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Emergency Motion to Approve Emergency Motion of Debtors and Debtors in Possession Pursuant to Sections 105 and 363 of the Bankruptcy Code for an Order (A) Authorizing Them to Enter Into the Master Transaction Agreement dated May 19, 2009

Chrysler Group, LLC.

Corinne Ball

David G. Heiman

Jeffrey B. Ellman

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JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
Corinne Ball
Veerle Roovers

JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
David G. Heiman

JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8330
Jeffrey B. Ellman

Proposed Attorneys for Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 11 Case No.**
: **09 – 50002 (AJG)**
: **(Jointly Administered)**
: **Debtors.**
: **Debtors.**
-----X

**EMERGENCY MOTION OF DEBTORS AND DEBTORS IN POSSESSION
PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE FOR
AN ORDER (A) AUTHORIZING THEM TO ENTER INTO THE MASTER
TRANSACTION AGREEMENT AMONG CHRYSLER LLC, THE UNITED
STATES DEPARTMENT OF THE TREASURY, GMAC LLC, AND U.S.
DEALER AUTOMOTIVE RECEIVABLES TRANSITION LLC; (B) WAIVING
THE STAY UNDER BANKRUPTCY RULE 6004(h); AND (C) WAIVING THE
NOTICE REQUIREMENTS UNDER BANKRUPTCY RULE 6004(a)**

TO THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE:

Chrysler LLC ("Chrysler") and its affiliated debtors and debtors in possession (collectively with Chrysler, the "Debtors"), respectfully represent as follows:

Background

1. On April 30, 2009 (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors' cases have been consolidated for procedural purposes only and are being administered jointly.

2. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Debtors and their nondebtor direct and indirect subsidiaries (collectively, the "Chrysler Companies") comprise one of the world's largest manufacturers and distributors of automobiles and other vehicles, together with related parts and accessories. On the Petition Date, the Chrysler Companies employed approximately 55,000 hourly and salaried employees worldwide, 70% of whom were based in the United States. In addition, as of the Petition Date, the Debtors made payments for health care and related benefits to more than 105,000 retirees.

4. Chrysler's ultimate parent company, Chrysler Holding LLC ("Chrysler Parent"), also owns a financing company, nondebtor Chrysler Financial Services Americas LLC, that operates under a governance structure separate from

Chrysler, with its own board and management. Chrysler Financial has provided financing to both Chrysler's dealers and consumers.

5. For the twelve months ended December 31, 2008, the Chrysler Companies recorded revenue of more than \$48.4 billion and had assets of approximately \$39.3 billion and liabilities totaling \$55.2 billion.

6. A more detailed explanation of Chrysler's businesses and operations, and the events leading to the commencement of these cases, can be found in the Affidavit of Ronald E. Kolka, which was filed on the Petition Date and is incorporated herein by reference.

Overview of These Cases

7. The significance of this chapter 11 filing to Chrysler and to the United States economy is difficult to overstate. In connection with the filing, Chrysler is seeking approval from this Court to consummate the only sale transaction that preserves some portion of its business as a going concern and averts a liquidation of historic proportions. If the proposed transaction, designed to effect an alliance with Italian automobile manufacturer Fiat S.p.A. ("Fiat"), is rejected and Chrysler liquidates, it will mean the end of an iconic, 83-year-old American car company whose name has been synonymous with innovative engineering, from the Slant-Six and HEMI engines, to power windows, power brakes and power steering, to the minivan. A liquidation would also have impacts on the nation's economy and Chrysler's stakeholders that are grim:

- 38,500 hourly and salaried Chrysler workers in the U.S. will lose their jobs;
- Chrysler's workers and retirees and their surviving spouses will lose over \$9.8 billion of health care and other benefits and \$2 billion in annual pension payments;

- All 23 of Chrysler's manufacturing plants and facilities and 15 parts depots in the United States will shut down (as well as 18 additional plants and parts depots worldwide);
- Approximately 3,200 Chrysler dealers will be put out of business and the over 140,000 employees of those dealerships will lose their jobs;
- Over \$5.7 billion in outstanding auto parts and service supplier invoices will not be paid to Chrysler's suppliers and new business will be cancelled, forcing hundreds of suppliers out of business and the loss of hundreds of thousands of additional jobs;
- Over 31 million Chrysler, Jeep and Dodge owners would lose significant value in their cars and trucks, particularly due to questions about the ongoing availability of warranties and replacement parts and services;
- Local, state and federal governments will lose tens of billions of dollars in tax revenues, according to a research memorandum published by the Center for Automotive Research in November 2008;¹
- Over \$100 billion in annual sales will disappear from local economies; and
- Chrysler's first lien secured creditors will receive net present value recoveries of less than 38 cents on the dollar and possibly as little as 9 cents; the U.S. government, another secured creditor, will receive less than that; and Chrysler's unsecured creditors will receive nothing.

