000,000,000, then Purchaser will, within five (5) Business Days of entry of the Claims Estimate Order, issue additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price, based on the extent by which such estimated aggregate general unsecured claims exceed \$35,000,000,000 (such amount, the "Excess Estimated Unsecured Claim Amount;" in the event this amount exceeds \$7,000,000,000 the Excess Estimated Unsecured Claim Amount will be reduced to a cap of \$7,000,000,000). The number of Adjustment Shares to be issued will be equal to the number of shares, rounded up to the next whole share, calculated by multiplying (i) 10,000,000 shares of Common Stock (adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation, reorganization or similar transaction with respect to the

Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares) and (ii) a fraction, (A) the numerator of which is Excess Estimated Unsecured Claim Amount (capped at \$7,000,000,000) and (B) the denominator of which is \$7,000,000,000.

(ii) At the Closing, Purchaser will have authorized and, thereafter, will reserve for issuance the maximum number of shares of Common Stock issuable as Adjustment Shares.

(s) **Section 6.9(b)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of \$1,175,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at the Eurodollar Rate (as defined in the Wind-Down Facility) plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities or proceeds received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(t) **Section 6.17(e)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies.* As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (collectively, the "Assumed Plans"), and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of

the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(u) A new **Section 6.17(n)** is hereby added to the Purchase Agreement to read as follows:

(n) *Harlem Employees.* With respect to non-UAW employees of Harlem, Purchaser or one of its Affiliates may make offers of employment to such individuals at its discretion. With respect to UAW-represented employees of Harlem and such other non-UAW employees who accept offers of employment with Purchaser or one of its Affiliates, in addition to obligations under the UAW Collective Bargaining Agreement with respect to UAW-represented employees, Purchaser shall assume all Liabilities arising out of, relating to or in connection with the salaries and/or wages and vacation of all such individuals that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date. With respect to non-UAW employees of Harlem who accept such offers of employment, Purchaser or one of its Affiliates shall take all actions necessary such that such individuals shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual in any employee benefit plans (excluding equity compensation plans or programs) covering such individuals after the Closing; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such individual or the funding for any such benefit. Purchaser or one of its Affiliates, in its sole discretion, may assume certain employee benefit plans maintained by Harlem by delivering written notice (which such notice shall identify such employee benefit plans of Harlem to be assumed) to Sellers of such assumption on or before the Closing, and upon delivery of such notice, such employee benefit plans shall automatically be deemed to be set forth on Section 6.17(e) of the Sellers' Disclosure Schedules. All such employee benefit plans that are assumed by Purchaser or one of its Affiliates pursuant to the preceding sentence shall be deemed to be Assumed Plans for purposes of this Agreement.

(v) A new **Section 6.36** is hereby added to the Purchase Agreement to read as follows:

Section 6.36 Advanced Technology Credits. The Parties agree that Purchaser shall, to the extent permissible by applicable Law (including all rules, regulations and policies pertaining to Advanced Technology Projects), be entitled to receive full credit for expenditures incurred by Sellers prior to the Closing towards Advanced Technology Projects for the purpose of any current or future program sponsored by a Governmental Authority providing financial assistance in

connection with any such project, including any program pursuant to Section 136 of the Energy Independence and Security Act of 2007 ("Advanced Technology Credits"), and acknowledge that the Purchase Price includes and represents consideration for the full value of such expenditures incurred by Sellers.

(w) **Section 7.2(c)(vi)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vi) *[Reserved]*;

(x) **Section 7.2(c)(vii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vii) *[Reserved]*;

(y) **Section 7.3(c)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(viii) *[Reserved]*;

(z) **Section 7.3(c)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ix) *[Reserved]*;

(aa) **Section 7.3(f)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(f) Purchaser shall have (i) offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (ii) transferred to Sellers the UST Warrant and (iii) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(bb) **Exhibit R** to the Purchase Agreement is hereby deleted in its entirety.

(cc) **Exhibit S** to the Purchase Agreement is hereby deleted in its entirety.

(dd) **Exhibit U** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit U** attached hereto.

(ee) **Exhibit X** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit X** attached hereto.

(ff) Section 2.2(b)(iv) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 2.2(b)(iv) of the Sellers' Disclosure Schedule attached hereto.

(gg) Section 4.4 of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 4.4 of the Sellers' Disclosure Schedule attached hereto.

(hh) Section 6.6(a)(i) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 6.6(a)(i) of the Sellers' Disclosure Schedule attached hereto.

Section 3. *Effectiveness of Amendment.* Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

Section 4. *Ratification of Purchase Agreement; Incorporation by Reference.* Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

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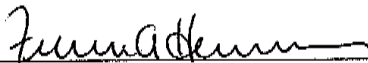
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09-50026-mg Doc 2968-2 Filed 07/05/09 Entered 07/05/09 23:17:21 Exhibit MSPA
Pg 129 of 132

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: 
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

TOTAL P 02

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

06/10/2009 09:50:26 am Doc 2008-20 Filed 07/05/09 Entered 07/05/09 23:17:21 Exhibit MSPA 2
Pg 130 of 132 P.02

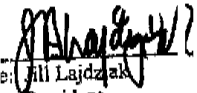
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By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By:  _____
Name: Jill Lajdzak
Title: President

SATURN DISTRIBUTION CORPORATION

By:  _____
Name: Jill Lajdzak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGM CO, INC.

By: _____
Name: Sadig Malik
Title: Vice President and Treasurer

TOTAL P.02

AMERICAN BANKRUPTCY INSTITUTE

09-50026-mg Doc 2968-2 Filed 07/05/09 Entered 07/05/09 23:17:21 Exhibit MSPA
Pg 131 of 132

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Name: Jill Lajdziak
Title: President

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By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

JUN-30-2009 09:50:26 AM Doc 2968-2 Filed 07/05/09 Entered 07/05/09 23:17:21 Exhibit MSPA Pg 132 of 132 P.21

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Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

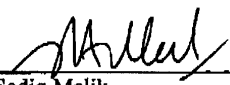
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Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By:  _____
Name: Sadiq Malik
Title: Vice President and Treasurer

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Approved: /s Richard Cooper /s Daniel Tracer
RICHARD COOPER/DANIEL TRACER
Assistant United States Attorneys

Before: HONORABLE SARAH L. CAVE
United States Magistrate Judge
Southern District of New York

- - - - - x
: **SEALED COMPLAINT**
UNITED STATES OF AMERICA :
: Violations of
- v. - : 15 U.S.C. §§ 77q, 77x; 18
: U.S.C. §§ 152(6), 1343,
DANIEL KAMENSKY, : 1512 & 2.
:
Defendant. : COUNTY OF OFFENSE:
: New York
- - - - - x

SOUTHERN DISTRICT OF NEW YORK, ss.:

FATIMA HAQUE, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE
(Fraud in the Offer or Sale of Securities)

1. On or about July 31, 2020, in the Southern District of New York and elsewhere, DANIEL KAMENSKY, the defendant, willfully and knowingly, in the offer and sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly employed a device, scheme, and artifice to defraud, to wit, KAMENSKY, in violation of his fiduciary duties, engaged in a scheme to defraud the unsecured creditors in the official bankruptcy proceeding of Neiman Marcus Group Ltd LLC ("Neiman Marcus") by pressuring a global investment bank (the "Investment Bank") to withdraw its bid to purchase certain securities from the unsecured creditors at a higher price than KAMENSKY's hedge fund, Marble Ridge Capital LP ("Marble Ridge"), had offered for those securities.

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

(Title 15, United States Code, Sections 77q(a)(1) and 77x; Title 18, United States Code, Section 2.)

COUNT TWO **(Wire Fraud)**

2. On or about July 31, 2020, in the Southern District of New York and elsewhere, DANIEL KAMENSKY, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, KAMENSKY, in violation of his fiduciary duties, engaged in a scheme to defraud the unsecured creditors in Neiman Marcus's official bankruptcy proceeding by pressuring the Investment Bank to withdraw its bid to purchase certain securities from the unsecured creditors at a higher price than KAMENSKY's hedge fund, Marble Ridge, had offered for those securities.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE **(Extortion and Bribery In Connection With Bankruptcy)**

3. On or about July 31, 2020, in the Southern District of New York and elsewhere, DANIEL KAMENSKY, the defendant, knowingly and fraudulently gave, offered, received, and attempted to obtain money and property, remuneration, compensation, reward, advantage, and promise thereof for acting or forbearing to act in any case under Title 11 of the United States Code, to wit, KAMENSKY pressured the Investment Bank to withdraw its bid to purchase certain securities from the unsecured creditors by threatening to (i) use his position on the creditors' committee to ensure that the Investment Bank's bid would be rejected, and (ii) withhold Marble Ridge's future business from the Investment Bank, so that Marble Ridge could obtain those securities at a lower price.

(Title 18, United States Code, Sections 152(6) and 2.)

COUNT FOUR **(Obstruction of Justice)**

4. From at least on or about July 31, 2020 up to and including on or about August 4, 2020, in the Southern District of

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New York and elsewhere, DANIEL KAMENSKY, the defendant, corruptly obstructed, influenced, and impeded an official proceeding, and attempted to do so, to wit, KAMENSKY sought to influence a senior employee at the Investment Bank ("IB Employee-1") into providing a false account of a conversation KAMENSKY had with IB Employee-1, in order to impede a criminal investigation of KAMENSKY's conduct.

(Title 18, United States Code, Sections 1512(c)(2) and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

5. I have been a Special Agent with the FBI for approximately two years. I am currently assigned to a squad that is responsible for investigating violations of the federal securities laws, as well as wire and mail fraud laws and related offenses. I have participated in numerous investigations of these offenses, and I have made and participated in making arrests of numerous individuals for committing such offenses.

6. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including documents provided by others, from speaking with witnesses, and from conversations with representatives of the Office of the United States Trustee (the "UST") and the United States Securities and Exchange Commission (the "SEC"). Because this affidavit is being submitted for a limited purpose, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part unless otherwise noted. Where dates, figures, and calculations are set forth herein, they are approximate.

Background

The Defendant, Marble Ridge, and the Investment Bank

7. At all times relevant to this Complaint, DANIEL KAMENSKY, the defendant, was the principal of Marble Ridge, a hedge fund that invests in securities in distressed situations, including bankruptcies. Marble Ridge, which had assets under management of more than \$1 billion as of at least early 2020, was based in Manhattan, New York. Prior to opening Marble Ridge, KAMENSKY worked for many years as a bankruptcy attorney at a well-known international law firm, and as a distressed debt

investor at prominent financial institutions.

8. At all times relevant to this Complaint, the Investment Bank was a diversified financial services company headquartered in New York, New York. Marble Ridge conducted business with the Investment Bank, including as a client.

The Bankruptcy Process and the
Office of the United States Trustee

9. The bankruptcy laws, or the bankruptcy code, allow a debtor to seek the aid of the United States Bankruptcy Court to restructure and reorganize its debt and thereby continue as a going concern. The Chapter 11 bankruptcy process typically begins with the filing of a bankruptcy petition in bankruptcy court and proceeds until the court approves a plan of reorganization (a "Plan").

10. Among the participants in a Chapter 11 bankruptcy are unsecured creditors. Unsecured creditors have claims that are not backed by any assets of the debtor, and therefore typically receive lesser pro rata recoveries of their claims, if they receive any recovery, than secured creditors.

11. The UST, a component within the U.S. Department of Justice, plays a critical role in bankruptcies throughout the United States by serving as a watchdog over the bankruptcy process. Among the duties entrusted to the UST in connection with bankruptcy proceedings, is the appointment of certain representatives of the unsecured creditors of a filing debtor to a "creditors' committee." A creditors' committee generally represents a wide range of unsecured creditors and is formed to obtain the largest possible recovery for the unsecured creditors in a Plan. By statute, members of the creditors' committee are required to act as fiduciaries to all unsecured creditors, thus requiring them to, among other things, act with the highest standards of honesty and integrity, and put the interests of the collective group of unsecured creditors above their own personal self-interest.

The Neiman Marcus Bankruptcy and MyTheresa

12. From my review of public filings in the United States Bankruptcy Court for the Southern District of Texas and my conversations with representatives of the UST, I have learned, among other things, that:

a. Neiman Marcus is an American chain of luxury department stores with stores located across the United States.

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As of at least approximately 2013, Neiman Marcus was privately owned by two investment funds.

b. In or about May 2020, Neiman Marcus filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). Prior to its bankruptcy filing, Neiman Marcus transferred MyTheresa--an online luxury fashion retailer that was owned by Neiman Marcus--to another Neiman Marcus entity that did not file for bankruptcy. At the time of the bankruptcy filing, MyTheresa was considered one of the most valuable assets within the family of Neiman Marcus entities. Some of Neiman Marcus's creditors alleged that transfer to be a fraudulent conveyance for the purpose of removing that asset from the pool of available assets to creditors in the bankruptcy (the "Alleged Fraudulent Conveyance").

c. At the outset of the Neiman Marcus bankruptcy, the UST formed an Official Committee of Unsecured Creditors (the "Committee"), composed of nine entities who all were unsecured creditors of Neiman Marcus. Marble Ridge, through DANIEL KAMENSKY, the defendant, applied to be on the Committee and was thereafter appointed to be a member of the Committee. At the time, Marble Ridge was one of the largest unsecured creditor of Neiman Marcus.

d. In KAMENSKY's signed application to serve on the Committee, KAMENSKY attested that he agreed to a number of conditions, including that "[m]embers of the Committee are fiduciaries who represent all unsecured creditors as a group. . . ." In the cover email transmitting that application to the UST, the General Counsel of Marble Ridge wrote that "Mr. Kamensky has more than 20 years of bankruptcy and investing experience and fully understands the fiduciary responsibilities associated with membership on the Committee. Mr. Kamensky is committed to devote the time and energy necessary to earnestly represent all unsecured creditors."

e. During the bankruptcy process, the Committee had negotiated with the owners of Neiman Marcus (also known as the "Sponsors")--who also controlled the Neiman Marcus entity to which MyTheresa was transferred--to obtain Series B shares in MyTheresa (the "MYT Securities") in exchange for providing a release from potential claims against them for the Alleged Fraudulent Conveyance. Ultimately, the Committee was successful in coming to a settlement to obtain 140 million shares of MYT Securities for the benefit of certain unsecured creditors of the bankruptcy estate (the "Settlement"). The MYT Securities represented an ownership interest in MyTheresa and were considered highly illiquid (i.e., they did not trade on any public exchange). The Committee and the

Sponsors intended for the Settlement to be included in the final bankruptcy plan that was subject to confirmation by the Bankruptcy Court in or about early September 2020.

f. As further described below, the Committee also discussed the possibility of entertaining an offer from a financial firm interested in purchasing MYT Securities from certain unsecured creditors (the "Cashout Option"). Under the terms of the Cashout Option, a financial firm would offer to purchase MYT Securities from any unsecured creditor who preferred to receive cash as part of the Settlement rather than the illiquid MYT Securities. In particular, up until at least on or about July 31, 2020, KAMENSKY and the Committee were discussing the possibility of Marble Ridge providing the Cashout Option.

g. On or about August 5, 2020, after the Bankruptcy Court was advised by representatives of the Committee that KAMENSKY had pressured the Investment Bank not to bid on providing the Cashout Option for the MYT Securities, the Bankruptcy Court directed that the UST conduct an investigation (the "UST Investigation") and thereafter to file a report with the Bankruptcy Court.

The Fraudulent Scheme

13. As part of my investigation, I have reviewed the report filed by the UST, dated August 19, 2020 (the "Trustee Report"), as well as documents obtained by the UST during the UST Investigation and transcripts of interviews conducted by the UST with DANIEL KAMENSKY, the defendant, and other individuals. I have also interviewed IB Employee-1 as well as a senior analyst at the Investment Bank ("IB Employee-2," and collectively the "IB Employees"). As a result of that review and those interviews, I have learned, among other things, that:

KAMENSKY Learns that the Investment Bank Indicated Intent to
Make a Higher Bid for the MYT Securities

a. In or about late July 2020, KAMENSKY proposed to the Committee that Marble Ridge provide the Cashout Option by purchasing, for twenty cents per share, 60 million MYT Securities from any unsecured creditor wishing to sell MYT Securities it obtained under the Settlement. The Committee agreed to negotiate with Marble Ridge, which negotiations would have needed to be completed quickly and in advance of a court hearing scheduled for August 3, 2020, so that the agreement could be presented to the Bankruptcy Court for inclusion in the bankruptcy reorganization plan.

b. On or about July 30, 2020, the IB Employees were contacted by a client of the Investment Bank (the "Client") who expressed interest in making a bid to purchase MYT Securities from unsecured creditors who elected the Cashout Option. On the morning of July 31, 2020, the IB Employees discussed a plan for the Investment Bank to move forward with a proposal to the Committee to buy the MYT Securities for the Client and potentially for others.

c. That morning, the IB Employees informed the financial and legal advisors to the Committee that the Investment Bank was prepared to provide a Cashout Option to purchase MYT Securities for a price "in the thirties" (i.e., between thirty and forty cents per share), a price that was higher than the twenty cents per share that was offered by Marble Ridge.

d. At or about 3:15 p.m. on or about July 31, 2020, the financial and legal advisors to the Committee called KAMENSKY and informed him, in substance and in part, that the Investment Bank had made an offer for the MYT Securities in the range of thirty cents per share.

