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**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

**MOTION OF DEBTORS AND DEBTORS IN POSSESSION,
PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE
BANKRUPTCY CODE, FOR AN ORDER AUTHORIZING THEM
TO PAY THE PREPETITION CLAIMS OF CERTAIN POTENTIAL LIENHOLDERS**

TO THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE:

Chrysler LLC ("Chrysler") and 24 of its domestic direct and indirect subsidiaries, as debtors and debtors in possession (collectively with Chrysler, the "Debtors"), respectfully represent as follows:

Background

1. On the date hereof (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"). By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases be consolidated for procedural purposes only and 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 ("Chrysler Financial"), that operates under a governance structure separate from Chrysler, with

its own board and management. Historically, 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 contemporaneously herewith 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 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,

¹ Daniel Cole, *et al.*, Center for Automotive Research Memorandum, *The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers*, at <http://www.cargroup.org> (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).

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") and Export Development Canada, an affiliate of the Canadian government, which together will provide the new alliance with approximately \$6 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. As the culmination of these efforts, Chrysler, Fiat and New Chrysler (as defined below) have reached an agreement in principle and are expected to enter into a Master Transaction Agreement (collectively with other ancillary and supporting documents, the "Purchase Agreement") in short order. 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 and pay to Chrysler \$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. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors hereby seek the entry of an order: (a) authorizing them, in their sole discretion and subject to the terms and conditions set forth herein, to pay, in the ordinary course of the Debtors' businesses, the prepetition secured claims (collectively, the "Lienholder Claims") of certain parties holding a potential lien on, security interest in or other possessory rights to property of the Debtors' estates (collectively, the "Lienholders"); and (b) granting related relief. Prior to any hearing before the Court to consider granting the relief requested herein, the Debtors will have filed: (a) a consolidated memorandum of law (the "Memorandum of Law"); (b) the Declaration of Scott Garberding (the "Garberding Declaration") and (c) the Declaration of Frank Ewasyshyn (the "Ewasyshyn Declaration") in further support of this Motion and certain other requests for relief.

Basis for Relief

15. As set forth above, the Debtors are pursuing the prompt approval and consummation of the Fiat Transaction or a similar going concern transaction with a competing bidder (any such transaction, a "Sale Transaction"). Pending such a sale, the Debtors intend to 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 in connection with the consummation of a Sale Transaction and (b) consumers are not impacted by the filing (e.g., by continuing operations at parts depots to provide an uninterrupted supply of parts to service the Debtors' vehicles). The Debtors anticipate that the purchased manufacturing and assembly facilities will resume normal operations under ownership of New Chrysler or other purchaser (any such purchaser, the "Purchaser").

16. During the short period between the Petition Date and the anticipated consummation of a Sale Transaction, the Debtors intend to make every effort to minimize the adverse effects of their chapter 11 filing on the transition of the Debtors' assets to New Chrysler or the Purchaser. The Debtors intend to fulfill their fiduciary duties to maximize the recoveries of their stakeholders by obtaining authority to pay those parties in a position to delay or interrupt the transition of the Debtors' operating assets to the Purchaser and, thus, impair the value of a Sale Transaction.

17. Prior to the Petition Date, and in the ordinary course of the Debtors' businesses, certain parties with commercial relationships with the Debtors had the ability to — and did — obtain liens on and interests in property owned by the Debtors, including, in some cases, a right to a lien by virtue of possession of the Debtors' property under state law. The Debtors believe that the failure to pay the claims of these parties could have a negative impact on

their efforts to conduct operations at their parts depots, maintain customer goodwill and complete a sale on an expedited basis.

18. The Debtors believe that, despite the temporary idling of their manufacturing and assembly facilities, the failure to pay certain Lienholder Claims could have an adverse impact on their business activities. Among other things, availability and timely deliveries of parts are essential to the functioning of the Debtors' parts depots that remain open to serve the needs of dealers and consumers. Delays in delivering parts to permit customer's cars to be repaired, which could result from a shipper or warehousemen refusing to deliver or relinquish goods, could have a devastating impact on the Debtors' brands and, in turn, going concern value. This potential impact is magnified here given the scrutiny of the Debtors' bankruptcy. In addition, certain of the Debtors' personal property in a Lienholder's possession must be available without delay in connection with the consummation of a Sale Transaction and the restarting of the Debtors' businesses. As such, the Debtors have determined, in the exercise of their business judgment, that payment of the Lienholders (in the Debtors' sole discretion) is important to preserve the going concern value of their brands and assets in anticipation of a Sale Transaction.

19. Because the amount of many of the Lienholder Claims is less than the value of any property securing those claims, it is likely that many of the Lienholders are (or will allege that they are) fully secured creditors.³ Moreover, certain of the statutory liens held by certain Lienholders may be superior to those of the Debtors' prepetition secured lenders.⁴ In

³ If the Debtors do not pay such Lienholder Claims pursuant to the relief sought herein, the Debtors reserve all of their rights to challenge the amount, nature and classification of such claims.