8. The economic and market conditions that led to the commencement of Chrysler's chapter 11 cases and the need for the proposed sale transaction are well known, but sobering nonetheless. The automotive market meltdown, the worst in at least 26 years,² disrupted Chrysler's substantial progress in implementing a long-term plan to reduce costs and transform its businesses for the next generation of

¹ David Cole, Sean McAlinden, Kristin Dzikczek & Debra Maranger, CAR Research Memorandum: The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers, CENTER FOR AUTOMOTIVE RESEARCH, Nov. 4, 2008.

² Chris Isidore, Auto Sales Are Worst in 26 Years. January Sales Tumble More Than Expected at GM, Ford and Toyota as Rental Car Companies Slash Purchases, CNNMoney.com, Feb. 3, 2009 (4:22 p.m., ET).

cars. With sales plummeting and credit markets frozen, Chrysler undertook an intense effort to address the challenges it faced. After months of hard work and dedication by Chrysler's management, employees and advisors, working with all key stakeholders and with the support of the U.S. government, the Debtors have commenced these cases to implement a prompt sale to preserve the going concern value of their businesses and return these businesses to viability under new ownership.

9. The proposed sale transaction would create the sixth-largest global automaker by volume unit, increasing competitiveness with other Original Equipment Manufacturers ("OEMs") and creating billions of dollars in synergies. This transaction is the result of thousands of hours of negotiations among multiple parties. The transaction is being financially backed by the United States Department of the Treasury (the "U.S. Treasury"), which will provide the new alliance with approximately \$4.5 billion of taxpayer money to start up and maintain operations. In addition to this unprecedented government support, virtually all of the major constituencies that would be affected by a Chrysler liquidation have recognized how devastating it would be and have made important concessions in support of the proposed alliance:

- The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") has agreed to wage and benefit reductions in the context of a sale to the new company, which would receive the benefit of a new collective bargaining agreement eliminating certain severance benefits, and would be a party to an agreement with the UAW containing restructured retiree health care benefits;
- Chrysler's dealers have agreed to reduce their dealer and service contract margins;
- Chrysler's already financially troubled suppliers have agreed to a further 3% price reduction and other measures that will save millions of dollars;

- Chrysler's largest secured creditors, JPMorgan Chase, Goldman Sachs, Morgan Stanley and Citigroup, have agreed to the transaction that would substantially compromise their first lien debt, comprising 70% of the \$6.9 billion total outstanding, for an estimated recovery of approximately 28 cents on the dollar; and
- Chrysler Parent's minority shareholder, Daimler AG ("Daimler"), has agreed as part of a settlement with Chrysler to (a) forgive \$1.5 billion of second lien debt, at the same time that \$500 million of second lien debt is forgiven by majority shareholder Cerberus Capital Management L.P. ("Cerberus"); and (b) assist in funding Chrysler's pension plans.

Representatives of these constituencies have devoted the past six months to reaching these agreements.

10. These efforts culminated on April 30, 2009, when Chrysler, Fiat and New Chrysler (as defined below) entered into a Master Transaction Agreement (collectively with other ancillary and supporting documents, the "Purchase Agreement"). Pursuant to the Purchase Agreement, among other things: (a) Chrysler will transfer the majority of its operating assets to New CarCo Acquisition LLC ("New Chrysler"), a newly established Delaware limited liability company that currently is an indirect wholly-owned subsidiary of Fiat; and (b) in exchange for those assets, New Chrysler will assume certain liabilities of Chrysler (including the liabilities of Chrysler under the GMAC MAFA as described below) and pay to Chrysler approximately \$2 billion in cash (collectively with the other transactions contemplated by the Purchase Agreement, the "Fiat Transaction").

11. With the support of the U.S. government, Fiat, the UAW, dealers, suppliers and other stakeholders, the Debtors commenced these cases to implement an expeditious sale process to implement the Fiat Transaction, or a similar transaction with a competing bidder, designed to maximize the value of the Debtors' operations and

businesses for the benefit of their stakeholders. Pending the proposed sale, the Debtors will idle most operations as they conserve their resources, while at the same time ensuring that (a) the facilities are prepared to resume normal production schedules quickly upon the completion of a sale and (b) consumers are not impacted by the filing.