KAMENSKY Pressures the Investment Bank

e. Shortly after that call concluded, KAMENSKY sent a Bloomberg chat message to the head trader at Marble Ridge (the "MR Trader"), asking the MR Trader to check the text messages on his phone. Thereafter, KAMENSKY and the MR Trader had the following text message exchange about the need to prevent the Investment Bank from placing a bid for the MYT Securities:

KAMENSKY: [IB Employee-2] from [the Investment Bank] called the UCC counsel and offered to buy the [MYT Securities] at 30 cents,

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

that is a monumental mistake. I'm getting [IB Employee-1] now. he needs to talk me. let me know. They are threatening to put a bid in.

MR Trader: For nmg [Neiman Marcus]??

KAMENSKY: yes i just texted [IB Employee-1]

MR Trader: Yikes what did we bid. Those guys man I hope they were just ignorant to our interests

f. At or around the same time as the text message exchange above, KAMENSKY engaged in a Bloomberg chat message exchange with IB Employee-1 in which he pressed IB Employee-1 not to submit a bid for the MYT Securities:

KAMENSKY: Need you NOW

KAMENSKY: Where can I reach you

IB Employee-1: Call me in 10min

* * *

KAMENSKY: Tell [IB Employee-2] to stand DOWN

IB Employee-1: Im on an inernal [sic] call

KAMENSKY: And let's talk

* * *

KAMENSKY: Do I need to reach out to [IB Employee-2]

KAMENSKY: DO NOT SEND IN A BID

g. At or about 3:45 p.m. on or about July 31, 2020, the IB Employees spoke with KAMENSKY on the phone. According to the IB Employees, in that conversation, in substance and in part, KAMENSKY was highly agitated and told the Investment Bank to stand down and not put in a bid for the MYT Securities. In particular, KAMENSKY explained that he had been responsible for getting the MYT Securities as part of the Settlement for the unsecured creditors and had incurred \$3.5 million in legal fees in doing so. Accordingly, KAMENSKY believed that Marble Ridge should have the exclusive right to purchase MYT Securities from the unsecured

creditors. KAMENSKY further said that he would use his official role as co-chair of the Committee to prevent the Investment Bank from acquiring the MYT Securities. KAMENSKY also stated that Marble Ridge had been a good partner to the Investment Bank, but that if the Investment Bank moved forward with its bid for the MYT Securities, Marble Ridge would cease doing business with the Investment Bank. According to the IB Employees, at no point during that call did KAMENSKY ask whether the Investment Bank had been serious in making a bid for the MYT Securities or whether the Investment Bank had adequate financing to advance such a bid.

The Investment Bank Withdraws the Higher Bid

h. Following this phone call, on or about July 31, 2020, as a result of KAMENSKY's pressure, the Investment Bank decided to not make a bid to purchase the MYT Securities. Shortly thereafter, the IB Employees called KAMENSKY and informed him of the decision not to bid, but advised KAMENSKY that they would be transparent with other parties about the reason for withdrawing the bid. KAMENSKY responded, in substance and in part, that he was grateful for that decision and that he was indebted to them.

i. At approximately 5:00 p.m. on or about July 31, 2020, the IB Employees spoke with the legal advisor to the Committee and informed him, in substance and in part, that the Investment Bank was withdrawing from making a bid because KAMENSKY -- a client of the Investment Bank -- had asked it to do so.

j. At approximately 7:00 p.m. on or about July 31, 2020, the legal advisor to the Committee and other professional advisors to the Committee spoke with counsel for Marble Ridge (the "Marble Ridge Counsel") and informed him of the substance of the call from the IB Employees. The Marble Ridge Counsel said, in substance and in part, that he would have to speak with KAMENSKY. The Marble Ridge Counsel thereafter contacted advisors to the Committee and falsely informed them, in substance and in part, that KAMENSKY had not asked the IB Employees not to bid; but instead, had told the IB Employees to place a bid for the MYT Securities only if the Investment Bank was serious.

KAMENSKY Attempts to Cover-up the Fraud

k. Around this same time, KAMENSKY contacted IB Employee-1 and attempted to influence what IB Employee-1 would tell others (including the Committee and law enforcement) about KAMENSKY's attempt to block the Investment Bank's bid for the MYT Securities. At approximately 7:42 p.m., KAMENSKY sent a Bloomberg chat message to IB Employee-1 that read "Are you there?" The two

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

spoke shortly after 8:00 p.m. According to IB Employee-1, KAMENSKY began the call by saying, in substance and in part, "this conversation never happened." IB Employee-1, concerned that KAMENSKY would engage in unethical or unlawful behavior, then began recording the call.

1. During the recorded portion of the call, in substance and in part, KAMENSKY asked why IB Employee-1 had said that KAMENSKY threatened IB Employee-1 and asked if IB Employee-1 knew that could result in KAMENSKY going to jail. KAMENSKY further asked IB Employee-1 to falsely say instead that it was a misunderstanding and KAMENSKY had actually suggested that the Investment Bank only bid if it was serious. According to a draft transcript of that recording, during that call, the following was said, among other things:

KAMENSKY: Why would you tell committee counsel that I threatened you? Why would you tell them that?

* * *

KAMENSKY: Do you understand . . . I can go to jail? I can go to jail. Do you understand that?

IB Employee-1: Dan. Do you understand I went in to them [the Committee] this morning telling them I was going to bid, okay? You then contact me on IB and you say I need to talk to you now. Stand down. Do not bid. . . . Hold on. Hold on a second, Dan. Listen to me. And then you call me and you say, do not bid. It's going to be a relationship issue, and so I said okay. Dan's a good relationship. What he's asking me to do makes me a little bit uncomfortable. So, I thought about it and I said okay, I'm fine doing it, but I'm disclosing why I'm not bidding.

KAMENSKY: Okay. Well . . . I might go to jail. Okay? If you had told me that The position I'm going to take is this is a huge misunderstanding and I hope you - I pray you tell them that it was a huge misunderstanding, okay, and I'm going to invite you to bid and be part of the process me saying to you, okay,

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this is going to be my view on what happened okay, and you can decide if you don't want to agree or not. But I'm telling you . . . this is going to the U.S. Attorney's Office. This is going to go to the court. Like, do you want to be dragged into this? Like, bid all you want but don't - don't - don't put me in jail.

* * *

IB Employee-1: I honestly . . . don't want anything to do with this.

KAMENSKY: . . . It's too late now. They're going to report this to the U.S. Attorney's Office, okay? . . . The U.S. Attorney is going to investigate this. My position to them is this. I said to them, this is a huge misunderstanding, okay, humongous misunderstanding and I told them - the only thing I said was if you're not real don't bid and if they're real then they should bid. Because otherwise the U.S. Attorney is investigating this then, okay? They're going to report it, okay, and my position . . . is going to be look, this was a huge misunderstanding. . . . [A]ll I told them was if they're not real they shouldn't bid.

* * *

KAMENSKY: [P]lease . . . help me out here. . . . I mean, like, talk to me here ,talk to me. How do we salvage this?

* * *

KAMENSKY: . . . Like, this is like, like, the committee counsel is going to report this. I can't stop that, okay? There's no question in my mind that they're going to report it. THE only thing that I can say to them is that this is a huge misunderstanding.

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

* * *

KAMENSKY: . . . [I]f you're going to continue to tell them what you just told me, I'm going to jail, okay? Because they're going to say that I abused my position as a fiduciary, which I probably did, right? Maybe I should go to jail. But I'm asking you not to put me in jail.

IB Employee-1: . . . Dan [] I would never lie for anyone, okay, like 100 percent clear because that in and of itself is a crime and I have ethics...

* * *

KAMENSKY: . . . Just so you know I'm not asking you to lie, okay, and all I'm saying is that if that's what I said that's not at all what I intended and I apologize, okay? . . . I'm telling you that what I intended to say, okay, is if you're not real don't bid but if you're real then you should bid, and . . . for the relationship I would tell you that's exactly what I said and I apologize if I was upset or if it appeared as a threat. But I'm telling you that is exactly what I intended to say and I'm just begging you to please appreciate that's what I meant to say and that this conversation never happened. . . .

IB Employee-1: . . . [IB Employee-2] was also on the phone, Dan, right, and I just will not be involved in a situation where I lie, okay? I just will not ...

* * *

KAMENSKY: I'm not asking you to lie . . . maybe you can see your way to saying that it was misconstrued . . . That's all I'm saying . . . And this conversation could not have happened. . . .

KAMENSKY Admits "Profound Errors," Resigns from the Committee
and Closes Marble Ridge

14. As part of the UST Investigation, the UST conducted a voluntary interview under oath of DANIEL KAMENSKY, the defendant (the "KAMENSKY Interview"). During the KAMENSKY Interview, KAMENSKY was represented by counsel and advised of the voluntary nature of the interview. Based on my review of a transcript of the KAMENSKY Interview, I have learned the following:

a. KAMENSKY stated, in substance and in part, that he understood that a Committee member had a fiduciary duty to act "in the best interest of unsecured creditors generally and put those interests above your own personal interests."

b. KAMENSKY stated, in substance and in part, that during the telephone call described in paragraph 13(g) above, that he "may have" told the IB Employees that their bid for the MYT Securiites "would affect our business relationship going forward," and also that KAMENSKY would "use my membership on the UCC to stop [the Investment Bank's bid for MYT Securities]."

c. KAMENSKY stated, in substance and in part, when discussing the telephone call with IB Employee-1 described in paragraph 13(k) above, that he did not want IB Employee-1 to lie, but said instead that he was attempting to "manage the message" and hoped that the two could find "common ground" regarding KAMENSKY's position that he had intended to communicate that the Investment Bank should bid for MYT Securities if it was serious.

d. KAMENSKY stated on multiple occasions, in substance and in part, that his calls to IB Employee-1 were a "terrible mistake" and "profound errors in lapses of judgment [that] violated the personal and professional belief I tried my best to live by."

15. From my review of the Trustee Report, I have learned that Marble Ridge resigned from the Committee on August 1, 2020.

16. From my review of publicly available information, I have learned that on or about August 20, 2020, Marble Ridge advised its investors that it intended to begin winding down operations and returning investor capital.

2020 VIRTUAL WINTER LEADERSHIP CONFERENCE

WHEREFORE, I respectfully request that an arrest warrant be issued for DANIEL KAMENSKY, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

/s/ Fatima Haque (By Court with Authorization)
FATIMA HAQUE
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to me through the transmission
of this Complaint by reliable electronic means
pursuant to Federal Rule of Criminal Procedure 4.1,
this 2nd day of September, 2020



HONORABLE SARAH L. CAVE
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

 Warning
As of: March 9, 2020 4:08 PM Z

[Mission Prod. Holdings, Inc. v. Tempnology, LLC \(In re Tempnology, LLC\)](#)

United States Court of Appeals for the First Circuit

January 12, 2018, Decided

No. 16-9016

Reporter

879 F.3d 389 *; 2018 U.S. App. LEXIS 870 **; Bankr. L. Rep. (CCH) P83,196; 65 Bankr. Ct. Dec. 23
possession, post-rejection, reorganization

IN RE: TEMPNOLOGY, LLC, n/k/a Old Cold LLC,
Debtor. MISSION PRODUCT HOLDINGS, INC.,
Appellant, v. TEMPNOLOGY, LLC, n/k/a Old Cold LLC,
Appellee.

Case Summary

Overview

HOLDINGS: [1]-Debtor seeking to reorganize under Chapter 11 rejected an agreement giving certain marketing and distribution rights to the business, and the court agreed with the bankruptcy court that the rejection left the business with only a pre-petition damages claim in lieu of any obligation by the debtor to further perform under either the trademark license or the grant of exclusive distribution rights; [2]-[11 U.S.C.S. § 365\(n\)](#) did not apply to the business's right to be the exclusive distributor of the debtor's products, or to its trademark license, and the business's right to use the debtor's trademarks did not otherwise survive rejection of the agreement; [3]-There was no "embodiment" at issue in the relevant statutory sense; [4]-The court favors the categorical approach of leaving trademark licenses unprotected from court-approved rejection, unless and until Congress should decide otherwise.

Subsequent History: As Corrected June 18, 2018.

US Supreme Court certiorari granted by, in part *Mission Prod. Holdings v. Tempnology, LLC*, 139 S. Ct. 397, 202 L. Ed. 2d 309, 2018 U.S. LEXIS 6265 (U.S., Oct. 26, 2018)

Reversed by, Remanded by [Mission Prod. Holdings v. Tempnology](#), 2019 U.S. LEXIS 3544 (U.S., May 20, 2019)

Prior History: **[**1]** APPEAL FROM THE BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT.

[Mission Prod. Holdings v. Tempnology LLC \(In re Tempnology LLC\)](#), 559 B.R. 809, 2016 Bankr. LEXIS 4025 (B.A.P. 1st Cir., Nov. 18, 2016)

Core Terms

trademark, license, intellectual property, rights, licensee, products, distribution rights, embodiment, bankruptcy court, equitable, patent, executory contract, intellectual property rights, nonexclusive, obligations, terminate, nonbankruptcy, pre-petition, parties, licensor, courts, adversary proceedings, breach of contract, exclusive right, right to use, make clear, terms, debtor-in-

Outcome

Decision affirmed.

LexisNexis® Headnotes

Daniel Schimizzi

879 F.3d 389, *389; 2018 U.S. App. LEXIS 870, **1

Bankruptcy Law > ... > Executory Contracts &
Unexpired Leases > Powers to Assume &
Reject > Executory Contracts

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

[HN1](#) Powers to Assume & Reject, Executory Contracts

Generally speaking, when a company files for protection under Chapter 11 of the Bankruptcy Code, the trustee or the debtor-in-possession may secure court approval to reject any executory contract of the debtor, meaning that the other party to the contract is left with a damages claim for breach, but not the ability to compel further performance. [11 U.S.C.S. §§ 365\(a\), 1107\(a\)](#). When the rejected contract, however, is one under which the debtor is a licensor of a right to intellectual property, the licensee may elect to retain its rights to such intellectual property, thereby continuing the debtor's duty to license the intellectual property. [11 U.S.C.S. § 365\(n\)\(1\)](#).

Bankruptcy Law > ... > Executory Contracts &
Unexpired Leases > Powers to Assume &
Reject > Executory Contracts

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

[HN2](#) Powers to Assume & Reject, Executory Contracts

[11 U.S.C.S. § 365\(a\)](#) permits a debtor-in-possession, with the court's approval, to reject any executory contract that, in the debtor's business judgment, is not beneficial to the company.

Bankruptcy Law > ... > Executory Contracts &
Unexpired Leases > Powers to Assume &
Reject > Executory Contracts

[HN3](#) Powers to Assume & Reject, Executory Contracts

Although [11 U.S.C.S. § 365\(a\)](#) only refers to the powers

of a trustee, per [11 U.S.C.S. § 1107\(a\)](#), a Chapter 11 debtor in possession shall have all the rights and powers, and shall perform all the functions and duties, of a trustee serving in a case under this chapter.

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

[HN4](#) Executory Contracts & Unexpired Leases, Rejections

[11 U.S.C.S. § 365\(n\)](#) provides an exception from [§ 365\(a\)](#)'s broad rejection authority by limiting the debtor-in-possession's ability to terminate intellectual property licenses it has granted to other parties.

Bankruptcy Law > ... > Judicial Review > Standards
of Review > Clear Error Review

Bankruptcy Law > ... > Judicial Review > Standards
of Review > De Novo Standard of Review

[HN5](#) Standards of Review, Clear Error Review

On appeal from a decision by the Bankruptcy Appellate Panel for the First Circuit (BAP), the appellate court accords no special deference to determinations made by the BAP, and instead trains the lens of the inquiry directly on the bankruptcy court's decision. In doing so, the appellate court reviews the bankruptcy court's factual findings for clear error and its conclusions of law de novo.

Bankruptcy Law > ... > Executory Contracts &
Unexpired Leases > Powers to Assume &
Reject > Executory Contracts

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

[HN6](#) Powers to Assume & Reject, Executory Contracts

Executory contracts, although not defined in the Bankruptcy Code, are generally considered to be contracts on which performance is due to some extent on both sides. [11 U.S.C.S. § 365\(a\)](#) permits the debtor-

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in-possession to assume those contracts that are beneficial and reject those that may hinder its recovery. It provides an elixir for use in nursing a business back to good health by allowing the trustee or debtor-in-possession to prescribe it as an emetic to purge the bankruptcy estate of obligations that promise to hinder a reorganization. [Section 365\(a\)](#) thus furthers Chapter 11's paramount objective of rehabilitating debtors. In lieu of the rejected obligation, a debtor is left with a liability for what the Code deems to be a pre-petition breach of the contract. [11 U.S.C.S. § 365\(g\)](#).