⁴ Specifically, the holders of statutory liens dependent upon the Lienholders' possession of the Debtors' goods generally are superior in priority to security interests in such goods (unless the statute creating the lien provides otherwise). See Uniform Commercial Code § 9-333(b) ("Priority of Certain Liens Arising by Operation of Law") ("A possessory lien on goods has priority over a security interest in the goods unless

general, pursuant to section 506 of the Bankruptcy Code, fully secured creditors are entitled to receive (a) payment in full of their prepetition claims and (b) the postpetition interest accruing on such claims up to the value of the collateral. Consequently, payment of the Lienholder Claims now will: (a) in most cases give the Lienholders no more than they otherwise would be entitled to receive on account of their claims in the chapter 11 process; and (b) save the Debtors the cost of interest that otherwise may accrue on the Lienholder Claims.

20. In total, approximately \$227 million in Lienholder Claims were outstanding as of the Petition Date. Because the Debtors' manufacturing facilities will be idled pending a sale, and the Debtors are pursuing completion of the sale on an expedited basis, the Debtors believe that they will be able to minimize the payment of these amounts.

The Identity of the Lienholders

21. The Lienholders the Debtors seek authority to pay pursuant to this Motion fall into five main categories: (a) shippers; (b) warehousemen; (c) customs brokers; (d) tooling suppliers; and (e) artisans and repairmen. Detailed discussions of each category of Lienholders are set forth in the Garberding Declaration and the Ewasyshyn Declaration. A brief overview of each category follows immediately below. The types of liens securing the Lienholder Claims, and the legal basis therefor, are summarized on Exhibit A hereto.

(continued...)

the lien is created by a statute that expressly provides otherwise."); see also Bellamy's Inc. v. Genoa Nat'l Bank (In re Borden), 361 B.R. 489, 493 (B.A.P. 8th Cir. 2007) (noting that, under Nebraska version of section 9-333 of the Uniform Commercial Code, "an artisan's lien has priority over a previously perfected security interest in the same goods."); Stanziale v. Pratt & Whitney (In re Tower Air, Inc.), 319 B.R. 88, 94 n.8 (Bankr. D. Del. 2004) (stating that "[a]s under [the predecessor to section 9-333 of the Uniform Commercial Code], the possessory lien has priority over a security interest unless the possessory lien is created by a statute that expressly provides otherwise. If the statute creating the possessory lien is silent as to its priority relative to a security interest, this section provides a rule of interpretation that the possessory lien takes priority, even if the statute has been construed judicially to make the possessory lien subordinate.").

22. Shippers. The Debtors rely on hundreds of foreign and domestic commercial common carriers, shippers, logistics providers and other third-party service providers (collectively, the "Shippers") to transport production parts, raw materials and other goods. As a result, as of the Petition Date, the Shippers maintained possession of approximately \$510 million of the Debtors' raw materials and component parts, some of which the Debtors need on a postpetition basis or will be essential to prepare for the consummation of any sale. In addition, the Debtors rely on Shippers to transfer service parts to dealers and others as needed to fix their vehicles. These services are critical to the functioning of the Debtors' operating parts depots and to protect and preserve consumer goodwill and brand value.

23. Warehousemen. The Debtors engage certain outside providers that supplement the Debtors' own storage facilities by storing component parts and finished vehicles used in or produced by the Debtors' manufacturing and assembly operations at a variety of warehouse and storage facilities (collectively, the "Warehouses"). The owners of the Warehouses (collectively, the "Warehousemen") maintain possession of certain of the Debtors' goods in the ordinary course of their businesses, some of which the Debtors need on a postpetition basis to operate their parts depots, or will be essential to prepare for the restarting of operations and the consummation of any sale.

24. The Debtors believe that any disruption in obtaining the services and cooperation of the Warehousemen, when needed, would impair the ability to restart operations in connection with a sale and, thus, to preserve going concern value and implement any Sale Transaction. Moreover, many of the Warehousemen's services are integrated into the Debtors'

just-in-time inventory system, which will be transferred to the Purchaser.⁵ As such, it is unlikely that, even if suitable alternative warehouse facilities were available in advance of a Sale Transaction, these integrated services could be easily or timely replaced. The need for a transition to alternate providers could delay or hinder the ability to restart operations or complete a Sale Transaction.

25. Customs Brokers. The Debtors use the services of multiple customs brokers, consultants and freight forwarders (collectively, the "Customs Brokers") to provide services that enable the Debtors to comply with the complex customs laws and regulations of the United States and other jurisdictions. Customs Brokers often hold or control the flow of goods sent to the Debtors from outside of the United States. Without the cooperation of these Customs Brokers, the Debtors may have no alternatives to obtain essential goods. Even while idled, the Debtors will require the Customs Brokers to perform services associated with goods currently in transit (both goods needed for operating parts depots and goods to be sold to the Purchaser), as well as in connection with service parts yet to be shipped, from low-cost foreign countries.⁶

⁵ Warehouses that store the Debtors' component parts prior to the delivery of such goods to the Debtors' manufacturing and assembly facilities are referred to as "In-Bound Warehouses." Nearly all of the In-Bound Warehouses perform "metering" and "sequencing" functions that extend beyond the simple storage of the Debtors' goods. The "metering" function performed by the In-Bound Warehouses involves apportioning stored goods into manageable bundles that can be delivered to the Debtors' facilities in quantities and volume that minimize the amount of floor space devoted to such goods. The "sequencing" function performed by the In-Bound Warehouses takes two forms: (a) processing certain component parts stored therein into an assembled module prior to the delivery of the module to the Debtors' facilities (e.g., the assembly of various component parts into an instrument panel before delivering the instrument panel to the Debtors); and (b) managing the delivery of certain component parts to the Debtors' facilities in just the right "sequence" to maximize the facilities' efficiency (e.g., delivering colored seats in a particular sequence that ensures that the Debtors install the proper color into the applicable vehicle).

