

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549-1004

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the year ended December 31, 2009

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 333-160471

**GENERAL MOTORS COMPANY**

*(Exact Name of Company as Specified in its Charter)*

STATE OF DELAWARE  
*(State or other jurisdiction of  
Incorporation or Organization)*

300 Renaissance Center, Detroit, Michigan  
*(Address of Principal Executive Offices)*

27-0756180  
*(I.R.S. Employer  
Identification No.)*

48265-3000  
*(Zip Code)*

Company's telephone number, including area code  
(313) 556-5000

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the company is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the company is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the company (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, and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its company Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the company's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. Yes  No

Indicate by check mark whether the company is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "small reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
Do not check if smaller reporting company

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

As of March 15, 2010, the number of shares outstanding of \$0.01 par value common stock was 500,000,000 shares.

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General Motors Company was formed by the United States Department of the Treasury (UST) in 2009 originally as a Delaware limited liability company, Vehicle Acquisition Holdings LLC, and subsequently converted to a Delaware corporation, NGMCO, Inc. This company, which on July 10, 2009 acquired substantially all of the assets and assumed certain liabilities of General Motors Corporation (363 Sale) and changed its name to General Motors Company, is sometimes referred to in this Annual Report on Form 10-K (2009 10-K) for the periods on or subsequent to July 10, 2009 as “we,” “our,” “us,” “ourselves,” the “Company,” “General Motors,” or “GM,” and is the successor entity solely for accounting and financial reporting purposes (Successor). General Motors Corporation is sometimes referred to in this 2009 10-K, for the periods on or before July 9, 2009, as “Old GM.” Prior to July 10, 2009 Old GM operated the business of the Company, and pursuant to the agreement with the SEC Staff, the accompanying consolidated financial statements include the financial statements and related information of Old GM as it is our predecessor entity solely for accounting and financial reporting purposes (Predecessor). On July 10, 2009 in connection with the 363 Sale, General Motors Corporation changed its name to Motors Liquidation Company, which is sometimes referred to in this 2009 10-K for the periods after July 10, 2009 as “MLC.” MLC continues to exist as a distinct legal entity for the sole purpose of liquidating its remaining assets and liabilities. Refer to Note 1 to the consolidated financial statements for additional information.

We are a private company and were not previously subject to the filing requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. We are a voluntary filer with the Securities and Exchange Commission (SEC). We are filing an Annual Report on Form 10-K for the year ended December 31, 2009, a Quarterly Report on Form 10-Q for the quarter ended September 30, 2009 and a Registration Statement on Form 10 pursuant to an agreement with the SEC Staff, as described in a no-action letter issued to Old GM by the SEC Staff on July 9, 2009 regarding our filing requirements and those of MLC.

Prior to July 10, 2009 Old GM operated the business of the Company, and pursuant to the agreement with the SEC Staff, the accompanying consolidated financial statements include the financial statements and related information of Old GM as it is our predecessor entity solely for accounting and financial reporting purposes.

The 363 Sale resulted in a new entity, General Motors Company, which is the successor entity solely for accounting and financial reporting purposes. Because we are a new reporting entity, our financial statements are not comparable to the financial statements of Old GM.

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## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### PART I

General Motors Company was formed by the United States Department of the Treasury (UST) in 2009 originally as a Delaware limited liability company, Vehicle Acquisition Holdings LLC, and subsequently converted to a Delaware corporation, NGMCO, Inc. This company, which on July 10, 2009 acquired substantially all of the assets and assumed certain liabilities of General Motors Corporation (363 Sale) and changed its name to General Motors Company, is sometimes referred to in this Annual Report on Form 10-K (2009 10-K) for the periods on or subsequent to July 10, 2009 as “we,” “our,” “us,” “ourselves,” the “Company,” “General Motors,” or “GM,” and is the successor entity solely for accounting and financial reporting purposes (Successor). General Motors Corporation is sometimes referred to in this 2009 10-K, for the periods on or before July 9, 2009, as “Old GM.” Prior to July 10, 2009 Old GM operated the business of the Company, and pursuant to the agreement with the SEC Staff, the accompanying consolidated financial statements include the financial statements and related information of Old GM as it is our predecessor entity solely for accounting and financial reporting purposes (Predecessor). On July 10, 2009 in connection with the 363 Sale, General Motors Corporation changed its name to Motors Liquidation Company, which is sometimes referred to in this 2009 10-K for the periods after July 10, 2009 as “MLC.” MLC continues to exist as a distinct legal entity for the sole purpose of liquidating its remaining assets and liabilities.

#### Item 1. *Business*

##### **Launch of General Motors Company**

Prior to July 10, 2009 Old GM operated the business of the Company, and pursuant to the agreement with the SEC Staff, the accompanying consolidated financial statements include the financial statements and related information of Old GM as it is our predecessor entity solely for accounting and financial reporting purposes. On June 1, 2009 Old GM and three of its domestic direct and indirect subsidiaries filed voluntary petitions for relief under Chapter 11 (Chapter 11 Proceedings) of the U.S. Bankruptcy Code (Bankruptcy Code) in the U.S. Bankruptcy Court for the Southern District of New York (Bankruptcy Court). On July 10, 2009 in connection with the 363 Sale, we, through certain of our subsidiaries, acquired substantially all of the assets and assumed certain liabilities of Old GM. MLC continues to exist as a distinct legal entity for the sole purpose of liquidating its remaining assets and liabilities.

Through our purchase of substantially all of the assets and assumption of certain liabilities of Old GM in connection with the 363 Sale, we have launched a new company with a strong balance sheet, a competitive cost structure, and a strong cash position, which we believe will enable us to compete more effectively with our U.S. and foreign-based competitors in the U.S. and to continue our strong presence in growing global markets. In particular, we acquired Old GM’s strongest operations and we believe we will have a competitive operating cost structure, partly as a result of recent agreements with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Canadian Auto Workers Union (CAW).

In addition the formation of General Motors Company comes with a renewed vision to design, build and sell the world’s best vehicles. In order to implement this renewed vision, a majority of our Board of Directors is comprised of directors that did not serve on Old GM’s Board of Directors, and we have recently appointed new executive leadership, including our CEO and CFO. We have also recently installed a smaller executive committee, which meets more frequently than prior leadership committees, resulting in faster decision making and increased accountability.

Our executive leadership and our employees are committed to:

- Building our market share, revenue, earnings and cash flow with the goal of paying back in 2010 our loans from the UST and Export Development Canada (EDC), a corporation wholly-owned by the government of Canada;
- Improving the quality of our cars and trucks, while increasing customer satisfaction and overall perception of our products; and
- Continuing to take a leadership role in the development of advanced energy saving technologies, including advanced combustion engines, biofuels, fuel cells, hybrid vehicles, extended-range-electric vehicles, and advanced battery development.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### General

We develop, produce and market cars, trucks and parts worldwide. We do so through our three segments: General Motors North America (GMNA), General Motors Europe (GME) and General Motors International Operations (GMIO).

In the year ended 2009 vehicle sales, market share data and production volume combine our data in the period July 10, 2009 through December 31, 2009 with Old GM's data in the period January 1, 2009 through July 9, 2009 for comparative purposes.

Total combined GM and Old GM worldwide vehicle sales in the year ended 2009 were 7.5 million. Old GM's total worldwide vehicle sales were 8.4 million and 9.4 million in the years ended 2008 and 2007. Substantially all of the cars, trucks and parts are marketed through retail dealers in North America, and through distributors and dealers outside of North America, the substantial majority of which are independently owned. GMNA primarily meets the demands of customers in North America with vehicles developed, manufactured and/or marketed under the following core brands:

- Buick
- Cadillac
- Chevrolet
- GMC

The demands of customers outside North America are primarily met with vehicles developed, manufactured and/or marketed under the following brands:

- Buick
- Cadillac
- Chevrolet
- Daewoo
- GMC
- Holden
- Isuzu
- Opel
- Vauxhall

At December 31, 2009 we had equity ownership stakes directly or indirectly through various regional subsidiaries, including GM Daewoo Auto & Technology Co. (GM Daewoo), Shanghai General Motors Co., Ltd. (SGM), SAIC-GM-Wuling Automobile Co., Ltd. (SGMW), and FAW-GM Light Duty Commercial Vehicle Co., Ltd. (FAW-GM). These companies design, manufacture and market vehicles under the following brands:

- Buick
- Cadillac
- Chevrolet
- Daewoo
- FAW
- GMC
- Holden
- Jiefang
- Wuling

In addition to the products we sell to our dealers for consumer retail sales, we also sell cars and trucks to fleet customers, including daily rental car companies, commercial fleet customers, leasing companies and governments. Sales to fleet customers are completed through our network of dealers and in some cases directly by us. Our retail and fleet customers can obtain a wide range of aftersale vehicle services and products through our dealer network, such as maintenance, light repairs, collision repairs, vehicle accessories and extended service warranties.

### Brand Rationalization

We have focused our resources in the U.S. on four core brands: Chevrolet, Cadillac, Buick and GMC. As a result, we have sold our Saab brand and announced plans to phase out our Pontiac, Saturn and HUMMER brands. In connection with the rationalization of our brands, there is no planned investment for Pontiac, and the brand is expected to be phased out by the end of 2010.

#### *Saturn*

In September 2009 we decided to wind-down the Saturn brand and dealership network in accordance with the deferred termination agreements that Saturn dealers have signed with us. Refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations — Brand Rationalization" for a further discussion on the Saturn disposition.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**HUMMER**

In February 2010 we announced that Tengzhong Heavy Industrial Machinery Co., Ltd. (Tengzhong), was unable to complete the acquisition of HUMMER and that we would proceed to wind down the HUMMER brand. Refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Brand Rationalization” for a further discussion on the HUMMER disposition.

**Saab**

In February 2010 we completed the sale of Saab to Spyker Cars NV. Refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Brand Rationalization” for a further discussion on the Saab disposition.

**Opel/Vauxhall Restructuring Activities**

In February 2010 we presented our plan for the long-term viability of our Opel/Vauxhall operations to the German government. Our plan includes specific capital requirements, restructuring initiatives, estimated 12 product launches in the next two years and emphasis on alternative propulsion technologies. Refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Opel/Vauxhall Restructuring Activities” for a further discussion on the Opel/Vauxhall operations long-term viability plan.

**Vehicle Sales**

The following tables summarize total industry sales of new motor vehicles of domestic and foreign makes and the related competitive position (vehicles in thousands):

	Vehicle Sales(a)(b)								
	2009			2008			2007		
	Industry	Combined GM and Old GM	Combined GM and Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry
United States									
Cars									
Midsize	2,288	518	22.7%	2,920	760	26.0%	3,410	884	25.9%
Small	2,051	202	9.8%	2,547	328	12.9%	2,605	381	14.6%
Luxury	778	69	8.8%	1,017	122	12.0%	1,184	157	13.3%
Sport	253	85	33.7%	272	48	17.7%	372	68	18.2%
Total cars	5,370	874	16.3%	6,756	1,257	18.6%	7,571	1,489	19.7%
Trucks									
Utilities	3,071	642	20.9%	3,654	809	22.1%	4,752	1,136	23.9%
Pick-ups	1,404	487	34.7%	1,993	738	37.0%	2,710	979	36.1%
Vans	583	68	11.7%	841	151	17.9%	1,119	219	19.6%
Medium Duty	178	13	7.1%	259	26	10.0%	321	44	13.7%
Total trucks	5,238	1,210	23.1%	6,746	1,723	25.5%	8,902	2,377	26.7%
Total United States	10,608	2,084	19.6%	13,503	2,981	22.1%	16,473	3,867	23.5%
Canada, Mexico, and Other	2,464	400	16.2%	3,064	585	19.1%	3,161	650	20.6%
Total GMNA	13,073	2,485	19.0%	16,567	3,565	21.5%	19,634	4,516	23.0%
GMIO	32,358	3,326	10.3%	28,641	2,754	9.6%	28,173	2,672	9.5%
GME	18,827	1,667	8.9%	21,968	2,043	9.3%	23,123	2,182	9.4%
Total Worldwide	64,257	7,478	11.6%	67,176	8,362	12.4%	70,929	9,370	13.2%

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

	Vehicle Sales (a)(b) Years Ended December 31,								
	2009			2008			2007		
	Industry	Combined GM and Old GM	Combined GM and Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry
<b>GMNA</b>									
United States	10,608	2,084	19.6%	13,503	2,981	22.1%	16,473	3,867	23.5%
Canada	1,482	254	17.2%	1,674	359	21.4%	1,691	404	23.9%
Mexico	774	138	17.9%	1,071	212	19.8%	1,146	230	20.1%
Other	208	7	3.5%	319	13	4.2%	325	16	4.8%
Total GMNA	<u>13,073</u>	<u>2,485</u>	19.0%	<u>16,567</u>	<u>3,565</u>	21.5%	<u>19,634</u>	<u>4,516</u>	23.0%
<b>GMIO</b>									
China	13,671	1,826	13.4%	9,074	1,095	12.1%	8,457	1,032	12.2%
Brazil	3,141	596	19.0%	2,820	549	19.5%	2,463	499	20.3%
Australia	937	121	12.9%	1,012	133	13.1%	1,050	149	14.2%
Middle East Operations	1,053	117	11.1%	1,118	144	12.9%	1,276	136	10.7%
South Korea	1,455	115	7.9%	1,215	117	9.7%	1,271	131	10.3%
Argentina	517	79	15.2%	616	95	15.5%	573	92	16.1%
India	2,240	69	3.1%	1,971	66	3.3%	1,989	60	3.0%
Colombia	185	67	36.1%	219	80	36.3%	252	93	36.8%
Egypt	204	52	25.6%	262	60	23.1%	227	40	17.5%
Venezuela	137	49	36.1%	272	90	33.2%	492	151	30.7%
Other	8,817	235	2.7%	10,061	325	3.2%	10,123	289	2.9%
Total GMIO	<u>32,358</u>	<u>3,326</u>	10.3%	<u>28,641</u>	<u>2,754</u>	9.6%	<u>28,173</u>	<u>2,672</u>	9.5%
<b>GME</b>									
Germany	4,049	382	9.4%	3,425	300	8.8%	3,482	331	9.5%
United Kingdom	2,223	287	12.9%	2,485	384	15.4%	2,800	427	15.2%
Italy	2,349	189	8.0%	2,423	202	8.3%	2,778	237	8.5%
Russia	1,494	142	9.5%	3,024	338	11.2%	2,707	260	9.6%
France	2,686	119	4.4%	2,574	114	4.4%	2,584	125	4.8%
Spain	1,075	94	8.7%	1,363	107	7.8%	1,939	171	8.8%
Other	4,951	455	9.2%	6,674	599	9.0%	6,832	632	9.2%
Total GME	<u>18,827</u>	<u>1,667</u>	8.9%	<u>21,968</u>	<u>2,043</u>	9.3%	<u>23,123</u>	<u>2,182</u>	9.4%
Total Worldwide	<u>64,257</u>	<u>7,478</u>	11.6%	<u>67,176</u>	<u>8,362</u>	12.4%	<u>70,929</u>	<u>9,370</u>	13.2%

(a) Vehicle sales above primarily represent vehicles manufactured or sold under a GM brand or through an owned distribution network. Under contractual agreements with SGMW and FAW-GM, joint venture vehicle sales in China are included in the vehicle sales and global market share above. Combined GM and Old GM joint venture vehicle sales in China included in the vehicle sales and market share data above was 1.0 million vehicles in the year ended 2009. Old GM's joint venture vehicle sales in China included in the vehicle sales and market share data above was 606,000 vehicles and 516,000 vehicles in the years ended 2008 and 2007. Consistent with industry practice, vehicle sales information includes estimates of industry sales in certain countries where public reporting is not legally required or otherwise available on a consistent basis.

(b) Totals may include rounding differences.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES*****Fleet Sales and Deliveries***

The sales and market share data provided previously includes both retail and fleet vehicle sales. Fleet sales are comprised of vehicle sales to daily rental car companies, as well as leasing companies and commercial fleet and government customers. Certain fleet transactions, particularly daily rental, are generally less profitable than retail sales. As part of our pricing strategy, particularly in the U.S., we have improved our mix of sales to specific customers.

The following table summarizes estimated fleet sales and the amount of those sales as a percentage of total vehicle sales (vehicles in thousands):

	<b>Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
	<b>Combined GM and Old GM</b>	<b>Old GM</b>	<b>Old GM</b>
GMNA	590	953	1,152
GMIO	510	587	594
GME	540	769	833
Total fleet sales (a)	<u>1,640</u>	<u>2,309</u>	<u>2,579</u>
Fleet sales as a percentage of total vehicle sales	21.9%	27.6%	27.5%

(a) Fleet sale transactions vary by segment and some amounts are estimated.

The following table summarizes U.S. fleet sales and the amount of those sales as a percentage of total U.S. vehicle sales (vehicles in thousands):

	<b>Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
	<b>Combined GM and Old GM</b>	<b>Old GM</b>	<b>Old GM</b>
Daily rental sales	307	480	596
Other fleet sales	207	343	412
Total fleet sales	<u>514</u>	<u>823</u>	<u>1,008</u>
Fleet sales as a percentage of total vehicle sales			
Cars	29.0%	34.8%	34.9%
Trucks	21.6%	22.4%	20.5%
Total cars and trucks	24.7%	27.6%	26.1%

**Competitive Position**

The global automotive industry is highly competitive. The principal factors that determine consumer vehicle preferences in the markets in which we operate include price, quality, available options, style, safety, reliability, fuel economy and functionality. Market leadership in individual countries in which we compete varies widely.

In the year ended 2009 combined GM and Old GM estimated worldwide market share was 11.6%. In 2009 the U.S. continued to be negatively affected by the economic factors experienced in 2008 as U.S. automotive industry sales declined 21.4% when compared to 2008. Despite this U.S. industry sales decline and the fact that the market share decreased from Old GM 2008 levels of 22.1%, combined GM and Old GM estimated U.S. market share of 19.6% was the highest among GM and Old GM's principal competitors.

Old GM's estimated worldwide market share was 12.4% and 13.2% in the years ended 2008 and 2007. In 2008 worldwide market share was severely affected by the recession in Old GM's largest market, the U.S., and the recession in Western Europe. Tightening of the credit markets, increases in the unemployment rate, declining consumer confidence as a result of declining household incomes and

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

escalating public speculation related to Old GM's potential bankruptcy contributed to significantly lower vehicle sales in the U.S. These economic factors had a negative effect on the U.S. automotive industry and the principal factors that determine consumers' vehicle buying decisions. As a result, consumers delayed purchasing or leasing new vehicles which caused a decline in U.S. vehicle sales.

The following table summarizes the respective U.S. market shares in passenger cars and trucks:

	<b>Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
GM (a)	19.6%	22.1%	23.5%
Toyota	16.7%	16.5%	15.9%
Ford	15.9%	14.7%	15.2%
Honda	10.8%	10.6%	9.4%
Chrysler	8.8%	10.8%	12.6%
Nissan	7.3%	7.0%	6.5%
Hyundai/Kia	6.9%	5.0%	4.7%

(a) Market share data in the year ended 2009 combines our market share data in the period July 10, 2009 through December 31, 2009 with Old GM's market share data in the period January 1, 2009 through July 9, 2009 for comparative purposes. Market share data in the years ended 2008 and 2007 relate to Old GM.

**Product Pricing**

A number of methods are used to promote our products, including the use of dealer, retail and fleet incentives such as customer rebates and finance rate support. The level of incentives is dependent in large part upon the level of competition in the markets in which we operate and the level of demand for our products. In 2010, we will continue to price vehicles competitively, including offering strategic and tactical incentives as required. We believe this strategy coupled with improved inventory management will continue to strengthen the reputation of our brands and continue to improve our average transaction price.

**Cyclical Nature of Business**

In the automotive industry, retail sales are cyclical and production varies from month to month. Vehicle model changeovers occur throughout the year as a result of new market entries. The market for vehicles is cyclical and depends on general economic conditions, credit availability and consumer spending. In 2009 the global automotive industry, particularly in the U.S., had not yet recovered from the negative economic factors experienced in 2008 and has continued to experience decreases in the total number of new cars and trucks sold and decreased production volume.

**Relationship with Dealers**

Worldwide we market vehicles through a network of independent retail dealers and distributors. At December 31, 2009 there were 5,619 vehicle dealers in the U.S., 568 in Canada and 263 in Mexico. Additionally, there were a total of 14,317 distribution outlets throughout the rest of the world. These outlets include distributors, dealers and authorized sales, service and parts outlets.

The following table summarizes the number of authorized dealerships:

	<b>December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
GMNA	6,450	7,360	7,835
GMIO	5,895	5,510	5,150
GME	8,422	8,732	8,902
Total Worldwide	<u>20,767</u>	<u>21,602</u>	<u>21,887</u>

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

As part of achieving and sustaining long-term viability and the viability of our dealer network, we determined that a reduction in the number of GMNA dealerships was necessary. In determining which dealerships would remain in our network we performed analyses of volumes and consumer satisfaction indexes, among other criteria. Refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations — U.S. Dealer Reduction" for a further discussion on our plan to reduce U.S. dealerships.

We enter into a contract with each authorized dealer agreeing to sell to the dealer one or more specified product lines at wholesale prices and granting the dealer the right to sell those vehicles to retail customers from a GM approved location. Our dealers often offer more than one GM brand of vehicle at a single dealership. In fact, we actively promote this for several of our brands in a number of our markets in order to enhance dealer profitability. Authorized GM dealers offer parts, accessories, service and repairs for GM vehicles in the product lines that they sell, using genuine GM parts and accessories. Our dealers are authorized to service GM vehicles under our limited warranty program, and those repairs are to be made only with genuine GM parts. In addition, our dealers generally provide their customers access to credit or lease financing, vehicle insurance and extended service contracts provided by GMAC Inc. (GMAC) or its subsidiaries and other financial institutions.

Because dealers maintain the primary sales and service interface with the ultimate consumer of our products, the quality of GM dealerships and our relationship with our dealers and distributors are critical to our success. In addition to the terms of our contracts with our dealers, we are regulated by various country and state franchise laws that may supersede those contractual terms and impose specific regulatory requirements and standards for initiating dealer network changes, pursuing terminations for cause and other contractual matters.

### Research, Development and Intellectual Property

Costs for research, manufacturing engineering, product engineering, and design and development activities relate primarily to developing new products or services or improving existing products or services, including activities related to vehicle emissions control, improved fuel economy and the safety of drivers and passengers.