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

[HN7](#) **Executory Contracts & Unexpired Leases, Rejections**

[11 U.S.C.S. § 365\(n\)\(1\)](#) gives to a licensee of intellectual property rights a choice between treating the license as terminated and asserting a claim for pre-petition damages -- a remedy the licensee held already under [§ 365\(g\)](#) -- or retaining its intellectual property rights under the license.

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

[HN8](#) **Executory Contracts & Unexpired Leases, Rejections**

[11 U.S.C.S. § 365\(n\)\(1\)\(B\)](#) allows a party to retain its rights (including a right to enforce any exclusivity provision of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law).

Bankruptcy Law > ... > Executory Contracts &
Unexpired Leases > Powers to Assume &
Reject > Executory Contracts

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

[HN9](#) **Powers to Assume & Reject, Executory Contracts**

The court starts in [11 U.S.C.S. § 365\(a\)](#) with the universe of all executory contracts that a debtor may seek to reject; [§ 365\(n\)\(1\)](#) then focuses on a subset of that universe (executory contracts under which the debtor is a licensor of a right to intellectual property); [§ 365\(n\)\(1\)\(B\)](#) then says what happens to intellectual property rights granted under such contracts (the licensee may retain its rights); and the parenthetical merely makes clear that those rights to such intellectual property include any exclusivity attributes of those rights. In this manner, [§ 365\(n\)\(1\)\(B\)](#) protects, for example, an exclusive license to use a patent, but does not protect an exclusive right to sell a product merely because that right appears in a contract that also contains a license to use intellectual property.

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

[HN10](#) **Executory Contracts & Unexpired Leases, Rejections**

Given that the right to sell a product is clearly not included within [11 U.S.C.S. § 365](#)'s definition of intellectual property, the court is not going to treat it as such merely because of a coincidental practical effect it may have in limiting the scope of the manner in which a patent might be exploited, especially where the agreement itself expressly makes clear that any patent license is nonexclusive.

Patent Law > Subject Matter

[HN11](#) **Patent Law, Subject Matter**

Embodiment is a term of art associated with intellectual property. The term is tagged as belonging to patent law, with alternate definitions: (1) the tangible manifestation of an invention; (2) the method for using this tangible form; or (3) the part of a patent application or patent that describes a concrete manifestation of the invention. While intellectual property is a mental construct without physical structure, an embodiment is a specific physical form of the invention and thus each embodiment exists in the real world.

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Governments > Legislation > Interpretation

HN12 **Legislation, Interpretation**

Where the statutory language includes a term of art, resort to sources beyond the text is particularly appropriate to make clear the intended meaning of that term.

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

Patent Law > Subject Matter

HN13 **Executory Contracts & Unexpired Leases, Rejections**

In the context of 11 U.S.C.S. § 365(a)(1)(B) and its reference to "any embodiment of such intellectual property," the pre-petition agreement must give the licensee access to the embodiment of intellectual property. Second, an embodiment of intellectual property is a tangible or physical object that exists pre-petition. Third, an embodiment of intellectual property is something inherently limited in number -- it is a prototype or example of a product, but does not include all products produced using the intellectual property. Finally, the court can infer that the purpose of this provision is to allow the licensee to exploit its right to the underlying intellectual property.

Civil Procedure > Appeals > Reviewability of Lower
Court Decisions > Preservation for Review

HN14 **Reviewability of Lower Court Decisions, Preservation for Review**

Absent the most extraordinary circumstances, legal theories not raised squarely in the lower court cannot be broached for the first time on appeal.

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

HN15 **Executory Contracts & Unexpired Leases, Rejections**

In defining the intellectual property eligible for the protection of [11 U.S.C.S. § 365\(n\)](#), Congress expressly listed six kinds of intellectual property. [11 U.S.C.S. § 101\(35A\)](#). Trademark licenses (hardly something one would forget about) are not listed, even though relatively obscure property such as "mask work protected under Chapter 9 of Title 17" is included. [11 U.S.C.S. § 101\(35A\)](#). Nor does the statute contain any catchall or residual clause from which one might infer the inclusion of properties beyond those expressly listed.

Bankruptcy Law > Procedural Matters > Judicial
Review

HN16 **Procedural Matters, Judicial Review**

What the Bankruptcy Code provides, a judge cannot override by declaring that enforcement would be inequitable. Whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.

Bankruptcy Law > Administrative
Powers > Executory Contracts & Unexpired
Leases > Rejections

Business & Corporate
Compliance > ... > Trademark
Law > Conveyances > Licenses

HN17 **Executory Contracts & Unexpired Leases, Rejections**

It is the court's obligation to interpret the Bankruptcy Code clearly and predictably using well established principles of statutory construction. The court favors the categorical approach of leaving trademark licenses unprotected from court-approved rejection, unless and until Congress should decide otherwise.

Counsel: Robert J. Keach, with whom Lindsay K.Z. Milne and Bernstein, Shur, Sawyer & Nelson, P.A. were on brief, for appellant.

Lee A. Harrington, with whom Daniel W. Sklar and Nixon Peabody LLP were on brief, for appellee.

Daniel Schimizzi

Judges: Before Torruella, Lynch, and Kayatta, Circuit Judges. TORRUELLA, Circuit Judge (Concurring in part, dissenting in part).

Opinion by: KAYATTA

Opinion

[*392] KAYATTA, Circuit Judge. [HN1](#)¹ Generally speaking, when a company files for protection under Chapter 11 of the Bankruptcy Code, the trustee or the debtor-in-possession may secure court approval to "reject" any executory contract of the debtor, meaning that the other party to the contract is left with a damages claim for breach, but not the ability to compel further performance. *11 U.S.C. §§ 365(a), 1107(a)*; see *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531-32, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984); *Mason v. Official Comm. of Unsecured Creditors, for FBI Distrib. Corp. & FBC Distrib. Corp. (In re FBI Distrib. Corp.)*, 330 F.3d 36, 43-44 (1st Cir. 2003). When the rejected contract, however, is one "under which the debtor is a licensor of a right to intellectual property," the licensee may elect to "retain its rights . . . to such intellectual property," thereby continuing the debtor's duty to license the intellectual property. *11 U.S.C. § 365(n)(1)*. In this case, Tempnology, LLC ("Debtor") -- a debtor-in-possession seeking to reorganize under Chapter 11 -- rejected an agreement [*2] giving certain marketing and distribution rights to Mission Product Holdings, Inc. The parties agree that Mission can insist that the rejection not apply to nonexclusive patent licenses contained in the rejected agreement. They disagree as to whether the rejection applies to the agreement's grants of a trademark license and of exclusive rights to sell certain of Debtor's goods. In the case of the trademark license, resolving that disagreement poses for this circuit an issue of first impression concerning which other circuits are split. For the following reasons, we agree with the bankruptcy court that the rejection left Mission with only a pre-petition damages claim in lieu of any obligation by Debtor to further perform under either the trademark license or the grant of exclusive distribution rights.

I.

Debtor made specialized products -- such as towels, socks, headbands, and other accessories -- designed to remain at low temperatures even when used during exercise, which it marketed under the "Coolcore" and "Dr. Cool" brands. A significant intellectual property portfolio supported Debtor's products. This portfolio consisted of two issued patents, four pending patents, research studies, [*3] and a multitude of registered and pending trademarks.

On November 21, 2012, Mission and Debtor executed a Co-Marketing and Distribution Agreement, which serves as the focal point of this appeal. The Agreement provided Mission with three relevant categories of rights.

First, Debtor granted Mission distribution rights to certain of its manufactured [*393] products within the United States.¹ These products, called "Cooling Accessories," were defined in the Agreement as "products of the specific types listed on Exhibit A" and "manufactured by or on behalf of [Debtor]." They also included "additional products that are hereafter developed by [Debtor]." Exhibit A broke down the thirteen listed products into two categories: "Exclusive" and "Non-Exclusive" Cooling Accessories. For "Exclusive Cooling Accessories" -- comprised of towels, wraps, hoodies, bandanas, multi-chills, and doo rags -- Debtor agreed that "it will not license or sell" the products "to anyone other than [Mission] during the Term." Mission's rights with respect to the remaining Cooling Accessories -- comprised of socks, headbands, wristbands, sleeves, skullcaps, yoga mats, and baselayers -- were nonexclusive because Debtor reserved [*4] for itself the "right to sell . . . to vertically integrated companies as well as customers that are not Sports Distributors or retailers in the Sporting Channel."

Second, Debtor granted Mission a nonexclusive license to Debtor's intellectual property. This "non-exclusive, irrevocable, royalty-free, fully paid-up, perpetual, worldwide, fully-transferable license" granted Mission the right "to sublicense (through multiple tiers), use, reproduce, modify, and create derivative work based on and otherwise freely exploit" Debtor's products -- including Cooling Accessories -- and its intellectual

¹ In addition to the United States, the exclusive geographic territory also included "other countries and territories that [Mission] acquires exclusive distribution rights to pursuant to its first rights of refusal and notice."

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property. This irrevocable license, however, expressly excluded any rights to Debtor's trademarks.

Trademarks were the subject of the third bucket of rights. Section 15(d) of the Agreement granted Mission a "non-exclusive, non-transferable, limited license" for the term of the Agreement "to use [Debtor's] trademark and logo (as well as any other Marks licensed hereunder) for the limited purpose of performing its obligations hereunder, exercising its rights and promoting the purposes of this Agreement." This license came with limitations. Mission was forbidden from using the trademarks in a manner that was disparaging, **[**5]** inaccurate, or otherwise inconsistent with the terms of the Agreement. Further, Mission was required to "comply with any written trademark guidelines" and Debtor had "the right to review and approve all uses of its Marks," except for certain pre-approved uses.

The Agreement also included a provision permitting either party to terminate the Agreement without cause. On June 30, 2014, Mission exercised this option, triggering a "Wind-Down Period" of approximately two years. Debtor, in turn, issued a notice of immediate termination for cause on July 22, 2014, claiming that Mission's hiring of Debtor's former president violated the Agreement's restrictive covenants. Pursuant to the Agreement's terms, Mission's challenge to Debtor's immediate termination for cause went before an arbitrator. The arbitrator determined that Debtor had waived any grounds for immediate termination under the restrictive covenant and that the Agreement remained in effect until the expiration of the Wind-Down Period. That ruling meant that Mission was contractually entitled to retain its distribution and trademark rights until July 1, 2016, and its nonexclusive intellectual property rights in perpetuity.

Intervening **[**6]** events, however, put an earlier end to the parties' contractual relationship. Although Debtor posted profits in 2012, its financial outlook dimmed. After **[*394]** accruing multi-million dollar net operating losses in 2013 and 2014, Debtor filed a voluntary petition for Chapter 11 bankruptcy on September 1, 2015. The following day, Debtor moved to reject seventeen of its contracts, including the Agreement, pursuant to [11 U.S.C. § 365\(a\)](#).

HN2  [Section 365\(a\)](#) permits a debtor-in-possession,² with the court's approval, to

² **HN3**  Although this provision of the statute only refers to

"reject any executory contract" that, in the debtor's business judgment, is not beneficial to the company. See [Agarwal v. Pomona Valley Med. Grp., Inc. \(In re Pomona Valley Med. Grp., Inc.\)](#), 476 F.3d 665, 669-71 (9th Cir. 2007); see also [Bildisco & Bildisco](#), 465 U.S. at 520, 523. In its memoranda supporting its motion, Debtor informed the bankruptcy court that it sought to reject the Agreement because it hindered Debtor's ability to derive revenue from other marketing and distribution opportunities. Debtor faulted Mission -- and particularly the Agreement's grant of exclusive distribution rights -- for its bankruptcy. It alleged that the Agreement "suffocated the Debtor's ability to market and distribute its products" after Mission failed to fulfill its obligations, "essentially starving the Debtor from any income."

Mission objected to the rejection motion, arguing **[**7]** that [11 U.S.C. § 365\(n\)](#) allowed Mission to retain both its intellectual property license and its exclusive distribution rights. **HN4**  [Section 365\(n\)](#) provides an exception from [section 365\(a\)](#)'s broad rejection authority by limiting the debtor-in-possession's ability to terminate intellectual property licenses it has granted to other parties.

On September 21, 2015, the bankruptcy court granted Debtor's motion to reject certain executory contracts, except for the Agreement, for which it ordered further hearing. In a subsequent one-sentence order, the bankruptcy court granted the motion to reject the Agreement, "subject to Mission Product Holdings's election to preserve its rights under [11 U.S.C. § 365\(n\)](#)." Debtor then moved for a determination of the applicability and scope of Mission's rights under [section 365\(n\)](#). In that motion, Debtor conceded that Mission retained its nonexclusive, perpetual license to certain of Debtor's intellectual properties -- which did not include its trademarks -- but argued that [section 365\(n\)](#) did not cover either Mission's exclusive distribution rights or the trademark license. Mission again objected, arguing that the relief Debtor requested required an adversary proceeding pursuant to [Rule 7001\(2\) of the Federal Rules of Bankruptcy Procedure](#).

After holding a nontestimonial hearing, the bankruptcy court concluded **[**8]** that Mission's election pursuant to

the powers of a trustee, per [11 U.S.C. § 1107\(a\)](#), a Chapter 11 "debtor in possession shall have all the rights . . . and powers, and shall perform all the functions and duties, . . . of a trustee serving in a case under this chapter." See also [In re FBI Distrib. Corp.](#), 330 F.3d at 42 n.8 (citing this provision).

879 F.3d 389, *394; 2018 U.S. App. LEXIS 870, **8

[section 365\(n\)](#) did not preserve either the exclusive distribution rights or the trademark license. The court found that [section 365\(n\)](#) only protected intellectual property rights, and Mission's exclusive distributorship could not fairly be characterized as such. With respect to trademarks, the court reasoned that Congress's decision to leave trademarks off the definitional list of intellectual properties in [11 U.S.C. § 101\(35A\)](#) left the trademark license unprotected from rejection. Finally, the court rejected Mission's argument that the Bankruptcy Code required an adversary proceeding to determine the issue. The court viewed "the Motion in the context of rejection under [\[*395\] § 365](#), which is a contested matter under [Fed. R. Bankr. P. 9014](#)."

Mission appealed to the Bankruptcy Appellate Panel for the First Circuit ("BAP"). The BAP affirmed the bankruptcy court's order with respect to Mission's exclusive distribution rights, concluding that "Mission's attempt to re-characterize its exclusive product distribution rights under the Agreement as an intellectual property license [is] unsupported by either the letter or the spirit of the Agreement." Like the bankruptcy court, the BAP read [section 365\(n\)](#)'s protection of "exclusivity provision[s]" as [\[**9\]](#) encompassing only the exclusivity attributes, such as they might be, of intellectual property rights. The BAP also affirmed the bankruptcy court's determination that the [section 365\(n\)](#) motion did not require Debtor to commence an adversary proceeding under [Bankruptcy Rule 7001](#).

Regarding trademarks, however, the BAP diverged from the bankruptcy court. Although the BAP agreed that [section 365\(n\)](#) failed to protect Mission's rights to Debtor's trademarks, it disagreed as to the effect of that conclusion. Rather than finding that rejection extinguished the non-debtor's rights, the BAP followed the Seventh Circuit's ruling in [Sunbeam Products, Inc. v. Chicago American Manufacturing, LLC](#), [686 F.3d 372 \(7th Cir. 2012\)](#). The BAP held that, because [section 365\(g\)](#) deems the effect of rejection to be a breach of contract, and a licensor's breach of a trademark agreement outside the bankruptcy context does not necessarily terminate the licensee's rights, rejection under [section 365\(g\)](#) likewise does not necessarily eliminate those rights. Thus, the BAP reversed the bankruptcy court's determination that Mission no longer had protectable rights in Debtor's trademarks and trade names.

This appeal ensued. We affirm the bankruptcy court's determinations. We conclude that [section 365\(n\)](#) does not apply to Mission's right to be the exclusive distributor

of Debtor's products, or to its [\[**10\]](#) trademark license. Unlike the BAP and the Seventh Circuit, we also hold that Mission's right to use Debtor's trademarks did not otherwise survive rejection of the Agreement.

II.

[HN5](#)[↑] On appeal from a decision by the BAP, "[w]e accord no special deference to determinations made by the [BAP]," and instead "train the lens of our inquiry directly on the bankruptcy court's decision."³ [Wheeling & Lake Erie Ry. Co. v. Keach \(In re Montreal, Maine & Atl. Ry., Ltd.\)](#), [799 F.3d 1, 5 \(1st Cir. 2015\)](#). In doing so, we review the bankruptcy court's factual findings for clear error and its conclusions of law de novo. [DeGiacomo v. Traverse \(In re Traverse\)](#), [753 F.3d 19, 24 \(1st Cir. 2014\)](#).

III.