⁶ Even if the Customs Brokers did not have liens, or even if those liens could be avoided, a substantial portion, if not all, of the Customs Duties sought to be paid hereunder would be entitled to priority pursuant to section 507(a)(8)(F) of the Bankruptcy Code. Section 507(a)(8)(F), in pertinent part, affords eighth priority in payment to the allowed unsecured claims of governmental units for:

a customs duty arising out of the importation of merchandise —

26. Tooling Modification Claims. In recent years, the Debtors have purchased from certain suppliers (collectively, the "Tooling Suppliers") approximately \$900 million annually in machinery, jigs, dies, gauges, molds, patterns, equipment, tooling and other personal property dedicated and tailored to vehicle production (collectively, "Tooling") that will be located at the Tooling Supplier's facility. In connection with the preparation for any Sale Transaction and the restarting of the Debtors' facilities, the Debtors require prompt access to the Tooling. A delay in obtaining access to key Tooling could undermine the Debtors' efforts to consummate the smooth transfer of operations to the Purchaser. In addition, many of the Tooling Suppliers are small companies with limited resources that have been hit particularly hard by the recent downturn in the automotive industry and the economy generally. Absent payment, many of these Tooling Suppliers that are critical to the operation of the Debtors' business after the sale may not survive, thereby further hindering a smooth transition to a Purchaser.⁷

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- (i) entered for consumption within one year before the date of the filing of the petition;
- (ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or
- (iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisal or classification of such merchandise was not available to the appropriate customs officer before such date

11 U.S.C. § 507(a)(8)(F). As priority claims, these Customs Duties would need to be paid in full before the Debtors could make any distributions to holders of general unsecured claims in connection with a chapter 11 plan.

⁷ The Debtors do not concede the validity of any asserted lien on Tooling. Indeed, the Debtors believe that many of the Tooling Suppliers' attempts to assert liens against the Debtors' property will fail. For example, the terms and conditions governing the vast majority of the Debtors' contracts with such suppliers provide that the supplier must "keep [the Debtors'] tooling or property in its possession and/or control in good condition, fully covered by insurance, free of liens and encumbrances and will replace such tooling or property when lost, damaged or destroyed." See Chrysler Production Purchasing Terms and Conditions, ¶ 10. As such, any state law rights of suppliers to assert liens or sell tooling have plainly been waived.

27. Artisans & Repairmen. The Debtors often require and utilize the services of artisans to repair or modify machinery and equipment, including Tooling, that is no longer fully operational, requires routine maintenance or requires modification. These are often sole source suppliers of these services, having special skill, tooling, experience or proprietary rights. On the Petition Date, certain of the artisans were in possession of the Debtors' machinery and equipment needed in advance of or in connection with the Sale Transaction. Any effort to restart operations in connection with a Sale Transaction will require prompt access to equipment under repair. Moreover, without certain equipment, facilities may not be able to be maintained in a safe and prudent manner. Any exercise of lien rights to deny or limit the Debtors' access to necessary machinery and equipment could impair going concern value.

Conclusion

28. The Lienholders provide services essential to the Debtors' ability to restart operations at their manufacturing and assembly facilities in connection with a Sale Transaction, marshal assets to be delivered to the purchaser, obtain and deliver service parts necessary to run the parts depots, thereby preserving supplier, dealer and consumer confidence in Chrysler, Jeep and Dodge brand vehicles and preserving market value. Any refusal by the Lienholders to provide such essential services and Tooling when required by the Debtors would threaten the Debtors' ability to service customers and could hinder or delay the consummation of a Sale Transaction, to the detriment of the Debtors' stakeholders.

(continued...)

Moreover, in many instances, where the Debtors have not fully paid a Tooling Supplier for Tooling, such Tooling may not "belong" to the Debtors within the meaning of molder's lien statutes, thus rendering such statutes inapplicable.

29. The Debtors' management has carefully reviewed the facts and circumstances of the potential claims of the Lienholders and have identified certain Lienholders the payment of whom would benefit the Debtors' chapter 11 estates by promoting the successful consummation of a Sale Transaction and maximizing the value received by the Debtors in connection with such a transaction. The Debtors intend to require clear prospective commitments from these Lienholders to provide necessary services to both the Debtors and the Purchaser (as applicable) in exchange for, and as a condition to, the payment of the Lienholder Claims, as discussed in detail below.