The following table summarizes research and development expense (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>	<u>Predecessor</u>		
		<u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>	<u>Year Ended</u> <u>December 31,</u> <u>2008</u>	<u>Year Ended</u> <u>December 31,</u> <u>2007</u>
Research and development expense	\$ 3,034	\$ 3,017	\$ 8,012	\$ 8,081

#### **Research**

##### *Overview*

Our top priority for research is to continue to develop and advance our alternative propulsion strategy, as energy diversity and environmental leadership are critical elements of our overall business strategy. Our objective is to be the recognized industry leader in fuel efficiency through the development of a wide variety of technologies to reduce petroleum consumption. To meet this objective we focus on five specific areas:

- Continue to increase the fuel efficiency of our cars and trucks;
- Development of alternative fuel vehicles;
- Invest significantly in our hybrid and electric technologies;
- Invest significantly in plug-in electric vehicle technology; and
- Continued development of hydrogen fuel cell technology.

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### *Fuel Efficiency*

We and Old GM have complied with federal fuel economy requirements since their inception in 1978, and we are fully committed to meeting the requirements of the Energy Independence and Security Act of 2007 (EISA) and compliance with other regulatory schemes, including the California CO<sub>2</sub> program. We anticipate steadily improving fuel economy for both our car and truck fleets. We are committed to meeting or exceeding all federal fuel economy standards in the 2010 through 2015 model years. We plan to achieve compliance through a combination of strategies, including: (1) extensive technology improvements to conventional powertrains; (2) increased use of smaller displacement engines and six speed automatic transmissions; (3) vehicle improvements, including increased use of lighter, front-wheel drive architectures; (4) increased hybrid offerings and the launch of the Chevrolet Volt electric vehicle with extended range in 2010; and (5) portfolio changes, including the increasing car/crossover mix and dropping select larger vehicles in favor of smaller, more fuel efficient offerings.

We are among the industry leaders in fuel efficiency and we are committed to lead in the development of technologies to increase the fuel efficiency of internal combustion engines such as cylinder deactivation, direct injection, turbo-charging with engine downsizing, six speed transmissions and variable valve timing. As a full-line manufacturer that produces a wide variety of cars, trucks and sport utility vehicles, we currently offer 20 models obtaining 30 mpg or more in highway driving, more than any other manufacturer.

### *Alternative Fuel Vehicles*

We have also been in the forefront in the development of alternative fuel vehicles, leveraging experience and capability developed around these technologies in our operations in Brazil. Alternative fuels offer the greatest near-term potential to reduce petroleum consumption in the transportation sector, especially as cellulosic sources of ethanol become more affordable and readily available in the U.S. An increasing percentage of our sales will be alternative fuel capable vehicles, estimated to increase from 17% in 2010 to 65% in 2014.

As part of an overall energy diversity strategy, we remain committed to making at least 50% of the vehicles we produce for the U.S. capable of operating on biofuels, specifically E85 ethanol, by 2012. We currently offer 17 FlexFuel models capable of operating on gasoline, E85 ethanol or any combination of the two.

We are focused on promoting sustainable biofuels derived from non-food sources, such as agricultural, forestry and municipal waste. We are continuing to work with our two strategic alliances with cellulosic ethanol makers Coskata, Inc., of Warrenville, Illinois, and New Hampshire based Mascoma Corp. In October 2009 Coskata, Inc. opened its semi-commercial facility for manufacturing cellulosic ethanol and Mascoma Corp. has been making cellulosic ethanol at its Rome, New York, demonstration plant since late 2008.

We are also supporting the development of biodiesel, a clean-burning alternative diesel fuel that is produced from renewable sources. We currently approve the use of B5, which are certified biodiesel blends of up to 5%, in our Duramax engine that we sell in the U.S. This engine is available on the Chevrolet Silverado and GMC Sierra heavy-duty pick-up trucks, Chevrolet Express and GMC Savanna fullsize vans and the Chevrolet Kodiak and GMC Top Kick commercial vehicles. B5 is also approved for all GM diesels in Europe and Asia. We offer a special equipment option on the 6.6-liter Duramax for B20, a 20% biodiesel blend. The special equipment option is available on certain configurations of the GMC Savanna and Chevrolet Express Vans and the Chevrolet Silverado and GMC Sierra Heavy-Duty One-Ton Pick-ups. For the 2011 model year, B20 capability will be available on our 6.6L turbo diesel engine.

### *Hybrid and Plug-In Electric Vehicles*

We are also investing significantly in vehicle electrification including hybrid, plug-in hybrid and electric vehicles with extended-range technology. We currently offer seven hybrid models. We are also developing plug-in hybrid electric vehicle technology (PHEV) and the Chevrolet Volt and Opel Ampera electric vehicles with extended range. We plan to invest heavily between 2010 and 2012 to support the expansion of our electrified vehicle offering and in-house development and manufacturing capabilities of the enabling technologies-advanced batteries, electric motors and power control systems.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

We have multiple technologies offering increasing levels of vehicle electrification — hybrid, plug-in hybrid and electric vehicle with extended range.

The highly capable GM Two-mode Hybrid system is offered with the automotive industry's only hybrid fullsize trucks and sport utility vehicles: Chevrolet Tahoe, Chevrolet Silverado, GMC Yukon and Yukon Denali, GMC Sierra, Cadillac Escalade and Escalade Platinum.

A PHEV, using a modified version of GM's Two-Mode Hybrid system and advanced lithium-ion battery technology, is scheduled to launch in 2012. The PHEV will provide low-speed electric-only propulsion, and blend engine and battery power to significantly improve fuel efficiency.

We have also announced that we plan to launch the Chevrolet Volt electric vehicle with extended range in late 2010. The Chevrolet Volt is powered by electricity at all times and at all speeds. The Chevrolet Volt is designed to operate on battery power alone for up to 40 miles, after which an engine-generator will provide the electricity to power the electric drive unit. Advanced lithium-ion battery technology is the key enabling technology for the Chevrolet Volt. In January 2009 Old GM announced that it would assemble the battery packs for the Chevrolet Volt in the U.S. using cells supplied by LG Chem. Battery production began at our Brownstown Battery facility in January 2010. A second electric vehicle with extended range, the Opel Ampera, is under development and scheduled to launch in Europe in late 2011.

### *Hydrogen Fuel Cell Technology*

As part of our long-term strategy to reduce petroleum consumption and greenhouse gas emissions we are committed to continuing development of our hydrogen fuel cell technology. We and Old GM have conducted research in hydrogen fuel cell development spanning the last 15 years, and we are the only U.S. automobile manufacturer actively engaged in fuel cell development. Our Chevrolet Equinox fuel cell electric vehicle demonstration programs, such as Project Driveway, are the largest in the world and have accumulated more than 1.2 million miles of real-world driving by consumers, celebrities, business partners and government agencies. More than 6,000 individuals have driven the fuel cell powered Chevrolet Equinox, either in short drives, such as media or special events, or as part of Project Driveway. To date, their feedback has led to technology improvements such as extending fuel cell stack life and improvements in the regenerative braking system, which has also benefited our Two-Mode Hybrid vehicles, and improvements in the infrastructure of fueling stations for hydrogen fuel cell electric vehicles. In addition, the knowledge gained during Project Driveway on the fuel cell itself has affected the development of the Chevrolet Volt battery as we are applying fuel cell thermal design knowledge to the Chevrolet Volt battery design. Project Driveway operates in Washington DC and California (including Los Angeles, Orange County and Sacramento) for the California Fuel Cell Partnership and the California Air Resources Board (CARB). Project Driveway also operates in the New York Metropolitan area in Westchester County with expansion to the greater New York City area due to recent openings of hydrogen fueling stations at JFK International Airport and in the Bronx. Most Project Driveway participants drive Chevrolet Equinoxes for two months with the cost of fuel and insurance provided free in exchange for participant feedback. The Chevrolet Equinox fuel cell electric vehicles do not use any gasoline or oil and emit only water vapor. We have made significant progress on the fuel cell stack for a second-generation fuel cell vehicle, though we currently have no vehicle program approved.

### *OnStar*

Advancements in telematics technology are demonstrated through our OnStar service. OnStar's in-vehicle safety, security and communications service is the automotive industry's leading telematics provider, available on more than 30 of our 2010 model year vehicles and currently serving approximately 5.5 million subscribers. OnStar's key services include: Automatic Crash Response, Stolen Vehicle Assistance, Turn-by-Turn Navigation, OnStar Vehicle Diagnostics and Hands-Free Calling. In May 2009 OnStar announced the development of an Injury Severity Prediction based on the findings of a Center for Disease Control and Prevention expert panel. This will allow OnStar advisors to alert first responders when a vehicle crash is likely to have caused serious injury to the occupants. Data from OnStar's Automatic Crash Response system will be used to automatically calculate the Injury Severity Prediction which can assist responders in determining the level of care required and the transport destination for patients. OnStar has

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

also expanded its Stolen Vehicle Assistance services with the announcement of Remote Ignition Block. This will allow an OnStar Advisor to send a remote signal to a subscriber's stolen vehicle to prevent the vehicle from restarting once the ignition is turned off. This capability will not only help authorities recover stolen vehicles, but can also prevent or shorten dangerous high speed pursuits.

### *Other Technologies*

Other safety systems include the third generation of our StabiliTrak electronic stability control system. In addition to controlling brakes and reducing engine power, the latest iteration of the system combines active front steering to turn the front wheels into the skid when the rear wheels lose traction. Our Lane Departure Warning System and Side Blind Zone Alert System extend and enhance driver awareness and vision.

Refer to "Environmental and Regulatory Matters" for a discussion of vehicle emissions requirements, vehicle noise requirements, fuel economy requirements and safety requirements, which also affect our research and development activities.

### *Product Development*

Our vehicle development activities are integrated into a single global organization. This strategy built on earlier efforts to consolidate and standardize our approach to vehicle development.

For example, in the 1990s Old GM merged 11 different engineering centers in the U.S. into a single organization. In 2005, GM Europe Engineering was created, following a similar consolidation from three separate engineering organizations. At the same time, we and Old GM have grown our engineering operations in emerging markets in the Asia Pacific and Latin America/Africa/Middle East (LAAM) regions.

As a result of this process, product development activities are fully integrated on a global basis under one budget and one decision-making group. Similar approaches have been in place for a number of years in other key functions, such as powertrain, purchasing and manufacturing, to take full advantage of our global footprint and resources.

Under our global vehicle architecture strategy and for each of our nine global architectures, we define a specific range of performance characteristics and dimensions supporting a common set of major underbody components and subsystems with common interfaces.

A centralized organization is responsible for many of the non-visible parts of the vehicle, referred to as the architecture, such as steering, suspension, the brake system, the heating, ventilation and air conditioning system and the electrical system. This team works very closely with the global architecture development teams around the world, who are responsible for components that are unique to each brand, such as exterior and interior design, tuning of the vehicle to meet the brand character requirements and final validation to meet applicable government requirements.

We currently have nine different global architectures that are assigned to regional centers around the world. The allocation of the architectures to specific regions is based on where the expertise for the vehicle segment resides, e.g., mini and small vehicles in Asia Pacific, compact vehicles in Europe and fullsize pick-up trucks, sport utility vehicles, midsize vehicles and crossover vehicles in North America.

The nine global architectures are:

- Mini
- Small
- Compact
- Full and Midsize
- Fullsize Truck
- Rear-Wheel Drive and Performance
- Crossover
- Midsize Truck
- Electric

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### *Intellectual Property*

We generate and hold a significant number of patents in a number of countries in connection with the operation of our business. While none of these patents by itself is material to our business as a whole, these patents are very important to our operations and continued technological development. In addition, we hold a number of trademarks and service marks that are very important to our identity and recognition in the marketplace.

### **Raw Materials, Services and Supplies**

We purchase a wide variety of raw materials, parts, supplies, energy, freight, transportation and other services from numerous suppliers for use in the manufacture of our products. The raw materials are primarily comprised of steel, aluminum, resins, copper, lead and platinum group metals. We have not experienced any significant shortages of raw materials and normally do not carry substantial inventories of such raw materials in excess of levels reasonably required to meet our production requirements. In 2009 the weakening of commodity prices experienced in the latter part of 2008 was generally reversed, with prices returning to more historical levels in the year ended 2009 and having the effect of increasing our costs. In a gradually recovering global economic climate, this shift is believed to be the result of speculative activity and the weakening of the U.S. Dollar combined with increased confidence and mild improvements in underlying demand.

In some instances, we purchase systems, components, parts and supplies from a single source, and may be at an increased risk for supply disruptions. Based on our standard payment terms with our systems, components and parts suppliers, we are generally required to pay most of these suppliers on average 47 days following delivery with weekly disbursements.

### **Environmental and Regulatory Matters**

#### *Automotive Emissions Control*

We are subject to laws and regulations, regarding vehicle exhaust emission standards, vehicle evaporative emission standards and onboard diagnostic system (OBD) requirements, in the regions throughout the world in which we sell cars, trucks and heavy-duty engines.

#### *North America*

The U.S. federal government imposes stringent emission control requirements on vehicles sold in the U.S., and additional requirements are imposed by various state governments, most notably California. These requirements include pre-production testing of vehicles, testing of vehicles after assembly, the imposition of emission defect and performance warranties and the obligation to recall and repair customer owned vehicles that do not comply with emissions requirements. We must obtain certification that the vehicles will meet emission requirements from the Environmental Protection Agency (EPA) before we can sell vehicles in the U.S. and Canada and from the CARB before we can sell vehicles in California and other states that have adopted the California emissions requirements.

The EPA and the CARB continue to emphasize testing on vehicles sold in the U.S. for compliance. We believe that our vehicles meet currently applicable EPA and CARB requirements. If our vehicles do not comply with the emission standards or if defective emission control systems or components are discovered in such testing, or as part of government required defect reporting, we could incur substantial costs related to emissions recalls. We expect that new CARB and federal requirements will increase the time and mileage periods over which manufacturers are responsible for a vehicle's emission performance.

The EPA and the CARB emission requirements currently in place are referred to as Tier 2 and Low Emission Vehicle (LEV) II. The Tier 2 requirements began in 2004 and were fully phased-in by the 2009 model year, while the LEV II requirements began in 2004 and increase in stringency each year through the 2010 model year. Fleet-wide compliance with the Tier 2 and LEV II standards must be achieved based on a sales-weighted fleet average. CARB is developing its next generation emission standards, LEV III,

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which will further increase the stringency of its emission standards. Based on discussions with the CARB staff, we expect the LEV III requirements to be adopted in the second half of 2010 and to apply beginning in the 2014 model year. California has also passed legislation and enacted a regulation to control the emissions of greenhouse gases. Since we believe this regulation is effectively a form of fuel economy requirement, it is discussed under "Automotive Fuel Economy." In addition, both the CARB and the EPA have adopted more stringent standards applicable to heavy-duty trucks.

California law requires that a specified percentage of cars and certain light-duty trucks sold in the state must be zero emission vehicles (ZEV), such as electric vehicles or hydrogen fuel cell vehicles. This requirement started at 10% for the 2005 model year and increased in subsequent years. Manufacturers have the option of meeting a portion of this requirement with partial ZEV credit for vehicles that meet very stringent exhaust and evaporative emission standards and have extended emission system warranties. An additional portion of the ZEV requirement can be met with vehicles that meet these partial ZEV requirements and incorporate advanced technology, such as a hybrid electric propulsion system meeting specified criteria. We are complying with the ZEV requirements using a variety of means, including producing vehicles certified to the partial ZEV requirements. California recently adopted changes applicable to the 2012 and later model years that allow an additional portion of the ZEV requirements to be met with PHEVs, including E-REV's such as the Chevrolet Volt, that meet partial ZEV requirements and other specified criteria. CARB has also announced plans to adopt, in the second half of 2010, 2015 model year and later requirements for ZEVs and PHEVs to achieve greenhouse gas as well as criteria pollutant emission reductions.

The Clean Air Act permits states that have areas with air quality compliance issues to adopt the California car and truck emission standards in lieu of the federal requirements. Ten states, including New York, Massachusetts, Maine, Vermont, Connecticut, Pennsylvania, Rhode Island, New Jersey, Oregon and Washington, currently have these standards in effect. Maryland and New Mexico have adopted the California standards effective beginning in the 2011 model year and Arizona's standards are effective beginning in the 2012 model year. Additional states could also adopt the California standards in the future.

In addition to the exhaust emission programs previously discussed, advanced OBD systems, used to identify and diagnose problems with emission control systems, have been required under federal and California law since the 1996 model year. Problems detected by the OBD system have the potential of increasing warranty costs and the chance for recall. OBD requirements become more challenging each year as vehicles must meet lower emission standards, and new diagnostics are required. Beginning with the 2004 model year, California adopted more stringent OBD requirements, including new design requirements and corresponding enforcement procedures, and we have implemented hardware and software changes to comply with these more stringent requirements. In addition, California adopted technically challenging new OBD requirements that take effect from the 2008 through 2013 model years.

The federal Tier 2 and California evaporative emission LEV II requirements began phasing-in with the 2004 model year. The federal requirements are being harmonized with the California requirements beginning with a 2009 model year phase-in. California plans to further increase the stringency of its requirements as part of its LEV III rulemaking.

### *Europe*

In Europe emissions are regulated by two different entities: the European Union (EU) and the United Nations Economic Commission for Europe (UN ECE). The EU imposes stringent emission control requirements on vehicles sold in all 27 EU Member States, and other countries apply regulations under the framework of the UN ECE. EU member states can give tax incentives to automobile manufacturers for vehicles which meet emission standards earlier than the compliance date. This can result in specific market requirements for automobile manufacturers to introduce technology earlier than is required for compliance with the EU emission standards. The current EU requirements include type approval of preproduction testing of vehicles, testing of vehicles after assembly and the obligation to recall and repair customer owned vehicles that do not comply with emissions requirements. EU and UN ECE requirements are equivalent in terms of stringency and implementation. We must demonstrate that vehicles will meet emission requirements in witness tests and obtain type approval from an approval authority before we can sell vehicles in the EU.

Emission requirements in Europe will become even more stringent in the future. A new level of exhaust emission standards for cars and light-duty trucks, Euro 5 standards, were applied in September 2009, while stricter Euro 6 standards are expected to apply beginning in 2014. The OBD requirements associated with these new standards will become more challenging as well. The new

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European emission standards focus particularly on reducing emissions from diesel vehicles. Diesel vehicles have become important in the European marketplace, where they encompass 50% of the market share. The new requirements will require additional technologies and further increase the cost of diesel engines, which currently cost more than gasoline engines. To comply with Euro 6, we expect that technologies need to be implemented which are identical to those being developed to meet U.S. emission standards. The technologies available today are not cost effective and would therefore not be suitable for the European market for small and midsize diesel vehicles, which typically are under high cost pressure. Further, measures to reduce exhaust pollutant emissions have detrimental effects on vehicle fuel economy which drives additional technology cost to maintain fuel economy.

In the long-term, notwithstanding the already low vehicle emissions in Europe, regulatory discussions in Europe are expected to continue. Regulators will continue to refine the testing requirements addressing issues such as test cycle, durability, OBD, in-service conformity and off-cycle emissions.

### *International Operations*

Within the Asia Pacific region, our vehicles are subject to a broad range of vehicle emission laws and regulations. China has implemented European standards, with Euro 4 standards first applied in Beijing in 2008. Shanghai implemented Euro 4 standards with European OBD requirements for newly registered vehicles in November 2009 and other cities are expected to implement the same standards for newly registered vehicles in 2010. China plans to implement Euro 4 standards nationwide beginning in July 2010 for new vehicle type approvals and beginning in July 2011 for newly registered vehicles. Since January 2009 South Korea has implemented the CARB emission Fleet Average System with different application timings and levels of nonmethanic organic gas targets for gasoline and liquefied petroleum gas powered vehicles. In September 2009 South Korea implemented Euro 5 standards for diesel powered vehicles. South Korea has adopted CARB standards for gasoline powered vehicles and EU regulations for diesel powered vehicles for OBD and evaporative emissions. The Association of Southeast Asian Nations (ASEAN) Committee has agreed that the major ASEAN countries Thailand, Malaysia, Indonesia, Philippines and Singapore will implement Euro 4 standards in 2012, although implementation of OBD requirements is still under study. In India, Bharat Stage IV emission standards will be required for new vehicle registrations in 11 major cities and Bharat Stage III emission standards will be required throughout India beginning in April 2010. Japan sets specific exhaust emission and durability standards, test methods and driving cycles. In Japan, OBD is required with both EU and U.S. OBD systems accepted. All other countries in which we conduct operations within the Asia Pacific region either require or allow some form of EPA, EU or UN ECE style emission regulations with or without OBD requirements.

Within the LAAM region, some countries follow the U.S. test procedures, standards and OBD requirements and some follow the EU test procedures, standards and OBD requirements with different levels of stringency. In terms of standards, Brazil implemented national LEV standards, L5, which preceded Tier 2 standards in the U.S., for passenger cars and light commercial vehicles in January 2009. Brazil has published new emission standards, L6, which are based on Euro 5 standards, for light diesel and gasoline vehicles. L6 standards for light diesel vehicles are to be implemented in January 2013, which mandate OBD requirements for light diesel vehicles in 2015. L6 standards for light gasoline vehicles are to be implemented in January 2014 for new types and January 2015 for all models. Argentina implemented Euro 4 standards starting with new vehicle registrations in January 2009 and is moving to Euro 5 standards in January 2012 for new vehicle types and January 2014 for all models. Chile currently requires Euro 3 standards for gasoline vehicles and Euro 4 standards for diesel vehicles and has proposed Euro 4 standards for gasoline vehicles beginning in September 2010 and Euro 5 standards for diesel vehicles beginning in September 2011. Other countries in the LAAM region either have some level of U.S. or EU standards or no standards at all.

### *Industrial Environmental Control*

Our operations are subject to a wide range of environmental protection laws including those laws regulating air emissions, water discharges, waste management and environmental cleanup. In connection with the 363 Sale we have assumed various stages of investigation for sites where contamination has been alleged and a number of remediation actions to clean up hazardous wastes as required by federal and state laws. Certain environmental statutes require that responsible parties fund remediation actions regardless of fault, legality of original disposal or ownership of a disposal site. Under certain circumstances these laws impose joint and several liability, as well as liability for related damages to natural resources.

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The future effect of environmental matters, including potential liabilities, is often difficult to estimate. Environmental reserves are recorded when it is probable that a liability has been incurred and the amount of the liability is reasonably estimable. This practice is followed whether the claims are asserted or unasserted. The amounts of current reserves are expected to be paid out over the periods of remediation for the applicable sites, which typically range from two to 30 years.

The following table summarizes the expenses for site remediation actions, including ongoing operations and maintenance (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Site remediation expenses	\$ 3	\$ 34	\$ 94	\$ 104

It is possible that such remediation actions could require average annual expenditures of \$30 million over the next five years.

Remediation costs and other damages for which we ultimately may be responsible are not reasonably estimable because of uncertainties with respect to factors such as our connection to the site or to materials located at the site, the involvement of other potentially responsible parties, the application of laws and other standards or regulations, site conditions and the nature and scope of investigations, studies and remediation to be undertaken (including the technologies to be required and the extent, duration and success of remediation). As a result, we are unable to determine or reasonably estimate the amount of costs or other damages for which we are potentially responsible in connection with these sites, although that total could be substantial.