We begin with the statutory framework that defines the scope of Debtor's ability, "subject to the court's approval," to "assume or reject any executory contract or unexpired lease of the debtor." [11 U.S.C. § 365\(a\)](#). [HN6](#)[↑] Executory contracts, although not defined in the Bankruptcy Code, are generally considered to be contracts "on which performance is due to some extent on both sides." [In re FBI](#) [\[*396\]](#) [Distrib. Corp.](#), [330 F.3d at 40 n.5](#) (quoting [Bildisco & Bildisco](#), [465 U.S. at 522 n.6](#)); see also [Parkview Adventist Med. Ctr. v. United States ex rel. Dep't of Health & Human Servs.](#), [842 F.3d 757, 763 n.12 \(1st Cir. 2016\)](#). [Section 365\(a\)](#) permits the debtor-in-possession to assume those contracts that are beneficial and reject those that may hinder its recovery. [In re FBI Distrib. Corp.](#), [330 F.3d at 42](#). It provides an "elixir for use in nursing a business back to good health" by allowing the trustee or debtor-in-possession to "prescribe it as an emetic to purge the bankruptcy estate of [\[**11\]](#) obligations that promise to hinder a reorganization." [Thinking Machs. Corp. v. Mellon Fin. Servs. Corp. \(In re Thinking Machs. Corp.\)](#), [67 F.3d 1021, 1024 \(1st Cir. 1995\)](#). [Section 365\(a\)](#) thus

³ We do nevertheless pay great attention to the considered opinion of the three experienced bankruptcy judges who sit on the BAP. Among other things, our consideration of such an opinion reduces the likelihood that our court of general appellate jurisdiction is blindsided by the effect that a decision might have on matters or issues of bankruptcy law and practice that are beyond the ken of the parties in a particular proceeding.

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further Chapter 11's "paramount objective" of rehabilitating debtors. *In re FBI Distrib. Corp.*, 330 F.3d at 41. In lieu of the rejected obligation, a debtor is left with a liability for what the Code deems to be a pre-petition breach of the contract. 11 U.S.C. § 365(g) ("[T]he rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease . . . immediately before the date of the filing of the petition . . .").

In 1985, the Fourth Circuit was tasked with applying this framework to an intellectual property license granted by a debtor. See *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043 (4th Cir. 1985). The Fourth Circuit held that the term "executory contract" in *section 365(a)* encompassed intellectual property licenses, *id.* at 1045, and that under *section 365(g)* the effect of rejection was to terminate an intellectual property license, *id.* at 1048. The court based its reasoning on what it saw as the animating principles behind *section 365(g)*, thus distinguishing "statutory breach" from common law breach:

Even though § 365(g) treats rejection as breach, the legislative history of § 365(g) makes clear that the purpose of the provision is to provide only a damages remedy for the non-bankrupt party. . . . [T]he statutory "breach" contemplated by § 365(g) controls, and provides only [*12] a money damages remedy for the non-bankrupt party. . . . Allowing specific performance would obviously undercut the core purpose of rejection under § 365(a).

Id.

Three years later, Congress responded. Rather than amending either *section 365(a)* or *section 365(g)*, Congress enacted a brand new *section 365(n)*. See S. Rep. No. 100-505, at 8 (1988). *HN7* [↑] *Section 365(n)(1)* gives to a licensee of intellectual property rights a choice between treating the license as terminated and asserting a claim for pre-petition damages -- a remedy the licensee held already under *section 365(g)* -- or retaining its intellectual property rights under the license. It states, in full:

If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect--

(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the

licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

(B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy [*13] law to specific performance of such contract) under such [*397] contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for--

- (i) the duration of such contract; and
- (ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

11 U.S.C. § 365(n)(1).

Congress also amended the definition of intellectual property, thus defining the scope of the new *section 365(n)(1)*. Under 11 U.S.C. § 101(35A),

The term "intellectual property" means--

- (A) trade secret;
- (B) invention, process, design, or plant protected under title 35;
- (C) patent application;
- (D) plant variety;
- (E) work of authorship protected under title 17; or
- (F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable nonbankruptcy law.

IV.

With the foregoing framework in mind, we turn now to Mission's arguments on appeal. We consider first its contention that its exclusive distribution rights remained unaffected by Debtor's rejection of the Agreement. We then address Mission's contention that its trademark license [*14] also remained in effect during the two-year Wind-Down Period. What is at issue for these parties, practically speaking, is whether to classify as pre-petition or post-petition liability any damages caused by Debtor's failure to honor its executory obligations

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during the two-year Wind-Down Period.

A.

[HN8](#)  [Section 365\(n\)\(1\)\(B\)](#) allows Mission "to retain its rights (including a right to enforce any exclusivity provision of such contract . . .) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law)." Mission would have us read the words "any exclusivity provision of such contract" in the foregoing parenthetical as meaning any "exclusivity provision" in the entire contract (or any supplementary agreement), whether or not the provision grants exclusive use of a pertinent intellectual property right.

We disagree. [HN9](#)  We start in [section 365\(a\)](#) with the universe of all executory contracts that a debtor may seek to reject; [section 365\(n\)\(1\)](#) then focuses on a subset of that universe ("executory contract[s] under which the debtor is a licensor of a right to intellectual property"); [subsection \(n\)\(1\)\(B\)](#) then says what **[**15]** happens to intellectual property rights granted under such contracts (the licensee may "retain its rights"); and the parenthetical merely makes clear that those rights "to such intellectual property" include any exclusivity attributes of those rights. In this manner, [subsection \(n\)\(1\)\(B\)](#) protects, for example, an exclusive license to use a patent, but does not protect an exclusive right to sell a product merely because that right appears in a contract that also contains a license to use intellectual property.

Our reading aligns with the legislative record. In enacting [section 365\(n\)](#), Congress **[*398]** made clear that it was responding to a "particular problem arising out of recent court decisions." S. Rep. No. 100-505, at 5. The limited "purpose of the bill is to amend [Section 365 of the Bankruptcy Code](#) to make clear that the rights of an intellectual property licensee to use the licensed property cannot be unilaterally cut off." *Id.* at 1. The amendment is "not in any way intended to address broader matters under [Section 365](#)." *Id.* at 5. Congress, it seems, was focused on a narrow issue, and only intended its amendment to address that issue. It did not intend the scope of its amendment to extend beyond the licensee's bargained-for intellectual property rights post-rejection, as Mission's **[**16]** position would necessarily require. Further supporting our reading of the statutory text, Congress's description of the protected exclusivity

rights in both relevant congressional reports is limited to license rights, and does not mention or imply the protection of exclusive rights other than those to intellectual property. The House Report, describing the House's version of the bill,⁴ states that, "[u]nder the legislation, any right in the license agreement giving the licensee an exclusive license will still be enforceable by the licensee, but other rights of the licensee cannot be specifically enforced." H.R. Rep. No. 100-1012, at 6 (1988). Similarly, the Senate Report says that "if the contract granted exclusive use to the licensee, such exclusivity would be preserved to the licensee." S. Rep. No. 100-505, at 9.

Mission's fallback position is to argue that, in this instance, its exclusive distribution right is, *de facto*, a provision that renders its right to use Debtor's intellectual property exclusive. The unstated premise is that because Mission has an exclusive right to sell certain of Debtor's products made using Debtor's intellectual property, no one else can use the intellectual **[**17]** property. Hence, Mission reasons, the exclusive distribution right is an "exclusivity provision" of the intellectual property right.

The most obvious defect in this argument is its premise. The Agreement and record are clear that Debtor can use its intellectual property to make and sell products other than those for which the Agreement grants Mission exclusive distribution rights. The only thing that is exclusive is the right to sell certain products, not the right to practice, for example, the patent that is used to make those products. An exclusive right to sell a product is not equivalent to an exclusive right to exploit the product's underlying intellectual property.

But, argues Mission, because of its exclusive distribution rights, no one can use the Debtor's patent to make at least some products if those products are to be sold in Mission's territory. Perhaps. But this is simply a restriction on the right to sell certain products that, like many products, happen to be made using a patent. And the exclusivity Mission seeks to maintain would apply fully even if there were no patent license at all. [HN10](#)  Given that the right to sell a product is clearly not included within the statute's **[**18]** definition of intellectual property, we are not going to treat it as such merely because of a coincidental practical effect it may have in limiting the scope of the manner in which a

⁴ Congress ultimately adopted the Senate version, although the language of this section of the House bill is identical to its Senate counterpart.

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patent might be exploited, especially where the Agreement itself expressly makes clear that any patent license is nonexclusive. To hold otherwise would be to find buried in a parenthetical to a statutory subsection an implied exception to rejection that would, [*399] in practical terms, likely cover as much commercial territory as do some of the rights expressly defined as protected. See Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 468, 121 S. Ct. 903, 149 L. Ed. 2d 1 (2001) ("Congress . . . does not, one might say, hide elephants in mouseholes."). The fact that Mission can cite no circuit court precedent for its effort to paint its exclusive distribution right as a de facto exclusive intellectual property right further buttresses our conclusion.⁵

Mission also argues that its nonexclusive license of intellectual property "lacks meaningful value" unless it retains an exclusive right to sell certain of Debtor's products. Why this is so is not apparent given that section 365(n) protects the nonexclusive license, hence Mission retained the right to use the intellectual property. The Agreement itself spells out myriad [*19] ways that Mission could exploit its nonexclusive intellectual property rights that were presumably unaffected by rejection of its exclusive distribution right: Mission could still "sublicense (through multiple tiers), use, reproduce, modify, and create derivative work based on" Debtor's intellectual property. And if those rights lacked meaningful value, that hardly becomes a reason for turning rights that are not intellectual property rights into intellectual property rights. Rather, it simply suggests that most of the contract's value was apparently in the exclusive distribution agreement.

Nor does the reference in section 365(n)(1)(B) to "any embodiment of such intellectual property" help Mission. HN11 [↑] Embodiment is a term of art associated with intellectual property. The Senate Report includes a letter informing the Judiciary Committee of the Department of Commerce's view of the bill, which states that "[a]lthough 'embodiment' is not defined, we assume the term arises from the copyright law." S. Rep. No. 100-505, at 12. Black's Law Dictionary tags the term as belonging to patent law, and offers three alternate definitions: (1) "[t]he tangible manifestation of an invention"; (2) "[t]he method for using this [*20]

tangible form"; or (3) "[t]he part of a patent application or patent that describes a concrete manifestation of the invention." Embodiment, Black's Law Dictionary (10th ed. 2014). Black's Law Dictionary further notes that while intellectual property "is a mental construct" without "physical structure," an embodiment "is a specific physical form of the invention" and thus "[e]ach embodiment exists in the real world." Id. (quoting Morgan D. Rosenberg, The Essentials of Patent Claim Drafting xvii (2012)).

HN12 [↑] Where the statutory language includes a term of art, resort to sources beyond the text is particularly appropriate to make clear the intended meaning of that term. See Molzof v. United States, 502 U.S. 301, 307, 112 S. Ct. 711, 116 L. Ed. 2d 731 (1992). Both the Senate Report and the Department of Commerce letter offer additional insight into the meaning of "embodiment" and its application to a licensee's rights. The Senate Report provides three examples of protected rights, and concludes with two traits that all protected rights must contain:

[T]he parties might have agreed that the licensor would prepare a prototype incorporating the licensed intellectual property. If such a prototype was prepared prior to the filing of the petition for relief, but had not been delivered [*21] to [*400] the licensee at that time, then the licensee can compel the delivery of the prototype in accordance with the terms of the rejected license. Other examples of embodiments include genetic material needed to produce certain biotechnological products and computer program source codes. There are many other possible examples of embodiments, but critical to any right of the licensee to obtain such embodiments under this bill is the prepetition agreement of the parties that the licensee have access to such material and the physical existence of such material on the day of the bankruptcy filing.

S. Rep. No. 100-505, at 9-10 (emphasis added). The Department of Commerce letter states:

Where the licensed intellectual property is not a work of authorship, we assume the term "embodiment" would be interpreted in a similar sense of enablement in a manner reasonable in the circumstances and would not necessarily include all physical manifestations of the intellectual property. For example, an embodiment of a licensed process might be interpreted to include technical data sufficient to enable the licensee to operate the

⁵ Mission cites Encino Bus. Mgmt., Inc. v. Prize Frize, Inc. (In re Prize Frize, Inc.), 32 F.3d 426 (9th Cir. 1994), but the contract in that case granted an "exclusive license to utilize the proprietary rights." Id. at 427. This case is clearly distinguishable, as Mission was granted no such right.

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process, but not a manufacturing facility using (or embodying) the process; and **[**22]** an embodiment of a licensed invention might be interpreted to include a sample of the invention, but not all inventory.

S. Rep. No. 100-505, at 12 (emphasis added).

A few common themes appear in these explanations. First, [HN13](#) the pre-petition agreement must give the licensee access to the embodiment of intellectual property. Second, an embodiment of intellectual property is a tangible or physical object that exists pre-petition. Third, an embodiment of intellectual property is something inherently limited in number -- it is a prototype or example of a product, but does not include all products produced using the intellectual property. Finally, we can infer that the purpose of this provision is to allow the licensee to exploit its right to the underlying intellectual property.

Here, we have no object to which Mission requires access in order to exploit an intellectual property right. Rather, we have a prosaic, nonexclusive right to use a patented process, and an unremarkable and entirely independent right to be the exclusive distributor of some but not all goods made with that process. There is simply no "embodiment" at issue in the relevant statutory sense.

Nor does this case, as Mission contends, **[**23]** bear on the enforceability of all negative covenants independent of an intellectual property license. If a party possesses an intellectual property license, perhaps the Code may protect from rejection certain negative covenants -- such as confidentiality -- that do not materially restrict the debtor's reorganization, are tied closely to the intellectual property license, and are necessary to implement its terms. See *Biosafe Int'l, Inc. v. Controlled Shredders, Inc.* (*In re Szombathy*), Nos. 94 B 15536, 95 A 01035, 1996 Bankr. LEXIS 888, 1996 WL 417121, at *11 (Bankr. N.D. Ill. July 9, 1996) rev'd in part sub nom. *Szombathy v. Controlled Shredders, Inc.*, Nos. 94 B 15536, 95 A 01035, 1997 U.S. Dist. LEXIS 5168, 1997 WL 189314 (N.D. Ill. Apr. 14, 1997). But we are not presented with that situation here.

Finally, we observe that Mission salts its brief with several undeveloped suggestions that rejection under [section 365\(a\)](#), even if allowed, might not extinguish a right to demand specific performance of the negative covenant implicit in the exclusive distribution rights. Mission attempts to support these suggestions by **[*401]** citing *In re Szombathy*, 1996 Bankr. LEXIS 888,

[1996 WL 417121](#), and by emphasizing that case's reliance on a quote from the Department of Commerce's letter to the Senate Judiciary Committee. Neither source seems to come close to carrying the meaning claimed by Mission. In any event, even as Mission tendered **[**24]** an analogous argument in connection with its trademark license (which we address, below), it never raised any such argument in the bankruptcy court as a basis for preserving its exclusive distribution rights. Hence, the argument is waived in this civil action. See *Argentaria v. Wiscovitch-Rentas (In re Net-Velázquez)*, 625 F.3d 34, 40 (1st Cir. 2010) ("The proposition is well established that, [HN14](#) 'absent the most extraordinary circumstances, legal theories not raised squarely in the lower court cannot be broached for the first time on appeal.'" (quoting *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 21 (1st Cir. 1992))).

B.

We next consider whether Mission retained its rights to use Debtor's trademarks post-rejection. [HN15](#) In defining the intellectual property eligible for the protection of [section 365\(n\)](#), Congress expressly listed six kinds of intellectual property. *11 U.S.C. § 101(35A)*. Trademark licenses (hardly something one would forget about) are not listed, even though relatively obscure property such as "mask work protected under chapter 9 of title 17" is included. *Id.* Nor does the statute contain any catchall or residual clause from which one might infer the inclusion of properties beyond those expressly listed.

One might reasonably conclude that Congress's decision not to include trademark licenses within the protective ambit of [section 365\(n\)](#) must mean that such licenses are not **[**25]** exempt from [section 365\(a\)](#) rejection. On the other hand, the conclusion that an agreement finds no haven from rejection in [section 365\(n\)](#) does not entirely exhaust the possible arguments for finding that a right under that agreement might otherwise survive rejection. For example, we have held that a counterparty's right to compel the return of its own property survives rejection of a contract under which the debtor has possession of that property. See *Abboud v. The Ground Round, Inc. (In re The Ground Round, Inc.)*, 482 F.3d 15, 19 (1st Cir. 2007). This case, though, does not present us with a request by a party following rejection to recover its own property temporarily in the hands of the debtor. Rather, it presents a demand by a party to continue using the debtor's property.