30. The Debtors therefore seek authority, in their sole discretion, to pay the prepetition claims of Lienholders, to the extent such payment is permitted by, and consistent with, the terms of the Debtors' proposed postpetition financing facility (the "DIP Financing Facility").⁸ Given the scope of the Debtors' businesses, and the importance of preserving the vendor constituency necessary to consummate Sale Transaction on a going concern basis, the Debtors submit that the exercise of such authority would be a reasonable and appropriate expenditure of estate funds.

31. Bankruptcy courts in this District and elsewhere have granted similar relief in numerous other cases. See In re Fortunoff Fine Jewelry and Silverware, LLC, No. 08-10353 (JMP) (Bankr. S.D.N.Y. Feb. 13, 2008) (order authorizing payment of prepetition claims of certain potential lien claimants); In re Wellman, Inc., No. 08-10595 (SMB) (Bankr. S.D.N.Y. Feb. 26, 2008) (same); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y.

⁸ Concurrently with the filing of this Motion, the Debtors have filed a motion seeking approval of up to \$4.5 billion in debtor in possession financing from the U.S. Treasury and Export Development Canada.

Mar. 29, 2006) (same); In re Delphi Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005) (same); In re Tower Automotive, Inc., No. 05-10578 (ALG) (Bankr. S.D.N.Y. Feb. 3, 2005) (same); In re Cornerstone Propane, L.P., No. 04-13856 (RDD) (Bankr. S.D.N.Y. June 10, 2004) (same); In re Acterna Corp., No. 03-12837 (BRL) (Bankr. S.D.N.Y. May 6, 2003) (same); In re Enron Corp., No. 01-16034 (AJG) (Bankr. S.D.N.Y. Dec. 3, 2001) (same); In re Teligent, Inc., No. 01-12974 (SMB) (Bankr. S.D.N.Y. June 13, 2001) (same); see also In re Cadence Innovation LLC, No. 08-11973 (KG) (Bankr. D. Del. Aug. 27, 2008) (multiple orders authorizing payment of prepetition claims of certain potential lien claimants); In re Internet Corp., No. 08-11859 (KG) (Bankr. D. Del. Aug. 14, 2008) (order authorizing payment of prepetition claims of certain potential lien claimants); In re Dura Auto. Sys., Inc., No. 06-11202 (KJC) (Bankr. D. Del. Nov. 20, 2006) (same).

Conditions on Payment of Lienholder Claims

32. In an effort to ensure that the prompt payment of the Lienholder Claims provides the Debtors with the maximum benefit to their estates, the Debtors propose that each recipient of payment of a Lienholder Claim (a "Lienholder Payment") be required, to the extent applicable, to: (a) continue its existing business relationship with the Debtors (and, after the closing of a Sale Transaction, with the Purchaser) on such terms as are acceptable to the Debtors in their business judgment; (b) continue to (i) extend normalized trade credit to the Debtors pending the closing of a Sale Transaction and, after such a closing, to the Purchaser and (ii) provide other business terms to such parties (as applicable) on a prospective basis (consistent with past practices and subject to adjustments and modifications contemplated by the applicable purchase order), including with respect to any applicable credit limits, the pricing of goods and services and the provision of equivalent levels of service, all on terms at least as favorable as those extended to the Debtors prepetition or on such other terms that are acceptable to the

Debtors in their business judgment; (c) not file or record in any jurisdiction (whether federal, state or in any subdivision of a state), or otherwise assert against the Debtors, their chapter 11 estates, the Purchaser or against any of their property, a lien (whether statutory or otherwise) or security interest relating in any manner to the Lienholder Claims satisfied through the Lienholder Payment; (d) agree that the Debtors' standard terms and conditions (i) continue to govern the Lienholder's commercial relationship with the Debtors pending the closing of a Sale Transaction and (ii) shall govern the Lienholder's commercial relationship with the Purchaser after such a closing; (e) agree to release to the Debtors (or the Purchaser) as requested goods or other assets of the Debtors in the Lienholder's possession; and (f) agree not to contest the assumption (and subsequent assignment to the Purchaser) of any purchase order issued by the Debtors to such Lienholder on the grounds that such purchase order is not an executory contract or on any other grounds (other than the failure of a Purchaser other than New Chrysler to provide adequate assurance of future performance) (collectively, the "Trade Terms"). The Trade Terms shall be applicable until the expiration of the term of any existing purchase orders between the parties.

33. If a Lienholder accepts a Lienholder Payment and fails to provide the requisite Trade Terms, then: (a) any Lienholder Payment received by the Lienholder will be deemed an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (i) recover from the Lienholder in cash or goods or (ii) at the Debtors' option, apply against any outstanding administrative claim held by such Lienholder; (b) upon recovery of any Lienholder Payment, the corresponding prepetition claim of the Lienholder will be reinstated in the amount recovered by the Debtors, less the Debtors' reasonable costs to recover such amounts; (c) the Debtors shall have all rights to challenge the validity, priority or extent of the Lienholders' lien or interest and the validity and amount of the related claim; and (d) the

Debtors shall have all rights to seek to avoid as fraudulent or preferential or otherwise any lien or interest held by the Lienholder.

