

Hearing Date and Time: TBD 2009 at 10:00 a.m.
Objection Deadline: May 15, 2009 at 4:00 p.m.

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

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

**FIRST OMNIBUS MOTION OF DEBTORS AND DEBTORS
IN POSSESSION, PURSUANT TO SECTION 365 OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULE 6006, FOR AN ORDER AUTHORIZING
THE REJECTION OF CERTAIN UNEXPIRED LEASES OF REAL PROPERTY**

TO THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE:

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

Background

1. On the date hereof (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases be consolidated for procedural purposes only and administered jointly.

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

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

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

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

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

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

Overview of These Cases

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

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

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

8. The economic and market conditions that led to the commencement of Chrysler's chapter 11 cases and the need for the proposed sale transaction are well known, but sobering nonetheless. The automotive market meltdown, the worst in at least 26 years,² disrupted Chrysler's substantial progress in implementing a long-term plan to reduce costs and transform its businesses for the next generation of cars. With sales plummeting and credit markets frozen, Chrysler undertook an intense effort to address the challenges it faced. After months of hard work and dedication by Chrysler's management, employees and advisors,

¹ Daniel Cole, *et al.*, Center for Automotive Research Memorandum, *The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers*, at <http://www.cargroup.org> (Nov 4, 2008).

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

working with all key stakeholders and with the support of the U.S. government, the Debtors have commenced these cases to implement a prompt sale to preserve the going concern value of their businesses and return these businesses to viability under new ownership.

9. The proposed sale transaction would create the sixth-largest global automaker by volume unit, increasing competitiveness with other Original Equipment Manufacturers ("OEMs") and creating billions of dollars in synergies. This transaction is the result of thousands of hours of negotiations among multiple parties. The transaction is being financially backed by the United States Department of the Treasury (the "U.S. Treasury") and Export Development Canada, an affiliate of the Canadian government, which together will provide the new alliance with approximately \$6 billion of taxpayer money to start up and maintain operations. In addition to this unprecedented government support, virtually all of the major constituencies that would be affected by a Chrysler liquidation have recognized how devastating it would be and have made important concessions in support of the proposed alliance

- The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") has agreed to wage and benefit reductions in the context of a sale to the new company, which would receive the benefit of a new collective bargaining agreement eliminating certain severance benefits, and would be a party to an agreement with the UAW containing restructured retiree health care benefits;
- Chrysler's dealers have agreed to reduce their dealer and service contract margins;
- Chrysler's already financially troubled suppliers have agreed to a further 3% price reduction and other measures that will save millions of dollars;
- Chrysler's largest secured creditors, JPMorgan Chase, Goldman Sachs, Morgan Stanley and Citigroup, have agreed to the transaction that would substantially compromise their first lien debt, comprising 70% of the \$6.9 billion total outstanding, for an estimated recovery of approximately 28 cents on the dollar; and
- Chrysler Parent's minority shareholder, Daimler AG ("Daimler"), has agreed as part of a settlement with Chrysler to (a) forgive \$1.5 billion of second lien

debt, at the same time that \$500 million of second lien debt is forgiven by majority shareholder Cerberus Capital Management L.P. ("Cerberus"); and (b) assist in funding Chrysler's pension plans.

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

10. As the culmination of these efforts, Chrysler, Fiat and New Chrysler (as defined below) have reached an agreement in principle and are expected to entered into a Master Transaction Agreement (collectively with other ancillary and supporting documents, the "Purchase Agreement") in short order. Pursuant to the Purchase Agreement, among other things: (a) Chrysler will transfer the majority of its operating assets to New CarCo Acquisition LLC ("New Chrysler"), a newly established Delaware limited liability company that currently is an indirect wholly-owned subsidiary of Fiat; and (b) in exchange for those assets, New Chrysler will assume certain liabilities of Chrysler and pay to Chrysler \$2 billion in cash (collectively with the other transactions contemplated by the Purchase Agreement, the "Fiat Transaction").

11. With the support of the U.S. government, Fiat, the UAW, dealers, suppliers and other stakeholders, the Debtors commenced these cases to implement an expeditious sale process to implement the Fiat Transaction, or a similar transaction with a competing bidder, designed to maximize the value of the Debtors' operations and businesses for the benefit of their stakeholders. Pending the proposed sale, the Debtors will idle most operations as they conserve their resources, while at the same time ensuring that (a) the facilities are prepared to resume normal production schedules quickly upon the completion of a sale and (b) consumers are not impacted by the filing.

