SECURITIES AND EXCHANGE COMMISSION

# **FORM 10-Q**

Quarterly report pursuant to sections 13 or 15(d)

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## **FILER**

## **DELPHI CORP**

CIK:1072342| IRS No.: 383430473 | State of Incorp.:DE | Fiscal Year End: 1231 Type: 10-Q | Act: 34 | File No.: 001-14787 | Film No.: 08817677 SIC: 3714 Motor vehicle parts & accessories Mailing Address 5725 DELPHI DRIVE TROY MI 48098

Business Address 5725 DELPHI DRIVE TROY MI 48098 248-813-2000

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## UNITED STATES SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549

# **FORM 10-Q**

☑ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2008

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES** 

**EXCHANGE ACT OF 1934** 

For the transition period from \_\_\_\_\_\_ to \_\_\_\_\_.

Commission file number: 1-14787

# **DELPHI CORPORATION**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

38-3430473

(I.R.S. Employer Identification No.)

5725 Delphi Drive, Troy, Michigan

(Address of principal executive offices)

**48098** (Zip Code)

(248) 813-2000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  $\square$ . No  $\square$ .

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  $\square$ . Accelerated filer  $\square$ . Non-Accelerated filer  $\square$ . Smaller reporting company  $\square$ .

#### (Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  $\Box$ . No  $\boxtimes$ .

As of March 31, 2008 there were 564,176,022 outstanding shares of the registrant's \$0.01 par value common stock.

## WEBSITE ACCESS TO COMPANY' S REPORTS

Delphi's internet website address is <u>www.delphi.com</u>. Our Annual Reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act are available free of charge through our website as soon as reasonably practicable after they are electronically filed with, or furnished to, the Securities and Exchange Commission.

## **DELPHI CORPORATION**

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## PART I. FINANCIAL INFORMATION

## **ITEM 1. FINANCIAL STATEMENTS**

## DELPHI CORPORATION (DEBTOR-IN-POSSESSION)

## **CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)**

|   | Three Months Ended<br>March 31, |                           |
|---|---------------------------------|---------------------------|
|   | 2008                            | 2007                      |
|   | (in millions, e                 | except per share amounts) |
| Net sales:  |                                 |                           |
| General Motors and affiliates   | \$ 1,641                        | \$ 2,163                  |
| Other customers   | 3,611                           | 3,519                     |
| Total net sales   | 5,252                           | 5,682                     |
| Operating expenses:   |                                 |                           |
| Cost of sales, excluding items listed below   | 4,897                           | 5,306                     |
| U.S. employee workforce transition program charges (credit)                         | 36                              | (6 )                      |
| Depreciation and amortization   | 222                             | 233                       |
| Selling, general and administrative   | 364                             | 364                       |
| Total operating expenses  | 5,519                           | 5,897                     |
| Operating loss  | (267                            | ) (215 )                  |
| Interest expense (contractual interest expense for the three months ended March 31, |                                 |                           |
| 2008 and 2007 was \$129 million and \$124 million, respectively)                    | (110                            | ) (90 )                   |
| Loss on extinguishment of debt  | -                               | (23)                      |
| Other income, net   | 19                              | 20                        |
| Reorganization items  | (109                            | ) (39 )                   |
| Loss from continuing operations before income taxes, minority interest and          |                                 |                           |
| equity income   | (467                            | ) (347 )                  |
| Income tax expense  | (63                             | ) (46 )                   |
| Loss from continuing operations before minority interest and equity income          | (530                            | ) (393)                   |
| Minority interest, net of tax   | (11                             | ) (12)                    |
| Equity income, net of tax   | 11                              | 14                        |
| Loss from continuing operations   | (530                            | ) (391)                   |
| Loss from discontinued operations, net of tax                                       | (59                             | ) (142)                   |
| Net loss  | \$ (589                         | ) \$ (533 )               |
| Basic and diluted loss per share:   |                                 |                           |
| Continuing operations   | \$ (0.94                        | ) \$ (0.70 )              |
| Discontinued operations   | (0.10                           | ) (0.25 )                 |
| Basic and diluted loss per share  | \$ (1.04                        | ) \$ (0.95)               |

See notes to consolidated financial statements.

## DELPHI CORPORATION (DEBTOR-IN-POSSESSION)

## **CONSOLIDATED BALANCE SHEETS**

|  | March 31,<br>2008<br>(Unaudited) | December 31,<br>2007 |
|--|----------------------------------|----------------------|
|  | (in m                            | uillions)            |
| ASSETS   |                                  |                      |
| Current assets:  | ¢1.210                           | ¢1.007               |
| Cash and cash equivalents  | \$1,310                          | \$1,036              |
| Restricted cash  | 175                              | 173                  |
| Accounts receivable, net:  | 1.000                            | 1.057                |
| General Motors and affiliates<br>Other   | 1,226                            | 1,257                |
|  | 2,991                            | 2,637                |
| Inventories, net:<br>Productive material, work-in-process and supplies   | 1,341                            | 1,312                |
| Finished goods   | 503                              | 496                  |
| Other current assets   | 592                              | 588                  |
| Assets held for sale (Note 4)  | 655                              | 720                  |
|  |                                  |                      |
| Total current assets   | 8,793                            | 8,219                |
| Long-term assets:  | 2 920                            | 2.962                |
| Property, net  | 3,820                            | 3,863                |
| Investments in affiliates  | 387<br>406                       | 387                  |
| Goodwill<br>Other  | 798                              | 397<br>801           |
|  |                                  |                      |
| Total long-term assets   | 5,411                            | 5,448                |
| Total assets   | \$14,204                         | \$13,667             |
| LIABILITIES AND STOCKHOLDERS' DEFICIT  |                                  |                      |
| Current liabilities:   |                                  |                      |
| Short-term debt (Note 11)  | \$4,212                          | \$3,495              |
| Accounts payable   | 2,960                            | 2,904                |
| Accrued liabilities (Note 8)   | 2,401                            | 2,281                |
| Liabilities held for sale (Note 4)   | 426                              | 412                  |
| Total current liabilities  | 9,999                            | 9,092                |
| Long-Term liabilities:   |                                  |                      |
| Other long-term debt (Note 11)   | 62                               | 59                   |
| Employee benefit plan obligations (Note 13)  | 475                              | 443                  |
| Other (Note 8)   | 1,201                            | 1,185                |
| Total long-term liabilities  | 1,738                            | 1,687                |
| Liabilities subject to compromise (Note 10)  | 16,363                           | 16,197               |
| Total liabilities  | 28,100                           | 26,976               |
| Commitments and contingencies (Note 18)  | 164                              | 1(2                  |
| Minority interest  | 164                              | 163                  |
| Stockholders' deficit:   |                                  |                      |
| Common stock, \$0.01 par value, 1,350 million shares authorized, 565 million shares  | 6                                | 6                    |
| issued in 2008 and 2007  | 6                                | 6                    |
| Additional paid-in capital   | 2,748                            | 2,756                |
| Accumulated deficit  | (15,690)                         | (14,976              |
| Accumulated other comprehensive loss:  | (1.721)                          | (1.670               |
| Employee benefit plans (Note 13)   | (1,721)                          | (1,679               |
| Other  | 611                              | 446                  |
| Total accumulated other comprehensive loss<br>Treasury stock, at cost (850 thousand and 1.5 million shares in 2008 and 2007, | (1,110)                          | (1,233               |
| respectively)  | (14)                             | (25                  |

| Total stockholders' deficit                     | (14,060) | (13,472) |
|---|----------|----------|
| Total liabilities and stockholders' deficit     | \$14,204 | \$13,667 |
| See notes to consolidated financial statements. |          |          |

## DELPHI CORPORATION (DEBTOR-IN-POSSESSION)

## CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)

|  | Three Mon<br>Marc                            |           |
|--|--|-----------|
|  | 2008<br>(in mil                              | 2007      |
| Cash flows from operating activities:  | (11 111)                                     | mons)     |
| Net loss   | \$(589)                                      | \$(533)   |
| Adjustments to reconcile net loss to net cash used in operating activities:                      | Φ(507)                                       | Φ(333-)   |
| Depreciation and amortization  | 222  | 233       |
| Deferred income taxes  | (4)  | 3         |
| Pension and other postretirement benefit expenses  | 185  | 249       |
| Equity income  | (11)   | (14)      |
| Reorganization items   | 109  | 39        |
| U.S. employee workforce transition program charges (credit)                                      | 36   | (6)       |
| Loss on extinguishment of debt   | -  | 23        |
| Loss on assets held for sale   | 30   | _         |
| Changes in operating assets and liabilities:   |  |           |
| Accounts receivable, net   | (395)  | (574)     |
| Inventories, net   | (50)   | (3)       |
| Other assets   | 18   | (55       |
| Accounts payable   | 176  | 304       |
| Accrued and other long-term liabilities  | 108  | 131       |
| Other, net   | 37   | (21       |
| U.S. employee workforce transition program payments  | (71)   | (481      |
| U.S. employee workforce transition program reimbursement by GM                                   |  | 264       |
| Pension contributions  | (68)   | (92       |
| Other postretirement benefit payments  | (66)   | (40       |
| Net payments for reorganization items  | (16)   | (30       |
| Dividends from equity investments  | 5  | _         |
| Discontinued operations (Note 4)   | 54   | 189       |
| Net cash used in operating activities  | (290)  | (414      |
| Cash flows from investing activities:  | <u>    (                                </u> |           |
| Capital expenditures   | (255)  | (178      |
| Proceeds from sale of property   | 21   | 10        |
| Proceeds from sale of non-U.S. trade bank notes  | 62   | 36        |
| Proceeds from divestitures, net  | 87   | _         |
| Increase in restricted cash  | (2)  | _         |
| Other, net   | 3  | (10       |
| Discontinued operations  | (70)   | (14       |
| Net cash used in investing activities  | (154)  | (156      |
|  | (134)  | (150      |
| Cash flows from financing activities:  |  | 2 720     |
| Proceeds from refinanced debtor-in-possession facility, net of issuance cost                     | -  | 2,739     |
| Repayments of borrowings under debtor-in-possession facility                                     | -  | (250)     |
| Repayments of borrowings under prepetition term loan facility                                    | -  | (988)     |
| Repayments of borrowings under prepetition revolving credit facility                             | -  | (1,508)   |
| Net borrowings under refinanced debtor-in-possession facility                                    | 452  | 327       |
| Net borrowings under other debt agreements   | 210  | 62        |
| Dividend payments of consolidated affiliates to minority shareholders<br>Discontinued operations | (7)  | (7 )      |
| Discontinued operations  |  | —         |
|  |  |           |
| Net cash provided by financing activities  | 666  | 375       |
|  |  | 375<br>12 |
| Net cash provided by financing activities  | 666  |           |

See notes to consolidated financial statements.

## DELPHI CORPORATION (DEBTOR-IN-POSSESSION)

## CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS (Unaudited)

|   |                 | Three Months Ended<br>March 31, |  |
|---|-----------------|---------------------------------|--|
|   | 2008<br>(in mil | <u>2007</u><br>lions)           |  |
| Net loss  | \$(589)         | \$(533)                         |  |
| Other comprehensive income:   |                 |                                 |  |
| Currency translation adjustments, net of tax                          | 69              | 26                              |  |
| Net change in unrecognized gain on derivative instruments, net of tax | 96              | 3                               |  |
| Employee benefit plans adjustment, net of tax                         | (30)            | -                               |  |
| Other comprehensive income  | 135             | 29                              |  |
| Comprehensive loss  | <u>\$(454)</u>  | <u>\$(504</u> )                 |  |

See notes to consolidated financial statements.

## DELPHI CORPORATION (DEBTOR-IN-POSSESSION)

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

#### 1. BASIS OF PRESENTATION

*General* – Delphi Corporation, together with its subsidiaries and affiliates ("Delphi" or the "Company"), is a supplier of vehicle electronics, transportation components, integrated systems and modules, and other electronic technology. Delphi's most significant customer is General Motors Corporation ("GM") and North America and Europe are its most significant markets. Delphi is continuing to diversify its customer base and geographic markets. The consolidated financial statements and notes thereto included in this report should be read in conjunction with Delphi's consolidated financial statements and notes thereto included in Delphi's Annual Report on Form 10-K for the year ended December 31, 2007 filed with the United States ("U.S.") Securities and Exchange Commission ("SEC").

**Consolidation** – The consolidated financial statements include the accounts of Delphi and domestic and non-U.S. subsidiaries in which Delphi holds a controlling financial or management interest and variable interest entities of which Delphi has determined that it is the primary beneficiary. Delphi's share of the earnings or losses of non-controlled affiliates, over which Delphi exercises significant influence (generally a 20% to 50% ownership interest), is included in the consolidated operating results using the equity method of accounting. All significant intercompany transactions and balances between consolidated Delphi businesses have been eliminated. All adjustments, consisting of only normal recurring items, which are necessary for a fair presentation, have been included. The results for interim periods are not necessarily indicative of results that may be expected from any other interim period or for the full year and may not necessarily reflect the consolidated results of operations, financial position and cash flows of Delphi in the future.

*Bankruptcy Filing* – On October 8, 2005 (the "Petition Date"), Delphi and certain of its U.S. subsidiaries (the "Initial Filers") filed voluntary petitions for reorganization relief under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court"), and on October 14, 2005, three additional U.S. subsidiaries of Delphi (together with the Initial Filers, collectively, the "Debtors") filed voluntary petitions for reorganization relief under chapter 11 of the Bankruptcy Code (collectively the Debtors") filed voluntary petitions for reorganization relief under chapter 11 of the Bankruptcy Code (collectively the Debtors") October 8, 2005 and October 14, 2005 filings are referred to herein as the "Chapter 11 Filings"). The reorganization cases are being jointly administered under the caption "In re Delphi Corporation, et al., Case No. 05-44481 (RDD)." The Debtors will continue to operate their businesses as "debtors-in-possession" under the jurisdiction of the Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Court. Delphi's non-U.S. subsidiaries were not included in the filings, will continue their business operations without supervision from the U.S. Courts and are not subject to the requirements of the Bankruptcy Code.

American Institute of Certified Public Accountants Statement of Position 90-7, *'Financial Reporting by Entities in Reorganization under the Bankruptcy Code*" ("SOP 90-7"), which is applicable to companies in chapter 11 of the Bankruptcy Code, generally does not change the manner in which financial statements are prepared. However, it does require, among other disclosures, that the financial statements for periods subsequent to the filing of the chapter 11 petition distinguish transactions and events that are directly associated with the reorganization from the ongoing operations of the business. Revenues, expenses, realized gains and losses, and provisions for losses that can be directly associated with the reorganization items in the statements of operations. The balance sheet must distinguish prepetition liabilities subject to compromise from both those prepetition liabilities that are not subject to compromise and from postpetition liabilities. Liabilities that may be affected by a plan of reorganization must be reported at the amounts expected to be allowed, even if they may be settled for lesser amounts. In addition, reorganization items must be disclosed separately in the statement of cash flows. Delphi has segregated those items as outlined above for all reporting periods subsequent to October 8, 2005.

Going Concern – The Debtors are operating pursuant to chapter 11 of the Bankruptcy Code and continuation of the Company as a going concern is contingent upon, among other things, the Debtors' ability (i) to comply with the terms and conditions of their debtor-in-possession ("DIP") financing agreement; (ii) to reduce wage and benefit costs and liabilities during the bankruptcy process; (iii) to return to profitability; (iv) to generate sufficient cash flow from operations; and (v) to obtain financing sources to meet the Company's future obligations. These matters create substantial uncertainty relating to the Company's ability to continue as a going concern. The accompanying consolidated financial statements do not reflect any adjustments relating to the recoverability of assets and classification of liabilities that might result from the outcome of these uncertainties. In addition, the Company filed its proposed plan of reorganization with the Court in September 2007. The Court confirmed Delphi's plan of reorganization, as amended, on January 25, 2008; however, Delphi has not yet consummated its confirmed plan of reorganization and is continuing to work with its stakeholders to further amend the plan. Depending on the extent and nature of any further proposed amendments, the plan of reorganization may not be consummated necessitating Delphi and certain of its U.S. subsidiaries to continue as "debtors-in-possession" in chapter 11 longer than initially anticipated. Consummation of a confirmed plan of reorganization often materially changes the amounts reported in a company's consolidated financial statements, which do not give effect to any adjustments to the carrying value of assets or amounts of liabilities that might be necessary as a consequence of consummation of a confirmed plan of reorganization.

Contractual Interest Expense and Interest Expense on Unsecured Claims - Contractual interest expense represents amounts due under the contractual terms of outstanding debt, including debt subject to compromise for which interest expense is not recognized in accordance with the provisions of SOP 90-7. Delphi did not record contractual interest expense on certain unsecured prepetition debt during the quarter ended March 31, 2007. In September 2007, Delphi began recording prior contractual interest expense related to certain prepetition debt because it became probable that the interest would become an allowed claim based on the provisions of the plan of reorganization filed with the Court in September 2007. The plan of reorganization also provides that certain holders of allowed unsecured claims against Delphi will be paid postpetition interest on their claims, calculated at the contractual non-default rate from the petition date through January 25, 2008. Delphi recorded interest related to prepetition debt and allowed unsecured claims of \$14 million during the quarter ended March 31, 2008. This interest expense was calculated through January 25, 2008, the confirmation date of the plan of reorganization. This estimate is based on numerous factual and legal assumptions. At March 31, 2008, Delphi had accrued interest of \$425 million in accrued liabilities in the accompanying balance sheet for prepetition claims. Upon consummation of the confirmed plan of reorganization discussed in Note 2. Transformation Plan and Chapter 11 Bankruptcy, the interest accrued for prepetition claims will be discharged at the emergence date; however, as noted above. Delphi has not yet consummated its confirmed plan and is continuing to work with its stakeholders to further amend the plan accordingly, and there can be no assurances that these estimates will not change as a result of changes to the plan.

*Use of Estimates* – Preparation of consolidated financial statements in conformity with generally accepted accounting principles in the United States of America ("U.S. GAAP") requires Delphi to make estimates and assumptions that affect amounts reported therein. During the first quarter of 2008, there were no material changes in the methods or policies used to establish accounting estimates. Generally, matters subject to Delphi's estimation and judgment include amounts related to accounts receivable realization, inventory obsolescence, asset impairments, useful lives of intangible and fixed assets, deferred tax asset valuation allowances, income taxes, pension and other postretirement benefit plan assumptions, accruals related to litigation, warranty costs, environmental remediation costs, workers' compensation accruals and healthcare accruals. Due to the inherent uncertainty involved in making estimates, actual results reported in future periods may be based upon amounts that differ from those estimates.

*Valuation of Long-Lived Assets* – Delphi periodically evaluates the carrying value of long-lived assets held for use including intangible assets when events or circumstances warrant such a review. The carrying value of a long-lived asset held for use is considered impaired when the anticipated separately identifiable undiscounted cash flows from the asset are less than the carrying value of the asset. In that event, a loss is

recognized based on the amount by which the carrying value exceeds the fair value of the long-lived asset. Fair value is determined primarily using the anticipated cash flows discounted at a rate commensurate with the risk involved or Delphi's review of appraisals. Impairment losses on long-lived assets held for sale are determined in a similar manner, except that fair values are reduced for the cost to dispose of the assets. During the first quarter of 2008 and 2007, Delphi recorded asset impairment charges of \$3 million and \$160 million, respectively, of which \$3 million and \$6 million, respectively, were recorded in depreciation and amortization and included in loss from continuing operations and \$154 million was recorded in loss from discontinued operations for the first quarter of 2007. Refer to Note 4. Discontinued Operations for more information.

**Discontinued Operations** – In accordance with Statement of Financial Accounting Standards No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, ("SFAS 144"), a business component that is disposed of or classified as held for sale is reported as discontinued operations if the cash flows of the component have been or will be eliminated from the ongoing operations of the Company and the Company will no longer have any significant continuing involvement in the business component. The results of discontinued operations are aggregated and presented separately in the consolidated statements of cash flows. Assets and liabilities of the discontinued operations are aggregated and reported separately as assets and liabilities held for sale in the consolidated balance sheet. SFAS 144 requires the reclassification of amounts presented for prior years to effect their classification as discontinued operations.

Amounts have been derived from the consolidated financial statements and accounting records of Delphi using the historical basis of assets and liabilities to be disposed of and historical results of operations related to Delphi's global steering and halfshaft businesses (the "Steering Business") and its interiors and closures product line (the "Interiors and Closures Business"). The sale of the U.S. operations and certain of the non-U.S. operations of the Steering Business will be sales of assets and will include (i) all assets, except for cash, deferred tax assets, and intercompany accounts, and (ii) all liabilities, except for debt, deferred tax liabilities, intercompany accounts, U.S. pension and other postretirement benefit liabilities, accrued payroll, and certain employee benefit accounts. The sale of certain non-U.S. operations of the Steering Business will be stock sales and will include all assets and liabilities for the sites with purchase price adjustments for cash, debt, and certain other accounts. The sale of the Interiors and Closures Business closed on February 29, 2008. The majority of the Interiors and Closures Business sale were asset sales and the buyer assumed inventory, fixed assets, non-U.S. pension liabilities and an investment in a joint venture in Korea.

While the historical results of operations of the Steering Business and the Interiors and Closures Business include general corporate allocations of certain functions historically provided by Delphi, such as accounting, treasury, tax, human resources, facility maintenance, and other services, no amounts for these general corporate retained functions have been allocated to the loss from discontinued operations in the statements of operations. Delphi expects to retain certain employee pension and other postretirement benefit liabilities for the Steering Business and these liabilities were not allocated to liabilities held for sale in the balance sheets. Expenses related to the service cost of employee pension and other postretirement benefit plans, however, were allocated to discontinued operations in the statements of operations. Allocations, because Delphi will not continue to incur such related expense subsequent to the divestiture of these businesses. Allocations have been made based upon a reasonable allocation method.

**Recently Issued Accounting Pronouncements** – In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157 ("SFAS 157"), *Fair Value Measurements*. SFAS 157 defines fair value, establishes a framework for measuring fair value in U.S. GAAP, and expands the disclosure requirements regarding fair value measurements. The rule does not introduce new requirements mandating the use of fair value. SFAS 157 defines fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." The definition is based on an exit price rather than an entry price, regardless of whether the entity plans to hold or sell the asset. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Company utilized the fair value measures of SFAS 157 in accounting for its marketable securities and derivative net assets. The adoption of the new definition of fair value pursuant to SFAS 157 did not have a significant impact on Delphi' s financial statements. Refer to Note 15. Fair Value Measurements for the disclosures required by SFAS 157.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 158 ("SFAS 158"), *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans-an amendment of FASB Statements No. 87, 88, 106, and 132(R)*. SFAS 158 requires, among other things, an employer to measure the funded status of its defined benefit pension and other postretirement benefits plans as of the date of its year-end statement of financial position, with limited exceptions, effective for fiscal years ending after December 15, 2008. Historically, Delphi has measured the funded status of its U.S. retiree health care benefit plans and certain international pension plans as of September 30 of each year. Delphi adopted the measurement date provisions of SFAS 158 as of January 1, 2008, which resulted in adjustments that increased pension and other postretirement benefit liabilities by \$139 million, the accumulated deficit by \$129 million and increased accumulated other comprehensive loss by \$10 million.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159 ("SFAS 159"), *The Fair Value Option for Financial Assets and Financial Liabilities – Including an amendment of FASB Statement No. 115.* SFAS 159 permits entities to choose, at specified election dates, to measure many financial instruments and certain other items at fair value that are not currently measured at fair value. Unrealized gains and losses on items for which the fair value option has been elected would be reported in earnings at each subsequent reporting date. SFAS 159 also establishes presentation and disclosure requirements in order to facilitate comparisons between entities choosing different measurement attributes for similar types of assets and liabilities. SFAS 159 does not affect existing accounting requirements for certain assets and liabilities to be carried at fair value. SFAS 159 is effective as of the beginning of a reporting entity's first fiscal year that begins after November 15, 2007. Delphi adopted SFAS 159 as of January 1, 2008 and did not elect the fair value option for any financial instruments upon adoption of SFAS 159.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (Revised 2007) ("SFAS 141R"), *Business Combinations*. SFAS 141R requires an acquiring entity to recognize all the assets acquired and liabilities assumed in a transaction at the acquisition-date fair value with limited exceptions. SFAS 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Earlier adoption is prohibited. Accordingly, Delphi is required to record and disclose business combinations following existing U.S. GAAP until January 1, 2009. Delphi is currently evaluating the requirements of SFAS 141R, and has not yet determined the impact on its financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160 ("SFAS 160"), *Noncontrolling Interests in Consolidated Financial Statements – An Amendment of ARB No. 51.* SFAS 160 establishes new accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Earlier adoption is prohibited. Delphi is currently evaluating the requirements of SFAS 160, and has not yet determined the impact on its financial statements.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161 ("SFAS 161"), *Disclosures about Derivative Instruments and Hedging Activities – an Amendment of FASB Statement 133*. SFAS 161 enhances required disclosures regarding derivatives and hedging activities, including enhanced disclosures regarding how: (a) an entity uses derivative instruments; (b) derivative instruments and related hedged items are accounted for under FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities;* and (c) derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after November 15, 2008. Earlier adoption is encouraged. Delphi is currently evaluating the requirements of SFAS 161, and has not yet determined the impact on its financial statements.

In April 2008, the FASB issued FASB Staff Position SOP 90-7-1 ("FSP SOP 90-7-1"), An Amendment of AICPA Statement of Position 90-7. FSP SOP 90-7-1 resolves the conflict between the guidance requiring early adoption of new accounting standards for entities required to follow fresh-start reporting under American Institute of Certified Public Accountants Statement of Position 90-7, Financial Reporting by Entities in Reorganization under the Bankruptcy Code, and other authoritative accounting standards that expressly prohibit early adoption. Specifically, FSP SOP 90-7-1 will require an entity emerging from bankruptcy that

applies fresh-start reporting to follow only the accounting standards in effect at the date fresh-start reporting is adopted, which include those standards eligible for early adoption if an election is made to adopt early.

## 2. TRANSFORMATION PLAN AND CHAPTER 11 BANKRUPTCY

On September 6, 2007, Delphi filed a proposed plan of reorganization (the "Plan") and related disclosure statement (the "Disclosure Statement") with the Court. The Plan and Disclosure Statement outlined Delphi's stransformation centering around five core areas, as detailed below, including agreements reached with each of Delphi's principal U.S. labor unions and GM. Through November 2007, the Court granted additional requests by Delphi to further continue the hearing on the adequacy of the Disclosure Statement to allow Delphi to negotiate potential amendments to the Plan and the related agreements with its stakeholders, including the comprehensive agreements reached with GM and the Equity Purchase and Commitment Agreement ("July EPCA") between Delphi and certain affiliates of lead investor Appaloosa Management L.P. ("Appaloosa"), Harbinger Capital Partners Master Fund I, Ltd. ("Harbinger"), Pardus Capital Management, L.P. ("Pardus") and Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill"), UBS Securities LLC ("UBS"), and Goldman Sachs & Co. ("Goldman") (collectively the "Investors"). On December 3, 2007, Delphi filed further potential amendments to the Plan, the comprehensive agreements reached with GM, the July EPCA, and the related Disclosure Statement and on December 4, 2007 Delphi announced that it had reached agreement in principle on these amendments with the Creditors' Committee, the Equity Committee, GM, and the Investors. After a hearing on the adequacy of the proposed Disclosure Statement in December of 2007, Delphi filed its first amended joint Plan of Reorganization (the "Amended Plan") and its first amended Disclosure Statement with respect to the Amended Plan (the "Amended Disclosure Statement"). The Court entered an order approving the adequacy of the Amended Disclosure Statement on December 10. 2007. On December 10, 2007, Delphi and the Investors entered into an amendment to the July EPCA (the "EPCA Amendment" and together with the July EPCA and all schedules and exhibits thereto, the "EPCA"). After entry of the order approving the Amended Disclosure Statement, Delphi began solicitation of votes on the Amended Plan. On January 16, 2008, Delphi filed further modifications to the Amended Plan. Additional modifications are set forth in Exhibit A to the Confirmation Order which was entered on January 25, 2008 and that order became final on February 4, 2008.

#### Plan of Reorganization and Transformation Plan

#### Elements of Transformation Plan

On March 31, 2006, Delphi announced its transformation plan centered around five key elements, each of which is also addressed in its Amended Plan and the series of settlement agreements it embodies. The progress on each element is discussed below.

Labor - Modify Delphi's labor agreements to create a more competitive arena in which to conduct business.

During the second quarter of 2007, Delphi signed an agreement with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"), and during the third quarter of 2007, Delphi signed agreements with the remainder of its principal U.S. labor unions, which were ratified by the respective unions and approved by the Court in the third quarter of 2007. Among other things, as approved and confirmed by the Court, this series of settlement agreements or memoranda of understanding among Delphi, its unions, and GM settled the Debtors' motion under sections 1113 and 1114 of the Bankruptcy Code seeking authority to reject their U.S. labor agreements and to modify retiree benefits (the "1113/1114 Motion"). As applicable, these agreements also, among other things, modify, extend or terminate provisions of the existing collective bargaining agreements among Delphi and its unions and cover issues such as site plans, workforce transition and legacy pension and other postretirement benefits obligations as well as other comprehensive transformational issues. Portions of these agreements have already become effective, and the remaining portions will not become effective until the effectiveness of the Global Settlement Agreement, as amended (the "GSA"), and the Master Restructuring Agreement, as amended (the "MRA"), with GM and upon substantial consummation of the Amended Plan as confirmed by the Court. The Amended Plan incorporates, approves, and is consistent with the terms of each agreement. Among other things, these agreements generally provided certain members of the union labor workforce options to either retire, accept a voluntary severance package or accept lump sum payments in return for lower hourly wages. Refer to Note 12. U.S. Employee Workforce Transition Programs for more information.

On September 4, 2007, the Court confirmed that the 1113/1114 Motion was withdrawn without prejudice, subject to the Court's prior settlement approval orders pertaining to each of Delphi's U.S. labor unions, as it relates to all parties and the intervening respondents, by entry of an Order Withdrawing Without Prejudice Debtors' Motion For Order Under 11 U.S.C. § 1113(c) Authorizing Rejection Of Collective Bargaining Agreements And Authorizing Modification Of Retiree Welfare Benefits Under 11 U.S.C. § 1114(g).

<u>GM</u> – Conclude negotiations with GM to finalize financial support for certain of Delphi's legacy and labor costs and to ascertain GM's business commitment to Delphi going forward.

Delphi and GM have entered into comprehensive settlement agreements consisting of the GSA and the MRA. The GSA and the MRA comprised part of the Amended Plan and were approved in the order confirming the Amended Plan on January 25, 2008. The GSA and MRA are not effective until and unless Delphi emerges from chapter 11. Accordingly, the accompanying consolidated financial statements do not include any adjustments related to the GSA or the MRA. These agreements will result in a material reduction in Delphi's liabilities related to the workforce transition programs. Delphi will account for the impact of the GSA or the MRA when the conditions of the agreements are satisfied, which will likely occur upon emergence from chapter 11.

Most obligations set forth in the GSA are to be performed upon the occurrence of the effective date of the Amended Plan or as soon as reasonably possible thereafter. By contrast, resolution of most of the matters addressed in the MRA will require a significantly longer period that will extend for a number of years after confirmation of the Amended Plan.

GM's obligations under the GSA and MRA are conditioned upon, among other things, Delphi's consummation of the Amended Plan, including payment of amounts to settle GM claims as outlined below.

The GSA is intended to resolve outstanding issues between Delphi and GM that have arisen or may arise before Delphi's emergence from chapter 11, and will be implemented by Delphi and GM in the short term. On November 14, 2007 and again on December 3, 2007, Delphi entered into amendments to both the GSA and the MRA. These agreements, as amended, provide for a comprehensive settlement of all outstanding issues between Delphi and GM, including (other than ordinary course matters): litigation commenced in March 2006 by Delphi to terminate certain supply agreements with GM; all potential claims and disputes with GM arising out of the separation of Delphi from GM in 1999; certain post-separation claims and disputes between Delphi and GM; the proofs of claim filed by GM against Delphi in Delphi's chapter 11 cases; GM's treatment under Delphi's Amended Plan; and various other legacy issues.

In addition to establishing claims treatment, including specifying which claims survive and the consideration to be paid by Delphi to GM in satisfaction of certain claims, the GSA addresses, among other things, commitments by Delphi and GM regarding other postretirement benefit and pension obligations, and other GM contributions with respect to labor matters and releases.

GM will assume approximately \$7 billion of certain post-retirement benefits for certain of the Company's active and retired hourly employees, including health care and life insurance;

Delphi will freeze its Delphi Hourly-Rate Employees Pension Plan as soon as practicable following the effective date of the Amended Plan, as provided in the union settlement agreements, and GM's Hourly Pension Plan will become responsible for certain future costs related to the Delphi Hourly-Rate Employees Pension Plan;

Delphi will transfer certain assets and liabilities of its Delphi Hourly-Rate Employees Pension Plan to the GM Hourly-Rate Employee Pension Plan, as set forth in the union settlement agreements;

Shortly after the effectiveness of the Amended Plan, GM will receive an interest bearing note from Delphi in the amount of \$1.5 billion which is expected to be paid promptly following effectiveness;

GM will make significant contributions to Delphi to fund various special attrition programs, consistent with the provisions of the U.S. labor agreements; and

GM and certain related parties and Delphi and certain related parties will exchange broad, global releases (which will not apply to certain surviving claims as set forth in the GSA).

The MRA is intended to govern certain aspects of Delphi and GM's commercial relationship following Delphi's emergence from chapter 11. The MRA addresses, among other things, the scope of GM's existing and future business awards to Delphi and related pricing agreements and sourcing arrangements, GM commitments with respect to reimbursement of specified ongoing labor costs, the disposition of certain Delphi facilities, and the treatment of existing agreements between Delphi and GM. Through the MRA, Delphi and GM have agreed to certain terms and conditions governing, among other things:

The scope of existing business awards, related pricing agreements, and extensions of certain existing supply agreements, including GM's ability to move production to alternative suppliers, and reorganized Delphi's rights to bid and qualify for new business awards;

GM will make significant, ongoing contributions to Delphi and reorganized Delphi to reimburse the Company for labor costs in excess of \$26 per hour, excluding certain costs, including hourly pension and other postretirement benefit contributions provided under the Supplemental Wage Agreement, at specified UAW manufacturing facilities retained by Delphi;

GM and Delphi have agreed to certain terms and conditions concerning the sale of certain of Delphi's non-core businesses;

GM and Delphi have agreed to certain additional terms and conditions if certain of Delphi's businesses and facilities are not sold or wound down by certain future dates (as defined in the MRA); and

GM and Delphi have agreed to the treatment of certain contracts between Delphi and GM arising from Delphi's separation from GM and other contracts between Delphi and GM.

The GSA and MRA may be terminated by the Company or GM because the effective date of the Amended Plan did not occur by March 31, 2008 and the EPCA was terminated. As of the date hereof, neither Delphi nor GM has terminated the GSA or the MRA.

<u>Portfolio</u> – Streamline Delphi' s product portfolio to capitalize on world-class technology and market strengths and make the necessary manufacturing alignment with Delphi' s new focus.

In March 2006, Delphi identified non-core product lines and manufacturing sites that do not fit into Delphi's future strategic framework, including brake and chassis systems, catalysts, cockpits and instrument panels, door modules and latches, ride dynamics, steering, halfshafts, and wheel bearings. Effective November 1, 2006, in connection with the Company's continuous evaluation of its product portfolio, it decided that the power products business no longer fit within the Company's future product portfolio and that business line was moved to Delphi's Automotive Holdings Group. With the exception of the catalyst product line (included in the Powertrain Systems segment), and the steering and halfshaft product lines and interiors and closures product lines (included in discontinued operations), the Company's non-core product lines are included in the Automotive Holdings Group segment, refer to Note 17. Segment Reporting.

Delphi has continued sale and wind-down efforts with respect to non-core product lines and manufacturing sites. The sale and wind-down process is being conducted in consultation with the Company's customers, unions and other stakeholders to carefully manage the transition of affected product lines and manufacturing sites. The disposition of any U.S. operation is also being accomplished in accordance with the requirements of the Bankruptcy Code and union labor contracts as applicable. The Company also has begun consultations with the works councils in accordance with applicable laws regarding any sale or wind-down of affected manufacturing sites in Europe.

During the first quarter of 2008, Delphi obtained Court approval of bidding procedures and sales agreements for the steering and halfshaft product line, the global bearings business and the U.S. suspensions business and closed on the sales of the interiors and closures product line and the North American brake components machining and assembly assets. Refer to Note 4. Discontinued Operations and Note 5. Divestitures for more information.

Costs recorded in the first quarter of 2008 and 2007 related to the transformation plan for non-core product lines include impairments of long-lived assets and employee termination benefits and other exit costs as further described in Note 4. Discontinued Operations and Note 6. Employee Termination Benefits and Other Exit Costs.

<u>Cost Structure</u> – Transform the salaried workforce and reduce general and administrative expenses to ensure that its organizational and cost structure is competitive and aligned with Delphi's product portfolio and manufacturing footprint.

Delphi is continuing to implement restructuring initiatives in furtherance of the transformation of its salaried workforce to reduce selling, general and administrative expenses to support its realigned portfolio. These initiatives include financial services and information technology outsourcing activities, reduction in its global salaried workforce by taking advantage of attrition and using salaried separation plans, and realignment of certain salaried benefit programs to bring them in line with more competitive industry levels. Given the investment required to implement these initiatives, Delphi does not expect to fully realize substantial savings until 2009 and beyond.

<u>Pensions</u> – Devise a workable solution to the current pension funding situation, whether by extending contributions to the pension trusts or otherwise.

Delphi's discussions with the Internal Revenue Service ("IRS") and the Pension Benefit Guaranty Corporation ("PBGC") regarding the funding of the Delphi Hourly-Rate Employees Pension Plan (the "Hourly Plan") and the Delphi Retirement Program for Salaried Employees (the "Salaried Plan") upon emergence from chapter 11 culminated in a funding plan that would enable the Company to satisfy its pension funding obligations upon emergence from chapter 11 through a combination of emergence contributions and a transfer of certain unfunded liabilities to a pension plan sponsored by GM.

On May 1, 2007, the IRS issued conditional waivers for the Hourly Plan and Salaried Plan with respect to the plan year ended September 30, 2006 (the "2006 Waivers"). On May 31, 2007, the Court authorized Delphi to perform under the terms of those funding waivers. The IRS modified the 2006 Waivers by extending the dates by which Delphi is required to file its Amended Plan and emerge from chapter 11. On September 28, 2007, the IRS issued a second conditional waiver for the Hourly Plan for the plan year ended September 30, 2007 (the "2007 Hourly Plan Waiver"). The waivers were required, at that time, to facilitate the Debtors' option to effectuate the transfer of certain hourly pension obligations to GM in an economically efficient manner, and to remove uncertainty as to whether excise taxes would be assessed as a result of accumulated funding deficiencies relating to prepetition service. Absent the waivers, the transfer to GM could have triggered an obligation on the part of the Debtors to make cash contributions to the Hourly Plan which would result in a projected overfunding of the Hourly Plan. On October 26, 2007, the Court authorized Delphi to perform under the 2007 Hourly Plan Waiver, which would have expired if Delphi did not emerge from chapter 11 by February 29, 2008. The Court authorized two additional funding waivers which authorized Delphi to defer funding contributions due under the Employee Retirement Income Security Act ("ERISA") and the U.S. Internal Revenue Code (the "Code") until May 9, 2008. On April 4, 2008, the IRS and the PBGC modified the 2006 Waivers and the 2007 Hourly Plan Waiver by extending the date by which Delphi must emerge from chapter 11 to May 9, 2008.

Delphi did not seek extension past May 9, 2008 of the 2006 Waivers or the 2007 Hourly Plan Waiver. Delphi believes that ERISA and the Code will still, under most circumstances, post June 15, 2008, permit the Company to be able to effect the planned transfer of hourly pension obligations to GM in an economically efficient manner. However, by permitting the waivers to lapse Delphi is exposed to excise taxes as a result of accumulated funding deficiencies for the plan years ended September 30, 2005 and 2006 of approximately

\$170 million and \$1.2 billion, respectively. Accordingly, the IRS may assert against Delphi excise taxes in the approximate amounts of \$17 million and \$122 million for plan years ended September 30, 2005 and 2006, respectively. Also, should Delphi not meet its minimum funding requirements on or before June 15, 2008, the accumulated funding deficiency would be approximately \$2.4 billion for the plan year ended September 30, 2007, which could lead to the IRS further asserting additional excise taxes of approximately \$244 million. If the accumulated funding deficiency is not corrected after Delphi receives the assessments, an excise tax of up to 100% may be assessed at the discretion of the IRS. Assuming Delphi is assessed an excise tax for all plan years through 2007, the total range of exposure would approximate between \$380 million and \$3.8 billion.

Delphi believes that under the Bankruptcy Code, the Company is not obligated to make contributions for pension benefits attributable to prepetition service while in chapter 11 and that it has made all required payments for postpetition service. Delphi further believes that as a result, it is not liable for any penalty excise taxes that may be assessed by the IRS. Delphi believes that its ultimate emergence from chapter 11 will result in a consensual resolution of its pension funding obligations, and given the significant uncertainty surrounding the outcome of the excise tax assessment and the potential for Delphi to litigate this matter, if necessary, management has concluded that an unfavorable outcome is not currently probable. Accordingly, as of March 31, 2008, no amounts have been recorded for any excise tax assessment.

Pursuant to the pertinent terms of the waivers, as modified, Delphi provided to the PBGC letters of credit, effective June 16, 2007, in favor of the Hourly and Salaried Plans in the amount of \$100 million to support funding obligations under the Hourly Plan (increased to \$112.5 million pursuant to the waiver extension granted March 28, 2008) and \$50 million to support funding obligations under the Salaried Plan. In exchange for extension of the waivers on April 4, 2008, the Company extended the term of the previously issued letters of credit to May 23, 2008, and increased the face amount of the letter of credit in favor of the Hourly Plan by \$10 million to \$122.5 million effective April 16, 2008. Due to the expiration of the waivers, the PBGC has informed Delphi that it intends to draw against the \$172.5 million of letters of credit in favor of the Hourly and Salaried Plans. The cash proceeds from the letters of credit will be recognized as Delphi funding contributions to the plans.

The Company has represented that it currently intends to meet the minimum funding standard under IRC section 412 for the plan years ended September 30, 2006 and 2007 upon emergence from chapter 11. Assuming a consensual funding plan is achieved, the Company currently expects that its pension contributions due upon emergence from chapter 11 will approximate \$1 billion under current legislation and plan design, after giving effect to an anticipated transfer of at least a net of \$1.5 billion of unfunded benefit liabilities from the Hourly Plan to a pension plan sponsored by GM.

In addition to the funding strategy discussed above and the changes to the Hourly Plan discussed in the Labor section, Delphi committed to freeze the Hourly and Salaried Plans effective at the end of the month following emergence from chapter 11. Refer to Note 13. Pension and Other Postretirement Benefits for more information.

#### The Amended Plan of Reorganization

On April 4, 2008, Delphi announced that although the Debtors had met the conditions required to substantially consummate the Amended Plan (as modified by the Court's final confirmation order), including obtaining \$6.1 billion of exit financing, the Investors refused to participate in a closing that was commenced but not completed and refused to fund the EPCA. The Debtors are prepared to pursue any and all available equitable and legal remedies with respect to the Investors that are in the best interests of the Debtors and their stakeholders, and are working with their stakeholders to achieve their goal of emergence from chapter 11 as soon as practicable.

Pursuant to an order entered by the Court on April 30, 2008, the Debtors' exclusivity period under the Bankruptcy Code for filing a plan of reorganization is extended until 30 days after substantial consummation of the Amended Plan (as modified) or any modified plan and the Debtors' exclusivity period for soliciting acceptance of the Amended Plan (as modified) is extended until 90 days after substantial consummation of the

Amended Plan (as modified) or any modified plan. Notwithstanding the foregoing, the Debtors' exclusive period for filing a plan of reorganization, as between the Debtors and the Creditors' Committee and the Equity Committee, collectively, is extended through and including August 31, 2008 and the Debtors' exclusive period for soliciting acceptance of a plan of reorganization, as between the Debtors and the Creditors' Committee and the Equity Committee, collectively, is extended through and including October 31, 2008.

#### Equity Purchase and Commitment Agreement

Under the terms and subject to the conditions of the EPCA, the Investors committed to purchase \$800 million of convertible preferred stock and approximately \$175 million of common stock in the reorganized Company. Additionally, subject to satisfaction of other terms and conditions, the Investors committed to purchase any unsubscribed shares of common stock in connection with an approximately \$1.6 billion rights offering that was made available to unsecured creditors. The rights offering commenced on March 11, 2008 and expired on March 31, 2008. In light of the Investors' refusal to fund the EPCA, in April 2008, the Company cancelled the rights offering and returned all funds submitted.

The EPCA also included certain corporate governance provisions for the reorganized Company, each of which was incorporated into Delphi's Amended Plan. The EPCA also incorporated Delphi's earlier commitment to preserve its salaried and hourly defined benefit U.S. pension plans and to fund required contributions to the plans that were not made in full as permitted under the Bankruptcy Code.

The EPCA was subject to the satisfaction or waiver of numerous conditions, including the condition that an affiliate of Appaloosa was reasonably satisfied with the terms of certain material transaction documents (evidenced by an affiliate of Appaloosa not delivering a deficiency notice), to the extent the terms thereof would have an impact on the Investors' proposed investment in the Company and receipt of proceeds from the sale of preferred stock, exit financing and the discount rights offering sufficient to fund the transaction contemplated by the EPCA and certain related transactions. Other conditions to closing included release and exculpation of each Investor as set forth in the EPCA Amendment; that the Company would have undrawn availability of \$1.4 billion including a letter of credit carve out and reductions under a borrowing base formula; that the Company's pro forma interest expense during 2008 on the Company's indebtedness, as defined in the EPCA, would not exceed \$585 million; that scheduled Pension Benefit Guarantee Corporation liens were withdrawn; and that the aggregate amount of trade and unsecured claims could be no more than \$1.45 billion (subject to certain waivers and exclusions).

An affiliate of Appaloosa could terminate the EPCA, including, at any time on or after April 5, 2008, if the Amended Plan had not become effective; if the Company had changed its recommendation or approval of the transactions contemplated by the EPCA, the Amended Plan terms or the settlement with GM in a manner adverse to the Investors or approved or recommended an alternative transaction; or if the Company had entered into any agreement, or taken any action to seek Court approval relating to any plan, proposal, offer or transaction, that was inconsistent with the EPCA, the settlement with GM or the Amended Plan. In the event of certain terminations of the EPCA pursuant to the terms thereof, the Company could be obligated to pay the Investors \$83 million plus certain transaction expenses as described in the immediately following paragraph.

The Company would be required to pay the Investors \$83 million plus certain transaction expenses if (a) the EPCA was terminated as a result of the Company's agreeing to pursue an alternative investment transaction with a third party or (b) either the Company's Board of Directors withdrew its recommendation of the transaction or the Company willfully breached the EPCA, and within the next 24 months thereafter, the Company then agreed to an alternative investment transaction.

On April 4, 2008, Delphi announced that although it had met the conditions required to substantially consummate its First Amended Joint Plan of Reorganization, including obtaining \$6.1 billion of exit financing, the Investors refused to participate in a closing that was commenced but not completed on that date. Several hours prior to the scheduled closing on April 4, 2008, Appaloosa delivered to Delphi a letter dated April 4, 2008, stating that such letter "constitutes a notice of immediate termination" of the EPCA. Appaloosa's April 4 letter alleged that Delphi had breached certain provisions of the EPCA, that Appaloosa is entitled to terminate the EPCA and that the Investors are entitled to be paid the fee of \$83 million plus certain

expenses and other amounts. At the time Appaloosa delivered its letter, other than the Investors, all the required parties for a successful closing and emergence from chapter 11, including representatives of Delphi's exit financing lenders, GM, and the Unsecured Creditors and Equity Committees in Delphi's chapter 11 cases were present, were prepared to move forward, and all actions necessary to consummate the plan of reorganization were taken other than the concurrent closing and funding of the EPCA.

On April 5, 2008, Appaloosa delivered to Delphi a letter described as "a supplement to the April 4 Termination Notice," stating "this letter constitutes a notice of an additional ground for termination" of the EPCA. The April 5 letter stated that because the EPCA had not become effective on or before April 4, 2008 it was grounds for its termination.

Delphi believes that Appaloosa wrongfully terminated the EPCA and disputes the allegations that Delphi breached the EPCA or failed to satisfy any condition to the Investors' obligations thereunder as asserted by Appaloosa in its April 4 letter. Delphi's Board of Directors formed a special litigation committee and engaged independent legal counsel to consider and pursue any and all available equitable and legal remedies, including the commencement of legal action in the Court to seek all appropriate relief, including specific performance by the Investors of their obligations under the EPCA.

In exchange for the Investors' commitment to purchase common stock and the unsubscribed shares in the rights offering, the Company paid an aggregate commitment fee of \$39 million and certain transaction expenses and in exchange for the Investors' commitment to purchase preferred stock the Company paid an aggregate commitment fee of \$18 million. In addition, the Company paid an arrangement fee of \$6 million to Appaloosa to compensate Appaloosa for arranging the transactions contemplated by the EPCA. The Company has also paid certain out-of-pocket costs and expenses reasonably incurred by the Investors or their affiliates subject to certain terms, conditions and limitations set forth in the EPCA. Delphi had deferred the recognition of these amounts in other current assets as they were to be netted against the proceeds from the EPCA upon issuance of the new shares. However, as a result of the events relating to the termination of the EPCA as described above, Delphi recognized \$79 million of expense related to these fees and other expenses during the first quarter of 2008.

The cost related to the transformation plan will be recognized in the Company's consolidated financial statements as elements of the Amended Plan (as modified), as the terms of any future confirmed plan of reorganization, as the U.S. labor agreements, and as the GSA, and the MRA become effective. In the event the Debtors are unable to consummate the Amended Plan (as modified), the cost will be recognized as the aforementioned agreements become effective as elements of any future confirmed plan of reorganization. The Amended Plan and agreements will significantly impact Delphi's accounting for its pension plans, post-retirement benefit plans, other employee related benefits, long-lived asset impairments and exit costs related to the sites planned for closure or consolidation, compensation costs for labor recognized over the term of the U.S. labor agreements, and the fair values assigned to assets and liabilities upon Delphi's emergence from chapter 11, among others. Such adjustments will have a material impact on Delphi's financial statements.

There are a number of risks and uncertainties inherent in the chapter 11 process, including those detailed in Delphi's Annual Report on Form 10-K for the year ended December 31, 2007, Part I, Item 1A. Risk Factors and Part II, Item 1A. Risk Factors in this Quarterly Report on Form 10-Q. In addition, Delphi cannot assure that potential adverse publicity associated with the Chapter 11 Filings and the resulting uncertainty regarding its future prospects will not materially hinder Delphi's ongoing business activities and its ability to operate, fund and execute Delphi's business plan by impairing relations with existing and potential customers; negatively impacting its ability to attract, retain and compensate key executives and associates and to retain employees generally; limiting its ability to obtain trade credit; and impairing present and future relationships with vendors and service providers.

The financial statements of the Debtors are presented as follows:

#### **Basis of Presentation**

**Condensed Combined Debtors-in-Possession Financial Statements** – The financial statements contained within this note represent the condensed combined financial statements for the Debtors only. Delphi's non-Debtor subsidiaries are treated as non-consolidated affiliates in these financial statements and as such their net income is included as "Equity income (loss) income from non-Debtor affiliates, net of tax" in the statement of operations and their net assets are included as "Investments in non-Debtor affiliates" in the balance sheet. The Debtors' financial statements contained herein have been prepared in accordance with the guidance in SOP 90-7.

*Intercompany Transactions* – Intercompany transactions between Debtors have been eliminated in the financial statements contained herein. Intercompany transactions between the Debtors and non-Debtor affiliates have not been eliminated in the Debtors' financial statements. Therefore, reorganization items, net included in the Debtors Statement of Operations, liabilities subject to compromise included in the Debtors' Balance Sheet, and reorganization items and payments for reorganization items, net included in the Debtors' Statement of Cash Flows are different than Delphi Corporation's consolidated financial statements. As approved by the Court on January 25, 2008, the Debtors sold investments in non-Debtor affiliates in the amount of \$1.4 billion to a non-Debtor affiliate and received a note receivable from non-Debtor affiliates, of which \$0.2 billion is included in current assets and \$1.2 billion is included in long-term assets.

*Contractual Interest Expense and Interest Expense on Unsecured Claims* – Contractual interest expense represents amounts due under the contractual terms of outstanding debt, including debt subject to compromise for which interest expense is not recognized in accordance with the provisions of SOP 90-7. Delphi did not record contractual interest expense on certain unsecured prepetition debt during the quarter ended March 31, 2007. In September 2007, Delphi began recording prior contractual interest expense related to certain prepetition debt because it became probable that the interest would become an allowed claim based on the provisions of the plan of reorganization filed with the Court in September 2007. The plan of reorganization also provides that certain holders of allowed unsecured claims against Delphi will be paid postpetition interest related to prepetition debt and allowed unsecured claims of \$14 million during the quarter ended March 31, 2008. This interest expense was calculated through January 25, 2008, the confirmation date of the plan of reorganization. This estimate is based on numerous factual and legal assumptions. At March 31, 2008, Delphi had accrued interest of \$425 million in accrued liabilities in the accompanying balance sheet for prepetition claims.

*U.S. Employee Workforce Transition Programs* – The workforce transition programs offer buy-down payments for eligible traditional employees who do not elect the attrition or flowback options and continue to work for Delphi. The estimated payments to be made under the buy-down arrangements within the UAW and IUE-CWA Workforce Transition Programs totaled \$323 million and were recorded as a wage asset and liability in 2007. In the first quarter of 2008, the wage asset and liability were increased by \$3 million to reflect the final terms of certain divestitures. At March 31, 2008, \$84 million was recorded in other current assets and \$199 million was recorded in other long-term assets in the accompanying balance sheet, net of \$21 million of amortization expense recorded in the first quarter of 2008, of which \$1 million was recorded in loss from discontinued operations. In addition, \$16 million was recorded in U.S. employee workforce transition programs in excess of amounts previously estimated. Refer to Note 12. U.S. Employee Workforce Transition Programs for more information.

*Assets Held for Sale* – The assets held for sale by the Debtors include the net assets held for sale of the Non-debtor affiliates of \$335 million which was reclassified from investments in non-Debtor affiliates.

## CONDENSED COMBINED DEBTORS-IN-POSSESSION STATEMENTS OF OPERATIONS (Unaudited) (Non-filed entities, principally non-U.S. subsidiaries, excluded from consolidated Debtor group)

|  | Three Months Ended<br>March 31 |                 |
|--|--------------------------------|-----------------|
|  | 2008                           | 2007            |
|  | (in mil                        | lions)          |
| Net sales  | \$2,328                        | \$3,287         |
| Operating expenses:  |                                |                 |
| Cost of sales, excluding items listed below  | 2,453                          | 3,322           |
| U.S. employee workforce transition program charges (credit)                                  | 36                             | (6)             |
| Depreciation and amortization  | 115                            | 137             |
| Selling, general and administrative  | 225                            | 236             |
| Total operating expenses   | 2,829                          | 3,689           |
| Operating loss   | (501)                          | (402)           |
| Interest expense (contractual interest expense for the three months ended March 31, 2008 and |                                |                 |
| 2007 was \$113 million and \$112 million, respectively)                                      | (95)                           | (79)            |
| Loss on extinguishment of debt   | -                              | (23)            |
| Other income, net  | -                              | 12              |
| Reorganization items, net  | (100)                          | (31)            |
| Loss from continuing operations before income tax expense and equity income                  | (696)                          | (523)           |
| Income tax expense   | (3)                            | (4 )            |
| Loss from continuing operations before equity income   | (699)                          | (527)           |
| Equity income from non-consolidated affiliates, net of tax                                   | 7                              | 14              |
| Loss from continuing operations before discontinued operations and equity income from non-   |                                |                 |
| Debtor affiliates  | (692)                          | (513)           |
| Loss from discontinued operations, net of tax  | (82)                           | (123)           |
| Equity income from non-Debtor affiliates, net of tax   | 185                            | 103             |
| Net loss   | <u>\$(589</u> )                | <u>\$(533</u> ) |

## CONDENSED COMBINED DEBTORS-IN-POSSESSION BALANCE SHEET (Non-filed entities, principally non-U.S. subsidiaries, excluded from consolidated Debtor group)

|   | March 31,<br>2008    | December 31,     |
|---|----------------------|------------------|
|   | (Unaudited)<br>(in m | 2007<br>illions) |
| ASSETS  | (iii iii)            | linoiis)         |
| Current assets:                                   |                      |                  |
| Cash and cash equivalents                         | \$47                 | \$113            |
| Restricted cash                                   | 125                  | 125              |
| Accounts receivable, net:                         |                      |                  |
| General Motors and affiliates                     | 900                  | 972              |
| Other third parties                               | 708                  | 623              |
| Non-Debtor affiliates                             | 245                  | 250              |
| Notes receivable from non-Debtor affiliates       | 449                  | 278              |
| Inventories, net:                                 |                      |                  |
| Productive material, work-in-process and supplies | 639                  | 652              |
| Finished goods                                    | 156                  | 171              |
| Other current assets                              | 342                  | 385              |
| Assets held for sale                              | 422                  | 475              |
| Total current assets                              | 4,033                | 4,044            |
| Long-term assets:                                 |                      |                  |
| Property, net                                     | 1,347                | 1,446            |
| Investments in affiliates                         | 329                  | 331              |
| Investments in non-Debtor affiliates              | 2,067                | 3,267            |
| Goodwill  | 152                  | 152              |
| Notes receivable from non-Debtor affiliates       | 1,172                | -                |
| Other   | 487                  | 512              |
| Total long-term assets                            | 5,554                | 5,708            |
| Total assets                                      | \$9,587              | \$9,752          |
| LIABILITIES AND STOCKHOLDERS' DEFICIT             |                      |                  |
| Current liabilities not subject to compromise:    |                      |                  |
| Notes payable and secured debt in default         | \$3,231              | \$2,782          |
| Accounts payable                                  | 898                  | 1,007            |
| Accounts payable to non-Debtor affiliates         | 654                  | 689              |
| Accrued liabilities                               | 1,275                | 1,328            |
| Liabilities held for sale                         | 193                  | 167              |
| Total current liabilities                         | 6,251                | 5,973            |
| Debtor-in-possession financing                    | 23                   | 24               |
| Employee benefit plan obligations and other       | 932                  | 951              |
| Total long-term liabilities                       | 955                  | 975              |
| Liabilities subject to compromise                 | 16,441               | 16,276           |
| Total liabilities                                 | 23,647               | 23,224           |
| Stockholders' deficit:                            |                      |                  |
| Total stockholders' deficit                       | (14,060)             | (13,472          |
| Total liabilities and stockholders' deficit       | \$9,587              | \$9,752          |
| rour nuonneos una scockilolaois acheit            | Ψ,501                | ψ,132            |

## CONDENSED COMBINED DEBTORS-IN-POSSESSION STATEMENT OF CASH FLOWS (Unaudited) (Non-filed entities, principally non-U.S. subsidiaries, excluded from consolidated Debtor group)

|  | Three Months Ended<br>March 31, |          |
|--|---------------------------------|----------|
|  | 2008                            | 2007     |
|  | (in mi                          | illions) |
| Cash flows from operating activities:  |                                 |          |
| Net cash used in operating activities  | <u>\$(555</u> )                 | \$(513)  |
| Cash flows from investing activities:  |                                 |          |
| Capital expenditures   | (105)                           | (64)     |
| Proceeds from sale of property   | 11                              | 5        |
| Proceeds from divestitures   | 85                              | -        |
| Proceeds from notes receivable from non-Debtor affiliates                    | 100                             | -        |
| Other, net   | (12)                            | (4)      |
| Discontinued operations  | (38)                            | (3)      |
| Net cash provided by (used in) investing activities                          | 41                              | (66 )    |
| Cash flows from financing activities:  |                                 |          |
| Proceeds from refinanced debtor-in-possession facility, net of issuance cost | -                               | 2,739    |
| Repayments of borrowings from debtor-in-possession facility                  | -                               | (250)    |
| Repayments of borrowings under prepetition term loan facility                | -                               | (988)    |
| Repayments of borrowings from prepetition revolving credit facility          | -                               | (1,508)  |
| Net borrowings under refinanced debtor-in-possession facility                | 452                             | 327      |
| Repayments of borrowings under other debt agreements                         | (4)                             | (4 )     |
| Net cash provided by financing activities                                    | 448                             | 316      |
| Decrease in cash and cash equivalents  | (66)                            | (263)    |
| Cash and cash equivalents at beginning of period                             | 113                             | 376      |
| Cash and cash equivalents at end of period                                   | \$47                            | \$113    |

#### **3. REORGANIZATION ITEMS**

SOP 90-7 requires reorganization items such as revenues, expenses such as professional fees directly related to the process of reorganizing the Debtors under chapter 11 of the Bankruptcy Code, realized gains and losses, provisions for losses, and interest income resulting from the reorganization and restructuring of the business to be separately disclosed. Professional fees directly related to the reorganization include fees associated with advisors to the Debtors, unsecured creditors, secured creditors and unions. The Debtors' reorganization items consist of the following:

|  | Three Mont<br>March |       |
|--|---------------------|-------|
|  | 2008                | 2007  |
|  | (in milli           | ions) |
| Professional fees directly related to reorganization                     | \$ 29               | \$ 43 |
| Interest income  | (2)                 | (4)   |
| Write off of previously capitalized fees or expenses related to the EPCA | 79                  | -     |
| Other  | 3                   | _     |
| Total Reorganization Items   | \$ 109              | \$ 39 |



For the three months ended March 31, 2008 and 2007, reorganization items resulted in \$2 million and \$4 million, respectively, of cash received entirely related to interest income. Cash paid for professional fees was approximately \$18 million and \$34 million, respectively, for the three months ended March 31, 2008 and 2007.

#### 4. DISCONTINUED OPERATIONS

The Court approval of Delphi's plan to dispose of the Interiors and Closures Business and the Steering Business triggered held for sale accounting under SFAS 144 in 2007.

#### **Steering and Halfshaft Business**

In the fourth quarter of 2007, Delphi executed a Purchase and Sale Agreement (the "Purchase Agreement") with an affiliate of Platinum Equity, LLC, Steering Solutions Corporation ("Platinum"), for the sale of the Steering Business and a Transaction Facilitation Agreement with GM (the "Transaction Agreement"). Delphi expects proceeds from the sale and related Transaction Agreement to approximate \$250 million. After the conclusion of the sale hearing on February 21, 2008, on February 25, 2008, the Court issued an order authorizing Delphi to dispose of its Steering Business. Also on February 21, 2008, the Court scheduled a hearing on the sale motion as it pertained to certain proposed contracts to be assumed and/or assigned that were covered by unresolved objections. After the hearing on March 19, 2008 the Court entered an order resolving the certain adjourned objections and applying the terms of the sale order to the parties whose objections had been resolved. A further hearing is scheduled for May 29, 2008, when the Court is anticipated to rule on any outstanding objections relating to certain additional contracts proposed to be assumed and/or assigned in connection with the sale. During the first quarter of 2008, Delphi recorded additional losses of \$77 million related to the operations and assets held for sale of the Steering Business. Delphi is working to close the sale as soon as practicable. Any party in compliance with its obligations under the Purchase Agreement may terminate the Purchase Agreement if the transaction does not close by August 23, 2008, with certain exceptions. Delphi expects the transaction to be completed before this date.

Prior to the assets of the Steering Business being classified as held for sale, Delphi recorded asset impairment charges related to the valuation of long-lived assets held-for-use for its Steering Business of \$152 million during the first quarter of 2007.

#### **Interiors and Closures Business**

Delphi and certain of its affiliates entered into the Interiors and Closures Agreement with Inteva Products, LLC ("Inteva"), a wholly-owned subsidiary of the Renco Group, and certain of its affiliates for the sale of substantially all of the tangible assets primarily used in the Interiors and Closures Business. On January 25, 2008, the Court entered an order approving the assumption and assignment of the executory contracts covered by certain objections, all of which were resolved prior to the January 25, 2008 hearing. On that date, the Court also approved a compromise with Inteva, which facilitates the closing of the sale of the Interiors and Closures Business with Inteva by modifying the payment structure under the Interiors and Closures Agreement in consideration for the waiver of certain of Inteva's conditions to closing. Delphi closed on the sale of the Interiors and Closures Business to Inteva on February 29, 2008. Delphi received proceeds from the sale of approximately \$98 million consisting of \$63 million of cash (less \$23 million of cash at an overseas entity that was included in the sale) and the remainder in notes at fair value. During the first quarter of 2008, as a result of the operations and sale of the Interiors and Closures Business, Delphi recorded a favorable adjustment of \$18 million to the overall loss on the sale of the Interiors and Closures Business due to the results of operations and changes in working capital through the sale closing date of February 29, 2008.