34. The Debtors shall implement and provide notice of the conditions set forth in paragraphs 32 and 33 above through the following procedures:

- The Debtors may require a Lienholder to execute an agreement (a "Trade Agreement") prior to its receipt of a Lienholder Payment that (a) confirms that the Lienholder agrees to be bound by the Trade Terms, (b) confirms that the Lienholder has received and agrees to be bound by the order granting this Motion and (c) contains such other terms and conditions as the Debtors believe proper, including confidentiality provisions.
- If no Trade Agreement is executed, any payment pursuant to which a Lienholder Payment is made will be accompanied by (a) notice from the Debtors explaining that acceptance of the payment by the Lienholder constitutes its agreement to provide the Trade Terms and explaining the consequences of its failure to comply with such agreement and (b) a copy of the order granting this Motion (collectively, the "Lienholder Information").
- In the Debtors' sole discretion, any check issued on account of a Lienholder Payment may include a restrictive endorsement on the back of the check as follows:

By accepting this check, the payee agrees (a) to provide the payor and its affiliates, or any assignee of substantially all of the payor's assets, with normalized trade credit and provide other business terms on a prospective basis (consistent with past practices), including with respect to any applicable credit limits, pricing and the provision of equivalent levels of service, on terms at least as favorable as those extended to the payor and its affiliates prior to the commencement of payor's chapter 11 case, identified as Case No. 09-50002 (AJG) and pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), or as are otherwise acceptable to the payor until the expiration of the term of any existing purchase orders between the parties, (b) not to file or record in any jurisdiction, a lien or security interest against the payor, any assignee of substantially all of the payor's assets or their property relating in any manner to the claims satisfied through this payment; and (c) upon request,

to release to payor, or any assignee of substantially all of the payor's assets, any property of payor in payee's possession. Payee hereby submits to the jurisdiction of the Bankruptcy Court for the enforcement of such agreement.

Request for Authority for Banks to Honor and Pay Checks and Fund Transfers Related to the Lienholder Claims

35. In addition, by this Motion, the Debtors request that all banks and other financial institutions be authorized and directed, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, Lienholder Claims, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payment of Lienholder Claims. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

36. The Debtors further represent that they have anticipated access to sufficient debtor in possession financing to pay all Lienholder Claims, to the extent described herein and consistent with the terms of the DIP Financing Facility.

37. Nothing contained herein is intended or should be construed as: (a) an admission as to the amount, validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim constitutes a Lienholder Claim or is supported by a valid lien or security interest; or (e) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

Requests for Immediate Relief and Waiver of Stay

38. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek (a) immediate entry of an interim order granting the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtors' estates, the Court may allow the Debtors to pay all or part of a claim that arose before the Petition Date prior to the twenty-first day following the Petition Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise."

39. As set forth above, the payment of Lienholder Claims is necessary to prevent the immediate and irreparable damage to the going concern value of the Debtors' assets, and, thus, the ability to consummate a going concern Sale Transaction, that would result from the Debtors' inability to obtain indispensable goods and services (e.g., service parts necessary to repair and maintain the Debtors' vehicles, logistics services related to the transfer of such parts, as well as of parts currently in transit) as needed to prepare for an expedited sale process and transition of assets to the Purchaser in the initial weeks of these chapter 11 cases. Accordingly, the Debtors submit that ample cause exists to justify: (a) the immediate entry of an order granting the relief sought herein pursuant to Bankruptcy Rule 6003(b); and (b) a waiver of the ten-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Notice

40. No trustee or examiner has been appointed in these chapter 11 cases.

Notice of this Motion has been given to: (a) the U.S. Trustee; (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; and (g) counsel to the U.S. Treasury. The Debtors submit that no other or further notice need be provided.

No Prior Request

41. No prior request for the relief sought in this Motion has been made to this or any other Court.

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

Dated: April 30, 2009
New York, New York

Respectfully submitted,

/s/ Corinne Ball

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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

<u>TYPE OF LIEN</u>	<u>LEGAL BASIS FOR LIEN & RELATED LEGAL ARGUMENTS</u>
Shippers' Lien	<ul style="list-style-type: none"> • U.C.C. § 7-307(1) (2009) (a "carrier has a Lien on the goods covered by a bill of Lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law."). • A substantially similar version of this provision of the Uniform Commercial Code (the "<u>UCC</u>") has been enacted in each of the major domestic jurisdictions in which the Debtors do business.
Warehousemen's Lien	<ul style="list-style-type: none"> • U.C.C. § 7-209(a) (2009) ("a warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale"). • A substantially similar version of this provision of the UCC has been enacted in each of the major domestic jurisdictions in which the Debtors do business. • The Bankruptcy Code expressly protects Warehousemen's liens. <u>See</u> 11 U.S.C. § 546(i)(1) (providing that a debtor "may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods."). • U.C.C. § 7-102(a)(13) (2009) ("Warehouse' means a person engaged in the business of storing goods for hire."). • A substantially similar version of this provision of the UCC has been enacted in each of the major domestic jurisdictions in which the Debtors do business. • The Debtors believe that any "metering" and "sequencing" functions performed by certain of the In-Bound Warehouses, and the claims related to such services, (a) place those In-Bound Warehouses outside the ambit of the definition of "warehouse" set forth at section 2-102(a)(13) of the UCC, (b) do not result in the attachment of a warehousemen's lien under section 2-709 of the UCC and (c) do not enjoy the protections of section 546(i) of the Bankruptcy Code. Although the Debtors reserve the right to contest the assertion of warehousemen's liens that allegedly secure claims related to metering and sequencing functions, the Debtors nevertheless recognize that they may require the authority to make payment upon the prepetition claims of Warehousemen asserting alleged lien rights under the UCC.