12. Time is of the essence. Given the continuing stress on all aspects of the automotive industry and the idling of the Debtors' manufacturing facilities, key relationships with suppliers, dealers and other business partners simply cannot be preserved if the sale process

is not concluded quickly. Absent a prompt sale, approved and consummated in the coming weeks, the value of the Debtors' assets will rapidly decline and the ability to achieve a going concern sale will be irretrievably lost. By contrast, the proposed sale transaction, if it can be promptly consummated, will maximize the value available for stakeholders, will save hundreds of thousands of jobs and will strengthen the U.S. automotive sector and the economy generally.

Jurisdiction

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

Relief Requested

14. Pursuant to section 365 of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors hereby seek the entry of an order authorizing them to reject the unexpired leases of real property (collectively, the "Leases")³ identified on Exhibit A attached hereto and incorporated herein by reference with the parties identified on Exhibit A (the "Lease Parties"), effective as of the Petition Date.⁴

Facts Relevant to This Motion

15. The Debtors have engaged in a review of their unexpired leases. As a result of their review, the Debtors have determined that the Leases identified on Exhibit A will

³ Each Lease includes any modifications, amendments, addenda or supplements thereto or restatements thereof.

⁴ For each Lease, Exhibit A includes: (a) a description of the Lease; (b) the name and address of the nondebtor counterparty to the Lease; (c) the name of the Debtor that is a party to the Lease; (d) the contractual payments or monthly rent, if any; (e) the term of the Lease; and (f) the Rejection Effective Date. Copies of the Lease are not attached hereto, but are available from the Debtors' counsel upon request. The terms of the Lease included in Exhibit A are provided for convenience only and are not intended to modify, or to represent the Debtors' interpretation of, the terms of any Lease.

not be assumed and assigned in the Fiat Transaction, and are neither necessary nor valuable to their estates. Moreover, 90% of the properties have been vacated prior to the Petition Date; for these Leases, the Debtors have surrendered possession of the premises to the applicable Lease Party.

16. Each of the Leases is an "unexpired lease" within the meaning of section 365 of the Bankruptcy Code, capable of being rejected by the Debtors. To the extent that any Lease already has expired or been terminated, it is included herein out of an abundance of caution.

Argument

17. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to assume, assume and assign or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993) (stating that section 365 of the Bankruptcy Code "permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject."); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of "business judgment"); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) ("A bankruptcy court reviewing a trustee's decision to assume or reject an executory contract should apply its 'business judgment' to determine if it would be beneficial or burdensome to the estate to assume it.").

18. Courts generally will not second-guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease. See In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) ("[A] court will ordinarily defer to the business judgment of the debtor's management"); accord Phar-Mor, Inc. v. Strouss Bldg. Assocs., 204 B.R. 948, 951-52 (Bankr. N.D. Ohio 1997) ("Whether an executory contract is 'favorable' or 'unfavorable' is left to the sound business judgment of the debtor Courts should generally defer to a debtor's decision whether to reject an executory contract.").

The "business judgment" test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. See, e.g., Bregman v. Meehan (In re Meehan), 59 B.R. 380, 385 (E.D.N.Y. 1986) ("The business judgment test is a flexible one The primary issue under the business judgment test is whether rejection of the contract would benefit general unsecured creditors."); In re Helm, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) ("To meet the business judgment test, the debtor in possession must establish that rejection will benefit the estate."); Westbury Real Estate Ventures, Inc. v. Bradless, Inc. (In re Bradless Stores, Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996) ("In reviewing a debtor's decision to assume or reject an executory contract, the court must examine the contract and circumstances and apply its best 'business judgment' to determine if the assumption or rejection would be beneficial or burdensome to the estate.").

19. The Leases are not necessary or valuable to the Debtors' business activities or the sale process. Moreover, in light of the fact that the properties have been, or will be, vacated, the Debtors' ongoing obligations under the Leases impose an undue burden on their estates. The Debtors believe that maintaining the Leases under these circumstances would unnecessarily deplete the assets of the Debtors' estates to the direct detriment of their creditors.

Moreover, the Debtors have determined that the Leases do not have any realizable value in the marketplace. Accordingly, in the sound exercise of their business judgment, the Debtors have determined that the rejection of the Leases, pursuant to section 365 of the Bankruptcy Code, effective as of the date of this Motion, or the later surrender of the premises for a particular Lease, is in the best interests of their estates.