The Interiors and Closures Business, through the date of the sale, and the Steering Business are reported as discontinued operations in the consolidated statement of operations and statement of cash flows for the quarters ended March 31, 2008 and 2007. The assets and liabilities of the Steering Business are reported in assets and liabilities held for sale in the consolidated balance sheet as of March 31, 2008 and December 31, 2007. The assets and liabilities of the Interiors and Closures Business are reported in assets and

liabilities held for sale in the consolidated balance sheet as of December 31, 2007, but are not included in assets and liabilities held for sale as of March 31, 2008 as a result of the sale to Inteva on February 29, 2008.

The results of the discontinued operations are summarized as follows:

|   |                | Three Months Ended<br>March 31, |  |
|---|----------------|---------------------------------|--|
|   | 2008           | 2007                            |  |
|   | (in m          | illions)                        |  |
| Sales:  |                |                                 |  |
| Steering Business   | \$ 569         | \$681                           |  |
| Interiors and Closures Business   | 241            | 312                             |  |
| Total sales   | \$810          | \$993                           |  |
| Loss before income taxes (including minority interest and equity income, net of |                |                                 |  |
| tax)  | \$(55)         | \$(139)                         |  |
| Provision for income taxes  | (4)            | (3                              |  |
| Loss from discontinued operations   | <u>\$(59</u> ) | \$(142)                         |  |
| Steering Business   | (77)           | (154)                           |  |
| Interiors and Closures Business   | 18             | 12                              |  |

Assets and liabilities of the discontinued operations are summarized as follows:

|                                 | March 31,<br>2008 | December 31,<br>2007 |
|---------------------------------|-------------------|----------------------|
|                                 | (in r             | nillions)            |
| Current assets:                 |                   |                      |
| Cash                            | \$45              | \$49                 |
| Accounts receivable             | 444               | 411                  |
| Inventory                       | 155               | 188                  |
| Other current assets            | 10                | 8                    |
| Long term assets:               |                   |                      |
| Property, net                   | -                 | 48                   |
| Other long-term assets          | 1                 | 16                   |
| Assets held for sale            | \$655             | \$720                |
| Steering Business               | 655               | 594                  |
| Interiors and Closures Business | -                 | 126                  |
| Current liabilities:            |                   |                      |
| Accounts payable                | \$265             | \$271                |
| Accrued liabilities             | 63                | 53                   |
| Short term debt                 | 57                | 49                   |
| Other long-term liabilities     | 22                | 14                   |
| Minority interest               | 19                | 25                   |
| Liabilities held for sale       | \$426             | \$412                |
| Steering Business               | 426               | 392                  |
| Interiors and Closures Business | -                 | 20                   |

Cash flows from operating activities for discontinued operations are summarized as follows:

|  |       | Three Months Ended<br>March 31, |  |
|--|-------|---------------------------------|--|
|  | 2008  | 2007                            |  |
|  | (in m | uillions)                       |  |
| Charge related to assets held for sale             | \$ 7  | <b>\$</b> -                     |  |
| Long lived asset impairment charges                | —     | 154                             |  |
| Pension and other postretirement benefit expenses  | 11    | 20                              |  |
| U.S. employee workforce transition program charges | 1     | _                               |  |
| Changes in net operating assets                    | 35    | 15                              |  |
| Total  | \$ 54 | \$ 189                          |  |
| Steering Business                                  | 24    | 181                             |  |
| Interiors and Closures Business                    | 30    | 8                               |  |

#### 5. DIVESTITURES

The results of operations, including the gain or loss on divestitures described below, were not significant to the consolidated financial statements in any period presented.

#### North American Brake Product Asset Sale

On September 17, 2007, Delphi and TRW Integrated Chassis Systems, LLC signed an Asset Purchase Agreement for the sale of certain assets for Delphi's North American brake components machining and assembly assets ("North American Brake Components") primarily located at its Saginaw, Michigan, Spring Hill, Tennessee, Oshawa, Ontario Canada and Saltillo, Mexico facilities. On November 16, 2007, Delphi received Court approval to proceed with the sale of the assets. The sale occurred in the first quarter of 2008. Delphi received proceeds from this sale of approximately \$38 million in the first quarter of 2008.

#### **Bearings Business Product Sale**

On January 15, 2008, the Debtors filed a motion to sell Delphi's bearings business (the "Bearings Business"). On January 25, 2008, the Court approved the bidding procedures authorizing Delphi to commence an auction under section 363 of the Bankruptcy Code. On February 21, 2008, the Debtors announced that they had entered into a purchase agreement with Kyklos, Inc., a wholly owned subsidiary of Hephaestus Holdings, Inc. and an affiliate of KPS Special Situations Fund II, L.P. ("Kyklos"), which was the successful bidder at the auction held on February 19, and 20, 2008. The Court entered the order confirming the sale of the Bearings Business to Kyklos on March 19, 2008. The 2007 annual revenues for the Bearings Business were \$280 million. During the first quarter of 2008, Delphi recognized a charge of \$30 million, included in cost of sales, related to the assets held for sale of the Bearings Business. The sale occurred on April 30, 2008 and Delphi expects proceeds from this sale to approximate \$13 million.

#### U.S. Suspensions Asset Sale

On March 7, 2008, the Debtors filed a motion to sell certain assets of Delphi's U.S. suspensions business including the machinery, equipment and inventory primarily used and located at its suspension manufacturing facility in Kettering, Ohio (the "Kettering Assets"), to Tenneco Automotive Operating Company Inc. ("Tenneco") for approximately \$19 million and other consideration. On March 20, 2008, the Court approved the bidding procedures for the Kettering Assets, but no further bids were submitted by the bid deadline. On April 30, 2008, the Court entered an order approving the sale of the Kettering Assets to Tenneco. The 2007 annual revenues for the Kettering Assets were \$113 million.

#### **Catalyst Product Line Sale**

On September 28, 2007, Delphi closed on the sale of its original equipment and aftermarket catalyst business (the "Catalyst Business") to Umicore. During the first quarter of 2008, Delphi and Umicore agreed on final working capital adjustments and Delphi received a payment of \$9 million, of which \$6 million offset a receivable booked during 2007 and \$3 million was recorded as a reduction to cost of sales.

## 6. EMPLOYEE TERMINATION BENEFITS AND OTHER EXIT COSTS

Delphi continually evaluates alternatives to align its business with the changing needs of its customers and to lower the operating costs of the Company. This includes the realignment of its existing manufacturing capacity, facility closures, or similar actions in the normal course of business. These actions may result in voluntary or involuntary employee termination benefits, which are mainly pursuant to union or other contractual agreements. Voluntary termination benefits are accrued when an employee accepts the related offer. Involuntary termination benefits are accrued when Delphi commits to a termination plan and the benefit arrangement is communicated to affected employees, or when liabilities are determined to be probable and estimable, depending on the circumstances of the termination plan. Contract termination costs are recorded when contracts are terminated or when Delphi ceases to use the facility and no longer derives economic benefit from the contract. All other exit costs are accrued when incurred.

Delphi's employee termination benefit and other exit costs are undertaken as necessary to execute management's strategy, streamline operations, take advantage of available capacity and resources, and ultimately achieve net cost reductions. These activities generally fall into one of two categories:

(1) Realignment of existing manufacturing capacity and closure of facilities and other exit or disposal activities, as it relates to executing the Company's strategy in the normal course of business.

Transformation plan activities, which support the Company's overall transformation initiatives announced in

(2) 2006, including selling or winding down non-core product lines, transforming its salaried workforce to reduce general and administrative expenses, and modifying labor agreements with its principal unions in the U.S.

The following table summarizes the employee termination benefit and other exit cost charges recorded for the three months ended March 31, 2008 and 2007 by operating segment:

|  | Three Months Endeo<br>March 31, |         |  |
|--|---------------------------------|---------|--|
| Segment                                      | 2008                            | 2007    |  |
|  | (in mi                          | llions) |  |
| Electronics & Safety                         | \$ 28                           | \$2     |  |
| Powertrain Systems                           | 4                               | 1       |  |
| Electrical/Electronic Architecture           | 13                              | 31      |  |
| Thermal Systems                              | 3                               | 3       |  |
| Automotive Holdings Group                    | 43                              | 44      |  |
| Corporate and Other                          | _                               | 4       |  |
| Continuing Operations                        | 91                              | 85      |  |
| Discontinued Operations                      | 35                              | 34      |  |
| Total  | \$ 126                          | \$ 119  |  |
| Cost of sales                                | 86                              | 82      |  |
| Selling, general and administrative expenses | 5                               | 3       |  |
| Loss from discontinued operations            | 35                              | 34      |  |

Delphi has initiated several programs to streamline operations and lower costs. The following are details of significant charges during the first quarter of 2008.

*Realignment of existing manufacturing capacity and closure of facilities.* As part of Delphi's ongoing efforts to lower costs and operate efficiently, Delphi's Electronics & Safety and Automotive Holdings Group segments plan to transfer core products manufactured at a shared location in Portugal to a lower cost market and exit non-core products from that facility and recognized employee termination benefits of \$44 million. Additionally, Electronics & Safety, Electrical / Electronic Architecture segment ("E&EA"), Thermal Systems and the Automotive Holdings Group executed initiatives to realign manufacturing operations within North America to lower cost markets, and incurred approximately \$23 million of employee termination benefits and other related exit costs.

*Transformation plan activities.* As part of an initiative to sell or wind down non-core product lines, Delphi incurred employee termination benefits and other exit costs of \$31 million related to the closure of a manufacturing facility in Athens, Alabama during the first quarter of 2008, which related to the Steering Business and was recorded in loss from discontinued operations. As part of an effort to transform its salaried workforce and reduce general and administrative expenses, Delphi identified certain salaried employees in North America during the first quarter of 2008 for involuntary separation and incurred \$18 million in related employee termination benefits in the Electronics & Safety, Powertrain Systems, E&EA and Automotive Holdings Group segments.

The following are details of significant charges during the first quarter of 2007.

*Realignment of existing manufacturing capacity and closure of facilities.* As part of Delphi's ongoing efforts to lower costs and operate efficiently, the E&EA segment announced an involuntary employee separation package due to a planned closure of a manufacturing facility in France for approximately \$11 million.

*Transformation plan activities.* As part of an initiative to sell or wind down non-core product lines, Delphi incurred employee termination benefits and other exit costs of \$61 million related to the closure of a manufacturing facility in Cadiz, Spain during the first quarter of 2007, of which \$31 million related to the Automotive Holdings Group segment and \$30 million related to the Steering Business, which is recorded in loss from discontinued operations. As a part of an effort to transform its salaried workforce and reduce general and administrative expenses, Delphi identified certain salaried employees, primarily in North America, during the first quarter of 2007 for involuntary separation, and incurred \$23 million in related employee termination benefits in the Powertrain Systems, E&EA, and Automotive Holdings Group segments.

#### 7. WEIGHTED AVERAGE SHARES

Basic and diluted loss per share amounts were computed using weighted average shares outstanding for each respective period. As Delphi incurred losses in the three months ended March 31, 2008 and 2007, the effect of potentially dilutive securities has been excluded from the calculation of loss per share as inclusion would have had an anti-dilutive effect.

Actual weighted average shares outstanding used in calculating basic and diluted loss per share were:

|                                     |         | Three Months Ended<br>March 31, |  |
|-------------------------------------|---------|---------------------------------|--|
|                                     | 2008    | 2007                            |  |
|                                     | (in the | ousands)                        |  |
| Weighted average shares outstanding | 563,646 | 561,782                         |  |
| Effect of dilutive securities       |         | _                               |  |
| Diluted shares outstanding          | 563,646 | 561,782                         |  |

Securities excluded from the computation of diluted loss per share because inclusion would have had an anti-dilutive effect:

|                          |        | onths Ended<br>rch 31, |  |
|--------------------------|--------|------------------------|--|
|                          | 2008   | 2007                   |  |
|                          | (in th | (in thousands)         |  |
| Anti-dilutive securities | 66,696 | 81,206                 |  |

## 8. LIABILITIES

Accrued liabilities consisted of the following:

|  | March 31,<br>2008 | December 31,<br>2007 |
|--|-------------------|----------------------|
|  | (in ı             | nillions)            |
| Payroll related obligations                              | \$278             | \$238                |
| Employee benefits, including current pension obligations | 172               | 185                  |
| Accrued income taxes                                     | 155               | 92                   |
| Taxes other than income                                  | 204               | 157                  |
| Warranty obligations (Note 9)                            | 240               | 244                  |
| U.S. employee workforce transition program (Note 12)     | 192               | 234                  |
| Manufacturing plant rationalization                      | 253               | 259                  |
| Interest on prepetition claims                           | 425               | 411                  |
| Other  | 482               | 461                  |
| Total  | \$2,401           | \$2,281              |

Other long-term liabilities consisted of the following:

|  | March 31,<br>2008 | December 31,<br>2007 |
|--|-------------------|----------------------|
|  | (in r             | nillions)            |
| Workers compensation                                 | \$326             | \$328                |
| Environmental  | 88                | 112                  |
| U.S. employee workforce transition program (Note 12) | 131               | 148                  |
| Extended disability benefits                         | 73                | 72                   |
| Warranty obligations (Note 9)                        | 314               | 315                  |
| Other  | 269               | 210                  |
| Total  | \$1,201           | \$1,185              |

#### 9. WARRANTY OBLIGATIONS

Delphi recognizes expected warranty costs for products sold principally at the time of sale of the product based on Delphi's estimate of the amount that will eventually be required to settle such obligations. These accruals are based on factors such as past experience, production changes, industry developments and various other considerations. Delphi's estimates are adjusted from time to time based on facts and circumstances that impact the status of existing claims.

The table below summarizes the activity in the product warranty liability for the three months ended March 31, 2008:

|  | March 31,<br>2008<br>(in millions) |
|--|------------------------------------|
| Accrual balance at beginning of year                         | \$559                              |
| Provision for estimated warranties issued during the period  | 17                                 |
| Provision for changes in estimate for preexisting warranties | 13                                 |
| Settlements made during the period (in cash or in kind)      | (45)                               |
| Foreign currency translation and other                       | 10                                 |
| Accrual balance at end of period                             | \$554                              |

Approximately \$240 million and \$244 million of the warranty accrual balance as of March 31, 2008 and December 31, 2007, respectively, is included in accrued liabilities in the accompanying consolidated balance sheets. Approximately \$314 million and \$315 million of the warranty accrual balance as of March 31, 2008 and December 31, 2007, respectively, is included in other long-term liabilities.

#### 10. LIABILITIES SUBJECT TO COMPROMISE

As a result of the Chapter 11 Filings, the payment of prepetition indebtedness is subject to compromise or other treatment under the Debtors' plan of reorganization. Generally, actions to enforce or otherwise effect payment of prepetition liabilities are stayed. Refer to Note 2. Transformation Plan and Chapter 11 Bankruptcy. Although prepetition claims are generally stayed, at hearings held in October and November 2005, the Court granted final approval of the Debtors' "first day" motions generally designed to stabilize the Debtors' operations and covering, among other things, human capital obligations, supplier relations, customer relations, business operations, tax matters, cash management, utilities, case management, and retention of professionals. The following data regarding the number and amount of claims and proof of claims is unaudited.

The Debtors have been paying and intend to continue to pay undisputed postpetition obligations in the ordinary course of business. In addition, pursuant to the Amended Plan, the Debtors assumed most of their executory contracts and unexpired leases with respect to the Debtors' operations, and rejected certain of them, with the approval of the Court. Damages resulting from rejection of executory contracts and unexpired leases are treated as general unsecured claims and will be classified as liabilities subject to compromise. The Court entered an order establishing July 31, 2006 as the bar date by which claims against the Debtors arising prior to the Debtors' Chapter 11 Filings were required to be filed if the claimants were to receive any distribution in the chapter 11 cases. As of April 30, 2008, the Debtors' have received approximately 16,813 proofs of claim, a portion of which assert, in part or in whole, unliquidated claims. In addition, the Debtors have compared proofs of claim they have received to liabilities they have already scheduled and determined that there are certain scheduled liabilities for which no proof of claim was filed. In the aggregate, total proofs of claim and scheduled liabilities assert approximately \$34 billion in liquidated amounts, including approximately \$900 million in intercompany claims, and additional unliquidated amounts. As is typical in reorganization cases, differences between claim amounts listed by the Debtors in their Schedules of Assets and Liabilities (as amended) and claims filed by creditors will be investigated and resolved in connection with the claims reconciliation process or, if necessary, the Court will make the final determination as to the amount, nature, and validity of claims. Many of these claims have been found to be duplicative, based on contingencies that have not occurred, or are otherwise overstated, and therefore have been determined to be invalid. As a result, the aggregate amount of claims filed with the Court exceeds the amount that has been to date allowed by the Court. As of April 30, 2008, the Debtors have filed twenty-nine omnibus claims objections that objected to claims on procedural or substantive grounds. Pursuant to these claims objections, the Debtors have objected to approximately 13,400 proofs of claim which asserted approximately \$10.1 billion in aggregate liquidated amounts plus additional unliquidated amounts. As of April 30, 2008, the Court has entered orders disallowing and/or claimants have withdrawn approximately 9,700 of those claims, which orders reduced the amount of asserted claims by approximately \$9.7 billion in aggregate liquidated amounts plus additional unliquidated

amounts. In addition, the Court has entered an order modifying approximately 3,500 claims reducing the aggregate amounts asserted on those claims from \$803 million to \$561 million, which amounts are subject to further objection by the Debtors at a later date on any basis. The Debtors anticipate that additional proofs of claim will be the subject of future objections as such proofs of claim are reconciled. The determination of how these liabilities are to be settled and treated is set forth in the Amended Plan. In light of the number of creditors of the Debtors, the claims resolution process may take considerable time to complete. Accordingly, the ultimate number and amount of allowed claims is not determinable at this time. Classification for purposes of these financial statements of any prepetition liabilities on any basis other than liabilities subject to compromise is not an admission against interest or a legal conclusion by the Debtors as to the manner of classification, treatment, allowance, or payment in the Debtors' chapter 11 cases, including in connection with any plan of reorganization that may be confirmed by the Court and that may become effective pursuant to an order of the Court. As of January 25, 2008, the total general unsecured claims, other than funded debt claims, against the Company had been reduced to an amount less than the \$1.45 billion cap specified in the Amended Plan. Refer to Note 2. Transformation Plan and Chapter 11 Bankruptcy for details on the chapter 11 cases.

SOP 90-7 requires prepetition liabilities that are subject to compromise to be reported at the amounts expected to be allowed, even if they may be settled for lesser amounts. The amounts currently classified as liabilities subject to compromise may be subject to future adjustments depending on Court actions, further developments with respect to disputed claims, determinations of the secured status of certain claims, the values of any collateral securing such claims, or other events.

Liabilities subject to compromise consist of the following:

|   | March 31,<br>2008 | December 31,<br>2007 |
|---|-------------------|----------------------|
|   | (in               | millions)            |
| Pension obligations.  | \$3,319           | \$3,329              |
| Postretirement obligations other than pensions, including amounts payable to GM | 9,002             | 8,786                |
| Debt and notes payable  | 1,984             | 1,984                |
| Accounts payable  | 738               | 744                  |
| Junior subordinated notes due 2033  | 391               | 391                  |
| GM claim for U.S. employee workforce transition programs                        | 312               | 312                  |
| Securities & ERISA litigation liability (Note 18)                               | 351               | 351                  |
| Other   | 266               | 300                  |
| Total Liabilities Subject to Compromise   | \$16,363          | \$16,197             |

#### **11. DEBT**

During the first quarter of 2007, Delphi refinanced its prepetition and postpetition credit facilities obligations by entering into a Revolving Credit, Term Loan, and Guaranty Agreement (the "Refinanced DIP Credit Facility") to borrow up to approximately \$4.5 billion from a syndicate of lenders. The Refinanced DIP Credit Facility consists of a \$1.75 billion first priority revolving credit facility (the "Revolving Facility"), a \$250 million first priority term loan (the "Tranche B Term Loan" and, together with the Revolving Facility, the "First Priority Facilities"), and an approximate \$2.5 billion second priority term loan (the "Tranche C Term Loan"). As of January 9, 2007, both the Refinanced DIP Credit Facility \$250 million Tranche B Term Loan and approximately \$2.5 billion Tranche C Term Loan were funded. The Refinanced DIP Credit Facility had a maturity date of July 1, 2008. On May 9, 2008, Delphi entered into an amended and restated DIP credit facility. The following describes the terms of the Refinanced DIP Credit Facility as it was in effect during the first quarter of 2008.

Borrowings under the Refinanced DIP Credit Facility were prepayable at Delphi's option without premium or penalty. As of March 31, 2008, total available liquidity under the Refinanced DIP Credit Facility

was approximately \$504 million. Also as of March 31, 2008, there was \$452 million outstanding under the Revolving Facility as of that date, including approximately \$162.5 million related to the letters of credit provided to the PBGC discussed further in Note 2. Transformation Plan and Chapter 11 Bankruptcy. The amount outstanding at any one time under the First Priority Facilities is limited by a borrowing base computation as described in the Refinanced DIP Credit Facility. While the borrowing base computation excluded outstanding borrowings, it was less than the Refinanced DIP Credit Facility commitment at March 31, 2008. During the first quarter of 2008, Delphi's availability, as determined by the Borrowing Base Certificate (as defined in the Refinanced DIP Credit Facility), dropped below \$500 million. As a result, Delphi is required to provide weekly borrowing base calculations to the bank lending syndicate.

The Refinanced DIP Credit Facility included affirmative, negative and financial covenants that impose restrictions on Delphi's financial and business operations, including Delphi's ability to, among other things, incur or secure other debt, make investments, sell assets and pay dividends or repurchase stock. The Company does not expect to pay dividends prior to emergence from chapter 11. So long as the Facility Availability Amount (as defined in the Refinanced DIP Credit Facility) is equal or greater than \$500 million, compliance with the restrictions on investments, mergers and disposition of assets does not apply (except in respect of investments in, and dispositions to, direct or indirect domestic subsidiaries of Delphi that are not guarantors). The covenants require Delphi, among other things, to maintain a rolling 12-month cumulative Global EBITDAR for Delphi and its direct and indirect subsidiaries, on a consolidated basis, at the levels set forth in the Refinanced DIP Credit Facility. The Refinanced DIP Credit Facility also contains certain defaults and events of default customary for debtor-in-possession financings of this type. Upon the occurrence and during the continuance of any default in payment of principal, interest or other amounts due under the Refinanced DIP Credit Facility, interest on all outstanding amounts is payable on demand at 2% above the then applicable rate. Delphi was in compliance with the Refinanced DIP Credit Facility covenants as of March 31, 2008. Refer to Note 14. Debt, to the consolidated financial statements in Delphi's Annual Report on Form 10-K for the year ended December 31, 2007 for additional information on the Refinanced DIP Credit Facility.

Delphi entered into a series of amendments over the course of the loan, and paid amendment fees of 100 basis points, or approximately \$45 million, to the lenders in the third quarter of 2007. As of March 31, 2008, \$19 million remains deferred in other current assets.

Concurrently with the entry into the Refinanced DIP Credit Facility, the Revolving Credit, Term Loan and Guaranty Agreement (the "DIP Credit Facility") Delphi entered into on October 14, 2005, as amended through November 13, 2006 (the "Amended DIP Credit Facility"), and the Five Year Third Amended and Restated Credit Agreement, dated as of June 14, 2005 (as amended, the "Prepetition Facility") were terminated. Delphi incurred no early termination penalties in connection with the termination of these agreements. However, as a result of changes in the debt structure and corresponding cash flows related to the refinancing, Delphi expensed \$25 million of unamortized debt issuance and discount costs related to the Amended DIP Credit Facility and Prepetition Facility in the first quarter of 2007, of which \$23 million was recognized as loss on extinguishment of debt as these fees relate to the refinancing of the term loans and \$2 million was recognized as interest expense as these fees relate to the refinancing of the revolving credit facility.

#### 12. U.S. EMPLOYEE WORKFORCE TRANSITION PROGRAMS

As previously disclosed in the Company's Annual Report on Form 10-K for the year ended December 31, 2007, Delphi, GM, and Delphi's principal labor unions signed settlement agreements during 2007 which included workforce transition programs for eligible union employees (the "Workforce Transition Programs"). Included in certain Workforce Transition Programs were attrition programs similar to the U.S. employee special attrition programs offered in June 2006, which offered certain eligible Delphi employees the following options: (i) normal and early voluntary retirements with lump sum incentive payments, (ii) a pre-retirement program under which certain eligible employees with less than 30 years of credited service were granted the ability to cease working and to receive monthly payments and benefits until they accrue 30 years of credited service at which time they will retire without additional incentives, and (iii) buyout payments in amounts dependant upon the amount of seniority or credited service. Certain

Workforce Transition Programs also offered the following options in addition to the attrition programs: (i) flowback rights or special employee placement opportunities with GM to certain eligible Delphi employees who do not elect the attrition options, including a relocation allowance in certain circumstances when plants cease production, (ii) buy-down payments for certain eligible employees who do not elect the attrition option, flowback option, or become employed by GM, and continue to work for Delphi under specified terms, (iii) conversion of temporary employees in Delphi plants to permanent employee status, and (iv) severance payments or supplemental unemployment benefits to eligible employees who are permanently laid off prior to a specified date.

During 2007, Delphi recorded charges for the Workforce Transition Programs of approximately \$52 million, which are included in the U.S. employee workforce transition program liability included in current liabilities in the consolidated balance sheet. In the first quarter of 2008, Delphi recorded additional charges of \$16 million to reflect costs under the Workforce Transition Programs in excess of amounts previously estimated. The estimated payments to be made under the buy-down arrangements within the UAW and IUE-CWA Workforce Transition Programs totaled \$323 million and were recorded as a wage asset and liability during 2007. In accordance with EITF 88-23, "*Lump-Sum Payments under Union Contracts,*" the wage asset is being amortized over the life of the respective union agreements. The corresponding wage liability will be reduced as buy-down payments are made. Based on the GSA with GM, Delphi expects reimbursement for certain costs related to the workforce transition programs, but given that the GSA is not effective until Delphi's emergence from chapter 11, reimbursement of these costs has not been recorded as of March 31, 2008. GM's reimbursement for costs associated with incentivized retirements are included in the U.S. labor agreements, which as previously discussed have been approved by the Court and ratified by the respective unions. Therefore, as of March 31, 2008, Delphi has recorded a receivable from GM in the amount of \$2 million included in GM and affiliates accounts receivable in the accompanying consolidated balance sheet.

The following table represents the activity in the U.S. employee workforce transition program liability for the three months ended March 31, 2008:

| U.S. Employee Workf                                 | orce Transition Program Liability (in mil | lions) |
|---|---|--------|
| Balance at December 31, 2007                        | \$382                                     |        |
| U.S. employee workforce transition program charges  | 16  |        |
| Buy-down wage liability adjustment                  | 3   |        |
| Payments  | (71                                       | )      |
| Pension and other postretirement benefits (Note 13) | (9  | )      |
| Accretion and other                                 | 2   |        |
| Balance at March 31, 2008                           | \$323                                     |        |

At March 31, 2008 and December 31, 2007, \$192 million and \$234 million, respectively, of the U.S. employee workforce transition program liability is included in accrued liabilities, and \$131 million and \$148 million, respectively, is included in other long-term liabilities in the consolidated balance sheet.

The following table represents the activity in the U.S. employee workforce transition program buydown wage asset for the three months ended March 31, 2008:

#### U.S. Employee Workforce Transition Program Buydown Wage Assetin millions)

| —                              |       | , |
|--------------------------------|-------|---|
| Balance at December 31, 2007   | \$301 |   |
| Buy-down wage asset adjustment | 3     |   |
| Amortization expense           | (21   | ) |
| Balance at March 31, 2008      | \$283 | _ |

As of March 31, 2008 and December 31, 2007, \$84 million and \$80 million, respectively, of the U.S. employee workforce transition program buydown wage asset is included in other current assets and \$199 million and \$221 million, respectively, is included in other long-term assets in the consolidated balance sheet.

Approximately 10,000 employees elected to flow back to GM and retire as part of the 2006 U.S. employee special attrition program. Although GM agreed to assume certain postretirement healthcare and life insurance coverages for these retirees, due to the volume of retirements, GM was unable immediately to transition these retirees to GM healthcare and life insurance plans. Delphi agreed to administer health and life insurance coverage for these retirees during the transition period and GM agreed to reimburse Delphi for the actual costs of providing such coverage. During 2007, GM overpaid Delphi, and, as of March 31, 2008, Delphi owed GM approximately \$10 million for these overpayments. This amount was paid in April 2008.

#### **13. PENSION AND OTHER POSTRETIREMENT BENEFITS**

The Debtors sponsor pension plans covering unionized employees in the U.S., which generally provide benefits of stated amounts for each year of service, as well as supplemental benefits for employees who qualify for retirement before normal retirement age. The Debtors also sponsor defined benefit plans covering U.S. salaried employees, with benefits generally based on years of service and salary history. Certain Delphi employees also participate in nonqualified pension plans covering executives, which are based on targeted wage replacement percentages and are unfunded. Delphi's funding policy with respect to its qualified plans is to contribute annually, not less than the minimum required by applicable laws and regulations, including the Bankruptcy Code. Certain of Delphi's non-U.S. subsidiaries also sponsor defined benefit pension plans, which generally provide benefits based on negotiated amounts for each year of service. Delphi's primary non-U.S. plans are located in France, Germany, Luxembourg, Mexico, Portugal, and the United Kingdom ("UK"). The UK and certain Mexican plans are funded. In addition, Delphi has defined benefit plans in Korea, Turkey and Italy for which amounts are payable to employees immediately upon separation. The obligations for these plans are recorded based on the vested benefit obligation.

Delphi also maintains other postretirement benefit plans, which provide covered U.S. hourly and salaried employees with retiree medical and life insurance benefits. Certain of Delphi's non-U.S. subsidiaries have other postretirement benefit plans; although most participants are covered by government sponsored or administered programs. The annual cost of such non-U.S. other postretirement benefit plans was not significant to Delphi.

The amounts shown below reflect the defined benefit pension and other postretirement benefit expense for the threemonth periods ended March 31, 2008 and 2007 for U.S. and non-U.S. salaried and hourly employees excluding the plans in Korea, Turkey and Italy discussed above. The settlements recorded in the first quarter of 2007 were primarily due to renegotiated labor contracts in Mexico. Benefit costs presented below were determined based on actuarial methods and included the following components for U.S. and non-U.S. salaried and hourly employees:

|                                     |               |            | _            |              | Otl<br>Postreti | rement |
|-------------------------------------|---------------|------------|--------------|--------------|-----------------|--------|
|                                     |               | Pension Be |              |              | Ben             | efits  |
|                                     | U.S. 1        |            | Non-U.S      |              |                 |        |
|                                     |               | Three      | e Months End | ed March 31, |                 |        |
|                                     | 2008          | 2007       | 2008         | 2007         | 2008            | 2007   |
|                                     | (in millions) |            |              |              |                 |        |
| Service cost (a)                    | \$41          | \$48       | \$ 11        | \$ 12        | \$7             | \$21   |
| Interest cost                       | 213           | 212        | 23           | 20           | 137             | 135    |
| Expected return on plan assets      | (218)         | (216)      | (23)         | (20)         | -               | -      |
| Settlements                         | _             | _          | 11           | 30           | -               | _      |
| Amortization of prior service costs | 7             | 14         | 1            | 1            | (27)            | (25)   |
| Amortization of actuarial losses    | 5             | 25         | 6            | 8            | 11              | 19     |
| Net periodic benefit cost           | \$48          | \$83       | \$ 29        | \$ 51        | \$128           | \$150  |

(a) Includes \$9 million and \$15 million for the three month periods ended March 31, 2008 and 2007, respectively, of costs previously accrued related to the U.S. employee workforce transition programs.

Net periodic benefit cost above reflects \$11 million and \$20 million that were included in loss from discontinued operations for the month periods ended March 31, 2008 and 2007, respectively.

In September 2006, the FASB issued SFAS 158, which requires, among other things, an employer to measure the funded status of its defined benefit pension and other postretirement benefit plans as of the date of its year-end statement of financial position, with limited exceptions, effective for fiscal years ending after December 15, 2008. Historically, Delphi has measured the funded status of its U.S. retiree health care benefit plans and certain international pension plans as of September 30 of each year. Delphi adopted the measurement date provisions of SFAS 158 as of January 1, 2008, and utilized the second transition approach provided under SFAS 158. Under this approach, net periodic benefit cost related to these plans for the period between the most recent measurement date of September 30, 2007 and December 31, 2008, was allocated proportionately between an adjustment of accumulated deficit as of January 1, 2008 and amounts to be recognized as net periodic benefit cost during 2008. The following table summarizes the impact of the adoption of the measurement date provisions of SFAS 158:

|  | J.S. Retiree<br>edical Plans         | Pe | Non-U.S.<br>nsion Plans | Total |  |  |
|--|--------------------------------------|----|-------------------------|-------|--|--|
|  | Increase/(Decrease)<br>(in millions) |    |                         |       |  |  |
| Pension and other postretirement benefit liabilities       | \$<br>132                            | \$ | 7                       | \$139 |  |  |
| Accumulated deficit as of January 1, 2008                  | \$<br>117                            | \$ | 12                      | \$129 |  |  |
| Accumulated other comprehensive loss as of January 1, 2008 | \$<br>15                             | \$ | (5)                     | \$10  |  |  |

As permitted under chapter 11 of the Bankruptcy Code, Delphi contributed only the portion of the contribution attributable to service after the Chapter 11 Filings. In January 2008 and April 2008, Delphi contributed approximately \$45 million and \$46 million, respectively, to its U.S. pension plans related to services rendered during the fourth quarter of 2007 and first quarter of 2008, respectively. Under ERISA and the Code, minimum funding payments to the U.S. pension plans of \$369 million were due in January and April 2008.

Delphi has been in discussions with the IRS and the PBGC regarding the funding of the Hourly Plan and the Salaried Plan upon emergence from chapter 11. These discussions are meant to achieve a consensual funding plan that would enable the Company to satisfy its pension funding obligations upon emergence from chapter 11 through a combination of cash contributions and a transfer of certain unfunded liabilities to a pension plan sponsored by GM. In addition, during 2006 and 2007, the IRS issued conditional waivers for the Hourly Plan and Salaried Plan which were intended to facilitate the Debtors' option to effectuate the transfer of certain hourly pension obligations to GM in an economically efficient manner, and to remove uncertainty as to whether excise taxes would be assessed as a result of accumulated funding deficiencies relating to prepetition service. The waivers were conditioned on Delphi emerging from chapter 11 and contributing funds to its pension plans on or before May 9, 2008. Delphi did not seek extension past May 9, 2008 of the waivers, and as a result, Delphi may be exposed to an excise tax penalty. Refer to Note 2. Transformation Plan and Chapter 11 Bankruptcy for more information.

Assuming a consensual funding plan is achieved, the Company currently expects that its pension contributions due upon emergence from chapter 11 will approximate \$1 billion under current legislation and plan design, after giving effect to an anticipated transfer of at least a net of \$1.5 billion of unfunded benefit liabilities from the Hourly Plan to a pension plan sponsored by GM.

# 14. DERIVATIVES AND HEDGING ACTIVITIES

Delphi is exposed to market risk, such as fluctuations in foreign currency exchange rates, commodity prices and changes in interest rates, which may result in cash flow risks. To manage the volatility relating to these exposures, Delphi aggregates the exposures on a consolidated basis to take advantage of natural offsets. For exposures that are not offset within its operations, Delphi enters into various derivative transactions pursuant to risk management policies. Designation is performed on a transaction basis to support hedge accounting. The changes in fair value of these hedging instruments are offset in part or in whole by corresponding changes in the fair value or cash flows of the underlying exposures being hedged. Delphi

assesses the initial and ongoing effectiveness of its hedging relationships in accordance with its documented policy. Delphi does not hold or issue derivative financial instruments for trading purposes.

The fair value of derivative financial instruments recorded in the consolidated balance sheets as assets and liabilities as of March 31, 2008 and December 31, 2007 are as follows:

|                         | March 31,<br>2008 | December 31,<br>2007 |
|-------------------------|-------------------|----------------------|
|                         | (in t             | nillions)            |
| Current assets          | \$85              | \$40                 |
| Non-current assets      | 18                | 13                   |
| Total assets            | \$103             | \$53                 |
| Current liabilities     | \$35              | \$24                 |
| Non-current liabilities | 7                 | -                    |
| Total liabilities       | \$42              | \$24                 |

The fair value of financial instruments recorded as assets increased from December 31, 2007 to March 31, 2008 primarily due to the increase in copper prices which have increased copper forward rates. The fair value of financial instruments recorded as liabilities increased from December 31, 2007 to March 31, 2008, primarily due to certain unfavorable foreign currency contracts involving the Euro with the U.S. Dollar, Turkish New Lira, and South African Rand.

Gains and losses on derivatives qualifying as cash flow hedges are recorded in other comprehensive income ("OCI"), to the extent that hedges are effective, until the underlying transactions are recognized in earnings. Unrealized amounts in OCI will fluctuate based on changes in the fair value of open hedge derivative contracts at each reporting period. Net gains included in OCI as of March 31, 2008, were \$148 million pre-tax. Of this pre-tax total, a gain of approximately \$120 million is expected to be included in cost of sales within the next 12 months and a gain of approximately \$29 million is expected to be included in cost of sales of the related fixed assets. Cash flow hedges are discontinued when it is no longer probable that the originally forecasted transactions will occur. The amount included in cost of sales related to hedge ineffectiveness was \$1 million gain for the three months ended March 31, 2007. The amount included in cost of sales related to the time value of options was not significant in the three months ended March 31, 2008 and 2007. The amount included in cost of sales related to a sale state to be included for hedge accounting due to changes in the underlying purchase contracts was not significant for the three months ended March 31, 2008 and \$3 million for the three months ended March 31, 2007.

#### **15. FAIR VALUE MEASUREMENTS**

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157 ("SFAS 157"), *Fair Value Measurements*. SFAS 157 defines fair value, establishes a framework for measuring fair value in U.S. GAAP, and expands the disclosure requirements regarding fair value measurements. The rule does not introduce new requirements mandating the use of fair value.

In February 2008, the FASB issued FASB Staff Position No. 157-2, "Effective Date of FASB Statement No. 157" ("FSP 157-2") which partially defers the effective date of SFAS No. 157 for one year for nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a nonrecurring basis. The FSP does not defer recognition and disclosure requirements for financial assets and liabilities or for nonfinancial assets and nonfinancial liabilities that are remeasured at least annually. Delphi adopted SFAS No. 157 as of January 1, 2008 for assets and liabilities not subject to the deferral and expects to adopt the provisions of SFAS No. 157 as of January 1, 2009 for nonfinancial assets and liabilities that are subject to the deferral.

SFAS 157 defines fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." The definition is based on an exit price rather than an entry price, regardless of whether the entity plans to hold or sell the asset. SFAS No. 157 also establishes a fair value hierarchy to prioritize inputs used in measuring fair value as follows:

Level 1: Observable inputs such as quoted prices in active markets;

Level 2: Inputs, other than quoted prices in active markets, that are observable either directly or indirectly; and

*Level 3:* Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

Assets and liabilities measured at fair value are based on one or more of the following three valuation techniques noted in SFAS 157:

- a. *Market approach:* Prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.
- b. Cost approach: Amount that would be required to replace the service capacity of an asset (replacement cost).
- c. *Income approach:* Techniques to convert future amounts to a single present amount based upon market expectations (including present value techniques, option-pricing and excess earnings models).

As of March 31, 2008, Delphi had the following assets measured at fair value on a recurring basis:

|                               |                               | Fair Value Measurements Using:                            |  |  |  |  |  |  |  |  |
|-------------------------------|-------------------------------|---|--|--|--|--|--|--|--|--|
|                               | Total as of<br>March 31, 2008 | Quoted Prices<br>in Active<br>Markets<br>Level 1<br>(in m | Significant Other<br>Observable<br>Inputs<br>Level 2<br>illions) | Significant<br>Unobservable<br>Inputs<br>Level 3 |  |  |  |  |  |  |
| Available for sale securities | \$2                           | \$2   | <b>\$</b> -  | <b>\$</b> -                                      |  |  |  |  |  |  |
| Commodity derivatives         | 83                            | —   | 83   | -  |  |  |  |  |  |  |
| Foreign currency derivatives  | 20                            | -   | 20   | -  |  |  |  |  |  |  |
| Total                         | \$105                         | \$2   | \$103  | \$-  |  |  |  |  |  |  |

As of March 31, 2008, Delphi had the following liabilities measured at fair value on a recurring basis:

|                              |    | tal as of<br>h 31, 2008 | in A<br>Ma | Quoted PricesSignificant Otherin ActiveObservableMarketsInputsLevel 1Level 2 |          | Observable | Significant<br>Unobservabl<br>Inputs<br>Level 3 |   |
|------------------------------|----|-------------------------|------------|--|----------|------------|---|---|
|                              |    |                         |            | (in  | millions | )          |   |   |
| Foreign currency derivatives | \$ | 42                      | \$         | _  | \$       | 42         | \$  | - |

All derivative instruments are required to be reported on the balance sheet at fair value with changes in fair value reported currently through earnings unless the transactions qualify and are designated as normal purchases or sales or meet special hedge accounting criteria. The fair value of foreign currency and commodity derivative instruments are determined using exchange traded prices and rates. Delphi values its derivative contracts using an income approach based on valuation techniques to convert future amounts to a single, discounted amount. Delphi also considers the credit-worthiness of its derivative counterparties in its determination of fair value.

Equity securities are classified as available-for-sale and are recorded in the consolidated financial statements at market value with changes in market value included in OCI.

# 16. OTHER INCOME (EXPENSE), NET

Other income (expense), net included:

|                   | Three Mon<br>Marcl |        |
|-------------------|--------------------|--------|
|                   | <u>2008</u>        | 2007   |
|                   | (in mill           | lions) |
| Interest income   | \$ 13              | \$ 15  |
| Other, net        | 6                  | 5      |
| Other income, net | <u>\$ 19</u>       | \$ 20  |

# **17. SEGMENT REPORTING**

Delphi's operating structure consists of its core business within four segments that support its previously identified strategic product lines, as well as the Automotive Holdings Group, consisting of business operations to be sold or wound down. An overview of Delphi's five reporting segments, which are grouped on the basis of similar product, market and operating factors follows:

Electronics and Safety, which includes audio, entertainment and communications, safety systems, body controls and security systems, displays, mechatronics and power electronics, as well as advanced development of software and silicon.

Powertrain Systems, which includes extensive systems integration expertise in gasoline, diesel and fuel handling and full end-to-end systems including fuel injection, combustion, electronic controls, exhaust handling, and test and validation capabilities.

Electrical/Electronic Architecture, which includes complete electrical architecture and component products.

Thermal Systems, which includes Heating, Ventilating and Air Conditioning ("HVAC") systems, components for multiple transportation and other adjacent markets, and powertrain cooling and related technologies.

Automotive Holdings Group, which includes various non-core product lines and plant sites that do not fit Delphi's future strategic framework.

Delphi also has non-core steering and halfshaft product lines and interiors and closures product lines that are reported in discontinued operations (the sale of the interiors and closures product line closed on February 29, 2008). Previously, the steering and halfshaft product line was a separate operating segment and the interiors and closures product line was part of Delphi's Automotive Holdings Group segment. Refer to Note 4. Discontinued Operations for more information.

The Corporate and Other category includes the expenses of corporate administration, other expenses and income of a non-operating or strategic nature, elimination of inter-segment transactions and charges related to the U.S. employee workforce transition programs. Additionally, Corporate and Other includes the Product and Service Solutions business, which is comprised of independent aftermarket, diesel aftermarket, original equipment service, consumer electronics and medical systems.

The accounting policies of the segments are the same as those described in Note 1. Basis of Presentation, except that the disaggregated financial results for the segments have been prepared using a management approach, which is consistent with the basis and manner in which management internally disaggregates financial information for the purposes of assisting internal operating decisions. Generally, Delphi evaluates performance based on stand-alone segment operating income and accounts for inter-segment sales and transfers as if the sales or transfers were to third parties, at current market prices.

Certain segment assets, primarily within the Electronics and Safety segment, are utilized for operations of other core segments. Income and expense related to operation of those assets, including depreciation, are

allocated to and included within the measures of segment profit or loss of the core segment that sells the related product to the third parties.

As of December 31, 2007, Delphi transferred responsibility for certain product lines that are no longer considered noncore from the Company's Automotive Holdings Group segment to the Powertrain Systems, Thermal Systems and Electronics and Safety Systems segments to more directly correspond with management's internal assessment of each segment's operating results for purposes of making operating decisions. The reporting segment results shown below have been reclassified to conform to current presentation for comparability with no effect on previously reported consolidated results of Delphi.

Included below are sales and operating data for Delphi's segments for the three months ended March 31, 2008 and 2007.

|                                | Electronics<br>and Safety | Powertrain<br>Systems | Electrical/<br>Electronic<br><u>Architecture</u><br>(in | Thermal<br><u>Systems</u><br>millions) | Automotive<br>Holdings<br>Group | Corporate<br>and Other | Total   |
|--------------------------------|---------------------------|-----------------------|---|--|---------------------------------|------------------------|---------|
| For the Three Months Ended:    |                           |                       |   |  |                                 |                        |         |
| March 31, 2008                 |                           |                       |   |  |                                 |                        |         |
| Net sales to GM and affiliates | \$349                     | \$308                 | \$403   | \$296                                  | \$195                           | \$ 90                  | \$1,641 |
| Net sales to other customers   | 818                       | 866                   | 1,137   | 251                                    | 280                             | 259                    | 3,611   |
| Inter-segment net sales        | 48                        | 109                   | 44  | 27                                     | 42                              | (270)                  | -       |
| Total net sales                | \$1,215                   | \$1,283               | \$1,584   | \$ 574                                 | \$517                           | \$ 79                  | \$5,252 |
| Depreciation and amortization  | \$64                      | \$68                  | \$45  | \$15                                   | \$14                            | \$16                   | \$222   |
| Operating (loss) income        | \$(80)                    | \$(13)                | \$(6)   | \$26                                   | \$(70)                          | \$(124)                | \$(267) |
| Equity income                  | <b>\$</b> -               | \$4                   | \$3   | \$2                                    | \$(1)                           | \$3                    | \$11    |
| Minority interest              | <b>\$</b> -               | \$(6)                 | \$(4)   | \$(1)                                  | <b>\$</b> -                     | <b>\$</b> -            | \$(11)  |
| March 31, 2007                 |                           |                       |   |  |                                 |                        |         |
| Net sales to GM and affiliates | \$407                     | \$414                 | \$442   | \$369                                  | \$423                           | \$108                  | \$2,163 |
| Net sales to other customers   | 825                       | 905                   | 969   | 227                                    | 345                             | 248                    | 3,519   |
| Inter-segment net sales        | 67                        | 127                   | 45  | 36                                     | 51                              | (326)                  | _       |
| Total net sales                | \$1,299                   | \$1,446               | \$1,456   | \$632                                  | \$819                           | \$30                   | \$5,682 |
| Depreciation and amortization  | \$70                      | \$72                  | \$45  | \$13                                   | \$13                            | \$20                   | \$233   |
| Operating income (loss)        | \$47                      | \$(34)                | \$(5)   | \$1                                    | \$(63)                          | \$(161)                | \$(215) |
| Equity income                  | <b>\$</b> -               | \$4                   | \$4   | \$1                                    | \$2                             | \$3                    | \$14    |
| Minority interest              | <b>\$</b> -               | \$(9)                 | \$(7)   | \$2                                    | \$-                             | \$2                    | \$(12)  |

# **18. COMMITMENTS AND CONTINGENCIES**

# **Shareholder Lawsuits**

As previously disclosed, the Company, along with certain of its subsidiaries, current and former directors of the Company, and certain current and former officers and employees of the Company or its subsidiaries, and others are named as defendants in several lawsuits filed following the Company's announced intention to restate certain of its financial statements in 2005. These lawsuits (the "Multidistrict Litigation") were coordinated for pretrial proceedings by the Judicial Panel on Multidistrict Litigation and assigned to Hon. Gerald E. Rosen in the United States District Court for the Eastern District of Michigan (the "District Court"). Set forth below is a description of the Multidistrict Litigation and a summary of a settlement concerning the Multidistrict Litigation.

The Multidistrict Litigation is comprised of lawsuits in three categories. One group of class action lawsuits, which is purportedly brought on behalf of participants in certain of the Company's and its subsidiaries' defined contribution employee benefit pension plans that invested in Delphi common stock, is brought under ERISA. On October 21, 2005, the court appointed interim lead plaintiffs for the putative class.

On March 3, 2006, these plaintiffs filed a consolidated class action complaint (the "ERISA Action") with a class period of May 28, 1999 to November 1, 2005. Plaintiffs in the ERISA Action allege, among other things, that the plans suffered losses as a result of alleged breaches of fiduciary duties under ERISA. The Company, which was initially named as a defendant in these lawsuits, was not named as a defendant in the ERISA Action due to its chapter 11 filing, but the plaintiffs stated that they intended to proceed with claims against the Company in the ongoing bankruptcy cases, and would seek to name the Company as a defendant in the ERISA Action if the bankruptcy stay were modified or lifted to permit such action. On May 31, 2007, by agreement of the parties, the Court entered a limited modification of the automatic stay, pursuant to which Delphi provided certain discovery to plaintiffs' counsel and other parties in the case.

A second group of class action lawsuits alleges, among other things, that the Company and certain of its current and former directors and officers and others made materially false and misleading statements in violation of federal securities laws. On September 30, 2005, the court-appointed Lead Plaintiffs filed a consolidated class action complaint (the "Securities Action") on behalf of a class consisting of all persons and entities who purchased or otherwise acquired publicly-traded securities of the Company, including securities issued by Delphi Trust I and Delphi Trust II, during a class period of March 7, 2000 through March 3, 2005. The Securities Action names several additional defendants, including Delphi Trust I and Delphi Trust II, certain former directors, and underwriters and other third parties, and includes securities claims regarding additional offerings of Delphi securities. The Securities Action, which had been consolidated in the United States District Court for Southern District of New York, was subsequently transferred to the District Court as part of the Multidistrict Litigation (as was a related securities action filed in the United States District Court for the Southern District of Florida concerning Delphi Trust I, which was subsequently consolidated into the Securities Action). The Securities Action was stayed against the Company pursuant to the Bankruptcy Code, but continued against the other defendants. On February 15, 2007, the District Court partially granted the Lead Plaintiffs' motion to lift the stay of discovery provided by the Private Securities Litigation Reform Act of 1995, thereby allowing the Lead Plaintiffs to obtain certain discovery from the defendants. On April 16, 2007, by agreement of the parties, the Court entered a limited modification of the automatic stay, pursuant to which Delphi provided certain discovery to the Lead Plaintiffs and other parties in the case.

The third group of lawsuits is comprised of shareholder derivative actions against certain current and former directors and officers of the Company ("Shareholder Derivative Actions"). A total of four complaints were filed: two in the federal court (one in the Eastern District of Michigan and another in the Southern District of New York) and two in Michigan state court. These suits alleged that certain current and former directors and officers of the Company breached a variety of duties owed by them to Delphi in connection with matters related to the Company's restatement of its financial results. The federal cases were coordinated with the securities and ERISA class actions in the Multidistrict Litigation. Following the filing on October 8, 2005 of the Debtors' petitions for reorganization relief under chapter 11 of the Bankruptcy Code, all the Shareholder Derivative Actions were administratively closed.

Following mediated settlement discussions, on August 31, 2007, representatives of Delphi, Delphi's insurance carriers, certain current and former directors and officers of Delphi named as defendants, and certain other defendants involved in the Multidistrict Litigation reached agreements with the Lead Plaintiffs in the Securities Action and the named plaintiffs in the ERISA Action to settle the claims asserted against them in those actions (the "MDL Settlements").

On September 5, 2007 the District Court entered an order preliminarily certifying a class in the Securities Action and the ERISA Action, preliminarily approving the MDL Settlements, and scheduling a fairness hearing on November 13, 2007. On November 13, 2007, the District Court conducted the fairness hearing and took the matter under advisement. Separately, on October 29, 2007, the Court entered an order preliminarily approving the MDL Settlements subject to final consideration at the confirmation hearing on Delphi's plan of reorganization and the Court's consideration of certain objections that may be filed as to the MDL Settlements. On October 29, 2007, the Court lifted the automatic stay as to the discovery provided to the Lead Plaintiffs. On December 4, 2007, the District Court held another hearing to consider proposed modifications to the proposed settlement of the Securities Action (as modified, the "Securities Settlement"), and tentatively

approved the Securities Settlement, after determining that the modifications were at least neutral to the class and may potentially provide a net benefit to the class.

The District Court approved the MDL Settlements (including the Securities Settlement) in an opinion and order issued on January 10, 2008 and amended on January 11, 2008, and the District Court entered an Order and Final Judgment dated January 23, 2008 in both the Securities Action and ERISA Action. One security holder appealed certain aspects of the District Court's opinion and order, as amended, approving the MDL Settlements. That appeal is pending before the United States Court of Appeals for the Sixth Circuit.

On January 25, 2008, the Court approved the MDL Settlements. As provided in the confirmation order, the MDL Settlements are contingent upon the effective date of the Amended Plan occurring, and if, for any reason, Delphi cannot emerge as contemplated, the MDL Settlements will become null and void. A copy of an addendum setting forth the modification is attached as Exhibit 99(f) to the Company's Current Report on Form 8-K filed with the SEC on January 30, 2008.

Under the terms of the MDL Settlements, the Lead Plaintiffs in the Securities Action and the named plaintiffs in the ERISA Action will receive claims that will be satisfied through Delphi's Amended Plan as confirmed by the Court pursuant to the confirmation order. Under the Securities Settlement, the Lead Plaintiffs will be granted an allowed claim in the face amount of \$179 million, which will be satisfied by Delphi providing \$179 million in consideration in the same form, ratio, and treatment as that which will be used to pay holders of general unsecured claims under its Amended Plan. Additionally, the class in the Securities Action will receive \$15 million to be provided by a third party. Delphi has also agreed to provide the Lead Plaintiffs, on behalf of the class members, the ability to exercise their rights in the discount rights offering in connection with the Amended Plan through a notice mechanism and a pledge of cash collateral. If an individual plaintiff opts out of the settlement reached with the Lead Plaintiffs and ultimately receives an allowed claim in Delphi's chapter 11 cases, the amount received by the opt-out plaintiff will be deducted from the amount received by the class in the Securities Action. Delphi will object to any claims filed by opt-out plaintiffs in the Court, and will seek to have such claims expunged.

The settlement of the ERISA Action is structured similarly to the settlement reached with the Lead Plaintiffs. The claim of the named plaintiffs in the ERISA Action will be allowed in the amount of approximately \$25 million and will be satisfied with consideration in the same form, ratio, and treatment as that which will be used to pay holders of general unsecured claims under the Plan. Unlike the settlement of the Securities Action, no member of the class in the ERISA Action can "opt out" of the settlement.

In addition to the amounts to be provided by Delphi from the above described claims in its chapter 11 cases, the class in the Securities Action will also receive a distribution of insurance proceeds of up to approximately \$89 million, including a portion of the remainder of any insurance proceeds that are not used by certain former officers and directors who are named defendants in various actions, and a distribution of approximately \$2 million from certain underwriters named as defendants in the Securities Actions. In addition, Delphi's insurance carriers have also agreed to provide \$20 million to fund any legal expenses incurred by certain of the former officer and director named defendants in defense of any future civil actions arising from the allegations raised in the securities cases. The class in the ERISA Action will also receive a distribution of approximately \$22 million. Settlement amounts from insurers and underwriters were paid and placed in escrow by September 25, 2007, pending the Effective Date of the MDL Settlements.

The MDL Settlements also provide for the dismissal with prejudice of the ERISA Action and Securities Action and a release of certain claims against certain named defendants, including Delphi, Delphi's current directors and officers, the former directors and officers who are named defendants, and certain of the third-party defendants. If the MDL Settlements are terminated according to their terms, the parties will proceed in all aspects as if the MDL Settlements had not been executed and any related orders had not been entered.

The Company also received a demand from a shareholder that the Company consider bringing a derivative action against certain current and former directors and officers premised on allegations that certain current and former directors and officers made materially false and misleading statements in violation of

federal securities laws and/or of their fiduciary duties. The Company appointed a committee of the Board of Directors (the "Special Committee") to evaluate the shareholder demand. As a component of the MDL Settlements, the Special Committee determined not to assert these claims; however, it has retained the right to assert the claims as affirmative defenses and setoffs against any action to collect on a proof of claim filed by those individuals named in the demand for derivative action should the Company determine that it is in its best interests to do so.

As a result of the MDL Settlements, as of March 31, 2008 and December 31, 2007, Delphi has a liability of \$351 million recorded for this matter. Delphi maintains directors and officers insurance providing coverage for indemnifiable losses of \$100 million, subject to a \$10 million deductible, and a further \$100 million of insurance covering its directors and officers for nonindemnifiable claims, for a total of \$200 million. As part of the settlement, the insurers contributed the entire \$100 million of indemnifiable coverage, and a portion of the nonindemnifiable coverage. In conjunction with the MDL Settlements, Delphi expects recoveries of \$148 million for the settlement amounts provided to the plaintiffs from insurers, underwriters, and third-party reimbursements and will record such recoveries upon Delphi's emergence from chapter 11.

## **Ordinary Business Litigation**

Delphi is from time to time subject to various legal actions and claims incidental to its business, including those arising out of alleged defects, breach of contracts, product warranties, intellectual property matters, and employment-related matters.

Under section 362 of the Bankruptcy Code, the filing of a bankruptcy petition automatically stays most actions against a debtor, including most actions to collect prepetition indebtedness or to exercise control over the property of the debtor's estate. Absent an order of the Court, substantially all prepetition liabilities are subject to settlement under a plan of reorganization. Refer to Note 2. Transformation Plan and Chapter 11 Bankruptcy for details on the chapter 11 cases.

With respect to warranty matters, although Delphi cannot assure that the future costs of warranty claims by customers will not be material, Delphi believes its established reserves are adequate to cover potential warranty settlements. However, the final amounts required to resolve these matters could differ materially from the Company's recorded estimates. Additionally, in connection with the Separation, Delphi agreed to indemnify GM against substantially all losses, claims, damages, liabilities or activities arising out of or in connection with its business post-Separation for which it is determined Delphi has responsibility. Due to the nature of such indemnities, Delphi is not able to estimate the maximum amount thereof.

During the first quarter of 2008, Delphi recovered \$28 million from an affiliated supplier and recorded it as a reduction of warranty expense. Delphi began experiencing quality issues regarding parts purchased by Delphi's Thermal Systems segment during the third quarter of 2006 and established warranty reserves of approximately \$60 million to cover the cost of various repairs that may be implemented. The reserve has subsequently been adjusted for payments and settlements. As of March 31, 2008 and December 31, 2007, the related reserve was \$41 million.

On September 27, 2007, the Court authorized Delphi to enter into a Warranty, Settlement, and Release Agreement (the "Warranty Settlement Agreement") with GM resolving certain warranty matters, including all warranty claims set forth in GM's amended proof of claim filed on July 31, 2006 in connection with Delphi's chapter 11 cases. Delphi elected to defer amounts due under the Warranty Settlement Agreement until it receives payments from GM, on or about the time of its emergence from chapter 11. Since Delphi has elected to defer these payments, GM will receive interest at the rate of 6% per annum on the payment from November 1, 2007, until the amounts are paid by Delphi or set off against amounts payable by GM.

#### **Environmental Matters**

Delphi is subject to the requirements of U.S. federal, state, local and non-U.S. environmental and occupational safety and health laws and regulations. These include laws regulating air emissions, water discharge and waste management. Delphi has an environmental management structure designed to facilitate

and support its compliance with these requirements globally. Although it is Delphi's intent to comply with all such requirements and regulations, it cannot provide assurance that it is at all times in compliance. Delphi has made and will continue to make capital and other expenditures to comply with environmental requirements. Although such expenditures were not material during the past three years, Delphi expects to spend \$11 million to install pollution control equipment on coal-fired boilers at its Saginaw, Michigan Steering Division facility, to meet U.S. and State of Michigan air emission regulations. Environmental requirements are complex, change frequently and have tended to become more stringent over time. Accordingly, Delphi cannot assure that environmental requirements will not change or become more stringent over time or that its eventual environmental remediation costs and liabilities will not be material.

Delphi establishes reserves for environmental cleanup liabilities when a loss is probable and can be reasonably estimated. Such liabilities generally are not subject to insurance coverage. The cost of each environmental cleanup is estimated by engineering, financial, and legal specialists within Delphi based on current law and considers the estimated cost of investigation and remediation required and the likelihood that, where applicable, other potentially responsible parties ("PRPs") will be able to fulfill their commitments at the sites where Delphi may be jointly and severally liable. The process of estimating environmental cleanup liabilities is complex and dependent primarily on the nature and extent of historical information and physical data relating to a contaminated site, the complexity of the site, the uncertainty as to what remediation and technology will be required, and the outcome of discussions with regulatory agencies and other PRPs at multi-party sites. In future periods, new laws or regulations, advances in cleanup technologies and additional information about the ultimate cleanup remediation methodology to be used could significantly change Delphi's estimates.

As previously disclosed, with respect to environmental matters, Delphi has received notices that it is a PRP in proceedings at various sites, including the Tremont City Landfill Site (the "Site") located in Tremont, Ohio, which is alleged to involve ground water contamination. In September 2002, Delphi and other PRPs entered into a Consent Order with the U.S. Environmental Protection Agency ("EPA") to perform a Remedial Investigation and Feasibility Study concerning a portion of the Site. The Remedial Investigation and Alternatives Array Document were finalized in 2007. A Feasibility Study and Record of Decision are expected to be completed in late 2008 or 2009. Although Delphi believes that capping and future monitoring is a reasonably possible outcome, a different cleanup approach ultimately may be required for the Site. Because the manner of remediation is yet to be determined, it is possible that the resolution of this matter may require Delphi to make material future expenditures for remediation, possibly over an extended period of time and possibly in excess of existing reserves. As of March 31, 2008, Delphi has recorded its best estimate of its share of the remediation based on the remedy described above. However, if that remedy is not accepted, Delphi's expenditures for remediation could increase by \$20 million in excess of its existing reserves. Delphi will continue to reassess any potential remediation costs and, as appropriate, its environmental reserve as the investigation proceeds.

Delphi is in various stages of investigation and cleanup at its manufacturing facilities where contamination has been discovered. As previously disclosed, Delphi completed a number of environmental investigations during 2006 in conjunction with its transformation plan, which contemplates significant restructuring activity, including the sale, closure or demolition of numerous facilities. These assessments identified previously unknown conditions and resulted in Delphi recording an adjustment to its environmental reserves. As Delphi continues the ongoing assessment with respect to such facilities, additional and perhaps material environmental remediation costs may require recognition, as previously unknown conditions may be identified. Delphi cannot assure that environmental requirements will not change or become more stringent over time or that its eventual environmental remediation costs and liabilities will not exceed the amount of its current reserves. In the event that such liabilities were to significantly exceed the amounts recorded, Delphi's results of operations could be materially affected.

As of March 31, 2008 and December 31, 2007, Delphi's reserve for environmental investigation and remediation was approximately \$107 million and \$112 million, respectively. Approximately \$19 million of the environmental reserve balance as of March 31, 2008 is included in accrued liabilities in the accompanying consolidated balance sheets. Approximately \$88 million and \$112 million of the environmental reserve

balance as of March 31, 2008 and December 31, 2007, respectively, is included in other long-term liabilities. The amounts recorded take into account the fact that GM retained the environmental liability for certain inactive sites as part of the separation from GM in 1999 (the "Separation").

#### Other

As mentioned above, Delphi continues to pursue its transformation plan and continues to conduct additional assessments as the Company evaluates whether to permanently close or demolish one or more facilities as part of its restructuring activity. These assessments could result in Delphi being required to recognize additional and possibly material costs or demolition obligations in the future.

# **19. SUBSEQUENT EVENTS**

Certain events have occurred subsequent to March 31, 2008 that do not impact the reported balances or results of operations as of that date, but are material to the Company's ongoing operations. These events are listed below.