<u>TYPE OF LIEN</u>	<u>LEGAL BASIS FOR LIEN & RELATED LEGAL ARGUMENTS</u>
Liens Securing Customs Claims	<ul style="list-style-type: none"> • Shippers' Liens (as described above) • Warehousemen's Liens (as described above).
Liens Potentially Asserted by Customs Service	<ul style="list-style-type: none"> • 19 C.F.R. § 141.1(d) ("The liability for duties also constitutes a lien upon the merchandise imported which may be enforced while such merchandise is in the custody or subject to the control of the United States.").
Liens Securing Tooling Modification Claims	<ul style="list-style-type: none"> • <i>Molder's Liens</i> <ul style="list-style-type: none"> • <u>See, e.g.</u>, Ind. Code. Ann. § 32-33-16-3 ("A fabricator has a lien, dependent on possession, on any die, mold, form, jig, or pattern in the fabricator's possession belonging to the customer for the amount due the fabricator from the customer for fabrication work performed with the die, mold, form, jig, or pattern."); 770 Ill. Comp. Stat. Ann. § 105/1 ("Plastic or metal processors or persons conducting a plastic or metal processing business shall have a lien on the tools, dies, molds, jigs, fixtures, forms or patterns in their possession belonging to a customer, for the balance due them from such customer for plastic or metal processing work, and for all materials related to such work. The processor may retain possession of the tool, die, mold, jig, fixture, form or pattern until such balance is paid . . ."); Mich. Comp. Laws Ann. § 445.618 ("A molder has a lien, dependent on possession, on any die, mold, or form in the molder's possession belonging to a customer for the amount due the molder from the customer for plastic fabrication work performed with the die, mold, or form. A molder may retain possession of the die, mold, or form until the amount due is paid."); Mich. Comp. Laws. Ann. § 570.533 ("An end user has a lien, dependent on possession, on any special tool in the end user's possession belonging to a customer for the amount due the end user from the customer for metal fabrication work performed with the special tool. An end user may retain possession of the special tool until the amount due is paid."); Ohio Rev. Code Ann. § 1333.31(A)(1) ("A molder has a lien on a die, mold, pattern, or form that is in his possession and that belongs to a customer, for the following: (a) the amount due from the customer for . . . making or improving the die, mold, pattern, or form"); Tenn. Code Ann. § 66-18 102 ("Molders shall have a lien, dependent on possession, on all dies, molds, forms or patterns in their hands belonging to a customer, for the balance due them from such customer for any manufacturing or fabrication work, and in the value of all material related to such work. Such liens shall attach upon the commencement of work by the molder and shall be subject to any prior perfected security interest in such property as of the commencement date. The molder may retain possession of the dye, mold, form or pattern until the charges are paid, or until repossessed by a creditor with a prior perfected security interest."). • <i>Moldbuilder's Liens</i> <ul style="list-style-type: none"> • <u>See, e.g.</u>, Mich. Comp. Laws Ann. § 570.563 ("[a] special tool builder has a lien on any special tool ...