To mitigate the effects our worldwide facilities have on the environment we are committed to convert as many of our worldwide facilities as possible to landfill-free facilities. Landfill-free facilities send no waste to landfills, waste is either recycled or used to create energy. As part of Old GM's commitment to reduce the effect its worldwide facilities had on the environment, Old GM had committed to convert half of its major global manufacturing operations to landfill-free facilities by 2010. This landfill-free strategy translated, on an individual facility basis, to more than 70 of Old GM's manufacturing operations worldwide. At July 10, 2009 we had acquired, in connection with the 363 Sale, 56 landfill-free manufacturing facilities worldwide. At our landfill-free facilities, 97% of waste materials are recycled or reused and 3% is converted to energy at waste-to-energy facilities. We estimate that over 2 million tons of waste materials were recycled or reused by us and Old GM in 2009 and estimate that 41,000 tons of waste materials from us and Old GM in 2009 were converted to energy at waste-to-energy facilities. These numbers will increase as additional manufacturing sites reach landfill-free status.

We currently have not announced publicly any future targets to reduce CO<sub>2</sub> emission levels from our worldwide facilities; however, we are continuing to make significant progress in further reducing CO<sub>2</sub> emission levels. Seven of our facilities in Europe are included in and comply with the European Emissions Trading Scheme, which is being implemented to meet the European Community's greenhouse gas reduction commitments under the Kyoto Protocol. We and Old GM reported in accordance with the Global Reporting Initiative, the Carbon Disclosure Project, the EPA Climate Leaders Program and the Department of Energy (DOE) 1605(b) program since their inception. We are implementing and publicly reporting on various voluntary initiatives to reduce energy consumption and greenhouse gas emissions from our worldwide operations. In 2005 Old GM had a 2010 target of an 8% reduction in CO<sub>2</sub> emissions from its worldwide facilities compared to Old GM's worldwide facilities 2005 emission levels. By 2008 Old GM had exceeded this target by reducing CO<sub>2</sub> emissions from its worldwide facilities by 20% compared to 2005 levels.

***Automotive Fuel Economy******North America***

The 1975 Energy Policy and Conservation Act (EPCA) provided for average fuel economy requirements for fleets of passenger cars built for the 1978 model year and thereafter. For the 2009 model year, our and Old GM's domestic passenger car fleet achieved a Corporate Average Fuel Economy (CAFE) of 31.1 mpg, which exceeded the standard of 27.5 mpg. The estimated CAFE for our 2010 model year domestic passenger cars is 30.3 mpg, which would also exceed the 27.5 mpg standard applicable for that model year.

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Cars that are imported for sale in the U.S. are accounted for separately. For our and Old GM's imported passenger cars, the 2009 model year CAFE was 30.3 mpg, which exceeded the requirement of 27.5 mpg. The estimated CAFE for our 2010 model year imported passenger cars is 34.5 mpg, which would also exceed the applicable requirement.

Fuel economy standards for light-duty trucks became effective in 1979. Starting with the 2008 model year, the National Highway Traffic Safety Administration (NHTSA) implemented substantial changes to the structure of the truck CAFE program, including reformed standards based upon truck size. Under the existing truck rules, reformed standards are optional for the 2008 through 2010 model years. Old GM chose to comply with these optional reform-based standards beginning with the 2008 model year. Our and Old GM's light-duty truck CAFE performance for the 2009 model year was 23.7 mpg, which exceeds our and Old GM's reformed requirement of 22.5 mpg. Our projected reform standard for light-duty trucks for the 2010 model year is 22.9 mpg and our projected performance under this standard is 23.7 mpg.

In 2007 Congress passed the Energy Independence and Security Act, which directed NHTSA to modify the CAFE program. Among the provisions in the new law was a requirement that fuel economy standards continue to be set separately for cars and trucks that combined would increase to at least 35.0 mpg by 2020.

In addition, California has passed legislation (AB 1493) requiring the CARB to regulate greenhouse gas emissions from vehicles (which is the same as regulating fuel economy). This California program is currently established for the 2009 through 2016 model years. California needed a federal waiver to implement this program and was granted this waiver on June 30, 2009.

Further, in response to a U.S. Supreme Court decision, the EPA was directed to establish a new program to regulate greenhouse gas emissions for vehicles under the Clean Air Act. As a result, in September 2009 the EPA and the NHTSA issued a joint proposal to establish a coordinated national program consisting of new requirements for model year 2012 through 2016 light-duty vehicles that will reduce greenhouse gas emissions under the Clean Air Act and improve fuel economy pursuant to the CAFE standards under the EPCA. These reform-based standards will apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles (collectively, light-duty vehicles) built in model years 2012 through 2016. The rule is to be finalized by April 2010. Our current product plan projects compliance with the federal and California programs through 2016.

CARB has agreed that compliance with the EPA's greenhouse gas emission standards will be deemed compliant with the AB 1493 standards for 2012 through 2016 model years. In the meantime, California's program to regulate vehicle greenhouse gases is in effect for the 2009-2011 model years. The following table illustrates California's program compliance standards and our projected compliance (in grams per mile CO<sub>2</sub>-equivalent):

	2009 Model Year		2010 Model Year		2011 Model Year	
	Standard	Combined GM and Old GM	Standard	GM(a)	Standard	GM(a)
Passenger car and light-duty truck 1 fleet	323	292	301	303	267	290
Light-duty truck 2 + medium-duty passenger vehicle fleet	439	413	420	387	390	394

(a) Our performance projections for the 2010 model year for the passenger car and light-duty truck 1 fleet as well as both fleets for the 2011 model year are projected to be more than the standard. We are still projecting compliance due to the allowed use of credits earned in previous years.

*Europe*

In Europe, the EU passed legislation in December 2008 to regulate CO<sub>2</sub> emissions beginning in 2012. Based on a target function of CO<sub>2</sub> to vehicle weight, each manufacturer must meet a specific target based on the CO<sub>2</sub> target value on this curve for each vehicle it sells, but with the ability to average across its fleet in each year. This requirement will be phased in with 65% of vehicles sold in 2012 required to meet this target, 75% in 2013, 80% in 2014 and 100% in 2015 and beyond. Automobile manufacturers can earn super-credits under this legislation for the sales volume of vehicles having a specific CO<sub>2</sub> value of less than 50 grams CO<sub>2</sub>. This is intended to encourage the early introduction of ultra-low CO<sub>2</sub> vehicles such as the Chevrolet Volt and Opel/Vauxhall Ampera by providing an

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additional incentive to reduce the CO<sub>2</sub> fleet average. Automobile manufacturers may gain credit of up to 7 grams for eco-innovations for those technologies which improve real-world fuel economy but may not show in the test cycle, such as solar panels on vehicles. There is also a 5% credit for E85 flexible-fuel vehicles if more than 30% of refueling stations in an EU member state sell E85. Further regulatory detail is being developed in the comitology process, which develops the detail of the regulatory requirements through a process involving the European Commission and member states. The legislation sets a target of 95 grams per kilometer CO<sub>2</sub> for 2020 with an impact assessment required to further assess and develop this requirement. We have developed a compliance plan by adopting operational CO<sub>2</sub> targets for each market entry in Europe.

In October 2009 the EU Commission adopted a proposal to regulate CO<sub>2</sub> emissions from light commercial vehicles. The proposal is modeled after the CO<sub>2</sub> regulation for passenger cars. It proposes that new light commercial vehicles meet a fleet average CO<sub>2</sub> target of 175 grams per kilometer CO<sub>2</sub> with a phase-in of compliance beginning with 75% of new light commercial vehicles by 2014, 80% by 2015 and 100% compliance by 2016. The manufacturer-specific CO<sub>2</sub> compliance target will be determined as a function of vehicle curb mass. Flexibilities, such as eco-innovations and super credits, are part of the regulatory proposal as well. A long-term target for 2020 of 135g/km has been also proposed, to be confirmed after an impact assessment in 2013. We are currently making an assessment of the effect of the proposal on our fleet of light commercial vehicles. The EU Commission's proposal will now go through the legislative process with the European Parliament and European Council, during which we expect some modifications to be adopted.

A regulation has been adopted that will require low-rolling resistance tires, tire pressure monitoring systems and gear shift indicators by 2012. An additional regulation has been adopted that will require labeling of tires for noise, fuel efficiency and rolling resistance, affecting vehicles at sale as well as the sale of tires in the aftermarket. Further, there are plans to introduce regulatory proposals regarding energy efficiency of air conditioning systems and fuel economy meters.

Sixteen EU member states have introduced CO<sub>2</sub> based vehicle taxation schemes. Tax measures are within the jurisdiction of the EU member states. We are faced with significant challenges relative to the predictability of future tax laws and differences in the tax schemes and thresholds.

### *International Operations*

In the Asia Pacific region, we face new or increasingly more stringent fuel economy standards. In China, Phase 3 fuel economy standards are under development and may move from a vehicle pass-fail system to a corporate fleet average scheme. Phase 3 fuel economy standards are expected to increase by 15% to 20% from the current Phase 2 targets and implementation is expected to begin in 2012. Phase 2 currently allows some relief for certain vehicle types and vehicles with automatic transmissions. It is unclear at this time if that relief will be carried over in Phase 3. In Korea, new fuel economy/CO<sub>2</sub> targets were announced last year as part of the government's low carbon/green growth strategy. These targets are planned to be set at levels more stringent than fuel economy/CO<sub>2</sub> targets in the U.S., but less stringent than fuel economy/CO<sub>2</sub> targets in Europe. Phase-in is expected to begin in 2012 and finish in 2015 with manufacturers having the option to certify either on a fuel consumption basis or a CO<sub>2</sub> emissions basis. Each manufacturer will be given a corporate target to meet based on an overall industry fleet fuel economy/CO<sub>2</sub> average. Other aspects of the program being considered include credits, incentives, and penalties. Legislation of the new standard is expected to be completed by the end of 2010. In Australia the government is conducting an assessment of possible vehicle fuel efficiency measures including shifting from voluntary to mandatory standards and how any such move would align with the government's policy response to climate change. Before the government makes any decisions on additional fuel efficiency measures, it will conduct an industry consultation. For the first time, India is expected to establish fuel economy norms based on weight and measured in CO<sub>2</sub> emissions that will become mandatory sometime in 2011. Final targets and labeling requirements are still to be determined. In April 2009 automobile manufacturers in India began to voluntarily declare the fuel economy of each vehicle at the point of sale.

In Brazil, governmental bodies and the Brazilian automobile makers association established, in 2009, a national voluntary program for evaluation and labeling of light passenger and commercial vehicles equipped with internal combustion engines. This voluntary program aims to increase vehicles energy efficiency by labeling vehicles with fuel consumption measurements for urban, extra-urban and combined (equivalent to city and highway mpg measurements in the U.S.) driving conditions. We and Old GM was engaged in this program along with other leading car manufacturers.

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### ***Chemical Regulations***

#### *North America*

Several states have introduced legislation related to green chemistry and product stewardship initiatives. These initiatives would give states broad regulatory authority in relation to the use of certain chemical substances and potentially affect a manufacturer's vehicle life-cycle responsibilities. For example, we expect California's Green Chemistry regulations to be finalized at the end of 2010. Currently, vehicles are not included in the scope of the regulations; however, if vehicles are included in future revised regulations it could lead to increased product complexity and cost.

#### *Europe*

In June 2007 the EU implemented its regulatory requirements to register, evaluate, authorize and restrict the use of chemical substances (REACH). The regulation deals with chemical substances produced with a production volume of one ton or more per year are required to be registered with a new European Chemicals Agency. During REACH's pre-registration phase, Old GM and our suppliers registered those substances identified by the regulation. REACH is to be phased in over a 10 year period from the implementation date. During the implementation phase, REACH will require ongoing action from us, Original Equipment Manufacturers (OEM), our suppliers and other suppliers in the supply chain. Under REACH, substances of very high concern may require authorization for further use and may also be restricted in the future, which could increase the cost of certain substances that are used to manufacture vehicles and parts. In addition, our research and development initiatives may be diverted to address future REACH requirements. We are continually monitoring the implementation of REACH and its effect on our suppliers and the automotive industry to maintain compliance.

### ***Safety***

New vehicles and equipment sold in the U.S. are required to meet certain safety standards promulgated by the NHTSA. The National Traffic and Motor Vehicle Safety Act of 1966 authorized the NHTSA to determine these standards and the schedule for implementing them. In addition, in the case of a vehicle defect that creates an unreasonable risk to motor vehicle safety or does not comply with a safety standard, the National Traffic and Motor Vehicle Safety Act of 1966 generally requires that the manufacturer notify owners and provide a remedy. The Transportation Recall Enhancement, Accountability and Documentation Act requires us to report certain information relating to certain customer complaints, warranty claims, field reports and lawsuits in the U.S. and fatalities and recalls outside the U.S.

We are subject to certain safety standards and recall regulations in the markets outside the U.S. in which we operate. These standards often have the same purpose as the U.S. standards, but may differ in their requirements and test procedures. From time to time, other countries pass regulations which are more stringent than U.S. standards. Most countries require type approval while the U.S. and Canada require self-certification.

### ***Vehicular Noise Control***

Vehicles we manufacture and sell may be subject to noise emission regulations.

In the U.S., passenger cars and light-duty trucks are subject to state and local motor vehicle noise regulations. We are committed to designing and developing our products to meet these noise regulations. Since addressing different vehicle noise regulations established in numerous state and local jurisdictions is not practical, we attempt to identify the most stringent requirements and validate to those requirements. In the rare instances where a state or local noise regulation is not covered by the composite requirement, a waiver of the requirement is requested and to date no significant cost has resulted from such a request. Medium to heavy-duty trucks are regulated at the federal level. Federal truck regulations preempt all United States state or local noise regulations for trucks over 10,000 lbs. gross vehicle weight rating.

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Outside the U.S., noise regulations have been established by authorities at the national and supranational level (e.g., EU or UN ECE for Europe). We believe that our vehicles meet all applicable noise regulations in the markets where they are sold.

While current noise emission regulations serve to regulate maximum allowable noise levels, proposals have been made to regulate minimum noise levels. These proposals stem from concern that vehicles that are relatively quiet, specifically hybrids, may not be heard by the sight-impaired. We are committed to design and manufacture vehicles to comply with potential noise emission regulations that may come from these proposals.

### *Potential Effect of Regulations*

We have established aggressive near-term and long-term plans to develop and bring to market technologies designed to further reduce emissions, mitigate remediation expenses related to environmental liabilities, improve fuel efficiency, monitor and enhance the safety features of our vehicles and provide additional value and benefits to our customers. This is illustrated by our commitment to marketing more hybrid vehicles, our accelerated commitment to develop electrically powered vehicles, our use of biofuels in our expanded portfolio of flexible-fuel vehicles and enhancements to conventional internal combustion engine technology have contributed to the fuel efficiency of our vehicles. In addition, the conversion of many of our manufacturing facilities to landfill-free status has shown our commitment to mitigate potential environmental liability. We believe that the development and global implementation of new, cost-effective energy technologies in all sectors is the most effective way to improve energy efficiency, reduce greenhouse gas emissions and mitigate environmental liabilities.

Despite these advanced technology efforts, our ability to satisfy fuel economy and CO<sub>2</sub> requirements is contingent on various future economic, consumer, legislative and regulatory factors that we cannot control and cannot predict with certainty. If we are not able to comply with specific new fuel economy requirements, which include higher CAFE standards and state CO<sub>2</sub> requirements such as those imposed by the AB 1493 Rules, then we could be subject to sizeable civil penalties or have to restrict product offerings drastically to remain in compliance. Environmental liabilities, which we may be responsible for, are not reasonably estimable and could be substantial. In addition, violations of safety standards could result in the recall of one or more of our products. In turn, any of these actions could have substantial adverse effects on our operations, including facility idling, reduced employment, increased costs and loss of revenue.

### **Pension Legislation**

We are subject to a variety of federal rules and regulations, including the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the Pension Protection Act of 2006, which govern the manner in which we fund and administer our pensions for our retired employees and their spouses. The Pension Protection Act of 2006 is designed, among other things, to more appropriately reflect the value of pension assets and liabilities to determine funding requirements. Under the Pension Protection Act of 2006 we expect there will be no cash funding requirement for our U.S. hourly and salaried pension plans in 2010. We rereasure our U.S. pension plans at the end of each year and for significant plan amendments, benefit modifications and related events. Based on preliminary asset returns, the year-to-date discount rate, assuming interest rates remain at current levels and pension fund assets earn 8.5% annually going forward, we may need to make significant contributions to the U.S. pension plans in 2013 and beyond. We are currently analyzing our pension funding strategies. We also maintain pension plans for employees in a number of countries outside the U.S., which are subject to local laws and regulations.

### **Export Control**

We are subject to U.S. export control laws and regulations, including those administered by the U.S. Departments of State, Commerce, and Treasury. In addition, most countries in which we do business have applicable export controls. Our Office of Export Compliance and global Export Compliance Officers are responsible for working with our business units to ensure compliance with these laws and regulations. Non-U.S. export controls are likely to become increasingly significant to our business as we develop our research and development operations on a global basis. If we fail to comply with applicable export compliance regulations, we and our employees could be subject to criminal and civil penalties and, under certain circumstances, loss of export privileges and debarment from doing business with the U.S. government and the governments of other countries.

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### Significant Transactions

On July 10, 2009 we completed the acquisition of substantially all of the assets and assumed certain liabilities of Old GM and its direct and indirect subsidiaries (collectively, the Sellers). The 363 Sale was consummated in accordance with the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, as amended, (Purchase Agreement) between us and the Sellers, and pursuant to the Bankruptcy Court's sale order dated July 5, 2009.

In connection with the 363 Sale, the purchase price we paid to Old GM equaled the sum of:

- A credit bid in an amount equal to the total of: (1) debt of \$19.8 billion under Old GM's UST Loan Agreement, plus notes of \$1.2 billion issued as additional compensation for the UST Loan Agreement, plus interest on such debt Old GM owed as of the closing date of the 363 Sale; and (2) debt of \$33.3 billion under Old GM's DIP Facility, plus notes of \$2.2 billion issued as additional compensation for the DIP Facility, plus interest Old GM owed as of the closing date, less debt of \$8.2 billion owed under the DIP Facility;
- The UST's return of the warrants Old GM previously issued to it;
- The issuance to MLC of 50 million shares (or 10%) of our common stock and warrants to acquire newly issued shares of our common stock initially exercisable for a total of 91 million shares of our common stock (or 15% on a fully diluted basis); and
- Our assumption of certain specified liabilities of Old GM (including debt of \$7.1 billion owed under the DIP Facility).

Under the Purchase Agreement, we are obligated to issue additional shares of our common stock to MLC (Adjustment Shares) in the event that allowed general unsecured claims against MLC, as estimated by the Bankruptcy Court, exceed \$35.0 billion. The maximum Adjustment Shares equate to 2% (or 10 million shares) of our common stock. The number of Adjustment Shares to be issued is calculated based on the extent to which estimated general unsecured claims exceed \$35.0 billion with the maximum number of Adjustment Shares issued if estimated general unsecured claims total \$42.0 billion or more. We determined that it is probable that general unsecured claims allowed against MLC will ultimately exceed \$35.0 billion by at least \$2.0 billion. In that circumstance, under the terms of the Purchase Agreement, we would be required to issue 2.9 million Adjustment Shares to MLC as an adjustment to the purchase price.

At July 10, 2009 we accrued \$113 million in Other liabilities and deferred income taxes related to this contingent obligation.

#### ***Agreements with the UST, UAW Retiree Medical Benefits Trust and Export Development Canada***

On July 10, 2009 we entered into the UST Credit Agreement and assumed debt of \$7.1 billion Old GM incurred under its DIP Facility. Immediately after entering into the UST Credit Agreement, we made a partial pre-payment, reducing the UST Loans principal balance to \$6.7 billion. An amendment to the UST Credit Agreement, as subsequently discussed, provides for quarterly payments of \$1.0 billion beginning in December 2009. At March 31, 2010 the first two quarterly payments have been made reducing the UST Loans principal balance to \$4.7 billion. We also entered into the VEBA Note Agreement and issued a note in the principal amount of \$2.5 billion (VEBA Notes) to the UAW Retiree Medical Benefits Trust (New VEBA).

We are required to prepay the UST Loans, VEBA Notes and Canadian Loan (as subsequently defined), in certain cases on a pro rata basis, in an amount equal to the net cash proceeds received from certain asset dispositions, casualty events, extraordinary receipts and the incurrence of certain debt. We can voluntarily repay all or a portion of the UST Loans or VEBA Notes at any time. Once repaid, we cannot reborrow under the UST Credit Agreement.

The obligations under the UST Credit Agreement and the VEBA Note Agreement are secured by substantially all of our assets, subject to certain exceptions, including our equity interests in certain of our foreign subsidiaries, limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries due to tax considerations.

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Proceeds of the DIP Facility of \$16.4 billion were deposited in escrow and will be distributed to us at our request if the following conditions are met: (1) the representations and warranties we made in the loan documents are true and correct in all material respects on the date of our request; (2) we are not in default on the date of our request taking into consideration the amount of the withdrawal request; and (3) the UST, in its sole discretion, approves the amount and intended use of the requested disbursement. Any unused amounts in escrow on June 30, 2010 are required to be used to repay the UST Loans and the Canadian Loan on a pro rata basis. Any proceeds remaining in the escrow account after the UST Loans and the Canadian Loan are repaid in full shall be returned to us.

On July 10, 2009 through our wholly-owned subsidiary General Motors of Canada Limited (GMCL), we also entered into the amended and restated Canadian Loan Agreement with EDC, as a result of which GMCL has a CAD \$1.5 billion (equivalent to \$1.3 billion when entered into) term loan (Canadian Loan). An amendment to the UST Credit Agreement provides for quarterly payments of \$192 million beginning December 2009. At March 31, 2010 the first two quarterly payments had been made reducing the Canadian Loan principal balance to \$1.0 billion.

GMCL may voluntarily repay the Canadian Loan in whole or in part at any time. Once repaid, GMCL cannot reborrow under the Canadian Loan Agreement. We and 1908 Holdings Ltd., Parkwood Holdings Ltd., and GM Overseas Funding LLC, each of which is a Subsidiary Guarantor of GMCL, have guaranteed the Canadian Loan. Our guarantee of GMCL's obligations under the Canadian Loan Agreement is secured by a lien on the equity of GMCL. Because 65% of our ownership interest in GMCL was previously pledged to secure the obligations under the UST Credit Agreement and the VEBA Note Agreement, EDC received a first priority lien on 35% of our equity interest in GMCL and a second priority lien on the remaining 65%. With certain exceptions, GMCL's obligations under the Canadian Loan Agreement are secured by a first lien on substantially all of its and the Subsidiary Guarantors' assets, including GMCL's ownership interests in the Subsidiary Guarantors and a portion of GMCL's equity interests in General Motors Product Services Inc., a subsidiary of ours.