The Refinanced DIP Credit Facility had a maturity date of July 1, 2008. Delphi received Court approval to amend and extend its Refinanced DIP Credit Facility on April 30, 2008. Delphi has received the required commitments from its lenders and the amended and restated DIP credit facility (the "Amended and Restated DIP Credit Facility") became effective on May 9, 2008. The Amended and Restated DIP Credit Facility extends the tenor until December 31, 2008 and modifies the size of the facility by reducing the Revolving Facility to \$1.1 billion from \$1.75 billion and increasing the size of the Tranche B Term Loan to \$500 million from \$250 million and leaving the Tranche C Term Loan unchanged at approximately \$2.5 billion. On May 9, 2008, Delphi filed a motion with the Court to increase the Tranche C Term Loan to \$2008 with funding in June 2008. The Amended and Restated DIP Credit Facility includes certain covenants and restrictions on Delphi's financial and business operations that mirror those imposed by the Refinanced DIP Credit Facility with the exception of the modifications listed below. The Amended and Restated DIP Credit Facility:

Increases the interest rate on the facilities,

Increases the undrawn revolver fees,

Adds a LIBOR floor to the Tranche B and Tranche C Term Loans,

Modifies the borrowing base definition and limits availability to draw additional amounts under the Revolving Facility, under certain conditions as defined,

Sets Global EBITDAR covenant levels for the extension period,

Modifies the allowable junior liens, and

Allows Delphi to enter into an agreement with GM as described below.

In connection with the Amended and Restated DIP Credit Facility, Delphi paid a total of approximately \$75 million to consenting lenders on the Tranche A facility, the Tranche B facility and the Tranche C facility. Delphi also received approval from the Court to pay arrangement and other fees to various lenders in conjunction with the Amended and Restated DIP Credit Facility and the previously arranged bankruptcy exit financing that was commenced but not completed.

Concurrently with the Amended and Restated DIP Credit Facility, Delphi entered into an agreement with GM whereby GM will advance Delphi amounts anticipated to be paid following the effectiveness of the GSA and MRA. The agreement has a maturity date of the earlier of December 31, 2008 or when \$650 million has been paid under the GSA and MRA. GM will receive an administrative claim for its advances. The agreement provides for availability of up to \$650 million, as necessary for Delphi to maintain \$500 million of liquidity, as defined in the Amended and Restated DIP Credit Facility. The amounts advanced will accrue interest at the same rate as the Tranche C Term Loan on a paid-in-kind basis. The interest on the advances will be cancelled

if the GSA and MRA become effective on or prior to the expiration date of the agreement. Advances will be set off against the GSA and MRA upon effectiveness of those agreements or any remaining administrative claims in Delphi's chapter 11 case.

# ITEM 2. MANAGEMENT' S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following management's discussion and analysis of financial condition and results of operations ("MD&A") is intended to help you understand the business operations and financial condition of Delphi Corporation (referred to as "Delphi," the "Company," "we," or "our"). The MD&A should be read in conjunction with our financial statements and the accompanying notes as well as the MD&A included in our Annual Report on Form 10-K for the year ended December 31, 2007.

## **Executive Summary of Business**

Delphi Corporation is a global supplier of vehicle electronics, transportation components, integrated systems and modules and other electronic technology. In addition, our technologies are present in communication, computer, consumer electronic, energy and medical applications. We operate in extremely competitive markets. Our customers select us based upon numerous factors, including technology, quality, delivery and price. Our efforts to generate new business do not immediately affect our financial results, because supplier selection in the auto industry is generally finalized several years prior to the start of production of the vehicle. As a result, business that we win in 2008 will generally not impact our financial results until 2010 or beyond.

In light of our continued deterioration in performance in recent years, we determined that it was necessary to address and resolve our United States ("U.S.") legacy liabilities, product portfolio, operational issues and profitability requirements. As a result, we intensified our efforts during 2005 to engage our unions, as well as General Motors Corporation ("GM"), in discussions seeking consensual modifications that would permit us to align our U.S. operations to our strategic portfolio and be competitive with our U.S. peers, and to obtain financial support from GM to implement our restructuring plan. Despite significant efforts to reach a resolution, we determined that these discussions were not likely to lead to the implementation of a plan sufficient to address our issues on a timely basis and that we needed to pursue other alternatives to preserve value for our stakeholders.

Accordingly, to transform and preserve the value of the Company, which requires resolution of existing legacy liabilities and the resulting high cost of U.S. operations, on October 8, 2005 (the "Petition Date"), Delphi and certain of its U.S. subsidiaries (the "Initial Filers") filed voluntary petitions for reorganization relief under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court"), and on October 14, 2005, three additional U.S. subsidiaries of Delphi (together with the Initial Filers, collectively, the "Debtors") filed voluntary petitions for reorganization relief under chapter 11 of the Bankruptcy Code (collectively, the Debtors' October 8, 2005 and October 14, 2005 filings are referred to herein as the "Chapter 11 Filings") in the Court. The Court is jointly administering these cases as "In re Delphi Corporation, et al., Case No. 05-44481 (RDD)." We continue to operate our business as "debtors-in-possession" under the jurisdiction of the Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Court. Delphi's non-U.S. subsidiaries were not included in the filings, continue their business operations without supervision from the Court and are not subject to the requirements of the Bankruptcy Code.

On September 6, 2007, Delphi filed its proposed plan of reorganization (the "Plan") and related disclosure statement (the "Disclosure Statement") with the Court. The Plan and Disclosure Statement outline Delphi's transformation centering around five core areas, as detailed below, including agreements reached with each of Delphi's principal U.S. labor unions and GM. At a Court hearing on September 27, 2007, Delphi stated that the current dynamics of the capital markets prompted Delphi to consider whether amendments to the Plan filed on September 6 might be necessary. Delphi commenced its Disclosure Statement hearing on October 3, 2007, and after resolving certain objections, requested that the hearing continue on October 25, 2007. During October and November, the Court granted additional requests by Delphi to further continue the hearing on the adequacy of the Disclosure Statement to allow Delphi to negotiate potential amendments to the Plan and the related agreements with its stakeholders, including the comprehensive agreements reached with GM and the Equity Purchase and Commitment Agreement ("July EPCA") between

Delphi and certain affiliates of lead investor Appaloosa Management L.P. ("Appaloosa"), Harbinger Capital Partners Master Fund I, Ltd. ("Harbinger"), Pardus Capital Management, L.P. ("Pardus") and Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill"), UBS Securities LLC ("UBS"), and Goldman Sachs & Co. ("Goldman") (collectively the "Investors"). On December 3, 2007, Delphi filed further potential amendments to the Plan, the comprehensive agreements reached with GM, the July EPCA, and the related Disclosure Statement and on December 4, 2007 Delphi announced that it had reached agreement in principle on these amendments with the Creditors' Committee, the Equity Committee, GM, and the Investors. On December 10, 2007, Delphi and the Investors entered into an amendment to the July EPCA (the "EPCA Amendment" together with the July EPCA and all schedules and exhibits thereto, the "EPCA"). After a hearing on the adequacy of the proposed Disclosure Statement, on December 10, 2007 Delphi filed its first amended joint Plan of Reorganization ("Amended Plan") and its first amended Disclosure Statement with respect to the Amended Plan ("Amended Disclosure Statement"). The Court entered an order approving the adequacy of the Amended Disclosure Statement"). The Court entered an order approving the Amended Disclosure Statement, Delphi began solicitation of votes on the Amended Plan. On January 16, 2006, Delphi filed further modifications to the Amended Plan. Additional modifications are set forth in Exhibit A to the Confirmation Order which was entered on January 25, 2008 and that order became final on February 4, 2008.

On April 4, 2008, Delphi announced that although the Debtors had met the conditions required to substantially consummate the Amended Plan (as modified), including obtaining \$6.1 billion of exit financing, the Investors refused to participate in a closing that was commenced but not completed and refused to fund the EPCA. The Debtors are prepared to pursue any and all available equitable and legal remedies with respect to the Investors that are in the best interests of the Debtors and their stakeholders, and are working with their stakeholders to achieve their goal of emerging from chapter 11 as soon as practicable.

Delphi's ability to develop a revised recapitalization plan and continue implementing its transformation plan such that it can consummate the Amended Plan (as modified) or obtain a confirmation order and successfully consummate an alternative plan of reorganization is affected by the substantial uncertainty and a significant decline in capacity in the credit markets and operational challenges due to the overall climate in the U.S. automotive industry. Refer to Part II, Item 1A. Risk Factors in this Quarterly Report on Form 10-Q, the rest of this Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations and the other risk factors set forth in our Annual Report on Form 10-K for the year ended December 31, 2007. Until Delphi is able to successfully consummate a confirmed plan of reorganization, Delphi and certain of its U.S. subsidiaries will continue as "debtors-in-possession" in chapter 11, until one of the following occurs: the order confirming the Amended Plan is modified, a further amended plan of reorganization is confirmed or other dispositive action is taken. In addition, in the event the Amended Plan is not consummated, approvals obtained in connection with the confirmation of the GM settlement and restructuring agreements and the Court' s entry of orders authorizing the assumption and rejection of unexpired leases and executory contracts by Delphi as contemplated by Article 8.1 of the Amended Plan.

Furthermore, if the MDL Settlements (as defined in Note 18. Commitments and Contingencies to the consolidated financial statements) are terminated according to their terms, the parties may proceed in all aspects as if the MDL Settlements had not been executed and any related orders had not been entered.

Delphi is working with its stakeholders to review and consider modifications to the Amended Plan to reflect the change in circumstances. There can be no assurances that Delphi would be successful in these alternative actions or any other actions necessary if the Amended Plan is not consummated.

In addition, the Refinanced DIP Credit Facility (as defined in this Item 2) had a maturity date of July 1, 2008. Delphi received Court approval to amend and extend the Refinanced DIP Credit Facility and the amended and restated DIP credit facility (the "Amended and Restated DIP Credit Facility") became effective on May 9, 2008. Additionally, Delphi entered into an agreement with GM whereby GM agreed to advance payments to be made by GM to Delphi following effectiveness of the GM settlement and restructuring agreements. Refer to Note 19. Subsequent Events for additional information. The Amended and Restated DIP Credit Facility and the agreement by which GM has agreed to make advances to us, both expire on

December 31, 2008. If we are not able to emerge from chapter 11 prior to December 31, 2008, we would seek to further extend the term of our Amended and Restated DIP Credit Facility and/or accelerate the effectiveness of the GM settlement and restructuring agreements and seek alternative sources of financing. Delphi can make no assurances that it will emerge from bankruptcy before the Amended and Restated DIP Credit Facility and GM agreement expire. The failure to secure such extension or alternative sources of financing would materially adversely impact our business, financial condition and operating results by severely restricting our liquidity. See Part II, Item 1A. Risk Factors in this Quarterly report on Form 10-Q and also our Annual Report on Form 10-K for the year ended December 31, 2007, Item 1A. Risk Factors, Risk Factors Specifically Related to our Current Reorganization Cases Under Chapter 11 of the U.S. Bankruptcy Code, and Debt.

In addition, with respect to implementing the transfer of certain of Delphi's unfunded pension obligations to a pension plan sponsored by GM, the Internal Revenue Service ("IRS") and Pension Benefit Guaranty Corporation ("PBGC") agreed to certain waivers that at the time were required for the transfers to proceed in an economically efficient manner. The waivers were conditioned upon Delphi emerging from chapter 11 by a specified date, which has been modified from time to time. On April 4, 2008, the IRS and the PBGC modified the 2006 Hourly and Salaried Plan Waivers (as defined below) and the 2007 Hourly Plan Waiver (as defined below) by extending the date by which Delphi must emerge from chapter 11 until May 9, 2008. Delphi did not seek extension past May 9, 2008 of the 2006 Waivers or the 2007 Hourly Plan Waiver. Delphi believes that ERISA and the Code will still, under most circumstances, post June 15, 2008, permit the Company to be able to effect the planned transfer of hourly pension obligations to GM in an economically efficient manner. However, by permitting the waivers to lapse Delphi is exposed to excise taxes as a result of accumulated funding deficiencies. Refer to Note 2. Transformation Plan and Chapter 11 Bankruptcy for further information on Delphi's discussions with the IRS and the PBGC.

There can be no assurance that Delphi will be able to negotiate a revised funding plan with the IRS and PBGC, that GM will agree that any revised funding plan satisfies the conditions to consummation of the other transactions called for by the global settlement and restructuring agreements, or that any plan agreed to will not result in the need for substantially greater cash contributions or that Delphi will be able to satisfy such increased obligations. If the Amended Plan, including the settlement agreements reached with GM, does not become effective and the transactions contemplated thereby are not consummated such that Delphi does not emerge from chapter 11, the PBGC could initiate an involuntary plan termination, missed contributions would become due and the IRS could assess penalties on the accumulated funding deficiencies. Although Delphi would likely contest such assessment, the PBGC could consider our failure to immediately fund our plans a basis to call for an involuntary termination of the plans.

#### Plan of Reorganization and Transformation Plan

#### Elements of Transformation Plan

On March 31, 2006, we announced our transformation plan centered around five key elements, each of which is also addressed in our Amended Plan and the series of settlement agreements it embodies. The progress on each element is discussed below.

Labor – Modify our labor agreements to create a more competitive arena in which to conduct business.

During the second quarter of 2007, Delphi signed an agreement with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"), and during the third quarter of 2007, Delphi signed agreements with the remainder of its principal U.S. labor unions, which were ratified by the respective unions and approved by the Court in the third quarter of 2007. Among other things, as approved and confirmed by the Court, this series of settlement agreements or memoranda of understanding among Delphi, its unions, and GM settled the Debtors' motion under sections 1113 and 1114 of the Bankruptcy Code seeking authority to reject their U.S. labor agreements and to modify retiree benefits (the "1113/1114 Motion"). As applicable, these agreements also, among other things, modify, extend or terminate provisions of the existing collective bargaining agreements among Delphi and its unions and cover issues such as site plans, workforce transition and legacy pension and other postretirement benefits obligations as well as other comprehensive transformational issues. Portions of these agreements have already become effective, and

the remaining portions will not become effective until the effectiveness of the Global Settlement Agreement, as amended (the "GSA") and the Master Restructuring Agreement, as amended (the "MRA") with GM and upon substantial consummation of the Amended Plan as confirmed by the Court. The Amended Plan as confirmed by the Court incorporates, approves and is consistent with the terms of each agreement.

Among other things, these agreements generally provided certain members of the union labor workforce options to either retire, accept a voluntary severance package or accept lump sum payments in return for lower hourly wages. Refer to Note 12. U.S. Employee Workforce Transition Programs to the consolidated financial statements for more information.

On September 4, 2007, the Court confirmed that the 1113/1114 Motion was withdrawn without prejudice, subject to the Court's prior settlement approval orders pertaining to each of Delphi's U.S. labor unions, as it relates to all parties and the intervening respondents, by entry of an Order Withdrawing Without Prejudice Debtors' Motion For Order Under 11 U.S.C. § 1113(c) Authorizing Rejection Of Collective Bargaining Agreements And Authorizing Modification Of Retiree Welfare Benefits Under 11 U.S.C. § 1114(g).

<u>GM</u> – Conclude negotiations with GM to finalize financial support for certain of our legacy and labor costs and to ascertain GM's business commitment to Delphi going forward.

Delphi and GM have entered into comprehensive settlement agreements consisting of the GSA and the MRA. The GSA and the MRA comprised part of the Amended Plan and were approved in the order confirming the Amended Plan on January 25, 2008. The GSA and MRA are not effective until and unless Delphi emerges from chapter 11. Accordingly, the accompanying consolidated financial statements do not include any adjustments related to the GSA or the MRA. These agreements will result in a material reduction in Delphi's liabilities related to the workforce transition programs. Delphi will account for the impact of the GSA or the MRA when the conditions of the agreements are satisfied, which will likely occur upon emergence from chapter 11.

Most obligations set forth in the GSA are to be performed upon the occurrence of the effective date of the Amended Plan or as soon as reasonably possible thereafter. By contrast, resolution of most of the matters addressed in the MRA will require a significantly longer period that will extend for a number of years after confirmation of the Amended Plan.

GM's obligations under the GSA and MRA are conditioned upon, among other things, Delphi's consummation of the Amended Plan, including payment of amounts to settle GM claims as outlined below.

The GSA is intended to resolve outstanding issues between Delphi and GM that have arisen or may arise before Delphi's emergence from chapter 11, and will be implemented by Delphi and GM in the short term. On November 14, 2007 and again on December 3, 2007, Delphi and GM entered into amendments to both the GSA and the MRA. These agreements, as amended, provide for a comprehensive settlement of all outstanding issues between Delphi and GM (other than ordinary course matters), including: litigation commenced in March 2006 by Delphi to terminate certain supply agreements with GM; all potential claims and disputes with GM arising out of the separation of Delphi from GM in 1999; certain post-separation claims and disputes between Delphi and GM; the proofs of claim filed by GM against Delphi in Delphi's chapter 11 cases; GM's treatment under Delphi's Amended Plan; and various other legacy issues.

In addition to establishing claims treatment, including specifying which claims survive and the consideration to be paid by Delphi to GM in satisfaction of certain claims, the GSA addresses, among other things, commitments by Delphi and GM regarding other postretirement benefit and pension obligations, and other GM contributions with respect to labor matters and releases.

GM will assume approximately \$7 billion of certain post-retirement benefits for certain of the Company's active and retired hourly employees, including health care and life insurance;

Delphi will freeze its Delphi Hourly-Rate Employees Pension Plan as soon as practicable following the effective date of the Amended Plan, as provided in the union settlement agreements, and GM's Hourly

Pension Plan will become responsible for certain future costs related to the Delphi Hourly-Rate Employees Pension Plan;

Delphi will transfer certain assets and liabilities of its Delphi Hourly-Rate Employees Pension Plan to the GM Hourly-Rate Employee Pension Plan, as set forth in the union settlement agreements;

Shortly after the effectiveness of the Amended Plan, GM will receive an interest bearing note from Delphi in the amount of \$1.5 billion which is expected to be paid promptly following effectiveness;

GM will make significant contributions to Delphi to fund various special attrition programs, consistent with the provisions of the U.S. labor agreements; and

GM and certain related parties and Delphi and certain related parties will exchange broad, global releases (which will not apply to certain surviving claims as set forth in the GSA).

The MRA is intended to govern certain aspects of Delphi and GM's commercial relationship following Delphi's emergence from chapter 11. The MRA addresses, among other things, the scope of GM's existing and future business awards to Delphi and related pricing agreements and sourcing arrangements, GM commitments with respect to reimbursement of specified ongoing labor costs, the disposition of certain Delphi facilities, and the treatment of existing agreements between Delphi and GM. Through the MRA, Delphi and GM have agreed to certain terms and conditions governing, among other things:

The scope of existing business awards, related pricing agreements, and extensions of certain existing supply agreements, including GM's ability to move production to alternative suppliers, and reorganized Delphi's rights to bid and qualify for new business awards;

GM will make significant, ongoing contributions to Delphi and reorganized Delphi to reimburse the Company for labor costs in excess of \$26 per hour, excluding certain costs, including hourly pension and other postretirement benefit contributions provided under the Supplemental Wage Agreement, at specified UAW manufacturing facilities retained by Delphi;

GM and Delphi have agreed to certain terms and conditions concerning the sale of certain of Delphi's non-core businesses;

GM and Delphi have agreed to certain additional terms and conditions if certain of Delphi's businesses and facilities are not sold or wound down by certain future dates (as defined in the MRA); and

GM and Delphi have agreed to the treatment of certain contracts between Delphi and GM arising from Delphi's separation from GM and other contracts between Delphi and GM.

The GSA and MRA may be terminated by the Company or GM because the effective date of the Amended Plan did not occur by March 31, 2008 and the EPCA was terminated. As of the date hereof, neither Delphi nor GM has terminated the GSA or the MRA.

<u>Portfolio</u> – Streamline Delphi' s product portfolio to capitalize on world-class technology and market strengths and make the necessary manufacturing alignment with its new focus.

In March 2006, Delphi identified non-core product lines and manufacturing sites that do not fit into Delphi's future strategic framework, including brake and chassis systems, catalysts, cockpits and instrument panels, door modules and latches, ride dynamics, steering, halfshafts, and wheel bearings. Effective November 1, 2006, in connection with the Company's continuous evaluation of its product portfolio, we decided that our power products business no longer fit within the Company's future product portfolio and that business line was moved to Delphi's Automotive Holdings Group. With the exception of the catalyst product line (included in the Powertrain Systems segment), the steering and halfshaft product lines (included in discontinued operations), and interiors and closures product lines (included in discontinued operations), the Company's non-core product lines are included in the Automotive Holdings Group segment, refer to Note 17. Segment Reporting to the consolidated financial statements.

Delphi has continued sale and wind-down efforts with respect to non-core product lines and manufacturing sites. The sale and wind-down process is being conducted in consultation with the Company's

customers, unions and other stakeholders so as to carefully manage the transition of affected product lines and manufacturing sites. The disposition of any U.S. operation is also being accomplished in accordance with the requirements of the Bankruptcy Code and union labor contracts as applicable. The Company also has begun consultations with the works councils in accordance with applicable laws regarding any sale or wind-down of affected manufacturing sites in Europe.

During the first quarter of 2008, Delphi obtained Court approval of bidding procedures and sales agreements for the steering and halfshaft product line, the global bearings business and the U.S. suspensions business and closed on the sales of the interiors and closures product line and the North American brake components machining and assembly assets. Refer to Note 4. Discontinued Operations and Note 5. Divestitures to the consolidated financial statements for more information.

Costs recorded in the first quarter of 2008 and 2007 related to the transformation plan for non-core product lines include impairments of long-lived assets of \$2 million and \$157 million, respectively (of which \$2 million and \$3 million were recorded as a component of depreciation and amortization for the three months ended March 31, 2008 and 2007, respectively, and \$154 million was recorded as a component of loss on discontinued operations for the first quarter of 2007), and employee termination benefits and other exit costs of \$78 million and \$78 million, respectively (of which \$39 million were recorded as a component of cost of sales, \$4 million and \$1 million were recorded as a component of solving, general and administrative expenses, and \$35 million and \$34 million were recorded as a component of loss on discontinued operations). Included in employee termination benefits and other exit costs for the first quarter of 2007 were \$61 million related to a manufacturing facility in Cadiz, Spain.

<u>Cost Structure</u> – Transform our salaried workforce and reduce general and administrative expenses to ensure that its organizational and cost structure is competitive and aligned with our product portfolio and manufacturing footprint.

Delphi is continuing to implement restructuring initiatives in furtherance of the transformation of its salaried workforce to reduce selling, general and administrative expenses necessary to support its realigned portfolio. These initiatives include financial services and information technology outsourcing activities, reduction in our global salaried workforce by taking advantage of attrition and using salaried separation plans, and realignment of certain salaried benefit programs to bring them in line with more competitive industry levels. Given the investment required to implement these initiatives, we do not expect to fully realize substantial savings until 2009 and beyond.

<u>Pensions</u> – Devise a workable solution to our current pension funding situation, whether by extending contributions to the pension trusts or otherwise.

Delphi's discussions with the Internal Revenue Service ("IRS") and the Pension Benefit Guaranty Corporation ("PBGC") regarding the funding of the Delphi Hourly-Rate Employees Pension Plan (the "Hourly Plan") and the Delphi Retirement Program for Salaried Employees (the "Salaried Plan") upon emergence from chapter 11 culminated in a funding plan that would enable the Company to satisfy its pension funding obligations upon emergence from chapter 11 through a combination of emergence contributions and a transfer of certain unfunded liabilities to a pension plan sponsored by GM.

On May 1, 2007, the IRS issued conditional waivers for the Hourly Plan and Salaried Plan with respect to the plan year ended September 30, 2006 (the "2006 Waivers"). On May 31, 2007, the Court authorized Delphi to perform under the terms of those funding waivers. The IRS modified the 2006 Waivers by extending the dates by which Delphi is required to file its Amended Plan and emerge from chapter 11. On September 28, 2007, the IRS issued a second conditional waiver for the Hourly Plan for the plan year ended September 30, 2007 (the "2007 Hourly Plan Waiver"). The waivers were required, at that time, to facilitate the Debtors' option to effectuate the transfer of certain hourly pension obligations to GM in an economically efficient manner, and to remove uncertainty as to whether excise taxes would be assessed as a result of accumulated funding deficiencies relating to prepetition service. Absent the waivers, the transfer to GM could have triggered an obligation on the part of the Debtors to make cash contributions to the Hourly Plan which would result in a projected overfunding of the Hourly Plan. On October 26, 2007, the Court authorized Delphi

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to perform under the 2007 Hourly Plan Waiver, which would have expired if Delphi did not emerge from chapter 11 by February 29, 2008. The Court authorized two additional funding waivers which authorized Delphi to defer funding contributions due under the Employee Retirement Income Security Act ("ERISA") and the U.S. Internal Revenue Code (the "Code") until May 9, 2008. On April 4, 2008, the IRS and the PBGC modified the 2006 Waivers and the 2007 Hourly Plan Waiver by extending the date by which Delphi must emerge from chapter 11 to May 9, 2008.

Delphi did not seek extension past May 9, 2008 of the 2006 Waivers or the 2007 Hourly Plan Waiver. Delphi believes that ERISA and the Code will still, under most circumstances, post June 15, 2008, permit the Company to be able to effect the planned transfer of hourly pension obligations to GM in an economically efficient manner. However, by permitting the waivers to lapse Delphi is exposed to excise taxes as a result of accumulated funding deficiencies for the plan years ended September 30, 2005 and 2006 of approximately \$170 million and \$1.2 billion, respectively. Accordingly, the IRS may assert against Delphi excise taxes in the approximate amounts of \$17 million and \$122 million for plan years ended September 30, 2005 and 2006, respectively. Also, should Delphi not meet its minimum funding requirements on or before June 15, 2008, the accumulated funding deficiency would be approximately \$2.4 billion for the plan year ended September 30, 2007, which could lead to the IRS further asserting additional excise taxes of approximately \$244 million. If the accumulated funding deficiency is not corrected after Delphi receives the assessments, an excise tax of up to 100% may be assessed at the discretion of the IRS. Assuming Delphi is assessed an excise tax for all plan years through 2007, the total range of exposure would approximate between \$380 million and \$3.8 billion.

Delphi believes that under the Bankruptcy Code, the Company is not obligated to make contributions for pension benefits attributable to prepetition service while in chapter 11 and that it has made all required payments for postpetition service. Delphi further believes that as a result, it is not liable for any penalty excise taxes that may be assessed by the IRS. Delphi believes that its ultimate emergence from chapter 11 will result in a consensual resolution of its pension funding obligations, and given the significant uncertainty surrounding the outcome of the excise tax assessment and the potential for Delphi to litigate this matter, if necessary, management has concluded that an unfavorable outcome is not currently probable. Accordingly, as of March 31, 2008, no amounts have been recorded for any excise tax assessment.

Pursuant to the pertinent terms of the waivers, as modified, Delphi provided to the PBGC letters of credit, effective June 16, 2007, in favor of the Hourly and Salaried Plans in the amount of \$100 million to support funding obligations under the Hourly Plan (increased to \$112.5 million pursuant to the waiver extension granted March 28, 2008) and \$50 million to support funding obligations under the Salaried Plan. In exchange for extension of the waivers on April 4, 2008, the Company extended the term of the previously issued letters of credit to May 23, 2008, and increased the face amount of the letter of credit in favor of the Hourly Plan by \$10 million to \$122.5 million effective April 16, 2008. Due to the expiration of the waivers, the PBGC has informed Delphi that it intends to draw against the \$172.5 million of letters of credit in favor of the Hourly and Salaried Plans. The cash proceeds from the letters of credit will be recognized as Delphi funding contributions to the plans.

The Company has represented that it currently intends to meet the minimum funding standard under IRC section 412 for the plan years ended September 30, 2006 and 2007 upon emergence from chapter 11. Assuming a consensual funding plan is achieved, the Company currently expects that its pension contributions due upon emergence from chapter 11 will approximate \$1 billion under current legislation and plan design, after giving effect to an anticipated transfer of at least a net of \$1.5 billion of unfunded benefit liabilities from the Hourly Plan to a pension plan sponsored by GM.

In addition to the funding strategy discussed above and the changes to the Hourly Plan discussed in the Labor section, Delphi committed to freeze the Hourly and Salaried Plans effective at the end of the month following emergence from chapter 11. Refer to Note 13. Pension and Other Postretirement Benefits for more information.

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# The Amended Plan of Reorganization

The Amended Disclosure Statement and Amended Plan are based upon a series of global settlements and compromises that involved every major constituency of Delphi and its affiliated Debtors' reorganization cases, including Delphi's principal U.S. labor unions, GM, the official committee of unsecured creditors (the "Creditors' Committee") and the official committee of equity security holders (the "Equity Committee") appointed in Delphi's chapter 11 cases, and the lead plaintiffs in certain securities and ERISA Multidistrict Litigation (on behalf of holders of various claims based on alleged violations of federal securities law and ERISA), and include detailed information regarding the treatment of claims and interests and an outline of the EPCA and rights offering. The Amended Disclosure Statement also outlines Delphi's s transformation centering around the five core areas discussed above.

Pursuant to an order entered by the Court on April 30, 2008, the Debtors' exclusivity period under the Bankruptcy Code for filing a plan of reorganization is extended until 30 days after substantial consummation of the Amended Plan (as modified) or any modified plan and the Debtors' exclusivity period for soliciting acceptance of the Amended Plan (as modified) is extended until 90 days after substantial consummation of the Amended Plan (as modified) is extended until 90 days after substantial consummation of the Amended Plan (as modified) or any modified plan. Notwithstanding the foregoing, the Debtors' exclusive period for filing a plan of reorganization, as between the Debtors and the Creditors' Committee and the Equity Committee, collectively, is extended through and including August 31, 2008 and the Debtors' exclusive period for soliciting acceptance of a plan of reorganization, as between the Debtors and the Creditors' Committee and the Equity Committee, collectively, is extended through and including October 31, 2008.

# Equity Purchase and Commitment Agreement

Under the terms and subject to the conditions of the EPCA, the Investors committed to purchase \$800 million of convertible preferred stock and approximately \$175 million of common stock in the reorganized Company. Additionally, subject to satisfaction of other terms and conditions, the Investors committed to purchase any unsubscribed shares of common stock in connection with an approximately \$1.6 billion rights offering that was made available to unsecured creditors. The rights offering commenced on March 11, 2008 and expired on March 31, 2008. In light of the Investors' refusal to fund the EPCA, in April 2008, the Company cancelled the rights offering and returned all funds submitted.

As noted above, during October and November 2007, Delphi negotiated potential amendments to the July EPCA. On December 10, 2007, the Investors and Delphi entered into the EPCA Amendment and together with the July EPCA, and all schedules and exhibits thereto, the EPCA; delivery of a revised disclosure letter by the Company; delivery of a revised business plan by the Company; updates and revisions to representations and warranties; agreements with principal labor unions; the execution and amendment of certain settlement agreements with GM; and the execution of a best efforts financing letter and the filing of a plan of reorganization and disclosure statement. Further, the EPCA Amendment amended provisions relating to the discount rights offering (including the replacement of existing common stockholders with unsecured creditors). Finally, the EPCA Amendment revised the July EPCA to reflect certain economic changes for recoveries provided under the plan of reorganization, and a post-emergence capital structure which included Series C Preferred Stock to be issued to GM.

The EPCA also included certain corporate governance provisions for the reorganized Company, each of which was incorporated into Delphi's Amended Plan. The EPCA also incorporated Delphi's earlier commitment to preserve its salaried and hourly defined benefit U.S. pension plans and to fund required contributions to the plans that were not made in full as permitted under the Bankruptcy Code.

The EPCA was subject to the satisfaction or waiver of numerous conditions, including the condition that an affiliate of Appaloosa was reasonably satisfied with the terms of certain material transaction documents (evidenced by an affiliate of Appaloosa not delivering a deficiency notice), to the extent the terms thereof would have an impact on the Investors' proposed investment in the Company and receipt of proceeds from the sale of preferred stock, exit financing and the discount rights offering sufficient to fund the transaction contemplated by the EPCA and certain related transactions. Other conditions to closing included release and exculpation of each Investor as set forth in the EPCA Amendment; that the Company would have undrawn

availability of \$1.4 billion including a letter of credit carve out and reductions under a borrowing base formula; that the Company's pro forma interest expense during 2008 on the Company's indebtedness, as defined in the EPCA, would not exceed \$585 million; that scheduled Pension Benefit Guarantee Corporation liens were withdrawn; and that the aggregate amount of trade and unsecured claims could be no more than \$1.45 billion (subject to certain waivers and exclusions).

An affiliate of Appaloosa could terminate the EPCA, including, at any time on or after April 5, 2008, if the Amended Plan had not become effective; if the Company had changed its recommendation or approval of the transactions contemplated by the EPCA, the Amended Plan terms or the settlement with GM in a manner adverse to the Investors or approved or recommended an alternative transaction; or if the Company had entered into any agreement, or taken any action to seek Court approval relating to any plan, proposal, offer or transaction, that was inconsistent with the EPCA, the settlement with GM or the Amended Plan. In the event of certain terminations of the EPCA pursuant to the terms thereof, the Company could be obligated to pay the Investors \$83 million plus certain transaction expenses as described in the immediately following paragraph.

The Company would be required to pay the Investors \$83 million plus certain transaction expenses if (a) the EPCA was terminated as a result of the Company's agreeing to pursue an alternative investment transaction with a third party or (b) either the Company's Board of Directors withdrew its recommendation of the transaction or the Company willfully breached the EPCA, and within the next 24 months thereafter, the Company then agreed to an alternative investment transaction.

The foregoing description of the EPCA is a general description only. For additional detail see the July EPCA, which is filed as an exhibit to the quarterly report, for the quarter ended June 30, 2007, and the EPCA Amendment filed as an exhibit to the Company's Current Report on Form 8-K/A dated December 12, 2007.

On April 4, 2008, Delphi announced that although it had met the conditions required to substantially consummate its First Amended Joint Plan of Reorganization, including obtaining \$6.1 billion of exit financing, the Investors refused to participate in a closing that was commenced but not completed on that date. Several hours prior to the scheduled closing on April 4, 2008, Appaloosa delivered to Delphi a letter dated April 4, 2008, stating that such letter "constitutes a notice of immediate termination" of the EPCA. Appaloosa's April 4 letter alleged that Delphi had breached certain provisions of the EPCA, that Appaloosa is entitled to terminate the EPCA and that the Investors are entitled to be paid the fee of \$83 million plus certain expenses and other amounts. At the time Appaloosa delivered its letter, other than the Investors, all the required parties for a successful closing and emergence from chapter 11, including representatives of Delphi's exit financing lenders, GM, and the Unsecured Creditors and Equity Committees in Delphi's chapter 11 cases were present, were prepared to move forward, and all actions necessary to consummate the plan of reorganization were taken other than the concurrent closing and funding of the EPCA.

On April 5, 2008, Appaloosa delivered to Delphi a letter described as "a supplement to the April 4 Termination Notice," stating "this letter constitutes a notice of an additional ground for termination" of the EPCA. The April 5 letter stated that because the EPCA had not become effective on or before April 4, 2008 it was grounds for its termination.

Delphi believes that Appaloosa wrongfully terminated the EPCA and disputes the allegations that Delphi breached the EPCA or failed to satisfy any condition to the Investors' obligations thereunder as asserted by Appaloosa in its April 4 letter. Delphi's Board of Directors formed a special litigation committee and engaged independent legal counsel to consider and pursue any and all available equitable and legal remedies, including the commencement of legal action in the Court to seek all appropriate relief, including specific performance by the Investors of their obligations under the EPCA.

In exchange for the Investors' commitment to purchase common stock and the unsubscribed shares in the rights offering, the Company paid an aggregate commitment fee of \$39 million and certain transaction expenses and in exchange for the Investors' commitment to purchase preferred stock the Company paid an aggregate commitment fee of \$18 million. In addition, the Company paid an arrangement fee of \$6 million to Appaloosa to compensate Appaloosa for arranging the transactions contemplated by the EPCA. The Company has also paid certain out-of-pocket costs and expenses reasonably incurred by the Investors or their affiliates

subject to certain terms, conditions and limitations set forth in the EPCA. Delphi had deferred the recognition of these amounts in other current assets as they were to be netted against the proceeds from the EPCA upon issuance of the new shares. However, as a result of the events relating to the termination of the EPCA described above, Delphi recognized \$79 million of expense related to these fees and other expenses during the first quarter of 2008.

The cost related to the transformation plan will be recognized in the Company's consolidated financial statements as elements of the Amended Plan (as modified), as the terms of any future confirmed plan of reorganization, as the U.S. labor agreements, the GSA, and the MRA become effective. In the event the Debtors are unable to consummate the Amended Plan (as modified), the cost will be recognized as the aforementioned agreements become effective as elements of any future confirmed plan of reorganization. The Amended Plan and agreements will significantly impact Delphi's accounting for its pension plans, post-retirement benefit plans, other employee related benefits, long-lived asset impairments and exit costs related to the sites planned for closure or consolidation, compensation costs for labor recognized over the term of the U.S. labor agreements, and the fair values assigned to assets and liabilities upon Delphi's emergence from chapter 11, among others. Such adjustments will have a material impact on Delphi's financial statements.

There are a number of risks and uncertainties inherent in the chapter 11 process, including those detailed in Delphi's Annual Report on Form 10-K for the year ended December 31, 2007, Part I, Item 1A. Risk Factors and Part II, Item 1A. Risk Factors in this Quarterly Report on Form 10-Q. In addition, Delphi cannot assure that potential adverse publicity associated with the Chapter 11 Filings and the resulting uncertainty regarding our future prospects will not materially hinder Delphi's ongoing business activities and our ability to operate, fund and execute Delphi's business plan by impairing relations with existing and potential customers; negatively impacting our ability to attract, retain and compensate key executives and associates and to retain employees generally; limiting our ability to obtain trade credit; and impairing present and future relationships with vendors and service providers.

#### **Overview of Performance During the First Quarter of 2008**

Delphi believes that several significant issues have largely contributed to our financial performance, including (a) a competitive U.S. vehicle production environment for domestic original equipment manufacturers resulting in the reduced number of motor vehicles that GM, our largest customer, produces annually in the U.S. and pricing pressures; (b) increasing commodity prices; (c) U.S. labor legacy liabilities and noncompetitive wage and benefit levels; and (d) restrictive collectively bargained labor agreement provisions which have historically inhibited Delphi's responsiveness to market conditions, including exiting non-strategic, non-profitable operations or flexing the size of our unionized workforce when volume decreases. Although the 2006 UAW and IUE-CWA U.S. employee workforce transition programs and the U.S. labor settlement agreements entered into in 2007 will allow us to reduce our legacy labor liabilities, transition our workforce to more competitive wage and benefit levels and allow us to exit non-core product lines, such changes will occur over several years, and are partially dependent on GM being able to provide significant financial support. We are beginning to see the benefits of decreased labor costs as a result of the attrition plans included in the workforce transition programs. However, we still have future costs to incur to complete our transformation plan, divest of non-core operations and realign our cost structure to match our more streamlined product portfolio.

In light of the current economic climate in the U.S. automotive industry, Delphi is facing considerable challenges due to revenue decreases in the U.S. and related pricing pressures stemming from a substantial reduction in GM's North American vehicle production in recent years. Our sales to GM have declined since our separation from GM, principally due to declining GM North American production, the impact of customer-driven price reductions, and GM's diversification of its supply base and ongoing changes in our content per vehicle and the product mix purchased. During the three months ended March 31, 2008, production in GM North American Axle decreased due to work stoppages at American Axle, a Tier-1 supplier to GM based in Detroit, Michigan (the "American Axle Work Stoppages"). On February 25, 2008 certain UAW-represented hourly employees of American Axle ceased production at certain of its manufacturing plants in North America. The work stoppages have forced GM to slow down production at certain of their

manufacturing plants, which has also slowed production of other Tier 1 suppliers, including Delphi. In the first quarter of 2008, GM North America produced 0.8 million vehicles, excluding CAMI Automotive Inc., New United Motor Manufacturing, Inc. and HUMMER H2 brand vehicle production, a decrease of 18% from the first quarter of 2007 production levels.

During the first quarter of 2008 we continued to be challenged by commodity cost increases, most notably copper, aluminum, petroleum-based resin products, steel and steel scrap, and fuel surcharges. We are continually seeking to manage these and other material related cost pressures using a combination of strategies, including working with our suppliers to mitigate costs, seeking alternative product designs and material specifications, combining our purchase requirements with our customers and/or suppliers, changing suppliers, hedging of certain commodities and other means. In the case of copper, which primarily affects the Electrical/Electronic Architecture segment, contract escalation clauses have enabled us to pass on some of the price increases to our customers and thereby partially offset the impact of increased commodity costs on operating income for the related products. However, despite our efforts, surcharges and other cost increases, particularly when necessary to ensure the continued financial viability of a key supplier, had the effect of reducing our earnings during the first quarter of 2008. We will increase our efforts to pass commodity market driven cost increases to our customers in order to maintain the margins that we quoted on these customer programs. Except as noted below in Results of Operations, our overall success in passing commodity cost increases on to our customers has been limited. As contracts with our customers expire, we will seek to renegotiate terms in order to recover the actual commodity costs we are incurring. Despite the challenges identified above, in the first quarter of 2008 Delphi achieved net material performance improvements (including cost adjustments from suppliers, material cost improvement initiatives and commodity market changes) on a year-over-year basis.

## **Overview of Net Sales and Net Loss**

|   |         | Three Months Ended March 31, |                           |     |        |               |  |  |  |  |
|---|---------|------------------------------|---------------------------|-----|--------|---------------|--|--|--|--|
|   | 2008    |                              | 2007(dollars in millions) |     |        | ole/<br>able) |  |  |  |  |
| Net sales:                                    |         |                              |                           |     |        |               |  |  |  |  |
| General Motors and affiliates                 | \$1,641 | 31%                          | \$2,163                   | 38% | \$(522 | )             |  |  |  |  |
| Other customers                               | 3,611   | 69%                          | 3,519                     | 62% | 92     |               |  |  |  |  |
| Total net sales                               | \$5,252 |                              | \$5,682                   |     | \$(430 | )             |  |  |  |  |
| Loss from continuing operations               | \$(530) |                              | \$(391)                   |     | \$(139 | )             |  |  |  |  |
| Loss from discontinued operations, net of tax | (59)    |                              | (142)                     |     | 83     |               |  |  |  |  |
| Net loss                                      | \$(589) |                              | \$(533)                   |     | \$(56  | )             |  |  |  |  |

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Including the impact of migration during the period of certain product programs from direct sales to GM to sales to customers which ultimately sell our products to GM as a sub-assembly of their final part ("Tier I") as well as the wind down and closure rates of certain plant closures and divestitures in our Automotive Holdings Group ("AHG") segment which were predominately GM related, our non-GM sales from continuing operations in the first quarter of 2008 increased 3% from the first quarter of 2007 and represented 69% of total net sales from continuing operations. However, excluding the impact of favorable foreign currency exchange rates, non-GM sales decreased 4% primarily due to the sale of the Catalyst business in the third quarter of 2007 and the migration of our converter business to a non-consolidated venture during 2007. In the first quarter of 2008, GM sales from continuing operations decreased 24% from the first quarter of 2007 and represented 31% of total net sales from continuing operations. GM North America ("GMNA") sales decreased due to an 18% reduction in production by GMNA, which includes the impact of the American Axle Work Stoppages. The increased net loss in the three months ended March 31, 2008 included \$79 million of previously capitalized fees paid to the potential Investors and their affiliates recorded as expense as a result of the termination of the EPCA, and increased U.S. employee workforce transition program charges of \$42 million.

## **Consolidated Results of Operations**

# Three Months Ended March 31, 2008 versus Three Months Ended March 31, 2007

The Company's sales and operating results for the three months ended March 31, 2008 and 2007 were as follows:

|   | Three Months Ended March 31, |      |                         |                             |        |   |  |  |
|---|------------------------------|------|-------------------------|-----------------------------|--------|---|--|--|
|   | 2008                         | (    | 2007<br>(dollars in mil | Favorable/<br>(Unfavorable) |        |   |  |  |
| Net sales:  |                              |      |                         |                             |        |   |  |  |
| General Motors and affiliates                                 | \$1,641                      | 31 % | \$2,163                 | 38 %                        | \$(522 | ) |  |  |
| Other customers   | 3,611                        | 69 % | 3,519                   | 62 %                        | 92     |   |  |  |
| Total net sales   | \$5,252                      |      | \$5,682                 |                             | \$(430 | ) |  |  |
| Cost of sales   | 4,897                        |      | 5,306                   |                             | (409   | ) |  |  |
| Gross margin(a)   | \$355                        | 6.8% | \$376                   | 6.6%                        | \$(21  | ) |  |  |
| U.S. employee workforce transition program charges (credit)   | 36                           |      | (6)                     |                             | (42    | ) |  |  |
| Depreciation and amortization                                 | 222                          |      | 233                     |                             | 11     |   |  |  |
| Selling, general and administrative                           | 364                          |      | 364                     |                             | -      |   |  |  |
| Operating loss  | \$(267)                      |      | \$(215)                 |                             | \$(52  | ) |  |  |
| Interest expense  | (110)                        |      | (90)                    |                             | (20    | ) |  |  |
| Loss on extinguishment of debt                                | -                            |      | (23)                    |                             | 23     |   |  |  |
| Other income, net   | 19                           |      | 20                      |                             | (1     | ) |  |  |
| Reorganization items  | (109)                        |      | (39)                    |                             | (70    | ) |  |  |
| Loss from continuing operations before income taxes, minority |                              |      |                         |                             |        |   |  |  |
| interest and equity income                                    | \$(467)                      |      | \$(347)                 |                             | \$(120 | ) |  |  |
| Income tax expense  | (63)                         |      | (46)                    |                             | (17    | ) |  |  |
| Loss from continuing operations before minority interest and  |                              |      |                         |                             |        |   |  |  |
| equity income   | \$(530)                      |      | \$(393)                 |                             | \$(137 | ) |  |  |
| Minority interest, net of tax                                 | (11)                         |      | (12)                    |                             | 1      |   |  |  |
| Equity income, net of tax                                     | 11                           |      | 14                      |                             | (3     | ) |  |  |
| Loss from continuing operations                               | \$(530)                      |      | \$(391)                 |                             | \$(139 | ) |  |  |
| Loss from discontinued operations, net of tax                 | (59)                         |      | (142)                   |                             | 83     |   |  |  |
| Net loss  | <u>\$(589</u> )              |      | <u>\$(533</u> )         |                             | \$(56  | ) |  |  |

(a) Gross margin is defined as net sales less cost of sales (excluding U.S. employee workforce transition program charges and Depreciation and amortization).

Delphi typically experiences fluctuations in sales due to customer production schedules, sales mix and the net of new and lost business (which we refer to collectively as volume), increased prices attributable to escalation clauses in our supply contracts for recovery of increased commodity costs (which we refer to as commodity pass-through), fluctuations in foreign currency exchange rates (which we refer to as FX), contractual reductions of the sales price to the customer (which we refer to as contractual price reductions) and design changes. Occasionally business transactions or non-recurring events may impact sales as well.

Delphi typically experiences fluctuations in operating income due to volume, contractual price reductions, cost savings due to materials or manufacturing efficiencies (which we refer to collectively as operational performance), and employee termination benefits and other exit costs.

# Net Sales

Net Sales. Below is a summary of Delphi's sales for the three months ended March 31, 2008 versus March 31, 2007.

|                               |         |                              |                      |       |                     |   |                      |     | Variance Due To:        |                    |                |  |  |
|-------------------------------|---------|------------------------------|----------------------|-------|---------------------|---|----------------------|-----|-------------------------|--------------------|----------------|--|--|
|                               |         | Three Months Ended March 31, |                      |       |                     |   |                      |     |                         |                    |                |  |  |
|                               | 2008    |                              | 2007<br>Iollars in m |       | Favoral<br>(Unfavor |   | Reductio<br>and Volu | me  | <u>FX</u><br>llars in n | Other<br>villions) | Total          |  |  |
| Net sales:                    |         | ,                            | ionar ș în în        | monsj |                     |   |                      | (uu | 114131111               | iiiioiis)          |                |  |  |
| General Motors and affiliates | \$1,641 | 31%                          | \$2,163              | 38%   | \$(522              | ) | \$(572               | )   | \$53                    | \$(3)              | \$(522)        |  |  |
| Other customers               | 3,611   | 69%                          | 3,519                | 62%   | 92                  |   | (157                 | )   | 248                     | 1                  | 92             |  |  |
| Total net sales               | \$5,252 |                              | \$5,682              |       | \$(430              | ) | \$(729               | _)  | \$301                   | \$(2)              | <u>\$(430)</u> |  |  |

Total sales for the three months ended March 31, 2008 decreased \$430 million. GM sales for the three months ended March 31, 2008 decreased \$522 million to 31% of total sales, primarily due to decreases in GMNA volume of 18% and contractual price reductions. Approximately \$214 million of the GM North America sales decrease is due to the American Axle Work Stoppages. Additionally, primarily as a result of portfolio transformation related to non-core businesses, during the three months ended March 31, 2008, our GM North America content per vehicle was \$1,328, 20% lower than the \$1,655 content per vehicle for the three months ended March 31, 2007, and GM sales were decreased by the impact of certain plant closures and divestitures in our AHG segment. The decrease to GM sales was offset slightly due to favorable fluctuations in foreign currency exchange rates, primarily driven by the Euro, Brazilian Real, Polish Zloty and Chinese Renminbi.

Other customer sales for the three months ended March 31, 2008 increased by \$92 million to 69% of total sales, primarily due to favorable foreign currency exchange impacts. Excluding the impact of foreign currency exchange, other customer sales decreased by \$156 million, or 4%, due to decreased volume, of which \$108 million was related to the migration of our converter business to a non-consolidated venture during 2007, \$38 million was related to the sale of the Catalyst business in the third quarter of 2007 and additional decreases were a result of certain plant closures and divestitures in our AHG segment, as well as contractual price reductions.

#### **Operating Results**

Below is a summary of the variances in Delphi's operating results for the three months ended March 31, 2008 versus March 31, 2007.

*Gross Margin.* Gross margin decreased \$21 million to \$355 million for the three months ended March 31, 2008 but increased to 6.8%, as a percentage of sales. Below is a summary of Delphi's gross margin for this period.

|                     | Three I | Months End   | led March 31,               | Variance Due To:               |   |                            |       |         |  |
|---------------------|---------|--------------|-----------------------------|--------------------------------|---|----------------------------|-------|---------|--|
|                     | 2008    | 2007         | Favorable/<br>(Unfavorable) | Price Reductions<br>and Volume |   | Operational<br>Performance | Other | Total   |  |
|                     | (       | dollars in n | nillions)                   | (dollars in millions)          |   |                            |       |         |  |
| Gross Margin        | \$355   | \$376        | \$(21)                      | \$(324                         | ) | \$264                      | \$ 39 | \$ (21) |  |
| Percentage of Sales | 6.8 %   | 6.6 %        |                             |                                |   |                            |       |         |  |

The gross margin decrease was primarily attributable to an approximate 18% reduction in GM North America vehicle production, as noted in the table above, including the negative impact of the American Axle Work Stoppages and the impact of certain plant closures and divestitures in our AHG segment. In addition to the decreased volume the following items negatively impacted gross margin in the three months ended March 31, 2008:

\$30 million charge related to the impairment of assets held for sale of Delphi's global bearings business in the AHG segment;



\$27 million due to the loss on foreign currency exchange contracts related to purchase transactions, of which \$14 million were at the Powertrain segment and \$13 million were at the Corporate and Other segment.

Offsetting these decreases were improvements in operational performance as noted in the table above, as well as the following items:

\$38 million due to favorable foreign currency exchange impacts, including \$10 million related to an intercompany loan in the Corporate and Other segment;

\$32 million of employee benefit plan settlements in Mexico which occurred in the three months ended March 31, 2007 in the Electronics & Safety segment; and

\$28 million recovery from an affiliated supplier related to previously established warranty reserves in the Thermal Systems segment.

*U.S. Employee Workforce Transition Program Charges (Credit).* Delphi recorded workforce transition program charges of approximately \$36 million during the three months ended March 31, 2008 for UAW-, IUE-CWA-, and USW-represented employees. These charges included \$20 million of amortization expense related to buy-down payments for eligible traditional employees who did not elect an attrition or flowback option and continue to work for Delphi and \$16 million to reflect costs under the workforce transition programs in excess of amounts previously estimated. Refer to Note 12. U.S. Employee Workforce Transition Programs to the consolidated financial statements for more information.

*Depreciation and Amortization.* Depreciation and amortization was \$222 million for the three months ended March 31, 2008 compared to \$233 million for the three months ended March 31, 2007. The decrease of \$11 million primarily reflects the impact of certain assets that were impaired in 2006 and 2007, resulting in reduced depreciation and amortization expense, lower capital spending at previously impaired sites and the effect of accelerated depreciation on assets nearing the end of their program life. Partially offsetting these decreases is an increase in overall capital spending of \$77 million or approximately 43% versus the three months ended March 31, 2007.

Selling, General and Administrative Expenses. Selling general and administrative ("SG&A") expenses were \$364 million for both the periods ended March 31, 2008 and 2007, increasing to 6.9% of total net sales for the three months ended March 31, 2008 from 6.4% of total net sales for the three months ended March 31, 2007. SG&A expenses in the three months ended March 31, 2008 were unfavorably impacted by foreign currency exchange impacts of \$16 million. Offsetting these increased costs was favorable performance of \$13 million due to a reduction in costs necessary to sustain information technology systems which support finance, manufacturing and product development and a decrease of \$13 million in expenses related to incentive compensation plans for executives and U.S. salaried employees.

*Interest Expense.* Interest expense for the three months ended March 31, 2008 was \$110 million compared to \$90 million for the three months ended March 31, 2007. This increase primarily resulted from higher overall debt outstanding for the three months ended March 31, 2008 as compared to the three months ended March 31, 2007. Additionally, Delphi recorded interest related to prepetition debt and allowed unsecured claims of \$14 million through January 25, 2008, the confirmation date of the plan of reorganization. Approximately \$24 million of contractual interest expense related to outstanding debt, including debt subject to compromise, was not recognized in accordance with the provisions of SOP 90-7 in the three months ended March 31, 2008 and 2007.

*Loss on extinguishment of debt.* Loss on extinguishment of debt for the three months ended March 31, 2007 was \$23 million. Concurrent with the execution of the Refinanced DIP Credit Facility, the Amended DIP Credit Facility and the Prepetition Facility were terminated. As a result of the changes in the debt structure and corresponding cash flows related to the refinancing, Delphi recognized \$23 million of loss on extinguishments of debt related to unamortized debt issuance and debt discount costs related to the Amended DIP Credit Facility and Prepetition Facility in the three months ended March 31, 2007.

*Other Income and Expense.* Other income for the three months ended March 31, 2008 was \$19 million as compared to other income of \$20 million for the three months ended March 31, 2007. The decrease was due to decreased non-Debtor interest income associated with additional cash and cash equivalents on hand.

*Reorganization Items.* Bankruptcy-related reorganization expenses were \$109 million and \$39 million for the three months ended March 31, 2008 and 2007, respectively. As a result of the events surrounding the termination of the EPCA, Delphi recorded expense of \$79 million related to previously capitalized fees paid to the Investors and their affiliates during the three months ended March 31, 2008. Additionally, Delphi incurred professional fees, primarily legal, directly related to the reorganization of \$29 million and \$43 million during the three months ended March 31, 2008 and 2007, respectively. These costs were partially offset by interest income of \$2 million and \$4 million from accumulated cash from the reorganization during the three months ended March 31, 2008 and 2007, respectively.

*Income Taxes.* We recorded an income tax expense of \$63 million and \$46 million for the three months ended March 31, 2008 and 2007, respectively. During the three months ended March 31, 2008 and 2007, we recorded taxes at amounts approximating the projected annual effective tax rate applied to earnings of certain non-U.S. operations. Given the effect of the mix of earnings by jurisdiction, some of which are subject to valuation allowance, the projected annual effective tax rate remained constant year-over-year. Income tax expense increased primarily due to increased profitability in our European operations. We do not recognize income tax benefits on losses in our U.S. and certain non-U.S. operations because, due to a history of operating losses, we have determined that it is more likely than not that these tax benefits will not be realized.

*Minority Interest.* Minority interest was \$11 million and \$12 million for the three months ended March 31, 2008 and 2007, respectively. Minority interest reflects the results of ongoing operations within Delphi's consolidated investments.

*Equity Income.* Equity income was \$11 million and \$14 million for the three months ended March 31, 2008 and 2007, respectively. Equity income reflects the results of ongoing operations within Delphi's equity-method investments.

*Loss from Discontinued Operations*. Loss from discontinued operations was \$59 million and \$142 million for the three months ended March 31, 2008 and 2007, respectively. Included in loss from discontinued operations for the three months ended March 31, 2008 were additional losses of \$77 million related to the operations and assets held for sale of the Steering Business. During the first quarter of 2008, as a result of the operations and sale of the Interiors and Closures Business, Delphi recorded a favorable adjustment of \$18 million to the overall loss on the sale of the Interiors and Closures Business due to the results of operations and changes in working capital through the sale closing date of February 29, 2008. The three months ended March 31, 2008 included \$35 million of employee termination benefits and other exit costs. The loss from discontinued operations for the three months ended March 31, 2007 includes long-lived asset impairment charges of \$154 million and employee termination benefits and other exit costs of \$34 million, primarily due to the exit of the Puerto Real site in Cadiz, Spain (see Note 2. Transformation Plan and Chapter 11 Bankruptcy).

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## **Results of Operations by Segment**

#### Three Months Ended March 31, 2008 versus Three Months Ended March 31, 2007

#### Electronics and Safety

The Electronics and Safety segment, which includes audio, entertainment and communications, safety systems, body controls and security systems, displays, mechatronics and power electronics, as well as advanced development of software and silicon, had sales and operating results for the three months ended March 31, 2008 and 2007 as follows:

|                               | Three Months Ended March 31, |     |                         |                            |        |   |  |  |  |  |
|-------------------------------|------------------------------|-----|-------------------------|----------------------------|--------|---|--|--|--|--|
|                               | 2008                         |     | 2007<br>(dollars in mil | Favorable/<br>(Unfavorable |        |   |  |  |  |  |
| Net sales:                    |                              |     |                         |                            |        |   |  |  |  |  |
| General Motors and affiliates | \$349                        | 29% | \$407                   | 31%                        | \$(58  | ) |  |  |  |  |
|                               |                              |     |                         |                            |        |   |  |  |  |  |
| Other customers               | 818                          | 67% | 825                     | 64%                        | (7     | ) |  |  |  |  |
| Inter-segment                 | 48                           | 4 % | 67                      | 5 %                        | (19    | ) |  |  |  |  |
| Total Other and Inter-segment | 866                          | 71% | 892                     | 69%                        | (26    | ) |  |  |  |  |
| Total net sales               | \$1,215                      |     | \$1,299                 |                            | \$(84  | ) |  |  |  |  |
| Operating (loss) income       | \$(80)                       |     | \$47                    |                            | \$(127 | ) |  |  |  |  |
| Gross margin                  | \$67                         |     | \$188                   |                            | \$(121 | ) |  |  |  |  |
| Gross margin%                 | 5.5 %                        |     | 14.5 %                  |                            |        |   |  |  |  |  |

*Net Sales* Total sales for the three months ended March 31, 2008 decreased \$84 million. The GM sales decrease for the three months ended March 31, 2008 was due primarily to a decline in volume of \$59 million, of which \$54 million was due to the American Axle Work Stoppages, as well as contractual price reductions. These decreases were slightly offset by favorable fluctuations in foreign currency exchange rates of \$12 million primarily related to the Euro.

The other customers and inter-segment sales decreased for three months ended March 31, 2008 primarily due to decreased volume of \$56 million as well as contractual price reductions. Other customer and inter-segment sales were favorably impacted by foreign currency exchange rates of \$49 million primarily related to the Euro.

*Operating Income/Loss* Operating income for the three months ended March 31, 2008 decreased due to a reduction in volume of \$75 million, including the negative impact of the American Axle Work Stoppages. Additionally, operating income was unfavorably impacted by contractual price reductions of \$29 million, decreases of \$24 million in operational performance improvements, primarily related to material, manufacturing and engineering, and increased expense for employee termination benefits and other exit costs of \$26 million, primarily related to operations in Portugal, and as a result of initiatives to realign manufacturing operations within North America to lower cost markets. Operating income in the three months ended March 31, 2007 was negatively impacted by employee benefit plan settlements in Mexico of \$32 million, which did not occur in the three months ended March 31, 2008.



# Powertrain Systems

The Powertrain Systems segment, which includes extensive systems integration expertise in gasoline, diesel and fuel handling and full end-to-end systems including fuel injection, combustion, electronics controls, exhaust handling, and test and validation capabilities, had sales and operating results for the three months ended March 31, 2008 and 2007 as follows:

|                               |         | Three Months Ended March 31, |                        |                                |             |   |  |  |  |  |
|-------------------------------|---------|------------------------------|------------------------|--------------------------------|-------------|---|--|--|--|--|
|                               | 2008    | (                            | 2007<br>dollars in mil | Favorabl<br><u>(Unfavora</u> l |             |   |  |  |  |  |
| Net sales:                    |         |                              |                        |                                |             |   |  |  |  |  |
| General Motors and affiliates | \$308   | 24%                          | \$414                  | 29%                            | \$(106      | ) |  |  |  |  |
|                               |         |                              |                        |                                |             |   |  |  |  |  |
| Other customers               | 866     | 67%                          | 905                    | 62%                            | (39         | ) |  |  |  |  |
| Inter-segment                 | 109     | 9 %                          | 127                    | 9 %                            | (18         | ) |  |  |  |  |
| Total Other and Inter-segment | 975     | 76%                          | 1,032                  | 71%                            | (57         | ) |  |  |  |  |
| Total net sales               | \$1,283 |                              | \$1,446                |                                | \$(163      | ) |  |  |  |  |
| Operating loss                | \$(13)  |                              | \$(34)                 |                                | \$21        |   |  |  |  |  |
| Gross margin                  | \$129   |                              | \$120                  |                                | <b>\$</b> 9 |   |  |  |  |  |
| Gross margin%                 | 10.1 %  |                              | 8.3 %                  |                                |             |   |  |  |  |  |

*Net Sales* Total sales for the three months ended March 31, 2008 decreased by \$163 million. The GM sales decrease for the three months ended March 31, 2008 was primarily due to a decline in GM volume of \$111 million, of which \$35 million was due to the American Axle Work Stoppages, as well as contractual price reductions. Offsetting these sales decreases was the favorable impact from currency exchange rates of \$7 million, related to the Euro and Brazilian Real, and commodity pass-through.

The decrease in other customers and inter-segment sales for the three months ended March 31, 2008 was impacted by decreases in volume of \$120 million due to the migration of our converter business to a non-consolidated venture during 2007 and \$41 million due to the sale of the Catalyst business in the third quarter of 2007, as well as contractual price reductions. The decreases were offset by increased volume of \$66 million primarily in Europe related to Diesel products, and favorable impacts of \$58 million from foreign currency exchange rates related to the Euro and Brazilian Real.

*Operating Income/Loss* The reduced operating loss for the three months ended March 31, 2008 was primarily attributable to improvements related to operating performance of \$96 million, and reductions in SG&A costs of \$8 million. Offsetting these improvements were reductions in volume of \$43 million, including the negative impact of the American Axle Work Stoppages, contractual price reductions of \$24 million and \$14 million due to the loss on foreign currency exchange contracts related to purchase transactions.

# Electrical/Electronic Architecture

The Electrical/Electronic Architecture segment, which includes complete electrical architecture and component products, had sales and operating results for the three months ended March 31, 2008 and 2007 as follows:

|                               | Three Months Ended March 31, |      |         |                               |       |                             |  |
|-------------------------------|------------------------------|------|---------|-------------------------------|-------|-----------------------------|--|
|                               | 2008                         | 2008 |         | 2007<br>(dollars in millions) |       | Favorable/<br>(Unfavorable) |  |
| Net sales:                    |                              |      |         |                               |       |                             |  |
| General Motors and affiliates | \$403                        | 25%  | \$442   | 30%                           | \$(39 | )                           |  |
|                               |                              |      |         |                               |       |                             |  |
| Other customers               | 1,137                        | 72%  | 969     | 67%                           | 168   |                             |  |
| Inter-segment                 | 44                           | 3 %  | 45      | 3 %                           | (1    | )                           |  |
| Total Other and Inter-segment | 1,181                        | 75%  | 1,014   | 70%                           | 167   | _                           |  |
| Total net sales               | \$1,584                      |      | \$1,456 |                               | \$128 |                             |  |
| Operating loss                | \$(6)                        |      | \$(5)   |                               | \$(1  | )                           |  |
| Gross margin                  | \$141                        |      | \$143   |                               | \$(2  | )                           |  |
| Gross margin%                 | 8.9 %                        |      | 9.8 %   |                               |       |                             |  |

*Net Sales* Total sales increased \$128 million for the three months ended March 31, 2008. GM sales decreased for three months ended March 31, 2008 due to a decline in volume in North America of \$63 million, of which \$49 million was related to the American Axle Work Stoppages, and contractual price reductions. Offsetting the decreased North America volume was increased GM volume in Europe, Asia Pacific and South America of \$14 million, and \$16 million due to favorable foreign currency exchange rate fluctuations, primarily related to the Euro and Brazilian Real. Sales for three months ended March 31, 2008 and 2007 have been favorably impacted by contract escalation clauses which have enabled some of the commodity price increases to be passed on to our customers.