<u>TYPE OF LIEN</u>	<u>LEGAL BASIS FOR LIEN & RELATED LEGAL ARGUMENTS</u>
	<p>[for] the amount that a customer or end user owes the special tool builder for the fabrication, repair, or modification of the special tool" provided that "the special tool builder has permanently recorded its name, street address, city and state" on the special tool.... The special tool builder retains the lien that attaches under this section even if the special tool builder is not in physical possession of the special tool for which the lien is claimed."); Ill. Comp. Stat. Ann. § 770.105/1(B) ("[a] toolmaker has a lien on all special tools produced by it and on all proceeds from the assignment, sale, transfer, exchange, or other disposition of the special tool produced by it until the toolmaker is paid in full all amounts due the toolmaker for the production of the special tool;" providing that (a) the lien attaches when the special tool is delivered from the toolmaker to the customer, (b) the amount of the lien is the amount that the customer owes the toolmaker for the fabrication of the special tool, and (c) the toolmaker retains the lien even if the toolmaker is not in possession of the special tool for which the lien is claimed); Ohio Rev. Code Ann. § 1333.33 ("A moldbuilder has a lien on all molds produced by it and on all proceeds from the assignment, sale, transfer, exchange, or other disposition of the molds produced by it until the moldbuilder is paid in full all amounts due the moldbuilder for the production of the mold or these proceeds. The lien described in this division attaches when the mold is delivered from the moldbuilder to the customer. The amount of the lien described in ... this section is the amount that a customer or molder owes the moldbuilder for the fabrication, repair, or modification of the mold. The moldbuilder retains the lien described in ... this section even if the moldbuilder is not in possession of the mold for which the lien is claimed."); Wis. Stat. § 779.485(2) ("A special tool builder ... has a lien on a special tool in the amount that a customer or manufacturer owes the special tool builder for designing, developing, manufacturing, fabricating, assembling, repairing, or modifying the special tool A special tool builder retains a special tool builder's lien even if the special tool builder does not have physical possession of the special tool for which the lien is claimed.").</p> <ul style="list-style-type: none"> • <i>Artisan's Liens</i> (as described below).
Artisan's Liens	<ul style="list-style-type: none"> • <u>See, e.g.</u>, Texas Const. Art. XVI, § 37 ("Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor"); Mich. Comp. Laws Ann. § 570.187 ("When any person shall deliver to any mechanic, artisan, or any tradesman any ... article of value, to be altered, fitted or repaired, such mechanic, artisan or tradesman shall have a lien thereon for the just value of the labor or skill applied thereto by him"); 8 N.Y. Consol. Laws Adv. § 180 ("A person who makes, alters, repairs or performs work or services of any nature or description upon, or in any way enhances the value of an article of personal property, at the request of or with the consent of the owner, has a lien on such article, while lawfully in possession thereof, for his reasonable charges for the work done and materials furnished, and may retain possession thereof until such charges are paid."); Tenn. Code Ann. § 66 14 101 ("repairers, and artisans generally, who do work for the public, shall have the common law lien, and the right, at the expiration of six (6) months from the time of the contract and the

<u>TYPE OF LIEN</u>	<u>LEGAL BASIS FOR LIEN & RELATED LEGAL ARGUMENTS</u>
	<p>leaving with them of the goods or products to be repaired, developed, processed or improved, if not claimed or called for by the owner, to sell the same at public outcry after complying with the provisions of this chapter.").</p> <ul style="list-style-type: none"> • In some states, artisan's liens are not imposed by statute but by common law. See <u>In re Stookey Holsteins, Inc.</u>, 112 B.R. 942, 946 (Bankr. N.D. Ind. 1990) (recognizing common law possessory artisan's lien under Indiana law); <u>In re Mark S. Kaplan, Inc.</u>, 42 B.R. 288, 290 (Bankr. S.D. Ohio 1984) (explaining Ohio law in respect of artisan's liens and their viability despite lack of statutory basis); <u>Mack Trucks, Inc. v. Performance Assocs. Corp.</u>, 553 A.2d 412, 413-14 (Pa. Super. Ct. 1989) (recognizing common law artisan's lien under Pennsylvania law); <u>Nat'l Bank of Joliet v. Bergeron Cadillac, Inc.</u>, 361 N.E.2d 1116, 1117 (Ill. 1977) (stating that Illinois recognizes the common law artisan's possessory lien); <u>Fruehauf Corp. v. Huntington Moving & Storage Co.</u>, 159 W. Va. 14, 19 (1975) (recognizing common law possessory artisan's liens under West Virginia law); <u>Moynihan Assocs., Inc. v. Hanisch</u>, 56 Wis. 2d 185, 189 (1972) (recognizing common law artisan's lien under Wisconsin law); <u>Jackson v. Kusmer</u>, 411 S.W.2d 257, 258 (Mo. App. 1967) (recognizing common law artisan's lien under Missouri law); <u>South v. Truesdale</u>, 233 Ky. 682, 685 (1930) (recognizing common law artisan's lien under Kentucky law); accord <u>Nickell v. Lambrecht</u>, 185 N.W. 2d 155 (Mich. Ct. App. 1970) (recognizing viability of common law artisan's liens for repair claims and their co-existence with statutory liens); <u>Forrest Cate Ford, Inc. v. Fryar</u>, 62 Tenn. App. 572, 574 (Tn. Ct. App. 1970) (recognizing common law artisan's lien under Tennessee law).

EXHIBIT B

**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(a) AND 363(b)
OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTORS TO PAY
THE PREPETITION CLAIMS OF CERTAIN POTENTIAL LIENHOLDERS**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code, for an Order Authorizing Them to Pay the Prepetition Claims of Certain Potential Lienholders (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Court having reviewed the Motion, the Memorandum of Law, the Declaration of Scott Garberding (the "Garberding Declaration"), the Declaration of Frank Ewasyshyn (the "Ewasyshyn Declaration") and the Affidavit of Ronald E. Kolka filed in support of the Debtors' first day papers (the "Kolka Affidavit") and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) notice of the Motion and the Hearing was sufficient under the circumstances, (iv) there is good cause to waive the ten-day stay imposed by Bankruptcy Rule 6004(h) to the