In November 2009 we signed amendments to the UST Credit Agreement and the Canadian Loan Agreement to provide for quarterly repayments of the UST Loans and Canadian Loan. Under these amendments, we agreed to make quarterly payments of \$1.0 billion and \$192 million to the UST and EDC, which began in the fourth quarter of 2009. Upon making such payments, equivalent amounts were released to us from escrow. In the event of an initial public offering of our equity, this payment schedule would be suspended. The remaining terms would remain unchanged versus the original agreement. Any funds remaining in our escrow account after repayment of the loans will be released to us.

### ***Agreement with Delphi Corporation***

In July 2009 we entered into the Delphi Master Disposition Agreement (DMDA) with Delphi Corporation (Delphi) and other parties. Under the DMDA, we agreed to acquire Delphi's global steering business (Nexteer), which supplies us and other OEMs with steering systems and columns, and four domestic facilities that manufacture a variety of automotive components, primarily sold to us. We and several third party investors who held the Delphi Tranche DIP facilities (collectively the Investors) agreed to acquire substantially all of Delphi's remaining assets through DIP HOLDCO, LLP, subsequently named Delphi Automotive LLP (New Delphi). Certain excluded assets and liabilities have been retained by a Delphi entity (DPH) to be sold or liquidated. In October 2009 we consummated the transaction contemplated by the DMDA with Delphi, New Delphi, Old GM and other sellers and other buyers that are party to the agreement, as more fully described in Note 5 to the consolidated financial statements. Refer to "Item 7 — Management's Discussion and Analysis of Financial Condition and Results of Operations — Strategic Initiatives — Delphi Master Disposition Agreement" for a description of the terms of the DMDA and related agreements.

### ***Holding Company Merger***

On October 19, 2009 we completed our holding company merger to implement a new holding company structure that is intended to provide greater financial and organizational flexibility. In connection with the merger, all of the outstanding shares of common stock and Series A Preferred Stock in our previous legal entity were exchanged on a one-for-one basis for new shares of our common stock and Series A Preferred Stock. These new securities have the same economic terms and provisions as the securities for which they were exchanged and are held by our securityholders in the same class evidencing the same proportional interest in us as the securityholders held prior to the exchange.

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In addition, in connection with the merger we entered into amended and restated warrant agreements and a Stockholders Agreement dated as of October 15, 2009, which are substantially identical to our prior warrant agreements and Stockholders Agreement dated as of July 10, 2009, respectively. Also in connection with the merger, GMCL entered into an amendment (Canadian Loan Amendment) to the Canadian Loan Agreement and we entered into an assignment and assumption agreement and amendment to the UST Credit Agreement and an assignment and assumption agreement and amendment to the VEBA Note Agreement. Refer to “Market for the Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities — Recent Sales of Unregistered Securities” for a further discussion on the merger.

**Employees**

At December 31, 2009 we employed 217,000 employees, of whom 151,000 (70%) were hourly employees and 66,000 (30%) were salaried employees. The following table summarizes employment by segment (in thousands):

	<u>Successor</u> <u>Year Ended</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>Years Ended</u> <u>December 31,</u> <u>2008</u> <u>2007</u>	
	GMNA(a)	102	116
GMIO	61	70	68
GME	53	55	57
Corporate	1	2	2
Total Worldwide	<u>217</u>	<u>243</u>	<u>266</u>
U.S. — Salaried(a)(b)(d)	26	29	34
U.S. — Hourly(a)(c)	51	62	78

- (a) Includes additional 11,000 employees due to the acquisition of Nexteer and four domestic facilities from Delphi on October 6, 2009, of which 2,000 are U.S. salaried employees, 5,000 are U.S. hourly employees and 4,000 are employees located outside the U.S.
- (b) 5,000 U.S. salaried employees irrevocably accepted the 2009 Salaried Window Program (a voluntary program, subject to management approval, to reduce salaried headcount based on individual eligibility and employees elections made) option or the GM severance program option.
- (c) 13,000 U.S. hourly employees elected to participate in Old GM’s 2009 Special Attrition Programs, which were introduced in February and June of 2009 and offered cash and other incentives for individuals who elected to retire or voluntarily terminate employment.
- (d) Includes employees in GMNA and Corporate.

Refer to Note 19 to the consolidated financial statements for additional information on our salaried and hourly severance programs.

At December 31, 2009 52,000 of our U.S. employees (or 67%) were represented by unions, of which 50,000 employees were represented by the UAW. In addition, many of our employees outside the U.S. were represented by various unions. At December 31, 2009 we had 388,000 U.S. hourly and 118,000 U.S. salaried retirees, surviving spouses and deferred vested participants.

**Segment Reporting Data**

Operating segment and principal geographic area data for July 10, 2009 through December 31, 2009, January 1, 2009 through July 9, 2009, and the years ended 2008 and 2007 are summarized in Note 33 to the consolidated financial statements.

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**Website Access to Our Reports**

Our internet website address is [www.gm.com](http://www.gm.com).

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 Securities Exchange Act of 1934, as amended, (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 (SEC).

In addition to the information about us and our subsidiaries contained in this 2009 Form 10-K, extensive information about us can be found on our website, including information about our management team, our brands and products and our corporate governance principles.

The public may read and copy the materials we file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Additionally, the SEC maintains an internet site that contains reports, proxy and information statements, and other information. The address of the SEC's website is [www.sec.gov](http://www.sec.gov).

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**Item 1A. Risk Factors**

We face a number of significant risks and uncertainties in connection with our operations. Our business, results of operations and financial condition could be materially adversely affected by the factors described below.

While we describe each risk separately, some of these risks are interrelated and certain risks could trigger the applicability of other risks described below. Also, the risks and uncertainties described below are not the only ones that we may face. Additional risks and uncertainties not presently known to us, or that we currently do not consider significant, could also potentially impair, and have a material adverse effect on, our business, results of operations and financial condition.

***Our business is highly dependent on sales volume. Global vehicle sales have declined significantly from their peak levels and there is no assurance that the global automobile market will recover in the near future or that it will not suffer a significant further downturn.***

Our business and financial results are highly sensitive to sales volume, as demonstrated by the effect of sharp declines in vehicle sales in the U.S. since 2007 and globally since 2008 on our business. Vehicle sales in the U.S. have fallen significantly on an annualized basis since their peak in 2007, and sales globally have shown steep declines on an annualized basis since their peak in January 2008. The deteriorating economic and market conditions that have driven the drop in vehicle sales, including declines in real estate and equity values, rising unemployment, tightened credit markets, depressed consumer confidence and weak housing markets, may not improve significantly during 2010 and may continue past 2010 and could deteriorate further. Although vehicle sales began to recover in the last quarter of 2009 and we expect that they will continue to recover in 2010, there is no assurance that any recovery in vehicle sales will continue. Further, sales volumes may decline more severely or take longer to recover than we expect, and if they do, our results of operations and financial condition will be materially adversely affected.

***Our ability to attract a sufficient number of consumers to consider our vehicles particularly our new products, including cars and crossover vehicles, is essential.***

Our ability to achieve long-term profitability depends on our ability to entice consumers to consider our products when purchasing a new vehicle. The automotive industry, particularly in the U.S., is very competitive and our competitors have been very successful in persuading customers that previously purchased our products to purchase their vehicles instead as is reflected by our loss of market

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share over the past three years. We believe that this is due, in part, to a negative public perception of our products in relation to those of some of our competitors. Changing this perception will be critical. If we are unable to change public perception of our company and products, particularly our new products, including cars and crossovers, our results of operations and financial condition could be materially adversely affected.

***Our continued ability to achieve cost reductions and to realize production efficiencies for our automotive operations is critical to our ability to return to profitability.***

We are continuing to implement a number of cost reduction and productivity improvement initiatives in our automotive operations, including substantial restructuring initiatives for our North American operations. Our future competitiveness depends upon our continued success in implementing these restructuring initiatives throughout our automotive operations, especially in North America. In addition, while some of the elements of cost reduction are within our control, others such as interest rates or return on investments, which influence our expense for pensions, depend more on external factors, and there can be no assurance that such external factors will not materially adversely affect our ability to reduce our structural costs. Reducing costs may prove difficult due to our focus on increasing advertising and our belief that engineering expenses necessary to improve the performance, safety, and customer satisfaction of our vehicles are likely to increase.

***The ability of our new executive management team to quickly learn the automotive industry and lead our company will be critical to our ability to succeed.***

During the last six months we have substantially changed our executive management team. We have appointed a new Chief Executive Officer and a new Chief Financial Officer, both of whom have no outside automotive industry experience. We have also promoted from within many new senior officers in areas ranging from marketing to engineering. It is important to our success that the new members of the executive management team quickly understand the automotive industry and that our senior officers quickly adapt and excel in their new senior management roles. If they are unable to do so, and as a result are unable to provide effective guidance and leadership, our business and financial results could be materially adversely affected.

***Failure of our suppliers, due to difficult economic conditions affecting our industry, to provide us with the systems, components and parts that we need to manufacture our automotive products and operate our business could result in a disruption in our operations and have a material adverse effect on our business.***

We rely on many suppliers to provide us with the systems, components and parts that we need to manufacture our automotive products and operate our business. In recent years, a number of these suppliers have experienced severe financial difficulties and solvency problems, and some have sought relief under the Bankruptcy Code or similar reorganization laws. This trend intensified in 2009 due to the combination of general economic weakness, sharply declining vehicle sales and tightened credit availability that has affected the automotive industry generally. Suppliers may encounter difficulties in obtaining credit or may receive an opinion from their independent public accountants regarding their financial statements that includes a statement expressing substantial doubt about their ability to continue as a going concern, which could trigger defaults under their financings or other agreements or impede their ability to raise new funds.

When comparable situations have occurred in the past, suppliers have attempted to increase their prices, pass through increased costs, alter payment terms or seek other relief. In instances where suppliers have not been able to generate sufficient additional revenues or obtain the additional financing they need to continue their operations, either through private sources or government funding, which may not be available, some have been forced to reduce their output, shut down their operations or file for bankruptcy protection. Such actions would likely increase our costs, create challenges to meeting our quality objectives and in some cases make it difficult for us to continue production of certain vehicles. To the extent we take steps in such cases to help key suppliers remain in business, our liquidity would be adversely affected. It may also be difficult to find a replacement for certain suppliers without significant delay.

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### ***Increase in cost, disruption of supply or shortage of raw materials could materially harm our business.***

We use various raw materials in our business including steel, non-ferrous metals such as aluminum and copper and precious metals such as platinum and palladium. The prices for these raw materials fluctuate depending on market conditions. In recent years, freight charges and raw material costs increased significantly. Substantial increases in the prices for our raw materials increase our operating costs and could reduce our profitability if we cannot recoup the increased costs through vehicle prices. In addition, some of these raw materials, such as corrosion-resistant steel, are only available from a limited number of suppliers. We cannot guarantee that we will be able to maintain favorable arrangements and relationships with these suppliers. An increase in the cost or a sustained interruption in the supply or shortage of some of these raw materials, which may be caused by a deterioration of our relationships with suppliers or by events such as labor strikes, could negatively affect our net revenues and profitability to a material extent.

### ***The pace of introduction and market acceptance of new vehicles is important to our success and the frequency of new vehicle introductions may be materially adversely affected by reductions in capital expenditures.***

Our competitors have introduced new and improved vehicle models designed to meet consumer expectations, and will continue to do so. Our profit margins, sales volumes and market shares may decrease if we are unable to produce models that compare favorably to these competing models. If we are unable to produce new and improved vehicle models on a basis competitive with the models introduced by our competitors, demand for our vehicles may be materially adversely affected. Further, the pace of our development and introduction of new and improved vehicles depends on our ability to successfully implement improved technological innovations in design, engineering and manufacturing, which requires extensive capital investment. Any capital expenditure cuts in this area that we may determine to implement in the future to reduce costs and conserve cash could reduce our ability to develop and implement improved technological innovations, which may materially reduce demand for our vehicles.

### ***Inadequate cash flow could materially adversely affect our business operations in the future.***

We will require substantial liquidity to implement long-term cost savings and restructuring plans, satisfy our obligations under the UST Credit Agreement, continue capital spending to support product programs and development of advanced technologies, and meet scheduled term debt and lease maturities, in each case as contemplated by our business plan. If our cash levels approach the minimum cash levels necessary to support our normal business operations, we may be forced to borrow additional funds at rates that may not be favorable, curtail capital spending, and reduce research and development and other programs that are important to the future success of our business. If this were to happen, our need for cash would be intensified.

Although we believe that the funding we received in connection with our formation and our purchase of substantially all of MLC's assets provides us with sufficient liquidity to operate our business in the near-term, our ability to maintain adequate liquidity in the medium- and long-term will depend significantly on the volume, mix and quality of vehicle sales and the continuing curtailment of operating expenses. Our liquidity needs are sensitive to changes in each of these and other factors.

### ***As part of our business plan, we have reduced compensation for our most highly paid executives and have reduced the number of our management and non-management salaried employees, and these actions may materially adversely affect our ability to hire and retain salaried employees.***

As part of the cost reduction initiatives in our business plan, and pursuant to the direction of the Special Master for TARP Executive Compensation we have imposed salary reductions on our most highly paid executives, and reduced benefits to a level that we believe is significantly lower than offered by other major corporations. Furthermore, the UST Credit Agreement restricts the compensation that we can provide to our top executives and prohibits certain types of compensation or benefits for any employees. At the same time, we have substantially decreased the number of salaried employees so that the workload is shared among fewer employees and in general the demands on each salaried employee are increased. Companies in similar situations have experienced significant difficulties in hiring and retaining highly skilled employees, particularly in competitive specialties. Given our compensation structure and increasing job demands, there is no assurance that we will be able to hire and retain the employees whose expertise is required to execute our business plan while at the same time developing and producing vehicles that will stimulate demand for our products.

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***Our plan to reduce the number of our retail channels and core brands and to consolidate our dealer network is likely to reduce our total sales volume, may not create the cost savings we anticipate and is likely to result in restructuring costs that may materially adversely affect our results of operations.***

As part of our business plan, we will focus our resources in the U.S. on our four core brands: Chevrolet, Cadillac, Buick and GMC. We completed the sale of Saab in February 2010, and the current business plan also provides for the resolution of HUMMER in 2010. In conjunction with these brand eliminations, there is no planned investment for Pontiac, and therefore the brand will be phased out by the end of 2010. We will also be winding down the Saturn brand and dealership networks in accordance with the deferred termination agreements that Saturn dealers have signed with us. We also intend to consolidate our dealer network by reducing the total number of our U.S. dealers to approximately 3,600 to 4,000 in the long term. We anticipate that this reduction in retail outlets, core brands and dealers will result in costs savings over time, but there is no assurance that we would realize the savings expected. Based on our experience and the experiences of other companies that have eliminated brands, models and/or dealers, we believe that our market share could decline because of these reductions. In addition, executing the phase-out of retail channels and brands and the reduction in the number of our dealers will require us to terminate established business relationships. There is no assurance that we will be able to terminate all of these relationships, and if we are not able to terminate substantially all of these relationships we would not be able to achieve all of the benefits we have targeted. In December 2009 President Obama signed legislation giving dealers access to neutral arbitration should they decide to contest the wind-down of their dealership. Under the terms of the legislation we have informed dealers as to why their dealership received a wind-down agreement. In turn, dealers were given a timeframe to file for reinstatement through the American Arbitration Association. Under the law, decisions in these arbitration proceedings must generally be made by June 2010 and are binding and final. We have sent letters to over 2,000 of our dealers explaining the reasons for their wind-down agreements and over 1,100 dealers have filed for arbitration. In response to the arbitration filings we reviewed each of the dealer reinstatement claims filed with the American Arbitration Association. Our review resulted in over 600 letters of intent sent to dealers, which upon compliance by the dealer, would result in reinstatement of the dealership. We anticipate that negotiating these terminations on an individual basis through binding arbitration will require considerable time and expense and we would be required to comply with a variety of national and state franchise laws, which will limit our flexibility and increase our costs. Given the pendency of the arbitration process and the anticipated cost of negotiating terminations on an individual basis if dealers are granted reinstatement it is impossible for us to know at this point how many dealers will be in our network long-term or the cost of restructuring our dealership network.

***Our business plan contemplates that we restructure our operations in various European countries, but we may not succeed in doing so, and that could have a material adverse effect on our business.***

Our business plan contemplates that we restructure our operations in various European countries and we are actively working to accomplish this. We continue to work towards a restructuring of our German and certain other European operations. We are engaging in discussions with certain European governments regarding financial support for our European operations. We cannot be certain that we will be able to successfully complete any of these restructurings. In addition, restructurings, whether or not ultimately successful, can involve significant expense and disruption to the business as well as labor disruptions, which can adversely affect the business. Moreover, our decision to restructure our European operations could require us to invest significant additional funds particularly if we are unable to obtain financial support from European governments. We cannot assure you that any of our contemplated restructurings will be completed or achieve the desired results, and if we cannot successfully complete such restructurings out of court, we may seek to, or the directors of the relevant entity may be compelled to, or creditors may force us to, seek relief under applicable local bankruptcy, reorganization, insolvency or similar laws, where we may lose control over the outcome of the restructuring process due to the appointment of a local receiver, trustee or administrator (or similar official) or otherwise and which could result in a liquidation and us losing all or a substantial part of our interest in the business.

***Continued limited availability of adequate financing on acceptable terms through GMAC or other sources to our customers and dealers, distributors and suppliers to enable them to continue their business relationships with us could materially adversely affect our business.***

Our customers and dealers require financing to purchase a significant percentage of our global vehicle sales. Historically, GMAC has provided most of the financing for our dealers and a significant amount of financing for our customers. Due to conditions in credit markets particularly later in 2008, retail customers and dealers have experienced severe difficulty in accessing the credit markets. As a

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result, the number of vehicles sold or leased declined rapidly in the second half of 2008, with lease contract volume dropping significantly by the end of 2008. This had a significant effect on Old GM vehicle sales overall, since many of its competitors have captive finance subsidiaries that were better capitalized than GMAC during 2008 and 2009 and thus were able to offer consumers subsidized financing and leasing offers.

Similarly, the reduced availability of GMAC wholesale dealer financing (particularly in the second half of 2008), the increased cost of such financing and a limited availability of other sources of dealer financing due to the general weakness of the credit market, has caused and may continue to cause dealers to modify their plans to purchase vehicles from us.

Because of recent modifications to our commercial agreements with GMAC, GMAC no longer is subject to contractual wholesale funding commitments or retail underwriting targets. Therefore, there can be no assurance that GMAC will continue to provide adequate funding at competitive rates to ensure that financing for purchases of our vehicles by our dealers and customers will be consistent with the funding levels and competitive rates that have historically been available from GMAC.

***The UST (or its designee) owns a controlling interest in us and its interests may differ from those of our other stockholders.***

The UST beneficially owns a majority of our common stock on a fully diluted basis. As a result of its majority stock ownership interest and its role as a significant lender to us, the UST is able to exercise significant influence and control over our business if it elects to do so. This includes the ability to have significant influence and control over matters brought for a shareholder vote. To the extent the UST elects to exercise such influence or control over us, its interests (as a government entity) may differ from those of our other stockholders and it may influence matters including:

- The selection and tenure and compensation of our management;
- Our business strategy and product offerings;
- Our relationship with our employees, unions and other constituencies; and
- Our financing activities, including the issuance of debt and equity securities.

In the future we may also become subject to new and additional laws and government regulations regarding various aspects of our business as a result of participation in the TARP program and the U.S. government's ownership in (and financing of) our business. These regulations could make it more difficult for us to compete with other companies that are not subject to similar regulations. Refer to "Directors, Executive Officers and Corporate Governance — Stockholders Agreement" for further information.

***The UST Credit Agreement and VEBA Note Agreement contain significant representations and affirmative and negative covenants that may restrict our ability and the ability of our subsidiaries to take actions management believes are important to our long-term strategy.***

The UST Credit Agreement and VEBA Note Agreement contain representations and warranties, affirmative covenants requiring us to take certain actions and negative covenants restricting our ability to take certain actions. The affirmative covenants impose obligations on us with respect to, among other things, financial and other reporting to the UST (including periodic confirmation of compliance with certain expense policies and executive privileges and compensation requirements), use of proceeds of asset sales, maintenance of facility collateral and other property, payment of obligations, compliance with various restrictions on executive privileges and compensation and compliance with a corporate expense policy.

The negative covenants in the UST Credit Agreement generally apply to us and our U.S. subsidiaries that provided guarantees of our obligations under that agreement and restrict us with respect to, among other things, granting liens, distributions on capital stock, amendments or waivers of certain documents and entering into new indebtedness.

Compliance with the representations, warranties and affirmative and negative covenants contained in the UST Credit Agreement and VEBA Note Agreement could restrict our ability to take actions that management believes are important to our long-term

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strategy. If strategic transactions we wish to undertake are prohibited or inconsistent with, or detrimental to, our long-term viability, our ability to execute our long-term strategy could be materially adversely affected. In addition, monitoring and certifying our compliance with the UST Credit Agreement and VEBA Note Agreement requires a high level of expense and management attention on a continuing basis.

***Even though we have made significant modifications to our obligations to the New VEBA, we are still obligated to contribute a significant amount of cash to fund the New VEBA in the future and cumulative dividends on the Series A Preferred Stock must be paid prior to any dividends or distributions to common stockholders.***

Even though we have made significant modifications to our obligations to the New VEBA, we are still required to contribute a significant amount of cash to the New VEBA over a period of years. The amounts payable to the New VEBA include: (1) dividends payable on the 260 million shares of Series A Preferred Stock issued to the New VEBA in connection with the closing of the 363 Sale, which have a liquidation preference of \$25.00 per share and accrue cumulative dividends at a rate equal to 9.0% per annum (payable quarterly on March 15, June 15, September 15 and December 15) if, as and when declared by our Board of Directors (the UST and Canada Holdings hold an additional 100 million shares of Series A Preferred Stock); and (2) payments on the VEBA Notes in three equal installments of \$1.4 billion on July 15, 2013, 2015 and 2017. On or after December 31, 2014, we may redeem, in whole or in part, the shares of Series A Preferred Stock at the time outstanding, at a redemption price per share equal to the sum of: (1) \$25.00 per share; and (2) subject to limited exceptions, any accrued and unpaid dividends. There is no assurance that we will be able to obtain all of the necessary funding to fund our existing VEBA payment obligations on terms that will be acceptable to us. If we are unable to obtain funding from internal or external sources or some combination thereof on terms that are consistent with our business plan, we would have to delay, reduce or cancel other planned expenditures.