The other customers and inter-segment sales increased for the three months ended March 31, 2008 due to volume increases outside of North America of \$100 million and the impact of favorable foreign currency exchange rates of \$100 million, primarily related to the Euro and Brazilian Real. Offsetting these increases was a reduction in North America volume of \$31 million and contractual price reductions.

*Operating Income/Loss* Operating loss for the three months ended March 31, 2008 was unfavorably impacted by the decrease in GM North America volume, including the negative impact of the American Axle Work Stoppages, and contractual price reductions of \$25 million. Operating loss was positively impacted by operational performance improvements, partially offset by negative material economics related to copper and oil-based resins, of \$44 million, and decreased expenses related to employee termination benefits and other exit costs of \$18 million.

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# Thermal Systems

The Thermal Systems segment, which includes Heating, Ventilating and Air Conditioning ("HVAC") systems, components for multiple transportation and other adjacent markets, commercial/industry applications, and powertrain cooling and related technologies, had sales and operating results for the three months ended March 31, 2008 and 2007 as follows:

|                               |              | Three Months Ended March 31, |                       |     |                          |   |
|-------------------------------|--------------|------------------------------|-----------------------|-----|--------------------------|---|
|                               | 2008         |                              | 2007<br>(dollars in m |     | Favora<br><u>(Unfavo</u> |   |
| Net sales:                    |              |                              |                       |     |                          |   |
| General Motors and affiliates | \$296        | 52%                          | \$369                 | 58% | \$(73                    | ) |
|                               |              |                              |                       |     |                          |   |
| Other customers               | 251          | 44%                          | 227                   | 36% | 24                       |   |
| Inter-segment                 | _27          | 4 %                          | 36                    | 6 % | (9                       | ) |
| Total Other and Inter-segment | 278          | 48%                          | 263                   | 42% | 15                       |   |
| Total net sales               | <u>\$574</u> |                              | \$632                 |     | \$(58                    | ) |
| Operating income              | \$26         |                              | \$1                   |     | \$25                     |   |
| Gross margin                  | \$77         |                              | \$50                  |     | \$27                     |   |
| Gross margin%                 | 13.4%        |                              | 7.9 %                 |     |                          |   |

*Net Sales* Total sales for the three months ended March 31, 2008 decreased by \$58 million. The GM sales decrease for the three months ended March 31, 2008 was driven by a decline in volume of \$79 million, of which \$24 million was due to the American Axle Work Stoppages, and contractual price reductions. Offsetting these decreases was the favorable impact of foreign currency exchange rates of \$12 million related to the Euro, Polish Zloty and Brazilian Real.

The other customer and inter-segment sales increase for the three months ended March 31, 2008 was favorably impacted by foreign currency exchange rates of \$22 million related to the Euro, Polish Zloty and Brazilian Real. Offsetting the increase were contractual price reductions.

*Operating Income/Loss* The increase in operating income for the three months ended March 31, 2008 was primarily due to a recovery of \$28 million from an affiliated supplier related to previously established warranty reserves and favorable operational performance of \$27 million. Offsetting these increases in operating income was a reduction in volume of \$29 million, including the negative impact of the American Axle Work Stoppages, and contractual price reductions. Operating income was also disproportionately affected by Thermal System's ongoing investments and related expenses in developing its new markets business.

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# Automotive Holdings Group

The Automotive Holdings Group segment, which includes non-core product lines and plant sites that do not fit Delphi's future strategic framework, had sales and operating results for the three months ended March 31, 2008 and 2007 as follows:

|                               |        | Three Months Ended March 31, |                        |         |                      |   |
|-------------------------------|--------|------------------------------|------------------------|---------|----------------------|---|
|                               | 2008   |                              | 2007<br>(dollars in mi | llions) | Favorat<br>(Unfavora |   |
| Net sales:                    |        |                              |                        |         |                      |   |
| General Motors and affiliates | \$195  | 38%                          | \$423                  | 52%     | \$(228               | ) |
|                               |        |                              |                        |         |                      |   |
| Other customers               | 280    | 54%                          | 345                    | 42%     | (65                  | ) |
| Inter-segment                 | 42     | 8 %                          | 51                     | 6 %     | (9                   | ) |
| Total Other and Inter-segment | 322    | 62%                          | 396                    | 48%     | (74                  | ) |
| Total net sales               | \$517  |                              | \$819                  |         | \$(302               | ) |
| Operating loss                | \$(70) |                              | \$(63)                 |         | \$(7                 | ) |
| Gross margin                  | \$(31) |                              | \$(2)                  |         | \$(29                | ) |
| Gross margin%                 | (6.0)% |                              | (0.2)%                 |         |                      |   |

*Net Sales* Total sales for the three months ended March 31, 2008 decreased \$302 million. GM sales decreased for the three months ended March 31, 2008 primarily due to volume and the impact of certain plant closures and divestitures of \$232 million, which includes a slight impact of the American Axle Work Stoppages. The sales decrease was partially offset by favorable foreign currency exchange rates, primarily due to the Brazilian Real.

The other customer and inter-segment sales decrease for the three months ended March 31, 2008 was primarily due to volume of \$83 million and contractual price reductions. The sales decrease was slightly offset by the impact of favorable foreign currency exchange rates of \$15 million, primarily due to the Polish Zloty, Chinese Renminbi, and the Euro.

*Operating Income/Loss* The increased operating loss for the three months ended March 31, 2008 was due to reductions in volume of \$67 million, employee termination benefits and other exit costs of \$29 million for operations in Portugal and a \$30 million charge related to the assets held for sale of Delphi's global bearings business. Partially offsetting these decreases were favorable operational performance improvements of \$79 million. Additionally, operating loss decreased due to employee termination benefits and other exit costs of \$31 million related to the closure of the Puerto Real site in Cadiz, Spain during the three months ended March 31, 2007.

# Corporate and Other

Corporate and Other includes the expenses of corporate administration, other expenses and income of a non-operating or strategic nature, elimination of inter-segment transactions and charges related to U.S. workforce transition programs (Refer to Note 12. U.S. Employee Workforce Transition Programs to the consolidated financial statements). Additionally, Corporate and Other includes the Product and Service Solutions business, which is comprised of independent aftermarket, diesel aftermarket, original equipment service, and consumer electronics. The Corporate and Other segment had sales and operating results for the three months ended March 31, 2008 and 2007 as follows:

|                | Three    | Three Months Ended March 31,                                     |    |    |  |  |
|----------------|----------|--|----|----|--|--|
|                | 2008     | Favorable/<br>2007 <u>(Unfavorable)</u><br>(dollars in millions) |    |    |  |  |
| Net sales      | \$ 79    | \$ 30  | \$ | 49 |  |  |
| Operating loss | \$ (124) | \$ (161)   | \$ | 37 |  |  |

*Net Sales* Corporate and Other sales for the three months ended March 31, 2008 were \$79 million, an increase of \$49 million compared to the three months ended March 31, 2007, primarily as a result of decreased eliminations of intersegment transactions resulting from decreased volume and lower inter-segment sales at Delphi's other reporting segments. Offsetting the increases were lower sales in our GM service parts organization.

*Operating Income/Loss* Operating loss was favorably impacted by decreased expenses related to incentive compensation plans for executives and U.S. salaried employees of \$49 million, decreases in pension and other postretirement and postemployment benefit costs of \$49 million, lower costs necessary to sustain information technology systems which support finance, manufacturing and product development of \$29 million, and \$10 million in foreign currency benefits of intercompany loans. Offsetting these favorable variances were increased workforce transition charges of \$42 million, \$13 million due to loss on foreign currency exchange contracts and increased corporate expenses retained at Corporate and Other due to the impact of divestitures and plant closures.

#### Liquidity and Capital Resources

### **Overview of Capital Structure**

During the first quarter of 2007, Delphi refinanced its prepetition and postpetition credit facilities obligations by entering into a Revolving Credit, Term Loan, and Guaranty Agreement (the "Refinanced DIP Credit Facility") to borrow up to approximately \$4.5 billion from a syndicate of lenders. The Refinanced DIP Credit Facility consists of a \$1.75 billion first priority revolving credit facility (the "Revolving Facility"), a \$250 million first priority term loan (the "Tranche B Term Loan" and, together with the Revolving Facility, the "First Priority Facilities"), and an approximate \$2.5 billion second priority term loan (the "Tranche C Term Loan"). As of January 9, 2007, both the Refinanced DIP Credit Facility \$250 million Tranche B Term Loan and approximately \$2.5 billion Tranche C Term Loan were funded.

The Refinanced DIP Credit Facility had a maturity date of July 1, 2008. Delphi received Court approval to amend and extend its Refinanced DIP Credit Facility on April 30, 2008. Delphi has received the required commitments from its lenders and the Amended and Restated DIP Credit Facility became effective on May 9, 2008. The Amended and Restated DIP Credit Facility became effective on May 9, 2008. The Amended and Restated DIP Credit Facility to \$1.1 billion from \$1.75 billion and increasing the size of the Tranche B Term Loan to \$500 million from \$250 million and leaving the Tranche C Term Loan unchanged at approximately \$2.5 billion. On May 9, 2008, Delphi filed a motion with the Court to increase the Tranche C Term Loan to \$2.75 billion from approximately \$2.5 billion and expects the Court to approve the motion by the end of May 2008 with funding in June 2008. The Amended and Restated DIP Credit Facility includes certain covenants and restrictions on Delphi's financial and business operations that mirror those imposed by the Refinanced DIP Credit Facility with the exception of the modifications listed below. The Amended and Restated DIP Credit Facility:

Increases the interest rate on the facilities,

Increases the undrawn revolver fees,

Adds a LIBOR floor to the Tranche B and Tranche C Term Loans,

Modifies the borrowing base definition and limits availability to draw additional amounts under the Revolving Facility, under certain conditions as defined,

Sets Global EBITDAR covenant levels for the extension period,

Modifies the allowable junior liens, and

Allows Delphi to enter into an agreement with GM as described below.

In connection with the Amended and Restated DIP Credit Facility, Delphi paid a total of approximately \$75 million to consenting lenders on the Tranche A facility, the Tranche B facility and the Tranche C facility. Delphi also received approval from the Court to pay arrangement and other fees to various lenders in

conjunction with the Amended and Restated DIP Credit Facility and the previously arranged bankruptcy exit financing that was commenced but not completed.

Concurrently with the Amended and Restated DIP Credit Facility, Delphi entered into an agreement with GM whereby GM will advance Delphi amounts anticipated to be paid following the effectiveness of the GSA and MRA. The agreement has a maturity date of the earlier of December 31, 2008 or when \$650 million has been paid under the GSA and MRA. GM will receive an administrative claim for its advances. The agreement provides for availability of up to \$650 million, as necessary for Delphi to maintain \$500 million of liquidity, as defined in the Amended and Restated DIP Credit Facility. The amounts advanced will accrue interest at the same rate as the Tranche C Term Loan on a paid-in-kind basis. The interest on the advances will be cancelled if the GSA and MRA become effective on or prior to the expiration date of the agreement. Advances will be set off against the GSA and MRA upon effectiveness of those agreements or any remaining administrative claims in Delphi's chapter 11 case.

Borrowings under the Refinanced DIP Credit Facility were prepayable at Delphi's option without premium or penalty. As of March 31, 2008, total available liquidity under the Refinanced DIP Credit Facility was approximately \$504 million. Also as of March 31, 2008, there was \$452 million outstanding under the Revolving Facility and the Company had \$270 million in letters of credit outstanding under the Revolving Facility as of that date, including approximately \$162.5 million related to the letters of credit provided to the PBGC discussed further in Note 2. Transformation Plan and Chapter 11 Bankruptcy. The amount outstanding at any one time under the First Priority Facilities is limited by a borrowing base computation as described in the Refinanced DIP Credit Facility. While the borrowing base computation excluded outstanding borrowings, it was less than the Refinanced DIP Credit Facility commitment at March 31, 2008. During the first quarter of 2008, Delphi's availability, as determined by the Borrowing Base Certificate (as defined in the Refinanced DIP Credit Facility), dropped below \$500 million. As a result, Delphi is required to file weekly borrowing base calculations. The Amended and Restated DIP Credit Facility contains similar provisions, including the ability of Delphi to prepay borrowings without premium or penalty and a borrowing base limitation, see Note 19. Subsequent Events for more information.

The Refinanced DIP Credit Facility included affirmative, negative and financial covenants that impose restrictions on Delphi's financial and business operations, including Delphi's ability to, among other things, incur or secure other debt, make investments, sell assets and pay dividends or repurchase stock. Delphi was in compliance with the Refinanced DIP Credit Facility covenants as of March 31, 2008. Similar covenants are also contained in the Amended and Restated DIP Credit Facility as described above. The Company does not expect to pay dividends prior to emergence from chapter 11. So long as the Facility Availability Amount (as defined in the Amended and Restated DIP Credit Facility) is equal or greater than \$500 million, compliance with the restrictions on investments, mergers and disposition of assets do not apply (except in respect of investments in, and dispositions to, direct or indirect domestic subsidiaries of Delphi that are not guarantors). The covenants require Delphi, among other things, to maintain a rolling 12-month cumulative Global EBITDAR for Delphi and its direct and indirect subsidiaries, on a consolidated basis, at the levels set forth in the Amended and Restated DIP Credit Facility. The Amended and Restated DIP Credit Facility also contains certain defaults and events of default customary for debtor-in-possession financings of this type. Upon the occurrence and during the continuance of any default in payment of principal, interest or other amounts due under the Amended and Restated DIP Credit Facility, interest on all outstanding amounts is payable on demand at 2% above the then applicable rate.

Delphi entered into a series of amendments over the course of the loan, and paid amendment fees of 100 basis points, or approximately \$45 million, to the lenders in the third quarter of 2007. As of March 31, 2008, \$19 million remains deferred in other current assets.

The foregoing description of the Refinanced DIP Credit Facility and the amendments thereto is a general description only. For additional detail see the underlying agreements, copies of which were previously filed with the SEC. Additionally, refer to Note 14. Debt, to the consolidated financial statements in Delphi's Annual Report on Form 10-K for the year ended December 31, 2007 for additional information on the Refinanced DIP Credit Facility.

Concurrently with the entry into the Refinanced DIP Credit Facility, the Revolving Credit, Term Loan and Guaranty Agreement (the "DIP Credit Facility") Delphi entered into on October 14, 2005, as amended through November 13, 2006 (the "Amended DIP Credit Facility"), and the Five Year Third Amended and Restated Credit Agreement, dated as of June 14, 2005 (as amended, the "Prepetition Facility") were terminated. Delphi incurred no early termination penalties in connection with the termination of these agreements. However, as a result of changes in the debt structure and corresponding cash flows related to the refinancing, Delphi expensed \$25 million of unamortized debt issuance and discount costs related to the Amended DIP Credit Facility and Prepetition Facility in the first quarter of 2007, of which \$23 million was recognized as loss on extinguishment of debt as these fees relate to the refinancing of the term loans and \$2 million was recognized as interest expense as these fees relate to the refinancing of the revolving credit facility.

As of March 31, 2008, substantially all of our unsecured prepetition long-term debt was in default and is subject to compromise. For additional information on our unsecured prepetition long-term debt, please refer to our Annual Report on Form 10-K for the year ended December 31, 2007. Pursuant to the terms of our confirmed Amended Plan, the following table details our unsecured prepetition long-term debt subject to compromise, and our short-term and other debt not subject to compromise:

|  | March 31,<br>2008 | December 31,<br>2007 |
|--|-------------------|----------------------|
|  | (in 1             | millions)            |
| Long-term debt subject to compromise:                            |                   |                      |
| Senior unsecured debt with maturities ranging from 2006 to 2029  | \$1,984           | \$1,984              |
| Junior subordinated notes due 2033                               | 391               | 391                  |
| Total long-term debt subject to compromise                       | 2,375             | 2,375                |
| Short-term, other, and long-term debt not subject to compromise: |                   |                      |
| Refinanced DIP term loans  | 2,746             | 2,746                |
| Refinanced DIP revolving credit facility                         | 452               | -                    |
| Accounts receivable factoring                                    | 560               | 384                  |
| European securitization  | 191               | 205                  |
| Other debt   | 263               | 160                  |
| Total short-term and other debt not subject to compromise        | 4,212             | 3,495                |
| Other long-term debt   | 62                | 59                   |
| Total debt not subject to compromise                             | 4,274             | 3,554                |
| Total outstanding debt   | \$6,649           | \$5,929              |

## **Other Financing**

We also maintain various accounts receivable factoring facilities in Europe that are accounted for as short-term debt. These uncommitted factoring facilities are available through various financial institutions. As of March 31, 2008, we had \$560 million outstanding under these accounts receivable factoring facilities.

In addition, Delphi continues to use its European accounts receivable securitization program, which has an availability of 178 million (\$281 million at March 31, 2008 foreign currency exchange rates) and £12 million (\$24 million at March 31, 2008 foreign currency exchange rates). Accounts receivable transferred under this program are also accounted for as short-term debt. As of March 31, 2008, outstanding borrowings under this program were approximately \$191 million.

As of March 31, 2008, we had \$325 million of other debt, primarily consisting of overseas bank facilities, and less than \$1 million of other debt classified as Liabilities Subject to Compromise.

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## Credit Ratings, Stock Listing

Delphi was rated by Standard & Poor's, Moody's, and Fitch Ratings. Primarily as a result of the Chapter 11 Filings, Standard & Poor's, Moody's, and Fitch Ratings had withdrawn their ratings of Delphi's senior unsecured debt, preferred stock, and senior secured debt. Standard & Poor's, Moody's, and Fitch Ratings assigned point-in-time ratings of BBB-/B1/BB-, respectively, to the Amended DIP Credit Facility. In January 2007 Standard & Poor's, Moody's, and Fitch Ratings assigned point-in-time ratings to the Refinanced DIP Credit Facility first-priority loans of BBB+/Ba1/BB and to the Refinanced DIP Credit Facility second-priority loans of BBB-/Ba3/BB-.

As of the date of filing this Quarterly Report on Form 10-Q, Delphi's common stock (OTC: DPHIQ) is traded on the Pink Sheets. Delphi's preferred shares (OTC: DPHAQ) ceased trading on the Pink Sheets November 14, 2006 due to the fact that the same day the property trustee of each Trust liquidated each Trust's assets in accordance with the terms of the applicable trust declarations. Pink Sheets is a centralized quotation service that collects and publishes market maker quotes for over the counter ("OTC") securities in real-time. Delphi's listing status on the Pink Sheets is dependent on market makers' willingness to provide the service of accepting trades to buyers and sellers of the stock. Unlike securities traded on a stock exchange, such as the NYSE, issuers of securities traded on the Pink Sheets do not have to meet any specific quantitative and qualitative listing and maintenance standards. As of the date of filing this Quarterly Report on Form 10-Q, Delphi's 6<sup>1</sup>/<sub>2</sub>% Notes due May 1, 2009 (DPHIQ.GB) and 7<sup>1</sup>/<sub>8</sub>% debentures due May 1, 2029 (DPHIQ.GC) are also trading over the counter via the Trade Reporting and Compliance Engine (TRACE), a NASD-developed reporting vehicle for OTC secondary market transactions in eligible fixed income securities that provides debt transaction prices.

#### **Cash Flows**

*Operating Activities.* Net cash used in operating activities totaled \$290 million and \$414 million for the three months ended March 31, 2008 and 2007, respectively. Cash flow from operating activities was reduced for the three months ended March 31, 2008 and 2007 by contributions to our pension plans of \$68 million and \$92 million, respectively, and other postretirement benefit payments of \$66 million and \$40 million, respectively. Cash flow from operating activities during the three months ended March 31, 2008 and 2007 was reduced by cash paid to employees in conjunction with the U.S. employee workforce transition programs of \$71 million and \$481 million, respectively, net of reimbursement by GM of \$264 million during the three months ended March 31, 2007. During the three months ended March 31, 2008 and 2007, our cash flows from operating activities were negatively impacted by interest payments of \$100 million and \$107 million, respectively, reorganization related costs of \$16 million and \$30 million, respectively, and incentive compensation to executives and U.S. salaried employees of \$59 million and \$62 million. In addition, operating cash flow is impacted by the timing of payments to suppliers and receipts from customers.

Absent complete implementation of the comprehensive restructuring to address our existing U.S. legacy liabilities and our resulting high cost structure in the U.S., we expect that our operating activities will continue to use, not generate, cash. Prior to the Chapter 11 Filings we faced ERISA pension funding minimums of \$1.2 billion in 2006 and \$2.8 billion in 2007. As permitted under chapter 11 of the Bankruptcy Code, Delphi made only the portion of the contribution attributable to service after the Chapter 11 Filings. During 2007, Delphi contributed \$0.2 billion to its U.S. pension plans. Although Delphi's 2008 minimum funding requirement is approximately \$2.5 billion under current legislation and plan design, Delphi is in chapter 11, and our 2008 contributions will be limited to approximately \$0.2 billion, representing the normal service cost earned during the year. Upon emergence from chapter 11, we would be required to meet our past due funding obligations. Delphi has been in discussions with the IRS and the PBGC regarding the funding of Delphi's spension plans upon emergence from chapter 11. These discussions are meant to achieve a consensual funding plan that would enable the Company to satisfy its pension funding obligations upon emergence from chapter 11 through a combination of cash contributions and a transfer of certain unfunded liabilities to a pension plan sponsored by GM. Assuming that a consensual funding plan is achieved, the Company currently expects that its pension contributions due upon emergence from chapter 11 will approximate \$1 billion under current

legislation and plan design, after giving effect to an anticipated transfer of at least a net of \$1.5 billion of unfunded benefit liabilities from the Hourly Plan to a pension plan sponsored by GM.

In 2006 and 2007, the IRS issued conditional funding waivers for the Hourly Plan and Salaried Plan which were intended to facilitate the Debtors' option to effectuate the transfer of certain hourly pension obligations to GM in an economically efficient manner, and to remove uncertainty as to whether excise taxes would be assessed as a result of accumulated funding deficiencies relating to prepetition service. The waivers were conditioned on Delphi emerging from chapter 11 and contributing funds to its pension plans on or before May 9, 2008. Delphi did not seek extension past May 9, 2008 of the waivers, and as a result, Delphi may be exposed to an excise tax penalty. Refer to Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations, Transformation Plan for more information.

*Investing Activities.* Cash flows used in investing activities totaled \$154 million and \$156 million for the three months ended March 31, 2008 and 2007, respectively. The use of cash in the first three months of 2008 and 2007 primarily reflects capital expenditures related to ongoing operations of \$255 million and \$178 million, respectively, offset by proceeds from the sale of property and non-U.S. trade bank notes representing short term notes receivable received from customers with original maturities of 90 days or more. Cash flows used in investing activities during the three months ended March 31, 2008 also included proceeds from divestitures of \$87 million, related to the Interiors and Closures Business sale on February 29, 2008 and the sale of Delphi's North American brake components machining and assembly assets in January 2008.

*Financing Activities.* Net cash provided by financing activities was \$666 million and \$375 million for the three months ended March 31, 2008 and March 31, 2007, respectively. Net cash provided by financing activities during the three months ended March 31, 2008 includes \$452 million in borrowings under the debtor-in-possession facility and \$210 million of other borrowings, primarily increased accounts receivable factoring. As of March 31, 2008, total available liquidity under the Refinanced DIP Credit Facility decreased \$0.7 billion from March 31, 2007 to \$0.5 million. Net cash provided by financing activities during the three months ended March 31, 2007 primarily reflected borrowings under the Refinanced DIP Credit Facility, as amended, offset by repayments of the Amended DIP Credit Facility and the Prepetition Facility.

*Dividends*. On September 8, 2005, the Board of Directors announced the elimination of Delphi's quarterly dividend on Delphi common stock. In addition, the Company's debtor-in-possession credit facilities include negative covenants, which prohibit the payment of dividends by the Company. The Company does not expect to pay dividends in the near future. Refer to Note 11. Debt, to the consolidated financial statements for more information.

#### **Liquidity Outlook for 2008**

In light of the current economic climate in the global automotive industry, we anticipate continued operating challenges due to lower North American production volumes, slower growth overseas, related pricing pressures stemming from increasingly competitive markets, and continued commodity price increases. In addition, tight credit markets have impacted our emergence from chapter 11, make us particularly vulnerable to changes in the overall economic climate.

As a result of the foregoing, we believe 2008 revenue will be decrease as compared to 2007, reflecting lower GM revenues primarily as a result of lower forecast production volumes in North America as well as continued divestitures by Delphi of non-core operations, and flat to moderate growth in sales to other customers.

We continue to make progress in our overall transformation plan, including transformation of our labor force, streamlining our product portfolio and making the manufacturing and cost structure improvements to address these changes in the global automotive industry. Until such time as we are able to successfully reorganize our capital structure and operations, fully implement our transformation plan and emerge from chapter 11, we expect that our operations will continue to use cash. Throughout 2008 we expect that a substantial use of cash will be related to our restructuring efforts and capital projects and that despite the current economic climate, we will be able to continue funding our restructuring and capital projects by

supplementing cash generated from operations with available borrowings. With the Amended and Restated DIP Credit Facility and advances from GM of amounts anticipated to be paid upon the effectiveness of the GM settlement and restructuring agreements, we believe we will continue to have adequate access to liquidity throughout 2008 to continue implementing our transformation plan. In addition, we expect that the continued divestiture of non-core and discontinued operations will be a source of liquidity. We have the flexibility to delay some of these actions should revenues and cash flow from operations decrease significantly below our expectations as a result of a further deterioration in the economic climate or global automotive industry or should such divestitures not be completed when expected to continue to have access to sufficient liquidity. For more information regarding our sources and uses of liquidity and the Amended and Restated DIP Credit Facility and arrangements with GM, see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources and Note 19. Subsequent Events to the unaudited consolidated financial statements.

In addition, upon successful emergence from chapter 11, we will be required to fund our pension plans. As permitted under chapter 11 of the Bankruptcy Code, Delphi contributed only the portion of the contribution attributable to service after the Chapter 11 Filings. Assuming a consensual funding plan is achieved, the Company currently expects that its pension contributions due upon emergence from chapter 11 will approximate \$1 billion under current legislation and plan design, after giving effect to an anticipated transfer of at least a net of \$1.5 billion of unfunded benefit liabilities from the Hourly Plan to a pension plan sponsored by GM. Refer to Note 2. Transformation Plan and Chapter 11 Bankruptcy for further information.

# Litigation Commitments and Contingencies

Delphi is from time to time subject to various legal actions and claims incidental to its business, including those arising out of alleged defects, breach of contracts, product warranties, intellectual property matters and employment-related matters. We do not believe that any of the routine litigation incidental to the conduct of our business to which we are currently a party will have a material adverse effect on our business or financial condition. For a description of significant litigation that is not routine in nature and which if adversely determined against us could have a significant impact on our business, see Note 18. Commitments and Contingencies, Shareholder Lawsuits, to the unaudited consolidated financial statements.

#### **Environmental Matters**

Delphi is subject to the requirements of U.S. federal, state, local and non-U.S. environmental and occupational safety and health laws and regulations. For a discussion of matters relating to compliance with laws for the protection of the environment, refer to Item 1. Business – Environmental Compliance in Delphi's Annual Report on Form 10-K for the year ended December 31, 2007. Additionally, refer to Note 18. Commitments and Contingencies to the consolidated financial statements for information on sites where Delphi has been named a potentially responsible party.

As of March 31, 2008 and December 31, 2007, our reserve for environmental investigation and remediation was approximately \$107 million and \$112 million, respectively. The amounts recorded take into account the fact that GM retained the environmental liability for certain inactive sites as part of the separation from GM in 1999 (the "Separation").

#### Other

As mentioned above, Delphi continues to pursue its transformation plan and continues to conduct additional assessments as the Company evaluates whether to permanently close or demolish one or more facilities as part of its restructuring activity. These assessments could result in Delphi being required to recognize additional and possibly material costs or demolition obligations in the future.

# Inflation

Inflation generally affects Delphi by increasing the cost of labor, equipment and raw materials. We believe that, because rates of inflation in countries where we have significant operations have been moderate

Copyright © 2012 www.secdatabase.com. All Rights Reserved. Please Consider the Environment Before Printing This Document during the periods presented, inflation has not had a significant impact on our results of operations, other than increased commodity costs as disclosed in the Executive Summary in Management's Discussion and Analysis of Financial Condition and Results of Operations.

### **Recently Issued Accounting Pronouncements**

Refer to Note 1. Basis of Presentation, Recently Issued Accounting Pronouncements, to the unaudited Consolidated Financial Statements for a complete description of recent accounting standards which we have not yet been required to implement and may be applicable to our operation, as well as those significant accounting standards that have been adopted during 2008.

# Significant Accounting Policies and Critical Accounting Estimates

Certain of our accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. These judgments are based on our historical experience, terms of existing contracts, our evaluation of trends in the industry, information provided by our customers and information available from other outside sources, as appropriate. For a discussion of our significant accounting policies and critical accounting estimates, see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Significant Accounting Policies and Critical Accounting Estimates, and Note 1. Significant Accounting Policies, to the consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2007.

We adopted Statement of Financial Accounting Standards ("SFAS") No. 157 ("SFAS 157"), *Fair Value Measurements* and SFAS No. 158 ("SFAS 158"), *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans-an amendment of FASB Statements No. 87, 88, 106, and 132(R)*. For a discussion of the impact of adoption of SFAS 157 and SFAS 158, see Note 1. Basis of Presentation to the consolidated financial statements included in this Quarterly Report on Form 10-Q. There have been no other significant changes in our significant accounting policies or critical accounting estimates during the three months ended March 31, 2008.

#### **Forward-Looking Statements**

This Quarterly Report on Form 10-Q, including the exhibits being filed as part of this report, as well as other statements made by Delphi may contain forward-looking statements that reflect, when made, the Company's current views with respect to current events and financial performance. Such forward-looking statements are and will be, as the case may be, subject to many risks, uncertainties and factors relating to the Company's operations and business environment which may cause the actual results of the Company to be materially different from any future results, express or implied, by such forward-looking statements. In some cases, you can identify these statements by forward-looking words such as "may," "might," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "potential" or "continue." the negative of these terms and other comparable terminology. Factors that could cause actual results to differ materially from these forward-looking statements include, but are not limited to, the following: the ability of the Company to continue as a going concern; the ability of the Company to operate pursuant to the terms of the debtor-in-possession financing facility and its advance agreement with GM, to obtain an extension of term or other amendments as necessary to maintain access to such facility and advance agreement; the Company's ability to obtain Court approval with respect to motions in the chapter 11 cases prosecuted by it from time to time; the ability of the Company to consummate its Amended Plan which was confirmed by the Court on January 25, 2008 or any other subsequently confirmed plan of reorganization; risks associated with third parties seeking and obtaining Court approval to terminate or shorten the exclusivity period for the Company to propose and confirm one or more plans of reorganization, for the appointment of a chapter 11 trustee or to convert the cases to chapter 7 cases; the ability of the Company to obtain and maintain normal terms with vendors and service providers; the Company's ability to maintain contracts that are critical to its operations; the potential adverse impact of the chapter 11 cases on the Company's liquidity or results of operations; the ability of the Company to fund and execute its business plan (including the transformation plan described in

Note 2. Transformation Plan and Chapter 11 Bankruptcy, to the consolidated financial statements) and to do so in a timely manner; the ability of the Company to attract, motivate and/or retain key executives and associates; the ability of the Company to avoid or continue to operate during a strike, or partial work stoppage or slow down by any of its unionized employees or those of its principal customers and the ability of the Company to attract and retain customers. Additional factors that could affect future results are identified in the Annual Report on Form 10-K for the year ended December 31, 2007 filed with the SEC, including the risk factors in Part I. Item 1A. Risk Factors, contained therein and in Part II. Item 1A. Risk Factors in this quarterly report on Form 10-Q. Delphi disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events and/or otherwise. Similarly, these and other factors, including the terms of any reorganization plan ultimately confirmed, can affect the value of the Company's various prepetition liabilities, common stock and/or other equity securities.

# ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes to our exposures to market risk since December 31, 2007.

#### ITEM 4. CONTROLS AND PROCEDURES

#### **Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our Chief Executive Officer (the "CEO") and Chief Financial Officer (the "CFO"), we have evaluated the effectiveness of design and operation of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this report. Based on this evaluation, our CEO and CFO concluded that our disclosure controls and procedures were not effective as of March 31, 2008. The basis for this determination was that, as reported in our annual report on Form 10-K for the period ended December 31, 2007, we have identified a material weakness in our internal control over financial reporting, which we view as an integral part of our disclosure controls and procedures, and remedial actions taken and planned which we expect will materially affect such controls, see Item 9A. Controls and Procedures of our annual report on Form 10-K for the year ended December 31, 2007, which was filed on February 19, 2008, and which is incorporated by reference into this Item 4.

The certifications of the Company's CEO and CFO are attached as Exhibits 31(a) and 31(b) to this Quarterly Report on Form 10-Q include, in paragraph 4 of such certifications, information concerning the Company's disclosure controls and procedures and internal control over financial reporting. Such certifications should be read in conjunction with the information contained in this Item 4, including the information incorporated by reference to our filing on Form 10-K for the year ended December 31, 2007, for a more complete understanding of the matters covered by such certifications.

## Changes in internal control over financial reporting

While we are continuing to develop and implement remediation plans with respect to the identified material weakness, there have been no changes in our internal control over financial reporting other than those discussed below that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting beyond those identified in our Form 10-K for the year ended December 31, 2007.

Deployment of the Company's enterprise software solution, including the implementation of a perpetual inventory system at our Electrical/Electronics Architecture segment's North American operations will continue throughout 2008. The successful implementation of this system is an integral element to the remediation of our material weakness regarding Inventory Accounting Adjustments as disclosed in Item 9A. Controls and Procedures of our annual report on Form 10-K for the year ended December 31, 2007.

During the three months ended March 31, 2008, the Company made progress in outsourcing the transaction processing and administration for its contract administration, travel and expense reporting, accounts

payable and receivables processing functions for its North American and European operations to a third party. The Company expects outsourcing of these functions will streamline and enhance the control environment of these accounting and reporting activities. The failure to successfully transition these processes and to implement proper controls and procedures both in the transition as well as after the transition is complete may adversely impact our internal control environment. We anticipate the global transition of these activities will continue throughout 2008 and 2009.

As noted in Item 1A. Risk Factors in our annual report on Form 10-K for the year ended December 31, 2007, failure to achieve and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act of 2002 could have a material effect on our business and our failure to maintain sustained improvements in our controls or successfully implement compensating controls and procedures as part of our disclosure controls and procedures may further adversely impact our existing internal control structure.

# PART II. OTHER INFORMATION

# ITEM 1. LEGAL PROCEEDINGS

Except as discussed in Note 2. Transformation Plan and Chapter 11 Bankruptcy, and Note 18. Commitments and Contingencies, to the consolidated financial statements of this quarterly report there have been no other material developments in legal proceedings involving Delphi or its subsidiaries since those reported in Delphi's Annual Report on Form 10-K for the year ended December 31, 2007.

We are involved in routine litigation incidental to the conduct of our business. We do not believe that any of the routine litigation to which we are currently a party will have a material adverse effect on our business or financial condition.

# ITEM 1A. RISK FACTORS

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Item 1A. Risk Factors, in our Annual Report on Form 10-K for the year ended December 31, 2007 as supplemented by certain additional or updated risk factors enumerated below. The risks described in our Annual Report on Form 10-K and those set forth below are not the only risks facing our Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may adversely affect our business, financial condition and/or operating results. You should also refer to the Statement Regarding Forward-Looking Statements in this quarterly report.

# If We Are Unable To Successfully Reorganize Our Capital Structure And Operations And Implement Our Transformation Plan Through the Chapter 11 Process, The Debtors May Be Required To Liquidate Their Assets.

The failure to consummate our Amended Plan as confirmed by the Court on January 25, 2008 means that we will continue to face substantial risks related to the filings on October 8, 2005, and October 14, 2005, by us and certain of our U.S. subsidiaries of voluntary petitions for reorganization relief under chapter 11 of the Bankruptcy Code. The risks that the Company continues to face related to the Chapter 11 Filings include, but are not limited to, the following:

The chapter 11 cases may adversely affect our business prospects and/or our ability to operate during the reorganization cases.

We may have difficulty continuing to obtain and maintain contracts, including critical supply agreements, necessary to continue our operations at affordable rates with competitive terms.

We may have difficulty maintaining existing customer relationships and winning awards for new business.

We may not be able to further diversify our customer base and maintain our customer base in our non-Debtor entities, both during and assuming successful emergence from chapter 11.

Debtor entity transactions outside the ordinary course of business are subject to the prior approval of the Court, which may limit our ability to respond timely to certain events or take advantage of certain opportunities.

The Debtors may not be able to obtain Court approval or such approval may be delayed with respect to motions made in the chapter 11 cases.

We may be unable to retain and motivate key executives and associates through the process of reorganization, and we may have difficulty attracting new employees.

The Debtors may be unable to maintain satisfactory labor relations as we seek to implement negotiated changes to our existing collective bargaining agreements with our U.S. labor unions and certain retiree benefits. Although we have reached agreements with each of our U.S. labor unions to settle our previously-filed motions under sections 1113 and 1114 of the Bankruptcy Code and to

extend, with certain modifications, our collective bargaining agreements, our failure to consummate the Amended Plan (as modified) and the transactions contemplated thereby may leave us with no choice but to reinitiate a process to reject our collective bargaining agreements. Rejection of our labor contracts could lead such unions to call a strike or other form of significant work disruption.

We may have difficulty selling or exiting non-core businesses in a timely manner due to union or customer concerns. Failure to timely exit the non-core businesses may have a negative impact on future earnings and cash flows.

There can be no assurance as to our ability to maintain sufficient financing sources to fund our reorganization plan and meet future obligations, including costs expected to be incurred related to the workforce transition program comprehended in the U.S. labor settlement agreements. We may be unable to operate pursuant to the terms of our Amended and Restated DIP Credit Facility, including the financial covenants and restrictions contained therein, or to negotiate and obtain necessary approvals, amendments, waivers, extensions or other types of modifications, and to otherwise fund and execute our business plans during the chapter 11 cases. As noted below, we may be unsuccessful in obtaining an extension of such facility beyond its current maturity date of December 31, 2008 and we may not be able to procure alternative financing. Failure to continue to operate pursuant to the terms of the Amended and Restated DIP Credit Facility or procure alternative financing would have a material adverse impact on our business, financial condition and operating results by severely restricting our liquidity and force us, among other things to delay completion of our transformation plan.

GM is one of the largest creditors and a significant stakeholder in our chapter 11 cases, and our ability to consummate the transactions contemplated by the U.S. labor settlement agreements, to implement a plan of reorganization and to maintain sufficient liquidity while continuing to operate in chapter 11 prior to the effectiveness of the settlement agreements we have negotiated with GM, depend not only on reaching a consensual agreement with GM, but also on GM' s ability to fulfill certain financial obligations to Delphi' s UAW-, IUE-CWA-, and USW-represented employees and retirees and advance amounts anticipated to be paid following effectiveness of the GM Settlement and restructuring agreements, including the assumption of approximately \$7 billion of certain post-retirement benefits for certain of Delphi' s active and retired hourly employees. GM had reported a variety of challenges it is facing, including with respect to its debt ratings, its relationships with its unions and large shareholders and its cost and pricing structures. If GM is unable or unwilling to fulfill these commitments, we believe that the Company' s cost structure and ability to operate would be adversely affected.

Third parties may seek and obtain Court approval to terminate or shorten the exclusivity period for Delphi to propose and confirm one or more plans of reorganization, to appoint a chapter 11 trustee, or to convert the cases to chapter 7 cases. Pursuant to an order entered by the Court on April 30, 2008, the Debtors' exclusivity period under the Bankruptcy Code for filing a plan of reorganization is extended until 30 days after substantial consummation of the Amended Plan (as modified) or any modified plan and the Debtors' exclusivity period for soliciting acceptance of the Amended Plan (as modified plan. Notwithstanding the foregoing, the Debtors' exclusive period for filing a plan of reorganization, as between the Debtors and the Creditors' Committee and the Equity Committee, collectively, is extended through and including August 31, 2008 and the Creditors' Committee and the Equity Committee, collectively, is extended through and including October 31, 2008.

Although we have been successful to date in implementing various aspects of our transformation plan, including achieving settlement agreements with our U.S. labor unions and GM, making substantial progress in divesting many of our non-core businesses, and devising a plan to fund our existing defined benefit plans upon emergence from chapter 11, the failure to consummate our Amended Plan (as modified) means that we and the other Debtors will continue to operate as "debtors-in-possession" in chapter 11, until one of the following occurs: additional actions are taken to consummate the Amended Plan (as modified), the order confirming the Amended Plan is modified, a further amended plan of reorganization is confirmed or other dispositive action

is taken. In addition, in the event the Amended Plan (as modified) is not consummated, approvals obtained in connection with the confirmation of the Amended Plan, may become null and void, including:

Court approval of the GM settlement and restructuring agreements, the termination of which may leave us unable to complete our transformation plans, including implementing revised collective bargaining agreements with our U.S. labor unions, winding-down or divesting non-core businesses, and implementing the proposed funding plan for our existing defined benefit plans;

Court approval and approval by the U.S. District Court for the Eastern District of Michigan of the settlement agreements reached with plaintiffs in the securities and Employee Retirement Income Security Act ("ERISA") Multidistrict Litigation; and

The Court's entry of orders, authorizing the assumption and rejection of unexpired leases and executory contracts by Delphi.

Even assuming a successful emergence from chapter 11, there can be no assurance as to the overall long-term viability of our operational reorganization, including our ability to generate sufficient cash to support our operating needs, fulfill our transformation objectives and fund continued investment in technology and product development without incurring substantial indebtedness that will hinder our ability to compete, adapt to market changes and grow our business in the future.

In addition, the uncertainty regarding the eventual outcome of our transformation plan, and the effect of other unknown adverse factors, could threaten our existence as a going concern. Continuing on a going-concern basis is dependent upon, among other things, implementation of the Amended Plan (as modified) or an alternative confirmed plan of reorganization, maintaining the support of key vendors and customers, and retaining key personnel, along with financial, business, and other factors, many of which are beyond our control. Our independent registered public accounting firm has included a going-concern explanatory paragraph in its report on our consolidated financial statements.

Under the absolute priority rules established by the Bankruptcy Code, unless creditors agree otherwise, prepetition liabilities and postpetition liabilities accrued during the pendency of the chapter 11 cases must be satisfied in full before shareholders may be entitled to receive any distribution or retain any property under a plan of reorganization. No assurance can be given as to what values, if any, will be ascribed in the chapter 11 cases to each of these constituencies or what types or amounts of distributions, if any, they would receive upon consummation of a confirmed plan of reorganization. Our common stock may ultimately be determined to have no value. Accordingly, the Company urges that appropriate caution be exercised with respect to existing and future investments in its common stock or other equity securities, or any claims relating to prepetition liabilities.

# We Continue to Need Substantial Borrowings To Support Our Restructuring And Operations. We May Not Be Able To Obtain An Extension Of Our Current Debtor-in-Possession Financing Or Alternative Sources of Liquidity Necessary For Our Transformation Plan And Continuation As A Going Concern Until We Are Able To Successfully Reorganize Our Capital Structure.

Our net cash used in operating activities totaled \$290 million and \$414 million for the three months ended March 31, 2008 and 2007, respectively. Cash flow from operating activities was reduced for the three months ended March 31, 2008 and 2007 by contributions to our U.S. pension plans of \$68 million and \$92 million, respectively, and other postretirement benefit payments of \$66 million and \$40 million, respectively. Cash flow from operating activities during the three months ended March 31, 2008 and 2007 was reduced for cash paid to employees in conjunction with the U.S. employee workforce transition programs of \$71 million and \$481 million, respectively, net of reimbursement by GM of \$264 million during the three months ended March 31, 2007. During the three months ended March 31, 2008 and 2007, our cash flows from operating activities were negatively impacted by payments of \$100 million and \$107 million, respectively, of interest, reorganization related costs of \$16 million and \$30 million, respectively, and incentive compensation to executives and U.S. salaried employees of \$59 million and \$62 million. In addition, operating cash flow is impacted by the timing of payments to suppliers and receipts from customers. Absent a comprehensive restructuring to address our high cost structure in the U.S. we expect that our operating activities will continue

to use, not generate, cash and that we will need to supplement cash from operations with periodic draws on our revolving portion of our Amended and Restated DIP Credit Facility and or advances from GM of amounts anticipated to be made by GM to following effectiveness of the GM settlement and restructuring agreements.

In addition, the Amended and Restated DIP Credit Facility and the agreement by which GM has agreed to make advances to us, both expire on December 31, 2008. If we are not able to emerge from chapter 11 prior to December 31, 2008, we would seek to further extend the term of our Amended and Restated DIP Credit Facility, accelerate the effectiveness of the GM settlement and restructuring agreements and/or seek alternative sources of financing. Delphi can make no assurances that it will emerge from bankruptcy before the Amended and Restated DIP Credit Facility and GM agreement expire. The failure to secure such extension or alternative sources of financing would materially adversely impact our business, financial condition and operating results by severely restricting our liquidity.

# The Current Volatility In The Credit Markets And Economic Conditions In The Global Automotive Markets May Make It Difficult For Us To Raise Financing Necessary For Us To Emerge From Chapter 11 In The Near Term.

Consummation of a confirmed plan of reorganization will likely depend on obtaining both debt and equity exit financing in order to successfully reorganize our capital structure. Despite the substantial uncertainty in the U.S. and global credit markets, Delphi was able to obtain exit financing commitments of \$6.1 billion in satisfaction of the requirements of the EPCA, however it terminated those commitments, which would have expired on April 15, 2008, in light of the Investors' decision not to fund their investments under the EPCA. There can be no assurances that Delphi will be able to obtain replacement exit financing or that other parties will be willing to invest in the Amended Plan (as modified) as it exists or as may be modified, or in any subsequently confirmed plan of reorganization.

# We May Be Unable To Generate Sufficient Excess Cash Flow To Meet Increased U.S. Pension Funding Obligations Upon Emergence.

We may require additional cash to meet increases in U.S. Pension funding obligations resulting from market volatility that adversely affects our asset return expectations, a declining interest rate environment or other reasons. Delphi's pension obligations, including those covering U.S. hourly and salaried employees, exposed Delphi to approximately \$3.8 billion and \$4.8 billion in underfunded liabilities at December 31, 2007 and 2006, respectively. However, through the chapter 11 process, Delphi is permitted to defer a significant portion of the pension contributions until it emerges from chapter 11. Delphi will be required to make up any deferred pension contributions at the time of its emergence from chapter 11. Delphi's discussions with the Internal Revenue Service ("IRS") and Pension Benefit Guaranty Corporation ("PBGC") regarding the funding of certain of its pension obligations upon emergence from chapter 11 through a combination of cash contributions and a transfer of certain underfunded liabilities to a pension plan sponsored by GM. Assuming a consensual funding plan is achieved, the Company expects that its pension contributions due upon emergence from chapter 11 will approximate \$1 billion under current legislation and plan design, after giving effect to an anticipated transfer of at least a net of \$1.5 billion of unfunded benefit liabilities from the Hourly Plan to a plan sponsored by GM. The inability to achieve a consensual funding plan or the other factors noted above, may result in an increase in ultimate funding requirements.

In addition, in 2006 and 2007, the IRS and PBGC agreed to certain conditional funding waivers intended to facilitate the transfer of certain underfunded liabilities to a pension plan sponsored by GM in an economically efficient manner, thereby effectively lowering the amount of cash contributions to be made after Delphi's emergence from chapter 11, and to remove uncertainty as to whether excise taxes would be assessed as a result of the accumulated funding deficiencies relating to prepetition service. However, the waivers were conditioned on Delphi emerging from chapter 11 on or before May 9, 2008. Delphi did not seek extension past May 9, 2008 of the conditional waivers. Delphi believes that the operation of ERISA will still, under most circumstances, permit it to be able to effect the planned transfer of hourly pension obligations to GM in an economically efficient manner. However, by permitting the waivers to lapse Delphi may be exposed to excise taxes as a result of accumulated funding deficiencies relating to accumulated funding deficiencies for the plan

years ended September 30, 2005 and 2006 of approximately \$170 million and \$1.2 billion, respectively. Accordingly, Delphi may be subject to excise taxes of approximately \$17 million and \$122 million for plan years ended September 30, 2005 and 2006, respectively. Also, should Delphi not meet its minimum funding requirements on or before June 15, 2008, the accumulated funding deficiency would be approximately \$2.4 billion for the plan year ended September 30, 2007, possibly exposing Delphi to further excise taxes of approximately \$244 million. If the accumulated funding deficiency is not corrected after Delphi receives the assessments, a 100% excise tax may be assessed at the discretion of the IRS. Delphi believes that under the Bankruptcy Code, the Company is not obligated to make contributions for pension benefits attributable to prepetition service while in chapter 11 and that it has made all required payments for postpetition service. Delphi further believes that as a result it is not liable for any penalty excise taxes that may be assessed by the IRS. Delphi believes that its ultimate emergence from chapter 11 will result in satisfaction of its pension funding obligations, and although there is significant uncertainty surrounding the outcome of the excise tax assessment and the potential for Delphi to litigate this matter, if necessary, management has concluded that an unfavorable outcome is not currently probable. Assuming Delphi is assessed an excise tax for all plan years through 2007, the total range of exposure would approximate between \$380 million and \$3.8 billion. Refer to Note 2. Transformation Plan and Chapter 11 Bankruptcy for further information on Delphi's discussions with the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

# Even if Our Employees do not Strike, Labor Related Disruptions at Our Customers or other Suppliers May Adversely Affect our Operations.

During the three months ended March 31, 2008, production in GM North America decreased due to work stoppages at American Axle, a Tier-1 supplier to GM based in Detroit, Michigan (the "American Axle Work Stoppages"). On February 25, 2008 certain UAW-represented hourly employees of American Axle ceased production at certain of its manufacturing plants in North America. The work stoppages have forced GM to slow down or suspend production at certain of their manufacturing plants, which has also slowed production of other Tier 1 suppliers, including Delphi. The impact of the American Axle Work Stoppages on Delphi operations through March 2008 was \$214 million unfavorable to sales.

# Changes In the Competitive Environment For Raw Materials Integral To Our Products May Adversely Affect Our Profitability.

In recent periods there have been significant increases in the global prices of copper, aluminum, petroleum-based resin products, steel and steel scrap, and fuel charges, which have had and may continue to have an unfavorable impact on our business, results of operations or financial condition. We anticipate that these increases along with any fluctuation in the availability of these commodities will continue to have adverse affects on our business, results of operations or financial condition throughout fiscal 2008. As the resin raw material market related cost pressure continues, we expect to see increasing costs in our resin as well as our plastic component supplier value streams. We will continue efforts to pass some of the supply and raw material cost increases onto our customers, although competitive and market pressures have limited our ability to do that, particularly with domestic vehicle manufacturers ("VMs"), and may prevent us from doing so in the future and in some cases there is a lapse of time before we are able to pass price increases through to the customer. Price reductions are often required pursuant to contracts or to remain competitive with our peers and are sometimes necessary to win additional business. In addition, our customers are generally not obligated to accept price increases that we may desire to pass along to them. This inability to pass on price increases to our customers when raw material prices increase rapidly or to significantly higher than historic levels could adversely affect our operating margins and cash flow, possibly resulting in lower operating income and profitability.

We also face an inherent business risk of exposure to commodity prices risks, and have historically offset a portion of our exposure, particularly to changes in the price of various non-ferrous metals used in our manufacturing operations, through commodity swaps and option contracts. We expect to be continually challenged as demand for our principal raw materials will be significantly impacted by demand in emerging markets, particularly in China and India. We cannot provide assurance that fluctuations in commodity prices

will not otherwise have a material adverse effect on our financial condition or results of operations, or cause significant fluctuations in quarterly and annual results of operations.

# ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

#### Purchase of Equity Securities by the Issuer and Affiliated Purchasers

No shares were purchased by the Company or on its behalf by any affiliated purchaser in the first quarter of 2008.

### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

The Chapter 11 Filings triggered defaults on substantially all debt obligations of the Debtors. For additional information, refer to Note 14. Debt, to the consolidated financial statements within our Annual Report on Form 10-K for the year ended December 31, 2007.

# ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

During the first quarter of 2008, no matters were submitted to a vote of security holders.

# **ITEM 5. OTHER INFORMATION**

The following items occurred within the last four business days of the date of filing of this quarter report and are reported here in lieu of filing a Form 8-K.

#### Item 1.01 Entry into a Material Definitive Agreement

On May 9, 2008, Delphi entered into an amended and restated DIP credit facility (the "Amended and Restated DIP Credit Facility"). The Amended and Restated DIP Credit Facility extends the tenor until December 31, 2008 and modifies the size of the facility by reducing the Revolving Facility to \$1.1 billion from \$1.75 billion and increasing the size of the Tranche B Term Loan to \$500 million from \$250 million and leaving the Tranche C Term Loan unchanged at approximately \$2.5 billion. On May 9, 2008, Delphi filed a motion with the Court to increase the Tranche C Term Loan to \$2.75 billion from approximately \$2.5 billion and expects the Court to approve the motion by the end of May 2008 with funding in June 2008. Concurrently with the Amended and Restated DIP Credit Facility, Delphi entered into an agreement with GM whereby GM will advance Delphi amounts anticipated to be paid following the effectiveness of the GSA and MRA. The material terms of the Amended and Restated DIP Credit Facility and the agreement with GM are described in Note 19. Subsequent Events to the consolidated financial statements and the executed agreements are filed as exhibits to this quarterly report.

# ITEM 6. EXHIBITS

| Exhibit<br>Numb | er <u>Exhibit Name</u>   |
|-----------------|--|
| 2(a)            | Confirmed Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and   |
|                 | Debtors-in-Possession, incorporated by reference to Exhibit 99(e) to Delphi's Report on Form 8-K filed   |
|                 | January 30, 2008.  |
| 3(a)            | Amended and Restated Certificate of Incorporation of Delphi Automotive Systems Corporation, incorporated by reference to Exhibit 3(a) to Delphi's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002. |
| 3(b)            | Certificate of Ownership and Merger, dated March 13, 2002, Merging Delphi Corporation into Delphi  |
|                 | Automotive Systems Corporation, incorporated by reference to Exhibit 3(b) to Delphi' s Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.  |
| 3(c)            | Amended and Restated Bylaws of Delphi Corporation, incorporated by reference to Exhibit 99(c) to Delphi's Report on Form 8-K filed October 14, 2005.   |
| 10(a)           | Delphi Corporation 2007 Short-Term Incentive Plan, incorporated by reference to Exhibit 99(a) to Delphi's  |
|                 | Report on Form 8-K filed January 30, 2008.*  |
| 10(b)           | Delphi Corporation 2007 Long-Term Incentive Plan, incorporated by reference to Exhibit 99(b) to Delphi's   |
|                 | Report on Form 8-K filed January 30, 2008.*  |
| 10(c)           | Delphi Corporation Salaried Retirement Equalization Savings Program, incorporated by reference to  |
|                 | Exhibit 99(d) to Delphi' s Report on Form 8-K filed January 30, 2008.*   |
| 10(d)           | Delphi Corporation Supplemental Executive Retirement Program, incorporated by reference to Exhibit 99(a) to Delphi's Report on Form 8-K/A filed February 20, 2008.*  |
| 10(e)           | Order Under 11 U.S.C. §§ 105 and 363 of the United States Bankruptcy Court for the Southern District of  |
|                 | New York Authorizing the Debtors to Implement a Short-Term Annual Incentive Program entered March 19, 2008, incorporated by reference to Exhibit 99(a) to Delphi's Report on Form 8-K filed on March 25, 2008.*      |
| 10(f)           | Amended and Restated Revolving Credit, Term Loan, and Guaranty Agreement dated as of May 9, 2008.  |
| 10(g)           | Agreement between Delphi Corporation and General Motors Corporation dated as of May 9, 2008.   |
| 31(a)           | Certification Pursuant to Exchange Act Rules 13a-14(a)/15d-14(a), adopted pursuant to Section 302 of the   |
|                 | Sarbanes-Oxley Act of 2002.  |
| 31(b)           | Certification Pursuant to Exchange Act Rules 13a-14(a)/15d-14(a), adopted pursuant to Section 302 of the   |
|                 | Sarbanes-Oxley Act of 2002.  |
| 32(a)           | Certification Pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.   |
| 32(b)           | Certification Pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act  |

\* Management contract or compensatory plan or arrangement.

of 2002.

# SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

> Delphi Corporation (Registrant)

May 9, 2008

/s/ Thomas S. Timko

Thomas S. Timko Chief Accounting Officer and Controller

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### AMENDED AND RESTATED REVOLVING CREDIT, TERM LOAN AND GUARANTY AGREEMENT

#### Among

#### **DELPHI CORPORATION**

a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code as Borrower

DUITUWC

and

THE SUBSIDIARIES OF THE BORROWER NAMED HEREIN, Each a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code <u>as Guarantors</u>

and

# THE LENDERS PARTY HERETO

and

JPMORGAN CHASE BANK, N.A. as Administrative Agent

and

# CITICORP USA, INC. as Syndication Agent

and

# BANK OF AMERICA, N.A., GENERAL ELECTRIC CAPITAL CORPORATION and WACHOVIA CAPITAL FINANCE CORPORATION as Co-Documentation Agents for Tranche A and Tranche B

J.P. MORGAN SECURITIES INC., CITIGROUP GLOBAL MARKETS INC. and GE CAPITAL MARKETS, INC. as Joint Lead Arrangers for Tranche A and Tranche B

JPMORGAN SECURITIES INC., CITIGROUP GLOBAL MARKETS INC., GE CAPITAL MARKETS, INC. and BANK OF AMERICA, N.A. as Joint Bookrunners for Tranche A and Tranche B

> **DEUTSCHE BANK SECURITIES INC. as Documentation Agent for Tranche C**

J.P. MORGAN SECURITIES INC., CITIGROUP GLOBAL MARKETS INC. and DEUTSCHE BANK SECURITIES INC. <u>as Joint Lead Arrangers for Tranche C</u>

J.P. MORGAN SECURITIES INC., CITIGROUP GLOBAL MARKETS INC. and DEUTSCHE BANK SECURITIES INC. <u>as Joint Bookrunners for Tranche C</u>

Dated as of May 9, 2008

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EXHIBIT A

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Approval Order

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# AMENDED AND RESTATED REVOLVING CREDIT, TERM LOAN AND GUARANTY AGREEMENT Dated as of May 9, 2008

AMENDED AND RESTATED REVOLVING CREDIT, TERM LOAN AND GUARANTY AGREEMENT, dated as of May 9, 2008, among DELPHI CORPORATION, a Delaware corporation (the "Borrower"), a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code, and the subsidiaries of the Borrower signatory hereto (each a "Guarantor" and collectively the "Guarantors"), each of which Guarantors is a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (the cases of the Borrower and the Guarantors, each a "Case" and collectively, the "Cases"), the financial institutions from time to time party hereto (the "Lenders"), JPMORGAN CHASE BANK, N.A. ("JPMCB"), as administrative agent (in such capacity, the "Administrative Agent") for the Lenders, and CITICORP USA, INC., as syndication agent (in such capacity, the "Syndication Agent"; together, the Administrative Agent and the Syndication Agent are the "Agents").

# **INTRODUCTORY STATEMENT**

On October 8, 2005, the Borrower and the Guarantors filed voluntary petitions with the Bankruptcy Court initiating the Cases and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

Certain of the parties hereto have heretofore entered into that certain Revolving Credit, Term Loan and Guaranty Agreement, dated as of January 9, 2007 (the "<u>Original Credit Agreement</u>", and as amended and restated as of November 20, 2007 and in effect immediately prior to the effectiveness of this Amended and Restated Revolving Credit, Term Loan and Guaranty Agreement, the "<u>Existing Credit Agreement</u>").

Subject to the satisfaction of the conditions set forth in Section 4.01 hereof, the Existing Credit Agreement shall be amended and restated in its entirety to read as set forth herein and shall provide for, among other things, loan facilities of up to \$4,350,000,000, all of the Borrower's obligations under each of which facilities will be guaranteed by the Guarantors.

# SECTION 1. DEFINITIONS

# SECTION 1.01 Defined Terms.

"<u>ABR</u>", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"ABR Borrowing" shall mean a Borrowing comprised of ABR Loans.

"<u>Account</u>" shall mean any right to payment for goods sold or leased or for services rendered, whether or not earned by performance, as set forth in the UCC.

"Account Debtor" shall mean the Person obligated on an Account.

"Additional Lender" means a Lender which is an Amended and Restated Lender and which is not an Original Lender.

"<u>Adjusted LIBO Rate</u>" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period <u>multiplied by</u> (b) the Statutory Reserve Rate, subject to the proviso set forth in Section 2.08(b) with respect to any Tranche B Eurodollar Borrowing or a Tranche C Loan Eurodollar Borrowing.

"Adjusted Eligible Receivables" shall mean the Eligible Receivables, minus the Dilution Reserve.

"Administrative Agent" shall have the meaning given such term in the Introduction.

"<u>Affiliate</u>" shall mean, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, a Person (a "<u>Controlled Person</u>") shall be deemed to be "<u>controlled by</u>" another Person (a "<u>Controlling Person</u>") if the Controlling Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of the Controlled Person whether by contract or otherwise.

"Agents" shall have the meaning given such term in the Introduction.

"Agreement" shall mean this Revolving Credit, Term Loan and Guaranty Agreement, as the same may from time to time be amended, modified or supplemented.

"<u>Alternate Base Rate</u>" shall mean, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%, subject to the proviso set forth in Section 2.08(a) with respect to any Tranche B ABR Borrowing or a Tranche C Loan ABR Borrowing. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"<u>Amended and Restated Lenders</u>" shall mean the Lenders identified in Annex A hereto, the interest(s) of each of which shall be, on the Effective Date, those shown opposite its name on Annex A hereto under the heading "Tranche A Commitment Amount", "Tranche B Commitment Amount", "Initial Tranche C Commitment Amount" and/or "Subsequent Tranche C Commitment Amount".

"<u>Approval Order</u>" shall have the meaning given such term in Section 4.01(b) of the Original Credit Agreement, as supplemented from time to time thereafter, including by the Fourth Amendment Approval Order and the Supplemental Approval Order.

"Approved Fund" shall have the meaning given such term in Section 10.03(b).

"Arrangers/Bookrunners" shall mean, collectively, J.P. Morgan Securities Inc., Citigroup Global Markets Inc., GE Capital Markets, Inc. and Deutsche Bank Securities Inc.

"<u>Asset Sale</u>" shall mean any Disposition of property or series of related Dispositions of property by the Borrower or any Guarantor (excluding any such Disposition permitted by Clauses (i), (ii), (ii), (v), (vii) and (viii) of Section 6.10).

"<u>Assignment and Acceptance</u>" shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.03), and accepted by the Administrative Agent, substantially in the form of Exhibit C.

"<u>Automotive Holdings Group</u>" shall mean the division within Delphi Automotive Systems LLC comprised of select product lines and plant sites that do not meet the Borrower's targets for net income or other financial metrics, with such additions and deletions to product lines and plant sites as the Borrower may from time to time determine (in a manner consistent with the criteria used on the Closing Date to include product lines and plant sites in such division) and as such divisional name may be changed from time to time.

"Availability Period" shall mean the period from and including the Effective Date to but excluding the Termination Date.

"<u>Available Amount</u>" means, at any time, an amount equal to (A) the lesser of (i) the Total First Priority Commitment at such time and (ii) the Borrowing Base, minus (B) after giving effect to any proposed Borrowing or issuance of a Letter of Credit at such time, the sum of the aggregate principal amount of the outstanding Tranche A Loans, plus the aggregate principal amount of the outstanding Tranche B Loan, plus the LC Exposure.

"Available Inventory" shall mean, on any date, the lesser of (i) an amount equal to (x) the product of (1) 75% multiplied by (2) the sum of Eligible Inventory, less Inventory Reserves, less (y) Rent Reserves and (ii) 85% of the product of (x) the Net Recovery Rate in effect for the Inventory (based on the then most recent independent inventory appraisal) on such date of determination, multiplied by (y) the aggregate amount of gross domestic Inventory and Mexican Inventory (in each case as reported in accordance with the Borrower's general ledger and inventory system at such date of determination) as set forth in the most recent Borrowing Base Certificate.

"<u>Available Liquidity</u>" shall mean, at any time, an amount that is equal to the sum of (i) the Available Amount at such time, (ii) the unrestricted cash and cash equivalents of the Borrower and the Guarantors (as reflected on a consolidated balance sheet of the Borrower and the Guarantors) in an aggregate amount up to \$25,000,000 at such time, and (iii) the aggregate amount of Cash Collateral at such time.