Notice

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

No Prior Request

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

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

Dated: April 30, 2009
New York, New York

Respectfully submitted,

/s/ Corinne Ball
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Veerle Roovers
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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Schedule of Leases to Be Rejected

<u>Description of Leases</u>	<u>Contracting Parties Name and Address</u>	<u>Debtor Party to Lease</u>	<u>Periodic Payments (if applicable)</u>	<u>Expiration of Lease</u>
Lease of 11705 Valley Boulevard, El Monte, CA 91732	GSL Development, LLC 732 South Walnut Avenue, San Dimas, CA 91773	Chrysler Realty Company, LLC	Monthly rent of \$60,000 due the first of each month	November 11, 2026
Lease of 370 South Kiley Boulevard, San Jose, CA 95129	Lopina Partners III 360 Kiely Blvd., Suite 220, San Jose, CA 95129	Chrysler Realty Company, LLC	Monthly rent of \$10,617 due the first of each month	April 30, 2018
Lease of 735 Dillingham Blvd., Honolulu, HI 96817 (One of two leases associated with this property)	The Gutman Realty Company 445 Seaside Avenue, Suite 3, Honolulu, Hawaii 36815	Chrysler Realty Company, LLC	Monthly rent of \$64,406 due the first of each month	November 30, 2026
Lease of 735 Dillingham Blvd., Honolulu, HI 96817 (Second of two leases associated with this property)	Hawaiian Electronic Co. Inc. PO Box 2750, Honolulu, HI 96840	Chrysler Realty Company, LLC	Monthly rent of \$10,780 due the first of each month	November 31, 2010
Lease of 9850 Indianapolis, Highland, IN 46322	Leo B. Abrahamson & Elaine Abrahamson 175 East Delaware Place, Suite 8510, Chicago, IL 60611	Chrysler Realty Company, LLC	Monthly rent of \$5,233 due the first of each month	September 30, 2012
Lease of 4848 Veterans Memorial Blvd., Metairie, LA 70006	Ronnie Lamarque Properties LLC 3101 Williams Boulevard., Kenner LA 7006	Chrysler Realty Company, LLC	Monthly rent of \$56,000 rent due the first of each month	December 27, 2013

<u>Description of Leases</u>	<u>Contracting Parties Name and Address</u>	<u>Debtor Party to Lease</u>	<u>Periodic Payments (if applicable)</u>	<u>Expiration of Lease</u>
Lease of 2185 Walden Ave., Cheekatowaga, New York 14225	2185 Walden Partners LLC 33 Clarks Crossing, Fairport, NY 14450	Chrysler Realty Company, LLC	Monthly rent of \$1,342.00 due the first of each month	May 31, 2018
Lease of 2960 I-30 East, Mesquite, TX 75149	Frederick A. Nagher 5602 Harbor Town Drive, Dallas, TX 75287	Chrysler Realty Company, LLC	Monthly rent of \$35,000 due the first of each month	March 31, 2015
Lease of 5.18 Acres off Jefferson Avenue, Trenton, MI 48183	Ellias Realty, LLC Attn: Howard Ellias 2727 Rutledge Road Trenton, MI 48183	Chrysler LLC	Monthly rent of \$1,083 due the first of each month	August 31, 2009
Lease of 1.59 Acres off Jefferson Avenue, Trenton, MI 48183	Foris Management Attn: Michael Burchyett PO BOX 664 Trenton, MI 48183	Chrysler LLC	Monthly rent of \$333	August 31, 2009

EXHIBIT B

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

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

**FIRST ORDER AUTHORIZING THE REJECTION
OF CERTAIN UNEXPIRED LEASES OF REAL PROPERTY**

This matter coming before the Court on the First Omnibus Motion of Debtors and Debtors in Possession, Pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, for an Order Authorizing the Rejection of Certain Unexpired Leases of Real Property (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion and the Hearing was sufficient under the circumstances, and (d) a sound business purpose exists for the relief granted herein; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

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

2. The Debtors are authorized to reject the Leases² identified on the attached Schedule 1, which is incorporated herein by reference, and the Leases are deemed rejected, pursuant to section 365 of the Bankruptcy Code, effective as of the date of this Motion for the later surrender of the premises for a particular lease identified for each Lease identified on Schedule 1.

3. This Court shall retain jurisdiction to resolve all matters relating to the implementation of this Order.

Dated: New York, New York
_____, 2009

UNITED STATES BANKRUPTCY JUDGE

² Each Lease includes any modifications, amendments, addenda or supplements thereto or restatements thereof. The terms of the Leases included in Schedule 1 are provided for convenience only and are not intended to modify, or to represent the Debtors' interpretation of or a Court determination regarding, the terms of any Lease.

SCHEDULE 1

<u>Description of Leases</u>	<u>Contracting Parties Name and Address</u>	<u>Debtor Party to Lease</u>	<u>Periodic Payments (if applicable)</u>	<u>Expiration of Lease</u>	<u>Rejection Effective Date</u>
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