***Our pension funding obligations may increase significantly due to weak performance of financial markets and its effect on plan assets.***

Our future funding obligations for our U.S. defined benefit pension plans qualified with the IRS depends upon the future performance of assets placed in trusts for these plans, the level of interest rates used to determine funding levels, the level of benefits provided for by the plans and any changes in government laws and regulations. Our employee benefit plans currently hold a significant amount of equity and fixed income securities. Due to Old GM's contributions to the plans and to the strong performance of these assets during prior periods, the U.S. hourly and salaried pension plans were consistently overfunded from 2005 through 2007, which allowed Old GM to maintain a surplus without making additional contributions to the plans. However, due to significant declines in financial markets and a deterioration in the value of our plan assets, as well as the coverage of additional retirees, including certain Delphi hourly employees, we may need to make significant contributions to our U.S. pension plans in 2013 and beyond. There is no assurance that interest rates will remain constant or that our pension fund assets can earn our assumed rate of 8.5% annually, and our actual experience may be significantly more negative.

If the market values of the assets held by our pension plans decline, our pension expenses would increase and, as a result, could materially adversely affect our financial position. Decreases in interest rates that are not offset by contributions and asset returns could also increase our obligations under such plans. In addition, if local legal authorities increase the minimum funding requirements for our pension plans outside the U.S., we could be required to contribute more funds, which would negatively affect our cash flow.

***Despite the formation of our new Company, we continue to have indebtedness and other obligations. Our debt obligations together with our cash needs may require us to seek additional financing, minimize capital expenditures or seek to refinance some or all of our debt.***

Despite the formation of our new Company, we continue to have indebtedness and other obligations. Our current and future indebtedness and other obligations could have several important consequences. For example, it could:

- Require us to dedicate a larger portion of our cash flow from operations than we currently do to the payment of principal and interest on our indebtedness and other obligations, which will reduce the funds available for other purposes such as product development;

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- Make it more difficult for us to satisfy our obligations;
- Make us more vulnerable to adverse economic and industry conditions;
- Limit our ability to withstand competitive pressures;
- Limit our ability to fund working capital, capital expenditures and other general corporate purposes;
- Make us more vulnerable to any continuing downturn in general economic conditions and adverse developments in our business; and
- Reduce our flexibility in responding to changing business and economic conditions.

Future liquidity needs may require us to seek additional financing, or minimize capital expenditures. There is no assurance that any of these alternatives would be available to us on satisfactory terms or on terms that would not require us to renegotiate the terms and conditions of our existing debt agreements.

***Our planned investment in new technology in the future is significant and may not be funded at anticipated levels, and, even if funded at anticipated levels, may not result in successful vehicle applications.***

We intend to invest significant capital resources to support our products and to develop new technology. In addition, we are committed to invest heavily in alternative fuel and advanced propulsion technologies between 2010 and 2012, largely to support our planned expansion of hybrid and electric vehicles, consistent with our announced objective of being recognized as the industry leader in fuel efficiency. Moreover, if our future operations do not provide us with the liquidity we anticipate, we may be forced to reduce, delay or cancel our planned investments in new technology.

In some cases, the technologies that we plan to employ, such as hydrogen fuel cells and advanced battery technology, are not yet commercially practical and depend on significant future technological advances by us and by suppliers. For example, we have announced that we intend to produce by November 2010 the Chevrolet Volt, an electric car, which requires battery technology that has not yet proven to be commercially viable. There can be no assurance that these advances will occur in a timely or feasible way, that the funds that we have budgeted for these purposes will be adequate or that we will be able to establish our right to these technologies. Moreover, our competitors and others are pursuing similar technologies and other competing technologies, in some cases with more money available, and there can be no assurance that they will not acquire similar or superior technologies sooner than we do or on an exclusive basis or at a significant price advantage.

***New laws, regulations or policies of governmental organizations regarding increased fuel economy requirements and reduced greenhouse gas emissions, or changes in existing ones, may have a significant effect on how we do business.***

We are affected significantly by governmental regulations that can increase costs related to the production of our vehicles and affect our product portfolio. We anticipate that the number and extent of these regulations, and the costs and changes to our product lineup to comply with them, will increase significantly in the future. In the U.S. and Europe, for example, governmental regulation is primarily driven by concerns about the environment (including greenhouse gas emissions), vehicle safety, fuel economy and energy security. These government regulatory requirements could significantly affect our plans for global product development and may result in substantial costs including civil penalties. They may also result in limits on the types of vehicles we sell and where we sell them, which can affect revenue.

CAFE provisions in the EISA mandate fuel economy standards beginning in the 2011 model year that would increase to at least 35 mpg by 2020 on a combined car and truck fleet basis, a 40% increase over current levels. In addition, California is implementing a program to regulate vehicle greenhouse gas emissions (AB 1493 Rules), and therefore will require increased fuel economy. This California program has standards currently established for the 2009 model year through the 2016 model year. Thirteen additional states and the Province of Quebec have also adopted the California greenhouse gas standards.

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On May 19, 2009 President Obama announced his intention for the federal government to implement a harmonized federal program to regulate fuel economy and greenhouse gases. He directed the EPA and the U.S. Department of Transportation (DOT) to work together to create standards through a joint rulemaking for control of emissions of greenhouse gases and for fuel economy. In the first phase, these standards would apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles built in model years 2012 through 2016. The CARB has agreed that compliance with EPA's greenhouse gas standards will be deemed compliance with the California greenhouse gas standards for the 2012 through 2016 model years. EPA and DOT issued their final rule to implement this new federal program on April 1, 2010. We have committed to work with EPA, the DOT, the states and other stakeholders in support of a strong national program to reduce oil consumption and address global climate change.

We are committed to meeting or exceeding these regulatory requirements, and our product plan of record projects compliance with the anticipated federal program through the 2016 model year. We expect that to comply with these standards we will be required to sell a significant volume of hybrid or electrically powered vehicles throughout the U.S., as well as implement new technologies for conventional internal combustion engines, all at increased cost levels. There is no assurance that we will be able to produce and sell vehicles that use such technologies at a competitive price, or that our customers will purchase such vehicles in the quantities necessary for us to comply with these regulatory programs.

In addition, the EU passed legislation in December 2008 to begin regulating vehicle carbon dioxide emissions beginning in 2012. The legislation sets a target of a fleet average of 95 grams per kilometer for 2020, with the requirements for each manufacturer based on the weight of the vehicles it sells. Additional measures have been proposed or adopted in Europe to regulate features such as tire rolling resistance, vehicle air conditioners, tire pressure monitors, gear shift indicators and others. At the national level, 16 EU Member States have adopted some form of carbon dioxide-based vehicle taxation system, which could result in specific market requirements for us to introduce technology earlier than is required for compliance with the EU emissions standards.

Other governments around the world, such as Canada, South Korea and China, are also creating new policies to address these same societal issues. As in the U.S., these government policies could significantly affect our plans for product development. Due to these regulations we could be subject to sizable civil penalties or have to restrict product offerings drastically to remain in compliance. Additionally, the regulations will result in substantial costs, which could be difficult to pass through to our customers, and could result in limits on the types of vehicles we sell and where we sell them, which could affect our operations, including facility closings, reduced employment, increased costs and loss of revenue.

***We may be unable to qualify for federal funding for our advanced technology vehicle programs under Section 136 of the EISA or may not be selected to participate in the program.***

The U.S. Congress provided the DOE with \$25.0 billion in funding to make direct loans to eligible applicants for the costs of re-equipping, expanding, and establishing manufacturing facilities in the U.S. to produce advanced technology vehicles and components for these vehicles. Old GM submitted three applications for Section 136 Loans aggregating \$10.3 billion to support its advanced technology vehicle programs prior to July 2009. Based on the findings of the President's Designee under the U.S. Treasury Loan Agreement in March 2009, the DOE determined that Old GM did not meet the viability requirements for Section 136 Loans.

On July 10, 2009 we purchased certain assets of Old GM pursuant to Section 363 of the Bankruptcy Code, including the rights to the loan applications submitted to the Advanced Technology Vehicle Manufacturing Incentive Program (ATVMIP). Further, we submitted a fourth application in August 2009. Subsequently, the DOE advised us to resubmit a consolidated application including all the four applications submitted earlier and also the Electric Power Steering project acquired from Delphi in October 2009. We submitted the consolidated application in October 2009, which requested an aggregate amount of \$14.4 billion of Section 136 Loans. Ongoing product portfolio updates and project modifications requested from the DOE have the potential to reduce the maximum loan amount. To date, the DOE has announced that it would provide approximately \$8.3 billion in Section 136 Loans to Ford Motor Company, Nissan Motor Company, Tesla Motors, Inc., Fisker Automotive, Inc., and Tenneco Inc. There can be no assurance that we will qualify for any remaining loans or receive any such loans even if we qualify.

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### ***A significant amount of our operations are conducted by joint ventures that we cannot operate solely for our benefit.***

Many of our operations, particularly in emerging markets, are carried on by joint ventures such as Shanghai GM. In joint ventures we share ownership and management of a company with one or more parties who may not have the same goals, strategies, priorities or resources as we do. In general, joint ventures are intended to be operated for the equal benefit of all co-owners, rather than for our exclusive benefit. Operating a business as a joint venture often requires additional organizational formalities as well as time-consuming procedures for sharing information and making decisions. In joint ventures, we are required to pay more attention to our relationship with our co-owners as well as with the joint venture, and if a co-owner changes, our relationship may be materially adversely affected. In addition, the benefits from a successful joint venture are shared among the co-owners, so that we do not receive all the benefits from our successful joint ventures.

### ***Shortages of and volatility in the price of oil have caused and may continue to cause diminished profitability due to shifts in consumer vehicle demand.***

Volatile oil prices in 2008 and 2009 contributed to weaker demand for some of Old GM's and our higher margin vehicles, especially our fullsize sport utility vehicles, as consumer demand shifted to smaller, more fuel-efficient vehicles, which provide lower profit margins and in recent years represented a smaller proportion of Old GM's and our sales volume in North America. Fullsize pick-up trucks, which are generally less fuel efficient than smaller vehicles, represented a higher percentage of Old GM's and our North American sales during 2008 and 2009 compared to the total industry average percentage of fullsize pick-up truck sales in those periods. Demand for traditional sport utility vehicles and vans also declined during the same periods. Any future increases in the price of oil in the U.S. or in our other markets or any sustained shortage of oil could further weaken the demand for such vehicles, which could reduce our market share in affected markets, decrease profitability and have a material adverse effect on our business.

### ***We could be materially adversely affected by changes or imbalances in foreign currency exchange and other rates.***

Because we sell products and buy materials globally over a significant period of time, we are exposed to risks related to the effects of changes in foreign currency exchange rates, commodity prices and interest rates, which can have material adverse effects on our business. In recent years, the relative weakness of certain currencies, including the Japanese Yen, has provided competitive advantages to certain of our competitors. While in recent months the Japanese Yen has strengthened significantly, its weakness in recent years has provided pricing advantages for vehicles and parts imported from Japan to markets with more robust currencies like the U.S. and Western Europe. Moreover, the relative strength of other currencies has negatively affected our business. For example, before the current financial crisis, the relative weakness of the British Pound compared to the Euro has had an adverse effect on our results of operations in Europe. In addition, in preparing our consolidated financial statements we translate our revenues and expenses outside the U.S. into U.S. Dollars using the average foreign currency exchange rate for the period and the assets and liabilities using the foreign currency exchange rate at the balance sheet date. As a result, foreign currency fluctuations and the associated translations could have a material adverse effect on our results of operation.

### ***Our businesses outside the U.S. expose us to additional risks that may materially adversely affect our business.***

The majority of our vehicle sales are generated outside the U.S. We are pursuing growth opportunities for our business in a variety of business environments outside the U.S. Operating in a large number of different regions and countries exposes us to political, economic and other risks as well as multiple foreign regulatory requirements that are subject to change, including:

- Foreign regulations restricting our ability to sell our products in those countries;
- Differing local product preferences and product requirements, including fuel economy, vehicle emissions and safety;
- Differing labor regulations and union relationships;
- Consequences from changes in tax laws;

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- Difficulties in obtaining financing in foreign countries for local operations; and
- Political and economic instability, natural calamities, war, and terrorism.

The effects of these risks may, individually or in the aggregate, materially adversely affect our business.

***New laws, regulations or policies of governmental organizations regarding safety standards, or changes in existing ones, may have a significant negative effect on how we do business.***

Our products must satisfy legal safety requirements. Meeting or exceeding government-mandated safety standards is difficult and costly, because crashworthiness standards tend to conflict with the need to reduce vehicle weight in order to meet emissions and fuel economy standards. While we are managing our product development and production operations on a global basis to reduce costs and lead times, unique national or regional standards or vehicle rating programs can result in additional costs for product development, testing and manufacturing. Governments often require the implementation of new requirements during the middle of a product cycle, which can be substantially more expensive than accommodating these requirements during the design of a new product.

***The costs and effect on our reputation of product recalls could materially adversely affect our business.***

From time to time, we recall our products to address performance, compliance or safety-related issues. The costs we incur in connection with these recalls typically include the cost of the part being replaced and labor to remove and replace the defective part. In addition, product recalls can harm our reputation and cause us to lose customers, particularly if those recalls cause consumers to question the safety or reliability of our products. Any costs incurred or lost sales caused by future product recalls could materially adversely affect our business. Conversely, not issuing a recall or not issuing a recall on a timely basis can harm our reputation and cause us to lose customers for the same reasons as expressed above.

***We have determined that our disclosure controls and procedures and our internal control over financial reporting are currently not effective. The lack of effective internal controls could materially adversely affect our financial condition and ability to carry out our business plan.***

As discussed in Item 9A, “Controls and Procedures”, our management team for financial reporting, under the supervision and with the participation of our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of our internal controls. At December 31, 2009, because of the inability to sufficiently test the effectiveness of remediated internal controls, they concluded that our disclosure controls and procedures and our internal control over financial reporting were not effective. Until we have been able to test the operating effectiveness of remediated internal controls, and ensure the effectiveness of our disclosure controls and procedures, it may materially adversely affect our ability to report accurately our financial condition and results of operations in the future in a timely and reliable manner. In addition, although we continually review and evaluate internal control systems to allow management to report on the sufficiency of our internal controls, we cannot assure you that we will not discover additional weaknesses in our internal control over financial reporting. Any such additional weakness or failure to remediate the existing weakness could adversely affect our financial condition or ability to comply with applicable financial reporting requirements and the requirements of the Company’s various financing agreements.

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**Item 1B. Unresolved Staff Comments**

None

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### Item 2. *Properties*

Other than dealerships, at December 31, 2009 we had 121 locations in 27 states and 95 cities or towns in the United States. Of these locations, 41 are manufacturing facilities, of which 11 are engaged in the final assembly of our cars and trucks and other manufacture automotive components and power products. Of the remaining locations, 27 are service parts operations primarily responsible for distribution and warehouse functions, and the remainder are offices or facilities primarily involved in engineering and testing vehicles. In addition, we have 17 locations in Canada, and assembly, manufacturing, distribution, office or warehousing operations in 56 other countries, including equity interests in associated companies which perform assembly, manufacturing or distribution operations. The major facilities outside the United States and Canada, which are principally vehicle manufacturing and assembly operations, are located in:

- Argentina
- Australia
- Belgium
- Brazil
- China
- Colombia
- Ecuador
- Egypt
- Germany
- India
- Kenya
- Mexico
- Poland
- Russia
- South Africa
- South Korea
- Spain
- Thailand
- United Kingdom
- Uzbekistan
- Venezuela
- Vietnam

We, our subsidiaries, or associated companies in which we own an equity interest, own most of the above facilities. Leased properties primarily comprised of warehouses and administration, engineering and sales offices. The leases for warehouses generally provide for an initial period of five to 10 years, based upon prevailing market conditions and may contain renewal options. Leases for administrative offices are generally for shorter periods.

Our properties include facilities which, in our opinion, are suitable and adequate for the manufacture, assembly and distribution of our products.

\* \* \* \* \*

### Item 3. *Legal Proceedings*

The following section summarizes material pending legal proceedings to which the Company is a party, other than ordinary routine litigation incidental to the business. We and the other defendants affiliated with us intend to defend all of the following actions vigorously.

#### **Canadian Export Antitrust Class Actions**

Approximately eighty purported class actions on behalf of all purchasers of new motor vehicles in the United States since January 1, 2001, have been filed in various state and federal courts against General Motors Corporation, GMCL, Ford Motor Company, Chrysler, LLC, Toyota Motor Corporation, Honda Motor Co., Ltd., Nissan Motor Company, Limited, and Bavarian Motor Works and their Canadian affiliates, the National Automobile Dealers Association, and the Canadian Automobile Dealers Association. The federal court actions have been consolidated for coordinated pretrial proceedings under the caption *In re New Market Vehicle Canadian Export Antitrust Litigation Cases* in the U.S. District Court for the District of Maine, and the more than 30 California cases have been consolidated in the California Superior Court in San Francisco County under the case captions *Belch v. Toyota Corporation, et al.* and *Bell v. General Motors Corporation*. Old GM's liability in these matters was not assumed by General Motors Company as part of the 363 Sale. GMCL was not part of Old GM's bankruptcy proceeding and potentially remains liable in all matters. In the California state court cases, oral arguments on the plaintiffs' motion for class certification and defendants' motion in limine were heard on April 21, 2009. The court ruled that it would certify a class. Defendants written appeal to the appropriate California court was denied. Defendants are preparing other substantive motions for summary judgment.

The nearly identical complaints alleged that the defendant manufacturers, aided by the association defendants, conspired among themselves and with their dealers to prevent the sale to U.S. citizens of vehicles produced for the Canadian market and sold by dealers in Canada. The complaints alleged that new vehicle prices in Canada are 10% to 30% lower than those in the United States, and that

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preventing the sale of these vehicles to U.S. citizens resulted in the payment of higher than competitive prices by U.S. consumers. The complaints, as amended, sought injunctive relief under U.S. antitrust law and treble damages under U.S. and state antitrust laws, but did not specify damages. The complaints further alleged unjust enrichment and violations of state unfair trade practices act. On March 5, 2004, the U.S. District Court for the District of Maine issued a decision holding that the purported indirect purchaser classes failed to state a claim for damages under federal antitrust law but allowed a separate claim seeking to enjoin future alleged violations to continue. The U.S. District Court for the District of Maine on March 10, 2006 certified a nationwide class of buyers and lessees under Federal Rule 23(b)(2) solely for injunctive relief, and on March 21, 2007 stated that it would certify 20 separate statewide class actions for damages under various state law theories under Federal Rule 23(b)(3), covering the period from January 1, 2001 to April 30, 2003. On October 3, 2007, the U.S. Court of Appeals for the First Circuit heard oral arguments on Old GM's consolidated appeal of the both class certification orders.

On March 28, 2008, the U.S. Court of Appeals for the First Circuit reversed the certification of the injunctive class and ordered dismissal of the injunctive claim. The U.S. Court of Appeals for the First Circuit also vacated the certification of the damages class and remanded to the U.S. District Court for the District of Maine for determination of several issues concerning federal jurisdiction and, if such jurisdiction still exists, for reconsideration of that class certification on a more complete record. On remand, plaintiffs again moved to certify a damages class, and defendants again moved for summary judgment and to strike plaintiffs' economic expert. On July 2, 2009, the court granted one of defendants' summary judgment motions. Plaintiffs did not appeal. As a result, the only issues remaining in the federal actions relate to disposition of the funds paid by Toyota in a settlement years ago.

### **American Export Antitrust Class Actions**

On September 25, 2007, a claim was filed in the Ontario Superior Court of Justice against GMCL and Old GM on behalf of a purported class of actual and intended purchasers of vehicles in Canada claiming that a similar alleged conspiracy was now preventing lower-cost U.S. vehicles from being sold to Canadians. The Plaintiffs have delivered their certification materials. An order staying claims against MLC was granted in November 2009. A certification hearing has not yet been scheduled. No determination has been made that the case may be maintained as a class action, and it is not possible to determine the likelihood of liability or reasonably ascertain the amount of any damages.

### **Canadian Dealer Class Action**

On January 21, 2010, a claim was filed in the Ontario Superior Court of Justice against GMCL for damages on behalf of a purported class of 215 Canadian General Motors dealers which entered into wind-down agreements with GMCL in May 2009. GMCL offered the Plaintiff dealers the wind-down agreements to assist the Plaintiffs' exit from the GMCL Canadian dealer network upon the expiration of their GM Dealer Sales and Service Agreements (DSSAs) on October 31, 2010, and to assist the Plaintiffs in winding down their dealer operations in an orderly fashion. The Plaintiff dealers allege that the DSSAs have been wrongly terminated by GMCL and that GMCL failed to comply with franchise disclosure obligations, breached its statutory duty of fair dealing and unlawfully interfered with the dealers' statutory right to associate in an attempt to coerce the class member dealers into accepting the wind-down agreements. The Plaintiff dealers claim that the wind-down agreements are void. GMCL is vigorously defending the claims. A certification hearing has not yet been scheduled. No determination has been made that the case may be maintained as a class action, and it is not possible to determine the likelihood of liability or reasonably ascertain the amount of any damages.

### **Delphi Salaried Pension Plan Claim**

On November 12, 2009, we were served with an Amended Complaint in a previously pending case in the United States District Court for the Eastern District of Michigan captioned *Dennis Black, Charles Cunningham, Kenneth Hollis and the Delphi Salaried Retiree Association v. The Pension Benefit Guaranty Corporation, the US Treasury Departments, The Presidential Task Force on the Auto Industry, Timothy Geithner, Steve Rattner, Ron Bloom and General Motors Company*. The case, brought on behalf of participants in the salaried pension plan formerly offered by Delphi, challenges the complex series of events which led to the termination of the Delphi salaried pension plan and its assumption by the Pension Benefit Guaranty Corporation with a significant reduction in benefits, and the allegedly more favorable outcome for unionized employees and retirees participating in other Delphi plans. With respect to us, the Amended Complaint asserts that by reason of the United States Treasury's substantial equity interest in

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

the company, we are a government actor and that our actions and those of the other defendants constituted a violation of plaintiff's constitutional rights because of the difference in outcome for participants in the Delphi salaried and hourly pension plans respectively. Plaintiffs ask that the court order us to "top up" Delphi salaried plan consistent with its contributions to Delphi's union plan under other agreements or to require us to distribute funds allocated for Delphi pension plans equally between hourly and salaried plans. Plaintiffs ask the court to order the United States Treasury and other defendants to require us to take such actions, providing loan assistance if necessary. The Amended Complaint also seeks compensatory and punitive damages from defendants other than us and costs and attorneys fees from all defendants. On February 25, 2010, the Bankruptcy Court in the Delphi bankruptcy proceeding granted our motion to enforce the Delphi plan of reorganization as approved by that Court and to enforce its injunction against lawsuits contrary to provisions of that plan, which includes a release with respect to any liability we may have regarding plaintiffs' claims. The Court has ordered plaintiffs to dismiss their claims against us in the Eastern District of Michigan. Such dismissal, however, would be without prejudice to plaintiffs' ability to petition the Bankruptcy Court to set aside its injunction based upon new evidence that we had willfully violated plaintiffs' constitutional rights. Indications are that plaintiffs will appeal the Bankruptcy Court order. In the meantime, plaintiffs have filed a motion to dismiss their case against us in the Eastern District of Michigan.