"Available Receivables" shall mean, at any date of determination, an amount equal to 85% of Adjusted Eligible Receivables.

"<u>Bankruptcy Code</u>" shall mean The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. Section 101 et seq.

"<u>Bankruptcy Court</u>" shall mean the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Cases from time to time.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States.

"Borrower" shall have the meaning given such term in the Introduction.

"Borrowing" shall mean (a) the incurrence, conversion or continuation of Tranche A Loans of a single Type made from all the Tranche A Lenders on a single date and having, in the case of Eurodollar Loans, a single Interest Period, (b) the incurrence of the Tranche B Loan or the conversion or continuation of a portion of the Tranche B Loan having a specified Type and having, in the case of a Eurodollar Borrowing, a specified Interest Period and (c) the incurrence of the Tranche C Loan or the conversion or continuation of a portion of the Tranche C Loan having a specified Type and having, in the case of a Eurodollar Borrowing, a specified Type and having, in the case of a Eurodollar Borrowing, a specified Interest Period.

"Borrowing Base" shall mean, on any date, an amount (calculated based on the most recent Borrowing Base Certificate delivered to the Administrative Agent in accordance with this Agreement) that is equal to the sum of (i) Available Receivables, plus (ii) Available Inventory, plus (iii) the Fixed Asset Component, minus (iv) the Carve-Out, minus (v) an amount equal to the excess (if any) of the aggregate amount of Secured Domestic Hedging Obligations (determined on a marked-to-market basis) over \$75,000,000, minus (vi) the GM Prepayment Reserve outstanding on such date; provided that the aggregate amount of the Fixed Asset Component shall at no time account for more than thirty percent (30%) of the aggregate amount of the Borrowing Base (it being understood that, solely for purposes of this proviso, the aggregate amount of the Borrowing Base shall be calculated without giving effect to the deductions described in clauses (iv) and (v) above). For the avoidance of doubt, for purposes of this definition, (A) the amount described in clause (iii) of the definition of Carve-Out shall be deemed at all times to be equal to \$35,000,000 and (B) the amount described in clause (iv)(y) of the definition of Carve-Out shall be deemed at all times to be equal to \$10,000,000. Borrowing Base standards may be fixed and revised from time to time by the Administrative Agent in its reasonable discretion.

"Borrowing Base Certificate" shall mean a certificate substantially in the form of an Exhibit E (with such changes therein as may be reasonably required from time to time (upon at least 10 days' notice by the Administrative Agent, except during the continuance of an Event of Default) to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time), executed and certified by a Financial Officer of the Borrower, which shall include appropriate exhibits, schedules and collateral reporting requirements as provided for herein, including in Section 5.08.

"Borrowing Request" shall mean a request by the Borrower for a Borrowing in accordance with Section 2.04.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York City are required or authorized to remain closed (and, for a Letter of Credit, other than a day on which the applicable Issuing Lender is closed); provided, however, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits on the London interbank market.

"Canadian Dollars" and "C\$" mean the lawful money of Canada.

"<u>Capitalized Lease</u>" shall mean, as applied to any Person, any lease of property by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP. The amount of obligations of such Person under a Capitalized Lease shall be the capitalized amount thereof determined in accordance with GAAP.

"<u>Carve-Out</u>" shall mean (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code, (ii) all fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code, (iii) after the occurrence and during the continuance of an Event of Default, the payment of allowed and unpaid professional fees and disbursements incurred by the Borrower, the Guarantors and any statutory committees appointed in the Cases (each, a "<u>Committee</u>"), and any Post-Order Transaction Expenses, in an aggregate amount not exceeding \$35,000,000 and (iv) all unpaid professional fees and disbursements incurred or accrued by the Borrowers, the Guarantors and any Committees, and any Post-Order Transaction Expenses, in each case incurred or accrued at any time when no Event of Default is continuing, in an aggregate amount not exceeding the sum of (x) such unpaid professional fees and disbursements and Post-Order Transaction Expenses reflected on the most recent Borrowing Base Certificate delivered to the Administrative Agent prior to any Event of Default that is then continuing and (y) such unpaid professional fees and disbursements and Post-Order Transaction Expenses incurred or accrued after the date of such Borrowing Base Certificate (but at a time when no Event of Default is continuing) in an aggregate amount under this clause (y) not exceeding \$10,000,000 (and with amounts included under this clause (y) to be supported by back-up documentation in respect of the amounts and dates of incurrence of such fees and disbursements), in each of the foregoing clauses (i), (ii), (iii) and (iv), to the extent allowed by the Bankruptcy Court at any time.

"Cases" shall have the meaning given such term in the Introduction.

"Cash Collateral" shall mean cash collateral and Permitted Investments pledged to the Administrative Agent and held in segregated accounts at the Administrative Agent subject to Full Control Deposit Account Agreements and/or Full Control Securities Account Agreements, as applicable.

"Cash Collateralization" shall have the meaning given such term in Section 2.03(j), and "Cash Collateralize" shall have the corresponding meaning.

"Change in Law" shall mean (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or Issuing Lender (or, for purposes of Section 2.16(b), by any lending office of such Lender or Issuing Lender or by such Lender's or Issuing Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"<u>Change of Control</u>" shall mean the occupation of a majority of the seats (other than vacant seats) on the Board of Directors of the Borrower by Persons who were neither (a)

nominated by the Board of Directors of the Borrower nor (b) appointed by directors so nominated.

"<u>Class</u>" (i) when used with respect to Lenders, shall refer to whether such Lenders are Tranche A Lenders, Tranche B Lenders or Tranche C Lenders, (ii) when used with respect to Commitments, refers to whether such Commitments are Tranche A Commitments, Tranche B Commitments, Initial Tranche C Commitments or Subsequent Tranche C Loan Commitments and (iii) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Tranche A Loans, Tranche B Loan, Initial Tranche C Loan or Subsequent Tranche C Loan.

"Closing Date" shall mean January 9, 2007.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Collateral" shall mean the "Collateral" as defined in the Security and Pledge Agreement.

"<u>Commitment</u>" shall mean either a Tranche A Commitment, a Tranche B Commitment, an Initial Tranche C Commitment or a Subsequent Tranche C Commitment.

"Commitment Letter" shall mean that certain Commitment Letter dated December 15, 2006, among the Arrangers/Bookrunners, certain of their Affiliates and the Borrower.

"<u>Consummation Date</u>" shall mean the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Reorganization Plan that is confirmed pursuant to an order of the Bankruptcy Court.

"DASHI Intercompany Transfer Order" shall mean the Order Under 11 U.S.C. §§ 363(c), 1107, and 1108, and Cash Management Order, and Alternatively, Under 11 U.S.C. §§ 363(b)(1) and 364(c), Confirming Authority of Delphi Automotive Systems (Holding), Inc. to Complete Intercompany Transfer of Funds, entered by the Bankruptcy Court on October 25, 2007.

"Debtor Liens" shall have the meaning set forth in the Approval Order.

"<u>Dilution Factors</u>" shall mean, without duplication (including, without duplication to the deductions taken into account in the calculation of Eligible Receivables), with respect to any period, the aggregate amount of all deductions, credit memos, returns, adjustments, allowances, bad debt write-offs and other non-cash credits which are recorded to reduce accounts receivable in a manner consistent with current and historical accounting practices of the Loan Parties.

"<u>Dilution Ratio</u>" shall mean, at any date, the amount (expressed as a percentage) equal to (a) the aggregate amount of the applicable Dilution Factors for the twelve (12) most recently ended fiscal months <u>divided</u> by (b) total gross sales of the Loan Parties for the twelve

(12) most recently ended fiscal months, or such other amount as may be otherwise agreed by the Administrative Agent and the Borrower.

"<u>Dilution Reserve</u>" shall mean, at any date, (i) the amount by which the Dilution Ratio exceeds five percent (5%) multiplied by (ii) the Eligible Receivables on such date.

"<u>Disclosure Filings</u>" shall mean the following filings made by the Borrower with the Securities and Exchange Commission: (a) all Form 8-K filings from the filing date of the Form 10-Q in respect of the period ending March 31, 2008 through May 2, 2008 and (b) all Form 10-K and Form 10-Q filings from December 31, 2007 through May 2, 2008.

"<u>Disposition</u>" shall mean, with respect to any property, any sale, lease, sale and leaseback, assignment (other than for security or collection in the ordinary course of business), conveyance, transfer or other disposition thereof. The terms "<u>Dispose</u>" and "<u>Dispose</u>" shall have correlative meanings.

"Dollars" and "\$" shall mean lawful money of the United States of America.

"Domestic Entities" shall mean the Borrower and its direct and indirect domestic Subsidiaries on a consolidated basis.

"DPW" shall have the meaning given such term in Section 10.05(a).

"Effective Date" shall have the meaning given such term in Section 4.01(a).

"Eligible Assignee" shall mean (i) a commercial bank having total assets in excess of \$1,000,000,000, (ii) a finance company, insurance company or other financial institution or fund, in each case reasonably acceptable to the Administrative Agent, which in the ordinary course of business extends credit of the type contemplated herein and has total assets in excess of \$200,000,000 and whose becoming an assignee would not constitute a prohibited transaction under Section 4975 of the Code or Section 406 of ERISA, (iii) an Affiliate of the assignor Lender, (iv) an Approved Fund and (v) any other Person reasonably satisfactory to the Administrative Agent.

"Eligible Equipment" shall mean, on any date of determination, the aggregate value (as reflected on the accounting records of the Borrower or the applicable Guarantor and consistent with such Person's current and historical accounting practices) at such date of all Qualified Equipment and Machinery owned by the Borrower and the Guarantors and located in any jurisdiction in the United States of America as to which Qualified Equipment and Machinery appropriate UCC financing statements have been filed naming the Borrower or the applicable Guarantor as "debtor" and JPMorgan Chase Bank, N.A., as Administrative Agent, as "secured party". As used herein, the term "Qualified Equipment and Machinery" means, with respect to the Borrower or any Guarantor, all Equipment that is owned solely by such Person and as to which such Person has good, valid and marketable and unencumbered title; *provided* that no Equipment shall be considered for inclusion as Qualified Equipment and Machinery until (i) a collateral review of such Equipment shall have been performed by the Agents or their representatives (the fees and expenses associated with such review to be paid by the Borrower in accordance with the terms of this Agreement) and (ii) the Administrative Agent shall have received a third party appraisal of such Equipment in form and substance, and prepared by an

independent appraisal firm, reasonably satisfactory to the Administrative Agent (the fees and expenses associated with such appraisal to be paid by the Borrower in accordance with the terms of this Agreement).

"<u>Eligible Inventory</u>" shall mean, at the time of any determination thereof, without duplication, the Inventory Value of the Loan Parties at such time that is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (m) below. Criteria and eligibility standards used in determining Eligible Inventory may be fixed and revised from time to time by the Administrative Agent in its reasonable discretion. Unless otherwise from time to time approved in writing by the Administrative Agent, no Inventory shall be deemed Eligible Inventory if, without duplication:

- (a) a Loan Party does not have good, valid and unencumbered title thereto, subject only to Liens permitted under clause (iv) or (v) of Section 6.01; or
- (b) it is not located in the United States or, solely in the case of Inventory that qualifies as Mexican Inventory, Mexico; or

it is not either (i) located on property owned by a Loan Party, (ii) Mexican Inventory or (iii) located in a third party warehouse or at a third party processor or (except in the case of consigned Inventory, which is covered by clause (f) below) in another location not owned by a Loan Party (it being understood that the Borrower will provide its best estimate of the value of such Inventory to be

(c) agreed to by the Administrative Agent and reflected in the Borrowing Base Certificate), and either (A) is not covered by a Landlord Lien Waiver, (B) a Rent Reserve has not been taken with respect to such Inventory or (C) is not subject to an enforceable agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which the relevant Loan Party has validly assigned its access rights to such Inventory and property to the Administrative Agent; or

it is operating supplies, labels, packaging or shipping materials, cartons, repair parts, labels or miscellaneous spare parts,

- (d) nonproductive stores inventory and other such materials, in each case not considered used for sale in the ordinary course of business of the Loan Parties by the Administrative Agent in its reasonable discretion from time to time; or
- (e) it is not subject to a valid and perfected first priority Lien in favor of the Administrative Agent; or

it is consigned at a customer, supplier or contractor location but still accounted for in the Loan Party's inventory balance (it being understood that the Mexican Inventory shall not be excluded pursuant to this clause (f)); provided that a portion of the Loan Parties'

(f) consigned Inventory (not to exceed 50%) may be included in "Eligible Inventory" in the Administrative Agent's discretion to the extent such consigned Inventory is (i) subject to an agreement (in form and substance reasonably satisfactory to the Administrative Agent) pursuant to which the relevant Loan Party has validly assigned its access rights to such Inventory



and property to the Administrative Agent and (ii) otherwise eligible for inclusion in the Borrowing Base; or

it is Inventory (other than Mexican Inventory) that is in-transit to or from a location not leased or owned by a Loan Party (it being understood that the Borrower will provide its best estimate of the value of all such Inventory and all Mexican Inventory in-transit, which estimate is to be reflected in the Borrowing Base Certificate); or

it is obsolete, slow-moving, nonconforming or unmerchantable or is identified as a write-off, overstock or excess by a Loan Party, or does not otherwise conform to the representations and warranties contained in this Agreement and the other Loan Documents

- (h) applicable to Inventory; <u>provided</u> that a portion of the Loan Parties' reserve for such Inventory (not to exceed 50%) may be included in "Eligible Inventory" in the Administrative Agent's reasonable discretion to the extent such Inventory is otherwise eligible for inclusion in the Borrowing Base; or
- (i) it is Inventory used as a sample or prototype, display or display item; or

to the extent of any portion of Inventory Value thereof attributable to intercompany profit among Loan Parties or their affiliates (it
 (j) being understood that the Borrower will provide its best estimate of the value of such Inventory Value to be agreed by the Administrative Agent and reflected in the Borrowing Base Certificate); or

any Inventory that is damaged, defective or marked for return to vendor, has been deemed by a Loan Party to require rework or is being held for quality control purposes; provided that a portion (not to exceed 25%) of the book value of core Inventory that is held

- (k) being here for quarky control purposes, <u>provided</u> that a portion (not to exceed 25.5) of the book value of core inventory that is here for scrap value recovery at a location of Automotive Holdings Group may be included in "Eligible Inventory" in the Administrative Agent's reasonable discretion to the extent such Inventory is otherwise eligible for inclusion in the Borrowing Base; or
- (l) such Inventory does not meet all material applicable standards imposed by any Governmental Authority having regulatory authority over it.

"Eligible Real Estate" shall mean, on any date of determination, the aggregate value (as reflected on the accounting records of the Borrower or the applicable Guarantor and consistent with such Person's current and historical accounting practices) at such date of all Qualified Real Estate owned by the Borrower and the Guarantors and located in any jurisdiction in the United States of America as to which Qualified Real Estate (x) an appropriate mortgage, deed of trust or deed to secure debt has been recorded, to the extent required to be recorded pursuant Section 2.25(b), naming the Borrower or the applicable Guarantor as "mortgagor" or "trustor" and JPMorgan Chase Bank, N.A., as Administrative Agent, as "mortgagee" or "beneficiary" and (y) UCC financing statements have been filed naming the Borrower or the applicable Guarantor as "debtor" and JPMorgan Chase Bank, N.A., as Administrative Agent, as "secured party". As used herein, the term "Qualified Real Estate" means, with respect to the Borrower or any Guarantor, all real property that is owned solely by such Person and as to which



such Person has good, valid and marketable and unencumbered title; *provided* that no real property shall be considered for inclusion as Qualified Real Estate until (i) a collateral review of such real property shall have been performed by the Agents or their representatives (the fees and expenses associated with such review to be paid by the Borrower in accordance with the terms of this Agreement) and (ii) the Administrative Agent shall have received a third party appraisal of such real property in form and substance, and prepared by an independent appraisal firm, reasonably satisfactory to the Administrative Agent (the fees and expenses associated with such appraisal to be paid by the Borrower in accordance with the terms of this Agreement).

"Eligible Receivables" means, at the time of any determination thereof, each Account that satisfies the following criteria: such Account (i) has been invoiced to, and represents the bona fide amounts due to a Loan Party from, the purchaser of goods or services, in each case originated in the ordinary course of business of such Loan Party and (ii) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (t) below. Without limiting the foregoing, to qualify as Eligible Receivables, an Account shall indicate no person other than a Loan Party as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (A) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Loan Party may be obligated to rebate to a customer pursuant to the terms of any agreement or understanding (written or oral)), (B) without duplication, the aggregate amount of all limits and deductions provided for in this definition and elsewhere in this Agreement, if any, and (C) the aggregate amount of all cash received in respect of such Account but not yet applied by a Loan Party to reduce the amount of such Account. Criteria and eligibility standards used in determining Eligible Receivables may be fixed and revised from time to time by the Administrative Agent in its reasonable discretion. Unless otherwise approved from time to time in writing by the Administrative Agent, no Account shall be an Eligible Receivable if, without duplication:

(i) a Loan Party does not have sole lawful and absolute title to such Account (subject only to Liens permitted under clause (iv) or

- (v) of Section 6.01) or (ii) the goods sold with respect to such Account have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates that any Person other than a Loan Party has or has purported to have an ownership interest in such goods; or
- (b) (i) it is unpaid more than 90 days from the original date of invoice or 60 days from the original due date or (ii) it has been written off the books of a Loan Party or has been otherwise designated on such books as uncollectible; or
- (c) more than 50% in face amount of all Accounts of the same Account Debtor are ineligible pursuant to clause (b) above; or
- the Account Debtor is insolvent or the subject of any bankruptcy case or insolvency proceeding of any kind (other than postpetition
  accounts payable of an Account Debtor that is a debtor-in-possession under the Bankruptcy Code and reasonably acceptable to the Administrative Agent); or



the Account is not (i) payable in Dollars or Canadian Dollars or (ii) the Account Debtor is either not organized under the laws of the United States of America, any state thereof, or the District of Columbia, or Canada or any province thereof or is located outside or has its principal place of business or substantially all of its assets outside the United States or Canada, unless, in each case, such Account is supported by a letter of credit from an institution and in form and substance satisfactory to the Administrative Agent in its sole

(e) discretion; provided that Accounts in an aggregate amount not exceeding \$50,000,000 of Account Debtors that (x) are not organized under the laws of the United States of America, any state thereof, the District of Columbia, or Canada or any province thereof or (y) are located outside or have their respective principal places of business or substantially all of their assets outside the United States or Canada may be included in "Eligible Receivables" in the Administrative Agent's reasonable discretion to the extent such Accounts are otherwise eligible for inclusion in the Borrowing Base; or

the Account Debtor is the United States of America or any department, agency or instrumentality thereof, unless the relevant Loan
 Party duly assigns its rights to payment of such Account to the Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended, which assignment and related documents and filings shall be in form and substance reasonably satisfactory to the Administrative Agent; or

(g) the Account is subject to any security deposit (to the extent received from the applicable Account Debtor), progress payment, retainage or other similar advance made by or for the benefit of the applicable Account Debtor, in each case to the extent thereof; or

(i) it is not subject to a valid and perfected first priority Lien in favor of the Administrative Agent, subject to no other Liens other than
 (h) Liens permitted by this Agreement or (ii) it does not otherwise conform in all material respects to the representations and warranties contained in this Agreement and the other Loan Documents relating to Accounts; or

(i) (i) such Account was invoiced in advance of goods or services provided, (ii) such Account was invoiced twice or more, or (iii) the associated revenue has not been earned; or

the sale to the Account Debtor is on a bill-and-hold, guaranteed sale, sale-and-return, ship-and-return, sale on approval or

(j) consignment or other similar basis or made pursuant to any other agreement providing for repurchases or return of any merchandise which has been claimed to be defective or otherwise unsatisfactory; or

the goods giving rise to such Account have not been shipped and/or title has not been transferred to the Account Debtor, or the

(k) Account represents a progress-billing or otherwise does not represent a complete sale; for purposes hereof, "progress-billing" means any invoice for goods sold or leased or services

rendered under a contract or agreement pursuant to which the Account Debtor's obligation to pay such invoice is conditioned upon the completion by a Loan Party of any further performance under the contract or agreement; or

- (1) it arises out of a sale made by a Loan Party to an employee, officer, agent, director, Subsidiary or Affiliate of a Loan Party; or
- (m) such Account was not paid in full, and a Loan Party created a new receivable for the unpaid portion of the Account, and other Accounts constituting chargebacks, debit memos and other adjustments for unauthorized deductions; or

the Account Debtor (i) has or has asserted a right of set-off against a Loan Party (unless such Account Debtor has entered into a written agreement reasonably satisfactory to the Administrative Agent to waive such set-off rights) or (ii) has disputed its liability (whether by chargeback or otherwise) or made any claim with respect to the Account or any other Account of a Loan Party which has

(n) not been resolved, in each case, without duplication, only to the extent of the amount of such actual or asserted right of set-off, or the amount of such dispute or claim, as the case may be (except to the extent that such right of set-off (x) may not be exercised as a result of the automatic stay pursuant to Section 362 of the Bankruptcy Code or (y) otherwise may not be currently exercised pursuant to the terms of the Approval Order or the Fourth Amendment Approval Order); or

the Account does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation, the Federal Consumer Credit Protection Act, Federal Truth in Lending Act and Regulation Z; or

(0)

as to any Account, to the extent that (i) a check, promissory note, draft, trade acceptance or other Instrument for the payment of money has been received, presented for payment and returned uncollected for any reason or (ii) such Account is otherwise classified

- (p) Inforce has been received, presented for payment and retained anconceted for any reason of (ii) such receasing the obligation with respect thereto is evidenced by a promissory note or other debt instrument or agreement; or
- (q) the Account is created on cash on delivery terms, or on extended terms and is due and payable more than 90 days from the invoice date; or
- (r) the Account represents tooling receivables related to tooling that has not been completed or received by a Loan Party and approved and accepted by the applicable customer.

Notwithstanding the forgoing, all Accounts of any single Account Debtor and its Affiliates which, in the aggregate, exceed (i) 25% in the case of GM Receivables, (ii) 20% in respect of any other Account Debtor whose securities are rated Investment Grade or (iii) 10% in respect of all other Account Debtors, of the total amount of all Eligible Receivables at the time of any determination shall be deemed not to be Eligible Receivables to the extent of such excess. In addition, in determining the aggregate amount from the same Account Debtor that is unpaid

more than 90 days from the date of invoice or more than 60 days from the due date pursuant to clause (b) above there shall be excluded the amount of any net credit balances relating to Accounts due from an Account Debtor with invoice dates more than 90 days from the date of invoice or more than 60 days from the due date.

"<u>Environmental Laws</u>" shall mean all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating to the protection of the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"<u>Environmental Lien</u>" shall mean a Lien in favor of any Governmental Authority for (i) any liability under federal or state environmental laws or regulations, or (ii) damages arising from or costs incurred by such Governmental Authority in response to a release or threatened release of a hazardous or toxic waste, substance or constituent, or other substance into the environment.

"Equipment" shall have the meaning set forth in Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York.

"<u>Equity Interests</u>" shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"<u>ERISA Affiliate</u>" shall mean any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to

any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Eurocurrency Liabilities" shall have the meaning assigned thereto in Regulation D issued by the Board, as in effect from time to time.

"Eurodollar", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"Eurodollar Borrowing" shall mean a Borrowing comprised of Eurodollar Loans.

"Event of Default" shall have the meaning given such term in Section 7.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender, any Issuing Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income, franchise, or similar taxes imposed on (or measured by) its net income as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction of the Governmental Authority imposing such Tax or any political subdivision or Taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered or performed its obligations or received payment under, or enforced, this Agreement or any other Loan Document), (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located and (c) any withholding tax that would have been imposed had such payment been made to such Lender at the time such Lender became a party to this Agreement (or designates a new lending office) or is attributable to such Lender's failure to comply with Sections 2.18(e) and (f), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.18(a).

"Existing Credit Agreement" shall have the meaning set forth in the Introductory Statement.

"Existing DIP Agent" shall mean JPMCB, in its capacity as administrative agent under the Existing DIP Credit Agreement, and its successors in such capacity.

"Existing DIP Credit Agreement" shall mean the Amended and Restated Revolving Credit, Term Loan and Guaranty Agreement dated as of November 21, 2005, among the Borrower, the guarantors party thereto, the lenders party thereto, JPMCB, as administrative

agent, and Citicorp USA, Inc., as syndication agent, as amended, restated, or otherwise modified from time to time, and shall include all other "Loan Documents" as defined therein.

<u>"Existing DIP Facility Indebtedness</u>" shall mean Indebtedness and other obligations incurred by the Borrower and certain of its subsidiaries under the Existing DIP Credit Agreement.

"Existing DIP Liens" shall mean the "DIP Liens" as defined in the Existing DIP Order.

"Existing DIP Order" shall mean the order of the Bankruptcy Court dated October 28, 2005 approving, *inter alia*, the Borrower's entry into the Existing DIP Credit Agreement.

"Existing Lenders" shall mean, collectively, the Tranche A Lenders, the Tranche B Lenders and the Tranche C Lenders immediately prior to the Effective Date.

"Existing Letters of Credit" means all outstanding letters of credit issued by JPMCB, as issuing lender under the Existing DIP Credit Agreement.

"Existing Loans" shall mean the "Loans" under the Existing Credit Agreement as in effect immediately prior to the Effective Date, and the "Existing Tranche A Loans", "Existing Tranche B Loans" and "Existing Tranche C Loans" shall mean the Tranche A Loans, the Tranche B Loans and the Tranche C Loans, respectively, outstanding under the Existing Credit Agreement immediately prior to the Effective Date.

"Existing Pre-Petition Agent" shall mean JPMCB, in its capacity as administrative agent under the Existing Pre-Petition Agreement, and its successors in such capacity.

"Existing Pre-Petition Agreement" shall mean the 5-Year Third Amended and Restated Credit Agreement dated as of June 14, 2005 among the Borrower, the lenders party thereto and the Existing Pre-Petition Agent, as amended, restated, or otherwise modified from time to time, and shall include all related security and guarantee agreements as listed on Schedule 1.01 hereto.

<u>"Existing Pre-Petition Indebtedness</u>" shall mean Indebtedness and other obligations incurred by the Borrower and certain of its Subsidiaries under the Existing Pre-Petition Agreement.

"Facility Availability Amount" means, at any time, an amount equal to (A) the lesser of (x) the Total First-Priority Commitment at such time and (y) the Borrowing Base, <u>minus</u> (B) if the Available Liquidity at such time is less than \$500,000,000, \$200,000,000, <u>minus</u> (C) the sum of the aggregate principal amount of the outstanding Tranche A Loans, *plus* the aggregate principal amount of the outstanding Tranche B Loan, *plus* the LC Exposure, <u>plus</u> (D) an amount (up to a maximum of \$500,000,000) equal to the excess (if any) of the unrestricted cash reflected on the consolidated balance sheet of the Borrower and its Subsidiaries then most recently delivered to the Lenders over \$500,000,000.

"Federal Funds Effective Rate" shall mean, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fees" shall collectively mean the Tranche A Commitment Fee, the Tranche C Commitment Fee, Letter of Credit Fees, fees referred to in Section 2.21 of the Original Credit Agreement and other fees referred to in Sections 2.21, 2.22, 2.23, 4.01 and 4.03.

"Filing Date" shall mean October 8, 2005.

"<u>Financial Officer</u>" shall mean the chief financial officer, chief restructuring officer, chief accounting officer or treasurer of the Borrower.

"First-Priority Tranches Payout Date" shall mean the first date on which each of the following shall have occurred: (i) the Total Tranche A Commitment shall have been wholly and permanently terminated, (ii) all Tranche A Loans and the Tranche B Loan shall have been paid in full in cash (plus any accrued but unpaid interest thereon, including without limitation any interest payable pursuant to Section 2.09), (iii) all LC Disbursements shall have been reimbursed in full in cash (plus any accrued but unpaid interest thereon, including without limitation any interest thereon, including without limitation any interest thereon, including without limitation any interest payable pursuant to Section 2.09), (iv) the accrued and unpaid Tranche A Commitment Fees and accrued and unpaid Letter of Credit Fees shall have been paid in full in cash and (v) no Letters of Credit shall be outstanding (or, if any are outstanding, they shall have been backed by Cash Collateralization in an aggregate amount equal to 105% of the then Uncollateralized LC Exposure).

"Fixed Asset Component" shall mean, on any date, an amount equal to the sum of (i) 80% of the Net Orderly Liquidation Value of Eligible Equipment plus (ii) 50% of the fair market value of Eligible Real Estate (as set forth in the most recent third party real estate appraisal in form and substance, and prepared by an independent appraisal firm, reasonably satisfactory to the Administrative Agent ) less (iii) reserves as are deemed necessary from time to time by the Administrative Agent in its reasonable discretion, including a reserve in respect of matters disclosed in the most recent environmental consultant report that was delivered to the Administrative Agent prior to the Effective Date.

"<u>Foreign Lender</u>" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located and that is not a "United States Person" as defined in Section 7701(a)(30) of the Code. For purposes of this definition and Sections 2.18(e) and (f), the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Receivables Financing" means Indebtedness and other financings relating to securitizations and factoring arrangements entered into by any of the Foreign Subsidiaries.

"Foreign Subsidiary" shall mean any direct or indirect non-U.S. Subsidiary of the Borrower.

"Foreign Subsidiary Debt Limit" shall have the meaning given such term in Section 6.03.

"Fourth Amendment Approval Order" shall mean the order of the Bankruptcy Court dated April 30, 2008 approving, *inter alia*, the Borrower's entry into this Agreement.

"<u>Full Control Deposit Account Agreement</u>" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, between any Loan Party and the Administrative Agent, with respect to collection and control of all deposits and balances held in a deposit account maintained by any Loan Party with the Administrative Agent.

"<u>Full Control Securities Account Agreement</u>" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, between any Loan Party and the Administrative Agent, with respect to collection and control of all assets held in a securities account maintained by any Loan Party with the Administrative Agent.

"GAAP" shall mean generally accepted accounting principles applied in accordance with Section 1.03.

"Global EBITDAR" shall mean, for any period, all as determined in accordance with GAAP, the consolidated net income (or net loss) of the Global Entities for such period, plus (a) to the extent deducted in the calculation of consolidated net income, without duplication, the sum of (i) income tax expense, (ii) interest expense, (iii) amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans), (iv) depreciation and amortization expense, (v) amortization of intangibles (including, but not limited to, goodwill) and organization costs, (vi) any extraordinary, unusual or non-recurring non-cash expenses or losses (other than (1) Restructuring Costs and (2) all expenses arising out of, or in relation to, the U.S. Securities and Exchange Commission multidistrict litigation settlement of the Borrower or any of the Guarantors, recorded for accounting purposes in the fiscal quarters ended June 30, 2007 and September 30, 2007) and one-time write-downs of assets, (vii) any expenses accounted by the Borrower or any of it Subsidiaries in such period for post-retirement or post-employment benefits under FAS 106 or FAS 112, (viii) any Restructuring Costs of the Borrower and its Subsidiaries accounted for in such period, (ix) professional fees and other "Chapter 11 expenses" (or "administrative costs reflecting Chapter 11 expenses") attributable to the Borrower and the Guarantors for such period as shown on the Borrower's consolidated statement of income for such period, and (x) the cumulative effect of any change in accounting principles, <u>minus</u> (b) to the extent included in the calculation of consolidated net income, the sum of (1) interest income and (2) any extraordinary, unusual or non-recurring gains, all as determined on a consolidated basis, <u>minus</u> (c) any cash payments made during such period in respect of expenses described in clause (vii) above.

"Global Entities" shall mean the Borrower and all of its direct and indirect Subsidiaries, on a consolidated basis.

"GM" shall mean General Motors Corporation and its Affiliates.

"GM Commitment" shall mean "Commitment" as set forth in the GM-Delphi Agreement.

"<u>GM-Delphi Agreement</u>" shall mean the agreement dated as of the date hereof among the Borrower, the Guarantors and General Motors Corporation.

"GM Global Settlement Agreement" shall mean the "Global Settlement Agreement" as defined in the GM-Delphi Agreement.

"<u>GM Liquidity Availability</u>" shall mean, at any time, the lesser of (i) the unused GM Commitment in effect and available to be drawn at such time and (ii) the "Specified Availability" (as defined in, and determined in accordance with the terms of, the GM-Delphi Agreement as in effect on the date hereof) at such time.

"GM Master Restructuring Agreement" shall mean the "Master Restructuring Agreement" as defined in the GM-Delphi Agreement.

"GM Obligations" shall mean "Obligations" as set forth in the GM-Delphi Agreement.

"<u>GM Obligation Satisfaction Date</u>" shall mean, the date on or after the effectiveness of the amendments to each of the GM Master Restructuring Agreement and the GM Global Settlement Agreement referred to in Section 5.03 of the GM-Delphi Agreement on which GM has paid (whether through the exercise of the set-off right under the GM-Delphi Agreement or otherwise paid in cash) to or for the credit or the account of the Borrower or any Guarantor from and after the effective date of the GM-Delphi Agreement an amount equal to or greater than \$650,000,000 in the aggregate under such agreements.

"<u>GM Permitted Commitment Reduction</u>" shall mean, any reduction of the GM Commitment upon any payment made by GM to the Borrower under the GM Global Settlement Agreement and GM Master Restructuring Agreement to the extent required by the GM-Delphi Agreement.

"<u>GM Permitted Prepayments</u>" shall mean any GM Obligations required to be prepaid pursuant to Section 2.09 of the GM-Delphi Agreement (including by way of set off), interest payable under the GM-Delphi Agreement to the extent paid in kind and payments of GM Obligations made solely through any set-off right exercised by GM against amounts payable by GM to the Borrower pursuant to the GM Global Settlement Agreement and GM Master Restructuring Agreement, in each case to the extent required by the GM-Delphi Agreement as in effect on the date hereof.

"<u>GM Prepayment Reserve</u>" shall mean, at any time, the aggregate principal amount due, if any, and payable by the Borrower pursuant to Section 2.09 of the GM-Delphi Agreement and not paid by the Borrower at such time.

"GM Receivables" shall mean any Accounts owing from GM.

"<u>GM Scheduled Termination Date</u>" shall mean the earliest of (a) December 31, 2008, (b) the GM Obligation Satisfaction Date and (c) the date on which a Reorganization Plan becomes effective.

"<u>Governmental Authority</u>" shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantor" shall have the meaning set forth in the Introduction.

"<u>Hazardous Materials</u>" shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"<u>Hedging Agreements</u>" shall mean (x) foreign exchange contracts, currency swap agreements, currency future or option contracts and other similar agreements designed to hedge against fluctuations in foreign interest or exchange rates, (y) interest rate swap, cap or collar agreements and interest rate future or option contracts designed to hedge against fluctuations in interest rates and (z) commodity price protection agreements or other commodity price hedging arrangements.

"Indebtedness" shall mean, at any time and with respect to any Person, (i) all indebtedness of such Person for borrowed money, (ii) all indebtedness of such Person for the deferred purchase price of property or services (other than property, including inventory, and services purchased, trade payables that are not more than 90 days past due (or that are more than 90 days past due, if the validity or amount thereof is being contested in good faith and by appropriate proceedings or if such Person shall have set aside on its books adequate reserves therefor in accordance with GAAP) and expense accruals and deferred compensation items arising in the ordinary course of business), (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds and completion guarantees arising in the ordinary course of business), (iv) 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, in which case such Indebtedness shall be limited to the value of the property), (v) all obligations of such Person under Capitalized Leases, (vi) (A) all reimbursement, payment or similar obligations of such Person, contingent or otherwise, under acceptance, letter of credit or similar facilities and (B) all obligations of such Person in respect of Hedging Agreements; (vii) all Indebtedness referred to in clauses (i) through (vi) above guaranteed directly or indirectly by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (A) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (B) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss in respect

of such Indebtedness, (C) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (D) otherwise to assure a creditor against loss in respect of such Indebtedness, and (viii) all Indebtedness referred to in clauses (i) through (vii) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; provided, however, such Indebtedness referred to in this clause (viii) shall be the lesser of the value of such property on which a Lien is attached or the amount of such Indebtedness.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Indemnitee" shall have the meaning given such term in Section 10.05(b).

"<u>Initial Tranche C Commitment</u>" shall mean the commitment of each Tranche C Lender to make such amount of the Initial Tranche C Loan hereunder in the amount set forth opposite its name on Annex A hereto or as may be subsequently set forth in the Register from time to time, as the case may be and as the same may be reduced from time to time pursuant to the last sentence of Section 2.01(c)(i) and Sections 2.12 and 2.13. The initial aggregate amount of the Initial Tranche C Commitment is \$2,495,820,240.48.

"Initial Tranche C Commitment Percentage" shall mean, at any time, with respect to each Tranche C Lender, the percentage obtained by dividing its Initial Tranche C Commitment at such time by the Total Initial Tranche C Commitment.

"Insufficiency" shall mean, with respect to any Plan, its "amount of unfunded benefit liabilities" within the meaning of Section 4001(a)(18) of ERISA, if any.

"Initial Tranche C Loan" shall have the meaning set forth in Section 2.01(c)(i).

"Intellectual Property" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Interest Election Request" shall mean a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.06.

"Interest Payment Date" shall mean (i) as to any Eurodollar Loan included in any Eurodollar Borrowing, the last day of each consecutive 30 day period running from the commencement of the applicable Interest Period, and (ii) as to all ABR Loans, the last calendar day of each month and the date on which any ABR Loans are converted to Eurodollar Loans pursuant to Section 2.06.

"Interest Period" shall mean, as to any Eurodollar Borrowing, the period commencing on the date of such Borrowing (including as a result of a conversion from ABR

Loans) or on the last day of the preceding Interest Period applicable to such Eurodollar Borrowing and ending on the numerically corresponding day (or if there is no corresponding day, the last day) in the calendar month that is two weeks or one, three or six months thereafter, as the Borrower may elect in the related notice delivered pursuant to Sections 2.04 or 2.06; <u>provided</u>, <u>however</u>, that (i) if any Interest Period would end on a day which shall not be a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) no Interest Period shall end later than the Termination Date.

"Inventory" shall have the meaning set forth in Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York.

"Inventory Reserves" shall mean reserves against Inventory equal to the sum of the following:

- (a) an unrecorded book to physical inventory reduction determined by the Borrower based on its most recent physical inventory or cycle counts or as otherwise determined by the Administrative Agent in its reasonable discretion;
- (b) a revaluation reserve whereby favorable variances shall be deducted from Eligible Inventory and unfavorable variances shall not be added to Eligible Inventory;
- (c) a lower of cost or market value reserve for any differences between a Loan Party's actual cost to produce versus its selling price to third parties, as calculated on a quarterly basis;
- (d) a reserve in an amount equal to five percent (5%) of the Eligible Inventory that is Mexican Inventory; <u>provided</u> that such percentage may be increased from time to time by the Administrative Agent in its reasonable discretion; and
- (e) any other reserve as deemed necessary from time to time by the Administrative Agent in its reasonable discretion.

"Inventory Value" shall mean with respect to any Inventory of a Loan Party at the time of any determination thereof, the standard cost carried on the general ledger or inventory system of such Loan Party stated on a basis consistent with its current and historical accounting practices, in Dollars, determined in accordance with the standard cost method of accounting less, without duplication, (i) any markup on Inventory from an affiliate and (ii) in the event variances under the standard cost method are expensed, a reserve reasonably determined by the Administrative Agent as appropriate in order to adjust the standard cost of Eligible Inventory to approximate actual cost.

"<u>Investment Credit</u>" shall mean the amount of dividends, distributions, returns of equity, repayments of advances or similar payments paid to the Borrower or any of the Guarantors during the term of this Agreement by any Person in which Investments may be made under Section 6.09(ix).

"Investment Grade" shall mean a rating established by a third party rating agency, equivalent to 'BBB-' by S&P or 'Baa3' by Moody's, or better.

"Investments" shall have the meaning given such term in Section 6.09.

"Issuing Lender" shall mean JPMCB, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.03(i) and such other Lenders (which other Lenders shall be reasonably satisfactory to the Administrative Agent) as may agree with the Borrower to act in such capacity. Any Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Lender, in which case the term "Issuing Lender" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"JPMorgan" shall mean J.P. Morgan Securities Inc.

"JPMCB" shall have the meaning given such term in the Introduction.

"Junior Adequate Protection Liens" shall have the meaning set forth in the Approval Order.

"Landlord Lien Waiver" shall mean a written agreement that is reasonably acceptable to the Administrative Agent, pursuant to which a Person shall waive or subordinate its rights (if any, that are or would be prior to the Liens granted to the Administrative Agent for the benefit of the Lenders under the Loan Documents) and claims as landlord in any Inventory of a Loan Party for unpaid rents, grant access to the Administrative Agent for the repossession and sale of such inventory and make other agreements relative thereto.

"LC Disbursement" shall mean a payment made by the Issuing Lender pursuant to a Letter of Credit.

"<u>LC Exposure</u>" shall mean, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time <u>plus</u> (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Tranche A Lender at any time shall be its Tranche A Commitment Percentage of the LC Exposure at such time.

"Lenders" shall have the meaning set forth in the Introduction.

"Letter of Credit" shall mean (a) the Existing Letters of Credit and (b) any irrevocable letter of credit issued pursuant to Section 2.03, which letter of credit shall be (i) an import documentary or a standby letter of credit, (ii) issued for purposes that are consistent with the provisions of this Agreement (including Section 3.09), (iii) denominated in Dollars and (iv) otherwise in such form as may be reasonably approved from time to time by the Administrative Agent and the applicable Issuing Lender.

"Letter of Credit Account" shall mean the account established by the Borrower under the sole and exclusive control of the Administrative Agent maintained at the office of the Administrative Agent at 270 Park Avenue, New York, New York 10017 designated as the "Delphi Letter of Credit Account" that shall be used solely for the purposes set forth herein.

"Letter of Credit Fees" shall mean the fees payable in respect of Letters of Credit pursuant to Section 2.23.

"LIBO Rate" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Page 3750 of the Dow Jones Market Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" with respect to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"Lien" shall mean (a) any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, lien or charge of any kind whatsoever, (b) the interest of a vendor or a lessor under any conditional sale, capital lease or other title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan" shall mean, collectively, the Tranche A Loans, the Tranche B Loan and the Tranche C Loan.

"Loan Documents" shall mean this Agreement, the Letters of Credit, the Security and Pledge Agreement, and any other instrument or agreement executed and delivered by the Borrower or any Guarantor to the Administrative Agent or any Lender in connection herewith.

"Loan Parties" shall mean the Borrower and the Guarantors.

"<u>Material Adverse Effect</u>" shall mean a material adverse effect on (a) the business, financial condition, operations or assets of (i) the Domestic Entities taken as a whole or (ii) the Global Entities taken as a whole, (b) the validity or enforceability of this Agreement or any other Loan Documents or (c) the rights and remedies of the Administrative Agent or the Lenders hereunder or thereunder; <u>provided</u> that (x) the failure to make a contribution to any Plan and any Lien resulting therefrom that arises pursuant to Section 412(n) of the Code shall not be considered to have such a material adverse effect, so long as (1) any such Lien encumbering assets of a Domestic Entity shall be permitted under Section 6.01(xvii) and (2) any such Lien encumbering assets of a Foreign Subsidiary shall be permitted under Section 6.01(xviii), it being understood that subsequent events, developments and circumstances relating to such failure to make a contribution to a Plan and the resulting Liens may be considered in determining whether such subsequent events, developments and circumstances have had or could reasonably be expected to have such a material adverse effect, (y) events, developments and circumstances disclosed in the Disclosure Filings and any information disclosed to the Lenders prior to May 2,

2008 shall not be considered to have such a material adverse effect, although subsequent events, developments and circumstances relating to such disclosed matters which reveal material adverse changes in such disclosed matters may be considered in determining whether such subsequent events, developments and circumstances have had or could reasonably be expected to have such a material adverse effect and (z) the commencement of the Cases and the consequences that customarily result therefrom shall not be considered to have such a material adverse effect.

"Maturity Date" shall mean December 31, 2008.

"Mexican Inventory" shall mean Inventory that is owned by a Loan Party and has been consigned to a Mexican Subsidiary of the Borrower; <u>provided</u> that no Inventory shall qualify as Mexican Inventory unless (i) the rights of the Loan Parties under the agreements pursuant to which such Inventory is so consigned are subject to a first priority Lien in favor of the Administrative Agent and (ii) such Inventory is (x) located at a plant owned by the Borrower or its Subsidiaries, (y) in-transit between such a plant and a location owned or leased by a Loan Party or (z) located on property as to which an enforceable power of attorney and other requisite documentation (in each case in form and substance reasonably satisfactory to the Administrative Agent) providing the Administrative Agent rights of access to such Inventory has been delivered to the Administrative Agent.

"Minority Lenders" shall have the meaning given such term in Section 10.09.

"Moody' s" shall mean Moody' s Investors Service, Inc.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"<u>Net Cash Proceeds</u>" shall mean in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and Permitted Investments, net of attorneys' fees, accountants' fees, investment banking fees, commissions, premiums, amounts required to be applied to the repayment of Indebtedness secured by a Lien permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to the Security and Pledge Agreement) and other customary fees and expenses actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) and a reasonable reserve for purchase price adjustments and indemnification payments that could reasonably be expected to arise during the term of the Loans; <u>provided</u> that in the case of any Asset Sale or Recovery Event in respect of which the Net Cash Proceeds do not exceed \$2,500,000, such Net Cash Proceeds shall not be deemed to constitute "Net Cash Proceeds" for purposes of Section 2.13 until the aggregate amount of all such excluded Net Cash Proceeds is at least \$10,000,000.

"<u>Net Orderly Liquidation Value</u>" shall mean, with respect to Inventory or Equipment, as the case may be, the orderly liquidation value with respect to such Inventory or Equipment, net of expenses estimated to be incurred in connection with such liquidation, based on the most recent third party appraisal in form and substance, and by an independent appraisal firm, reasonably satisfactory to the Administrative Agent.

"<u>Net Recovery Rate</u>" shall mean, with respect to Inventory at any time, the quotient (expressed as a percentage) of (i) the Net Orderly Liquidation Value of all Inventory owned by the Borrower and the Guarantors *divided by* (ii) the gross inventory cost of such Inventory, determined on the basis of the then most recently conducted third party inventory appraisal in form and substance, and performed by an independent appraisal firm, reasonably satisfactory to the Administrative Agent.

"Non-Filed Domestic Entity" means any Domestic Entity that is not a Guarantor.

"<u>Obligations</u>" shall mean (a) the due and punctual payment of principal of and interest on the Loans and the reimbursement of all amounts drawn under Letters of Credit, and (b) the due and punctual payment of the Fees and all other present and future, fixed or contingent, monetary obligations of the Borrower and the Guarantors to the Lenders and the Administrative Agent under the Loan Documents.

"Original Credit Agreement" shall have the meaning set forth in the Introductory Statement.

"Original Lender" means an Original Tranche A Lender, an Original Tranche B Lender or an Original Tranche C Lender.

"Other Taxes" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

"Original Tranche A Commitments" means the Tranche A Commitments existing prior to the Effective Date under the Existing Credit Agreement.

"Original Tranche A Lender" means each Lender under the Existing Credit Agreement holding an Original Tranche A Commitment.

"Original Tranche B Lender" means each Lender under the Existing Credit Agreement holding Tranche B Loans under the Existing Credit Agreement immediately prior to the Effective Date.

"Original Tranche C Lender" means each Lender under the Existing Credit Agreement holding Tranche C Loans under the Existing Credit Agreement immediately prior to the Effective Date.

"Participant" shall have the meaning given such term in Section 10.03(d).

"Patriot Act" shall mean the USA Patriot Act, Title III of Pub. L. 107-56, signed into law on October 26, 2001.

"<u>PBGC</u>" shall mean the Pension Benefit Guaranty Corporation, or any successor agency or entity performing substantially the same functions.

"Permitted Investments" shall mean (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bank notes having maturities of 270 days or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$250,000,000; (c) commercial paper of an issuer rated at least A-2 by S&P or P-2 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's; (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000; or (i) in the case of any Foreign Subsidiary, (x) direct obligations of the sovereign nation (or any agency thereof) in which such Foreign Subsidiary is organized or is conducting business or in obligations fully and unconditionally guaranteed by such sovereign nation (or any agency thereof), or (y) investments of the type and maturity described in clauses (a) through (g) above of foreign obligors, which investments or obligors have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies, with references in clauses (a), (b) and (d) above to the "United States" being understood to mean the sovereign nation in which such Foreign Subsidiary is organized or conducting business or other jurisdiction sharing the same currency as such sovereign nation.

"<u>Permitted Non-Filed Domestic Entity Transfer</u>" means any transfer of inventory from the Borrower or a Subsidiary to a Non-Filed Domestic Entity that occurs in connection with and for the purpose of facilitating the ultimate sale of such inventory to a third party in an arm's length transaction in the ordinary course of business consistent with past practices; provided that such transfer is made (x) as an equity investment that is counted against the basket in Section 6.09(ix) (subject to the cap in the first proviso in Section 6.09) or (y) in exchange for an intercompany loan that is counted against the basket in Section 6.03(xiii).

"<u>Person</u>" shall mean any natural person, corporation, division of a corporation, partnership, limited liability company, trust, joint venture, association, company, estate, unincorporated organization or Governmental Authority or any agency or political subdivision thereof.

"<u>Plan</u>" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4062 of ERISA be deemed to be) a "contributing sponsor" as defined in Section 4001(a)(13) of ERISA or a member of its "controlled group" as defined in Section 4001(a)(14) of ERISA.

"Post-Order Transaction Expenses" shall have the meaning set forth in the Approval Order.

"Prepayment Period" shall have the meaning given such term in Section 2.13(a).

"<u>Pre-Petition Payment</u>" shall mean a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or trade payables or other pre-petition claims against the Borrower or any Guarantor.

"<u>Prime Rate</u>" shall mean the rate of interest per annum publicly announced from time to time by JPMCB as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"<u>Recovery Event</u>" shall mean any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any Guarantor, in each case in an amount in excess of \$5,000,000.

"Register" shall have the meaning given such term in Section 10.03(b)(iv).

"<u>Related Parties</u>" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"<u>Remediation Payments</u>" shall mean environmental investigation and remediation payments constituting Pre-Petition Payments in an aggregate amount not to exceed \$10,000,000 made by the Borrower or the Guarantors in connection with, or to enable, the sale of plants of the Borrower or the Guarantors permitted under this Agreement to one or more buyers that are not Affiliates of the Borrower or the Guarantors.

"<u>Rent Reserve</u>" shall mean, with respect to any plant, warehouse distribution center or other operating facility where any Inventory subject to landlords' Liens or other Liens arising by operation of law is located, a reserve equal to one (1) month's rent at such plant, warehouse distribution center, or other operating facility, and such other reserve amounts that may be determined by the Administrative Agent in its reasonable discretion.

"Reorganization Plan" shall mean a plan of reorganization in any of the Cases.

"<u>Required Lenders</u>" shall mean, at any time, Lenders having Tranche A Commitments at such time (or, if the Total Tranche A Commitment has been terminated, Lenders holding Tranche A Loans and LC Exposure at such time) and Lenders holding a portion of the Tranche B Loan at such time (or, if the Tranche B Loan is not outstanding, Lenders

holding Tranche B Commitments at such time) representing in excess of 50% of the sum of (x) the Total Tranche A Commitment at such time (or, if the Total Tranche A Commitment has been terminated, the Tranche A Total Commitment Usage at such time) <u>plus</u> (y) the Total Tranche B Commitment at such time.

"Requisite Super-majority Entities" shall have the meaning given such term in Section 10.09.

"Replacement Liens" shall have the meaning set forth in the Approval Order.

"<u>Restructuring Costs</u>" shall mean any and all of (i) the costs and expenses of restructuring, consolidating or closing of any of the plants, facilities or offices of the Borrower or any of its Subsidiaries, (ii) the costs of severance or other similar payments relating to the termination of employees at such plants, facilities or offices, (iii) machine transfer costs or any similar such costs at such plants, facilities or offices, (iv) costs and expenses in respect of the termination or settlement of executory contracts and (v) other non-cash charges in respect of other pre-petition obligations.

"S&P" shall mean Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"Secured Domestic Hedging Obligations" shall mean on any date, all obligations of the Borrower and the Guarantors in respect of Hedging Agreements, which obligations are secured by a Lien on any asset of any Domestic Entity.

"Secured Obligations" shall have the meaning set forth in the Security and Pledge Agreement.

"Security and Pledge Agreement" shall mean the Security and Pledge Agreement dated as of January 9, 2007 by and among the Loan Parties and the Administrative Agent.

"Single Employer Plan" shall mean a single employer plan, as defined in Section 4001(a)(15) of ERISA, that is maintained for employees of the Borrower or an ERISA Affiliate.

"Statutory Reserve Rate" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subsequent Tranche C Commitment" shall mean the commitment of each Tranche C Lender to make such amount of the Subsequent Tranche C Loan hereunder in the amount set forth opposite its name on Annex A hereto or as may be subsequently set forth in the

Register from time to time, as the case may be and as the same may be reduced from time to time pursuant to the last sentence of Section 2.01(c)(ii) and Sections 2.12 and 2.13. The initial aggregate amount of the Subsequent Tranche C Loan Commitment is \$254,179,759.52.

"Subsequent Tranche C Commitment Percentage" shall mean, at any time, with respect to each Tranche C Lender, the percentage obtained by dividing its Subsequent Tranche C Commitment at such time by the Total Subsequent Tranche C Commitment.

"Subsequent Tranche C Commitment Termination Date" shall have the meaning given such term in Section 2.01(c)(ii).

"Subsequent Tranche C Loan" shall mean a term loan made by the Lenders to the Borrower pursuant to Section 2.01(c)(ii).

"<u>Subsidiary</u>" shall mean, with respect to any Person (in this definition referred to as the "<u>parent</u>"), any corporation, association or other business entity (whether now existing or hereafter organized) of which at least a majority of the securities or other ownership or membership interests having ordinary voting power for the election of directors is, at the time as of which any determination is being made, owned or controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Super-majority First Priority Lenders" shall have the meaning given such term in Section 10.09.

"Super-majority Class Lenders" shall have the meaning given such term in Section 10.09.

"Super-majority Lenders" shall have the meaning given such term in Section 10.09.

"<u>Superpriority Claim</u>" shall mean a claim against the Borrower and any Guarantor in any of the Cases which is an administrative expense claim having priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

"Supplemental Approval Order" shall mean an order of the Bankruptcy Court approving, *inter alia*, the Borrower's Borrowing of the Subsequent Tranche C Loan and the payment of the Total Subsequent Tranche C Fees.

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"<u>Termination Date</u>" shall mean the earliest to occur of (i) the Maturity Date, (ii) the Consummation Date and (iii) the acceleration of the Loans and the termination of the Total Commitment in accordance with the terms hereof.

"<u>Termination Event</u>" shall mean (i) a "reportable event", as such term is described in Section 4043(c) of ERISA (other than a "reportable event" as to which the 30-day notice is waived under subsection .22, .23, .25, .27 or .28 of PBGC Regulation Section 4043) or an event

described in Section 4068 of ERISA and excluding events which would not be reasonably likely (as reasonably determined by the Administrative Agent) to have a material adverse effect on the operations, business, properties, assets or condition (financial or otherwise) of the Borrower and the Guarantors taken as a whole, or (ii) the imposition of any Withdrawal Liability on the Borrower or any ERISA Affiliate, or (iii) providing notice of intent to terminate a Plan pursuant to Section 4041(c) of ERISA or the treatment of a Plan amendment as a termination under Section 4041 of ERISA, if such amendment requires the provision of security, or (iv) the institution of proceedings to terminate a Plan by the PBGC under Section 4042 of ERISA, or (v) any other event or condition (other than the commencement of the Cases and the failure to have made any contribution accrued as of the Filing Date but not paid) which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the imposition of any liability under Title IV of ERISA (other than for the payment of premiums to the PBGC in the ordinary course).

"Total Commitment" shall mean, at any time, the sum of the Total Tranche A Commitment, the Total Tranche B Commitment and the Total Tranche C Commitment at such time.

"Total First-Priority Commitment" shall mean, at any time, the sum of the Total Tranche A Commitment and the Total Tranche B Commitment.

"<u>Total Initial Tranche C Commitment</u>" shall mean, at any time, (i) prior to the funding of the Initial Tranche C Loan pursuant to Section 2.01(c)(i), the sum of the Initial Tranche C Commitments at such time and (ii) on and after funding of the Initial Tranche C Loan pursuant to 2.01(c)(i), the outstanding principal amount of the Initial Tranche C Loan at such time.

"<u>Total Subsequent Tranche C Commitment</u>" shall mean, at any time, (i) prior to the funding of the Subsequent Tranche C Loan pursuant to Section 2.01(c)(ii), the sum of the Subsequent Tranche C Commitments at such time and (ii) on and after funding of the Subsequent Tranche C Loan pursuant to 2.01(c)(ii), the outstanding principal amount of the Subsequent Tranche C Loan at such time.

"<u>Total Subsequent Tranche C Fees</u>" shall mean the Tranche C Commitment Fee and the amendment fee payable to the Amended and Restated Lenders holding Subsequent Tranche C Commitments as set forth in Section 4.03(b).

"Total Tranche A Commitment" shall mean, any time, the sum of the Tranche A Commitments at such time.

"<u>Total Tranche B Commitment</u>" shall mean, at any time, (i) prior to the funding of the Tranche B Loan pursuant to Section 2.01(b), the sum of the Tranche B Commitments at such time and (ii) on and after funding of the Tranche B Loan pursuant to 2.01(b), the outstanding principal amount of the Tranche B Loan at such time.

"<u>Total Tranche C Commitment</u>" shall mean, at any time, the aggregate of the Total Initial Tranche C Commitment and the Total Subsequent Tranche C Commitment, at such time.

"<u>Tranche A Commitment</u>" shall mean the commitment of each Tranche A Lender to make Tranche A Loans hereunder in the amount set forth opposite its name in Annex A hereto or as may be subsequently set forth in the Register from time to time, as the case may be, and as may be reduced from time to time pursuant to Sections 2.12 and 2.13. The initial aggregate amount of the Tranche A Commitment is \$1,100,000,000.

"Tranche A Commitment Fee" shall have the meaning given such term in Section 2.22(a).

"<u>Tranche A Commitment Percentage</u>" shall mean, at any time, with respect to each Tranche A Lender, the percentage obtained by dividing its Tranche A Commitment at such time by the Total Tranche A Commitment or, if the Tranche A Commitments have been terminated, the Tranche A Commitment Percentage of each Tranche A Lender that existed immediately prior to such termination.

"Tranche A Facility" shall mean, at any time, collectively, the Tranche A Loans outstanding at such time, the aggregate LC Exposure at such time and the Unused Total Tranche A Commitment at such time.

"Tranche A Lender" shall mean each Lender having a Tranche A Commitment or, if the Tranche A Commitments have been terminated, each Lender holding a Tranche A Loan.

"Tranche A Loan" shall have the meaning set forth in Section 2.01(a).

"Tranche A Total Commitment Usage" shall mean, at any time, the sum of (i) the aggregate outstanding principal amount of all Tranche A Loans and (ii) the aggregate LC Exposure at such time.

"<u>Tranche B Commitment</u>" shall mean the commitment of each Tranche B Lender to make such amount of the Tranche B Loan hereunder in the amount set forth opposite its name on Annex A hereto or as may be subsequently set forth in the Register from time to time, as the case may be and as the same may be reduced from time to time pursuant to the last sentence of Section 2.01(b) and Sections 2.12 and 2.13. The initial aggregate amount of the Tranche B Commitment is \$500,000,000.

"Tranche B Commitment Percentage" shall mean, at any time, with respect to each Tranche B Lender, the percentage obtained by dividing its Tranche B Commitment at such time by the Total Tranche B Commitment.

"<u>Tranche B Lender</u>" shall mean each Lender having a Tranche B Commitment or, if the Tranche B Commitments have been terminated, each Tranche B Lender holding a portion of the Tranche B Loan.

"Tranche B Loan" shall have the meaning set forth in Section 2.01(b).

"Tranche C Commitment Fee" shall have the meaning given such term in Section 2.22(b).

"<u>Tranche C Lender</u>" shall mean each Lender having an Initial Tranche C Commitment or a Subsequent Tranche C Commitment or, if the Initial Tranche C Commitments or the Subsequent Tranche C Commitments have been terminated, each Lender holding a portion of the Initial Tranche C Loan or the Subsequent Tranche C Loan, as the case may be.

"Tranche C Loan" shall mean the Initial Tranche C Loan and the Subsequent Tranche C Loan.

"Transactions" shall mean the execution, delivery and performance by the Borrower and Guarantors of this Agreement, the borrowing of Loans, the use of the proceeds thereof and the request for and issuance of Letters of Credit hereunder.

"<u>Type</u>", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"<u>UAW Special Attrition Program Agreement</u>" shall mean the UAW-GM-Delphi Special Attrition Agreement dated as of March 22, 2006 by and among the Borrower, General Motors Corporation and the United Automobile, Aerospace and Agricultural Workers of America, as supplemented on June 5, 2006, a copy of which has been delivered to the Administrative Agent prior to the Effective Date, as amended.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Administrative Agent pursuant to the applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then "UCC" shall mean the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each Loan Document.

"<u>Uncollateralized LC Exposure</u>" shall mean, at any time, (i) the aggregate LC Exposure at such time <u>less</u> (ii) the aggregate LC Exposure for which Cash Collateralization has been made in accordance with Section 2.03(j) prior to such time and which Cash Collateralization is in effect at such time.

"Unused Total Tranche A Commitment" shall mean, at any time, (i) the Total Tranche A Commitment less (ii) the Tranche A Total Commitment Usage.

"<u>Withdrawal Liability</u>" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such term is defined in Part I of Subtitle E of Title IV of ERISA.

"<u>Wholly-Owned</u>" shall mean, as to any Guarantor (or any other Subsidiary of the Borrower), any other Person all of the capital stock (or other equivalent ownership interests) of which (other than directors' qualifying shares or nominal shares held by employees, in each case as required by law) is owned by such Guarantor (or such other Subsidiary of the Borrower) directly and or through other Wholly-Owned Subsidiaries. SECTION 1.02 **Terms Generally**. (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein", "hereof' and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(a) When a change in any amount, percentage, reserve, eligibility criteria or other item in the definitions of the terms "Borrowing Base", "Eligible Inventory", "Eligible Receivables", "Fixed Asset Component", "Inventory Reserves" and "Rent Reserve" is to be determined in the Administrative Agent's "reasonable discretion", such change shall become effective on the date that is ten (10) days after delivery of a written notice thereof to the Borrower (a "Borrowing Base Change Notice"), or immediately, without prior written notice, during the continuance of an Event of Default; provided that (regardless of whether an Event of Default is continuing) no change set forth in a Borrowing Base Change Notice shall be required to be reflected in the next Borrowing Base Certificate delivered by the Borrower if such Borrowing Base Change Notice is delivered to the Borrower less than ten (10) days prior to the date such Borrowing Base Certificate is required to be delivered hereunder.

SECTION 1.03 <u>Accounting Terms; GAAP</u>. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; <u>provided</u> that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall been withdrawn or such provision amended in accordance herewith.

### SECTION 2. AMOUNT AND TERMS OF CREDIT

#### SECTION 2.01 Commitments of the Lenders.

(a) <u>Tranche A Revolving Commitment</u>. (i) Each Tranche A Lender severally and not jointly with the other Tranche A Lenders agrees, upon the terms and subject to the conditions

herein set forth, to make revolving credit loans (each a "<u>Tranche A Loan</u>" and collectively, the "<u>Tranche A Loans</u>") to the Borrower at any time and from time to time during the Availability Period in an aggregate principal amount not to exceed, when added to its LC Exposure, the Tranche A Commitment of such Lender, which Tranche A Loans may be repaid and reborrowed in accordance with the provisions of this Agreement; <u>provided</u> that (A) at no time, after giving effect to any proposed Borrowing to be made at such time, shall the sum of the then outstanding aggregate principal amount of the Tranche A Loans <u>plus</u> the then LC Exposure exceed the Total Tranche A Commitment at such time and (B) at no time, after giving effect to any proposed Borrowing to be made at such time, shall the sum of the then outstanding aggregate principal amount of the Tranche A Loans <u>plus</u> the then LC Exposure exceed the Total Tranche A Commitment at such time and (B) at no time, after giving effect to any proposed Borrowing to be made at such time, shall the sum of the then outstanding aggregate principal amount of the Tranche A Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the Tranche A Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the Tranche A Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the Tranche A Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the Tranche B Loan exceed the amount equal to (i) the lesser of (x) the Total First-Priority Commitment at such time and (y) the Borrowing Base, minus (ii) if Available Liquidity at such time is, after giving effect to such Borrowing, less than \$500,000,000, \$200,000.