12. Time is of the essence. Given the continuing stress on all aspects of the automotive industry and the idling of the Debtors' manufacturing facilities, key relationships with suppliers, dealers and other business partners simply cannot be preserved if the sale process is not concluded quickly. Absent a prompt sale, approved and consummated in the coming weeks, the value of the Debtors' assets will rapidly decline and the ability to achieve a going concern sale will be irretrievably lost. By contrast, the proposed sale transaction, if it can be promptly consummated, will maximize the value available for stakeholders, will save hundreds of thousands of jobs and will strengthen the U.S. automotive sector and the economy generally.

Jurisdiction

13. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

14. By this motion (the "Motion"), the Debtors respectfully seek entry of an order, substantially in the form attached hereto as Exhibit A (the "Order"), authorizing the Debtors, pursuant to sections 105, 363(b) and 364(b) of the Bankruptcy Code, to enter into the Master Transaction Agreement (the "GMAC MTA"), dated May 20, 2009, among Chrysler, GMAC LLC ("GMAC"), The United States Department of

the Treasury (“UST”) and the U.S. Dealer Automotive Receivables Transition LLC (“LLC”). The form of the GMAC MTA is annexed hereto as Exhibit B.

The GMAC MTA

15. As discussed below, the Debtors, in exercising sound business judgment, seek approval to enter into the GMAC MTA, to facilitate providing financing to the Debtors’ dealers and retail customers, who are crucial to the Debtors' ability to assure that the eventual purchaser of the Debtors' assets is able to generate revenue once the Debtors’ assets are sold, and New Chrysler recommences operations. As noted previously in these cases, on May 1, 2009, Chrysler Financial, which provided wholesale financing to approximately 62% of the Debtors' dealers (collectively, the “Dealers”) as of the Petition Date, announced that it would no longer provide additional funding under the wholesale lines of the Dealers, because the filing of these chapter 11 cases caused Chrysler Financial's conduit sources of financing to cease funding Chrysler Financial.

16. To address this lack of funding, Chrysler, GMAC and certain other parties entered into a binding term sheet contemplating a series of agreements to enable GMAC to provide substitute wholesale financing to dealers previously financed by Chrysler Financial (such binding term sheet, the “GMAC MAFA”). By an order entered on May 14, 2009 (Docket No. 789), this Court authorized the Debtors to enter into the GMAC MAFA and certain other agreements contemplated thereunder. In conjunction therewith, Chrysler, Chrysler Financial and certain other parties entered into a risk sharing arrangement (the “RSA”) whereby Chrysler Financial, which has liens on most of these Dealers’ assets (including, among other things, new and used cars, parts, and other inventory), agreed to grant consents and waivers for Chrysler and GMAC to begin

operating under the GMAC MAFA. This Court authorized the Debtors to enter into the RSA certain other agreements contemplated thereunder by corrected order entered May 15, 2009 (Docket No. 890).

17. The GMAC MTA is the product of numerous intense and complicated negotiations among Chrysler, GMAC, UST and New Chrysler. The GMAC MTA is designed to address the loss sharing arrangement contemplated in the GMAC MAFA. This loss sharing arrangement protects GMAC from certain potential losses that it may incur due to its obligations under the GMAC MAFA thereby facilitating dealer financing that is of crucial benefit to these estates. Without such loss sharing arrangement GMAC is not obligated to perform under the GMAC MAFA.

18. The GMAC MAFA contemplated that GMAC would be provided with a loss sharing arrangement to reimburse GMAC for certain losses, if any, which may be incurred in connection with making financing available under the GMAC MAFA. As described in supplemental pleadings, Chrysler will be lent an additional \$600 million in accordance with the terms of the debtor in possession financing facility currently pending final approval before this Court. Pursuant to the GMAC MTA, these funds will be transferred to LLC and will be utilized for the sole purpose of reimbursing GMAC and its subsidiaries for certain losses, if any, that GMAC and its subsidiaries may incur in connection with the financing arranged under the terms of the previously approved GMAC MAFA.

19. The GMAC MTA provides GMAC with credit support and a means to protect it against potential losses that it could incur in connection with the financing it is providing pursuant to the GMAC MAFA. This will enable GMAC to

provide financing to the Debtors' dealer network so that these dealers can to continue operate and thereby preserve the going concern value for the benefit of the Debtors' estates. Put simply, the GMAC MTA is essential for the Debtors to preserve their estates and provide enterprise value to the eventual purchaser of their assets as contemplated by the Purchase Agreement or a sale on substantially comparable terms.