### **OnStar Analog Equipment Litigation**

Our wholly-owned subsidiary OnStar Corporation is a party to more than 20 putative class actions filed in various states, including Michigan, Ohio, New Jersey, Pennsylvania and California. All of these cases have been consolidated for pretrial purposes in a multi-district proceeding under the caption *In re OnStar Contract Litigation* in the U.S. District Court for the Eastern District of Michigan. The litigation arises out of the discontinuation by OnStar of services to vehicles equipped with analog hardware. OnStar was unable to provide services to such vehicles because the cellular carriers which provide communication service to OnStar terminated analog service beginning in February 2008. In the various cases, the plaintiffs are seeking certification of nationwide or statewide classes of owners of vehicles currently equipped with analog equipment, alleging various breaches of contract, misrepresentation and unfair trade practices. This proceeding has not reached the class certification motion stage, though class discovery is nearly complete. No determination has been made as to whether class certification motions are appropriate, and it is not possible at this time to determine whether class certification or liability is probable as to OnStar or to reasonably ascertain the amount of any liability.

### **Patent Infringement Litigation**

On July 10, 2009, *Kruse Technology Partnership v. General Motors Company* was filed in the U.S. District Court for the Central District of California. In *Kruse*, the plaintiff alleges that we infringed three U.S. patents related to "Internal Combustion Engine with Limited Temperature Cycle" by making and selling diesel engines. The plaintiff has not made a claim specifying damages in this case. However, in a similar case filed against Old GM in December 2008, plaintiff asserted that its royalty damages would be significantly more than \$100 million. In April 2009, the plaintiff filed a separate patent infringement action against DMAX, Inc., then a joint venture between Isuzu Diesel Services of America, Inc. and Old GM, and which is now a joint venture between Isuzu Diesel Services of America, Inc. and General Motors LLC, our subsidiary. DMAX manufactures and assembles mechanical and other components of Duramax diesel engines for sale to us. The plaintiff asserted that its royalty damages claim against DMAX, Inc. would exceed \$100 million and requests an injunction in both the case against DMAX and the case against General Motors LLC. We are defending *Kruse* on several grounds, including non-infringement and invalidity of the patents.

### **Unintended Acceleration Class Actions**

We have been named as a co-defendant in two of the many class action lawsuits brought against Toyota arising from Toyota's recall of certain vehicles related to reports of unintended acceleration. The two cases are *Nimishabehn Patel v. Toyota Motors North America, Inc. et al* (filed in the United States District Court for the District of Connecticut on February 9, 2010) and *Darshak Shah v. Toyota Motors North America, Inc. et al* (filed in the United States District court for the District of Massachusetts on or about February 16, 2010). The 2009 and 2010 model year Pontiac Vibe, which was manufactured by a joint venture between Toyota and Old GM, included components that were common with those addressed by the Toyota recall and were accordingly the subject of a parallel recall by us. Each case makes allegations regarding Toyota's conduct related to the condition addressed by the recall and asserts breaches of implied and express warranty, unjust enrichment and violation of consumer protection statutes and seeks actual damages, multiple damages, attorneys fees, costs and injunctive relief on behalf of classes of vehicle owners which include owners of

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

2009 and 2010 model year Pontiac Vibes. The cases are in their earliest stage, with no determination that class treatment is appropriate. Although a comprehensive assessment of the cases is not possible at this time, we believe that, with respect to the overwhelming majority of Pontiac vehicles addressed by the two cases, the claims asserted are barred by the Sale Approval Order entered by the United States Bankruptcy Court for the Southern District of New York on July 5, 2009.

**UAW VEBA Contribution Claim**

On April 6, 2010, the UAW filed suit against us in the U.S. District Court for the Eastern District of Michigan claiming that we breached our obligation to contribute \$450 million to the New VEBA. The UAW alleges that we were required to make this contribution pursuant to the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007. The UAW is seeking payment of \$450 million. We have not been served in this matter.

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**Environmental Matters**

**Carbon Dioxide Emission Standard Litigation**

In a number of cases, we and the Alliance of Automobile Manufacturers, the Association of International Automobile Manufacturers, Chrysler, and various automobile dealers brought suit for declaratory and injunctive relief from state legislation imposing stringent controls on new motor vehicle CO<sub>2</sub> emissions. These cases argue that such state regulation of CO<sub>2</sub> emissions is tantamount to state regulation of fuel economy and is preempted by two federal statutes, the Energy Policy and Conservation Act (EPCA) and the Clean Air Act. California adopted such standards pursuant to its AB 1493 legislation. The California standards have been adopted by 13 other states.

The cases were brought against: (1) CARB on December 7, 2004, in the U.S. District Court for the Eastern District of California (Fresno Division); (2) the Vermont Agency of Natural Resources and the Vermont Department of Environmental Conservation on November 18, 2005, in the U.S. District Court for the District of Vermont; and (3) the Rhode Island Department of Environmental Management on February 13, 2006, in the U.S. District Court for the District of Rhode Island. The cases in Vermont and California were decided at the district court level in 2007. In both cases, the trial courts dismissed the EPCA claims, but the California district court enjoined enforcement of the CO<sub>2</sub> standards under the Clean Air Act unless the U.S. Environmental Protection Agency (EPA) approved them under the Clean Air Act. In March 2008, the EPA disapproved the California CO<sub>2</sub> standards. By that time, appeals of the adverse decisions under EPCA were being initiated in California (Ninth Circuit) and Vermont (Second Circuit). The EPA's action and the California district court's injunction effectively halted implementation of the CO<sub>2</sub> standards in each State that had adopted them.

In January 2009, President Obama directed the EPA to reconsider its disapproval of the California CO<sub>2</sub> standards, and to consider adoption of a national approach to the regulation of vehicle CO<sub>2</sub> emissions that would eliminate any environmental justification for separate state CO<sub>2</sub> standards. The EPA granted approval of the current California CO<sub>2</sub> standards in June 2009, pursuant to President Obama's instruction. In May 2009, we and most of the automotive industry agreed to this "National Standard" approach and, as part of that agreement, to discontinue litigation against the state standards if California and other states agreed to treat compliance with any new federal CO<sub>2</sub> standards as compliance with their separate state standards. Under that agreement, on April 1, 2010 California completed rulemaking to revise its CO<sub>2</sub> standards, and the EPA and the National Highway Traffic Safety Administration (NHTSA) completed rulemaking to establish coordinated vehicle CO<sub>2</sub> emissions and fuel economy standards. The parties have reached agreement on the terms for dismissal of all pending litigation against the state standards, in which we are involved, and we expect that dismissal motions will be filed soon. The litigation had been stayed pending finalization of the California and federal rulemaking.

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**Item 4. Reserved**

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## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## PART II

**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities****Market Information**

On April 7, 2010, we filed a Form 10 with the SEC and, pursuant to Section 12(g) of the Exchange Act, registered our common stock. Our common stock is not traded on any exchange or other interdealer electronic trading facility and there is no established public trading market for our common stock.

**Holder**

We have a total of 500 million issued and outstanding shares of common stock which are held by four stockholders of record and a total of 106 million shares of common stock for which warrants are initially exercisable by two stockholders of record.

**Dividends**

Since our formation, we have not paid any dividends on our common stock. We have no current plans to pay any dividends on our common stock. So long as any share of our Series A Preferred Stock remains outstanding, no dividend or distribution may be declared or paid on our common stock unless all accrued and unpaid dividends have been paid on our Series A Preferred Stock, subject to exceptions, such as dividends on our common stock payable solely in shares of our common stock. In addition, the UST Credit Agreement and the VEBA Note Agreement contain certain restrictions on our ability to pay dividends, other than dividends payable solely in shares of our common stock.

In particular, each of the UST Credit Agreement and the VEBA Note Agreement provides that we may not pay any such dividends on our common stock unless: no default or event of default has occurred under such agreement and is continuing at the time of such payment; and immediately prior to and after giving effect to such dividend, our consolidated leverage ratio is less than 3.00 to 1.00.

Our payment of dividends in the future, if any, will be determined by our Board of Directors and will be paid out of funds legally available for that purpose.

**Equity Compensation Plan Information**

The table below contains information about securities authorized for issuance under equity compensation plans. The features of these plans are discussed further in Note 29 to the consolidated financial statements.

<u>Plan Category</u>	<u>Number of Securities To be Issued Upon Exercise of Outstanding Options, Warrants and Rights (in millions)</u>	<u>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (a)</u>	<u>Number of Securities Remaining Available For Future Issuance Under Equity Compensation Plans (b)</u>
Equity compensation plans approved by security holders			
General Motors Company 2009 Long-Term Incentive Plan and Salary Stock Plan (c)	0.3	\$ —	9.7

(a) The awards under the General Motors Company 2009 Long-Term Incentive Plan and Salary Stock Plan are restricted stock units. The restricted stock units do not have an exercise price, and the awards will be payable in cash if settled prior to six months after completion of an initial public offering of our equity.

(b) Excludes securities reflected in the first column, "Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights."

(c) At December 31, 2009 all of our equity compensation plans were approved by security holders.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Recent Sales of Unregistered Securities

#### *Holding Company Merger*

In October 2009 in connection with a merger effected pursuant to an Agreement and Plan of Merger, dated as of October 15, 2009 by and among us, the previous GM Company and GM Merger Subsidiary Inc., a Delaware corporation and indirect wholly-owned subsidiary of the previous GM Company, we issued new securities. These new securities were issued solely in exchange for the corresponding securities of the previous GM Company. These new securities have the same economic terms and provisions as the corresponding previous GM Company securities and upon completion of the merger were held by our securityholders in the same class evidencing the same proportional interest in us as the securityholders held in the previous GM Company.

#### *Common Stock*

- Issued 304 million shares to the UST;
- Issued 58 million shares to Canada Holdings;
- Issued 88 million shares to the New VEBA; and
- Issued 50 million shares to MLC.

#### *Series A Preferred Stock*

- Issued 84 million shares to the UST;
- Issued 16 million shares to Canada Holdings; and
- Issued 260 million shares to the New VEBA.

The shares of Series A Preferred Stock have a liquidation preference of \$25.00 per share and accrue cumulative dividends at a rate equal to 9.0% per annum (payable quarterly on March 15, June 15, September 15 and December 15) if, as and when declared by our Board of Directors. So long as any share of the Series A Preferred Stock remains outstanding, no dividend or distribution may be declared or paid on our common stock unless all accrued and unpaid dividends have been paid on the Series A Preferred Stock, subject to exceptions, such as dividends on our common stock payable solely in shares of our common stock. On or after December 31, 2014, we may redeem, in whole or in part, the shares of Series A Preferred Stock at the time outstanding, at a redemption price per share equal to \$25.00 per share plus any accrued and unpaid dividends, subject to limited exceptions.

#### *Warrants*

- Issued warrants to MLC to acquire 45.5 million shares of our common stock, exercisable at any time prior to July 10, 2016, with an exercise price of \$30.00 per share;
- Issued warrants to MLC to acquire 45.5 million shares of our common stock, exercisable at any time prior to July 10, 2019, with an exercise price of \$55.00 per share; and
- Issued warrants to the New VEBA to acquire 15.2 million shares of our common stock, exercisable at any time prior to December 31, 2015, with an exercise price set at \$126.92 per share.

The number of shares of our common stock underlying each of the warrants issued to MLC and the New VEBA and the per share exercise price are subject to adjustment as a result of certain events, including stock splits, reverse stock splits and stock dividends.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**363 Sale**

The foregoing securities were issued to the UST, Canada Holdings, the New VEBA and MLC solely in exchange for the corresponding securities of the previous GM Company in connection with the merger. The consideration originally paid for the securities of the previous GM Company with respect to each of the UST, Canada Holdings, the New VEBA and MLC in connection with the formation of the previous GM Company and the 363 Sale on July 10, 2009 was as follows:

*UST*

- The UST's existing credit agreement with Old GM;
- The UST's portion of Old GM's DIP Facility (other than debt we assumed or MLC's wind-down facility) and all of the rights and obligations as lender thereunder;
- The warrants Old GM previously issued to the UST; and
- Any additional amounts the UST loaned to Old GM prior to the closing of the 363 Sale with respect to each of the foregoing UST credit facilities.

*Canada Holdings*

- Certain existing loans made to GMCL;
- Canada Holding's portion of the DIP Facility (other than debt we assumed or MLC's wind-down facility); and
- The loans made to us under the existing loan agreement between GMCL and EDC immediately following the closing of the 363 Sale.

*New VEBA*

- The compromise of certain claims against MLC existing under the 2008 UAW Settlement Agreement.

*MLC*

- The assets acquired by us pursuant to the Purchase Agreement, offset by the liabilities we assumed pursuant to the Purchase Agreement.

Refer to Note 2 to the consolidated financial statements for a discussion of the Chapter 11 Proceedings and the 363 Sale.

**Securities Act Exemption**

The securities of the previous GM Company, and our securities issued in replacement thereof in the merger, were issued pursuant to an exemption provided by Section 4(2) under the Securities Act.

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**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**Item 6. Selected Financial Data**
**(Dollars in millions except per share amounts)**

	Successor July 10, 2009 Through December 31, 2009 (a)	Predecessor				
		January 1, 2009 Through July 9, 2009	Years Ended December 31,			
		2008	2007	2006	2005	
Total net sales and revenue (b)	\$ 57,474	\$ 47,115	\$ 148,979	\$ 179,984	\$ 204,467	\$ 192,143
Reorganization gains, net (c)	\$ —	\$ 128,155	\$ —	\$ —	\$ —	\$ —
Income (loss) from continuing operations (c)(d)	\$ (3,786)	\$ 109,003	\$ (31,051)	\$ (42,685)	\$ (2,155)	\$ (10,625)
Income from discontinued operations, net of tax (e)	—	—	—	256	445	313
Gain on sale of discontinued operations, net of tax (e)	—	—	—	4,293	—	—
Cumulative effect of a change in accounting principle (f)	—	—	—	—	—	(109)
Net income (loss) (c)	(3,786)	109,003	(31,051)	(38,136)	(1,710)	(10,421)
Less: Net (income) loss attributable to noncontrolling interests	(511)	115	108	(406)	(324)	(48)
Less: Cumulative dividends on preferred stock	(131)	—	—	—	—	—
Net income (loss) attributable to common stockholders (c)	\$ (4,428)	\$ 109,118	\$ (30,943)	\$ (38,542)	\$ (2,034)	\$ (10,469)
GM \$0.01 par value common stock and Old GM \$1-2/3 par value common stock						
Basic earnings (loss) per share:						
Income (loss) from continuing operations attributable to common stockholders before cumulative effect of change in accounting principle	\$ (10.73)	\$ 178.63	\$ (53.47)	\$ (76.16)	\$ (4.39)	\$ (18.87)
Income from discontinued operations attributable to common stockholders (e)	—	—	—	8.04	0.79	0.55
Loss from cumulative effect of a change in accounting principle attributable to common stockholders (f)	—	—	—	—	—	(0.19)
Net income (loss) attributable to common stockholders	\$ (10.73)	\$ 178.63	\$ (53.47)	\$ (68.12)	\$ (3.60)	\$ (18.51)
Diluted earnings (loss) per share:						
Income (loss) from continuing operations attributable to common stockholders before cumulative effect of change in accounting principle	\$ (10.73)	\$ 178.55	\$ (53.47)	\$ (76.16)	\$ (4.39)	\$ (18.87)
Income from discontinued operations attributable to common stockholders (e)	—	—	—	8.04	0.79	0.55
Loss from cumulative effect of a change in accounting principle attributable to common stockholders (f)	—	—	—	—	—	(0.19)
Net income (loss) attributable to common stockholders	\$ (10.73)	\$ 178.55	\$ (53.47)	\$ (68.12)	\$ (3.60)	\$ (18.51)
Cash dividends per common share	\$ —	\$ —	\$ 0.50	\$ 1.00	\$ 1.00	\$ 2.00
Total assets (b)(d)(g)	\$ 136,295	\$ 104,575	\$ 91,039	\$ 148,846	\$ 185,995	\$ 473,938
Notes and loans payable (b)(h)	\$ 15,783	\$ 48,394	\$ 45,938	\$ 43,578	\$ 47,476	\$ 286,943
Equity (deficit) (d)(f)(i)(j)	\$ 21,957	\$ (109,128)	\$ (85,076)	\$ (35,152)	\$ (4,076)	\$ 15,931

(a) At July 10, 2009 we applied fresh-start reporting following the guidance in ASC 852, "Reorganizations." The consolidated financial statements for the periods ended on or before July 9, 2009 do not include the effect of any changes in the fair value of assets or liabilities as a result of the application of fresh-start reporting. Therefore, our financial information at and for the period July 10, 2009 through December 31, 2009 is not comparable to Old GM's financial information.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

- (b) In November 2006 Old GM sold a 51% controlling ownership interest in GMAC, resulting in a significant decrease in total consolidated net sales and revenue, assets and notes and loans payable.
- (c) In the period January 1, 2009 through July 9, 2009 Old GM recorded Reorganization gains, net of \$128.2 billion directly associated with the Chapter 11 Proceedings, the 363 Sale and the application of fresh-start reporting. Refer to Note 2 to the consolidated financial statements for additional detail.
- (d) In September 2007 Old GM recorded full valuation allowances of \$39.0 billion against net deferred tax assets in Canada, Germany and the United States.
- (e) In August 2007 Old GM completed the sale of the commercial and military operations of its Allison business. The results of operations, cash flows and the 2007 gain on sale of Allison have been reported as discontinued operations for all periods presented.
- (f) In December 2005 Old GM recorded an asset retirement obligation of \$181 million, which was \$109 million net of related income tax effects.
- (g) In December 2006 Old GM recorded the funded status of its benefit plans on the consolidated balance sheet with an offsetting adjustment to Accumulated other comprehensive loss of \$16.9 billion in accordance with the adoption of new provisions of ASC 715, "Compensation — Retirement Benefits."
- (h) In December 2008 Old GM entered into the UST Loan Agreement, pursuant to which the UST agreed to provide a \$13.4 billion UST Loan Facility. In December 2008 Old GM borrowed \$4.0 billion under the UST Loan Facility.
- (i) In January 2007 Old GM recorded a decrease to Retained earnings of \$425 million and a decrease of \$1.2 billion to Accumulated other comprehensive loss in accordance with the early adoption of the measurement provisions of ASC 715, "Compensation — Retirement Benefits."
- (j) In January 2007 Old GM recorded an increase to Retained earnings of \$137 million with a corresponding decrease to its liability for uncertain tax positions.

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## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Item 7. *Management's Discussion and Analysis of Financial Condition and Results of Operations*

#### **General Motors Company**

General Motors Company was formed by the UST in 2009 originally as a Delaware limited liability company, Vehicle Acquisition Holdings LLC, and subsequently converted to a Delaware corporation, NGMCO, Inc. This company acquired substantially all of the assets and assumed certain liabilities of General Motors Corporation in the 363 Sale on July 10, 2009 and changed its name to General Motors Company. General Motors Corporation is sometimes referred to in this 2009 10-K, for the periods on or before July 9, 2009, as "Old GM." Prior to July 10, 2009 Old GM operated the business of the Company, and pursuant to the agreement with the SEC Staff, the accompanying consolidated financial statements include the financial statements and related information of Old GM as it is our predecessor entity solely for accounting and financial reporting purposes. On July 10, 2009 in connection with the 363 Sale, General Motors Corporation changed its name to Motors Liquidation Corporation (MLC). MLC continues to exist as a distinct legal entity for the sole purpose of liquidating its remaining assets and liabilities.

We are engaged primarily in the worldwide development, production and marketing of cars, trucks, and parts. We also own a 16.6% equity interest in GMAC, which is accounted for as a cost method investment because we cannot exercise significant influence over GMAC. GMAC provides a broad range of financial services, including consumer vehicle financing, automotive dealership and other commercial financing, residential mortgage services, and automobile service contracts.

#### **Basis of Presentation**

This Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) should be read in conjunction with the accompanying consolidated financial statements.

We analyze the results of our business through our three segments, namely GMNA, GME, and GMIO.

Consistent with industry practice, market share information includes estimates of industry sales in certain countries where public reporting is not legally required or otherwise available on a consistent basis.

#### **Use of Estimates in the Preparation of the Financial Statements**

The consolidated financial statements are prepared in conformity with U.S. GAAP, which requires the use of estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses in the periods presented. We believe that the accounting estimates employed are appropriate and the resulting balances are reasonable; however, due to the inherent uncertainties in making estimates, actual results could differ from the original estimates, requiring adjustments to these balances in future periods.

## **OVERVIEW**

### **Chapter 11 Proceedings and the 363 Sale**

#### ***Background***

Over time as Old GM's market share declined in North America, Old GM needed to continually restructure its business operations to reduce cost and excess capacity. In addition, legacy labor costs and obligations and capacity in its dealer network made Old GM less competitive than new entrants into the U.S. market. These factors continue to strain on Old GM's liquidity. In 2005 Old GM incurred significant losses from operations and from restructuring activities such as providing support to Delphi and other efforts intended to reduce operating costs. Old GM managed its liquidity during this time through a series of cost reduction initiatives, capital markets transactions and sales of assets. However, the global credit market crisis had a dramatic effect on Old GM and the automotive industry. In the second half of 2008, the increased turmoil in the mortgage and overall credit markets (particularly the lack of

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

financing for buyers or lessees of vehicles), the continued reductions in U.S. housing values, the volatility in the price of oil, recessions in the United States and Western Europe and the slowdown of economic growth in the rest of the world created a substantially more difficult business environment. The ability to execute capital markets transactions or sales of assets was extremely limited, vehicle sales in North America and Western Europe contracted severely, and the pace of vehicle sales in the rest of the world slowed. Old GM's liquidity position, as well as its operating performance, were negatively affected by these economic and industry conditions and by other financial and business factors, many of which were beyond its control.

As a result of these economic conditions and the rapid decline in sales in the three months ended December 31, 2008 Old GM determined that, despite the actions it had then taken to restructure its U.S. business, it would be unable to pay its obligations in the normal course of business in 2009 or service its debt in a timely fashion, which required the development of a new plan that depended on financial assistance from the U.S. government.

In December 2008 Old GM requested and received financial assistance from the U.S. government and entered into the UST Loan Agreement. In early 2009 Old GM's business results and liquidity continued to deteriorate, and, as a result, Old GM obtained additional funding from the UST under the UST Loan Agreement. Old GM also received funding from EDC, a corporation wholly-owned by the government of Canada, under a loan and security agreement entered into in April 2009 (EDC Loan Facility).