(ii) Each Borrowing of a Tranche A Loan shall be made by the Tranche A Lenders <u>pro rata</u> in accordance with their respective Tranche A Commitments; <u>provided</u>, <u>however</u>, that the failure of any Tranche A Lender to make any Tranche A Loan shall not relieve the other Tranche A Lenders of their obligations to lend.

(b) <u>Tranche B Term Loan Commitment</u>. (i) Each Tranche B Lender, severally and not jointly with the other Tranche B Lenders agrees, upon the terms and subject to the conditions herein set forth, to make available to the Borrower on the Effective Date term loans in an aggregate principal amount equal to such Tranche B Lender's Tranche B Commitment (all such loans, collectively, the "<u>Tranche B Loan</u>"), in each case as provided in Section 4.01; <u>provided</u> that at such time, after giving effect to such Borrowing, the sum of the then outstanding aggregate principal amount of the Tranche A Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the Tranche B Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the B Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the B Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the B Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the B Loans <u>plus</u> the then LC Exposure <u>plus</u> the then outstanding aggregate principal amount of the B Loan shall not exceed the amount equal to (i) the lesser of (x) the Total First-Priority Commitment at such time and (y) the Borrowing Base, minus (ii) if Available Liquidity at such time is, giving effect to such Borrowing, less than \$500,000,000, \$200,000,000. Once repaid, the Tranche B Loan may not be reborrowed. The Tranche B Commitment of each Tranche B Lender shall be reduced to zero upon the funding of the Tranche B Loan on the Effective Date.

(ii) The Tranche B Loan shall be made by the Tranche B Lenders pro rata in accordance with their respective Tranche B Commitment; <u>provided</u>, <u>however</u>, that the failure of any Tranche B Lender to make its Tranche B Loan shall not in itself relieve the other Tranche B Lenders of their obligations to lend.

(c) <u>Tranche C Term Loan Commitment</u>. (i) Each Tranche C Lender, severally and not jointly with the other Tranche C Lenders agrees, upon the terms and subject to the conditions herein set forth, to make available to the Borrower on the Effective Date term loans in an aggregate principal amount equal to such Tranche C Lender's Initial Tranche C Commitment (all such loans, collectively, the "<u>Initial Tranche C Loan</u>"), in each case as provided in Section 4.01. The Initial Tranche C Commitment of each Tranche C Lender shall be reduced to zero upon the funding of the Initial Tranche C Loan on the Effective Date.

(ii) Each Tranche C Lender, severally and not jointly with the other Tranche C Lenders agrees, upon the terms and subject to the conditions herein set forth, to make available to the Borrower on the last day of the then Interest Period of the Initial Tranche C Loan term loans in an aggregate principal amount equal to such Tranche C Lender's Subsequent Tranche C Commitment (all such loans, collectively, the "<u>Subsequent Tranche C Loan</u>"). The Subsequent Tranche C Commitment of each Tranche C Lender shall be reduced to zero on the earlier of (x) the funding date of the Subsequent Tranche C Loan and (y) June 9, 2008 (such date, the "<u>Subsequent Tranche C Commitment Termination Date</u>").

(iii) Each of the Initial Tranche C Loan and the Subsequent Tranche C Loan shall be made by the Tranche C Lenders pro rata in accordance with their respective Initial Tranche C Commitment or Subsequent Tranche C Commitment, as the case may be; <u>provided</u>, <u>however</u>, that the failure of any Tranche C Lender to make its Initial Tranche C Loan or Subsequent Tranche C Loan shall not in itself relieve the other Tranche C Lenders of their obligations to lend.

(iv) Once repaid, no Tranche C Loan may be reborrowed.

(d) Each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Eurodollar Loan; <u>provided</u> that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(e) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is in an integral multiple of \$1,000,000 and not less than \$5,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000 provided, that an ABR Borrowing may be in an aggregate amount that is equal to the entire Unused Total Tranche A Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.03(e). Borrowings of more than one Type may be outstanding at the same time.

(f) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(g) Any Cash Collateral included in Available Liquidity at any time may be transferred by the Borrower out of the applicable segregated account only if and to the extent that, after giving effect to such transfer, (1) the Borrower shall be in compliance with the provisos set forth in Section 2.01(a)(i) and Section 2.01(b)(i) and (2) no Default shall have occurred and be continuing.

# SECTION 2.02 [Reserved].

SECTION 2.03 Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account or

the account of any Subsidiary, in a form reasonably acceptable to the Administrative Agent and the Issuing Lender, and the Issuing Lender hereby agrees to issue such requested Letters of Credit, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. At no time shall a Letter of Credit be issued if (i) the sum of the then outstanding aggregate principal amount of the Tranche A Loans plus the LC Exposure (inclusive of the amount of such proposed Letter of Credit) would exceed the Total Tranche A Commitment at such time and (ii) the sum of the then outstanding aggregate principal amount of the Tranche A amount of such proposed Letter of Credit) plus the then outstanding aggregate principal amount of the Tranche A Loans plus the amount of such proposed Letter of Credit) plus the then outstanding aggregate principal amount of the Tranche A Loans of the amount of such proposed Letter of Credit) plus the then outstanding aggregate principal amount of the Tranche A Loans plus to (A) the lesser of (x) the Total First-Priority Commitment at such time and (y) the Borrowing Base, minus (B) if Available Liquidity at such time is, after giving effect to such proposed Letter of Credit, less than \$500,000,000, \$200,000,000. All Existing Letters of Credit outstanding on the Effective Date shall, on the Effective Date, be deemed to be Letters of Credit issued hereunder.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Lender) to the Issuing Lender and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (b) of this Section), the amount of such Letter of Credit, the Person for whose account such Letter of Credit shall be issued, the name and address of the beneficiary thereof and such other information as shall be reasonably necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Lender, the Borrower also shall submit a letter of credit application on the Issuing Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the LC Exposure shall not exceed \$325,000,000. No Issuing Lender shall permit any such issuance, renewal, extension or amendment resulting in an increase in the amount of any Letter of Credit to occur if such Issuing Lender has received notice from the Administrative Agent or the Required Lenders that the conditions to such issuance, renewal, extension or amendment resulting in an increase in the amount of any Letter of Credit to occur if such Issuing Lender has received notice from the Administrative Agent or the Required Lenders that the conditions to such issuance, renewal, extension or

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) 365 days (such 365th day, the "<u>LC Outside Date</u>") after the Maturity Date; <u>provided</u> that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (ii) above). Notwithstanding the foregoing, if the date of the required notification of intent to or not to renew

or extend a Letter of Credit for an additional year (the "<u>LC Notification Date</u>") occurs prior to the Maturity Date, but such Letter of Credit, if extended or renewed for an additional year, would expire after the LC Outside Date, such notification may be given (in the case of any Letter of Credit that requires affirmative notification of intent to extend or renew) or withheld (in the case of any Letter of Credit that requires notification of intent to extend or renew) or withheld (in the case of any Letter of Credit that requires notification of intent not to extend or renew), and the maturity of such Letter of Credit may extend for a period of up to one year following the date of such renewal or extension, provided that (A) on or prior to the LC Notification Date, the Borrower shall deposit cash in the Letter of Credit Account in an amount equal to 105% of such Letter of Credit as collateral security for the Borrower's reimbursement obligations in connection therewith, such cash to be remitted to the Borrower upon and to the extent of the expiration, cancellation or other termination or satisfaction of such reimbursement obligations and (B) if requested by the Issuing Lender, the Borrower shall promptly (but in no event later than the Maturity Date) execute and deliver a letter of credit reimbursement agreement in form and substance satisfactory to the Issuing Lender in connection with such renewal or extension.

(d) Participations. By the issuance (or, in the case of an Existing Letter of Credit, the deemed issuance) of a Letter of Credit (or an amendment to a Letter of Credit including any amendment increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Tranche A Lenders, the Issuing Lender hereby grants to each Tranche A Lender, and each Tranche A Lender hereby acquires from the Issuing Lender, a participation in such Letter of Credit equal to such Tranche A Lender's Tranche A Commitment Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the Issuing Lender, such Tranche A Lender's Tranche A Commitment Percentage of each LC Disbursement made by the Issuing Lender and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Tranche A Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence of an Event of Default or reduction or termination of the Tranche A Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) <u>Reimbursement</u>. If the Issuing Lender shall make any LC Disbursement in respect of a Letter of Credit (including any Letter of Credit issued for the account of any Subsidiary), the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, New York City time, on the Business Day immediately following the day that the Borrower receives notice of such LC Disbursement; <u>provided</u>, that, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.04(a) that such payment be financed with an ABR Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Tranche A Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Tranche A Lender's Tranche A Commitment Percentage thereof. Promptly following receipt of such notice, each Tranche A Lender shall pay to the Administrative Agent its Tranche A Commitment Percentage of the payment then due to

the Issuing Lender from the Borrower, in the same manner as provided in Section 2.05 with respect to Tranche A Loans made by such Tranche A Lender (and Section 2.05 shall apply, <u>mutatis mutandis</u>, to the payment obligations of the Tranche A Lenders), and the Administrative Agent shall promptly pay to the Issuing Lender the amounts so received by it from the Tranche A Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Lender or, to the extent that Tranche A Lenders have made payments pursuant to this paragraph to reimburse the Issuing Lender, then to such Tranche A Lenders and the Issuing Lender for any LC Disbursement (other than the funding of ABR Loans as contemplated above) shall not constitute a Tranche A Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Tranche A Lenders nor the Issuing Lender, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Lender; provided, that the foregoing shall not be construed to excuse the Issuing Lender from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of the Issuing Lender, its directors, officers, employees or affiliates (as finally determined by a court of competent jurisdiction), the Issuing Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Lender may, in its reasonable discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) <u>Disbursement Procedures</u>. The Issuing Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Lender shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Lender has made or will make an LC Disbursement thereunder; <u>provided</u>, that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Lender and the Tranche A Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Lender shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans; provided, that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.09 shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Lender, except that interest accrued on and after the date of payment by any Tranche A Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Lender shall be for the account of such Tranche A Lender to the extent of such payment.

(i) <u>Replacement of the Issuing Lender</u>. An Issuing Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Lender and the successor Issuing Lender. The Administrative Agent shall notify the Tranche A Lenders of any such replacement of an Issuing Lender. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Lender pursuant to Section 2.22. From and after the effective date of any such replacement, (i) the successor Issuing Lender shall have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Lender" shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the replacement of a Issuing Lender there and shall continue to have all the rights and obligations of an Issuing Lender the rights and obligations of an Issuing Lender the replacement of a Issuing Lender shall previous Issuing Lender is the context shall require. After the replacement of a Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) <u>Replacement of Letters of Credit; Cash Collateralization</u>. Upon or prior to the occurrence of the Termination Date the Borrower shall (i) cause all Letters of Credit which expire after the Termination Date to be returned to the Issuing Lender undrawn and marked "cancelled" or, to the extent the Borrower is unable to return any of the Letters of Credit, (ii) either (x) provide one or more "back-to-back" letters of credit to one or more Issuing Lenders in a form reasonably satisfactory to each such Issuing Lender that is a beneficiary of such "back-to-back" letter of credit and the Administrative Agent, issued by a bank reasonably satisfactory to each such Issuing Lender and the Administrative Agent, and/or (y) deposit cash in the Letter of Credit Account, the sum of (x) and (y) of this sentence to be in an aggregate amount equal to 105% of Uncollateralized LC Exposure as collateral security for the Borrower's reimbursement obligations in connection therewith, such cash to be remitted to the Borrower upon and to the extent of the expiration, cancellation or other termination or satisfaction of such reimbursement obligations ("Cash Collateralization"). The Administrative Agent shall have exclusive dominion

and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole reasonable discretion of the Administrative Agent (in accordance with its usual and customary practices for investments of this type) and at the Borrower's risk and reasonable expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Lender for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time and upon expiration or cancellation (or backstop as set forth in clause (x) above) of the related Letter of Credit or other termination or satisfaction of the Borrower's reimbursement obligations with respect thereto, such cash shall be promptly remitted to the Borrower.

(k) <u>Issuing Lender Agreements</u>. Unless otherwise requested by the Administrative Agent, each Issuing Lender shall report in writing to the Administrative Agent (i) on the first Business Day of each week, the daily activity (set forth by day) in respect of Letters of Credit during the immediately preceding week, including all issuances, extensions, amendments and renewals, all expirations and cancellations and all disbursements and reimbursements, (ii) on or prior to each Business Day on which such Issuing Lender expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the aggregate face amount of the Letters of Credit to be issued, amended, renewed, or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension occurred (and whether the amount thereof changed), it being understood that such Issuing Lender shall not permit any issuance, renewal, extension or amendment resulting in an increase in the amount of any Letter of Credit to occur if such Issuing Lender has received notice from the Administrative Agent or the Required Lenders that the conditions to such issuance, extension or amendment have not been met, (iii) on each Business Day on which such Issuing Lender makes any LC Disbursement, the date of such LC Disbursement and the amount of such LC Disbursement, (iv) on any Business Day on which the Borrower fails to reimburse an LC Disbursement and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request.

#### SECTION 2.04 Requests for Borrowings.

(a) <u>Tranche A Loans</u>. Unless otherwise agreed to by the Administrative Agent in connection with making the initial Loans, to request a Borrowing of Tranche A Loans, the Borrower shall notify the Administrative Agent of such request by telephone (x) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing and (y) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, on the date of the proposed Borrowing; <u>provided that</u>, (i) any such notice of an ABR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.03(e) may be given not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing and (ii) any such notice of a Eurodollar Borrowing to be advanced on the Effective Date may be given not later than 11:00 a.m., New York City time, on the later than 11:00 a.m., New York City time, on the later than 11:00 a.m., New York City time, on the date of the proposed Borrowing and (ii) any such notice of a Eurodollar Borrowing to be advanced on the Effective Date may be given not later than 11:00 a.m., New York City time, on the Effective Date. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, courier or telecopy to the Administrative Agent of a

written Borrowing Request in a form reasonably acceptable to the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.01:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period".

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.04(a), the Administrative Agent shall advise each Tranche A Lender of the details thereof and of the amount of such Tranche A Lender's Tranche A Loan to be made as part of the requested Borrowing.

(b) <u>Tranche B Loan</u>. To request the Borrowing of the Tranche B Loan, the Borrower shall notify the Administrative Agent of such request by telephone (x) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing and (y) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time on the date of the proposed Borrowing. Such telephonic notice shall be irrevocable and shall be confirmed promptly by hand delivery, courier or telecopy to the Administrative Agent of a written Borrowing Request in a form reasonably acceptable to the Administrative Agent and signed by the Borrower. Such telephone and written Borrowing Request shall specify the following information in compliance with Section 2.01:

(i) the aggregate amount of the requested Borrowing (which shall be the amount of the Total Tranche B Commitment);

(ii) the date of such Borrowing, which shall be a Business Day and the Effective Date;

(iii) the portion of the Tranche B Loan that is to initially be an ABR Borrowing and that is to initially be a Eurodollar Borrowing; and

(iv) in the case of such portion of the Tranche B Loan that is a Eurodollar Borrowing, the initial Interest Period applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period".

If no election as to the Type of Borrowing is specified, then the Tranche B Loan shall initially be an ABR Borrowing. If no Interest Period is specified with respect to any portion of the Tranche B Loan that is to initially be a Eurodollar Borrowing, then the Borrower shall be deemed to have

selected an Interest Period of one month's duration. Promptly following receipt of the Borrowing Request in accordance with this Section 2.04(b), the Administrative Agent shall advise each Tranche B Lender of the details thereof and of the amount of such Tranche B Lender's Loan to be made as part of the requested Borrowing (which shall be equal to such Tranche B Lender's Tranche B Commitment).

(c) <u>Tranche C Loan</u>. To request the Borrowing of either Tranche C Loan, the Borrower shall notify the Administrative Agent of such request by telephone (x) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing and (y) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time on the date of the proposed Borrowing. Such telephonic notice shall be irrevocable and shall be confirmed promptly by hand delivery, courier or telecopy to the Administrative Agent of a written Borrowing Request in a form reasonably acceptable to the Administrative Agent and signed by the Borrower. Such telephone and written Borrowing Request shall specify the following information in compliance with Section 2.01:

(i) the aggregate amount of the requested Borrowing (which shall be the amount of the Total Initial Tranche C Commitment, in the case of the Borrowing of the Initial Tranche C Loan, and the amount of the Total Subsequent Tranche C Commitment, in the case of the Borrowing of the Subsequent Tranche C Loan);

(ii) the date of such Borrowing, which shall be (x) a Business Day and (y) in the case of the Initial Tranche C Loan, the Effective Date and in the case of the Subsequent Tranche C Loan, the last day of the Interest Period then applicable to the Initial Tranche C Loan;

(iii) the portion of such Borrowing that is to initially be an ABR Borrowing and that is to initially be a Eurodollar Borrowing; and

(iv) in the case of such Borrowing that is a Eurodollar Borrowing, the initial Interest Period applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period".

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall initially be an ABR Borrowing. If no Interest Period is specified with respect to any portion of either Tranche C Loan that is to initially be a Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of the Borrowing Request in accordance with this Section 2.04(c), the Administrative Agent shall advise each Tranche C Lender of the details thereof and of the amount of such Tranche C Lender's Loan to be made as part of the requested Borrowing (which shall be equal to such Tranche C Lender's Initial Tranche C Commitment, as the case may be).

SECTION 2.05 **Funding of Borrowings.** (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received,

in like funds, to an account of the Borrower maintained with the Administrative Agent and designated by the Borrower in the applicable Borrowing Request; <u>provided</u> that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.03(e) shall be remitted by the Administrative Agent to the Issuing Lender.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.06 Interest Elections. (a) Each Borrowing of Tranche A Loans, the Borrowing of the Tranche B Loan, the Borrowing of the Subsequent Tranche C Loan initially shall be of the Type or, in the case of the Tranche B Loan, the Initial Tranche C Loan and the Subsequent Tranche C Loan, Types specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowings to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders of the same Class comprising such Borrowing, and the Tranche A Loans, Tranche B Loan and Tranche C Loan, as the case may be, comprising each such Type shall be considered a separate Borrowing.

(b) To make an Interest Election Request pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by (x) in the case of a Eurodollar Borrowing, not later than 1:00 p.m. New York City time, three (3) Business Days before the effective date of such election and (y) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, courier or telecopy to the Administrative Agent of a written Interest Election Request in a form reasonably acceptable to the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.01:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing having an Interest Period of one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

# SECTION 2.07 [Reserved].

# SECTION 2.08 Interest on Loans.

(a) Subject to the provisions of Section 2.09, each ABR Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days or, when the Alternate Base Rate is based on the Prime Rate, a year with 365 days or 366 days in a leap year) at a rate per annum equal to the Alternate Base Rate plus (A) if a Tranche A Loan, 3.00%, (B) if a Tranche B Loan, 3.00% and (C) if a Tranche C Loan, 4.25%; *provided* that if the applicable Alternate Base Rate at the time of determination of the interest rate for a Tranche B Loan or a Tranche C Loan is below 4.25%, the Alternate Base Rate for such Tranche B Loan or Tranche C Loan for such Interest Period shall be deemed to be 4.25%.

(b) Subject to the provisions of Section 2.09, each Eurodollar Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a

rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBO Rate for such Interest Period in effect for such Borrowing plus (A) if a Tranche A Loan, 4.00%, (B) if a Tranche B Loan, 4.00% and (C) if a Tranche C Loan, 5.25%; *provided* that if the applicable Adjusted LIBO Rate at the time of determination of the interest rate for a Tranche B Loan or a Tranche C Loan is below 3.25%, the Adjusted LIBO Rate for such Tranche B Loan or Tranche C Loan for such Interest Period shall be deemed to be 3.25%.

(c) Accrued interest on all Loans shall be payable in arrears on each Interest Payment Date applicable thereto, on the Termination Date and after the Termination Date on demand and (with respect to Eurodollar Loans) upon any repayment or prepayment thereof (on the amount prepaid).

SECTION 2.09 **Default Interest**. If the Borrower or any Guarantor, as the case may be, shall default in the payment of the principal of or interest on any Loan or in the payment of any other amount becoming due hereunder (including the reimbursement pursuant to Section 2.03(e) of any LC Disbursements), whether at stated maturity, by acceleration or otherwise, the Borrower or such Guarantor, as the case may be, shall on demand from time to time pay interest, to the extent permitted by law, on all Loans and overdue amounts up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days or when the Alternate Base Rate is applicable and is based on the Prime Rate, a year with 365 days or 366 days in a leap year) equal to (x) the rate then applicable for such Borrowings <u>plus</u> 2.0% and (y) in the case of all other amounts, the rate applicable for Alternate Base Rate <u>plus</u> 2.0%.

SECTION 2.10 <u>Alternate Rate of Interest</u>. In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a Eurodollar Loan, the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower absent manifest error) that reasonable means do not exist for ascertaining the applicable Adjusted LIBO Rate, the Administrative Agent shall, as soon as practicable thereafter, give written, facsimile or telegraphic notice of such determination to the Borrower and the Lenders, and any request by the Borrower for a Borrowing of Eurodollar Loans (including pursuant to a refinancing with Eurodollar Loans) pursuant to Section 2.04 shall be deemed a request for a Borrowing of ABR Loans. After such notice shall have been given and until the circumstances giving rise to such notice no longer exist, each request for a Borrowing of Eurodollar Loans shall be deemed to be a request for a Borrowing of ABR Loans.

#### SECTION 2.11 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Termination Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type and Class thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be <u>prima facie</u> evidence of the existence and amounts of the obligations recorded therein; <u>provided</u> that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in a form furnished by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.03 to the extent requested by the Lender assignee) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.12 **Optional Termination or Reduction of Commitment**. Upon at least one Business Day's prior written notice to the Administrative Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Unused Total Tranche A Commitment, the Tranche B Commitment, the Initial Tranche C Commitment and the Subsequent Tranche C Commitment. Each such reduction of the Commitments shall be in the principal amount of \$1,000,000 or any integral multiple thereof. Simultaneously with each reduction or termination of the Tranche A Commitment, the Borrower shall pay to the Administrative Agent for the account of each Tranche A Lender the Tranche A Commitment Fee accrued and unpaid on the amount of the Subsequent Tranche C Simultaneously with each reduction or terminated through the date thereof. Simultaneously with each reduction of the Subsequent Tranche C Commitment, the Borrower shall, subject to entry by the Bankruptcy Court of the Supplemental Approval Order, pay to the Administrative Agent for the account of each Tranche C Lender Tranche C Lender holding a Subsequent Tranche C Commitment the Tranche C Commitment Fee, accrued and unpaid on the amount of the Subsequent Tranche C Commitment of such Tranche C Lender so terminated or reduced through the date thereof. Commitment of such Tranche C Commitment the Tranche C Commitment fee, accrued and unpaid on the amount of the Subsequent Tranche C Commitment of such Tranche C Commitment the Tranche C Commitment fee, accrued and unpaid on the amount of the Subsequent Tranche C Commitment of such Tranche C Lender so terminated or reduced through the date thereof. Any reduction of any Commitment of a Class pursuant to this Section shall be applied <u>pro rata</u> to reduce the applicable Commitment of each Lender of such Class.

### SECTION 2.13 Mandatory Prepayment; Commitment Termination.

(a) If at any time the aggregate principal amount of the outstanding Tranche A Loans <u>plus</u> the aggregate principal amount of the outstanding Tranche B Loan <u>plus</u> the LC Exposure exceeds the amount (the "<u>Maximum Amount</u>") equal to (A) the lesser of (x) the Total First-Priority Commitment at such time and (y) the Borrowing Base, <u>minus</u> (B) if Available Liquidity at such time is less than \$500,000,000, \$200,000 (any such excess amount, the

"Excess Drawn Amount"), the Borrower will within the Prepayment Period (i) make a prepayment in an amount, if any, necessary to cause the aggregate principal amount of the outstanding Tranche A Loans <u>plus</u> the aggregate principal amount of the outstanding Tranche B Loan <u>plus</u> the LC Exposure to be equal to or less than the Maximum Amount, such prepayment to be applied to repay Tranche A Loans (with no corresponding commitment reduction) and/or Tranche B Loan as directed by the Borrower, and (ii) if, after giving effect to the prepayment in full of the Tranche A Loans and the Tranche B Loan, the Uncollateralized LC Exposure exceeds the Maximum Amount, deposit into the Letter of Credit Account an amount equal to 105% of the amount by which the Uncollateralized LC Exposure so exceeds the Lesser Amount, <u>provided</u> that, if on any date thereafter, the Maximum Amount (as recalculated on such date) exceeds the LC Exposure plus the outstanding Tranche A Loans plus the outstanding Tranche B Loan on such date, any amount deposited into the Letter of Credit Account pursuant to subclause (ii) above shall be returned to the Borrower. For purposes hereof, "<u>Prepayment Period</u>" shall mean within one Business Day or, if a Qualifying GM Borrowing Notice has been delivered by the Borrower to General Motors Corporation, within three Business Days, and a "<u>Qualifying GM Borrowing Notice</u>" shall mean a notice of borrowing delivered by the Borrower to General Motors Corporation requesting a borrowing under the GM-Delphi Agreement in accordance with the terms of the GM-Delphi Agreement in an amount at least equal to the Excess Drawn Amount so long as, at such time, such amount shall then be fully available and permitted to be drawn by the Borrower under the GM-Delphi Agreement.

(b) If on any date the Borrower or any Guarantor shall receive Net Cash Proceeds from (x) any Asset Sale or (y) any Recovery Event (except to the extent that Net Cash Proceeds received in connection with such Recovery Event are applied within 180 days of receipt thereof to the replacement or repair of the assets giving rise thereto), and in each case, the aggregate amount of all Net Cash Proceeds from Asset Sales and Recovery Events received by the Borrower and the Guarantors from Asset Sales and Recovery Events occurring on and after the Closing Date exceeds \$125,000,000 then (without duplication of any reduction to the Borrowing Base as a result of such Asset Sale or Recovery Event), an amount equal to 66-2/3% of such excess Net Cash Proceeds received on such date shall be promptly, and in any event, within 10 days after such date, at the Borrower's option, either (i)(A) first, applied to the prepayment of the Tranche B Loan, (B) second, applied to the prepayment of the Tranche A Loans (with a corresponding permanent reduction of the Total Tranche A Commitments) and (C) third, solely on and after the First-Priority Tranches Payout Date has occurred and to the extent permitted by the Approval Order, applied to the prepayment of the Tranche C Loan or (ii) deposited into a cash collateral account maintained with the Administrative Agent for the benefit of the holders of Liens and claims granted under the Approval Order in the order of priority set forth therein; provided that the Borrower shall be permitted to request approval of the Bankruptcy Court to use such proceeds in accordance with Section 363 of the Bankruptcy Code so long as such uses are permitted under this Agreement and subject to the rights of parties in interest to contest such request, and provided further that the Borrower may elect to apply a portion of such Net Cash Proceeds pursuant to clause (i) above and the remaining portion pursuant to clause (ii) above. If, prior to the occurrence of the First-Priority Tranches Payout Date, after giving effect to the application of Net Cash Proceeds described in sub-clauses (A) and (B) of clause (i) of the preceding sentence, there shall remain any Net Cash Proceeds, such Net Cash Proceeds shall not be subject to the prepayment provisions of this Section 2.13(b), but remain subject to the Liens securing the Secured Obligations in accordance with the Loan Documents and the Approval Order.

(c) Upon the Termination Date, the Total Commitment shall be terminated in full and the Borrower shall repay the Loans in full.

# SECTION 2.14 Optional Prepayment of Loans.

The Borrower shall have the right at any time and from time to time to prepay any Loans, in whole or in part, (x) with respect to Eurodollar Loans, upon written or facsimile notice received by 1:00 p.m. New York City time three Business Days' prior to the proposed date of prepayment and (y) with respect to ABR Loans on the same Business Day upon written or facsimile notice by 12:00 noon New York City time on the proposed date of prepayment; provided, however, that (i) each such partial prepayment (other than a prepayment of all outstanding Loans of any Class) shall be in multiples of \$1,000,000, (ii) no prepayment of

(a) Eurodollar Loans shall be permitted pursuant to this Section 2.14(a) other than on the last day of an Interest Period applicable thereto unless such prepayment is accompanied by the payment of the amounts required by Section 2.17 and (iii) no prepayment of the Tranche C Loan shall be permitted or made pursuant to this Section 2.14(a) except in accordance with the Approval Order, and in no event shall any such prepayment of the Tranche C Loan be made prior to the occurrence of the First-Priority Tranches Payout Date.

(b) Each notice of prepayment shall specify the prepayment date, the principal amount of the Loans to be prepaid (it being understood that no prepayment of the Tranche C Loan shall be permitted or made pursuant to Section 2.14(a) prior to the occurrence of the First-Priority Tranches Payout Date) and in the case of Eurodollar Loans, the Borrowing or Borrowings pursuant to which made, and, subject to the last sentence of this Section 2.14(b), shall be irrevocable and shall commit the Borrower to prepay such Loan by the amount and on the date stated therein. The Administrative Agent shall, promptly after receiving notice from the Borrower hereunder, notify each Lender of the principal amount of the Loans held by such Lender which are to be prepaid, the prepayment date and the manner of application of the prepayment. Notwithstanding anything in this Section 2.14 to the contrary, if the Borrower delivers a notice of prepayment of all (but not less than all) of the outstanding Loans and other Obligations and the termination of all commitments hereunder, such notice may state that it is conditioned upon the effectiveness of other credit facilities or the occurrence of a Change of Control, and in either case, (i) such notice may be revoked by the Borrower by written notice to the Administrative Agent no later than 12 noon New York City time on the specified prepayment date if such condition is not satisfied, and (ii) such prepayment shall be accompanied by the payment of the amounts required by Section 2.17.

# SECTION 2.15 [Reserved].

SECTION 2.16 Increased Costs. (a) If any Change in Law (except in respect of Taxes (as to which Section 2.18 shall govern)) shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit



extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Lender; or

(ii) impose on any Lender or the Issuing Lender or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Lender of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Lender reasonably determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Lender's capital or on the capital of such Lender's or the Issuing Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or the Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be <u>prima facie</u> evidence of the obligations of the Borrower hereunder. The Borrower shall pay such Lender or the Issuing Lender, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof; <u>provided</u> that the failure of the Borrower to pay any amount owing to any Lender or Issuing Lender, as the case may be, pursuant to this Section 2.16 shall not be deemed to constitute a Default or an Event of Default hereunder to the extent that the Borrower is contesting in good faith its obligation to pay such amount by ongoing discussion diligently pursued with such Lender or Issuing Lender or by appropriate proceedings.

(d) Failure or delay on the part of any Lender or the Issuing Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Lender's right to demand such compensation; <u>provided</u>, that the Borrower shall not be required to compensate a Lender or the Issuing Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Lender's intention to claim

compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.17 **Break Funding Payments**. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto or as provided in the first sentence of Section 2.06(e), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.20, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

SECTION 2.18 <u>Taxes</u>. (a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes. If the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law; <u>provided</u>, however, that the Borrower shall not be required to increase any such amounts payable to any Administrative Agent, Lender or Issuing Lender with respect to Indemnified Taxes or Other Taxes (i) that are attributable to a Lender' s failure to comply with the requirements of paragraph (e) or (f) of this Section or (ii) that are withholding taxes that would have been imposed had such payment been made to such Lender at the time such Lender became a party to this Agreement, except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower with respect to such Indemnified Taxes or Other Taxes pursuant to this paragraph.

(b) In addition but without duplication of any Taxes to be paid pursuant to Section 2.18(a), the Borrower shall pay any Other Taxes to the relevant Governmental Authority

(other than Other Taxes resulting solely from as assignment pursuant to Section 10.03(b) hereof) in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the Issuing Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Lender, shall be conclusive absent manifest error. Without limiting the Borrower's obligation to indemnify the Administrative Agent, each Lender and each Issuing Lender (for purposes of this sentence, each such party is a "cooperating party") for Indemnified Taxes and Other Taxes hereunder (including in accordance with any time deadlines for such indemnification set forth herein), in the event that the Borrower makes any payment under Section 2.18(a), (b) or (c) with respect to any Tax, the Borrower may, at its own expense, contest the imposition of such Tax with the relevant Governmental Authority in order to obtain a refund thereof, and the relevant cooperating party shall use commercially reasonably efforts to cooperate with the Borrower in its pursuit of any such refund, provided that (i) prior to the Borrower commencing the pursuit of any such refund or any cooperation on the part of the relevant cooperating party, the Borrower has received an opinion of counsel to the effect that there is a substantial likelihood of success in obtaining such refund (such opinion of counsel to be issued by counsel, and in form and substance, satisfactory to the relevant cooperating party) and (ii) no relevant cooperating party shall (x) be required to disclose any confidential information (including tax returns), (y) incur any unreimbursed cost or expense or (z) be otherwise disadvantaged, in each case in connection with such cooperation.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent, for its own account or for the account of the relevant Lender as the case may be, the original or a certified copy of a receipt received by the Borrower evidencing such payment or other evidence of payment reasonably satisfactory to the Administrative Agent. Each Lender represents as of the date such Lender becomes a party to this Agreement that, to the best of its knowledge without having conducted any investigation, except for Other Taxes that may be imposed under the federal, state or local laws of the United States, it is not aware of any Other Taxes with respect to this Agreement or any other Loan Document.

(e) (i) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN, Form W-8ECI or Form W-8EXP, or, in the case of a Foreign Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a true and accurate statement substantially in the form of Exhibit D and a Form W-8BEN, or any subsequent versions thereof or successors thereto, that the Borrower has no knowledge or reason to know is untrue, properly completed and duly executed by such

Foreign Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the other Loan Documents.

(i) Each Lender and Administrative Agent that is a "United States Person", as defined in Section 7701(a)(30) of the Code (other than Persons that are exempt from United States backup withholding tax) shall deliver, at the time(s) and in the manner(s) prescribed by applicable law, to the Borrower and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of a properly completed and duly executed United States Internal Revenue Form W-9 or any subsequent version thereof or successor thereto, certifying that such Lender is exempt from United States backup withholding tax on payments made hereunder.

Such forms shall be delivered by each Lender and the Administrative Agent on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation). In addition, each Lender and the Administrative Agent shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Lender or the Administrative Agent. Each Lender and the Administrative Agent shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Lender or the Administrative Agent shall not be required to deliver any form pursuant to this paragraph that such Lender is not legally able to deliver.

(f) Any Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower and to the Administrative Agent, at the time or times prescribed by applicable law or reasonably requested by the Borrower, two copies of such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate; <u>provided</u> that such Lender is legally entitled to complete, execute and deliver such documentation in such Lender's judgment and such completion, execution or submission would not materially prejudice the legal position of such Lender.

(g) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund or the equivalent from the relevant Taxing Authority of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.18, it shall pay over such refund or equivalent to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.18 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or equivalent); provided, that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to

the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund or equivalent to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

# SECTION 2.19 Payments Generally; Pro Rata Treatment.

(a) The Borrower shall make each payment or prepayment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.16, 2.17 or 2.18, or otherwise) prior to 2:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except payments to be made directly to the Issuing Lender as expressly provided herein and except that payments pursuant to Sections 2.16, 2.17, 2.18 and 10.05 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest, fees and expenses then due hereunder, such funds shall be applied (i) first, towards payment of fees and expenses then due under Sections 2.21 and 10.05, ratably among the parties entitled thereto in accordance with the amounts of fees and expenses then due to such parties, (ii) second, towards payment of interest, Tranche A Commitment Fees and Letter of Credit Fees then due on account of Tranche A Loans, Tranche B Loan, Unused Total Tranche A Commitment, unreimbursed LC Disbursements and Letters of Credit (including any interest payable pursuant to Section 2.09), ratably among the parties entitled thereto in accordance with the amounts of such interest and fees then due to such parties, (iii) third, towards payment of principal of the Tranche A Loans, Tranche B Loan, and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties, (iv) fourth, towards the Cash Collateralization of Letters of Credit then outstanding in an aggregate amount equal to 105% of the Uncollateralized LC Exposure, (v) fifth, solely on and after the First-Priority Tranches Payout Date has occurred, towards payment of interest (including without limitation any interest payable pursuant to Section 2.09) and the Tranche C Commitment Fees then due on account of the Tranche C Loan, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties and (vi) sixth, solely on and after the First-Priority Tranches Payout Date has occurred and to the extent permitted by the Approval Order, towards payment of principal of the Tranche C Loan then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties; provided, however, that (A) funds may be applied towards payment of the interest then due on account of the Tranche C



Loan prior to the occurrence of the First-Priority Tranches Payout Date if all payments then due described in clauses <u>first</u> through <u>fourth</u>, inclusive, have been made in full in cash and (B) the proceeds from the foreclosure of any Collateral shall be applied as set forth in the Security and Pledge Agreement.

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(d) If any Lender shall fail to make any payment required to be made by it pursuant to Sections 2.03(d) and (e), 2.05(b) and 2.19(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.20 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.16, or if the Borrower is reasonably anticipated to be required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.18, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.16 or 2.18, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.16, or if the Borrower is reasonably anticipated to be required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.18, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.03), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and if a Tranche A Commitment is being assigned, the Issuing Lender), which consent shall not unreasonably be withheld or delayed, (ii) such Lender shall have

received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.16 or payments reasonably anticipated to be required to be made pursuant to Section 2.18, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.21 <u>Certain Fees</u>. The Borrower shall pay the fees set forth in that certain Fourth Amendment Fee Letter among, JPMorgan, JPMCB and the Borrower dated the Effective Date.

# SECTION 2.22 Commitment Fees. The Borrower shall pay to:

(a) the Tranche A Lenders a commitment fee (the "<u>Tranche A Commitment Fee</u>") for the period commencing on the Effective Date to the Termination Date or the earlier date of termination of the Tranche A Commitment, computed (on the basis of the actual number of days elapsed over a year of 360 days) at the rate of one percent (1.0%) per annum on the average daily Unused Total Tranche A Commitment. The Tranche A Commitment Fee, to the extent then accrued, shall be payable (x) monthly, in arrears, on the last calendar day of each month, (y) on the Termination Date and (z) as provided in Section 2.12 hereof, upon any reduction or termination in whole or in part of the Total Tranche A Commitment; and

(b) subject to entry by the Bankruptcy Court of the Supplemental Approval Order, the Tranche C Lenders holding Subsequent Tranche C Commitments a commitment fee (the "<u>Tranche C Commitment Fee</u>") for the period commencing on the Effective Date to the Subsequent Tranche C Commitment Termination Date or the earlier date of termination of the Subsequent Tranche C Commitment, computed (on the basis of the actual number of days elapsed over a year of 360 days) at the rate of two and five-eighths percent (2.625%) per annum on the Subsequent Tranche C Commitment. The Tranche C Commitment Fee, to the extent then accrued and approved by the Bankruptcy Court as set forth in the Supplemental Approval Order, shall be payable (x) on the funding date of the Subsequent Tranche C Loan and (y) as provided in Section 2.12 hereof, upon any reduction or termination in whole or in part of the Total Subsequent Tranche C Commitment.

SECTION 2.23 Letter of Credit Fees. The Borrower shall pay with respect to each Letter of Credit (i) to the Administrative Agent on behalf of the Tranche A Lenders a fee calculated (on the basis of the actual number of days elapsed over a year of 360 days) at the rate of four percent (4.00%) per annum, on the daily average LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) and (ii) to the Issuing Lender such Issuing Lender's customary fees for issuance, amendments and processing referred to in Section 2.03. In addition, the Borrower agrees to pay each Issuing Lender for its account a fronting fee of one quarter of one percent (1/4%) per annum in respect of each Letter of Credit issued by such Issuing Lender, for the period from and including the date of issuance of such Letter of Credit to and including the date of termination of such Letter of Credit. Accrued fees described in this

paragraph in respect of each Letter of Credit shall be due and payable monthly in arrears on the last calendar day of each month and on the Termination Date.

SECTION 2.24 <u>Nature of Fees</u>. All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for the respective accounts of the Administrative Agent and the Lenders, as provided herein and in the fee letter described in Section 2.21. Once paid, none of the Fees shall be refundable under any circumstances.

### SECTION 2.25 Priority and Liens.

(a) Subject to the Approval Order and the Security and Pledge Agreement, the Borrower and each of the Guarantors hereby covenants, represents and warrants that, upon entry of the Approval Order, the Obligations and the other Secured Obligations (including the obligations of the Borrower and the Guarantors in respect of any hedging obligations permitted hereunder and Indebtedness permitted by Section 6.03(viii), in each case owing to JPMCB, any other Lender or any of their respective banking Affiliates) and subject, in each of clauses (i) through (iv) below, to the Carve-Out:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed claims in the Cases having priority over any and all administrative expenses, diminution claims (including the Replacement Liens and Junior Adequate Protection Liens) and all other claims against the Borrower and the Guarantors, now existing or hereafter arising, of any kind whatsoever, including all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code; <u>provided</u>, <u>however</u>, that such claims granted under the Approval Order in respect of Obligations under the Tranche A Facility and the Tranche B Loan shall be senior in priority to such claims granted under the Approval Order in respect of Obligations under the Tranche C Loan;

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall at all times be secured by a valid, binding, continuing, enforceable and fully-perfected first priority senior security interest in and Lien on all tangible and intangible property of the Borrower's and the Guarantors' respective estates in the Cases that is not subject to valid, perfected, non-avoidable and enforceable Liens in existence on the Closing Date, including all present and future accounts receivable, inventory, general intangibles, chattel paper, real property, leaseholds, fixtures, machinery and equipment, deposit accounts, patents, copyrights, trademarks, tradenames, rights under license agreements and other intellectual property, capital stock of any Subsidiaries of the Borrower and Guarantors' rights in respect of avoidance actions under the Bankruptcy Code and (y) joint venture interests with respect to which a valid prohibition on pledging such interests or granting Liens thereon exists, it being understood that, notwithstanding such exclusion of such interests, the proceeds of such interests shall be subject to such liens under Section 364(c)(2) of the Bankruptcy Code and available to satisfy the Obligations and the other Secured Obligations);

(iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, shall be secured by valid, binding, continuing, enforceable and fullyperfected security interests in

and Liens upon all tangible and intangible property of the Borrower and the Guarantors (other than property described in clauses (ii) and (iv), as to which the liens and security interests in favor of the Administrative Agent and the Lenders will be as described in such clauses) that is subject to valid, perfected and non-avoidable liens in existence on the Closing Date, which security interests and liens in favor of the Administrative Agent and unavoidable liens;

(iv) pursuant to Section 364(d)(1) of the Bankruptcy Code, shall be secured by a valid, binding, continuing, enforceable and fullyperfected first priority senior priming security interest in and senior priming Lien on all of the tangible and intangible property of the Borrower and the Guarantors that is subject to existing Liens that pursuant to the terms of the Existing DIP Order are subject and subordinate to the Existing DIP Liens, which existing liens, rights and interests (the "<u>Primed Liens</u>") shall be primed by and made subject and subordinate to the liens granted to the Administrative Agent and the Lenders, which senior priming liens in favor of the Administrative Agent and the Lenders shall also prime any liens granted under the Approval Order or thereafter to provide adequate protection in respect of the Primed Liens; <u>provided</u>, <u>however</u>, that such security interests and liens granted to the Administrative Agent and the Lenders shall be subject and subordinate to (x) the Carve-Out, (y) any valid, perfected and unavoidable interests of other parties arising out of liens existing DIP Liens and (z) statutory liens or security interests arising after the Closing Date and permitted under this Agreement that by operation of law would have priority over a previously perfected security interest; <u>provided</u>, <u>further</u>, that any valid, perfected and non-voidable liens or security interests that remain in existence after the Closing Date and that were senior to or <u>pari passu</u> with the liens securing obligations under the Existing Pre-Petition Agreement prior to the Closing Date shall maintain such priority or <u>pari passu</u> position relative to the liens securing the Tranche C Loan;

provided, however, that (w) all liens granted under the Approval Order to the Administrative Agent and the Lenders to secure Obligations under the Tranche A Facility and the Tranche B Loan shall be senior in priority to all liens granted under the Approval Order to the Administrative Agent and the Lenders to secure Obligations under the Tranche C Loan; (x) the Borrower and the Guarantors shall not be required to pledge to the Administrative Agent in excess of 65% of the voting capital stock of its direct Foreign Subsidiaries or any of the capital stock or interests of its indirect Foreign Subsidiaries (if, in the good faith judgment of the Borrower, adverse tax consequences would result to the Borrower); (y) no portion of the Carve-Out may be utilized to fund prosecution or assertion of any claims against the Administrative Agent, the Lenders or the Issuing Lenders and (z) following the Termination Date, amounts in the Letter of Credit Account shall not be subject to the Carve-Out. The Lenders agree that so long as no Event of Default shall have occurred and be continuing, the Borrower and the Guarantors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under Sections 330 and 331 of title 11 of the United States Code, as the same may be due and payable, and the same shall not reduce the Carve-Out.

(b) Subject to the priorities set forth in subsection (a) above and to the Carve-Out, as to all real property the title to which is held by the Borrower or any of the Guarantors, or the possession of which is held by the Borrower or any of the Guarantors pursuant to leasehold

interests and which secured the Existing Pre-Petition Indebtedness prior to the refinancing thereof on the Closing Date, the Borrower and each Guarantor hereby assigns and conveys as security, grants a security interest in, hypothecates, mortgages, pledges and sets over unto the Administrative Agent on behalf of the Lenders all of the right, title and interest of the Borrower and such Guarantor in all of such owned real property and in all such leasehold interests, together in each case with all of the right, title and interest of the Borrower and such Guarantor in and to all buildings, improvements, and fixtures related thereto, any lease or sublease thereof, all general intangibles relating thereto and all proceeds thereof. The Borrower and each Guarantor acknowledges that, pursuant to the Approval Order, the Liens in favor of the Administrative Agent on behalf of the Lenders in all of such real property and leasehold instruments shall be perfected without the recordation of any instruments of mortgage or assignment. The Borrower and each Guarantor further agrees that, upon the request of the Administrative Agent following the occurrence of an Event of Default (regardless of whether such Event of Default is continuing), the Borrower and such Guarantor shall enter into separate fee or leasehold mortgages in recordable form with respect to such properties on terms reasonably satisfactory to the Administrative Agent.

SECTION 2.26 **Right of Set-Off**. Subject to the provisions of Section 7.01, upon the occurrence and during the continuance of any Event of Default, the Administrative Agent and each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law and without further order of or application to the Bankruptcy Court, to set off and apply any and all deposits (general or special, time or demand, provisional or final but excluding deposits designated as payroll accounts and any trust accounts) at any time held and other indebtedness at any time owing by the Administrative Agent and each such Lender to or for the credit or the account of the Borrower or any Guarantor against any and all of the obligations of such Borrower or Guarantor now or hereafter existing under the Loan Documents, irrespective of whether or not such Lender shall have made any demand under any Loan Document and although such obligations may not have been accelerated. Each Lender and the Administrative Agent agrees to notify the Borrower and Guarantors in accordance with Section 7.01 prior to any such set-off and application made by such Lender or by the Administrative Agent, as the case may be. The rights of each Lender and the Administrative Agent under this Section are in addition to other rights and remedies which such Lender and the Administrative Agent and the continuance of any Event of Default.

SECTION 2.27 <u>Security Interest in Letter of Credit Account</u>. Pursuant to Section 364(c)(2) of the Bankruptcy Code, the Borrower and the Guarantors hereby assign and pledge to the Administrative Agent, for its benefit and for the ratable benefit of the Lenders, and hereby grant to the Administrative Agent, for its benefit and for the ratable benefit of the Lenders, a first priority security interest, senior to all other Liens, if any, in all of the Borrower's and the Guarantors' right, title and interest in and to the Letter of Credit Account and any direct investment of the funds contained therein. Cash held in the Letter of Credit Account shall not be available for use by the Borrower, whether pursuant to Section 363 of the Bankruptcy Code or otherwise, and shall be released to the Borrower only as described in clause (ii)(y) of Section 2.03(j) or the last sentence of Section 2.03(c).

SECTION 2.28 **<u>Payment of Obligations</u>**. Subject to the provisions of Section 7.01, upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents of the Borrower and the Guarantors, the Lenders

shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

SECTION 2.29 **No Discharge; Survival of Claims**. Each of the Borrower and the Guarantors agrees that (i) its obligations hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan (and each of the Borrower and the Guarantors, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Approval Order and described in Section 2.25 and the Liens granted to the Administrative Agent pursuant to the Approval Order and described in Sections 2.27 shall not be affected in any manner by the entry of an order confirming a Reorganization Plan.

SECTION 2.30 <u>Use of Cash Collateral</u>. Notwithstanding anything to the contrary contained herein, the Borrower shall not be permitted to request a Borrowing under Section 2.04 or request the issuance of a Letter of Credit under 2.03 unless the Bankruptcy Court shall have entered the Approval Order and shall at that time have granted to the Borrower use of all cash collateral, subject to the Approval Order, for the purposes described in Section 3.09.

## SECTION 3. REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to make Loans and issue and/or participate in Letters of Credit hereunder, the Borrower and each of the Guarantors jointly and severally represent and warrant as follows:

SECTION 3.01 **Organization and Authority**. Each of the Borrower and the Guarantors (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) is duly qualified as a foreign corporation or other organization and in good standing in each jurisdiction where the conduct of its business requires such qualification, except to the extent that all failures to be duly qualified and in good standing could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, (iii) subject to the entry by the Bankruptcy Court of the Fourth Amendment Approval Order, and in the case of the Borrower's obligations with respect to the Subsequent Tranche C Loan and the Total Subsequent Tranche C Fees, the Supplemental Approval Order, has the requisite power and authority to effect the transactions contemplated hereby, and by the other Loan Documents to which it is a party, and (iv) subject to the entry by the Bankruptcy Court of the Fourth Amendment Approval Order, and in the case of the Borrower's obligations with respect to the entry by the Bankruptcy Court of the Fourth Amendment Approval Order, and in the case of the Borrower's obligations with respect to the entry by the Bankruptcy Court of the Fourth Amendment Approval Order, and in the case of the Borrower's obligations with respect to the entry by the Bankruptcy Court of the Fourth Amendment Approval Order, and in the case of the Borrower's obligations with respect to the subsequent Tranche C Loan and the Total Subsequent Tranche C Fees, the Supplemental Approval Order, has all requisite power and authority and the legal right to own, pledge, mortgage and operate its properties, and to conduct its business as now or currently proposed to be conducted, except where the failure thereof could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.02 **Due Execution**. Upon the entry by the Bankruptcy Court of the Fourth Amendment Approval Order, and, in the case of the Borrower's obligations with respect to the Subsequent Tranche C Loan and the Total Subsequent Tranche C Fees, the Supplemental Approval Order, the execution, delivery and performance by each of the Borrower and the Guarantors of each of the Loan Documents to which it is a party (i) are within the respective powers of each of the Borrower and the Guarantors, have been duly authorized by all necessary

action including the consent of shareholders where required, and do not (A) contravene the charter or by-laws of any of the Borrower or the Guarantors, (B) violate any law (including the Securities Exchange Act of 1934) or regulation (including Regulations T, U or X of the Board), or any order or decree of any court or Governmental Authority, conflict with or result in a breach of, or constitute a default under, any material contractual obligation entered into prior to the Filing Date binding on the Borrower or the Guarantors or any of their properties except to the extent that all such violations, conflicts or breaches could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, (C) conflict with or result in a breach of, or constitute a default under, any material contractual obligation entered into after the Filing Date binding on the Borrower or the Guarantors or any of the Borrower or the Guarantors or any of the Borrower or the Guarantors or any of the property of any of the Borrower or the Guarantors other than the Liens granted pursuant to this Agreement, the other Loan Documents or the Approval Order; and (ii) do not require the consent, authorization by or approval of or notice to or filing or registration with any Governmental Authority other than (A) the entry of the Approval Order and (B) other consents, authorizations, approvals, notices, filings or registrations the failure to obtain or make which could not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Upon the entry by the Bankruptcy Court of the Approval Order, this Agreement has been duly executed and delivered by each of the Borrower and the Guarantors. This Agreement is, and each of the other Loan Documents to which the Borrower and each Guarantor, as the case may be, enforceable against the Borrower and the Guarantors, as the case may be, in accordance with its terms and the Approval Order.

SECTION 3.03 <u>Statements Made</u>. The information that has been prepared by or at the request of the Borrower or any Guarantor and delivered in writing by the Borrower or any of the Guarantors to the Agents or to the Bankruptcy Court in connection with any Loan Document, any confidential information memorandum relating to the syndication of the credit facilities provided for herein, and any financial statement delivered pursuant hereto or thereto (other than to the extent that any such statements constitute projections), taken as a whole and in light of the circumstances in which made, contains no untrue statement of a material fact and does not omit to state a material fact necessary to make such statements not misleading in any material respect; and, to the extent that any such information constitutes projections, such projections were prepared in good faith based on assumptions believed by the Borrower or such Guarantor to be reasonable at the time such projections were furnished (it being understood that projections are inherently uncertain and that actual results may differ from the projections and such difference may be material).

SECTION 3.04 **Financial Statements**. The Borrower has furnished the Lenders with copies of the audited consolidated financial statements of the Global Entities for the fiscal year ended December 31, 2007. Such financial statements present fairly in all material respects, in accordance with GAAP, the financial condition and results of operations of the Global Entities on a consolidated basis as of such date and for such period; such balance sheets and the notes thereto disclose all liabilities, direct or contingent, of the Global Entities as of the date thereof required to be disclosed by GAAP; such financial statements were prepared in a manner consistent with GAAP. Since the audited financial statements for the fiscal year ended December 31, 2007 delivered to the Lenders prior to the Effective Date, no development or event has occurred that has had or is reasonably expected to have a Material Adverse Effect.

SECTION 3.05 **Ownership**. Other than as set forth on part A Schedule 3.05 (as such Schedule may be updated from time to time by written notice from the Borrower to the Administrative Agent to reflect transactions permitted by this Agreement), (i) each of the Persons listed on Schedule 3.05 is a wholly-owned, direct or indirect Subsidiary of the Borrower, (ii) the Borrower owns no other Subsidiaries, whether directly or indirectly and (iii) each of the Borrower's domestic Subsidiaries is a Guarantor. Each Guarantor on the Effective Date is listed on part B of Schedule 3.05.

SECTION 3.06 Liens. There are no Liens on any assets of the Domestic Entities or any of the Global Entities other than Liens permitted pursuant to Section 6.01.

SECTION 3.07 Compliance with Law. Except for matters which could not, in the aggregate, reasonably be expected to have a Material Adverse Effect:

(i) the operations of the Domestic Entities and the Global Entities comply in all material respects with all applicable environmental, health and safety statutes and regulations, including regulations promulgated under the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 <u>et seq</u>.);

(ii) to the Borrower's and each of the Guarantor's knowledge, none of the operations of the Borrower or the Guarantors is the subject of any Federal or state investigation evaluating whether any remedial action involving a material expenditure by the Domestic Entities is needed to respond to a release of any Hazardous Waste or Hazardous Substance (as such terms are defined in any applicable state or Federal environmental law or regulations) into the environment;

(iii) to the Borrower's and each of the Guarantor's knowledge, the Domestic Entities do not have any material contingent liability in connection with any release of any Hazardous Waste or Hazardous Substance into the environment; and

(iv) to the Borrower's and each of the Guarantor's best knowledge, none of the Domestic Entities and none of the Global Entities are in violation of any law, rule or regulation, or in default with respect to any judgment, writ, injunction or decree of any Governmental Authority.

SECTION 3.08 **Insurance**. The Borrower and the Guarantors have in full force and effect insurance policies of a nature and providing such coverage as is consistent with sound business practice and customarily carried by companies of the size and character of the Borrower and the Guarantors.

SECTION 3.09 Use of Proceeds. The proceeds of the Tranche A Loans and the Tranche B Loans made on the Effective Date shall be used to pay in part all the Existing Tranche A Loans and the Existing Tranche B Loans outstanding on the Effective Date, the proceeds of the Initial Tranche C Loan made on the Effective Date shall be used to pay in full all of the Existing Tranche C Loans outstanding on the Effective Date, and the proceeds of the Tranche A Loans made and the Subsequent Tranche C Loan made, and the Letters of Credit issued, in each case after the Effective Date shall be used for working capital and for other general corporate purposes of the Borrower and its Subsidiaries including the making of pension

contributions, the payment of transaction costs, fees and expenses in respect of the Transactions and the Cases and the payment of Restructuring Costs.

SECTION 3.10 **Litigation**. Other than as set forth on Schedule 3.10, there are no unstayed actions, suits or proceedings pending or, to the knowledge of the Borrower or the Guarantors, threatened against or affecting the Domestic Entities or the Global Entities or any of their respective properties, before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, with respect to this Agreement or any other Loan Documents or the transactions contemplated hereby or thereby, or otherwise as is, in the aggregate, reasonably expected to have a Material Adverse Effect.

SECTION 3.11 **ERISA** No ERISA Event has occurred that, when taken together with all other ERISA Events, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.12 **The Approval Order**. On the making of any Loan, other than the Subsequent Tranche C Loan, or the issuance of any Letter of Credit, the Fourth Amendment Approval Order shall have been entered, and on the making of the Subsequent Tranche C Loan, the Supplemental Approval Order shall have been entered, and in each such case the Approval Order shall not have been reversed, stayed, vacated or, without the Administrative Agent's consent, amended, supplemented or modified. Upon the maturity (whether by the acceleration or otherwise) of any of the Obligations of the Borrower and the Guarantor hereunder and under the other Loan Documents, the Lenders shall, subject to the provisions of Section 7.01, be entitled to immediate payment of such obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

### SECTION 3.13 Properties.

(a) Each of the Borrower and the Guarantors has good title to, or valid leasehold interests in, all its real and personal property, except for such failures to have good title or valid leasehold interests as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each of the Borrower and the Guarantors owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary, in the aggregate, for the conduct of its business as currently conducted, and the use thereof by the Borrower and the Guarantors does not infringe upon the rights of any other Person, except for any such infringement that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

# SECTION 4. CONDITIONS TO EFFECTIVENESS AND OF LENDING

## SECTION 4.01 Conditions to Effectiveness.

(a) This Agreement shall become effective on the date on which each of the following shall have occurred and the Administrative Agent shall have received evidence reasonably satisfactory to it of such occurrence (the "Effective Date"):

(i) this Agreement shall have been executed by the Borrower, the Guarantors and the Amended and Restated Lenders;

(ii) the Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each of the Borrower and the Guarantors, the authorization of the transactions under the Loan Documents and any other legal matters relating to each of the Borrower and the Guarantors, the Loan Documents or the transactions contemplated under the Loan Documents, all in form and substance satisfactory to the Administrative Agent and its counsel;

(iii) the Administrative Agent shall have received the favorable written opinion of (A) Shearman & Sterling, LLP, counsel to the Loan Parties and (B) in-house counsel to the Borrower, in each case, dated the Effective Date and in form and substance reasonably satisfactory to the Administrative Agent and its counsel;

(iv) the payments and repayments specified in Section 4.01(b) below shall have been made;

(v) the Bankruptcy Court shall have entered, before May 5, 2008, one or more orders reasonably satisfactory in form and substance to the Administrative Agent authorizing (A) the amendment and restatement of the Existing Credit Agreement in its entirety as set forth herein, (B) the payment by the Borrower to the Administrative Agent of all fees referred to herein or in that certain Fourth Amendment Fee Letter dated as of April 25, 2008 and (C) the GM-Delphi Agreement;

(vi) the Administrative Agent shall have received an amendment fee for the account of each Amended and Restated Lender that has executed and delivered a signature page hereto to the Administrative Agent no later than 12:00 p.m. (New York City time) on May 7, 2008 (or such later deadline as may be indicated by the Administrative Agent for receipt of signature) in an amount equal to (A) 150 basis points of the Commitments of each such Amended and Restated Lender who are Tranche A Lenders or Tranche B Lenders and (B) 200 basis points of the Initial Tranche C Commitments of each such Amended and Restated Lender who are Tranche C Lenders holding Initial Tranche C Commitments, as set forth on Annex A hereto;

(vii) the Administrative Agent shall have received payment in cash in full of any fees owing to the Administrative Agent or any other person pursuant to, or referenced in, that certain Fourth Amendment Fee Letter dated as of April 25, 2008; and

(viii) the GM-Delphi Agreement (A) shall be in form and substance satisfactory to the Amended and Restated Lenders and (B) shall have become effective pursuant to the terms thereof; it being understood that the form of the GM-Delphi Agreement filed with the Bankruptcy Court on April 24, 2008 shall be deemed to be in form and substance satisfactory to the Amended and Restated Lenders.

(b) On the Effective Date:

(i) the Original Tranche A Commitments of the Original Tranche A Lenders shall be terminated;



(ii) the Borrower shall (A) prepay, in full, the Loans outstanding under the Existing Credit Agreement immediately prior to or substantially concurring with the effectiveness of this Agreement as set forth herein and it is hereby acknowledged by the parties to this Agreement that this Section 4.01(b) constitutes notice of such prepayment under Section 2.14 of the Existing Credit Agreement (and each of the parties hereto that are Original Lenders hereby waive any requirement pursuant to Section 2.14 of the Existing Credit Agreement (and each of the parties hereto that are Original Lenders hereby waive any requirement pursuant to Section 2.14 of the Existing Credit Agreement to deliver such notice in advance of such payment), (B) subject to the conditions set forth herein, immediately thereafter borrow new Loans under this Agreement in an amount equal to such prepayment; *provided that*, with respect to clauses (A) and (B), (1) the prepayment to, and borrowing from, any Original Lender that is party to this Agreement may, in the Administrative Agent's discretion, be effected by book entry to the extent that any portion of the amount prepaid to such Original Lender will be subsequently borrowed from such Original Lender, and (2) if directed by the Administrative Agent in its sole discretion, the Original Lenders of each Class which are party to this Agreement and the Additional Lenders of such Class shall make and receive payments among themselves, in a manner acceptable to the Administrative Agent, so that, after giving effect thereto, the Loans of such Class are held ratably by such Lenders' respective Commitments of such Class (after giving effect to this Agreement) and (iii) pay to the Original Lenders the amounts, if any, payable under Section 2.17 of the Existing Credit Agreement as a result of any such prepayment;

(iii) if any Letters of Credit are outstanding on the Effective Date, the undivided interests and participations therein of the Original Lenders that were Tranche A Lenders before giving effect to the amendment and restatement of the Existing Credit Agreement set forth herein and that are not party to this Agreement, shall terminate and each of the Amended and Restated Lenders that are Tranche A Lenders shall be deemed to have purchased from the Issuing Lender pursuant to Section 2.03(d) of the Existing Credit Agreement an undivided interest and participation in such Letters of Credit to the extent of such Lender's Tranche A Commitment Percentage;

(iv) the Borrower shall pay any accrued but unpaid interest and Fees owing to the Original Lenders as of the Effective Date;

(v) each of the Amended and Restated Lenders shall be hereby deemed to have consented to the GM-Delphi Agreement;

(vi) the Existing Credit Agreement shall be amended and restated in its entirety as set forth herein;

(vii) the Security and Pledge Agreement shall be amended as follows: (A) the "Credit Agreement" referenced therein shall mean this Agreement, as amended, restated, modified or supplemented from time to time, (B) Section 15(g)(ii) thereof shall be amended by replacing the reference to "Commitment Fees" with "Tranche A Commitment Fees" and (C) the schedules to the Security and Pledge Agreement shall be amended as set forth in the attachments hereto; and

(viii) the Original Lenders that are not party to this Agreement shall no longer be Lenders hereunder.

(c) Each Loan Party hereby affirms that the terms of the Loan Documents (i) secure, and shall continue to secure, and (ii) guarantee, and shall continue to guarantee, in each case, the Obligations and acknowledges and agrees that the Security and Pledge Agreement is, and shall continue to be, in full force and effect and is hereby ratified in all respects, and all references therein to the Credit Agreement and to the Obligations thereunder shall be deemed to be references to this Agreement and to the Obligations hereunder.

SECTION 4.02 <u>Conditions Precedent to Each Loan and Each Letter of Credit</u>. The obligation of the Lenders to make each Loan and of the Issuing Lender to issue each Letter of Credit, including the initial Loans, is subject to the satisfaction (or waiver in accordance with Section 10.09) of the following conditions precedent:

(a) <u>Notice</u>. The Administrative Agent shall have received a notice with respect to such borrowing or issuance, as the case may be, as required by Section 2.

(b) <u>Representations and Warranties</u>. All representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of each Borrowing or the issuance of each Letter of Credit hereunder with the same effect as if made on and as of such date except to the extent such representations and warranties expressly relate to an earlier date.