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

extent it is applicable, (v) the payment of any Lienholder Claims on the terms and conditions set forth herein is necessary and appropriate to preserve the value of the Debtors' assets, brands, businesses and estates for the benefit of all stakeholders and (vi) the requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order; and the Court having determined that the legal and factual bases set forth in the Motion, the Memorandum of Law, the Garberding Declaration, the Ewasyshyn Declaration and the Kolka Affidavit and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are authorized, in the Debtors' sole discretion and subject to the terms and conditions described herein, to pay the Lienholder Claims, to the extent such payment is permitted by, and consistent with, the terms of the DIP Financing Facility.
3. Each recipient of a payment of a Lienholder Payment shall be required, to the extent applicable, to: (a) continue its existing business relationship with the Debtors (and, after the closing of a Sale Transaction, with the Purchaser) on such terms as are acceptable to the Debtors in their business judgment; (b) continue to (i) extend normalized trade credit to the Debtors pending the closing of a Sale Transaction and, after such a closing, to the Purchaser and (ii) provide other business terms to such parties (as applicable) on a prospective basis (consistent with past practices and subject to adjustments and modifications contemplated by the applicable purchase order), including with respect to any applicable credit limits, the pricing of goods and services and the provision of equivalent levels of service, all on terms at least as favorable as those extended to the Debtors prepetition or on such other terms that are acceptable to the Debtors in their business judgment; (c) not file or record in any jurisdiction (whether federal, state or in any subdivision of a state), or otherwise assert against the Debtors, their chapter 11

estates, the Purchaser or against any of their property, a lien (whether statutory or otherwise) or security interest relating in any manner to the Lienholder Claims satisfied through the Lienholder Payment; (d) agree that the Debtors' standard terms and conditions (i) continue to govern the Lienholder's commercial relationship with the Debtors pending the closing of a Sale Transaction and (ii) shall govern the Lienholder's commercial relationship with the Purchaser after such a closing; (e) agree to release to the Debtors (or the Purchaser) as requested goods or other assets of the Debtors in the Lienholder's possession; and (f) agree not to contest the assumption (and subsequent assignment to the Purchaser) of any purchase order issued by the Debtors to such Lienholder on the grounds that such purchase order is not an executory contract or on any other grounds (other than the failure of a Purchaser other than New Chrysler to provide adequate assurance of future performance) (collectively, the "Trade Terms"). The Trade Terms shall be applicable until the expiration of the term of any existing purchase orders between the parties.

4. If a Lienholder accepts a Lienholder Payment and fails to provide the requisite Trade Terms, then (a) any Lienholder Payment received by the Lienholder will be deemed an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (i) recover from the Lienholder in cash or goods or (ii) at the Debtors' option, apply against any outstanding administrative claim held by such Lienholder; (b) upon recovery of any Lienholder Payment, the corresponding prepetition claim of the Lienholder will be reinstated in the amount recovered by the Debtors; (c) the Debtors shall have all rights to challenge the validity, priority or extent of the Lienholders' lien or interest and the validity and amount of the related claim; and (d) the Debtors shall have all rights to seek to avoid as fraudulent or preferential or otherwise any lien or interest held by the Lienholder.

5. The Debtors shall implement and provide notice of the terms and conditions set forth in paragraphs 3 and 4 above through the following procedures:

- The Debtors may require a Lienholder to execute an agreement (a "Trade Agreement") prior to its receipt of a Lienholder Payment that (a) confirms that the Lienholder agrees to be bound by the Trade Terms, (b) confirms that the Lienholder has received and agrees to be bound by the order granting this Motion and (c) contains such other terms and conditions as the Debtors believe proper, including confidentiality provisions.
- If no Trade Agreement is executed, any payment pursuant to which a Lienholder Payment is made will be accompanied by (a) notice from the Debtors explaining that acceptance of the payment by the Lienholder constitutes its agreement to provide the Trade Terms and explaining the consequences of its failure to comply with such agreement and (b) a copy of the order granting this Motion (collectively, the "Lienholder Information").
- In the Debtors' sole discretion, any check issued on account of a Lienholder Payment may include a restrictive endorsement on the back of the check as follows:

By accepting this check, the payee agrees (a) to provide the payor and its affiliates, or any assignee of substantially all of the payor's assets, with normalized trade credit and provide other business terms on a prospective basis (consistent with past practices), including with respect to any applicable credit limits, pricing and the provision of equivalent levels of service, on terms at least as favorable as those extended to the payor and its affiliates prior to the commencement of payor's chapter 11 case, identified as Case No. 09-50002 (AJG) and pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), or as are otherwise acceptable to the payor until the expiration of the term of any existing purchase orders between the parties, (b) not to file or record in any jurisdiction, a lien or security interest against the payor, any assignee of substantially all of the payor's assets or their property relating in any manner to the claims satisfied through this payment; and (c) upon request, to release to payor, or any assignee of substantially all of the payor's assets, any property of payor in payee's possession. Payee hereby submits to the

jurisdiction of the Bankruptcy Court for the enforcement of such agreement.

6. The Debtors' banks and other financial institutions (collectively, the "Banks") are authorized and directed, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, Lienholder Claims, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and fund transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or fund transfer as approved by this Order.

7. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds or bring any avoidance action with respect to a lien or Lienholder Claim; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute a Lienholder Claim or is supported by a valid lien and security interest; or (e) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

8. The requirements of Bankruptcy Rule 6004(a) are hereby waived.

9. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon entry.

10. 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

UNITED STATES BANKRUPTCY JUDGE