As a condition to obtaining the loans under the UST Loan Agreement, Old GM was required to submit a Viability Plan in February 2009 that included specific actions intended to result in the following:

- Repayment of all loans, interest and expenses under the UST Loan Agreement, and all other funding provided by the U.S. government;
- Compliance with federal fuel efficiency and emissions requirements and commencement of domestic manufacturing of advanced technology vehicles;
- Achievement of a positive net present value, using reasonable assumptions and taking into account all existing and projected future costs;
- Rationalization of costs, capitalization and capacity with respect to its manufacturing workforce, suppliers and dealerships; and
- A product mix and cost structure that is competitive in the U.S. marketplace.

The UST Loan Agreement also required Old GM to, among other things, use its best efforts to achieve the following restructuring targets:

### *Debt Reduction*

- Reduction of its outstanding unsecured public debt by not less than two-thirds through conversion of existing unsecured public debt into equity, debt and/or cash or by other appropriate means.

### *Labor Modifications*

- Reduction of the total amount of compensation paid to its U.S. employees so that, by no later than December 31, 2009, the average of such total amount is competitive with the average total amount of such compensation paid to U.S. employees of certain foreign-owned, U.S. domiciled automakers (transplant automakers);
- Elimination of the payment of any compensation or benefits to U.S. employees who have been fired, laid-off, furloughed or idled, other than customary severance pay; and

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

- Application of work rules for U.S. employees in a manner that is competitive with the work rules for employees of transplant automakers.

### *VEBA Modifications*

- Modification of its retiree healthcare obligations arising under the 2008 UAW Settlement Agreement under which responsibility for providing healthcare for UAW retirees, their spouses and dependents would permanently shift from Old GM to the New Plan funded by the New VEBA, such that payment or contribution of not less than one-half of the value of each future payment was to be made in the form of Old GM common stock, subject to certain limitations.

The UST Loan Agreement provided that if, by March 31, 2009 or a later date (not to exceed 30 days after March 31, 2009) as determined by the President's Designee (Certification Deadline), the President's Designee had not certified that Old GM had taken all steps necessary to achieve and sustain its long-term viability, international competitiveness and energy efficiency in accordance with the Viability Plan, then the loans and other obligations under the UST Loan Agreement were to become due and payable on the thirtieth day after the Certification Deadline.

On March 30, 2009 the President's Designee determined that the plan was not viable and required substantial revisions. In conjunction with the March 30, 2009 announcement, the administration announced that it would offer Old GM adequate working capital financing for a period of 60 days while it worked with Old GM to develop and implement a more accelerated and aggressive restructuring that would provide a sound long-term foundation. On March 31, 2009 Old GM and the UST agreed to postpone the Certification Deadline to June 1, 2009.

Old GM made further modifications to its Viability Plan in an attempt to satisfy the President's Designee's requirement that it undertake a substantially more accelerated and aggressive restructuring plan (Revised Viability Plan). The following is a summary of significant cost reduction and restructuring actions contemplated by the Revised Viability Plan, the most significant of which included reducing Old GM's indebtedness and VEBA obligations:

### *Indebtedness and VEBA obligations*

In April 2009 Old GM commenced exchange offers for certain unsecured notes to reduce its unsecured debt in order to comply with the debt reduction condition of the UST Loan Agreement.

Old GM also commenced discussions with the UST regarding the terms of a potential restructuring of its debt obligations under the UST Loan Agreement, the UST GMAC Loan Agreement (as subsequently defined), and any other debt issued or owed to the UST in connection with those loan agreements pursuant to which the UST would exchange at least 50% of the total outstanding debt Old GM owed to it at June 1, 2009 for Old GM common stock.

In addition, Old GM commenced discussions with the UAW and the VEBA-settlement class representative regarding the terms of potential VEBA modifications.

### *Other cost reduction and restructuring actions*

In addition to the efforts to reduce debt and modify the VEBA obligations, the Revised Viability Plan also contemplated the following cost reduction efforts:

- Extended shutdowns of certain North American manufacturing facilities in order to reduce dealer inventory;
- Refocus its resources on four core U.S. brands: Chevrolet, Cadillac, Buick and GMC;
- Acceleration of the resolution for Saab Automobile AB (Saab), HUMMER and Saturn and no planned future investment for Pontiac, which was to be phased out by the end of 2010;

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- Acceleration of the reduction in U.S. nameplates to 34 by 2010;
- A reduction in the number of U.S. dealers from 6,246 in 2008 to 3,605 in 2010;
- A reduction in the total number of plants in the U.S. to 34 by the end of 2010 and 31 by 2012; and
- A reduction in the U.S. hourly employment levels from 61,000 in 2008 to 40,000 in 2010 as a result of the nameplate reductions, operational efficiencies and plant capacity reductions.

Old GM had previously announced that it would reduce salaried employment levels on a global basis by 10,000 during 2009 and had instituted several programs to effect reductions in salaried employment levels. Old GM had also negotiated a revised labor agreement with the CAW to reduce its hourly labor costs to approximately the level paid to the transplant automakers; however, such agreement was contingent upon receiving longer term financial support for its Canadian operations from the Canadian federal and Ontario provincial governments.

**Chapter 11 Proceedings**

Old GM was not able to complete the cost reduction and restructuring actions in its Revised Viability Plan, including the debt reductions and VEBA modifications, which resulted in extreme liquidity constraints. As a result, on June 1, 2009 Old GM and certain of its direct and indirect subsidiaries entered into the Chapter 11 Proceedings.

In connection with the Chapter 11 Proceedings, Old GM entered into a secured superpriority debtor-in-possession credit agreement with the UST and EDC (DIP Facility) and received additional funding commitments from EDC to support Old GM's Canadian operations.

The following table summarizes the total funding and funding commitments Old GM received from the U.S. and Canadian governments and the additional notes Old GM issued related thereto in the period December 31, 2008 through July 9, 2009 (dollars in millions):

<u>Description of Funding Commitment</u>	<u>Funding and Funding Commitments</u>	<u>Additional Notes Issued(a)</u>	<u>Total Obligation</u>
UST Loan Agreement (b)	\$ 19,761	\$ 1,172	\$ 20,933
EDC funding (c)	6,294	161	6,455
DIP Facility	33,300	2,221	35,521
Total	<u>\$ 59,355</u>	<u>\$ 3,554</u>	<u>\$ 62,909</u>

- (a) Old GM did not receive any proceeds from the issuance of these promissory notes, which were issued as additional compensation to the UST and EDC.
- (b) Includes debt of \$361 million, which the UST loaned to Old GM under the warranty program.
- (c) Includes approximately \$2.4 billion from the EDC Loan Facility received in the period January 1, 2009 through July 9, 2009 and funding commitments of CAD \$4.5 billion (equivalent to \$3.9 billion when entered into) that were immediately converted into our equity. This funding was received on July 15, 2009.

**363 Sale**

On July 10, 2009 we completed the acquisition of substantially all of the assets and assumed certain liabilities of Old GM and certain of its direct and indirect subsidiaries (collectively, the Sellers). The 363 Sale was consummated in accordance with the Purchase Agreement between us and the Sellers, and pursuant to the Bankruptcy Court's sale order dated July 5, 2009.

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In connection with the 363 Sale, the purchase price paid to Old GM was comprised of:

- A credit bid in an amount equal to the total of: (1) debt of \$19.8 billion under Old GM's UST Loan Agreement, plus notes of \$1.2 billion issued as additional compensation for the UST Loan Agreement, plus interest on such debt Old GM owed as of the closing date of the 363 Sale; and (2) debt of \$33.3 billion under Old GM's DIP Facility, plus notes of \$2.2 billion issued as additional compensation for the DIP Facility, plus interest Old GM owed as of the closing date, less debt of \$8.2 billion owed under the DIP Facility;
- The UST's return of the warrants Old GM previously issued to it;
- The issuance to MLC of 50 million shares (or 10%) of our common stock and warrants to acquire newly issued shares of our common stock initially exercisable for a total of 91 million shares of our common stock (or 15% on a fully diluted basis); and
- Our assumption of certain specified liabilities of Old GM (including debt of \$7.1 billion owed under the DIP Facility).

Under the Purchase Agreement, we are obligated to issue the Adjustment Shares in the event that allowed general unsecured claims against MLC, as estimated by the Bankruptcy Court, exceed \$35.0 billion. The maximum Adjustment Shares equate to 2% (or 10 million shares) of our common stock. The number of Adjustment Shares to be issued is calculated based on the extent to which estimated general unsecured claims exceed \$35.0 billion with the maximum number of Adjustment Shares issued if estimated general unsecured claims total \$42.0 billion or more. We determined that it is probable that general unsecured claims allowed against MLC will ultimately exceed \$35.0 billion by at least \$2.0 billion. In that circumstance, we would be required to issue 2.9 million Adjustment Shares to MLC as an adjustment to the purchase price. At July 10, 2009 we accrued \$113 million in Other liabilities and deferred income taxes related to this contingent obligation.

### *Agreements with the UST, UAW Retiree Medical Benefits Trust and Export Development Canada*

On July 10, 2009 we entered into the UST Credit Agreement and assumed the UST Loans of \$7.1 billion. Immediately after entering into the UST Credit Agreement, we made a partial prepayment, reducing the UST Loans principal balance to \$6.7 billion. We also entered into the VEBA Note Agreement and issued a note in the principal amount of \$2.5 billion (VEBA Notes) to the New VEBA. Through our wholly-owned subsidiary General Motors of Canada Limited (GMCL), we also entered into the amended and restated Canadian Loan Agreement with EDC, as a result of which GMCL has the Canadian Loan of CAD \$1.5 billion (equivalent to \$1.3 billion when entered into).

Refer to Note 18 for additional information on the UST Loans, VEBA Notes and the Canadian Loan.

### *Issuance of Common Stock, Preferred Stock and Warrants*

On July 10, 2009 we issued the following securities to the UST, Canada Holdings, the New VEBA and MLC:

#### *UST*

- 304.1 million shares of our common stock;
- 83.9 million shares of our Series A Fixed Rate Cumulative Perpetual Preferred Stock (Series A Preferred Stock);

#### *Canada Holdings*

- 58.4 million shares of our common stock;
- 16.1 million shares of Series A Preferred Stock;

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### *New VEBA*

- 87.5 million shares of our common stock;
- 260.0 million shares of Series A Preferred Stock;
- Warrant to acquire 15.2 million shares of our common stock;

### *MLC*

- 50.0 million shares of our common stock; and
- Two warrants, each to acquire 45.5 million shares of our common stock.

### *Preferred Stock*

The shares of Series A Preferred Stock have a liquidation preference of \$25.00 per share and accrue cumulative dividends at 9.0% per annum (payable quarterly on March 15, June 15, September 15 and December 15) that are payable if, as and when declared by our Board of Directors. So long as any share of the Series A Preferred Stock remains outstanding, no dividend or distribution may be declared or paid on our common stock unless all accrued and unpaid dividends have been paid on the Series A Preferred Stock, subject to exceptions, such as dividends on our common stock payable solely in shares of our common stock. On or after December 31, 2014 we may redeem, in whole or in part, the shares of Series A Preferred Stock outstanding, at a redemption price per share equal to \$25.00 per share plus any accrued and unpaid dividends, subject to limited exceptions.

The Series A Preferred Stock is classified as temporary equity because one of the holders, the UST, controls our Board of Directors and could compel us to call the Preferred Stock for redemption in 2014. We are not accreting the Preferred Stock to its redemption amount of \$9.0 billion because we believe it is not probable that the UST will control our Board of Directors in 2014.

### *Warrants*

The first tranche of warrants issued to MLC is exercisable at any time prior to July 10, 2016, with an exercise price of \$30.00 per share. The second tranche of warrants issued to MLC is exercisable at any time prior to July 10, 2019, with an exercise price of \$55.00 per share. The warrant issued to the New VEBA is exercisable at any time prior to December 31, 2015, with an exercise price of \$126.92 per share. The number of shares of our common stock underlying each of the warrants issued to MLC and the New VEBA and the per share exercise price are subject to adjustment as a result of certain events, including stock splits, reverse stock splits and stock dividends.

### *Additional Modifications to Pension and Other Postretirement Plans Contingent upon the Emergence from Bankruptcy*

We also modified the U.S. hourly pension plan, the U.S. executive retirement plan, the U.S. salaried life plan, the non-UAW hourly retiree medical plan and the U.S. hourly life plan. These modifications became effective upon the completion of the 363 Sale. The key modifications were:

- Elimination of the post 65 benefits and placing a cap on pre 65 benefits in the non-UAW hourly retiree medical plan;
- Capping the life benefit for non-UAW retirees and future retirees at \$10,000 in the U.S. hourly life plan;
- Capping the life benefit for existing salaried retirees at \$10,000, reduced the retiree benefit for future salaried retirees and eliminated the executive benefit for the U.S. salaried life plan;
- Elimination of a portion of nonqualified benefits in the U.S. executive retirement plan; and

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- Elimination of the flat monthly special lifetime benefit of \$66.70 that was to commence on January 1, 2010 for the U.S. hourly pension plan.

### ***Accounting for the Effects of the Chapter 11 Proceedings and the 363 Sale***

#### *Chapter 11 Proceedings*

Accounting Standards Codification (ASC) 852, "Reorganizations," (ASC 852) is applicable to entities operating under Chapter 11 of the Bankruptcy Code. ASC 852 generally does not affect the application of U.S. GAAP that we and Old GM followed to prepare the consolidated financial statements, but it does require specific disclosures for transactions and events that were directly related to the Chapter 11 Proceedings and transactions and events that resulted from ongoing operations.

Old GM prepared its consolidated financial statements in accordance with the guidance in ASC 852 in the period June 1, 2009 through July 9, 2009. Revenues, expenses, realized gains and losses, and provisions for losses directly related to the Chapter 11 Proceedings were recorded in Reorganization gains, net. Reorganization gains, net do not constitute an element of operating loss due to their nature and due to the requirement of ASC 852 that they be reported separately from operating loss. Old GM's balance sheet prior to the 363 Sale distinguished prepetition liabilities subject to compromise from prepetition liabilities not subject to compromise and from postpetition liabilities. Cash amounts provided by or used in the Chapter 11 Proceedings are separately disclosed in the statement of cash flows.

### **Renewed Business Focus**

The formation of General Motors Company, in connection with the 363 Sale, has positioned us to achieve profitability with the execution of certain key strategic initiatives. Achieving our goal of returning to profitability includes developing a culture with an increased focus on our customers' needs and our product quality and design.

#### ***Core Brands***

Going forward we will focus on four core brands in North America: Chevrolet, Cadillac, Buick, and GMC. We anticipate that these four core brands will have a total of 34 U.S. nameplates by the end of 2010. We believe the focus on four core brands will enable us to allocate more resources to each, resulting in improved product, design, quality and marketing.

#### ***Operational Structure***

To promote a new company culture, we have revised our operational structure to streamline our business and speed our decision making processes in order to respond to customer needs and market demands faster. In order to streamline our business and speed our decision making processes and in anticipation of the sale of our Adam Opel GmbH (Adam Opel) operations, we had revised our operational structure, combining Old GM's Europe, Latin America/Africa/Middle East and Asia Pacific segments into one segment, GMIO. In November 2009 our Board of Directors subsequently elected to retain sole ownership of the Adam Opel operations. We have therefore determined our current operational structure to be GMNA, GME, and GMIO, which combines Old GM's Latin America/Africa/Middle East and Asia Pacific segments. We have eliminated our regional strategy boards, as well as two senior leadership forums, the Automotive Strategy Board and the Automotive Product Board. We have instituted a single, smaller executive committee, which meets more frequently and focuses on business results, products, brands and customers. We have revised the segment presentation for all periods presented.

Nonsegment operations are classified as Corporate. Corporate includes investments in GMAC, certain centrally recorded income and costs, such as interest, income taxes and corporate expenditures, certain nonsegment specific revenues and expenses, including costs related to the Delphi Benefit Guarantee Agreements and a portfolio of automotive retail leases. The Delphi Benefit Guarantee Agreements require that in the event that Delphi or its successor companies ceases doing business or becomes subject to financial distress Old GM could be liable if Delphi fails to provide certain benefits at the required level.

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### *Investment in GMAC*

As part of the approval process for GMAC to obtain Bank Holding Company status in December 2008, Old GM agreed to reduce its ownership in GMAC to less than 10% of the voting and total equity of GMAC by December 24, 2011. At December 31, 2009 our equity ownership in GMAC was 16.6%.

In December 2008 Old GM and FIM Holdings, an assignee of Cerberus ResCap Financing LLC, entered into a subscription agreement with GMAC under which each agreed to purchase additional Common Membership Interests in GMAC, and the UST committed to provide Old GM with additional funding in order to purchase the additional interests. In January 2009 Old GM entered into the UST GMAC Loan Agreement pursuant to which it borrowed \$884 million (UST GMAC Loan) and utilized those funds to purchase 190,921 Class B Common Membership Interests of GMAC. The UST GMAC Loan was scheduled to mature in January 2012 and bore interest, payable quarterly, at the same rate of interest as the UST Loans. The UST GMAC Loan was secured by Old GM's Common and Preferred Membership Interests in GMAC. As part of this loan agreement, the UST had the option to convert outstanding amounts into a maximum of 190,921 shares of GMAC's Class B Common Membership Interests on a pro rata basis.

In May 2009 the UST exercised this option, the outstanding principal and interest under the UST GMAC Loan was extinguished, and Old GM recorded a net gain of \$483 million. The net gain was comprised of a gain on the disposition of GMAC Common Membership Interests of \$2.5 billion and a loss on extinguishment of the UST GMAC Loan of \$2.0 billion. After the exchange, Old GM's ownership was reduced to 24.5% of GMAC's Common Membership Interests.

GMAC converted its status to a C corporation effective June 30, 2009. At that date, Old GM began to account for its investment in GMAC using the cost method rather than the equity method as Old GM no longer exercised significant influence over GMAC. In connection with GMAC's conversion into a C corporation, each unit of each class of GMAC Membership Interests was converted into shares of capital stock of GMAC with substantially the same rights and preferences as such Membership Interests. On July 10, 2009 we acquired the investments in GMAC's common and preferred stocks in connection with the 363 Sale.

In December 2009 the UST made a capital contribution to GMAC of \$3.8 billion consisting of the purchase of trust preferred securities of \$2.5 billion and mandatory convertible preferred securities of \$1.3 billion. The UST also exchanged all of its existing GMAC non-convertible preferred stock for newly issued mandatory convertible preferred securities valued at \$5.3 billion. In addition the UST converted \$3.0 billion of its mandatory convertible preferred securities into GMAC common stock. These actions resulted in the dilution of our GMAC common stock investment from 24.5% to 16.6%, of which 6.7% is held directly and 9.9% is held in an independent trust. Pursuant to previous commitments to reduce influence over and ownership in GMAC, the trustee, who is independent of us, has the sole authority to vote and is required to dispose of all GMAC common stock held in the trust by December 24, 2011.

### **Strategic Initiatives**

The execution of certain strategic initiatives is critical in achieving our goal of sustained future profitability. The following provides a summary of these initiatives and significant results and events.

#### ***U.S. Automobile Industry and GMNA***

Our U.S. operations represent a substantial portion of our business and attaining future profitability in our U.S. operations is imperative if we are to achieve our worldwide profitability, debt reduction and U.S. market share goals.

Our plan to return our U.S. operations to profitability includes programs that enhance our customers' interaction at the point of sale through improved dealership operations. The first program, Standards for Excellence, is an initiative focused upon improving sales and customer satisfaction. The program includes an in-store facilitator, process improvement programs and customer research. Incentives are awarded to those dealers that achieve their targets under this program. Participating dealers in this program have consistently outperformed non-participating dealers. The second program, Essential Brand Elements, is an initiative focused upon

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conformance with four critical sales and marketing elements: (1) Customer Sales and Service Retention communications; (2) digital marketing; (3) high training standards; and (4) facility image requirements. Dealers that participate and are compliant earn quarterly incentives. Of our dealerships, 97% have participated in the program and compliance has increased for all elements.

In the year ended 2009 certain data such as vehicle sales, market share data and production volume combine our data in the period July 10, 2009 through December 31, 2009 with Old GM's data in the period January 1, 2009 through July 9, 2009 for comparative purposes.

### *Vehicle Sales and Market Share*

In the year ended 2009 U.S. industry vehicle sales were 10.6 million vehicles, of which combined GM and Old GM market share was 19.6%. This represents a decline in U.S. industry vehicle sales from 13.5 million vehicles (or 21.4%) and a decline in Old GM market share, which was 22.1% in 2008. The negative economic effects of the U.S. recession, in 2008, continued to effect the U.S. automobile industry in 2009 resulting in decreased U.S. industry vehicle sales.

Combined GM and Old GM dealers in the U.S. sold 2.1 million vehicles in the year ended 2009. This represents a decline from Old GM U.S. vehicle sales of 3.0 million vehicles (or 30.1%) in 2008. This decrease relates to the continuing tight credit markets, high unemployment rates and recessions in the United States and many international markets negatively affecting industry vehicle sales during 2009. In addition, Old GM's well publicized liquidity issues, public speculation as to the effects of Chapter 11 proceedings and the actual Chapter 11 Proceedings negatively affected vehicle sales. This decrease was also affected by a reduction in combined GM and Old GM U.S. fleet sales to 514,000 vehicles from 823,000 vehicles (or 37.5%), reduced incentive spending and the orderly wind-down of non-core brands. Despite this decrease in the combined GM and Old GM U.S. vehicle sales, combined GM and Old GM dealers' U.S. quarterly vehicle sales increased from 413,000 vehicles in the three months ended March 31, 2009 to 541,000 vehicles (or 31.1%) in the three months ended June 30, 2009. Combined GM and Old GM dealers' U.S. quarterly vehicle sales increased to 593,000 vehicles (or 9.4%) in the three months ended September 30, 2009 as compared to June 30, 2009 levels. The combined GM and Old GM dealers' U.S. quarterly vehicle sales increases in the first three quarters of 2009 reflect successful product launches, such as the Chevrolet Camaro, and vehicle sales from our portfolio of fuel efficient vehicles, such as the Chevrolet Aveo and Cobalt and crossovers Equinox and HHR, related to the U.S. government Car Allowance Rebate System (CARS) program. In the fourth quarter of 2009 our dealers' U.S. vehicle sales decreased to 538,000 vehicles (or 9.3%) as compared to September 2009 levels reflecting lost momentum from the expired CARS program.