(c) <u>No Default</u>. On the date of each Borrowing hereunder or the issuance of each Letter of Credit, no Event of Default or event which upon notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

(d) <u>Approval Order</u>. The Approval Order shall be in full force and effect and shall not have been stayed, reversed, modified or amended in any respect that the Agents reasonably determine to be adverse to the interests of the Agents and the Lenders without the prior written consent of the Administrative Agent and the Required Lenders, and if the Approval Order is the subject of a pending appeal in any respect, neither the making of the Loans nor the issuance of any Letter of Credit nor the performance by the Borrower or any Guarantor of any of their respective obligations under any of the Loan Documents shall be the subject of a presently effective stay pending appeal.

(e) <u>Payment of Fees and Expenses</u>. The Borrower shall have paid to the Administrative Agent the then unpaid balance of all accrued and unpaid Fees due under and pursuant to this Agreement, the Approval Order, the letters referred to in Section 2.21 of the Original Credit Agreement and the letter referred to in Section 2.21 and the reasonable fees and out-of-pocket expenses of counsel to the Administrative Agent and the Arrangers/Bookrunners as to which invoices have been issued, and to the extent reasonably requested by the Borrower, together with back-up documentation supporting such invoices.

(f) <u>Borrowing Base Certificates</u>. Prior to the making of any Loan or the issuance of any Letter of Credit, the Administrative Agent shall have received the most recent Borrowing Base Certificates dated no more than (i) 14 days for a Borrowing Base Certificate, in the case of

Loans to be made, or Letters of Credit to be issued, on the Effective Date and (ii)(A) 30 days for a monthly Borrowing Base Certificate and (B) seven (7) days for a weekly Borrowing Base Certificate, in the case of any other Loans or Letters of Credit.

(g) <u>Minimum GM Liquidity Availability</u>. At the time of each Borrowing hereunder, GM Liquidity Availability shall be no greater than \$50,000,000, and the Administrative Agent shall have received a certificate signed by a Financial Officer of the Borrower, certifying in reasonable detail that (i) the amount of GM Liquidity Availability on the date of such Borrowing is no more than \$50,000,000 and (ii) the most recent borrowing by the Borrower under the GM-Delphi Agreement had been in an amount equal to GM Liquidity Availability at the time of such borrowing; it being understood that the foregoing shall not apply to the issuance of any Letter of Credit hereunder.

The request by the Borrower for, and the acceptance by the Borrower of, each extension of credit hereunder shall be deemed to be a representation and warranty by the Borrower that the conditions specified in this Section have been satisfied or waived at that time.

SECTION 4.03 <u>Condition Precedent to the Subsequent Tranche C Loan.</u> Subject to Sections 4.01 and 4.02, the obligation of the Tranche C Lenders to make the Subsequent Tranche C Loan is subject to the satisfaction of the following additional conditions precedent:

(a) that the Bankruptcy Court shall have entered, before June 9, 2008, an order reasonably satisfactory in form and substance to the Administrative Agent authorizing (A) the Borrowing of the Subsequent Tranche C Loan as set forth herein and (B) the payment by the Borrower to the Tranche C Lenders of the Total Subsequent Tranche C Fees; and

(b) the Administrative Agent shall have received an amendment fee for the account of each Amended and Restated Lender holding a Subsequent Tranche C Commitment that has executed and delivered a signature page hereto to the Administrative Agent no later than 12:00 p.m. (New York City time) on May 7, 2008 (or such later deadline as may be indicated by the Administrative Agent for receipt of signature) in an amount equal to 200 basis points of the Subsequent Tranche C Commitments of each such Amended and Restated Lender, as set forth on Annex A hereto.

# SECTION 5. AFFIRMATIVE COVENANTS

From the Closing Date and for so long as any Commitment shall be in effect or any Letter of Credit shall remain outstanding (for which Cash Collateralization at the rate of 105% has not been made in accordance with Section 2.03(j)), or any amount shall remain outstanding or unpaid under this Agreement, the Borrower and each of the Guarantors agree that they will, and will cause each of their respective Subsidiaries to:

SECTION 5.01 **<u>Financial Statements</u>**, **<u>Reports</u>**, **etc**</u>. Deliver to the Administrative Agent (for delivery to each Lender, which delivery shall be made promptly by the Administrative Agent after receipt from the Borrower):

(a) within 110 days after the end of each fiscal year (or, with respect to each such fiscal year, such shorter period as the United States Securities and Exchange Commission may specify for the filing of annual reports on Form 10K), consolidated balance sheets and

related consolidated statements of income and consolidated cash flows for the Domestic Entities and the Global Entities, showing the financial condition of such entities on a consolidated basis as of the close of such fiscal year and the results of their respective operations during such year, the consolidated statements of the Global Entities to be audited by Ernst & Young LLP or other independent public accountants of recognized national standing and accompanied by an opinion of such accountants with respect to the financial statements and arising out of the scope of the audit (which opinion shall not be qualified in any material respect other than a going concern qualification as a result of the Cases or as a result of the Maturity Date falling less than one year from the date of such financial statements), all such consolidated financial statements to be certified by a Financial Officer of the Borrower to the effect that such financial statements fairly present in all material respects the financial condition and results of operations of the Domestic Entities or the Global Entities, as the case may be, on a consolidated basis in accordance with GAAP;

(b) within 60 days after the end of each of the first three fiscal quarters (or such shorter period as the United States Securities and Exchange Commission may specify for the filing of quarterly reports on Form 10-Q), the consolidated balance sheets and related consolidated statements of income and consolidated cash flows of the Domestic Entities and the Global Entities, showing the financial condition of such entities on a consolidated basis as of the close of such fiscal quarter and the results of their operations during such fiscal quarter and the then elapsed portion of the fiscal year, each certified by a Financial Officer of the Borrower as fairly presenting in all material respects the financial condition and results of operations of the Domestic Entities and the Global Entities, as the case may be, on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as practicable, but in no event later than 30 days after the end of each fiscal month of the Borrower thereafter, (i) monthly unaudited consolidated balance sheets of the Domestic Entities and the Global Entities and related consolidated statements of income and consolidated cash flows of such entities for the prior fiscal month (in the case of Domestic Entities, in a form consistent with the form provided to the lenders under Existing DIP Credit Agreement prior to the Closing Date), each certified by a Financial Officer of the Borrower and (ii) a monthly report, consistent with the form required to be filed with the Bankruptcy Court, detailing professional fees and expenses that have been billed and paid or billed but unpaid to date and the accumulated "hold-back" of professional fees and expenses to date;

(d) as soon as practicable, but (i) in no event later than 30 days after the end of each fiscal month of the Borrower, monthly financial projections and variance reports of the Domestic Entities and the Global Entities for the period from the date of such projections through the Termination Date in a form consistent with the form of projections provided to the Administrative Agent prior to the Closing Date, such projections to be updated and delivered to the Administrative Agent at such times as such projections are updated by the Borrower and (ii) in no event later than 10 Business Days after the end of each fiscal month of the Borrower, a statement of projected cash receipts and cash disbursements for the Domestic Entities for each week in the period of thirteen continuous weeks commencing with the immediately following week, in a form consistent with the form provided to the Administrative Agent prior to the Closing Date, and in each case of new or updated projections furnished pursuant to clause (i) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and any statements of projected cash receipts and cash disbursements pursuant to clause (ii) and

by a Financial Officer of the Borrower (it being understood that such certification in respect of projections shall be consistent with the representation and warranty as to projections in Section 3.03);

(e) concurrently with any delivery of financial statements under clauses (a), (b) and (c) above, a certificate of the Financial Officer of the Borrower certifying such statements (i) certifying that no Event of Default or event which upon notice or lapse of time or both would constitute an Event of Default has occurred, or, if such an Event of Default or event has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the provisions of Section 6.04;

(f) [reserved];

(g) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by it with the Securities and Exchange Commission, or any governmental authority succeeding to any of or all the functions of said commission, or with any national securities exchange, as the case may be;

(h) as soon as available and in any event (a) within 30 days after the Borrower or any of its ERISA Affiliates knows or has reason to know that any Termination Event described in clause (i) of the definition of Termination Event with respect to any Single Employer Plan of the Borrower or such ERISA Affiliate has occurred and (b) within 10 days after the Borrower or any of its ERISA Affiliates knows or has reason to know that any other Termination Event with respect to any such Plan has occurred, a statement of a Financial Officer of the Borrower describing the full details of such Termination Event;

(i) promptly and in any event within 10 days after receipt thereof by the Borrower or any of its ERISA Affiliates from the PBGC, copies of each notice received by the Borrower or any such ERISA Affiliate of the PBGC's intention to terminate any Single Employer Plan of the Borrower or such ERISA Affiliate or to have a trustee appointed to administer any such Plan;

(j) if requested by the Administrative Agent, promptly and in any event within 30 days after the filing thereof with the Internal Revenue Service, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Single Employer Plan of the Borrower or any of its ERISA Affiliates;

(k) within 10 days after notice is given or required to be given to the PBGC under Section 302(f)(4)(A) of ERISA of the failure of the Borrower or any of its ERISA Affiliates to make timely payments to a Plan, a copy of any such notice filed;

(l) promptly and in any event within 10 days after receipt thereof by the Borrower or any ERISA Affiliate from a Multiemployer Plan sponsor, a copy of each notice received by the Borrower or any ERISA Affiliate concerning (i) the imposition of Withdrawal Liability by a Multiemployer Plan, (ii) the determination that a Multiemployer Plan is, or is expected to be, in reorganization within the meaning of Title IV of ERISA, (iii) the termination of a Multiemployer Plan within the meaning of Title IV of ERISA, or (iv) the amount of liability

incurred, or which may be incurred, by the Borrower or any ERISA Affiliate in connection with any event described in clause (i), (ii) or (iii) above;

(m) promptly and in any event within 10 days after the Borrower or any Subsidiary knows or has reason to know of the occurrence thereof, notice of (i) any material adverse event or change to the business, financial condition, operations or assets of the Domestic Entities taken as a whole or the Global Entities taken as a whole and (ii) material litigation (if any), or any material adverse developments in previously disclosed material litigation (other than any of the foregoing that have been disclosed to the Administrative Agent pursuant to Section 5.01(o)), in each case since the Closing Date or such later date as of which the Borrower has furnished a report pursuant to this Section 5.01(m);

(n) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Domestic Entities or the Global Entities, or compliance with the terms of any material loan or financing agreements as the Administrative Agent, at the request of any Lender, may reasonably request; and

(o) furnish to the Administrative Agent and its counsel promptly after the same is available, copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of the Borrower or any of the Guarantors with the Bankruptcy Court in the Cases, or distributed by or on behalf of the Borrower or any of the Guarantors to any official committee appointed in the Cases.

SECTION 5.02 **Existence**. Preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except (i) (A) if in the reasonable business judgment of the Borrower it is no longer necessary for the Borrower and the Guarantors to preserve and maintain such rights, privileges, qualifications, permits, licenses and franchises, and (B) such failure to preserve the same could not, in the aggregate, reasonably be expected to have a Material Adverse Effect and (ii) as otherwise permitted in connection with sales of assets permitted by Section 6.10.

SECTION 5.03 **Insurance**. (a) Keep its insurable properties insured at all times, against such risks, including fire and other risks insured against by extended coverage, as is consistent with sound business practice and customary with companies of the same or similar size in the same or similar businesses; and maintain in full force and effect public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by the Borrower or any of its Subsidiaries, as the case may be, in such amounts (giving effect to self-insurance) and with such deductibles as are customary with companies of the same or similar size in the same or similar businesses; and (b) maintain such other insurance or self insurance as may be required by law.

SECTION 5.04 **Obligations and Taxes**. Timely pay all material obligations arising after the Filing Date promptly and in accordance with their terms and timely pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property arising after the Filing Date, as well as all material lawful claims for labor, materials and supplies or otherwise arising after the Filing Date which, if unpaid, would become a Lien or charge upon such properties or any part thereof, before

the same shall become in default; provided, however, that the Borrower and each of its Subsidiaries shall not be required to pay and discharge or to cause to be paid and discharged (i) any such obligation, tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings (if the Borrower or its Subsidiaries shall have set aside on their books adequate reserves therefor) or (ii) with respect to obligations and claims related to a Plan, any such obligations or claims that could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 5.05 Notice of Event of Default, etc. Promptly give to the Administrative Agent notice in writing of any Event of Default or the occurrence of any event or circumstance which with the passage of time or giving of notice or both would constitute an Event of Default.

SECTION 5.06 <u>Access to Books and Records</u>. (a) Maintain or cause to be maintained at all times true and complete books and records in a manner consistent with GAAP of the financial operations of the Borrower and its Subsidiaries; and provide the Administrative Agent and its representatives, upon their reasonable request, access to all such books and records during regular business hours, in order that the Administrative Agent may upon reasonable prior notice examine and make abstracts from such books, accounts, records and other papers for the purpose of verifying the accuracy of the various reports, including the Borrowing Base computations and supporting documentation, delivered by the Borrower or the Guarantors to the Administrative Agent or the Lenders pursuant to this Agreement or for otherwise ascertaining compliance with this Agreement.

(b) In the event that historical accounting practices, accounting systems or accounting reserves relating to the components of the Borrowing Base are modified in a manner that is adverse to the Lenders in any material respect, maintain such additional reserves (for purposes of computing the Borrowing Base) in respect to the components of the Borrowing Base and make such other adjustments (which may include maintaining additional reserves, modifying the advance rates or modifying the eligibility criteria for the components of the Borrowing Base) to its parameters for including the components of the Borrowing Base as the Administrative Agent shall reasonably require based upon such modifications.

(c) Upon the request of the Administrative Agent, provide (i) evidence reasonably satisfactory to the Administrative Agent that the Borrower and its Subsidiaries are in compliance in all material respects with all applicable Environmental Laws, (ii) information reasonably satisfactory to the Administrative Agent regarding the costs of maintaining such compliance and any other costs relating to Environmental Liabilities and (iii) the Administrative Agent or its designees with access to the properties, facilities, personnel, books and records of the Borrower and its Subsidiaries to permit the performance, at the sole cost of the Borrower, of reasonable environmental due diligence.

SECTION 5.07 <u>Maintenance of Concentration Account</u>. Continue to maintain with JPMCB or any of its Affiliates, an account or accounts to be used by the Borrower and the Guarantors as their principal concentration account for day-to-day operations conducted by the Borrower and the Guarantors.

SECTION 5.08 **Borrowing Base Certificate**. Furnish to the Administrative Agent (a) as soon as available and in any event on or before the twentieth (20th) day of each month, a

monthly Borrowing Base Certificate, as of the last day of the immediately preceding month, (b) as soon as available and in any event within five (5) Business Days after the end of each calendar week (each calendar week deemed, for purposes hereof, to end on a Friday), a weekly Borrowing Base Certificate (it being understood that certain Borrowing Base Certificate items (to be identified in the form of Borrowing Base Certificate) shall be updated only monthly) and (c) if requested by the Administrative Agent at any other time when the Administrative Agent reasonably believes that the then existing Borrowing Base Certificate is materially inaccurate, as soon as reasonably available but in no event later than five (5) Business Days after such request, a Borrowing Base Certificate showing the Borrowing Base as of the date so requested, in each case with supporting documentation and additional reports with respect to the Borrowing Base as the Administrative Agent shall reasonably request.

SECTION 5.09 <u>Collateral Monitoring and Review</u>. At any reasonable time upon reasonable notice and upon the reasonable request of the Administrative Agent, permit the Administrative Agent or any of its agents or representatives or professionals (including internal and third party consultants, accountants and appraisers) retained by the Administrative Agent or its professionals to visit the properties of the Borrower and its Subsidiaries, to confer with officers and representatives of the Borrower and the Guarantors, to conduct evaluations and appraisals of and to monitor (i) the Collateral, (ii) the Borrower's practices in the computation of the Borrowing Base and (iii) the assets included in the Borrowing Base, and pay the reasonable fees and expenses in connection therewith (including the reasonable and customary fees and expenses associated with JPMorgan and CUSA, as set forth in Section 10.05). In connection with any collateral monitoring or review and appraisal relating to the computation of the Borrower shall make such modifications and adjustments to the Borrowing Base or the computation thereof as the Administrative Agent shall reasonably require upon at least 10 days written notice (it being understood that no such notice is required during the continuance of an Event of Default) based upon the terms of this Agreement and results of such collateral monitoring, review or appraisal (which modifications and adjustments may include maintaining additional reserves, modifying the advance rates or modifying the eligibility criteria for components of the Borrowing Base to the extent reasonably required by the Administrative Agent).

SECTION 5.10 <u>GM-Delphi Agreement</u>. Concurrently with a delivery of an Advance Request (as defined in the GM-Delphi Agreement) and an Availability Certificate (as defined in the GM-Delphi Agreement) to GM under Section 4.02(a) of the GM-Delphi Agreement, the Borrower shall deliver a copy of such Advance Request and such Availability Certificate to the Administrative Agent.

SECTION 5.11 **Subsequently Filed Domestic Entities**. Within ten (10) days after any Non-Filed Domestic Entity becomes a debtor in a case under the Bankruptcy Code (a "<u>Subsequently Filed Entity</u>"), cause (x) such Subsequently Filed Entity to become a Guarantor party to this Agreement and (y) cause such Subsequently Filed Entity to become a party to the Security and Pledge Agreement and its assets to be subject to the Lien created thereby in favor of the Administrative Agent (which guarantees and Liens shall be Superpriority Claims) to the extent permitted under applicable law.

# SECTION 6. NEGATIVE COVENANTS

From the Closing Date and for so long as any Commitment shall be in effect or any Letter of Credit shall remain outstanding (for which Cash Collateralization at the rate of 105% has not been made in accordance with Section 2.03(j)) or any amount shall remain outstanding or unpaid under this Agreement, the Borrower and each of the Guarantors will not, and will not permit any of their respective Subsidiaries to (and will not apply, unless in connection with an amendment to the Agreement that is reasonably likely to be approved by the Lenders required to approve such amendment, to the Bankruptcy Court for authority to):

SECTION 6.01 Liens. Incur, create, assume or suffer to exist any Lien on any asset of the Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, other than:

(i) (x) Liens in existence on the Filing Date as reflected on Schedule 6.01 and (y) replacement Liens that secure only refinancing of Indebtedness permitted under Section 6.03(xii), so long as such replacement Liens do not extend to or cover any property other than the property covered by the original Lien;

(ii) Junior Adequate Protection Liens, Replacement Liens and Debtor Liens;

(iii) Liens created under the Loan Documents in favor of the Administrative Agent and the Lenders;

(iv) Liens for taxes not yet due or that are being contested in good faith by appropriate proceedings, <u>provided</u> that adequate reserves with respect thereto are maintained on the books of the Borrower or its Subsidiaries in conformity with GAAP;

(v) carriers', warehousemen's, mechanics', materialmen's, repair-men's, lessor's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings;

(vi) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(vii) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(viii) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(ix) any interest or title of a lessor under any lease entered into by the Borrower or any Subsidiary in the ordinary course of its business and covering only the assets so leased;

(x) Liens arising solely from precautionary filings of financing statements under the Uniform Commercial Code of the applicable jurisdictions in respect of consignments or operating leases entered into by the Borrower or any of its Subsidiaries in the ordinary course of business;

(xi) customary rights of setoff and similar Liens in favor of depositary institutions;

(xii) Liens for judgments that have not yet become an Event of Default under Section 7.01(k);

(xiii) Liens securing Indebtedness of the Borrower or any Subsidiary incurred pursuant to Section 6.03(vii) to finance the acquisition of fixed or capital assets, <u>provided</u> that (A) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (C) the amount of Indebtedness secured thereby is not increased;

(xiv) Liens on the assets of Foreign Subsidiaries securing Indebtedness and other obligations of any Foreign Subsidiary in an aggregate amount not to exceed \$1,500,000,000;

(xv) Liens upon any of the property and assets existing at the time such property or asset is purchased or otherwise acquired by the Borrower or any of its Subsidiaries; <u>provided</u> that any such Lien was not created in contemplation of such purchase or other acquisition and does not extend to or cover any property or assets other than the property or asset being so purchased or otherwise acquired and the products and proceeds thereof; and <u>provided further</u> that any Indebtedness or other obligations secured by such Liens shall otherwise be permitted under Section 6.03 or this Section 6.01;

(xvi) (A) Liens securing Indebtedness in respect of Hedging Agreements, which Indebtedness is permitted by Section 6.03(x), so long as the aggregate amount of Indebtedness so secured (determined on a marked-to-market basis) does not exceed \$150,000,000 and (B) Liens securing Indebtedness permitted by Section 6.03(viii) (and in each case of clauses (A) and (B), such Liens shall rank *pari passu* with the Liens created under the Loan Documents in favor of the Administrative Agent, the Tranche A Lenders and the Tranche B Lenders);

(xvii) Liens on assets of the Domestic Entities that arise pursuant to Section 412(n) of the Code or Section 4068 of ERISA (or (A) replacement Liens granted to the PBGC pursuant to the DASHI Intercompany Transfer Order or (B) similar Liens (including consensual Liens) on Collateral granted to the PBGC, <u>provided</u> that such Liens shall have no greater priority or rights than the Liens granted to the PBGC pursuant to the DASHI Intercompany Transfer Order as such priority and rights are set forth therein and

in the Fourth Amendment Approval Order); provided that such Liens do not otherwise give rise to an Event of Default;

(xviii) Liens on assets of the Foreign Subsidiaries that arise pursuant to Section 412(n) of the Code or Section 4068 of ERISA (or (A) replacement Liens granted to the PBGC pursuant to the DASHI Intercompany Transfer Order or (B) similar Liens (including consensual Liens) on Collateral granted to the PBGC, <u>provided</u> that such Liens shall have no greater priority or rights than the Liens granted to the PBGC pursuant to the DASHI Intercompany Transfer Order as such priority and rights are set forth therein and in the Fourth Amendment Approval Order); unless such Liens would otherwise give rise to an Event of Default, or unless any Person has taken steps to commence enforcement of one or more judgments, orders or enforceable mandates relating thereto, if the aggregate amount of assets in respect of which such enforcement has commenced exceeds ten percent (10%) of the aggregate amount of all assets of the Foreign Subsidiaries;

(xix) Liens on assets of any non-Guarantor Domestic Entity that is a joint venture securing Indebtedness of such Domestic Entity owed to the Borrower or a Guarantor that is permitted under Section 6.03(xiii);

(xx) escrow deposits held in a segregated bank account of the Borrower solely for the purpose of satisfying the Borrower's obligations pursuant to paragraph 3.b of the UAW Special Attrition Program Agreement (and similar obligations pursuant to comparable labor agreements) in an aggregate amount not to exceed \$175,000,000; provided that the UAW Special Attrition Program Agreement (or relevant comparable labor agreement) has been approved by order of the Bankruptcy Court; and provided further that the terms of such escrow agreement provide that the excess of any such escrow deposits over the amounts required to satisfy such obligations shall be returned to the Borrower; and

(xxi) Liens not otherwise permitted hereunder securing Indebtedness and other obligations in an aggregate amount not to exceed \$10,000,000.

SECTION 6.02 **Merger, etc**. Merge, consolidate or amalgamate with any other Person, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or dispose of all or substantially all of its property or business, except that (i) any Guarantor may merge or consolidate with any other Guarantor, (ii) any Guarantor may merge or consolidate with the Borrower if the Borrower is the surviving entity, (iii) any Foreign Subsidiary may merge or consolidate with any other Foreign Subsidiary, <u>provided</u> that if either such Foreign Subsidiary is a Wholly-Owned Subsidiary, the surviving entity must be a Wholly-Owned Subsidiary, (iv) any Guarantor may dispose of any or all of its assets to the Borrower or any other Guarantor (upon voluntary liquidation or otherwise), <u>provided</u> that any such disposition by a Wholly-Owned Guarantor must be to another Wholly-Owned Guarantor or to the Borrower, and (v) any Foreign Subsidiary may dispose of any or all of its assets to another Foreign Subsidiary; <u>provided</u> that any such disposition by a Wholly-Owned Subsidiary and any such disposition by a first-tier Foreign Subsidiary must be to a first-tier Foreign Subsidiary must be to a Wholly-Owned Subsidiary and any such disposition by a first-tier Foreign Subsidiary must be to any transaction or activity otherwise

subject to this Section 6.02, the Facility Availability Amount would be equal to or greater than \$500,000,000.

SECTION 6.03 Indebtedness. Contract, create, incur, assume or suffer to exist any Indebtedness, except for (i) Indebtedness under the Loan Documents; (ii) Indebtedness incurred prior to the Filing Date (including existing Capitalized Leases) and outstanding on the Filing Date; (iii) intercompany Indebtedness among the Borrower and the Guarantors; (iv) guarantees by the Borrower or any Guarantor of Indebtedness of the Borrower or any Guarantor otherwise permitted by this Section 6.03; (v) intercompany Indebtedness of any Foreign Subsidiary owing to another Global Entity, provided that (A) the incurrence of such indebtedness by such Foreign Subsidiary, and the making of the related loan or advance by the relevant Global Entity, is otherwise permitted under Section 6.09 and (B) in the case of intercompany Indebtedness owing from a Foreign Subsidiary to a Domestic Entity, such Indebtedness is evidenced by one or more promissory notes in form and substance reasonably satisfactory to the Administrative Agent and is subject to the Lien created by the Security and Pledge Agreement to the extent required by the Security and Pledge Agreement; (vi) other Indebtedness incurred after the Filing Date by any Foreign Subsidiary which, taken together with all other then outstanding Indebtedness of all Foreign Subsidiaries (excluding intercompany indebtedness described in clause (v) hereof, but including any then outstanding Indebtedness of the Foreign Subsidiaries incurred prior to the Filing Date and described in clause (ii) hereof and any Indebtedness in connection with Foreign Receivables Financings, sale-leaseback transactions and Hedging Agreements), does not exceed an aggregate amount of \$1,500,000,000 (the "Foreign Subsidiary Debt Limit") at any time outstanding; (vii) Capitalized Leases and Indebtedness secured by purchase money Liens, in each case incurred after the Filing Date in an aggregate amount not to exceed \$20,000,000 at any time outstanding; (viii) Indebtedness owed to JPMCB, CUSA, any other Lender or any of their respective banking Affiliates (or any Person that was a Lender or a banking Affiliate of a Lender at the time such Indebtedness was incurred) in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearing house transfers of funds; (ix) Indebtedness (other than Indebtedness described in clause (viii)) owed to any bank in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearing house transfers of funds; (x) Indebtedness incurred after the Filing Date by the Borrower or any Guarantor in connection with Hedging Agreements, in each case to the extent that (A) the counterparty to such agreement is a Lender or a banking Affiliate of a Lender (or was a Lender or a banking Affiliate of a Lender at the time such Indebtedness was incurred) and (B) such agreement or contract is entered into in the ordinary course of business and not for speculative purposes; (xi) intercompany Indebtedness of any Domestic Entity owing to any Foreign Subsidiary so long as such Indebtedness is subordinated (on terms reasonably satisfactory to the Administrative Agent) to the Secured Obligations; (xii) refinancings or replacements of Indebtedness described in clause (ii) hereof in respect of Capitalized Leases and purchase money debt obligations incurred in the ordinary course of business and, to the extent required, with the approval of the Bankruptcy Court, provided that the Liens securing such Indebtedness do not extend to or cover any additional property; and (xiii) other Indebtedness of the Global Entities in an aggregate outstanding amount not to exceed \$25,000,000; provided that except with respect to any such Indebtedness of a non-Guarantor Domestic Entity owed to the Borrower or a Guarantor, such Indebtedness shall be unsecured.

# SECTION 6.04 EBITDAR.

Permit cumulative Global EBITDAR for the Global Entities for each rolling twelve (12) fiscal month period ending on the last day of each fiscal month set forth below to be less than the amount appearing opposite such month for such entity:

| Period Ending      | Global Entities<br>Global EBITDAR |
|--------------------|-----------------------------------|
| April 30, 2008     | \$<br>475,000,000                 |
| May 31, 2008       | \$<br>575,000,000                 |
| June 30, 2008      | \$<br>600,000,000                 |
| July 31, 2008      | \$<br>575,000,000                 |
| August 31, 2008    | \$<br>550,000,000                 |
| September 30, 2008 | \$<br>625,000,000                 |
| October 31, 2008   | \$<br>600,000,000                 |
| November 30, 2008  | \$<br>675,000,000                 |

SECTION 6.05 GM-Delphi Agreement. Until the GM Obligation Satisfaction Date,

(i) amend, waive, modify or supplement any term of the GM-Delphi Agreement in a manner that (a) has the effect of restricting or reducing the availability of Advances (as defined in the GM-Delphi Agreement) thereunder, (b) reduces or eliminates any restriction on set-off rights of GM set forth in Section 6.01 of the GM-Delphi Agreement, (c) modifies the last paragraph of Section 6.01 of the GM-Delphi Agreement, (e) has the effect of requiring any repayment or prepayment of Advances on any earlier date, (f) adds or makes more restrictive any default or event of default thereunder or (g) is otherwise materially adverse to the Lenders;

(ii) assign or otherwise dispose of any of its rights or obligations under the GM-Delphi Agreement;

(iii) voluntarily reduce any GM Commitment; or

(iv) make any payment under the GM-Delphi Agreement except for GM Permitted Prepayments.

SECTION 6.06 <u>Chapter 11 Claims</u>. Incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against the Borrower and the Guarantors hereunder, except for the Carve-Out.

SECTION 6.07 **Dividends; Capital Stock**. Declare or pay, directly or indirectly, any dividends or make any other distribution or payment, whether in cash, property, securities or a combination thereof, with respect to (whether by reduction of capital or otherwise) any shares of capital stock or membership interests (or any options, warrants, rights or other equity securities or agreements relating to any capital stock or membership interests), or set apart any sum for the aforesaid purposes; <u>provided</u> that this Section 6.07 shall not restrict dividends and distributions from the Guarantors or the Foreign Subsidiaries directly or indirectly to the Borrower or any Guarantor or from any Foreign Subsidiary to any other Foreign Subsidiary.

SECTION 6.08 <u>Transactions with Affiliates</u>. Sell or transfer any property or assets to, or otherwise engage in any other material transactions with, any of its Affiliates (other than (A) the Borrower, (B) any of the Guarantors or (C) so long as such transaction is on commercially reasonable terms consistent with past practice, any other Subsidiary of the Borrower pursuant to joint venture arrangements of such Subsidiary) or its shareholders, except for (i) transactions that are entered into in good faith, and at prices and on terms and conditions not less favorable to such Person than would be obtained on an arm' s-length basis from unrelated third parties, (ii) transactions solely among the Foreign Subsidiaries, (iii) transactions among the Global Entities that are entered into in the ordinary course of the relevant Global Entities' business, (iv) other transactions among the Global Entities to the extent otherwise expressly permitted under this Agreement, and (v) transactions described on Schedule 6.08.

SECTION 6.09 Investments, Loans and Advances. Purchase, hold or acquire any capital stock, evidences of indebtedness or other securities of, make or permit to exist any loans or advances to, or make or permit to exist any investment in, any other Person (all of the foregoing, "Investments"), except for: (i) ownership by the Borrower or such Subsidiary, as the case may be, of the capital stock of each of the Subsidiaries listed on Schedule 3.05; (ii) Permitted Investments; (iii) advances and loans among the Borrower and the Guarantors in the ordinary course of business; (iv) advances and loans made by any Foreign Subsidiary to any other Foreign Subsidiary; (v) Investments in existence on the Filing Date; (vi) investments by Wholly-Owned Foreign Subsidiaries in other Wholly-Owned Foreign Subsidiaries; (vii) extensions of trade credit in the ordinary course of business; (viii) advances and loans by any Global Entity to the employees of any Global Entity in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes in an aggregate amount for all Global Entities not exceeding \$25,000,000 at any one time outstanding; (ix) investments in (including the contribution of assets to) Foreign Subsidiaries and joint ventures, in an aggregate amount (net of the Investment Credit) not to exceed \$30,000,000 at any one time outstanding; (x) to the extent constituting Investments, any Indebtedness owed to a Global Entity or any contribution of assets, issuance of Equity Interests or disposition to a Global Entity permitted to be made under Section 6.02, 6.03 or 6.10 and (xi) Investments in Equity Interests of account debtors or other assets received (and in the amount so received) pursuant to any reorganization or similar arrangement upon bankruptcy or insolvency of, or other settlement with, such account debtors; provided, however, that compliance with the restrictions set forth in this Section 6.09 shall not be required if, after giving effect to any transaction or activity otherwise subject to this Section 6.09, the Facility Availability Amount would be equal to or greater than \$500,000,000, except that in no event may the Borrower or any Guarantor make any Investment in a Non-Filed Domestic Entity if, after giving effect to such Investment, the aggregate amount (calculated net of the Investment Credit) of all Investments made by the Borrower and the Guarantors in Non-Filed Domestic Entities during the term of this Agreement would exceed \$25,000,000. For the avoidance of doubt, this Section 6.09 prohibits (x) the making of advances or loans from a Domestic Entity to any Foreign Subsidiary and (y) the making of any investment by a Domestic Entity in a Foreign Subsidiary and the creation of and making of any investment in a joint venture in an aggregate amount (net of the Investment Credit) for all such investments greater than \$30,000,000 at any one time outstanding, in each case at any time when the Facility Availability Amount is (or, after giving effect to the relevant transaction, would be) less than \$500,000,000; provided that any such transaction (other than Investments by the Borrower or any Guarantor in a Non-Filed Domestic Entity, which shall continue to be subject to the aforementioned \$25,000,000 cap) shall be permitted without

restriction under this Section 6.09 (but subject always to the limitations set forth in Section 6.03 in the case of any transaction pursuant to which a Foreign Subsidiary will incur Indebtedness) if, after giving effect thereto, the Facility Availability Amount would be equal to or greater than \$500,000,000); provided further that each Global Entity shall be permitted to hold any Investment made at a time when such Investment was permitted to be made.

SECTION 6.10 Disposition of Assets. Sell or otherwise dispose of any assets (including the sale or issuance of any capital stock of any Subsidiary), whether now owned or hereafter acquired, except for (i) the sale or other disposition of obsolete or worn out property in the ordinary course of business; (ii) the sale of inventory in the ordinary course of business or pursuant to Permitted Non-Filed Domestic Entity Transfers; (iii) sales or other dispositions permitted by clauses (iv) and (v) of Section 6.02; (iv) sale or disposition of assets constituting all or a portion of the Automotive Holdings Group (but not including any related foreign assets except for *de minimis* foreign assets); (v) the sale, issuance or contribution of any Subsidiary's capital stock to the Borrower or to any Wholly-Owned Guarantor or, in the case of a sale, issuance or contribution of capital stock of a Foreign Subsidiary that is not a first-tier Foreign Subsidiary, to any Wholly-Owned Subsidiary of the Borrower; (vi) sales or other dispositions consisting of the transfer of rights in Intellectual Property to third parties and/or routine patent portfolio deletions, in each case in the ordinary course of business consistent with past practice; (vii) sales or other dispositions of accounts receivables and other related assets in connection with any Foreign Receivables Financing, so long as such Foreign Receivables Financing is otherwise permitted under this Agreement (including pursuant to Section 6.01 and Section 6.03); (viii) intercompany sales or contributions among the Borrower and the Guarantors; (ix) dispositions described on Schedule 6.10; and (x) any other sale or disposition of property not otherwise expressly permitted by this Section 6.10 (A) having a fair market value of less than \$500,000 or (B) having a fair market value of \$500,000 or more, in which case such dispositions shall not exceed \$100,000,000 in the aggregate for any fiscal year of the Borrower; provided that compliance with the restrictions set forth in this Section 6.10 shall not be required if, after giving effect to any transaction or activity otherwise subject to this Section 6.10, the Facility Availability Amount would be equal to or greater than \$500,000,000, except that in no event may the Borrower or any Guarantor sell or otherwise transfer any assets, whether now owned or hereafter acquired, to a Non-Filed Domestic Entity (other than pursuant to a Permitted Non-Filed Domestic Entity Transfer) if, after giving effect thereto, the aggregate fair market value of all assets sold or transferred by the Borrower and the Guarantors to Non-Filed Domestic Entities would exceed \$15,000,000 during the term of this Agreement.

SECTION 6.11 <u>Nature of Business</u>. Modify or alter in any material manner the nature and type of its business as conducted at or prior to the Filing Date or the manner in which such business is conducted (except, in the case of the Borrower and the Guarantors, as required by the Bankruptcy Code), it being understood that asset sales permitted by Section 6.10 shall not constitute such a material modification or alteration.

## **SECTION 7. EVENTS OF DEFAULT**

SECTION 7.01 **Events of Default**. In the case of the happening of any of the following events and the continuance thereof beyond the applicable grace period, if any (each, an "Event of Default"):

(a) any material representation or warranty made by the Borrower or any Guarantor in this Agreement or in any Loan Document or in connection with this Agreement or the credit extensions hereunder or any material statement or representation made in any report, financial statement, certificate or other document furnished by the Borrower or any Guarantor to the Lenders under or in connection with this Agreement, shall prove to have been false or misleading in any material respect when made; or

(b) default shall be made in the payment of any (i) Fees, interest on the Loans or other amounts payable hereunder when due (other than amounts set forth in clause (ii) hereof), and such default shall continue unremedied for more than two (2) Business Days or (ii) principal of the Loans or reimbursement obligations or cash collateralization in respect of Letters of Credit, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise; or

(c) default shall be made by the Borrower or any Guarantor in the due observance or performance of any covenant, condition or agreement contained in Section 5.02 (with respect to the Borrower), Section 5.05 or Section 6 hereof, or

(d) default shall be made by the Borrower or any Guarantor in the due observance or performance of any other covenant, condition or agreement (other than those covered by clauses (b) and (c) above and clause (h) below) to be observed or performed pursuant to the terms of this Agreement, the Approval Order or any of the other Loan Documents and such default shall continue unremedied for more than ten (10) days; or

(e) any of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or the Borrower or any Guarantor shall file a motion or other pleading seeking the dismissal of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within 30 days after the entry thereof, or an application shall be filed by the Borrower or any Guarantor for the approval of any other Superpriority Claim (other than the Carve-Out) in any of the Cases which is <u>pari passu</u> with or senior to the claims of the Administrative Agent and the Lenders against the Borrower or any Guarantor hereunder, or there shall arise or be granted any such <u>pari passu</u> or senior Super Priority Claim; or

(f) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of the Borrower or any of the Guarantors which have a value in excess of \$20,000,000 in the aggregate; or

(g) a Change of Control shall occur; or

(h) the Borrower shall fail to deliver a certified Borrowing Base Certificate when due and such default shall continue unremedied for more than three (3) Business Days; or

(i) any material provision of any Loan Document shall, for any reason, cease to be valid and binding on the Borrower or any of the Guarantors, or the Borrower or any of the Guarantors shall so assert in any pleading filed in any court; or

(j) an order of the Bankruptcy Court shall be entered (i) reversing, staying for a period in excess of 10 days, or vacating the Approval Order or the GM Approval Order or (ii) without the written consent of the Administrative Agent and the Required Lenders, otherwise amending, supplementing or modifying the Approval Order or the GM Approval Order in a manner that is reasonably determined by the Agents to be adverse to the Agents and the Lenders, or (iii) terminating the use of cash collateral by the Borrower or the Guarantors pursuant to the Approval Order (for purposes hereof, "<u>GM Approval Order</u>" shall mean "<u>Approval Order</u>" as defined under the GM-Delphi Agreement); or

(k) any judgment or order in excess of \$20,000,000 as to any post-petition obligation shall be rendered against any Global Entity and the enforcement thereof shall not have been stayed; or

(l) any non-monetary judgment or order with respect to a post-petition event shall be rendered against any Global Entity which does or would reasonably be expected to have a Material Adverse Effect; or

(m) except as permitted by the Approval Order, the Borrower or the Guarantors shall make any Pre-Petition Payment other than (i) Pre-Petition Payments authorized by the Bankruptcy Court (v) in accordance with orders reasonably satisfactory to the Administrative Agent (including not in excess of the amount set forth in the essential supplier order), (w) in connection with the assumption of executory contracts and unexpired leases, (x) payments in respect of reclamation claims authorized by the Bankruptcy Court, (y) in respect of accrued payroll and related expenses and employee benefits as of the Filing Date (excluding any Pre-Petition Payment in respect of or in connection with any Termination Event) and (z) in respect of Remediation Payments, (ii) Pre-Petition Payments of Indebtedness permitted under Section 6.03(ii) made with proceeds of dispositions of assets that secure the Indebtedness so repaid, so long as (1) the Liens securing such repaid Indebtedness are not primed by the Liens of the Security and Pledge Agreement in favor of the Administrative Agent and (2) such asset dispositions are otherwise permitted under this Agreement and (iii) other Pre-Petition Payments (excluding any Pre-Petition Payments) in an aggregate amount not to exceed \$15,000,000; or

(n) (i) any Termination Event described in clauses (iii) or (iv) of the definition of such term shall have occurred and any Lien shall arise as a result of such Termination Event or (ii) any Lien shall arise under Section 412(n) of the Code, and in each case, (x) such Lien has been perfected or (y) any Person shall have obtained relief from the automatic stay to enforce such Lien or any Insufficiency; <u>provided</u> that the perfection of any Liens described in clauses (i) or (ii) above shall not constitute an Event of Default so long as such perfected Liens could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or an adverse effect on the Liens in favor of the Administrative Agent on behalf of the Lenders (including the priority of such Liens or the ability of the Administrative Agent and Lenders to exercise remedies in respect thereof); or (o) (i) any ERISA Event shall have occurred with respect to a Plan, (ii) the Borrower or any Guarantor or any ERISA Affiliate shall have been notified by the sponsor or trustee of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan or (iii) the Borrower or any Guarantor or any ERISA Affiliate shall have been notified by the sponsor or trustee of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, and, in any such case, such event does or would reasonably be expected to have a Material Adverse Effect; or

(p) it shall be determined (whether by the Bankruptcy Court or by any other judicial or administrative forum) that the Borrower or any Guarantor is liable for the payment of claims arising out of any failure to comply (or to have complied) with applicable environmental laws or regulations the payment of which will have a Material Adverse Effect; or

(q) the Borrower shall fail to make any payment required to be made pursuant to Section 2.09 of the GM-Delphi Agreement, when and as the same shall become due and payable and such default shall continue unremedied for more than three (3) Business Days; or

(r) any event or condition occurs that results in (i) the GM Commitment being terminated or reduced on a date other than the GM Scheduled Termination Date (except for a GM Permitted Commitment Reduction), (ii) any GM Obligations, other than GM Permitted Prepayments, becoming due prior to the GM Scheduled Termination Date or (iii) GM exercising any remedy to enforce any GM Obligations other than GM Permitted Prepayments, including seeking or receiving payment of any GM Obligations other than GM Permitted Prepayments; or

(s) it is or becomes unlawful for either the Borrower or GM to perform any of its material obligations under the GM-Delphi Agreement, any material obligation or material obligations of the Borrower or GM under the GM-Delphi Agreement are not or cease to be legal, valid, binding or enforceable, the GM-Delphi Agreement ceases to be in full force and effect prior to the GM Obligation Satisfaction Date, or the Borrower or GM rescinds or purports to rescind or repudiates or purports to repudiate in each case in writing the GM-Delphi Agreement; or

(t) GM shall assign any of its rights or obligations under the GM-Delphi Agreement except in accordance with Section 8.03 of the GM-Delphi Agreement as in effect on the date hereof,

then, and in every such event and at any time thereafter during the continuance of such event, and without further order of or application to the Bankruptcy Court, the Administrative Agent may, and at the request of the Required Lenders, shall, by notice to the Borrower (with a copy to counsel for the Official Creditors' Committee appointed in the Cases, to counsel for the Existing Pre-Petition Agent and to the United States Trustee for the Southern District of New York), take one or more of the following actions, at the same or different times (provided, that with respect to clause (iv) below and the enforcement of Liens or other remedies with respect to the Collateral under clause (v) below, the Administrative Agent shall provide the Borrower (with a copy to counsel for the Official Creditors' Committee in the Cases, to counsel for the Existing Pre-Petition Agent and to the United States Trustee Southern District of New York) with five (5) Business Days' written notice prior to taking the action contemplated thereby and provided, further, that upon receipt of notice referred to in the immediately preceding clause with respect to



the accounts referred to in clause (iv) below, the Borrower may continue to make ordinary course disbursements from such accounts (other than the Letter of Credit Account) but may not withdraw or disburse any other amounts from such accounts): (i) terminate or suspend forthwith the Total Commitment; (ii) declare the Loans or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of such Loans together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding; (iii) require the Borrower and the Guarantors upon demand to forthwith deposit in the Letter of Credit Account cash in an amount which, together with any amounts then held in the Letter of Credit Account, is equal to the sum of 105% of the then Uncollateralized LC Exposure (and to the extent the Borrower and the Guarantors shall fail to furnish such funds as demanded by the Administrative Agent, the Administrative Agent shall be authorized to debit the accounts of the Borrower and the Guarantors maintained with the Administrative Agent in such amount five (5) Business Days after the giving of the notice referred to above); (iv) set-off amounts in the Letter of Credit Account or any other accounts maintained with the Administrative Agent and in the other Loan Documents; and (v) exercise any and all remedies under the Loan Documents and under applicable law available to the Administrative Agent and the Lenders. Any payment received as a result of the exercise of remedies hereunder shall be applied in accordance with Section 2.19(b).

## SECTION 8. THE AGENTS

SECTION 8.01 <u>Appointments</u>; <u>Administration by Administrative Agent</u>; <u>No Duties for Syndication Agent</u>. (a) Each of the Lenders and the Issuing Lender hereby irrevocably appoints each Agent as its agent and authorizes such Agent to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

(b) The general administration of the Loan Documents shall be by the Administrative Agent.

(c) CUSA in its capacity as Syndication Agent, shall not have any duties or obligations of any kind under this Agreement.

(d) The Persons listed as Co-Documentation Agents on the cover page hereof in its capacity as such shall not have any duties or obligations of any kind under this Agreement.

SECTION 8.02 **<u>Rights of Agents</u>**. Each institution serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder.

### SECTION 8.03 Liability of Agents

(a) No Agent shall have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (i) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing, (ii) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.09), and (iii) except as expressly set forth herein, no Agent shall have any duty to disclose, and no Agent shall be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by any bank serving as an Agent or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.09) or in the absence of its own gross negligence or willful misconduct. Each Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with this Agreement, (B) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (D) the validity, enforceability, effectiveness or genuineness of this Agreement or any other agreement, instrument or document, or (E) the satisfaction of any condition set forth in Section 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

(b) Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(c) Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent hereunder.

SECTION 8.04 **<u>Reimbursement and Indemnification</u>**. Each Lender agrees (i) to reimburse the Administrative Agent for such Lender's Tranche A Commitment Percentage, Tranche B Commitment Percentage, Initial Tranche C Commitment Percentage or Subsequent Tranche C Commitment Percentage of any expenses and fees incurred for the benefit of the

Lenders under this Agreement and any of the Loan Documents, including counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, and any other expense incurred in connection with the operations or enforcement thereof, not reimbursed by the Borrower or the Guarantors and (ii) to indemnify and hold harmless the Administrative Agent, each Issuing Lender and any of their directors, officers, employees, agents or Affiliates, on demand, in the amount of its proportionate share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against it or any of them in any way relating to or arising out of this Agreement or any of the Loan Documents or any action taken or omitted by it or any of them under this Agreement or any of the Loan Documents or the Borrower or the Guarantors (except such as shall result from their respective gross negligence or willful misconduct).

SECTION 8.05 Successor Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Lender and the Borrower. Upon any such resignation, the Required Lenders shall have the right, to appoint a successor, which successor agent shall (unless an Event of Default under Section 7.01(b) shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

SECTION 8.06 <u>Independent Lenders</u>. Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder.

#### SECTION 8.07 Advances and Payments.

(a) On the date of each Loan, the Administrative Agent shall be authorized (but not obligated) to advance, for the account of each of the Lenders, the amount of the Loan to be made by it in accordance with its Tranche A Commitment, Tranche B Commitment, Initial

Tranche C Commitment or Subsequent Tranche C Commitment, as the case may be, hereunder. Should the Administrative Agent do so, each of the Lenders agrees forthwith to reimburse the Administrative Agent in immediately available funds for the amount so advanced on its behalf by the Administrative Agent. together with interest at the Federal Funds Effective Rate if not so reimbursed on the date due from and including such date but not including the date of reimbursement.

(b) Any amounts received by the Administrative Agent in connection with this Agreement (other than amounts to which the Administrative Agent is entitled pursuant to Sections 2.20, 8.04 and 10.05), the application of which is not otherwise provided for in this Agreement shall be applied in accordance with Section 2.19(b). All amounts to be paid to a Lender by the Administrative Agent shall be credited to that Lender, after collection by the Administrative Agent. in immediately available funds either by wire transfer or deposit in that Lender's correspondent account with the Administrative Agent. as such Lender and the Administrative Agent shall from time to time agree.

SECTION 8.08 Sharing of Setoffs. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or a Guarantor, including, but not limited to, a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim and received by such Lender under any applicable bankruptcy. insolvency or other similar law, or otherwise, obtain payment then due or payable in respect of its Loans or unreimbursed drafts drawn under Letters of Credit as a result of which the unpaid portion then due or payable in respect of its Loans or unreimbursed drafts drawn under Letters of Credit is proportionately less than the unpaid portion then due or payable in respect of the Loans or unreimbursed drafts drawn under Letters of Credit of any other Lender (a) it shall promptly purchase at par (and shall be deemed to have thereupon purchased) from such other applicable Lender a participation in the Loans or unreimbursed drafts drawn under Letters of Credit of such other applicable Lender, so that the aggregate unpaid principal amount of each applicable Lender's Loans and unreimbursed drafts drawn under Letters of Credit and its participation in Loans and unreimbursed drafts drawn under Letters of Credit of the other applicable Lenders shall be in the same proportion to the aggregate unpaid principal amount of all Loans of the applicable Lenders then outstanding and unreimbursed drafts drawn under Letters of Credit as the principal amount of its Loans and unreimbursed drafts drawn under Letters of Credit prior to the obtaining of such payment was to the principal amount of all Loans of the applicable Lenders outstanding and unreimbursed drafts drawn under Letters of Credit prior to the obtaining of such payment and (b) such other adjustments shall be made from time to time as shall be equitable to ensure that the applicable Lenders share such payment pro-rata in proportion to the amounts then due and payable to each of them, provided, that if any such non-pro-rata payment is thereafter recovered or otherwise set aside such purchase of participations shall be rescinded (without interest), it being agreed and understood that nothing in this Section 8.08 shall operate (x) to allow a Lender to keep a payment in respect of portions not then due or payable in respect of its Loans, (y) to entitle any Lender to participate in any sharing of payments in respect of portions not then due or payable in respect of its Loans or (z) to change the order of payments set forth in Sections 2.13, 2.14 or 2.19(b). The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding (or deemed to be holding) a participation in a Loan or unreimbursed drafts drawn under Letters of Credit may exercise any and all rights of banker's lien, setoff (in each case, subject to the same notice requirements as pertain to clause (iv) of the remedial provisions of Section 7.01) or counterclaim

with respect to any and all moneys owing by the Borrower to such Lender as fully as if such Lender were the original obligee thereon, in the amount of such participation.

## SECTION 9. GUARANTY

## SECTION 9.01 Guaranty.

(a) Each of the Guarantors unconditionally and irrevocably guarantees the due and punctual payment by the Borrower of the Obligations. Each of the Guarantors further agrees that the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and it will remain bound upon this guaranty notwithstanding any extension or renewal of any of the Obligations. The Obligations of the Guarantors shall be joint and several.

(b) Each of the Guarantors waives presentation to, demand for payment from and protest to the Borrower or any other Guarantor, and also waives notice of protest for nonpayment. The Obligations of the Guarantors hereunder shall not be affected by (i) the failure of the Administrative Agent or a Lender to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Guarantor under the provisions of this Agreement or any other Loan Document or otherwise; (ii) any extension or renewal of any provision hereof or thereof, (iii) any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any of the Loan Documents; (iv) the release, exchange, waiver or foreclosure of any security held by the Administrative Agent for the Obligations or any of them; (v) the failure of the Administrative Agent or a Lender to exercise any right or remedy against any other Guarantor; or (vi) the release or substitution of the Borrower or any other Guarantor.

(c) Each of the Guarantors further agrees that this guaranty constitutes a guaranty of payment when due and not just of collection, and waives any right to require that any resort be had by the Administrative Agent or a Lender to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of the Administrative Agent or a Lender in favor of the Borrower or any other Guarantor, or to any other Person.

(d) Each of the Guarantors hereby waives any defense that it might have based on a failure to remain informed of the financial condition of the Borrower and of any other Guarantor and any circumstances affecting the ability of the Borrower to perform under this Agreement.

(e) Each Guarantor's guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Guaranty. Neither of the Agents nor any of the Lenders makes any representation or warranty in respect to any such circumstances or shall have any duty or responsibility whatsoever to any Guarantor in respect of the management and maintenance of the Obligations.

(f) Subject to the provisions of Section 7.01, upon the Obligations becoming due and payable (by acceleration or otherwise), the Lenders shall be entitled to immediate payment of such Obligations by the Guarantors upon written demand by the Administrative Agent. without further application to or order of the Bankruptcy Court.

SECTION 9.02 **No Impairment of Guaranty**. The obligations of the Guarantors hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations. Without limiting the generality of the foregoing, the obligations of the Guarantors hereunder shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent or a Lender to assert any claim or demand or to enforce any remedy under this Agreement or any other agreement, by any waiver or modification of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantors or would otherwise operate as a discharge of the Guarantors as a matter of law, unless and until the Obligations are paid in full.

SECTION 9.03 <u>Subrogation</u>. Upon payment by any Guarantor of any sums to the Administrative Agent or a Lender hereunder, all rights of such Guarantor against the Borrower arising as a result thereof by way of right of subrogation or otherwise, shall in all respects be subordinate and junior in right of payment to the prior final and indefeasible payment in full of all the Obligations. If any amount shall be paid to such Guarantor for the account of the Borrower, such amount shall be held in trust for the benefit of the Administrative Agent and the Lenders and shall forthwith be paid to the Administrative Agent and the Lenders to be credited and applied to the Obligations, whether matured or unmatured.

# SECTION 10. MISCELLANEOUS

SECTION 10.01 <u>Notices</u>. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at 5725 Delphi Drive, Troy, Michigan 48098, Attention of Treasurer (Telecopy No. 248-813-2648; Telephone No. 248-813-2592; with a copy to Assistant General Counsel, Commercial and Transactions (Telecopy No. 248-816-2491; Telephone No. 248-813-2492);

(ii) if to JPMCB (in its capacity as the Administrative Agent or as a Lender), to JPMorgan Chase Bank, N.A., 277 Park Avenue, New York, New York 10017, Attention of: Susan Atkins (Telecopy No. 212-622-4556; Telephone No. 212-622-4506), Richard Duker (Telecopy No. 212-270-5127; Telephone No. 212-270-3057) and John Goebel, (Telecopy No.: 212-622-4556; Telephone No. 212-622-4583) with a copy to JPMorgan Chase Bank, N.A., Loan and Agency Services Group, 1111 Fannin,

10th Floor, Houston, Texas 77002, Attention of: Daniel Blazei, (Telecopy No. 713-750-2938; Telephone No. 713-750-7924);

(iii) if to the Issuing Lender, to it at the address most recently specified by it in notice delivered by it to the Administrative Agent and the Borrower, with a copy to the Administrative Agent as provided in clause (ii) above;

(iv) [reserved]; and

(v) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; <u>provided</u>, that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; <u>provided</u>, that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

SECTION 10.02 **Survival of Agreement, Representations and Warranties, etc.** All warranties, representations and covenants made by the Borrower or any Guarantor herein or in any certificate or other instrument delivered by it or on its behalf in connection with this Agreement shall be considered to have been relied upon by the Lenders and shall survive the making of the Loans herein contemplated regardless of any investigation made by any Lender or on its behalf and shall continue in full force and effect (in the case of any representations and warranties, as of the date when made or deemed to be made) so long as any amount due or to become due hereunder is outstanding and unpaid and so long as the Total Commitment has not been terminated.

SECTION 10.03 <u>Successors and Assigns</u>. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Lender that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Lender that issues any Letter of Credit), Participants (to the extent provided in paragraph (d) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent. the Issuing Lender

and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Total Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Administrative Agent; and

(B) the Issuing Lender, <u>provided</u> that no consent of the Issuing Lender shall be required for an assignment of all or any portion of a Tranche B Loan or a Tranche C Loan; and

(C) the Borrower; <u>provided</u> that no consent of the Borrower shall be required for an assignment if, after giving effect thereto, the aggregate amount of the assignee's Tranche A Commitment, Tranche B Loan and Tranche C Loan would be less than ten percent (10%) of the Total Commitment in effect at such time; and <u>provided further</u> that no consent of the Borrower shall be required if an Event of Default has occurred and is continuing.

(ii) Assignments shall be subject to the following additional conditions:

(A) any assignment of any portion of the Total Tranche A Commitment and Tranche A Loans and LC Exposure shall be made to an Eligible Assignee;

(B) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Tranche A Commitment, Tranche B Loan or Tranche C Loan, the amount of such commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless the Administrative Agent otherwise consents;

(C) each partial assignment of a Commitment or Loans of a Class shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of such Class under this Agreement;

(D) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500; <u>provided</u> that if an assignment is made by a Lender concurrently to an assignee and one or more Affiliates or Approved Funds of such assignee, then only one processing and recordation fee of \$3,500 shall be due in connection with such assignment;

(E) the assignee, if it was not a Lender immediately prior to such assignment, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(F) except in the case of (x) any assignment in connection with the primary syndication of the credit facilities provided for herein and (y) any assignment to a Lender or an Affiliate of a Lender or an Approved Fund, each assignment shall be made in consultation with the Borrower.

For the purposes of this Section 10.03(b), the term "<u>Approved Fund</u>" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender of the relevant Class or Classes, as the case may be, under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits (and, in the case of Section 2.18, subject to the obligations) of Sections 2.16, 2.17, 2.18 and 10.05). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.03 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal and interest amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "<u>Register</u>"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Lender and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Lender and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 10.03(b)(iv) shall be construed so that the Loans and LC Disbursements are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Code.

(c) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire

(unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; <u>provided</u>, that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.03(d) or (e), 2.05(b), 2.19(d) or 8.04, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(d) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Lender, and without consulting the Borrower, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided, that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.09(a) that affects such Participant. Subject to paragraph (d)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.16, 2.17 and 2.18 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 2.26 as though it were a Lender, provided such Participant agrees to be subject to Section 8.08 as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.16 or 2.18 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.18 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.18 as though it were a Lender.

(iii) A Participant shall not be entitled to any funds directly from the Borrower in respect of the benefits under Section 2.16, 2.17, 2.18 or 2.26, pursuant to Section 10.03(d), until such Participant has provided information to the Borrower sufficient to satisfy the requirements of Section 10.03(b)(iv) as if such Participant had been a Lender.

(e) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any

pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; <u>provided</u>, that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 10.03, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrower or any of the Guarantors furnished to such Lender by or on behalf of the Borrower or any of the Guarantors; <u>provided</u>, that prior to any such disclosure, each such assignee or participant or proposed assignee or participant shall agree in writing to be bound by the provisions of Section 10.04.

(g) Notwithstanding any provision to the contrary, any Lender may assign to one or more special purpose funding vehicles (each, an "SPV") all or any portion of its funded Tranche A Loans (without any corresponding Tranche A Commitment), without the consent of any Person or the payment of a processing and recordation fee, by execution of a written assignment agreement in a form agreed to by such Lender and any such SPV, and may grant any such SPV the option, in such SPV's sole discretion, to fund all or any part of any Tranche A Loans that such Lender would otherwise be obligated to fund pursuant to this Agreement. Subject to the provisions of this paragraph, each such SPV shall have all the rights which a Lender holding the Tranche A Loans funded by or assigned to it would have under this Agreement (other than, for the avoidance of doubts, rights determined by reference to such Lender's Tranche A Commitment), but no obligations. The Lender making such assignment or granting such option shall remain liable for all the obligations related to its Tranche A Commitments and any Tranche A Loans held by any such SPV under this Agreement, including (i) its Tranche A Commitments (although the unused portion thereof shall be reduced by the principal amount of any Tranche A Loans held by any such SPV), (ii) any reimbursement or indemnity obligations related to its Tranche A Commitments and any Tranche A Loans held by any such SPV and (iii) any obligation to share any payment received by any such SPV as provided for in Section 8.08 or to return any payment received by it or any such SPV as a result of any recovery by the Borrower or any other Person in respect thereof. Notwithstanding such assignment or grant, the Loan Parties, the Administrative Agent and the other Lenders may continue to deal with such Lender (which shall be deemed acting hereunder for all purposes hereof as an agent for each such SPV and itself) as though such Lender had not made such assignment or granted such option, including as to (x) the delivery of any notices or other communications under the Loan Documents, (y) the making of all payments to Lenders under the Loan Documents and (z) the execution and delivery of any modification, amendment, waiver, consent, instruction or Assignment and Acceptance relating to any Loan Document, except as the Administrative Agent shall otherwise determine in its sole discretion following any request by such Lender or any such SPV (in which case, to the extent necessary or appropriate, it shall notify the other parties hereto), provided that, to the extent they are requested to do so by any such SPV (or its agent), copies of any notices or communications by the Loan Parties and the Administrative Agent to such Lender under the Loan Documents shall be given to such SPV. By accepting any such assignment or grant, each such SPV acknowledges and agrees that it is bound by Section 8 and this paragraph. The Borrower shall, at the request of such Lender, execute and deliver to such Person as such Lender may designate, a promissory note as contemplated in

Section 2.11(e) in the amount of such Lender's original promissory note to evidence the Loans of such Lender and such SPV.

SECTION 10.04 **Confidentiality**. Each Lender agrees to keep any information delivered or made available by the Borrower or any of its Subsidiaries to it confidential from anyone other than persons employed or retained by such Lender who are or are expected to become engaged in evaluating, approving, structuring or administering the Loans; provided, that nothing herein shall prevent any Lender from disclosing such information (1) to any of its Affiliates, SPVs or funding sources or to any other Lender, provided such Affiliate, SPV or funding source agrees to keep such information confidential to the same extent required by the Lenders hereunder, (2) upon the order of any court or administrative agency, (3) upon the request or demand of any regulatory agency or authority, (4) which has been publicly disclosed other than as a result of a disclosure by any Agent or any Lender which is not permitted by this Agreement, (5) in connection with any litigation to which the any Agent, any Lender, or their respective Affiliates may be a party solely to the extent reasonably required, (6) to the extent reasonably required in connection with the exercise of any remedy hereunder, (7) to such Lender's legal counsel and independent auditors, and (8) to any actual or proposed participant or assignee of all or part of its rights hereunder subject to the proviso in Section 10.03(f). Each Lender shall use reasonable efforts to notify the Borrower of any required disclosure under clauses (ii) and (v) of this Section.

SECTION 10.05 **Expenses; Indemnity; Damage Waiver**. (a)(i) The Borrower shall pay or reimburse: (A) all reasonable fees and reasonable out-of-pocket expenses of the Agents and the Arrangers/Bookrunners (including the reasonable fees, disbursements and other charges of Davis Polk & Wardwell ("<u>DPW</u>"), special counsel to the Administrative Agent and the Arrangers/Bookrunners, and any local counsel retained by DPW or the Administrative Agent or the Arrangers/Bookrunners) associated with the syndication of the credit facilities provided for herein, and the preparation, execution, delivery and administration of the Loan Documents and any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated); and (B) all fees and expenses of the Agents and the Arrangers/Bookrunners, including the fees, disbursements and other charges of DPW, special counsel to the Administrative Agent and the Arrangers/Bookrunners) and the Arrangers/Bookrunners, and any local counsel retained by DPW or the Administrative Agent or the Arrangers/Bookrunners (including the fees, disbursements and other charges of DPW, special counsel to the Administrative Agent and the Arrangers/Bookrunners, and any local counsel retained by DPW or the Administrative Agent or the Arrangers/Bookrunners) and the Lenders in connection with the enforcement of the Loan Documents. In connection with the foregoing, it is understood that, subject to customary exceptions for conflicts of interest, special counsel and local counsel, the Agents and the Arrangers/Bookrunners/Bookrunners shall be represented by a single lead counsel.

(ii) The Borrower shall pay or reimburse (A) all reasonable fees and reasonable expenses of the Agents and the Arrangers/ Bookrunners and their internal and third-party auditors, appraisers and consultants incurred in connection with the Agents' (1) initial and ongoing Borrowing Base examinations, (2) analyses of the systems and processes of the Borrower and analyses and valuations of the Borrowing Base assets, (3) periodic field examinations and appraisals and (4) monthly and other monitoring of assets; and (B) all reasonable fees and reasonable out-of-pocket expenses of the Issuing Lenders in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand or any payment thereunder.

All payments or reimbursements pursuant to the foregoing clauses (a)(i) and (ii) shall be payable promptly upon written demand together with back-up documentation supporting such reimbursement request.