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Regarding trademarks specifically, the Senate Report states that Congress "postpone[d]" action on trademark licenses "to allow the development of equitable treatment of this situation by bankruptcy courts." S. Rep. No. 100-505, at 5. The only circuit to address this issue squarely has resisted the temptation to find in this ambiguous comment outside the statutory text a toehold for unfettered "equitable" dispensations from [section 365\(a\)](#) rejection when it would otherwise apply. See [Sunbeam, 686 F.3d at 375](#) [HN16](#)  ("What the Bankruptcy Code provides, a judge cannot override by **[**26]** declaring that enforcement would be 'inequitable.'). We agree. See [Law v. Siegel, 571 U.S. 415, 134 S. Ct. 1188, 1194-95, 188 L. Ed. 2d 146 \(2014\)](#) ("We have long held that 'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of' the Bankruptcy Code." (quoting [Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 108 S. Ct. 963, 99 L. Ed. 2d 169 \(1988\)](#))).

[*402] There is, though, an alternative argument for finding that a right to use a debtor's trademark continues post-rejection. That argument rests not on equitable dispensation from rejection, but instead on an exploration of exactly what rejection means. The argument, as accepted by the Seventh Circuit in [Sunbeam](#), runs thus: Under [section 365\(g\)](#), [section 365\(a\)](#) rejection constitutes a breach of contract that "frees the estate from the obligation to perform." [Sunbeam, 686 F.3d at 377](#) (quoting [Thompkins v. Lil' Joe Records, Inc., 476 F.3d 1294, 1306 \(11th Cir. 2007\)](#)). "But nothing about this process implies that any rights of the other contracting party have been vaporized." *Id.* Therefore, reasoned the Seventh Circuit, while rejection converts a debtor's duty to perform into a liability for pre-petition damages, it leaves in place the counterparty's right to continue using a trademark licensed to it under the rejected agreement. In so reasoning, the Seventh Circuit found itself unpersuaded by the contrary approach taken by the Fourth Circuit in [Lubrizol, Sunbeam, 686 F.3d at 378](#); see also [In re Exide Techs., 607 F.3d 957, 964-68 \(3d Cir. 2010\)](#) (Ambro, J., concurring). **[**27]**

Of course, to be precise, rejection as Congress viewed it does not "vaporize" a right. Rather, rejection converts the right into a pre-petition claim for damages. Putting that point of vocabulary to one side, and leaving open the possibility that courts may find some unwritten limitations on the full effects of [section 365\(a\)](#) rejection, we find trademark rights to provide a poor candidate for such dispensation. Congress's principal aim in providing

for rejection was to "release the debtor's estate from burdensome obligations that can impede a successful reorganization." [Bildisco & Bildisco, 465 U.S. at 528](#). [Sunbeam](#) therefore largely rests on the unstated premise that it is possible to free a debtor from any continuing performance obligations under a trademark license even while preserving the licensee's right to use the trademark. See [Sunbeam, 686 F.3d at 377](#). Judge Ambro's concurrence in [In re Exide Technologies](#) shares that premise. See [607 F.3d at 967](#) (Ambro, J., concurring) (assuming that the bankruptcy court could allow the licensee to retain trademark rights even while giving the debtor "a fresh start").

Careful examination undercuts that premise because the effective licensing of a trademark requires that the trademark owner -- here Debtor, followed by any purchaser **[**28]** of its assets -- monitor and exercise control over the quality of the goods sold to the public under cover of the trademark. See 3 J. Thomas McCarthy, [McCarthy on Trademarks & Unfair Competition](#) § 18:48 (5th ed. 2017) ("Thus, not only does the trademark owner have the right to control quality, when it licenses, it has the duty to control quality."). Trademarks, unlike patents, are public-facing messages to consumers about the relationship between the goods and the trademark owner. They signal uniform quality and also protect a business from competitors who attempt to profit from its developed goodwill. See [Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc., 982 F.2d 633, 636 \(1st Cir. 1992\)](#). The licensor's monitoring and control thus serve to ensure that the public is not deceived as to the nature or quality of the goods sold. Presumably, for this reason, the Agreement expressly reserves to Debtor the ability to exercise this control: The Agreement provides that Debtor "shall have the right to review and approve all uses of its Marks," except for certain pre-approved uses. Importantly, failure to monitor and exercise this control results in a so-called "naked license," jeopardizing the continued validity of the owner's own trademark rights. McCarthy, *supra*, **[*403]** § 18:48; see also [Eva's Bridal Ltd. v. Halanick Enters., Inc., 639 F.3d 788, 790 \(7th Cir. 2011\)](#) ("[A] naked license **[**29]** abandons a mark."); [Restatement \(Third\) of Unfair Competition § 33](#) ("The owner of a trademark, trade name, collective mark, or certification mark may license another to use the designation. . . . Failure of the licensor to exercise reasonable control over the use of the designation by the licensee can result in abandonment . . .").

The Seventh Circuit's approach, therefore, would allow Mission to retain the use of Debtor's trademarks in a

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manner that would force Debtor to choose between performing executory obligations arising from the continuance of the license or risking the permanent loss of its trademarks, thereby diminishing their value to Debtor, whether realized directly or through an asset sale. Such a restriction on Debtor's ability to free itself from its executory obligations, even if limited to trademark licenses alone, would depart from the manner in which [section 365\(a\)](#) otherwise operates. And the logic behind that approach (no rights of the counterparty should be "vaporized" in favor of a damages claim) would seem to invite further leakage. If trademark rights categorically survive rejection, then why not exclusive distribution rights as well? Or a right to receive advance notice before termination of performance? And so on. **[**30]**

Although claiming to follow *Sunbeam*, our dissenting colleague seems to reject its categorical approach in favor of what *Sunbeam* itself rejected -- an "equitable remedy" that would consider in some unspecified manner the "terms of the Agreement, and non-bankruptcy law." See *Sunbeam*, 686 F.3d at 375-76. In so doing, our colleague gives great weight to a few lines in the Senate Report, treating them variously as "guidance," as a statement of Congress's "intent," and even as a mandate that "instruct[s]" the courts. In short, the dissent's interpretative approach seems to accord a line in the Senate Report the force of a line in the statute itself. Moreover, it does so by taking a line out of the Senate Report addressing [section 365\(n\)](#), which itself has no relevant ambiguity, and then uses that line to inform the dissent's interpretation of the previously enacted [section 365\(a\)](#). And while it is true that the Senate Report references equitable consideration, the dissent also seems to overlook the fact that when Congress otherwise intended to grant bankruptcy courts the ability to "equitably" craft exceptions to the Code's rules, it did so in the statute itself. See, e.g., [11 U.S.C. § 365\(d\)\(5\)](#) (requiring the trustee to perform the obligations of the debtor until **[**31]** an unexpired lease is assumed or rejected "unless the court, after notice and a hearing and based on the equities of the case, orders otherwise"); [id. § 552\(b\)\(1\)](#) (stating that a security agreement may extend to proceeds or profits acquired after the commencement of the case "to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise"); see also [id. § 502\(j\)](#) ("A reconsidered claim may be allowed or disallowed according to the equities of the case."); [id. § 557\(d\)\(2\)\(D\)](#) (allowing the expedited disposition of grain

by, inter alia, "such other methods as is equitable in the case"); [id. § 723\(d\)](#) ("[T]he court, after notice and a hearing, shall determine an equitable distribution of the surplus so recovered"); [id. § 1113\(c\)](#) (listing whether "the balance of the equities clearly favors rejection of such agreement" as a factor for a court to consider in determining whether to approve an application for rejection of a collective bargaining agreement); [id. § 1114\(g\)](#) (requiring a court to modify the payment of retirement benefits **[*404]** if the court finds that "such modification is necessary to permit the **[**32]** reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities").

Even if we did sit in the chancellor's chair in applying [section 365\(a\)](#), we would likely hesitate to adopt our colleague's approach. Under such a case-specific, equitable approach, one might in theory preclude rejection only where the burden of quality assurance on the debtor will be minimal. The problem, though, is that in the bankruptcy context especially, where the licensor and licensee are at odds over continuing to deal with each other, the burden will likely often be greater than normal. Here, for example, the adversarial relationship between Debtor and Mission may portend less eager compliance. More importantly, in all cases there will be some burden, and it will usually not be possible to know at the time of the bankruptcy proceeding how great the burden will prove to be, as it will depend very much on the subsequent actions of the licensee. Conversely, the burden imposed on the counterparty of having its trademark right converted to a pre-petition damages claim at a time when the relationship signaled **[**33]** by the trademark is itself ending will in most instances be less than the burden of having patent rights so converted. The counterparty may still make and sell its products -- or any products -- just so long as it avoids use of the trademark precisely when the message conveyed by the trademark may no longer be accurate. We therefore find unappealing the prospect of saddling bankruptcy proceedings with the added cost and delay of attempting to draw fact-sensitive and unreliable distinctions between greater and lesser burdens of this type. See *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 649, 132 S. Ct. 2065, 182 L. Ed. 2d 967 (2012) [HN17](#)  ("[I]t is our obligation to interpret the Code clearly and predictably using well established principles of statutory construction."). There is, too, the public's interest in not being misled as to the origin and quality of goods that consumers buy. In sum, the approach taken by *Sunbeam* entirely ignores the

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residual enforcement burden it would impose on the debtor just as the Code otherwise allows the debtor to free itself from executory burdens. The approach also rests on a logic that invites further degradation of the debtor's fresh start options. Our colleague's alternative, "equitable" approach seems similarly flawed, and has the added drawback **[**34]** of imposing increased uncertainty and costs on the parties in bankruptcy proceedings. For these reasons, we favor the categorical approach of leaving trademark licenses unprotected from court-approved rejection, unless and until Congress should decide otherwise. *See* James M. Wilton & Andrew G. Devore, *Trademark Licensing in the Shadow of Bankruptcy*, *68 Bus. Law.* 739, 771-76 (2013).

C.

Mission's final argument is that the bankruptcy court erred by not holding an adversary proceeding under *Bankruptcy Rule 7001*. Mission contends that because the rule governing adversary proceedings includes within its ambit determinations of an "interest in property," the bankruptcy court was required to hold such a hearing to determine the scope of Mission's rights. The bankruptcy court instead treated the issue as a contested matter under *Rule 9014*. We need not address this argument directly, because we find that even if an adversary proceeding was required, any error was harmless.

[*405] Mission contends that it was prejudiced because it was not given a fair opportunity to develop an evidentiary record. But the issues at stake can be resolved -- and are resolved, in our de novo review -- without reliance on any disputed facts outside the four corners of the Agreement. **[**35]** The logical leap Mission asks us to make -- that extrinsic evidence would be both appropriate and lead to a different result -- is unsupported by any possible extrinsic evidence to which Mission points. Further, the bankruptcy court permitted Mission and Debtor to conduct discovery following its September 21, 2015 order. There is no evidence, however, that either party had a need for or in fact did conduct discovery, and if they did, Mission offers no explanation for how this discovery generated any factual dispute that need be resolved in a testimonial hearing. Requiring Debtor to commence an adversary proceeding would only have delayed the resolution of critical issues without changing the bankruptcy court's ultimate determination.

V.

For the foregoing reasons, the bankruptcy court's decision is affirmed.

Concur by: TORRUELLA (In Part)

Dissent by: TORRUELLA (In Part)

Dissent

TORRUELLA, Circuit Judge (Concurring in part, dissenting in part). I agree with the majority that *11 U.S.C. § 365(n)* does not protect Mission's exclusive distribution rights or its non-exclusive trademark license. The plain language of this subsection identifies "intellectual property," which, for purposes of chapter 11, does not encompass trademarks. *See 11 U.S.C. § 101(35A)*. However, **[**36]** I disagree with the majority's bright-line rule that the omission of trademarks from the protections of *section 365(n)* leaves a non-rejecting party without any remaining rights to use a debtor's trademark and logo. As Judge Easterbrook wrote, "an omission is just an omission," and simply implies that *section 365(n)* does not determine how trademark licenses should be treated -- one way or the other. *Sunbeam*, *686 F.3d at 375*. I would follow the Seventh Circuit and the BAP in finding that Mission's rights to use Debtor's trademark did not vaporize as a result of Debtor's rejection of the executory contract.

The majority focuses on the Bankruptcy Code's protection of debtors' ability to reorganize and to escape "burdensome obligations." But, as the majority acknowledges, in some situations, the Bankruptcy Code also provides protections to non-debtor parties of an executory contract, allowing the courts to determine an equitable remedy pursuant to the terms of a rejected contract. *See Ohio v. Kovacs*, *469 U.S. 274, 280, 105 S. Ct. 705, 83 L. Ed. 2d 649 (1985)*; *see also In re Nickels Midway Pier, LLC*, *255 F. App'x 633, 637-38 (3d Cir. 2007)*; *Abboud*, *482 F.3d at 19*. Thus, to determine the effect of a *section 365(a)* rejection on a trademark license, we look to the plain text of *section 365* as a whole, which dictates the parameters of such a rejection of an executory contract.

Daniel Schimizzi

879 F.3d 389, *405; 2018 U.S. App. LEXIS 870, **36

A plain language review reveals [section 365](#)'s silence as to the treatment **[**37]** of a trademark license post-rejection. Where a statute is silent, we look to the legislative history for assistance. *DiGiovanni v. Traylor Bros.*, 75 F.3d 748, 755 (1st Cir. 1996) (citing *Cabral v. I.N.S.*, 15 F.3d 193, 194 (1st Cir. 1994)). Resultantly, our examination leads us back to Congress's intent when it enacted [section 365\(n\)](#). The Senate Committee report makes clear that Congress enacted [section 365\(n\)](#) as a direct response to the Fourth Circuit's decision in *Lubrizol*, 756 F.2d 1043, where the court found that rejection of a contract for an intellectual property license deprived the licensee of all rights previously granted under that license. See S. Rep. No. 100-505, **[*406]** at 2-3. In so doing, Congress intended to "correct[] the perception of some courts that [Section 365](#) was ever intended to be a mechanism for stripping innocent licensee [sic] of rights central to the operations of their ongoing business." *Id.*, at 4.

Specific to trademark licenses, the Senate Committee report explains that the purposeful omission of trademarks was not designed to leave trademark licensees unprotected, but rather was "designed to allow more time for study, not to approve *Lubrizol*." *Sunbeam*, 686 F.3d at 375. The relevant portion of the Senate report reads:

[T]he bill does not address the rejection of executory trademark[s], ... While such rejection is of concern because of the interpretation of [\[§\] 365](#) by the **[**38]** *Lubrizol* court and others, . . . such contracts raise issues beyond the scope of this legislation. In particular, trademark . . . relationships depend to a large extent on control of the quality of the products or services sold by the licensee. Since these matters could not be addressed without more extensive study, it was determined to postpone congressional action in this area and to allow the development of equitable treatment of this situation by bankruptcy courts.

S. Rep. No. 100-505, at 5. This legislative history expresses congressional concern about the application of *Lubrizol*'s holding to trademarks licenses until further studies are done, and, rather than continue to apply *Lubrizol*'s holding, encourages "equitable treatment" by the courts to resolve disputes arising in the meantime. *Id.* Why would Congress have provided this guidance if it meant for *Lubrizol* -- the very case Congress rejected -- to apply to trademark licenses? Congress has yet to advise the courts about the results of any further studies; as such, the majority's judicially created bright-

line rule contravenes congressional intent.

The majority's view infers that the omission of trademarks from [section 101\(35A\)](#)'s definition **[**39]** of "intellectual property," and therefore the protections of [section 365\(n\)](#), implies that [section 365](#) categorically affords no protections to licensees of trademarks. Yet, Congress's own interpretation of [section 365\(n\)](#) informs us that the bill does not "address or intend any inference to be drawn concerning the treatment of executory contracts which are unrelated to intellectual property." *Id.* "In light of these direct congressional statements of intent, it is simply more freight than negative inference will bear to read rejection of a trademark license to effect the same result as termination of that license." *In re Exide Techs.*, 607 F.3d at 967 (Ambro, J., concurring) (citation and internal quotation marks omitted).

Instead, like the BAP below, I find it appropriate to view a debtor's [section 365\(a\)](#) rejection through the broader lens of [section 365](#), as the Seventh Circuit did in *Sunbeam*. [Section 365\(g\)](#) states that "the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease." [11 U.S.C. § 365\(g\)](#). Similar to other contractual breaches outside of the bankruptcy context, a rejection pursuant to [section 365\(a\)](#) does not automatically terminate a non-rejecting party's rights under a contract. *Sunbeam*, 686 F.3d at 377. Admittedly, "[w]hat the Bankruptcy Code provides, a judge cannot override by **[**40]** declaring that enforcement would be inequitable." *Id.* at 375 (internal quotation marks omitted). Given the Bankruptcy Code's silence as to the post-rejection rights that a trademark licensee does or does not retain, and in accordance with principles governing breaches of contract, we must resolve the dispute by looking to the terms of the **[*407]** contract to which these sophisticated parties agreed, and other applicable non-bankruptcy law. While the majority mistakenly insists that that this approach rejects the one followed in *Sunbeam*, it is precisely what the Seventh Circuit called for in finding that rejection does not abrogate a contract. *Id.* at 377. The majority takes issue with this consideration in what it terms as "some unspecified manner," but ignores that "the development of equitable treatment" is precisely what Congress has instructed the courts to do. See S. Rep. No. 100-505, at 6. Instead, the majority's view that a [section 365\(a\)](#) rejection eliminates a licensee's rights to the bargained-for use of a debtor's trademark effectively treats a debtor's rejection as a contract cancellation, rather than a contractual breach, putting the court at odds with legislative intent. It also "makes bankruptcy more a sword than **[**41]** a shield,

879 F.3d 389, *407; 2018 U.S. App. LEXIS 870, **41

putting debtor-licensors in a catbird seat they often do not deserve." [*In re Exide Techs.*, 607 F.3d at 967-68](#) (Ambro, J., concurring).