Authority to Enter Into the GMAC MTA

20. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under applicable case law in this circuit, if a debtor's proposed use of property pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. See, e.g., Licensing By Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989). See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. The LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented a good business reason to grant such application); see also In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is "good business reason"). When a valid business judgment exists, the law vests the debtor's decision with a strong presumption "that in making a business decision, the directors of a corporation

acted on an informed basis, in good faith, and in honest belief that the action taken was in the best interests of the company.” In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1990).

21. The business judgment rule is satisfied where the debtor acts "on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). In fact, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts generally will not entertain objections to the debtor's conduct." Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district consistently and appropriately have been reluctant to interfere with corporate decisions absent a showing of bad faith, self-interest or gross negligence, and have upheld such decisions as long as they are attributable to any "rational business purpose." Integrated Res., 147 B.R. at 656.

22. Stated simply, the Debtors' businesses cannot survive and the sale process contemplated in these cases cannot work without sufficient financing for the Dealers, and the GMAC MAFA may be terminated without an efficient and otherwise satisfactory loss sharing arrangement. Therefore, based upon the above, the Debtors, in the sound exercise of their business judgment, submit that their entry into the GMAC MTA is in the best interests of the Debtors and their estates.

Request for Waiver of Stay and Notice Requirements

23. By this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion under Bankruptcy Rule 6004(h), as well as applicable notice requirements under Rule 6004(a).

24. In the instant cases, time is of the essence, because New Chrysler, or any other potential purchaser, needs assurances that the Dealers will have adequate funding in place after the completion of the sale transaction. Currently, the sale hearing is scheduled for May 27, 2009. As such, the Debtors request that the 10 day stay imposed by Bankruptcy Rule 6004(h), as well as the notice requirements under Bankruptcy Rule 6004(a), be waived so that the Debtors are authorized to enter into the GMAC MTA forthwith.

Notice

25. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been given to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the creditors holding the 50 largest unsecured claims against the Debtors' estates, as identified in the Debtors' chapter 11 petitions; (c) counsel to the administrative agent for the Debtors' prepetition senior secured lenders; (d) counsel to Cerberus; (e) counsel to Daimler, (f) counsel to the UAW; (g) counsel to UST; (h) counsel to GMAC; (i) counsel to Chrysler Financial; (j) counsel to the official committee of unsecured creditors; and (k) counsel to Fiat. The Debtors submit that no other or further notice need be provided.

No Prior Request

26. No prior request for the relief sought in this Motion has been made to this or any other court in connection with these chapter 11 cases.

WHEREFORE the Debtors respectfully request that the Court (a) enter an order substantially in the form annexed hereto as Exhibit A granting the relief requested herein; and (b) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: May 19, 2009
New York, New York

Respectfully submitted,

/s/ Corinne Ball

Corinne Ball
Veerle Roovers
JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

David G. Heiman
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

Jeffrey B. Ellman
JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8330

PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

**ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY
CODE (A) AUTHORIZING THE DEBTORS TO ENTER INTO THE MASTER
TRANSACTION AGREEMENT AMONG CHRYSLER LLC, THE UNITED
STATES DEPARTMENT OF THE TREASURY, GMAC LLC, AND U.S.
DEALER AUTOMOTIVE RECEIVABLES TRANSITION LLC; (B) WAIVING
THE STAY UNDER BANKRUPTCY RULE 6004(h); AND (C) WAIVING THE
NOTICE REQUIREMENTS UNDER BANKRUPTCY RULE 6004(a)**

This matter coming before the Court on the Emergency Motion of Debtors and Debtors in Possession, Pursuant to Sections 105 and 363 of the Bankruptcy Code, for an Order Authorizing Them to (A) Enter into the GMAC Master Transaction Agreement, (B) Waiving the Stay Under Bankruptcy Rule 6004(h) and (C) Waiving the Notice Requirements Under Bankruptcy Rule 6004(a) (the "Motion"),³ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Court having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) notice of the Motion and the Hearing was sufficient under the

³ Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

circumstances, and (d) a sound business purpose exists for the Debtors' entry into the GMAC MTA; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized to enter into the GMAC MTA substantially in the form attached as Exhibit B to the Motion. In addition, the Debtors are authorized to execute and deliver such additional documents, instruments and agreements, as are required under the GMAC MTA.
3. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.
4. The requirements of Bankruptcy Rule 6004(a) are hereby waived.
5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2009

Hon. Arthur J. Gonzalez

EXHIBIT B