(b) The Borrower shall indemnify the Agents, the Arrangers/Bookrunners, the Issuing Lenders and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee (it being understood that claims for expense reimbursement hereunder shall be accompanied by back-up documentation supporting such request), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee (or such Indemnitee's officers, directors, employees or affiliates).

(c) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof

SECTION 10.06 <u>CHOICE OF LAW</u>. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL IN ALL RESPECTS BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

SECTION 10.07 **No Waiver**. No failure on the part of the Administrative Agent or any of the Lenders to exercise, and no delay in exercising, any right, power or remedy hereunder or any of the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

SECTION 10.08 **Extension of Maturity**. Should any payment of principal of or interest or any other amount due hereunder become due and payable on a day other than a Business Day,

the maturity thereof shall be extended to the next succeeding Business Day and, in the case of principal, interest shall be payable thereon at the rate herein specified during such extension.

### SECTION 10.09 Amendments, etc.

(a) No modification, amendment or waiver of any provision of this Agreement or the Security and Pledge Agreement, and no consent to any departure by the Borrower or any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given; provided, however, that no such modification or amendment shall without the written consent of (i) the Super-majority First Priority Lenders (A) increase the advance rates set forth in the definition of the term "Borrowing Base", add new asset categories to the Borrowing Base or otherwise cause the Borrowing Base or availability under the credit facilities provided for herein to be increased, (B) release any of the Liens granted to the Administrative Agent hereunder, under the Approval Order or under any other Loan Document, other than Liens on assets that are sold or otherwise disposed of in transactions permitted pursuant to the Loan Documents, or (C) release any of the Guarantors, other than as expressly permitted pursuant to the Loan Documents, (ii) the Lender affected thereby (A) increase the Commitment of a Lender (it being understood that a waiver of an Event of Default shall not constitute an increase in the Commitment of a Lender), or (B) reduce the principal amount of any Loan or the rate of interest payable thereon, or extend any date for the scheduled payment of interest hereunder or reduce any Fees payable hereunder or extend any date for the scheduled payment of any such Fees, or extend the final maturity of the Borrower's obligations hereunder, (iii) all of the Lenders (A) amend or modify any provision of this Agreement which provides for the unanimous consent or approval of the Lenders, (B) amend this Section 10.09, the definition of Super-majority Lenders or the definition of Requisite Supermajority Entities, (C) amend or modify the Superpriority Claim status of the Lenders contemplated by Section 2.25, (D) release all or substantially all of the Liens granted to the Administrative Agent hereunder, under the Approval Order or under any other Loan Document, or release all or substantially all of the Guarantors or (E) amend any provision that sets forth the priority of payment as among the Tranche A Lenders, the Tranche B Lenders and the Tranche C Lenders, (iv) all of the Tranche A Lenders and the Tranche B Lenders, amend the definition of Required Lenders or the definition of Super-majority First-Priority Lenders or (v) all of the Lenders of the applicable Class, amend the definition of Super-majority Class Lenders in respect of such Class. No such amendment or modification may adversely affect the rights and obligations of the Administrative Agent or any Issuing Lender hereunder or either JPMCB or CUSA in the capacity referred to in Section 6.03(viii) without its prior written consent. No notice to or demand on the Borrower or any Guarantor shall entitle the Borrower or any Guarantor to any other or further notice or demand in the same, similar or other circumstances. Each assignee under Section 10.03(b) shall be bound by any amendment, modification, waiver, or consent authorized as provided herein, and any consent by a Lender shall bind any Person subsequently acquiring an interest on the Loans held by such Lender. No amendment to this Agreement shall be effective against the Borrower or any Guarantor unless signed by the Borrower or such Guarantor, as the case may be. As used herein, the term "Super-majority First Priority Lenders" shall mean, at any time, Lenders having Tranche A Commitments at such time (or, if the Total Tranche A Commitment has been terminated, Lenders holding Tranche A Loans and LC Exposure at such time) and Lenders holding the Tranche B Loan at such time (or, if the Tranche B Loan is not outstanding, Lenders holding Tranche B Commitments at such time) representing

in excess of 66-2/3% of the sum of the Total Tranche A Commitment at such time (or, if the Total Tranche A Commitment has been terminated, the Tranche A Total Commitment Usage at such time) <u>plus</u> the Total Tranche B Commitment at such time.

Notwithstanding anything to the contrary contained in Section 10.09(a), in the event that the Borrower requests that this Agreement be modified or amended in a manner which would require the unanimous consent of all of the Lenders and such modification or amendment is agreed to by the Super-majority Lenders, the Super-majority First Priority Lenders and, with respect to any Class affected thereby, the Super-majority Class Lenders (together with the Super-majority Lenders and the Super-majority First Priority Lenders, the "Requisite Supermajority Entities"), then with the consent of the Borrower and the Requisite Super-majority Entities, the Borrower and the Requisite Supermajority Entities shall be permitted to amend the Agreement without the consent of the Lender or Lenders which did not agree to the modification or amendment requested by the Borrower (such Lender or Lenders, collectively the "<u>Minority Lenders</u>") to provide for (i) the termination of the Commitment of each of the Minority Lenders, (ii) the addition to this Agreement of one or more other financial institutions (each of which shall meet the requirements of Section 10.03(b)), or an increase in the Commitment of one or more of the Requisite Supermajority Entities, so that the Total Commitment and the Total First Priority Commitment after giving effect to such amendment, (iii) if any Loans are outstanding at the time of such amendment, the making of such additional Loans by such new financial institutions or Requisite Super-majority Entity or Entities, as the case may be, as may be necessary to repay in full the outstanding Loans of the Minority Lenders immediately before giving effect to such amendment and (iv) such other modifications to this Agreement as may be appropriate.

As used herein, the term "<u>Super-majority Lenders</u>" shall mean, at any time, Lenders having Tranche A Commitments at such time (or, if the Total Tranche A Commitment has been terminated, Lenders holding Tranche A Loans and LC Exposure at such time), Lenders holding the Tranche B Loan at such time (or, if the Tranche B Loan is not outstanding, Lenders holding Tranche B Commitments at such time), Lenders holding the Initial Tranche C Loan at such time (or, if the Initial Tranche C Loan is not outstanding, Lenders holding Initial Tranche C Commitments at such time) and Lenders holding the Subsequent Tranche C Loan at such time (or, if the Total Tranche C Commitments at such time), representing in excess of 66-2/3% of the sum of the Total Tranche A Commitment at such time (or, if the Total Tranche A Commitment has been terminated, the Tranche A Total Commitment Usage at such time) plus the Total Tranche B Commitment at such time plus the Total Initial Tranche C Commitment at such time at such time been terminated to the Total Subsequent Tranche B Commitment at such time.

As used herein, the term "<u>Super-majority Class Lenders</u>" means, (A) with respect to the Tranche A Lenders, Lenders having Tranche A Commitments at such time (or, if the Total Tranche A Commitment has been terminated, Lenders holding Tranche A Loans and LC Exposure at such time) representing in excess of 66-2/3% of the Total Tranche A Commitment at such time (or, if the Total Tranche A Commitment has been terminated, the Tranche A Total Commitment Usage at such time), (B) with respect to the Tranche B Lenders, Lenders holding the Tranche B Loan at such time (or, if the Tranche B Loan is not outstanding, Lenders holding Tranche B Commitments at such time) representing in excess of 66-2/3% of the Total Tranche B

Commitment at such time and (C) with respect to the Tranche C Lenders, Lenders holding the Tranche C Loan at such time (or, if the Initial Tranche C Loan and the Subsequent Tranche C Loan are not outstanding at such time, Lenders holding Initial Tranche C Commitments and Subsequent Tranche C Commitments at such time or, if the Initial Tranche C Loan is outstanding but the Subsequent Tranche C Loan is not outstanding at such time, Lenders holding the Initial Tranche C Loan and the Subsequent Tranche C Commitments at such time or, if the Initial Tranche C Loan and the Subsequent Tranche C Loan is not outstanding at such time, Lenders holding the Initial Tranche C Loan and the Subsequent Tranche C Commitments at such time) representing in excess of 66-2/3% of the Total Tranche C Commitment at such time.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, Collateral shall be released automatically from the Lien of the Security and Pledge Agreement, and Guarantors shall be released automatically from their guarantee obligations hereunder, in each case to the extent necessary to effect the consummation of any transaction permitted by the Loan Documents (including any transaction that has been approved by the requisite Lenders in accordance with Section 10.09). Each Lender hereby irrevocably authorizes the Administrative Agent to take, and the Administrative Agent hereby agrees to take, at the Borrower's expense, any action reasonably requested by the Borrower to evidence any such release of Collateral or guarantee obligations, so long as the Borrower certifies to the Administrative Agent that the transaction necessitating such release has been consummated in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on such certificate, without further inquiry).

SECTION 10.10 <u>Severability</u>. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 10.11 Headings. Section headings used herein are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

SECTION 10.12 **Survival**. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Lender or any Lender may have had notice or knowledge of any Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.16, 2.17, 2.18 and 10.05 and Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof

SECTION 10.13 Execution in Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different

counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agent or any other agent under this Agreement constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective on the Effective Date, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.14 **Prior Agreements**. This Agreement represents the entire agreement of the parties with regard to the subject matter hereof and the terms of any letters and other documentation entered into between the Borrower or a Guarantor and any Lender or the Administrative Agent prior to the effectiveness of this Agreement which relate to Loans to be made hereunder shall be replaced by the terms of this Agreement (except as otherwise expressly provided in the Commitment Letter, the fee letters referred to therein and the Fee Letter referenced in Section 2.21).

SECTION 10.15 **Further Assurances**. Whenever and so often as reasonably requested by the Administrative Agent, the Borrower and the Guarantors will promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things as may be necessary and reasonably required in order to further and more fully vest in the Administrative Agent all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred by this Agreement and the other Loan Documents.

SECTION 10.16 <u>USA Patriot Act</u>. Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

SECTION 10.17 **WAIVER OF JURY TRIAL**. EACH OF THE BORROWER, THE GUARANTORS, THE AGENTS AND EACH LENDER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first written.

### **BORROWER:**

DELPHI CORPORATION

By: /s/ JOHN D. SHEEHAN

Name: John Sheehan Title: Vice President and Chief Restructuring Officer

## **GUARANTORS:**

ASEC MANUFACTURING GENERAL PARTNERSHIP, a Delaware general partnership

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

ASEC SALES GENERAL PARTNERSHIP, a Delaware general partnership

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

ASPIRE, INC., a Michigan corporation

By: /s/ JAMES P. WHITSON

Name: James P. Whitson Title: Vice President

DELCO ELECTRONIC OVERSEAS CORPORATION, a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Assistant Treasurer

# DELPHI AUTOMOTIVE SYSTEMS (HOLDING), INC., a Delaware corporation

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: President

DELPHI AUTOMOTIVE SYSTEMS GLOBAL (HOLDING), INC., a Delaware corporation

By: <u>/s/ JOHN D. SHEEHAN</u> Name: John D. Sheehan Title: President

DELPHI AUTOMOTIVE SYSTEMS HUMAN RESOURCES LLC,

a Delaware limited liability company

By: <u>/s/ JOHN P. ARLE</u> Name: John P. Arle Title: Vice President & Treasurer

DELPHI AUTOMOTIVE SYSTEMS INTERNATIONAL, INC., a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

DELPHI AUTOMOTIVE SYSTEMS KOREA, INC., a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Chief Executive Officer & President

## DELPHI AUTOMOTIVE SYSTEMS LLC, a Delaware limited liability company

### By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: Vice President and Chief Restructuring Officer

## DELPHI AUTOMOTIVE SYSTEMS OVERSEAS CORPORATION, a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

## DELPHI AUTOMOTIVE SYSTEMS RISK MANAGEMENT CORP., a Delaware corporation

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: Vice President & Treasurer

## DELPHI AUTOMOTIVE SYSTEMS SERVICES LLC, a Delaware limited liability company

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

## DELPHI AUTOMOTIVE SYSTEMS TENNESSEE, INC., a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

# DELPHI AUTOMOTIVE SYSTEMS THAILAND, INC., a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

DELPHI CHINA LLC, a Delaware limited liability company

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Chief Tax Officer

DELPHI CONNECTION SYSTEMS, a California corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

DELPHI DIESEL SYSTEMS CORP., a Delaware corporation

By: /s/ JAMES P. WHITSON

Name: James P. Whitson Title: Chief Tax Officer

DELPHI ELECTRONICS (HOLDING) LLC, a Delaware limited liability company

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Assistant Treasurer

DELPHI FOREIGN SALES CORPORATION, a Virgin Islands corporation

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: Controller

# DELPHI INTEGRATED SERVICE SOLUTIONS, INC., a Michigan corporation

### By: /s/ JAMES P. WHITSON

Name: James P. Whitson Title: Vice President

## DELPHI INTERNATIONAL HOLDINGS CORP., a Delaware corporation

By: /s/ JOHN D. SHEEHAN Name: John D. Sheehan Title: President

DELPHI INTERNATIONAL SERVICES, INC., a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Chief Financial Officer & Treasurer

## DELPHI LIQUIDATION HOLDING COMPANY, a Delaware corporation

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: President

DELPHI LLC, a Delaware limited liability company

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: President

# DELPHI MECHATRONIC SYSTEMS, INC., a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

DELPHI MEDICAL SYSTEMS COLORADO CORPORATION, a Colorado corporation

By: <u>/s/ ALLAN F. SEGUIN</u> Name: Allan F. Seguin Title: Treasurer

# DELPHI MEDICAL SYSTEMS CORPORATION, a Delaware corporation

By: /s/ ALLAN F. SEGUIN Name: Allan F. Seguin Title: Treasurer

## DELPHI MEDICAL SYSTEMS TEXAS CORPORATION, a Delaware corporation

By: <u>/s/ ALLAN F. SEGUIN</u> Name: Allan F. Seguin

Title: Treasurer

DELPHI NY HOLDING CORPORATION, a New York corporation

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: President

# DELPHI SERVICES HOLDING CORPORATION, a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Treasurer

DELPHI TECHNOLOGIES, INC., a Delaware corporation

By: /s/ THOMAS N. TWOMEY Name: Thomas N. Twomey Title: Vice President Intellectual Property

DREAL, INC., a Delaware corporation

By: /s/ JOHN JAFFURS

Name: John Jaffurs Title: President

ENVIRONMENTAL CATALYSTS, LLC, a Delaware limited liability company

By: /s/ JAMES P. WHITSON

Name: James P. Whitson Title: Chief Tax Officer

EXHAUST SYSTEMS CORPORATION, a Delaware corporation

By: /s/ JOHN P. ARLE

Name: John P. Arle Title: Assistant Treasurer

## PACKARD HUGHES INTERCONNECT COMPANY, a Delaware corporation

By: /s/ JAMES P. WHITSON

Name: James P. Whitson Title: Chief Tax Officer

SPECIALTY ELECTRONICS INTERNATIONAL LTD., a Virgin Islands corporation

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Chief Tax Officer

SPECIALTY ELECTRONICS, INC., a South Carolina corporation

By: /s/ JAMES P. WHITSON

Name: James P. Whitson Title: Chief Tax Officer

#### **AGENTS AND LENDERS:**

JPMORGAN CHASE BANK, N.A. Individually and as Administrative Agent

By: /s/ SUSAN E. ATKINS

Name: Susan E. Atkins Title: Managing Director

CITICORP USA, INC. Individually and as Syndication Agent

By: <u>/s/ JEFFREY NITZ</u> Name: Jeffrey Nitz Title: Director Signature page for the Amended and Restated Revolving Credit, Term Loan and Guaranty Agreement, dated as of May 9, 2008 among Delphi Corporation and the lenders party thereto **Name of Lender:** 

By:

Name: Title:

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#### AGREEMENT

AGREEMENT, dated as of May 9, 2008, among DELPHI CORPORATION, a Delaware corporation (the "<u>Borrower</u>"), a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code, and the subsidiaries of the Borrower signatory hereto (each a "<u>Guarantor</u>" and collectively the "<u>Guarantors</u>"), each of which Guarantors is a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (the cases of the Borrower and the Guarantors, each a "<u>Case</u>" and collectively, the "<u>Cases</u>"), and GENERAL MOTORS CORPORATION ("<u>GM</u>").

#### **RECITALS:**

WHEREAS, on October 8, 2005, the Borrower and the Guarantors filed voluntary petitions with the Bankruptcy Court initiating the Cases and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower, the Guarantors hereunder and certain financial institutions from time to time party thereto (the "<u>DIP</u> <u>Lenders</u>"), JPMorgan Chase Bank, N.A., as administrative agent for the DIP Lenders, and Citicorp USA, Inc., as syndication agent for certain DIP Lenders, have previously entered into that certain Amended and Restated Revolving Credit, Term Loan and Guaranty Agreement, dated as of November 20, 2007 (as such may be amended, modified, refinanced or replaced from time to time, in each case, except upon the effectiveness of a Reorganization Plan, the "<u>DIP Credit Agreement</u>");

WHEREAS, in connection with the Master Restructuring Agreement and the Global Settlement Agreement, the Borrower has requested and, subject to the terms and conditions set forth herein, GM has agreed, to make the accommodations to the Borrower described in this Agreement, which accommodations relate to the advances to the Borrower by GM, on a net basis, in anticipation of the effectiveness of the Master Restructuring Agreement and the Global Settlement Agreement; and

WHEREAS, the Guarantors have agreed to guarantee the obligations of Borrower hereunder.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

#### ARTICLE I DEFINITIONS

Section 1.01. <u>Defined Terms</u>. Capitalized terms that are not otherwise defined herein shall have the meaning set forth in the DIP Credit Agreement, including as set forth in <u>Section 8.15</u>.

"Administrative Claims" shall have the meaning set forth in Section 2.11.

"Advance" shall mean any Loans made pursuant to this Agreement on a single date.

"Advance Request" shall mean a written request executed and delivered by the Borrower for an Advance in accordance with Section 2.02.

"Affiliates" shall have the meaning set forth in the Global Settlement Agreement.

"<u>Agreement</u>" shall mean this Agreement, as it may be amended, supplemented or otherwise modified from time to time.

"Approval Order" shall have the meaning set forth in Section 4.01(d).

"Availability Certificate" shall have the meaning set forth in Section 4.02(a).

"<u>Available Funds</u>" shall mean, on any date of determination, the sum of (i) all unrestricted cash and cash equivalents of the Borrower and the Guarantors (as reflected on a consolidated balance sheet of the Borrower and the Guarantors) <u>plus</u> (ii) the Available Amount (as defined under the DIP Credit Agreement on the date hereof) <u>plus</u> (iii) the GM Prepayment Reserve (as defined under the DIP Credit Agreement on the date hereof) <u>plus</u> (iv) on and after the first date on which the Subsequent Tranche C Commitment becomes available to the Borrower for borrowings under the DIP Credit Agreement in accordance with the terms and conditions thereof, any unused portion of the Subsequent Tranche C Commitment.

"Borrower" shall have the meaning set forth in the preamble to this Agreement.

"Case" and "Cases" shall have the meaning set forth in the preamble to this Agreement.

"<u>Commitment</u>" shall mean the commitment of GM to make loans from time to time (a) prior to June 1, 2008 in an aggregate outstanding principal amount not to exceed \$200,000,000, (b) from and after June 1, 2008 and prior to July 1, 2008 in an aggregate outstanding principal amount not to exceed \$300,000,000 and (c) from and after July 1, 2008 in an aggregate outstanding principal amount not to exceed \$650,000,000; *provided*, that, on and after the effectiveness of the amendments to each of the Master Restructuring Agreement and the Global Settlement Agreement referred to in Section 5.03, such Commitment shall be permanently reduced from time to time by the aggregate amount paid by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor from and after the Effective Date (whether through the exercise of the Set-Off Right hereunder or otherwise paid in cash) under such agreements.

"DIP Credit Agreement" shall have the meaning set forth in the recitals to this Agreement.

"DIP Extension Order" shall have the meaning set forth in Section 4.01(c).

"DIP Lenders" shall have the meaning set forth in the recitals to this Agreement.

"<u>DIP Termination Date</u>" shall mean the date on which the commitments under the DIP Credit Agreement have been terminated, the Borrower's obligations thereunder (other than contingent obligations for which no demand has been made) have been paid in full and any outstanding Letters of Credit have been cash collateralized or backstopped by other letters of credit in accordance with the DIP Credit Agreement, whether pursuant to a Reorganization Plan or otherwise (other than pursuant to a refinancing or replacement, except upon the effectiveness of a Reorganization Plan, of the DIP Credit Agreement).

"Effective Date" shall have the meaning set forth in Section 4.01.

"Event of Default" shall have the meaning set forth in Section 6.01.

"Excess Availability" shall have the meaning set forth in Section 2.09.

"<u>Existing Confirmed Plan</u>" shall mean the First Amended Joint Plan of Reorganization of the Borrower and certain affiliates, debtors and debtors-in-possession, as modified, which was confirmed by order of the United States Bankruptcy Court for the Southern District of New York entered January 25, 2008 (docket no. 12359).

"<u>Global Settlement Agreement</u>" shall mean that certain settlement agreement between the Borrower and GM dated September 6, 2007, as amended on December 7, 2007 and as further amended in accordance with <u>Section 5.03</u>.

"GM" shall have the meaning set forth in the preamble to this Agreement.

"GM-Related Parties" shall have the meaning set forth in the Global Restructuring Agreement.

"Guarantor" and "Guarantors" shall have the meaning set forth in the preamble to this Agreement.

"Indemnitee" shall have the meaning set forth in Section 8.04(b).

"Interest Payment Date" shall mean the last day of each March, June, September and December, commencing on September 30, 2008.

"Loan" and "Loans" shall have the meaning set forth in Section 2.01(a).

"<u>Master Restructuring Agreement</u>" shall mean that certain Master Restructuring Agreement between the Borrower and GM dated September 6, 2007, as amended on December 7, 2007 and as further amended in accordance with <u>Section 5.03</u>.

"<u>Obligations</u>" shall mean (a) the due and punctual payment of principal of and interest on (subject to the provisos to <u>Section 2.05(b)</u>) the Loans and (b) the due and punctual payment of all other present and future, fixed or contingent, monetary obligations of the Borrower and the Guarantors to GM under this Agreement.

"Reorganization Plan" shall mean a chapter 11 plan of reorganization or liquidation in any of the Cases.

"<u>Scheduled Termination Date</u>" shall mean the earliest of (a) December 31, 2008, (b) the date on or after the effectiveness of the amendments to each of the Master Restructuring Agreement and the Global Settlement Agreement referred to in <u>Section 5.03</u> on which GM or its Affiliates has paid (whether through the exercise of the Set-Off Right hereunder or otherwise paid in cash) to or for the credit or the account of the Borrower or any Guarantor from and after the Effective Date an amount equal to or greater than \$650,000,000 in the aggregate under such agreements and (c) the date on which a Reorganization Plan becomes effective.

"<u>Set-Off Right</u>" shall mean the right of GM to set-off and apply any and all indebtedness and other liabilities at any time owing by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor against any and all of the Obligations of such Borrower or Guarantor then existing under this Agreement in accordance with <u>Section 6.01</u>.

"Specified Availability" shall mean, on any date of determination, the amount by which the Available Funds is less than \$500,000,000 on such date.

"<u>Termination Date</u>" shall mean the earlier of the Scheduled Termination Date and the date on which Obligations become due and payable in accordance with <u>Section 6.01</u>.

### ARTICLE II AMOUNT AND TERMS OF ADVANCES

**Section 2.01.** <u>Commitment</u>. GM agrees, on and after the Effective Date, and upon the terms and subject to the conditions set forth herein, to make available to the Borrower during the period commencing May 9, 2008 and ending on the Termination Date, loans in an aggregate outstanding principal amount not to exceed the Commitment (all such loans, collectively, the "Loans"), which Loans may be repaid and reborrowed in accordance with the provisions of this Agreement; *provided*, that (a) the amount of any Advance shall not exceed the least of (i) the unused portion of the Commitment, (ii) without giving effect to such Advance, the sum of (y) Specified Availability as of the close of business on the Business Day immediately preceding the date of such Advance *plus* (z) the amount, if any, necessary to round up to the nearest minimum or integral multiple amount required by <u>Section 2.02(a)</u> and (iii) the aggregate amount requested by the Borrower in the applicable Advance Request in accordance with <u>Section 2.02(a)</u> and (b) the aggregate amount of all outstanding Loans shall not exceed the Commitment. The Commitment shall terminate immediately and without further action on the Termination Date.

Section 2.02. <u>Requests for Advances</u>. To request an Advance of Loans, the Borrower shall deliver an Advance Request to GM no later than 11:00 a.m., New York City time, on the date that is three (3) Business Days before the date of the proposed Advance; <u>provided</u>, that in any event, the Borrower shall deliver an Advance Request to GM no later than 11:00 a.m., New York City time, on the date that is five (5) Business Days before the date of the initial proposed Advance hereunder. Such Advance Request shall be in a form reasonably acceptable to GM, signed and certified by a Financial Officer of the Borrower and delivered in accordance with the notice provisions set forth in <u>Section 8.01</u>; <u>provided</u>, that, notwithstanding anything in <u>Section 8.01</u> to the contrary, Advance Requests may be delivered in .pdf or similar format by electronic mail; <u>provided</u>, <u>further</u>, that there shall be no more than one (1) Advance in one (1) calendar week. Such Advance Request shall specify the following information:

(a) the aggregate amount of the requested Advance, which shall be in an aggregate amount that is in an integral multiple of \$5,000,000 and not less than \$10,000,000;

(b) the amount of the Specified Availability as of the close of business on the Business Day immediately preceding the date of such request and the projected net use of cash through the date of the requested Advance and, in each case, reflecting the calculation thereof;

(c) the date of such Advance, which shall be a Business Day on or after May 9, 2008; and

(d) the initial Interest Period applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period."

(e) If no Interest Period is specified with respect to any portion of the Loan, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

Section 2.03. <u>Funding of Advances</u>. Upon satisfaction or waiver of the conditions precedent specified herein, GM shall make the proceeds of the Loans available to Borrower by wire transfer of immediately available funds by 2:00 p.m., New York City time, to the account of the Borrower most recently designated by it for such purpose by written notice to GM.

Section 2.04. <u>Interest Elections</u>. Each Advance of Loans shall have an initial Interest Period as specified in such Advance Request. Thereafter, the Borrower may elect to continue such Advance and may elect Interest Periods therefor, in accordance with the provisions set forth in Section 2.06(b), (c) and (e) of

the DIP Credit Agreement (which provisions have been duly incorporated by reference by <u>Section 8.14</u> herein); *provided*, that there shall be no more than ten (10) Interest Periods outstanding at any time.

### Section 2.05. Interest on the Loans.

(a) Subject to the provisions of <u>Section 2.06</u>, each Advance shall be comprised entirely of Eurodollar Loans and shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBO Rate for such Interest Period in effect for such Advance plus 5.25%; *provided* that if the applicable Adjusted LIBO Rate at the time of determination of the interest rate for an Advance is below 3.25%, the Adjusted LIBO Rate for such Advance for such Interest Period shall be deemed to be 3.25%.

(b) Accrued interest on all of the Loans shall be payable in arrears on each Interest Payment Date applicable thereto, on the Scheduled Termination Date and after the Scheduled Termination Date on demand and upon any repayment or prepayment thereof, other than a prepayment pursuant to <u>Section 2.09</u> hereof (on the amount prepaid); *provided*, that until the DIP Termination Date, all interest, including amounts owing pursuant to <u>Section 2.06</u>, shall be paid in kind by increasing the principal amount of the Loans then outstanding in an aggregate amount equal to the interest due on each Interest Payment Date; and *provided*, *further*, that if the Master Restructuring Agreement and the Global Settlement Agreement become effective on or before the Termination Date, then all interest accrued and owing hereunder, whether before or after the effectiveness of the Master Restructuring Agreement and the Global Settlement Agreement, including amounts owing pursuant to <u>Section 2.06</u> and any amounts which have been previously added to the principal amount of the Loans outstanding pursuant to the preceding proviso, shall be automatically cancelled and shall not be included in the Borrower's Obligations hereunder.

Section 2.06. <u>Default Interest</u>. If the Borrower or any Guarantor, as the case may be, shall default in the payment of the principal of or interest on any Loan becoming due hereunder, whether at stated maturity, by acceleration or otherwise, the Borrower or such Guarantor, as the case may be, shall on demand from time to time pay interest, to the extent permitted by law and subject to and in accordance with <u>Section 2.05(b)</u>, on all Loans up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the rate then applicable for such Advances plus 2.0%.

**Section 2.07.** <u>Repayment of Obligations</u>. The Borrower hereby unconditionally promises to pay to GM the then unpaid Obligations on the Scheduled Termination Date or earlier, if otherwise required by the terms hereof; <u>provided</u>, that, upon the effectiveness of the amendments to each of the Master Restructuring Agreement and the Global Settlement Agreement referred to in <u>Section 5.03</u>, such Obligations shall be paid as a set-off by GM of amounts payable by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor pursuant to such agreements, as and when such amounts become payable. GM shall maintain in accordance with customary practice an account or accounts evidencing the indebtedness of the Borrower to GM resulting from each Loan made by GM, including (i) the amount of each Loan made hereunder and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to GM, (iii) the amount of any interest paid in kind pursuant to <u>Section 2.05(b)</u> and (iv) the amounts of principal and interest paid by the Borrower to GM from time to time hereunder. The entries made in such accounts shall be prima facie evidence of the existence and amounts of the obligations recorded therein; <u>provided</u>, that the failure of GM to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

Section 2.08. <u>Optional Termination or Reduction of Commitment</u>. Upon at least one (1) Business Day's prior written notice to GM, the Borrower may at any time in whole permanently terminate, or



from time to time in part permanently reduce, the unused portion of the Commitment. Each such reduction of the Commitment shall be in the principal amount of \$25,000,000 or any integral multiple of \$5,000,000 in excess thereof.

Section 2.09. <u>Mandatory Prepayment</u>. If the aggregate amount of the Available Funds exceeds \$500,000,000 (such excess amount at any time, the "<u>Excess Availability</u>") and such excess is greater than \$5,000,000 (a) if the Borrowing Base Certificate is delivered on a weekly basis, on the date such Borrowing Base Certificate is delivered and (b) otherwise, on the last Business Day of any calendar week, the Borrower shall prepay the Loans (excluding any portion of the Loans comprising interest that is paid in kind on such Loans pursuant to <u>Section 2.05(b)</u>) within one (1) Business Day of such date in an amount equal to the Excess Availability. Notwithstanding anything to the contrary contained in this Agreement, from and after the effectiveness of the amendments to each of the Master Restructuring Agreement and the Global Settlement Agreement referred to in <u>Section 5.03</u>, on each date, the Borrower shall immediately repay, as a set-off by GM in accordance with <u>Section 2.07</u>, an amount equal to the lesser of (i) the Obligations outstanding hereunder on such date and (ii) any amounts due and payable by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor under such agreements on such date.

#### Section 2.10. Payments Generally.

(a) The Borrower shall make each payment or prepayment required to be made by it hereunder (whether of principal, interest, fees or other amounts payable hereunder) prior to 2:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of GM, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to GM at its offices at 767 Fifth Avenue, 14th Floor, New York, New York, except that payments pursuant to <u>Section 8.04</u> shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to GM to pay fully all amounts of principal, interest, fees and expenses then due hereunder, such funds shall be applied (i) *first*, towards payment of fees and expenses then due under <u>Section 8.04</u>, (ii) *second*, towards payment of interest accrued and then due hereunder on account of the Loans (including any interest payable pursuant to <u>Section 2.06</u>) and (iii) *third*, towards payment of principal of the Loans then due hereunder.

Section 2.11. <u>Priority</u>. The Borrower and each of the Guarantors hereby covenants, represents and warrants that, upon entry of the Approval Order, the Obligations owing to GM or its Affiliates shall at all times constitute allowed claims in the Cases having administrative expense priority pursuant to Section 503(b)(1) of the Bankruptcy Code (such allowed claims, the "<u>Administrative Claims</u>"). The parties hereto agree that GM's Set-Off Rights shall rank ahead of general unsecured claims at all times.

Section 2.12. <u>Payment of Obligations</u>. Subject to the provisions of <u>Section 2.07</u> and <u>Section 6.01</u>, upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement, GM shall be entitled to payment of such Obligations in accordance with the terms hereof without further application to or order of the Bankruptcy Court.

Section 2.13. <u>No Discharge; Survival of Claims</u>. Each of the Borrower and the Guarantors agrees that, except to the extent that GM shall have been paid in full (whether by exercising its Set-Off Rights or otherwise), (i) its obligations hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan (and each of the Borrower and the Guarantors, pursuant to Section 1141(d)(4) of the

Bankruptcy Code, hereby waives any such discharge) and (ii) the Administrative Claims granted to GM pursuant to the Approval Order and described in <u>Section 2.11</u> shall not be affected in any manner by the entry of an order confirming a Reorganization Plan.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

In order to induce GM to make the Loans hereunder, the Borrower and each of the Guarantors jointly and severally represent and warrant as follows:

**Section 3.01.** <u>Organization and Authority</u>. Each of the Borrower and the Guarantors (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) is duly qualified as a foreign corporation or other organization and in good standing in each jurisdiction where the conduct of its business requires such qualification, except to the extent that all failures to be duly qualified and in good standing could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, (iii) subject to the entry by the Bankruptcy Court of the Approval Order has the requisite power and authority to effect the transactions contemplated hereby, and (iv) subject to the entry by the Bankruptcy Court of the Approval Order has all requisite power and authority and the legal right to own, pledge, mortgage and operate its properties, and to conduct its business as now or currently proposed to be conducted, except where the failure thereof could not reasonably be expected to have a Material Adverse Effect.

**Section 3.02.** <u>Due Execution</u>. Upon the entry by the Bankruptcy Court of the Approval Order, the execution, delivery and performance by each of the Borrower and the Guarantors of this Agreement (i) are within the respective powers of each of the Borrower and the Guarantors, have been duly authorized by all necessary action including the consent of shareholders where required, and do not (A) contravene the charter or by-laws of any of the Borrower or the Guarantors, (B) violate any law (including the Securities Exchange Act of 1934) or regulation (including Regulations T, U or X of the Board), or any order or decree of any court or Governmental Authority, conflict with or result in a breach of, or constitute a default under, any material contractual obligation entered into prior to the Filing Date binding on the Borrower or the Guarantors or any of their properties except to the extent that all such violations, conflicts or breaches could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, or (C) conflict with or result in a breach of, or constitute a default under, any material contractual obligation entered of, or constitute a default under, any material contractual obligation entered of, or constitute a default under, any material contractual obligation entered into after the Filing Date binding on the Borrower or the Guarantors or any of their properties; and (ii) do not require the consent, authorization by or approval of or notice to or filing or registration with any Governmental Authority other than (A) the entry of the Approval Order and (B) other consents, authorizations, approvals, notices, filings or registrations the failure to obtain or make which could not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Upon the entry by the Bankruptcy Court of the Approval Order and (B) other consents, authorizations, approvals, notices, filings or registrations the failure to obtain or make which could not, in the aggregate, reasonably be expected to ha

Section 3.03. <u>Use of Proceeds</u>. The proceeds of the Loans shall be used for working capital and for other general corporate purposes of the Borrower and its Subsidiaries.

## ARTICLE IV CONDITIONS OF LENDING

Section 4.01. <u>Conditions Precedent to Effectiveness</u>. This Agreement shall become effective on the date (the "<u>Effective Date</u>") on which each of the following shall have occurred and GM shall have received evidence reasonably satisfactory to it of such occurrence:

(a) Execution of Agreement. This Agreement shall have been executed by the Borrower and each of the Guarantors.

(b) <u>Documents and Certificates</u>. GM shall have received such documents and certificates as GM or its counsel may reasonably request relating to the organization, existence and good standing of each of the Borrower and the Guarantors, the authorization of the transactions under this Agreement and any other legal matters relating to each of the Borrower and the Guarantors, the Agreement or the transactions contemplated hereunder, all in form and substance reasonably satisfactory to GM and its counsel.

(c) <u>DIP Extension</u>. The Bankruptcy Court shall have entered an order approving an amendment of the DIP Credit Agreement (the "<u>DIP</u> <u>Extension Order</u>"), which shall have become effective, and which amendment shall extend the termination date thereunder to a date no earlier than December 31, 2008; *provided*, that the terms of any other amendments or modifications to the DIP Credit Agreement shall be on terms reasonably acceptable to GM, and the DIP Extension Order shall have become final and non-appealable. The DIP Lenders shall have consented to this Agreement.

(d) <u>Modifications to Existing Confirmed Plan</u>. No motion or other pleading shall have been filed seeking the approval of a Reorganization Plan which contains modifications to the Existing Confirmed Plan which would have a material impact on GM, on the benefits GM reasonably expected to receive under the Existing Confirmed Plan (including, without limitation, GM's distributions thereunder), the Global Settlement Agreement, the Master Restructuring Agreement, or on the ability of the Borrower and its subsidiaries and Affiliates operating as debtors and debtors-in-possession in the Cases to fulfill any obligations to any GM-Related Parties under the Existing Confirmed Plan, the Global Settlement Agreement, the Master Restructuring Agreement, or any agreements assumed, reinstated, or ratified under the Master Restructuring Agreement agree that, among other things, any increase in the amount of distributions (or change in the form of distributions) to holders of claims or equity interests under the Existing Confirmed Plan, any change in any of the provisions of section 4.01, 4.02, or 4.03 of the Global Settlement Agreement, or any change in the identity of the Plan Investors (as defined in the Existing Confirmed Plan) other than as permitted by the EPCA shall be deemed to have a material impact on GM, on the benefits GM reasonably expected to receive under the Existing Confirmed Plan (including, without limitation, GM's distributions thereunder), the Global Settlement Agreement, the Master Restructuring Agreement, or on the ability of the Borrower and its subsidiaries and Affiliates operating as debtors and debtors-in-possession in the Cases to fulfill any obligations to any GM-Related Parties under the Existing Confirmed Plan, the Global Settlement Agreement, the Master Restructuring Agreement, or on the ability of the Borrower and its subsidiaries and Affiliates operating as debtors and debtors-in-possession in the Cases to fulfill any obligations to any GM-Related Parties under the Existing Confirmed Plan, the G

(e) <u>Other Contracts</u>. The Borrower or any Guarantor shall not, to the extent that the Global Settlement Agreement or Master Restructuring Agreement have not been terminated by GM, have filed a motion or other pleading seeking to reject any executory contract between the Borrower or any Guarantor and GM or any of its Affiliates.

(f) <u>Approval Order</u>. The Bankruptcy Court shall have entered an order approving this Agreement and the Administrative Claims as described in <u>Section 2.11</u> (the "<u>Approval Order</u>"), which Approval Order (i) shall authorize extensions of credit in the amount of \$650,000,000, (ii) shall authorize the

payment by the Borrower of all fees and expenses provided for herein, (iii) shall be in form and substance acceptable to GM and (iv) shall have become final and non-appealable.

(g) <u>No Default</u>. (i) No Event of Default or event which upon notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing under this Agreement and (ii) no Event of Default or event which upon notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing under the DIP Credit Agreement, in each case, unless such event has been waived (or deemed waived) or amended by the DIP Lenders.

(h) Fees and Expenses. GM shall have received the payment by the Borrower of all fees and expenses referred to herein.

Section 4.02. <u>Conditions Precedent to Each Loan</u>. The obligation of GM to make each Loan is subject to the satisfaction (or waiver in accordance with <u>Section 8.07</u>) of the following conditions precedent:

(a) <u>Advance Request and Availability Certificate</u>. GM shall have received (i) an Advance Request with respect to such Loan as required by <u>Article 2</u> and (ii) a certificate in a form reasonably acceptable to GM signed by a Financial Officer of the Borrower, certifying the amount of the Specified Availability as of the close of business on the Business Day immediately preceding the date of such Advance and reflecting the calculation thereof (an "<u>Availability Certificate</u>").

(b) <u>Representations and Warranties</u>. All representations and warranties contained in this Agreement shall be true and correct in all material respects on and as of the date of each Advance hereunder with the same effect as if made on and as of such date except to the extent such representations and warranties expressly relate to an earlier date.

(c) No Default. On the date of each Advance hereunder (i) no Event of Default or event which upon notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing under this Agreement, (ii) no Event of Default or event which upon notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing under the DIP Credit Agreement, in each case, unless such event has been waived (or deemed waived) or amended by the DIP Lenders and (iii) no amendments or other modifications to the DIP Credit Agreement with the effect of reducing the aggregate commitments or amounts available thereunder (except in accordance with the terms of the DIP Credit Agreement in effect on the date hereof) shall have become effective.

(d) <u>Modifications to Existing Confirmed Plan</u>. No motion or other pleading shall have been filed seeking the approval of a Reorganization Plan which contains modifications to the Existing Confirmed Plan which would have a material impact on GM, on the benefits GM reasonably expected to receive under the Existing Confirmed Plan (including, without limitation, GM' s distributions thereunder), the Global Settlement Agreement, the Master Restructuring Agreement, or on the ability of the Borrower and its subsidiaries and Affiliates operating as debtors and debtors-in-possession in the Cases to fulfill any obligations to any GM-Related Parties under the Existing Confirmed Plan, the Global Settlement Agreement, the Master Restructuring Agreement, or any agreements assumed, reinstated, or ratified under the Master Restructuring Agreement agree that, among other things, any increase in the amount of distributions (or change in the form of distributions) to holders of claims or equity interests under the Existing Confirmed Plan, any change in any of the provisions of section 4.01, 4.02, or 4.03 of the Global Settlement Agreement, or any change in the identity of the Plan Investors (as defined in the Existing Confirmed Plan) other than as permitted by the EPCA shall be deemed to have a material impact on GM, on the benefits GM reasonably expected to receive under the Existing Confirmed Plan (including, without limitation, GM' s distributions thereunder), the Global Settlement Agreement, the Master Restructuring Agreement, or on the ability of the Borrower and its subsidiaries and Affiliates operating as defined in the Existing Confirmed Plan) other than as permitted by the EPCA shall be deemed to have a material impact on GM, on the benefits GM reasonably expected to receive under the Existing Confirmed Plan (including, without limitation, GM' s distributions thereunder), the Global Settlement Agreement, the Master Restructuring Agreement, or on the ability of the Borrower and its subsidiaries and Affiliates operating as



debtors and debtors-in-possession in the Cases to fulfill any obligations to any GM-Related Parties under the Existing Confirmed Plan, the Global Settlement Agreement, the Master Restructuring Agreement, or any agreements assumed, reinstated, or ratified under the Master Restructuring Agreement.

(e) <u>Other Contracts</u>. The Borrower or any Guarantor shall not, to the extent that the Global Settlement Agreement or Master Restructuring Agreement have not been terminated by GM, have filed a motion or other pleading seeking to reject any executory contract between the Borrower or any Guarantor and GM or any of its Affiliates.

The request by the Borrower for, and the acceptance by the Borrower of, each extension of credit hereunder shall be deemed to be a representation and warranty by the Borrower that the conditions specified in this Section have been satisfied or waived at that time.

## ARTICLE V COVENANTS

From the Effective Date and for so long as the Commitment shall be in effect or any amount shall remain outstanding or unpaid under this Agreement, the Borrower and each of the Guarantors agree that they will, and will cause each of their respective Subsidiaries to:

Section 5.01. <u>Existence</u>. Preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except (i) (A) if in the reasonable business judgment of the Borrower it is no longer necessary for the Borrower and the Guarantors to preserve and maintain such rights, privileges, qualifications, permits, licenses and franchises, and (B) such failure to preserve the same could not, in the aggregate, reasonably be expected to have a Material Adverse Effect and (ii) as otherwise permitted in connection with sales of assets permitted by Section 6.10 of the DIP Credit Agreement.

Section 5.02. <u>Notice of Event of Default, etc</u>. Promptly give to GM notice in writing of any Event of Default or the occurrence of any event or circumstance which with the passage of time or giving of notice or both would constitute an Event of Default hereunder or under the DIP Credit Agreement.

Section 5.03. <u>Global Settlement Agreement and Master Restructuring Agreement</u>. The Borrower and GM hereby agree to use their good faith, commercially reasonable efforts to (a) negotiate and enter into amendments to each of the Global Settlement Agreement and Master Restructuring Agreement as soon as reasonably practicable following the date hereof (it being understood that the parties hereto desire to enter into such amendments on or prior to July 1, 2008) and (b) obtain the consent and cooperation of the Borrower's statutory committees with respect to such amendments; *provided*, that failure to enter into any such amendments shall not affect the rights or obligations of the parties hereto.

Section 5.04. <u>Information</u>. The Borrower shall deliver to GM all financial statements, reports, documents and other information that it provides to the DIP Lenders pursuant to the DIP Credit Agreement, at the same time such information is delivered to the DIP Lenders, in each case subject to compliance with the terms and conditions of confidentiality arrangements entered into with the Borrower.

### ARTICLE VI EVENTS OF DEFAULT

Section 6.01. <u>Events of Default</u>. In the case of the happening of any of the following events and the continuance thereof beyond the applicable grace period, if any (each, an "<u>Event of Default</u>"):

(a) any material representation or warranty made by the Borrower or any Guarantor in this Agreement or in connection with this Agreement or the credit extensions hereunder or any material statement or representation made in any report, financial statement, certificate or other document furnished by the Borrower or any Guarantor to GM under or in connection with this Agreement, shall prove to have been false or misleading in any material respect when made; or

(b) default shall be made in the payment of any (i) interest on the Loans payable hereunder when due (other than amounts set forth in clause (ii) hereof), and such default shall continue unremedied for more than three (3) Business Days or (ii) principal of the Loans when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise; or

(c) default shall be made by the Borrower or any Guarantor in the due observance or performance of any covenant, condition or agreement herein and, with respect to <u>Section 5.01</u> (but only with respect to any Guarantor) and <u>Section 5.04</u> only, such default shall continue unremedied for more than ten (10) days; or

(d) any of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or the Borrower or any Guarantor shall file a motion or other pleading seeking the dismissal of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within thirty (30) days after the entry thereof; or

(e) any material provision of this Agreement shall, for any reason, cease to be valid and binding on the Borrower or any of the Guarantors, or the Borrower or any of the Guarantors shall so assert in any pleading filed in any court; or

(f) an order of the Bankruptcy Court shall be entered (i) reversing, staying for a period in excess of ten (10) days, or vacating the Approval Order or the DIP Extension Order or (ii) without the written consent of GM, otherwise amending, supplementing or modifying the Approval Order or the DIP Extension Order in a manner that is reasonably determined by GM to be adverse to GM; or

(g) a default, event or condition arising under the Loan Documents relating to the DIP Credit Agreement, and such event or condition results in such Indebtedness becoming due prior to its stated maturity or remedies being exercised in respect of the collateral securing such Indebtedness;

then, and in every such event and at any time thereafter during the continuance of such event, and to the fullest extent permitted by law and without further order of or application to the Bankruptcy Court, GM may, by notice to the Borrower (with a copy to counsels for the Official Creditors' Committee and the Official Equity Committee appointed in the Cases, to counsel for the Administrative Agent under the DIP Credit Agreement and to the United States Trustee for the Southern District of New York), take one or more of the following actions, at the same or different times (*provided*, that with respect to clause (iv) below,

GM shall provide the Borrower (with a copy to counsels for the Official Creditors' Committee and the Official Equity Committee in the Cases, to counsel for the Administrative Agent under the DIP Credit Agreement and to the United States Trustee Southern District of New York) with five (5) Business Days' written notice prior to taking the action contemplated thereby: (i) terminate or suspend forthwith the Commitment; (ii) declare the Loans or any portion thereof then outstanding to be forthwith due and payable, whereupon the principal of such Loans together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Borrower accrued hereunder, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantors, anything contained herein to the contrary notwithstanding; (iii) exercise the Set-Off Right against all amounts payable by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor (including, without limitation, against any amounts payable by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor under the Master Restructuring Agreement and the Global Settlement Agreement), which Set-Off Right shall be in addition to other rights and remedies which GM may have; and (iv) exercise any and all remedies under applicable law otherwise available to GM; provided, that, notwithstanding anything to the contrary contained in this Agreement, GM hereby agrees not to exercise any Set-Off Right pursuant to this Section 6.01 or otherwise (which rights, with respect to any Obligations owing under this Agreement, may only be exercised against the Borrower and the Guarantors) with respect to the Obligations arising under this Agreement (A) against any amounts payable by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor under the Master Restructuring Agreement and the Global Settlement Agreement until the amendments to such agreements referred to in Section 5.03 become effective and (B) except with respect to any prepayments due and payable under Section 2.09, against all other amounts payable by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor (or defer, delay or suspend the payment of any other amounts payable by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor) until after the DIP Termination Date. Any payment received as a result of the exercise of remedies hereunder shall be applied in accordance with Section 2.10(b).

It is understood and agreed among the parties hereto that, except as expressly provided herein, no default or breach by the Borrower or any of its Subsidiaries under any other agreement entered into with GM or its Affiliates shall give rise to a default hereunder, and neither GM nor its Affiliates shall exercise any rights under any such other agreement as against any other such party as a result of a default hereunder.

Notwithstanding anything to the contrary contained in this Agreement, until after the DIP Termination Date, the Borrower and the Guarantors shall not make any payment to GM or its Affiliates with respect to the Obligations hereunder (except (a) with respect to any prepayments due and payable under <u>Section 2.09</u>, whether in cash or through any Set-Off Right exercised by GM or its Affiliates, (b) interest to the extent paid in kind under <u>Section 2.05(b)</u>, and (c) any Obligations due hereunder paid through any Set-Off Right exercised by GM or its Affiliates against amounts payable by GM or its Affiliates to or for the credit or the account of the Borrower or any Guarantor pursuant to the Global Settlement Agreement or Master Restructuring Agreement as permitted hereunder).

### ARTICLE VII GUARANTY

#### Section 7.01. Guaranty.

(a) Each of the Guarantors unconditionally and irrevocably guarantees the due and punctual payment by the Borrower of the Obligations. Each of the Guarantors further agrees that the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and it will remain

bound upon this guaranty notwithstanding any extension or renewal of any of the Obligations. The Obligations of the Guarantors shall be joint and several.

(b) Each of the Guarantors waives presentation to, demand for payment from and protest to the Borrower or any other Guarantor, and also waives notice of protest for nonpayment. The Obligations of the Guarantors hereunder shall not be affected by (i) the failure of GM to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Guarantor under the provisions of this Agreement or otherwise; (ii) any extension or renewal of any provision hereof or thereof, (iii) any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of this Agreement; (iv) the release, exchange, waiver or foreclosure of any security held by GM for the Obligations or any of them; (v) the failure of GM to exercise any right or remedy against any other Guarantor; or (vi) the release or substitution of the Borrower or any other Guarantor.

(c) Each of the Guarantors further agrees that this guaranty constitutes a guaranty of payment when due and not just of collection, and waives any right to require that any resort be had by GM to any security held for payment of the Obligations or to any balance of any deposit, account or credit on the books of GM in favor of the Borrower or any other Guarantor, or to any other Person.

(d) Each of the Guarantors hereby waives any defense that it might have based on a failure to remain informed of the financial condition of the Borrower and of any other Guarantor and any circumstances affecting the ability of the Borrower to perform under this Agreement.

(e) Each Guarantor's guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any other instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Guaranty. GM makes no representation or warranty in respect to any such circumstances or shall have any duty or responsibility whatsoever to any Guarantor in respect of the management and maintenance of the Obligations.

(f) Subject to the provisions of <u>Section 6.01</u>, upon the Obligations becoming due and payable (by acceleration or otherwise), GM shall be entitled to immediate payment of such Obligations by the Guarantors upon written demand by GM without further application to or order of the Bankruptcy Court.

Section 7.02. No Impairment of Guaranty. The obligations of the Guarantors hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations. Without limiting the generality of the foregoing, the obligations of the Guarantors hereunder shall not be discharged or impaired or otherwise affected by the failure of GM to assert any claim or demand or to enforce any remedy under this Agreement or any other agreement, by any waiver or modification of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantors or would otherwise operate as a discharge of the Guarantors as a matter of law, unless and until the Obligations are paid in full.

Section 7.03. <u>Subrogation</u>. Upon payment by any Guarantor of any sums to GM hereunder, all rights of such Guarantor against the Borrower arising as a result thereof by way of right of subrogation or otherwise, shall in all respects be subordinate and junior in right of payment to the prior final and indefeasible payment in full of all the Obligations. If any amount shall be paid to such Guarantor for the account of the Borrower in respect of the Loans, such amount shall be held in trust for the benefit of GM and shall forthwith be paid to GM to be credited and applied to the Obligations, whether matured or unmatured

### ARTICLE VIII MISCELLANEOUS

#### Section 8.01. Notices.

(a) Subject to paragraph (b) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at 5725 Delphi Drive, Troy, Michigan 48098, Attention: Treasurer (Telecopy No. 248-813-2648; Telephone No. 248-813-2592; with a copy to Deputy General Counsel, Transactional and Restructuring (Telecopy No. 248-816-2491; Telephone No. 248-813-2492); and

(ii) if to General Motors Corporation, to it at 767 Fifth Avenue, 14th floor, New York, New York 10153, Attention: Treasurer, with a copy to General Motors Corporation, 767 Fifth Avenue, 14th floor, New York, New York 10153, Attention: Director, Business Development.

(b) GM or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided*, that approval of such procedures may be limited to particular notices or communications. Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 8.02. <u>Survival of Agreement, Representations and Warranties, etc</u>. All warranties, representations and covenants made by the Borrower or any Guarantor herein or in any certificate or other instrument delivered by it or on its behalf in connection with this Agreement shall be considered to have been relied upon by GM and shall survive the making of the Loans herein contemplated regardless of any investigation made by GM or on its behalf and shall continue in full force and effect (in the case of any representations and warranties, as of the date when made or deemed to be made) so long as any amount due or to become due hereunder is outstanding and unpaid and so long as the Commitment has not been terminated.

Section 8.03. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no party hereto may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of (a) in the case of the Borrower or any Guarantor, GM, and (b) in the case of GM, the Borrower and to the extent reasonably necessary or advisable, by the Administrative Agent under the DIP Credit Agreement (in each case, in connection with the assignment of outstanding Loans, but not the Commitment, such consent not to be unreasonably withheld or delayed), (and any attempted assignment or transfer without such consent shall be null and void); *provided*, that the consent of the Borrower or the Administrative Agent under the DIP Credit Agreement shall not be required for GM to assign or otherwise transfer (i) its rights and obligations hereunder to any of its Affiliates that have the ability to perform hereunder or (ii) its rights and obligations with respect to the outstanding Loans, but not the Commitment, to another Person following the occurrence of an Event of Default which is continuing; and *provided*, *further* that (i) for purposes of this agreement, the term "GM" shall include GM' s successors and assigns hereunder, (ii) such assignee shall have no greater rights than GM would have had under this agreement, including as to rights to payment, enforcement and collection, and (iii) any such assignee shall agree in writing to be bound by the provisions of this agreement as if such assignee were GM.

## Section 8.04. Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay or reimburse: (A) all reasonable fees and reasonable out-of-pocket expenses of GM (including the reasonable fees, disbursements and other charges of counsel) associated with this Agreement, and the preparation, execution, delivery and administration of this Agreement and any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated); and (B) all fees and expenses of GM (including the fees, disbursements and other charges of counsel) incurred in connection with the enforcement of this Agreement. All payments or reimbursements pursuant to this clause shall be payable promptly upon written demand together with back-up documentation supporting such reimbursement request. GM's right to reimbursement pursuant to this clause or any other provision of this Agreement shall not be construed to limit GM's rights to reimbursement under any other agreement or arrangement it may have with the Borrower or any of its Subsidiaries.

(b) The Borrower shall indemnify GM and each Related Party of any of the foregoing Persons (each such Person being called an "<u>Indemnitee</u>") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee (it being understood that claims for expense reimbursement hereunder shall be accompanied by back-up documentation supporting such request), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated hereby or (ii) any Loan or the use of the proceeds therefrom; *provided*, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee (or such Indemnitee's officers, directors, employees or affiliates).

(c) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions hereunder, any Loan or the use of the proceeds thereof.

Section 8.05. <u>CHOICE OF LAW</u>. THIS AGREEMENT SHALL IN ALL RESPECTS BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

Section 8.06. <u>No Waiver</u>. No failure on the part of GM to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

Section 8.07. <u>Amendments, etc</u>. No modification, amendment or waiver of any provision of this Agreement, and no consent to any departure by the Borrower or any Guarantor herefrom, shall in any event be effective unless the same shall be in writing and signed by GM and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower or any Guarantor shall entitle the Borrower or any Guarantor to any other or further notice or demand in the same, similar or other circumstances. No amendment to this Agreement shall be

effective against the Borrower or any Guarantor unless signed by the Borrower or such Guarantor, as the case may be.

Section 8.08. <u>Severability</u>. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 8.09. <u>Headings</u>. Section headings used herein are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

**Section 8.10.** <u>Survival</u>. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that GM may have had notice or knowledge of any Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.16, 2.17, 2.18 and 10.04 of the DIP Credit Agreement (which provisions have been duly incorporated by reference by <u>Section 8.14</u> herein) and <u>Section 8.04</u> herein shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

Section 8.11. Execution in Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constituted the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 8.12.** <u>Further Assurances</u>. Whenever and so often as reasonably requested by GM, the Borrower and the Guarantors will promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things as may be necessary and reasonably required in order to further and more fully vest in GM all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred by this Agreement.

Section 8.13. <u>WAIVER OF JURY TRIAL</u>. EACH OF THE BORROWER, THE GUARANTORS AND GM HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.14. <u>Incorporation by Reference</u>. The terms and conditions of the following sections of the DIP Credit Agreement are hereby incorporated by reference into, and form integral parts of, this Agreement, *mutatis mutandis*, and GM, for purposes hereunder, shall be deemed a "Lender" and/or the

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"Administrative Agent", as applicable: Section 1 (Definitions); Section 2.06(b), (c) and (e) (Interest Elections); Section 2.10 (Alternate Rate of Interest); Section 2.16 (Increased Costs); Section 2.17 (Break Funding Payments); Section 2.18 (Taxes); and Section 10.04 (Confidentiality).

### [Signature Pages Follow]

Copyright © 2012 <u>www.secdatabase.com</u>. All Rights Reserved. Please Consider the Environment Before Printing This Document IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first written.

### **BORROWER:**

### DELPHI CORPORATION

By:/s/ JOHN D. SHEEHANName:John SheehanTitle:Vice President and Chief Restructuring Officer

### **GUARANTORS:**

DELPHI AUTOMOTIVE SYSTEMS (HOLDING), INC., a Delaware corporation

By: /s/ JOHN D. SHEEHAN Name: John D. Sheehan Title: President

DELPHI AUTOMOTIVE SYSTEMS GLOBAL (HOLDING), INC., a Delaware corporation

By: /s/ JOHN D. SHEEHAN Name: John D. Sheehan Title: President

DELPHI AUTOMOTIVE SYSTEMS LLC, a Delaware limited liability company

By: /s/ JOHN D. SHEEHAN Name: John D. Sheehan Title: Vice President and Chief Restructuring Officer DELPHI AUTOMOTIVE SYSTEMS RISK MANAGEMENT CORP., a Delaware corporation

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: Vice President & Treasurer

DELPHI FOREIGN SALES CORPORATION, a Virgin Islands corporation

By: /s/ JOHN D. SHEEHAN Name: John D. Sheehan Title: Controller

DELPHI INTERNATIONAL HOLDINGS CORP., a Delaware corporation

By: /s/ JOHN D. SHEEHAN Name: John D. Sheehan Title: President

DELPHI LIQUIDATION HOLDING COMPANY, a Delaware corporation

By: /s/ JOHN D. SHEEHAN Name: John D. Sheehan Title: President

DELPHI LLC, a Delaware limited liability company

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: President

# DELPHI NY HOLDING CORPORATION, a New York corporation

By: /s/ JOHN D. SHEEHAN

Name: John D. Sheehan Title: President

ASEC MANUFACTURING, a Delaware general partnership

By: <u>/s/ JOHN P. ARLE</u> Name: John P. Arle Title: Treasurer

ASEC SALES, a Delaware general partnership

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Treasurer

DELCO ELECTRONIC OVERSEAS CORPORATION, a Delaware corporation

By: <u>/s/ JOHN P. ARLE</u>

Name: John P. Arle Title: Assistant Treasurer

DELPHI AUTOMOTIVE SYSTEMS KOREA, INC., a Delaware corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Chief Executive Officer & President

# DELPHI AUTOMOTIVE SYSTEMS HUMAN RESOURCES LLC, a Delaware limited liability company

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Vice President & Treasurer

DELPHI AUTOMOTIVE SYSTEMS INTERNATIONAL, INC., a Delaware corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Treasurer

DELPHI AUTOMOTIVE SYSTEMS OVERSEAS CORPORATION, a Delaware corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Treasurer

DELPHI AUTOMOTIVE SYSTEMS SERVICES LLC, a Delaware limited liability company

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Treasurer

DELPHI AUTOMOTIVE SYSTEMS TENNESSEE, INC., a Delaware corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Treasurer

# DELPHI AUTOMOTIVE SYSTEMS THAILAND, INC., a Delaware corporation

By: <u>/s/ JOHN P. ARLE</u> Name: John P. Arle Title: Treasurer

DELPHI CONNECTION SYSTEMS, a California corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Treasurer

DELPHI ELECTRONICS (HOLDING) LLC, a Delaware limited liability company

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Assistant Treasurer

DELPHI INTERNATIONAL SERVICES, INC., a Delaware corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Chief Financial Officer & Treasurer

DELPHI MECHATRONIC SYSTEMS, INC., a Delaware corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Treasurer

# DELPHI SERVICES HOLDING CORPORATION, a Delaware corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Treasurer

EXHAUST SYSTEMS CORPORATION, a Delaware corporation

By: /s/ JOHN P. ARLE Name: John P. Arle Title: Assistant Treasurer

ASPIRE, INC., a Michigan corporation

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Vice President

DELPHI CHINA LLC, a Delaware limited liability company

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Chief Tax Officer

DELPHI DIESEL SYSTEMS CORP., a Delaware corporation

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Chief Tax Officer

# DELPHI INTEGRATED SERVICE SOLUTIONS, INC., a Michigan corporation

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Vice President

SPECIALTY ELECTRONICS, INC., a South Carolina corporation

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Chief Tax Officer

SPECIALTY ELECTRONICS INTERNATIONAL LTD., a Virgin Islands corporation

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Chief Tax Officer

PACKARD HUGHES INTERCONNECT COMPANY, a Delaware corporation

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Chief Tax Officer

ENVIRONMENTAL CATALYSTS, LLC, a Delaware limited liability company

By: /s/ JAMES P. WHITSON Name: James P. Whitson Title: Chief Tax Officer

# DELPHI MEDICAL SYSTEMS COLORADO CORPORATION, a Colorado corporation

By: <u>/s/ ALLAN F. SEGUIN</u> Name: Allan F. Seguin Title: Treasurer

DELPHI MEDICAL SYSTEMS CORPORATION, a Delaware corporation

By: /s/ ALLAN F. SEGUIN Name: Allan F. Seguin Title: Treasurer

DELPHI MEDICAL SYSTEMS TEXAS CORPORATION, a Delaware corporation

By: /s/ ALLAN F. SEGUIN Name: Allan F. Seguin Title: Treasurer

DELPHI TECHNOLOGIES, INC., a Delaware corporation

By: /s/ THOMAS N. TWOMEY

Name: Thomas N. Twomey Title: Vice President Intellectual Property

DREAL, INC., a Delaware corporation

By: /s/ JOHN JAFFURS Name: John Jaffurs Title: President

### LENDER

### GENERAL MOTORS CORPORATION

By: /s/ WALTER G. BORST Name: Walter G. Borst

Title: Treasurer

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#### CERTIFICATIONS

#### **Certification of Principal Executive Officer**

I, Rodney O' Neal, certify that:

1. I have reviewed this report on Form 10-Q of Delphi Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

May 9, 2008

/s/ Rodney O' Neal

Rodney O' Neal Chief Executive Officer & President (Principal Executive Officer)

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#### CERTIFICATIONS

#### **Certification of Principal Financial Officer**

I, Robert J. Dellinger, certify that:

1. I have reviewed this report on Form 10-Q of Delphi Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

May 9, 2008

/s/ Robert J. Dellinger

Robert J. Dellinger Executive Vice President and Chief Financial Officer (Principal Financial Officer)

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### CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Delphi Corporation (the "Company") on Form 10-Q for the period ended March 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Rodney O' Neal, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

May 9, 2008

/s/ Rodney O' Neal

Rodney O' Neal Chief Executive Officer & President

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### CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Delphi Corporation (the "Company") on Form 10-Q for the period ended March 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert J. Dellinger, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

May 9, 2008

/s/ Robert J. Dellinger

Robert J. Dellinger Executive Vice President and Chief Financial Officer