I respect my colleagues' concern that following the Seventh Circuit's holding that a [section 365\(a\)](#) rejection does not categorically eviscerate the trademark rights that a debtor-licensor bargained away may "require[] that the trademark owner -- here Debtor -- monitor and exercise control over the quality of the goods sold to the public" post-rejection. However, licensees have trademark quality assurance obligations under the terms of their individual contracts which can be enforced through further legal action and the equitable remedy of specific performance. In the current case, Mission's obligations are laid out in Section 15(d) of the Agreement, which states that, inter alia, Mission shall not use the trademarks in a disparaging or inaccurate manner, shall comply with written trademark guidelines, and shall not create a unitary composite mark. The majority speculates that the remaining burden on the debtor will be too great in the bankruptcy context, and therefore, if it "were in the chancellor's chair," it would not follow this approach. However, we need not enter such a debate as it is not the role **[**42]** of the courts to legislate, as the majority's approach effectively does, through the creation of bright-line rules in the face of congressional intent. Congress contemplated the majority's concern when it enacted [section 365\(n\)](#), recognizing "that there may be circumstances in which the future affirmative performance obligations under a license cannot be performed in a manner that benefits the estate." S. Rep. No. 100-505, at 4-5. The legislative history indicates that treatment of trademark licenses is one such circumstance.

Accordingly, the BAP was correct to follow the Seventh Circuit's lead in finding that, even though [11 U.S.C. § 365\(n\)](#) does not provide Mission protection of its license to use Debtor's trademarks, Debtor's rejection of the executory contract does not rescind the Agreement and eviscerate any of Mission's remaining trademark rights. Instead, as Congress has instructed the bankruptcy courts to do, the effect of Debtor's rejection on Mission's trademark license should be guided by the terms of the Agreement, and non-bankruptcy law, to determine the appropriate equitable remedy of the functional breach of contract. I respectfully dissent.

End of Document

Daniel Schimizzi

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	CASE NO.
	§	
NEIMAN MARCUS GROUP LTD, LLC,	§	20-32519 (DRJ)
<i>et al.</i> ,	§	(Chapter 11)
	§	Jointly Administered
DEBTORS ¹	§	

STATEMENT OF THE ACTING UNITED STATES TRUSTEE
PURSUANT TO COURT ORDER REGARDING THE CONDUCT
OF MARBLE RIDGE CAPITAL LP AND DAN KAMENSKY

TO THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Neiman Marcus Group LTD LLC (9435); Bergdorf Goodman Inc. (5530); Bergdorf Graphics, Inc. (9271); BG Productions, Inc. (3650); Mariposa Borrower, Inc. (9015); Mariposa Intermediate Holdings LLC (5829); NEMA Beverage Corporation (3412); NEMA Beverage Holding Corporation (9264); NEMA Beverage Parent Corporation (9262); NM Bermuda, LLC (2943); NM Financial Services, Inc. (2446); NM Nevada Trust (3700); NMG California Salon LLC (9242); NMG Florida Salon LLC (9269); NMG Global Mobility, Inc. (0664); NMG Notes PropCo LLC (1102); NMG Salon Holdings LLC (5236); NMG Salons LLC (1570); NMG Term Loan PropCo LLC (0786); NMG Texas Salon LLC (0318); NMGP, LLC (1558); The Neiman Marcus Group LLC (9509); The NMG Subsidiary LLC (6074); and Worth Avenue Leasing Company (5996). The Debtors' service address is: One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

COMES NOW the Acting United States Trustee for Region 7 (the “United States Trustee”), by and through the undersigned counsel, who respectfully submits this statement in response to the Court’s order of August 5, 2020 [Dkt. No. 1442] (the “Order”), and represents as follows:

PRELIMINARY STATEMENT AND SUMMARY

This statement sets out the evidence gathered by the United States Trustee and his preliminary analysis pursuant to the Court’s order directing a statement of position “regarding the conduct of Marble Ridge and Mr. Kamensky in this case.” Dkt. No. 1442. Marble Ridge Capital LP (“Marble Ridge”) was until recently one of the three co-chairs of the Official Committee of Unsecured Creditors (the “Committee”) appointed in the jointly administered chapter 11 cases of the Neiman Marcus Group (the “Debtors”), and Dan Kamensky, the managing partner and principal of Marble Ridge, served as Marble Ridge’s representative on the Committee. The Court’s Order expressed concern over “alarming” allegations about the conduct of Marble Ridge and Mr. Kamensky and ordered the United States Trustee to review the allegations and file this statement within fourteen days of the Order. *Id.*

Based on the United States Trustee’s time-limited investigation, on July 31, Marble Ridge, through Mr. Kamensky, breached its fiduciary duty of loyalty to the creditors it represented by coercing an outside investor to refrain from bidding against Marble Ridge on a key transaction that was considered integral to a successful plan of reorganization.² Furthermore, Marble Ridge’s initial explanation of its own actions to the Court and to the United States Trustee was, at best,

² Nevertheless, after initially refusing to bid, the outside investor ultimately made a competing offer for the assets once information about Marble Ridge’s conduct became the subject of this investigation.

incomplete and misleading. Based on these facts, further proceedings before the Court may be appropriate to permit the Court to hear from the witnesses and receive evidence concerning Marble Ridge and Mr. Kamensky and to consider what remedial measures, if any, are appropriate.³

I. SCOPE AND LIMITATIONS OF UNITED STATES TRUSTEE'S INVESTIGATION

Immediately following the August 5 Order, the United States Trustee prepared requests for documents and interviews to individuals who appeared to have knowledge relating to the allegations against Marble Ridge and Mr. Kamensky.⁴ The United States Trustee sent document requests to: (i) Richard Pachulski, counsel to the Committee; (ii) Michael Warner, co-counsel to the Committee; (iii) Moshin Meghji, financial advisor to the Committee; (iv) Eric Geller, of Jefferies Financial Group, Inc. ("Jefferies"); (v) Mr. Kamensky; (vi) Edward Weisfelner, counsel to Marble Ridge; and (vii) Chad J. Husnick and Anup Sathy, counsel to the Debtors. These requests sought:

documents and media of any kind pertaining to the potential purchase or conversion to cash of MYT Series B Preferred Shares held or to be held by the unsecured creditors of the debtors Neiman Marcus Group LTD LLC, et al. and/or any potential conflict of interest arising therefrom.

The United States Trustee directed the requests both to the individuals as well as to their respective companies and requested responses by August 10. The United States Trustee also requested a

³ Because of the preliminary and non-adversarial nature of the United States Trustee's investigation, the United States Trustee does not comment on the availability or viability of any causes of action that might be asserted by particular parties in this case.

⁴ The United States Trustee, in coordination with the Executive Office for United States Trustees, assembled a team to undertake this investigation that, in addition to the undersigned, included, among others, a former Assistant United States Attorney.

litigation hold on responsive documents. Although in many cases documents were not produced until after the August 10 deadline, the United States Trustee nevertheless received and reviewed approximately 3,200 pages of documents.

Between August 14 and August 17, the United States Trustee also conducted voluntary individual interviews via videoconference with Mr. Pachulski, Mr. Meghji, and Mr. Kamensky. In place of Mr. Geller, the United States Trustee interviewed a different Jefferies employee who requested that his name be kept anonymous in this report as a condition of his voluntary interview and cooperation. The United States Trustee agreed to this condition with respect to this statement only, and this individual will accordingly be referred to as “Jefferies Employee No. 1” or “JE1” in this statement. Mr. Weisfelner also made a presentation to the United States Trustee that sought to explain the background of Marble Ridge’s involvement with the Debtors and these cases. Each interview lasted between ninety minutes and four hours. Except in the case of Mr. Weisfelner’s presentation, a court reporter transcribed all interviews, and all witnesses were accompanied by counsel and agreed to be sworn.

This investigation was conducted on a fully voluntary basis, and the United States Trustee commends each of the persons or firms interviewed or providing documents for their cooperation. Because the United States Trustee’s investigation was not ordered under Rule 2004, the United States Trustee did not have the power to compel testimony or production of documents. Although the understandable, but short, deadline for submission of this statement somewhat constrained the United States Trustee’s work, this statement nevertheless renders sufficient evidence for the Court and the parties to determine appropriate next steps. Due to these time constraints, the United States

Trustee was unable to provide any of the parties with an opportunity to review or respond to this statement prior to its submission to the Court.⁵

II. STATEMENT OF FACTS

A. Pre-Petition Background

Marble Ridge is the holder of certain of Neiman Marcus's debt and characterizes itself as the largest single unsecured creditor of the Debtors as of the petition date. Since 2018, Marble Ridge and the Debtors have been engaged in a protracted legal dispute involving the Debtors' interests in MyTheresa, an e-commerce retailer, which were transferred to the Debtors' (non-debtor) parent in 2018 as an equity distribution (the "MyTheresa Distribution"). This transaction, which Marble Ridge has characterized as a fraudulent transfer, was the subject of two state court actions filed before the petition date, one by Marble Ridge and another by an Indenture Trustee allegedly on Marble Ridge's behalf.

In 2019, Neiman Marcus entered into a recapitalization agreement that had the effect of resolving potential claims arising out of the MyTheresa Distribution with many of its creditors—though not with Marble Ridge, which declined to participate in the exchange. Of significance here, those negotiations also created a "waterfall" that governed how the proceeds of MyTheresa would be distributed in the event of a sale or other monetization. Under that waterfall, the first \$450 million of any sale would go to certain secured lenders and to the holders of Series A preferred stock in the holding company for the MyTheresa assets, while the next \$250 million would go to the holders of Series B preferred stock, which was initially distributed to a Neiman

⁵ For the same reasons, the United States Trustee was unable to cite specifically to documents and transcripts in this statement.

Marcus affiliate (the “Series B Shares”). The Series B Shares were apparently designed to represent an indirect source of recovery for Neiman Marcus’s owners in the event of a MyTheresa sale; they were also highly illiquid, because they would be payable only in the event of a sale or monetization and even then only if the amount realized was at least \$450 million.

On April 28, Neiman Marcus appointed Marc Beilinson⁶ and Scott Vogel as “disinterested managers” to its Board of Managers (the “Disinterested Managers”). The Disinterested Managers were charged with determining “whether a conflict exists with respect to any issue in connection with the Debtors’ chapter 11 cases,” as well as with investigating the MyTheresa Distribution.

B. Commencement of the Bankruptcy Case and the Appointment of the Committee.

On May 7, the Debtors filed voluntary petitions seeking relief under chapter 11 of the Bankruptcy Code. That same day, the United States Trustee sent out a standard questionnaire to the Debtors’ largest creditors in order to solicit interest in serving on the Committee. Among other things, that questionnaire informed prospective committee members that they would be required to act as “fiduciaries who represent all unsecured creditors as a group.”

On May 10, Marble Ridge, through its general counsel, submitted a completed questionnaire expressing its willingness to serve on the Committee. In its cover email, Marble Ridge stated that:

If appointed to the Committee, Marble Ridge would be represented by Dan Kamensky. Mr. Kamensky has more than 20 years of bankruptcy and investing experience and fully understands the fiduciary responsibilities associated with membership on the Committee. Mr. Kamensky is committed to devote the time and energy necessary to earnestly represent all unsecured creditors.

⁶ Mr. Beilinson resigned his position in June after a health emergency.

On May 19, the United States Trustee appointed a nine-member Committee that included Marble Ridge. Dkt. No. 455. Marble Ridge would subsequently be elected as one of three co-chairs of the Committee, which retained the law firms of Pachulski, Stang, Ziehl & Jones and Cole Schotz P.C. as its counsel, and M-III Advisory Partners L.P. as its financial advisor. Dkt. Nos. 1105, 1106, 1225.

C. The Examiner Motion and Motion to Terminate Exclusivity.

The dispute over the MyTheresa Distribution would play a prominent role in many of the contested matters that would be brought before the Court in the first months of these cases. On May 15, Marble Ridge filed the Expedited Motion to Appoint an Examiner, which sought appointment of an examiner under section 1104 of the Bankruptcy Code to investigate the MyTheresa Distribution (the “Examiner Motion”). Dkt. No. 424. The Committee supported the Examiner Motion, but the Debtors, the Disinterested Managers, and certain groups of ad hoc lenders opposed it. Following a hearing before the Court on May 29, Marble Ridge withdrew the Examiner Motion without prejudice. Dkt. No. 664.

On June 21, the Committee filed a motion to terminate exclusivity, which sought permission to file a plan substantially identical to the proposed plan filed by the Debtors, except that it would eliminate certain releases and preserve causes of action relating to the MyTheresa Distribution. Dkt. No. 1061.

Although the litigation positions of the Committee during the first months of the case were closely aligned with those of Marble Ridge, there is no evidence that this was because of any improper influence exercised by Marble Ridge on the other Committee members. Rather, Mr. Pachulski, Committee counsel, characterized the Committee as “great to work with” until the Marble Ridge-Jefferies issues arose on July 31. Mr. Pachulski noted that the Committee was

populated by a diverse group of experienced and highly sophisticated creditors in addition to Marble Ridge and characterized that diversity as a “good thing.”

D. Marble Ridge Submits an Offer to Purchase Estate Litigation Claims

On the morning of July 4, Mr. Kamensky told Mr. Pachulski that Marble Ridge would be willing to submit an offer to purchase the MyTheresa-related litigation claims from the Debtors’ estate. Mr. Kamensky raised this suggestion again on July 9, during a call between the Committee co-chairs, the Committee professionals, and Mr. Vogel. Mr. Pachulski advised Mr. Kamensky that he thought the offer would be premature given the state of negotiations but informed the rest of the Committee of Mr. Kamensky’s expression of interest at some point between July 11 and July 14. Mr. Pachulski stated his belief that Mr. Kamensky’s offer was designed either to obtain a fair settlement or to increase the chances of obtaining a plan with a settlement trust. He said that Mr. Kamensky had “zero interest” in actually buying the litigation claims.

On July 24, Mr. Kamensky, on behalf of Marble Ridge, submitted an offer to Mr. Vogel for the purchase of the Debtors’ MyTheresa-related litigation claims. At a Committee meeting that same day, Mr. Pachulski, who was not informed in advance of Marble Ridge’s offer, informed Mr. Kamensky that he had two options: he could either withdraw his offer and agree not to submit any other offer without prior Committee approval, or if he chose not to withdraw his offer, he would be recused from Committee discussions regarding a settlement. Mr. Kamensky chose to withdraw his offer. Neither the United States Trustee nor the Court was informed of Mr. Kamensky’s initial expression of interest, his offer to purchase the claims, or the withdrawal of his offer until after the events of July 31.

E. Marble Ridge Proposes to Fund a Cash Out Option for the Series B Shares

In late July, the parties made progress towards a global settlement of the MyTheresa disputes, which ultimately would be announced to the Court at the disclosure statement hearing of July 30. Because it was probable that any settlement would likely involve the transfer of the Series B Shares that Neiman Marcus's parent had retained, Mr. Pachulski began to explore alternatives for a "cash out" option, under which creditors could exchange the illiquid Series B Shares for cash. Mr. Pachulski believed that this was particularly important for the Debtors' trade creditors, who strongly prefer cash to securities, and he believed a cash out option would help pave the way for a consensual plan of reorganization.

On July 28, following discussions with Mr. Pachulski, Mr. Kamensky emailed the outline of a cash out proposal to the Committee's members and professionals. The most salient feature of this rough proposal was that Marble Ridge would guarantee, or "backstop," the purchase of 60 million Series B Shares at twenty cents per share from other unsecured creditors wishing to sell. Other noteholder creditors would have the right to participate in the purchase of the 60 million shares in proportion to their pro rata share of the overall noteholder group of claims. Marble Ridge would purchase the shares available to any noteholder that did not wish to participate.

At a meeting held on July 29, the Committee members voted to support the global settlement. Mr. Pachulski excused Marble Ridge from the meeting, and the members discussed the outline of the cash out proposal. While not affirmatively accepting Mr. Kamensky's proposal, the Committee agreed to continue negotiations with Marble Ridge. These negotiations appear to have been somewhat time-sensitive, since any last-minute changes to the Disclosure Statement would need to be presented to the Court at a hearing set for August 3, in order to be included in the Disclosure Statement mailed to creditors.

F. Events of July 30 and 31**1. *The Jefferies Proposal***

Even as the Committee worked on the Marble Ridge proposal, the financial firm Jefferies was considering its own cash out offer. Eric Geller is the senior analyst in the Jefferies Distressed and Special Situations section. The Distressed and Special Situations section in Jefferies trades on its own behalf and for clients, one of whom is Marble Ridge.⁷ On the evening of July 30, Mr. Geller learned of the amended Neiman Marcus plan of reorganization providing for the distribution of the Series B Shares to unsecured creditors. That same evening, another Jefferies client contacted Mr. Geller to express interest in purchasing the Series B Shares. Mr. Geller then sent texts around 9:00 PM ET to JE1 and another Jefferies employee to discuss the possibility of making an offer to buy the Series B Shares.

JE1 saw these texts the next morning on July 31, and talked to Mr. Geller at approximately 8:00 AM ET. At 8:10 AM ET, JE1 and Mr. Geller had a call with the Jefferies client. The client expressed an interest in purchasing through Jefferies 70 million of the 140 million Series B Shares set to be distributed. After the call with the Jefferies client, JE1 spoke with an additional client who indicated interest in purchasing 10 million Series B Shares. At that point, JE1 believed there was more than enough interest for Jefferies to move forward with a proposal to buy Series B Shares.

Between 9:00 AM ET and 10:00 AM ET on July 31, Mr. Geller called Mr. Meghji, the Committee's financial advisor. Mr. Geller informed Mr. Meghji that Jefferies was interested in

⁷ Mr. Kamensky later informed the United States Trustee that Jefferies was Marble Ridge's ninth largest trading partner and that Marble Ridge had paid Jefferies approximately \$200,000 in trading commissions during the first six months of 2020.

making a bid to purchase the 140 million Series B Shares set to be distributed to unsecured creditors as part of the amended plan of reorganization. He informed Mr. Meghji that the firm was considering offering to buy the shares for a price in the range in “the thirties”—in other words, between thirty and forty cents per share. Mr. Geller sent Mr. Meghji a follow up email at 10:22 AM ET confirming Jefferies’s interest in submitting a firm bid to purchase the shares and its capacity to complete the transaction if the Committee chose to accept a bid from Jefferies. Mr. Geller’s email requested that Mr. Meghji keep Jefferies’s bid confidential from any member of the Committee that was interested in making its own cash out offer for the Series B Shares.

After speaking with Mr. Geller, Mr. Meghji contacted Mr. Pachulski. Mr. Meghji and Mr. Pachulski decided the next necessary step was to schedule a further call with Jefferies to gauge the firm’s interest in the shares and the potential for a Jefferies bid to produce a higher return for unsecured creditors than the pending offer from Marble Ridge. At 12:15 PM ET, Mr. Meghji and Mr. Pachulski spoke with Mr. Geller and JE1. Mr. Pachulski explained that while Jefferies could make a bid for the 140 million shares as a block, some unsecured creditors wanted to keep their shares, so an offer that allowed creditors to opt in or out of the sale would be more likely to be successful. Mr. Geller and JE1 had no issue proceeding along those lines and confirmed a price in the “thirties.” They also indicated that Jefferies was prepared to submit a proposal by the end of the day.

After the 12:15 PM ET call with the Committee professionals, JE1 began putting together a formal bid to buy Series B Shares from those unsecured creditors who wished to sell them. He informed internal Jefferies legal counsel of the proposed offer, and Jefferies outside legal counsel was tasked to prepare documents for the bid. JE1 discussed the Series B proposal with senior Jefferies management.

Mr. Pachulski and Mr. Meghji came away from the 12:15 PM ET conversation satisfied Jefferies was serious about making a cash out offer for the Series B Shares. They determined they would need to halt work on finalizing the Marble Ridge proposal to allow consideration of a proposal from Jefferies. They decided they needed to inform Mr. Kamensky of this development.

2. *Mr. Kamensky Learns of the Jefferies's Proposal and Forces its Withdrawal*

At 3:15 PM ET, Mr. Pachulski and Mr. Meghji called Mr. Kamensky. They informed him that another possible bidder had come forward to discuss making a cash out offer on the Series B Shares. They informed him the possible price for this bid was in the range of \$0.30 per share. When Mr. Kamensky asked them who the new potential purchaser was, they informed him that it was Jefferies. Mr. Pachulski stated that he did not recall Jefferies's request to keep its potential bid confidential, and it may be that this request was made only to Mr. Meghji. In any event, according to both Mr. Pachulski and Mr. Meghji, Mr. Kamensky received this news calmly, without apparent anger or surprise. Mr. Kamensky stated that he believed the Jefferies's expression of interest was not serious and that nothing would come of it; he stated that Jefferies was likely just fishing for information.

Despite Mr. Kamensky's calm demeanor during his 3:15 PM ET call with Mr. Pachulski and Mr. Meghji, Mr. Kamensky engaged in a frenzy of activity once it concluded. Immediately thereafter, Mr. Kamensky via Instant Bloomberg chat told Christopher Bauer, Head Trader at Marble Ridge, to check his text messages on his iPhone. At 3:20 PM ET, Mr. Bauer received a text message from Mr. Kamensky on his iPhone, which started the text message exchange set out below:

Fri. Jul 31 3:20 PM

Kamensky: Eric Geller from Jefferies called the UCC counsel and offered to buy the units at 30 cents, that is a monumental mistake. I'm getting [JE1] now. he needs to talk me. let me know. They are threatening to put a bid in.

Bauer: For nmg??

Kamensky: yes i just texted [JE1]

Bauer: Yikes what did we bid. Those guys man I hope they were just ignorant to our interests

Consistent with the text exchange between Mr. Kamensky and Mr. Bauer, Mr. Kamensky began communicating with JE1 at 3:20 PM ET using Instant Bloomberg chat messages. Mr. Kamensky told JE1 not to put in a proposal for the Series B Shares. The message chain between Mr. Kamensky and JE1 starting at 3:20 PM ET and ending at 3:28 PM ET is set out in relevant part below:

(2020-07-31 03:20:13 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL) has invited [JE1] (JEFFERIES LLC)

Need you NOW

(2020-07-31 03:20:40 PM EDT)

[JE1] (JEFFERIES LLC)

Call me in 10min

(2020-07-31 03:20:52 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

Tell Geller to stand DOWN

(2020-07-31 03:20:55 PM EDT)

[JE1] (JEFFERIES LLC)

Im on an inernal call

(2020-07-31 03:20:55 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

And let's talk

(2020-07-31 03:20:59 PM EDT)

[JE1] (JEFFERIES LLC)

I can't get off of

(2020-07-31 03:21 :03 PM EDT)

[JE1] (JEFFERIES LLC)

Lets speak in 10 min pls

(2020-07-31 03:21 :28 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

Do I need to reach out to Geller

(2020-07-31 03:28:30 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

DO NOT SEND IN A BID

Mr. Kamensky also contacted Mr. Geller at 3:23 PM ET by Instant Bloomberg and asked to speak right away:

(2020-07-31 03:23:55 PM EDT) DKAMENSKY2 (MARBLE RIDGE CAPITAL) has invited EGELLER9 (JEFFERIES LLC)

What is your number? Need you now?

Mr. Kamensky later stated to the United States Trustee that his instant messages to Mr. Geller and JE1 were motivated by panic. He feared Jefferies's bid might jeopardize an agreement on a cash out proposal for the Series B Shares. Mr. Kamensky claimed that, in his call with Mr. Pachulski and Mr. Meghji, Mr. Pachulski had said words to the effect of "that would be a problem" in response to Mr. Kamensky saying Jefferies was not a serious bidder. Mr. Kamensky said he interpreted this to mean that Jefferies's potential bid might disrupt the process of including a cash out proposal in the Disclosure Statement and Plan by August 3, which he understood to be a firm deadline. He admitted that he did not further discuss this concern with Mr. Pachulski. Mr. Kamensky also conceded a fear that Jefferies's higher price for the shares, mentioned in his texts with Mr. Bauer, would hurt Marble Ridge's ability to profit from any Series B purchase. He nevertheless claimed that process concerns about endangering the agreement on a cash out provision were his primary motivation for contacting JE1 and Mr. Geller. Mr. Kamensky admitted that contacting and trying to influence a potential rival bidder for property of the bankruptcy estate was wholly inappropriate and a grave mistake. He stated he should have gone to Mr. Pachulski with his concerns about the effect of Jefferies on the cash out process and let Mr. Pachulski make any necessary inquiries.

Following Mr. Kamensky's chat messages, JE1 and Mr. Geller spoke with Mr. Kamensky on the phone at approximately 3:45 PM ET. According to JE1, Mr. Kamensky was very upset and told them to stand down and not put in a bid. JE1 responded that Jefferies was just engaging in its normal business of purchasing assets. Mr. Kamensky told them that they did not understand how deep his interest was in the Series B Shares. He said he had been pursuing this matter for several years and amassed \$3.5 million in legal fees. His efforts had made the MyTheresa settlement possible. He said he was determined to acquire the shares, so all that Jefferies's bid would accomplish was driving up his final price and costing him money. He said that as co-chair of the Committee, he would prevent Jefferies from acquiring the shares. Finally, Mr. Kamensky stated that he had been a good partner to JE1 and Jefferies, but if JE1 moved forward with the Series B bid, they would not be partners going forward. JE1 understood this last statement as Mr. Kamensky using a possible termination of the business relationship between Marble Ridge and JE1's section of Jefferies to pressure JE1 to drop the bid. JE1 ended the conversation with Mr. Kamensky by stating they would consider what to do and get back to him.

In his interview with the United States Trustee, Mr. Kamensky admitted that he made each of the coercive statements recounted by JE1, including the promise to use his position as Committee Co-Chair to prevent the Jefferies's bid from winning and the statement that Marble Ridge would end its business relationship with Jefferies if the bid went forward. As Mr. Kamensky remembered it, Mr. Geller at the start of the call said Jefferies was just pursuing its normal business of pursuing bankruptcy assets and wanted to buy half the Series B shares. According to Mr. Kamensky, this remark turned his panic into fury. He said he perceived Jefferies to be shaking him down for half the available assets by barging into a situation they knew nothing about at a sensitive time. Mr. Kamensky said he began to shout, curse, and demand that Jefferies stand down

on any bid, while making the coercive statements recounted by JE1. Mr. Kamensky admitted to the United States Trustee that these statements were entirely inappropriate.

According to Mr. Kamensky, JE1 then asked him why he was so angry. Mr. Kamensky said this led him to regain his composure, and the latter half of the call purportedly involved a calmer discussion of Mr. Kamensky's long history with Neiman Marcus and the complications involved with the Series B Shares.⁸ Mr. Kamensky stated to the United States Trustee that he believed at the end of the call JE1 and Mr. Geller would consider Jefferies's next steps in light of the information he provided in the "calm" latter half of the call, not the coercive statements he made in the "angry" first half of the call. Mr. Kamensky claimed that the intended message of the "calm" half of the call was that Jefferies should bid if it was a serious bidder but that it should back off if it was not serious to avoid disruption to the bankruptcy process. He admitted, however, that he never actually said to JE1 and Mr. Geller that Jefferies should bid if it was serious or refrain from bidding if it was not.

JE1 and Mr. Geller had no perception that any portion of their call with Mr. Kamensky had superseded his demands that Jefferies pull its bid or face the consequences. JE1 specifically denied Mr. Kamensky ever gave them any indication that all he wanted was for Jefferies to bid if it was serious. JE1 and Mr. Geller perceived a clear and singular message: Jefferies should withdraw its bid or Mr. Kamensky would exact consequences by terminating their relationship.

Immediately after the call, JE1 spoke with Mr. Geller about his discomfort with what had just happened. JE1 believed that Mr. Kamensky's actions were outside the bounds of normal

⁸ Because Mr. Kamensky was interviewed after JE1, the United States Trustee was unable to ask JE1 about the "calmer" portion of the conversation recounted by Mr. Kamensky.

trading behavior. He also believed that Mr. Kamensky was abusing his position as a fiduciary in the bankruptcy case. Furthermore, Mr. Kamensky's demand that Jefferies not bid might involve JE1 and Jefferies in unethical and even illegal conduct. At the same time, JE1 was concerned about his business relationship with Mr. Kamensky and Marble Ridge. JE1 decided to speak with Jefferies general counsel, Mike Sharp, about the situation and called him at approximately 3:55 PM ET.

JE1's discussion with Jefferies general counsel resulted in a two-part decision: (1) Jefferies would withdraw from making any bid to purchase the Series B Shares; (2) JE1 and Jefferies would be completely transparent with all interested parties about why it was withdrawing. JE1 and Mr. Geller called Mr. Kamensky at approximately 4:07 PM ET. JE1 explained that Mr. Kamensky was an important relationship, and Jefferies would withdraw from making any bid for the Series B Shares. Jefferies, however, would also be transparent about why it was withdrawing. Specifically, Jefferies would be transparent about its reason for withdrawing with both its client who sought to purchase the shares and with the advisors for the Committee. Mr. Kamensky responded by thanking JE1 and Mr. Geller and saying he would always be grateful to them. After the call, Mr. Geller remarked to JE1 that Mr. Kamensky appeared not to hear or understand JE1's statement that they would be transparent about their reasons for withdrawing. Mr. Kamensky later confirmed to the United States Trustee that he did not hear the statement about being transparent on what led them to withdraw.

At 4:08 PM ET, during or immediately after his call with JE1 and Mr. Geller about the withdrawal, Mr. Kamensky contacted Mr. Bauer by Instant Bloomberg chat to share the news:

(2020-07-31 04:08:10 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

They are standing down

(2020-07-31 04:08:13 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

See me

(2020-07-31 04:08:15 PM EDT)

CCBAUER13 (MARBLE RIDGE CAPITAL)

Yeah

(2020-07-31 04:08:19 PM EDT)

CCBAUER13 (MARBLE RIDGE CAPITAL)

Thank goodness

(2020-07-31 04:08:22 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

He took the high roadf

(2020-07-31 04:08:28 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

Thank gd

(2020-07-31 04:08:52 PM EDT)

CCBAUER13 (MARBLE RIDGE CAPITAL)

He got the call from H

(2020-07-31 04:08:56 PM EDT)

CCBAUER13 (MARBLE RIDGE CAPITAL)

"stand down!!"

Shortly after their 4:07 PM ET call with Mr. Kamensky, JE1 and Mr. Geller contacted their original client for the purchase of the Series B Shares and told him they were withdrawing from making a bid. They explained they were withdrawing because of pressure from another client. JE1 and Mr. Geller then tried to contact Mr. Pachulski and Mr. Meghji. After an initial attempt to reach them by phone, Mr. Geller sent an email at 4:13 PM ET to Mr. Pachulski and Mr. Meghji requesting they call him back.

3. *The Committee Learns of Mr. Kamensky's Actions*

Mr. Pachulski alone eventually talked with JE1 and Mr. Geller at approximately 5:00 PM ET. After Mr. Geller explained that Jefferies was withdrawing from making a bid, Mr. Pachulski asked why. Mr. Geller explained that Jefferies was withdrawing because a significant client had asked it to do so. Mr. Pachulski asked if that client was a member of the Committee. Mr. Geller said yes. Mr. Pachulski asked if the client was Mr. Kamensky. Mr. Geller said yes. According to JE1, Mr. Pachulski responded by saying, "I've got a big problem." After the call concluded, Mr. Pachulski informed Mr. Meghji of Jefferies's withdrawal and its stated reason for doing so. Mr. Pachulski set a 6:00 PM ET conference call for Committee professionals to decide on the necessary steps in reaction to Mr. Kamensky's reported actions. In the meantime, Mr. Meghji conducted his

own follow up call with Mr. Geller, who confirmed the basic account he had provided Mr. Pachulski about Jefferies's withdrawal.

At the 6:00 PM ET conference call, the Committee professionals decided as a first step to reach out to Mr. Weisfelner, counsel for Marble Ridge, to determine if Jefferies's report about Mr. Kamensky's conduct was accurate. At approximately 7:00 PM ET, Mr. Pachulski and several other Committee professionals spoke to Mr. Weisfelner. Mr. Weisfelner responded that he knew nothing about the allegations and would call them back after contacting Mr. Kamensky. Mr. Kamensky confirmed to the United States Trustee that Mr. Weisfelner called him at this time and informed him that Jefferies had reported to Committee counsel that it was withdrawing from bidding after pressure from Mr. Kamensky. Mr. Weisfelner spoke again with Mr. Pachulski and other Committee professionals at approximately 7:30 PM ET. After speaking with Mr. Kamensky, he reported that Mr. Kamensky did contact Jefferies about its potential bid, but there was a misunderstanding about his intention in doing so. According to Mr. Weisfelner, Mr. Kamensky had told Jefferies to bid if it was serious. If it was not serious, it should back off to avoid disruption to the Neiman Marcus bankruptcy. Mr. Pachulski ended the call by stating that he would need to schedule an emergency meeting of the Committee without Marble Ridge or its attorneys to consider the Committee's next steps.

Meanwhile, Mr. Kamensky was trying to contact JE1. At 7:42 PM ET, he sent an Instant Bloomberg chat message to JE1 asking "Are you there?" JE1 got the messages and reported being available at 8:08 PM ET. Mr. Kamensky and JE1 soon thereafter began a phone conversation. According to JE1, Mr. Kamensky began the call by saying, "this conversation never happened." Disturbed by this opening, JE1 began to record the phone call. Through counsel, JE1 later voluntarily provided a copy of the recorded call, an initial rough transcript, and then a final

transcript to the United States Trustee. In the recorded portion of the call, Mr. Kamensky asked why JE1 had told Committee counsel that Mr. Kamensky had threatened JE1 and asked if JE1 knew this could cause Mr. Kamensky to go to jail. JE1 responded that he had planned to bid, then Mr. Kamensky demanded Jefferies stand down to preserve their business relationship:

Hold on. Hold on a second, Dan. Listen to me. And then you call me and you say, do not bid. It's going to be a relationship issue, and so I said okay. Dan's a good relationship. What he's asking me to do makes me a little bit uncomfortable.

Mr. Kamensky reiterated that he could go to jail and urged JE1 to agree that Mr. Kamensky asking Jefferies to stand down was just a large misunderstanding.

Mr. Kamensky also urged JE1 to now take part in the bidding process for the Series B Shares. JE1 denied any further interest in having anything to do with the matter. Mr. Kamensky responded:

It's too late now. They're going to report this to the U.S. Attorney's Office, okay? They're reporting this to the U.S. Attorney's Office. This is -- this is -- it's, not like, not like you can't bid. The U.S. Attorney is going to investigate this. My position to them is this. I said to them, this a huge misunderstanding, okay, humongous misunderstanding and I told them -- the only thing I said was if you're not real don't bid and if they're real then they should bid. Because otherwise the U.S. Attorney is investigating this then, okay? They're going to report it, okay, and my position is - - is -- going to be look, this is was a huge misunderstanding. I never in a million years would have told them not to do that. I -- all I told them was if they're not real they shouldn't bid.⁹

JE1 later explained to the United States Trustee that Mr. Kamensky was trying to get JE1 to agree to his account of their phone conversation earlier that day. In fact, there had been no misunderstanding between them. Mr. Kamensky had made no inquiry whether Jefferies was

⁹ Quotations of the phone call are based on the transcript provided by JE1's counsel. The transcript matches the audio recording also provided by JE1's counsel.

“real,” i.e. a serious bidder, and had certainly not said it should bid if Jefferies was “real.” Mr. Kamensky had just demanded that Jefferies pull its bid.

In the call, JE1 again pushed back against the plausibility of Mr. Kamensky’s explanation, reminding him that Mr. Geller had been on the call as well and heard what Mr. Kamensky actually said. He urged Mr. Kamensky to just recuse himself from the whole matter. Mr. Kamensky again responded with a plea for JE1 to adopt his version of their earlier conversations, stressing the dire consequences for Mr. Kamensky if JE1 did not. Mr. Kamensky also admitted to abusing his position as a member of the Neiman Marcus Committee:

. . . [I]f you're going to continue to tell them what you just told me, I'm going to jail, okay? Because they're going to say that I abused my position as a fiduciary, which I probably did, right? Maybe I should go to jail. But I'm asking you not to put me in jail.

JE1 responded that there was no possibility of lying for Mr. Kamensky. Mr. Kamensky denied wanting JE1 to lie but kept urging JE1 to adopt his version of their earlier conversations.

JE1 again reiterated that Mr. Kamensky had pressured him to withdraw the bid to preserve their business relationship:

I thought you were very upset about it, okay, and I thought that you -- I thought that you were basically pushing me very hard to not put a bid and I thought about it and frankly it's not even worth it. It's not even important enough for me. So that's why because of my relationship with you I said okay. I don't want anything to do with this.

Mr. Kamensky then pleaded with JE1 to agree that Mr. Kamensky said something he purportedly intended to say but never actually did—that Jefferies should bid if it was serious. He implied that adopting this position was necessary to preserve their relationship:

I apologize. I apologize. I apologize, okay, and I'm telling you that what I intended to say, okay, is if you're not real don't bid but if you're real then you should bid, and, [JE1], for the relationship I would tell you that's exactly what I said and I apologize if I was upset or if it appeared as a threat.

He also repeated what he had set at the start of the call, “this conversation never happened,” referring to his efforts to influence JE1 but not have anyone know about these efforts.

But I'm telling you that is exactly what I intended to say and I'm just begging you to please appreciate that's what I meant to say and that this conversation never happened.

The United States Trustee questioned Mr. Kamensky concerning the above call recorded by JE1. Mr. Kamensky freely admitted he had made the call and said it was a serious mistake, one of the worst of his life. The United States Trustee played the audio recording of the call, and Mr. Kamensky verified it accurately captured his call with JE1. He stated he made the call out of fear and panic of the possible consequences of Jefferies’s report to the Committee that he had pressured them to withdraw from bidding. He denied wanting JE1 to lie but said he was trying to “manage the message” by talking with him. His hope was that he and JE1 could find “common ground” around Mr. Kamensky’s notion that the “calm” second half of their earlier call was meant to communicate that Jefferies should bid if it was serious, even though he never actually said that to JE1 and Mr. Geller during their first call that day. Mr. Kamensky admitted that his repeated statement that “this conversation never happened” was a recognition that attempting to influence JE1 might be considered improper. When questioned by the United States Trustee, Mr. Kamensky had no explanation for his use of the phrase “for the relationship” in his statement: “I'm telling you that what I intended to say, okay, is if you're not real don't bid but if you're real then you should bid, and, [JE1], for the relationship I would tell you that's exactly what I said.”

G. Marble Ridge Resigns from the Committee on August 1

At 8:31 AM ET on August 1, in advance of an emergency Committee meeting set for 2:00 PM ET, Mr. Weisfelner emailed Committee counsel on behalf of Mr. Kamensky and Marble Ridge. He again advanced the “misunderstanding” explanation of Mr. Kamensky’s conduct from

the day before, asserting that Mr. Kamensky had only contacted Jefferies to make sure it was truly committed to bidding, not to discourage a bid. Mr. Weisfelner, on Mr. Kamensky's behalf, asked the Committee professionals to assure Jefferies that it was strongly encouraged to submit a bid. Mr. Weisfelner mentioned Mr. Kamensky's continuing work on Marble Ridge's own cash out proposal. Finally, even though he believed Mr. Kamensky's conduct had been grossly misconstrued, Mr. Weisfelner stated that Marble Ridge would be resigning from the Committee as a way to resolve the issue in the best interests of all concerned.

At 1:15 PM ET, Mr. Weisfelner wrote to the United States Trustee to offer Marble Ridge's resignation from the Committee. In discussing the reasons for the resignation, Mr. Weisfelner provided the United States Trustee the substantially same "misunderstanding" explanation of Mr. Kamensky's July 31 conduct that he had provided to the Committee.

At the 2:00 PM ET emergency Committee meeting, given Marble Ridge's resignation, the Committee decided that counsel should promptly disclose Mr. Kamensky's conduct to the United States Trustee. Later that afternoon, Mr. Pachulski and Mr. Warner spoke by phone to Hector Duran, an attorney for the United States Trustee, and explained what they knew of the situation involving Mr. Kamensky and Marble Ridge. They advised Mr. Duran that they would provide him what they knew in writing and that the Committee would also disclose the situation to the Court.

H. Jefferies Renews Its Bid

Also on August 1, Jefferies decided to resume pursuit of its proposal to purchase Series B Shares. JE1 later explained to the United States Trustee that, given the turmoil following Jefferies's withdrawal, the business reasons behind the withdrawal no longer held. JE1 stressed that Jefferies's resumption of its proposal was not in response to Mr. Kamensky's request during

their phone call the prior evening that Jefferies bid in aid of his cover story. Instead, the renewed bid was motivated by Jefferies's own financial interest in a profitable transaction. During the morning of August 1, Mr. Geller and JE1 contacted Mr. Pachulski to inquire if the Committee would still be interested in a Jefferies cash out proposal for the Series B Shares. Mr. Pachulski said the Committee would be interested in a Jefferies proposal. He also asked Mr. Geller to reaffirm his explanation that Jefferies withdrew the day before in response to pressure from Mr. Kamensky. Mr. Geller did so. Mr. Pachulski asked if Mr. Kamensky had requested that Jefferies resume its bid. Mr. Geller responded that at the advice of counsel Jefferies could not provide any additional explanation beyond what it had already provided.

Committee counsel subsequently spoke with Mr. Sharp, Jefferies general counsel, who reported that Mr. Kamensky had phoned a Jefferies employee the evening of July 31, and "seemed concerned." This was apparently a reference to Mr. Kamensky's call with JE1 at approximately 8:08 PM ET. Mr. Sharp did not provide any other details. At the 2:00 PM ET Committee meeting that day, the Committee agreed to consider any renewed Jefferies cash out proposal.

I. The Court Orders the United States Trustee to Investigate Marble Ridge and Mr. Kamensky

On August 3, the Committee filed under seal an August 2 letter by Mr. Pachulski to United States Trustee attorney Hector Duran, laying out the facts about Mr. Kamensky and the Jefferies cash out proposal as the Committee understood them. Dkt. No. 1427. The Committee did not offer any conclusions as to Mr. Kamensky's conduct, but its narrative is consistent with the facts the United States Trustee has been able to establish during its subsequent investigation.

On August 4, Mr. Weisfelner, counsel to Marble Ridge Capital, filed under seal a declaration in his own name that provided an account of Mr. Kamensky's conduct ("Weisfelner

Declaration”). Dkt. No. 1432. Once again, Mr. Weisfelner advanced the “misunderstanding” explanation of Mr. Kamensky’s actions. As discussed below, the Weisfelner Declaration in several material respects is not consistent with the facts that the United States Trustee has established during the subsequent investigation.

In response to these filings, the Court on August 5, ordered both the Committee’s letter and the Weisfelner Declaration unsealed. The Court then required the United States Trustee “to file a statement of position within 14 days regarding the conduct of Marble Ridge and Mr. Kamensky in this case.” The United States Trustee began work immediately.

J. The Committee is Currently Considering Cash Out Proposals from Marble Ridge and Jefferies

In the meantime, both Jefferies and Marble Ridge submitted cash out proposals to the Committee. Jefferies submitted a Letter of Intent to the Committee on August 2. Marble Ridge provided a letter proposal on August 3, and then a revised proposal on August 11. Although the proposals are complex, each offers a higher price per share than the twenty cents of Marble Ridge’s original proposal. The United States Trustee understands that the Committee has not made a decision on any cash out proposal, and the Marble Ridge and Jefferies offers remain pending.

III. LEGAL ANALYSIS

When a creditor accepts appointment to an official creditors’ committee in a chapter 11 case, it agrees to assume certain fiduciary duties to other creditors. *See Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3rd Cir. 2001) (noting that section 1103 of the Bankruptcy Code “impl[ies] a fiduciary duty on the part of members of a creditor's Committee”). Those duties include a duty of loyalty, a duty of care, and a duty of disclosure. *See In re Farrell*, 610 B.R. 317, 323 (Bankr. C.D. Cal. 2019). A committee member owes its duties to the

represented creditors collectively, rather than to particular creditors individually. *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 717, 722 (Bankr. S.D. N.Y. 1992).

Committee members differ from most other bankruptcy fiduciaries, however, in one important respect: committee members are not required to be disinterested, *see* 11 U.S.C. § 1102, and it is common for committee members to have individual economic interests that may be opposed to the debtor or to other creditors. *See In re Rickel & Assocs., Inc.*, 272 B.R. 74, 100 (Bankr. S.D.N.Y. 2002) (committee members are “hybrids who serve more than one master”). For this reason, a conflict of interest does not automatically prevent a creditor from serving on a committee—provided, however, that the creditor is otherwise able to exercise its fiduciary duties and provide adequate representation for the creditor body. *See In re First RepublicBank Corp.*, 95 B.R. 58, 61 (Bankr. N.D. Tex. 1988). In other words, committee members are not expected to abandon their personal interests, and are not prohibited from taking positions or actions that are adverse to other creditors or the estate outside the committee, so long as they do not take “unfair advantage” of their committee membership in order to do so. *In re El Paso Refinery, L.P.*, 196 B.R. 58, 75 (Bankr. W.D. Tex. 1996).

The United States Trustee has the statutory duty to monitor creditors’ committees, is responsible for soliciting and appointing members to committees, and may reconstitute or remove members from committees if necessary. 28 U.S.C. § 586(a)(3)(E), 11 U.S.C. § 1102(a). In the United States Trustee’s experience, the solicitation and appointment process itself can often forestall or mitigate many threats to the integrity of committees. Potential committee members are advised of their fiduciary duties in advance of their appointment, and potential members will be questioned extensively about any positions, interests, or status that may affect their behavior as fiduciaries before being appointed. Potential committee members are also advised of their

obligation to notify the United States Trustee of any changed circumstances that arise during the case that may affect their ability to serve. If there is doubt about a creditor's willingness or ability to act as a fiduciary, that creditor will typically not be appointed, and a creditor who violates these duties or becomes unable to perform those duties after appointment may be removed. *See In re America West Airlines*, 142 B.R. 901, 902 (Bankr. D. Ariz. 1992) (upholding United States Trustee's removal of creditor from committee).

IV. CONCLUSIONS

Although some details and interpretations remain in dispute, the substantial evidence collected to date clearly demonstrates that Mr. Kamensky breached his fiduciary duty to unsecured creditors on July 31, and his earlier conduct between July 4 and July 30 was problematic. After being told both of the existence of a rival bid and the identity of the bidder, Mr. Kamensky sought to exploit that information for his own benefit by contacting Jefferies and pressuring them to withdraw their initial bid, to the likely detriment of all other creditors.¹⁰ In the course of those conversations with JE1, Mr. Kamensky improperly suggested to JE1 that he could prevent a successful Jefferies bid because of his role as Committee co-chair. Regardless of whether Mr. Kamensky actually had the power to ensure that the Committee rejected any Jefferies bid, this type of coercion by a Committee fiduciary is highly inappropriate. Moreover, Marble Ridge's initial representations regarding the conversations between Mr. Kamensky and Jefferies, which

¹⁰ Marble Ridge's actions might have been prevented had the Court and the United States Trustee been notified that Marble Ridge intended to engage in a self-interested transaction as early as July 4. Wider awareness of Marble Ridge's intentions might have called into question its ability to continue serving on the Committee or at least led to more stringent procedures to avoid a breach of fiduciary duty.

minimized Mr. Kamensky's role in Jefferies's withdrawal of its initial offer and which suggested that Mr. Kamensky was surprised by that result, are inconsistent with the evidence regarding those same conversations, including Mr. Kamensky's own later testimony. His actions were a clear abuse of his Committee position and a breach of his duty.

As a number of courts have held—and, indeed, as Mr. Kamensky himself appears to have admitted in his conversation with JE1—his actions of July 31 are paradigmatic examples of a breach of a committee member's duties. *See Rickel*, 272 B.R. at 100 (committee member breaches its duty by using its position to monopolize negotiations, effectively freezing out other bidders, or by exploiting confidential information known only to it through its committee service in order to seize an advantage); *In re Refco Inc.*, 336 B.R. 187, 198 n.13 (Bankr. S.D.N.Y. 2006) (“a Committee member's fiduciary duties do not preclude it from representing its own interests, provided that in so doing it does not abuse its position on the Committee at the expense of the creditor class”). *See also In re Russo*, 762 F.2d 239, 243 (2d Cir. 1985) (directing bankruptcy court to consider whether asset sale was tainted due to former fiduciary's misuse of confidential information).

As this Court observed in its August 5 Order, effective committees are critical to a robust chapter 11 process, and any threats to their integrity and function must be resolved promptly and publicly:

A creditors' committee in a large commercial case serves an especially important role in the bankruptcy process. A properly functioning committee adds transparency and public confidence to a complicated and often confusing process. The Court relies on a committee's views to add depth and balance to the myriad of commercial issues that it considers. Any threat that endangers this delicate balance must be resolved promptly and in a public manner.

Order, Dkt. No. 1442.

Although the issues discussed and conclusions drawn in this statement are supported by substantial evidence, this investigation was preliminary, and no party has had an opportunity to respond to or rebut the United States Trustee's statement. In the Court's order of August 5, the Court cited possible remedial actions, including the creditors' remedy of subordination of claims under 11 U.S.C. § 510(c).¹¹ To the extent the Court believes that further relief may be appropriate under these or any other provisions, such relief should be considered in a formal proceeding in open court so that the Court may hear and consider all relevant evidence.

Dated: August 19, 2020

Respectfully Submitted,

HENRY G. HOBBS, JR.
ACTING UNITED STATES TRUSTEE
REGION 7, SOUTHERN and WESTERN
DISTRICTS OF TEXAS

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic means on all PACER participants on this 19th day of August 2020.

/s/ Hector Duran
Hector Duran, Trial Attorney

¹¹ The Court also cited 18 U.S.C. § 152(6), and consistent with long-standing practice, the United States Trustee does not opine publicly about possible implications of title 18 in this statement.