In the year ended 2009 combined GM and Old GM core brands accounted for 87.1% of combined GM and Old GM total U.S. vehicle sales. These core brands consist of Buick, Cadillac, Chevrolet and GMC. Combined GM and Old GM dealers' U.S. quarterly core brand vehicle sales increased from 346,000 vehicles in the three months ended March 31, 2009 to 465,000 vehicles (or 34.4%) in the three months ended June 30, 2009. Combined GM and Old GM dealers' U.S. quarterly core brand vehicle sales increased to 509,000 vehicles (or 9.4%) in the three months ended September 30, 2009 as compared to June 30, 2009 levels. These core brand vehicle sale increases are reflective of the new product launches and the CARS program mentioned previously. In the fourth quarter of 2009 our U.S. core brand vehicle sales decreased to 496,000 vehicles (or 2.5%) reflecting the expiration of the CARS program. In the fourth quarter of 2009 core brand vehicle sales reached 92.3% of total U.S. vehicle sales as the wind-down of non-core brands Pontiac and Saturn were ahead of schedule. At December 31, 2009 only 2,752 Pontiac or Saturn vehicles remained in dealer stock.

The continued increase in U.S. industry and core brand vehicle sales is critical for us to achieve our worldwide profitability, debt reduction, and U.S. market share goals.

### *U.S. Salaried and Hourly Headcount Reductions*

In June 2009 Old GM announced its intention to reduce U.S. salaried headcount by means of the 2009 Salaried Window Program. At December 31, 2009 our U.S. salaried workforce was 26,000 employees. At December 31, 2008 Old GM's U.S. salaried workforce was 29,000 employees. This represents a decrease of 5,000 U.S. salaried employees, excluding 2,000 U.S. salaried employees acquired with Delphi's global steering business (Nexteer) and four domestic facilities, as more fully discussed in "Delphi Master Disposition Agreement" in this MD&A.

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In order to align U.S. hourly headcount with current production levels, Old GM determined that reductions in its U.S. hourly workforce were necessary. At December 31, 2009 13,000 U.S. hourly employees had elected to participate in the 2009 Special Attrition Programs, introduced in February and in June of 2009. At December 31, 2009 our U.S. hourly headcount was 51,000 employees. At December 31, 2008 Old GM's U.S. hourly headcount was 62,000 employees. This represents a decrease of 16,000 U.S. hourly employees, excluding 5,000 U.S. hourly employees acquired with Nexteer and four domestic facilities.

### *Manufacturing Operations Rationalization*

We continue to consolidate our U.S. manufacturing operations while maintaining the flexibility to meet increasing 2010 production levels. At December 31, 2009 we had reduced the number of U.S. manufacturing plants to 41 from 47 in 2008, excluding Nexteer and four domestic facilities recently acquired from Delphi.

In the year ended 2009 combined GM and Old GM GMNA produced 1.9 million vehicles. This represents a decrease of 44.5% compared to 3.4 million vehicles in the year ended 2008. However, combined GM and Old GM GMNA production levels increased from 371,000 vehicles in the three months ended March 31, 2009 to 395,000 vehicles (or 6.5%) in the three months ended June 30, 2009. Combined GM and Old GM GMNA production increased to 531,000 vehicles (or 34.4%) in the three months ended September 30, 2009 as compared to June 30, 2009 quarterly production levels. GMNA production increased to 616,000 vehicles (or 16.0%) in the three months ended December 31, 2009 as compared to September 30, 2009 quarterly production levels. The increase in production levels from the three months ended September 30, 2009 related to increased consumer demand for certain products such as the Chevrolet Equinox, GMC Terrain, Buick LaCrosse and Cadillac SRX.

### *Timely Repayment of Debt*

Proceeds from the DIP Facility were necessary in order to provide sufficient capital to operate. In connection with the 363 Sale, we assumed the UST Loans and Canadian Loan, which Old GM incurred under the DIP Facility. One of our key priorities going forward is to repay the outstanding balances from these loans prior to maturity.

### *Repayment of UST Loans and Canadian Loan*

In November 2009 we signed amendments to the UST Credit Agreement and Canadian Loan Agreement to provide for quarterly repayments of the UST Loans and Canadian Loan. Under these amendments, we agreed to make quarterly payments of \$1.0 billion and \$192 million to the UST and EDC. In December 2009 and March 2010 we made our first two quarterly payments on the UST Loans and Canadian Loan. Upon making such payments, equivalent amounts were released to us from escrow. After these payments, the carrying amounts of the UST Loans and Canadian Loan were \$4.7 billion and \$1.0 billion.

### *UST Escrow Funds*

Proceeds of the DIP Facility of \$16.4 billion were deposited in escrow and will be distributed to us at our request upon certain conditions. Any unused amounts in escrow on June 30, 2010 are required to be used to repay the UST Loans and Canadian Loan. In the event of an initial public offering of our equity, this accelerated payment schedule would be suspended. Any funds remaining in our escrow account after repayment of the loans will be released to us. We have used our escrow account to acquire all Class A Membership Interests in DIP HOLDCO LLP, subsequently named Delphi Automotive LLP, (New Delphi) in the amount of \$1.7 billion and acquire Nexteer and four domestic facilities and make other related payments in the amount of \$1.0 billion. In addition, \$2.4 billion were released from escrow in connection with two quarterly payments of \$1.2 billion on the UST Loans and Canadian Loan. At March 31, 2010 our escrow account had a balance of \$11.3 billion.

### *UST Credit Agreement and Canadian Loan Agreement*

On July 10, 2009 we entered into the UST Credit Agreement and assumed the UST Loans in the amount of \$7.1 billion incurred by Old GM under its DIP Facility. Immediately after entering into the UST Credit Agreement, we made a partial pre-payment, reducing

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the UST Loans principal balance to \$6.7 billion. On July 10, 2009 through our wholly-owned subsidiary GMCL, we also entered into the amended and restated Canadian Loan Agreement with EDC, and assumed the CAD \$1.5 billion (equivalent to \$1.3 billion when entered into) Canadian Loan.

We are required to prepay the UST Loans and Canadian Loan on a pro rata basis, between the UST Loans, Canadian Loan and VEBA Notes, in an amount equal to the amount of net cash proceeds received from certain asset dispositions, casualty events, extraordinary receipts and the incurrence of certain debt. We may also voluntarily repay the UST Loans and Canadian Loan in whole or in part at any time. Once repaid, amounts borrowed under the UST Credit Agreement may not be reborrowed. The UST Credit Agreement and the Canadian Loan Agreement mature on July 10, 2015.

### *Repayment of German Revolving Bridge Facility*

In May 2009 Old GM entered into a revolving bridge facility with the German government and certain German states (German Facility) with a total commitment of up to Euro 1.5 billion (equivalent to \$2.1 billion when entered into) and maturing November 30, 2009. The German Facility was necessary in order to provide sufficient capital to operate Opel/Vauxhall. On November 24, 2009, the debt was paid in full and extinguished.

### **Brand Rationalization**

As mentioned previously, we will focus our resources in the U.S. on four core brands: Chevrolet, Cadillac, Buick and GMC. As a result, we completed the sale of Saab in February 2010 and have announced plans to sell or phase out our Pontiac, Saturn, and HUMMER brands. In connection with the rationalization of our brands, there is no planned investment for Pontiac, and the brand is expected to be phased out by the end of 2010.

### *Saturn*

In September 2009 we decided to wind-down the Saturn brand and dealership network in accordance with the deferred termination agreements that Saturn dealers have signed with us. Pursuant to the terms of the deferred termination agreements, the wind-down process is scheduled to be completed no later than October 2010.

### *HUMMER*

In February 2010 we announced Tengzhong was unable to complete the acquisition of HUMMER. We will now work closely with HUMMER employees, dealers and suppliers to wind-down the HUMMER brand in an orderly, responsible manner.

### *Saab*

In February 2010 we completed the sale of Saab to Spyker Cars NV. As part of the agreement, Saab and Spyker Cars NV will operate under the Spyker Cars NV umbrella and Spyker Cars NV will assume responsibility for Saab operations. The previously announced wind-down activities of Saab operations have ended.

### **U.S. Dealer Reduction**

As part of achieving and sustaining long-term viability and the viability of our dealer network, we determined that a reduction in the number of U.S. dealerships was necessary. In determining which dealerships would remain in our network we performed analyses of volumes and consumer satisfaction indexes, among other criteria. Wind-down agreements with over 1,800 U.S. retail dealers have been executed. The retail dealers executing wind-down agreements have agreed to terminate their dealer agreements with us prior to October 31, 2010. Our plan was to reduce dealerships in the United States to approximately 3,600 to 4,000 in the long-term. However, in December 2009 President Obama signed legislation giving dealers access to neutral arbitration should they decide to contest the wind-down of their dealership. Under the terms of the legislation we have informed dealers as to why their dealership received a

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wind-down agreement. In turn, dealers were given a timeframe to file for reinstatement through the American Arbitration Association. Under the law decisions in these arbitration proceedings must generally be made by June 2010 and are binding and final. We have sent letters to over 2,000 of our dealers explaining the reasons for their wind-down agreements and over 1,100 dealers have filed for arbitration. In response to the arbitration filings we reviewed each of the dealer reinstatement claims filed with the American Arbitration Association. Our review resulted in our sending over 600 letters of intent, containing our core business criteria for operation of a dealership to dealers, which upon compliance by the dealer, would result in reinstatement of the dealership. We expect to have the overall arbitration and reinstatement process fundamentally resolved in 2010. Due to the reinstatement of dealerships and the uncertainty of the outcome of the remaining binding arbitration cases we expect the number of dealerships in our network to exceed the previously estimated range.

To create a strong and viable distribution network for our products, continuing dealers have signed participation agreements. These participation agreements include performance expectations in the areas of retail sales, new vehicle inventory and facility exclusivity.

### ***Opel/Vauxhall Restructuring Activities***

In February 2010 we presented our plan for the long-term viability of our Opel/Vauxhall operations to the German government. We are currently in discussions with European governments concerning funding support. Our plan includes:

- Funding requirement estimate of Euro 3.7 billion (equivalent to \$5.1 billion) including original estimate of Euro 3.3 billion plus an additional Euro 0.4 billion, requested by European governments, to offset the potential effect of adverse market developments;
- Financing contributions from us of Euro 1.9 billion (equivalent to \$2.6 billion) or more than 50% of the overall funding requirements;
- Requested of total funding support/loan guarantees from European governments of Euro 1.8 billion (equivalent to \$2.5 billion);
- We plan to invest in capital and engineering of Euro 11.0 billion (equivalent to \$15.0 billion) over the next five years; and
- Reduced capacity to adjust to current and forecasted market conditions including headcount reductions of 1,300 employees in sales and administration, 7,000 employees in manufacturing and the idling of our Antwerp, Belgium facility.

With these restructuring initiatives complete, we plan to have 80% of our carlines at an age of three years or less by 2012. This would be accomplished by eight product launches in 2010 and another four product launches in 2011. In addition, we plan to invest Euro 1.0 billion to introduce innovative fuel efficient powertrain technologies including an additional extended-range electric vehicle and introducing battery-electric vehicles in smaller-size segments.

If our Opel/Vauxhall operations cannot secure the government-sponsored financing package above, we would be responsible for its remaining funding requirements and this could have a significant negative effect on our liquidity position. To the extent our liquidity is not available to finance the Opel/Vauxhall operations and Adam Opel fails to secure government-sponsored financing or other financing, the long term viability of the Opel/Vauxhall operations could be negatively affected.

### ***Delphi Master Disposition Agreement***

In October 2009 we consummated the transaction contemplated in the DMDA with Delphi and other parties. Under the DMDA, we agreed to acquire Nexteer, which supplies us and other OEMs with steering systems and columns, and four domestic facilities that manufacture a variety of automotive components, primarily sold to us. We, along with the Investors who held the Delphi Tranche DIP facilities, agreed to acquire substantially all of Delphi's remaining assets through New Delphi. Certain excluded assets and liabilities have been retained by DPH to be sold or liquidated. In connection with the DMDA, we agreed to pay or assume Delphi obligations of \$1.0 billion related to its senior DIP credit facility, including certain outstanding derivative instruments, its junior DIP credit facility, and other Delphi obligations, including certain administrative claims. At the closing of the transactions contemplated by the DMDA,

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

we waived administrative claims associated with our advance agreements with Delphi, the payment terms acceleration agreement with Delphi and the claims associated with previously transferred pension costs for hourly employees.

We agreed to acquire, prior to the consummation of the transactions contemplated by the DMDA, all Class A Membership Interests in New Delphi for a cash contribution of \$1.7 billion with the Investors acquiring Class B Membership Interests. We and the Investors also agreed to establish: (1) a secured delayed draw term loan facility for New Delphi, with us and the Investors each committing to provide loans of up to \$500 million; and (2) a note of \$41 million to be funded at closing by the Investors. In addition, the DMDA settled outstanding claims and assessments against and from MLC, us and Delphi, including the termination of the Master Restructuring Agreement with limited exceptions, and establishes an ongoing commercial relationship with New Delphi. We agreed to continue all existing Delphi supply agreements and purchase orders for GMNA to the end of the related product program, and New Delphi agreed to provide us with access rights designed to allow us to operate specific sites on defined triggering events to provide us with protection of supply.

In separate agreements, we, Delphi and the Pension Benefit Guarantee Corporation (PBGC) negotiated the settlement of the PBGC's claims from the termination of the Delphi pension plans and the release of certain liens with the PBGC against Delphi's foreign assets. In return, the PBGC was granted a 100% interest in Class C Membership Interests in New Delphi which provides for the PBGC to participate in predefined equity distributions and received a payment of \$70 million from us. We maintain the obligation to provide the difference between pension benefits paid by the PBGC according to regulation and those originally guaranteed by Old GM under the Delphi Benefit Guarantee Agreements.

### **Section 136 Loans**

Section 136 of the Energy Independence and Security Act of 2007 establishes an incentive program consisting of both grants and direct loans to support the development of advanced technology vehicles and associated components in the U.S.

The U.S. Congress provided the U.S. Department of Energy (DOE) with \$25.0 billion in funding to make direct loans to eligible applicants for the costs of re-equipping, expanding, and establishing manufacturing facilities in the United States to produce advanced technology vehicles and components for these vehicles. Old GM submitted three applications for Section 136 Loans aggregating \$10.3 billion to support its advanced technology vehicle programs prior to July 2009. Based on the findings of the President's Designee under the U.S. Treasury Loan Agreement in March 2009, the DOE determined that Old GM did not meet the viability requirements for Section 136 Loans.

On July 10, 2009, we purchased certain assets of Old GM pursuant to Section 363 of the Bankruptcy Code, including the rights to the loan applications submitted to the ATVMIP. Further, we submitted a fourth application in August 2009. Subsequently, the DOE advised us to resubmit a consolidated application including all the four applications submitted earlier and also the Electric Power Steering project acquired from Delphi in October 2009. We submitted the consolidated application in October 2009, which requested an aggregate amount of \$14.4 billion of Section 136 Loans. Ongoing product portfolio updates and project modifications requested from the DOE have the potential to reduce the maximum loan amount. To date, the DOE has announced that it would provide approximately \$8.3 billion in Section 136 Loans to Ford Motor Company, Nissan Motor Company, Tesla Motors, Inc., Fisker Automotive, Inc., and Tenneco Inc. There can be no assurance that we will qualify for any remaining loans or receive any such loans even if we qualify.

### **Special Attrition Programs, Labor Agreements and Benefit Plan Changes**

#### **2009 Special Attrition Programs**

In February and June 2009 Old GM announced the 2009 Special Attrition Programs for eligible UAW represented employees, offering cash and other incentives for individuals who elected to retire or voluntarily terminate employment. In the period January 1, 2009 through July 9, 2009 Old GM recorded postemployment benefit charges related to these programs for 13,000 employees. In the periods January 1, 2009 through July 9, 2009 and July 10, 2009 through December 31, 2009 7,980 and 5,000 employees accepted the terms of the 2009 Special Attrition Programs.

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### ***Global Salaried Workforce Reductions***

In February and June 2009 Old GM announced its intention to reduce global salaried headcount. The U.S. salaried employee reductions related to this initiative were to be accomplished primarily through the 2009 Salaried Window Program or through a severance program funded from operating cash flows. These programs were involuntary programs subject to management approval where employees were permitted to express interest in retirement or separation, for which the charges for the 2009 Salaried Window Program were recorded as special termination benefits funded from the U.S. salaried defined benefit pension plan and other applicable retirement benefit plans.

A net reduction of 9,000 salaried employees was achieved globally, excluding 2,000 salaried employees acquired with our acquisition of Nexteer and four domestic facilities, as more fully discussed in "Delphi Master Disposition Agreement" in this MD&A. Global salaried headcount decreased from 73,000 salaried employees at December 31, 2008 to 66,000 at December 31, 2009, including a reduction of 5,500 U.S. salaried employees.

### ***U.S. Salaried Benefits Changes***

In February 2009 Old GM reduced salaried retiree life benefits for U.S. salaried employees. In June 2009 Old GM approved and communicated plan amendments associated with the U.S. salaried retiree health care program including reduced coverage and increases to cost sharing. In June 2009 Old GM also communicated changes in benefits for retired salaried employees including an acceleration and further reduction in retiree life insurance, elimination of the supplemental executive life insurance benefit, and reduction in supplemental executive retirement plan, contingent on completion of the 363 Sale.

### ***2009 Revised UAW Settlement Agreement***

In May 2009 the UAW and Old GM agreed to the 2009 Revised UAW Settlement Agreement relating to the UAW hourly retiree medical plan and the 2008 UAW Settlement Agreement that permanently shifted responsibility for providing retiree health care from Old GM to the New Plan funded by the New VEBA. The 2009 Revised UAW Settlement Agreement was subject to the successful completion of the 363 Sale and we and the UAW executed the 2009 Revised UAW Settlement Agreement on July 10, 2009 in connection with the 363 Sale. Details of the most significant changes to the agreement are:

- The Implementation Date changed from January 1, 2010 to the later of December 31, 2009 or the emergence from bankruptcy, which occurred on July 10, 2009;
- The timing of payments to the New VEBA changed as subsequently discussed;
- The form of consideration changed as subsequently discussed;
- The contribution of employer securities changed such that they are contributed directly to the New VEBA in connection with the 363 Sale on July 10, 2009;
- Certain coverages will be eliminated and certain cost sharing provisions will increase; and
- The flat monthly special pension lifetime benefit that was scheduled to commence on January 1, 2010 was eliminated.

There was no change to the timing of our existing internal VEBA asset transfer to the New VEBA in that the internal VEBA asset transfer occurred within 10 business days after December 31, 2009 in accordance with both the 2008 UAW Settlement Agreement and the 2009 Revised UAW Settlement Agreement.

The new payment terms to the New VEBA under the 2009 Revised UAW Settlement Agreement are:

- VEBA Notes of \$2.5 billion and accrued interest, at an implied interest rate of 9.0% per annum, are scheduled to be repaid in three equal installments of \$1.4 billion on July 15 of 2013, 2015 and 2017;

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- 260 million shares of our Series A Preferred Stock that accrue cumulative dividends at 9.0% per annum;
- 88 million shares (17.5%) of our common stock;
- A warrant to acquire 15 million shares (2.5%) of our common stock at \$126.92 per share at any time prior to December 31, 2015;
- Two years funding of claims costs for certain individuals that elected to participate in the 2009 Special Attrition Programs; and
- The existing internal VEBA assets.

Under the terms of the 2009 Revised UAW Settlement Agreement, we are released from UAW retiree health care claims incurred after December 31, 2009. All obligations of ours, the New Plan and any other entity or benefit plan of ours for retiree medical benefits for the class and the covered group arising from any agreement between us and the UAW terminated at December 31, 2009. Our obligations to the New Plan and the New VEBA are limited to the 2009 Revised UAW Settlement Agreement.

### *IUE-CWA and USW Settlement Agreement*

In September 2009 we entered into a settlement agreement with MLC, the IUE-CWA, and the USW. Under the settlement agreement, the IUE-CWA and the USW agreed to withdraw and release all claims against us and MLC relating to retiree health care benefits and basic life insurance benefits. In exchange, the IUE-CWA, the USW and any additional union that agrees to the terms of the settlement agreement will be granted an allowed pre-petition unsecured claim in MLC's Chapter 11 proceedings of \$1.0 billion with respect to retiree health and life insurance benefits for the post-age-65 medicare eligible retirees, post-age-65 surviving spouses and under-age-65 medicare eligible retirees or surviving spouses disqualified for retiree health care benefits from us under the settlement agreement. For participants remaining eligible for health care, certain coverages were eliminated and cost sharing will increase.

The settlement agreement was expressly conditioned upon, and did not become effective until approved by the Bankruptcy Court in MLC's Chapter 11 proceedings, which occurred in November 2009. Several additional unions representing MLC hourly retirees joined the IUE-CWA and USW settlement agreement with respect to health care and life insurance.

### *2009 CAW Agreement*

In March 2009 Old GM announced that the members of the CAW had ratified the 2009 CAW Agreement intended to reduce manufacturing costs in Canada by closing the competitive gap with transplant automakers in the United States on active employee labor costs and reducing legacy costs through introducing co-payments for healthcare benefits, increasing employee healthcare cost sharing, freezing pension benefits and eliminating cost of living adjustments to pensions for retired hourly workers. The 2009 CAW Agreement was conditioned on Old GM receiving longer term financial support from the Canadian and Ontario governments.

GMCL subsequently entered into additional negotiations with the CAW which resulted in a further addendum to the 2008 collective agreement which was ratified by the CAW members in May 2009. In June 2009 the Ontario and Canadian governments agreed to the terms of a loan agreement, approved the GMCL viability plan and provided funding to GMCL.

In June 2009 GMCL and the CAW agreed to the terms of an independent Health Care Trust (HCT) to provide retiree health care benefits to certain active and retired employees represented by the CAW. The HCT will be implemented when certain preconditions are achieved including certain changes to the Canadian Income Tax Act. The preconditions have not been achieved and the HCT is not yet implemented at December 31, 2009. Under the terms of the HCT agreement, GMCL is obligated to make a payment of CAD \$1.0 billion on the HCT implementation date which it will fund out of its CAD \$1.0 billion escrow funds, adjusted for the net difference between the amount of retiree monthly contributions received during the period December 31, 2009 through the HCT implementation date less the cost of benefits paid for claims incurred by covered employees during this period. GMCL will provide a

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CAD \$800 million note payable to the HCT on the HCT implementation date which will accrue interest at an annual rate of 7.0% with five equal annual installments of \$256 million due December 31 of 2014 through 2018. Concurrent with the implementation of the HCT, GMCL will be legally released from all obligations associated with the cost of providing retiree health care benefits to current employees and retired plan participants.

### *Canadian Defined Benefit Pension Plan Contributions*

Under the terms of the pension agreement with the Government of Ontario and the Superintendent of Financial Services, GMCL was required to make initial contributions of CAD \$3.3 billion to the Canadian hourly defined benefit pension plan and CAD \$0.7 billion to the Canadian salaried defined benefit pension plan, effective September 2, 2009. The contributions were made as scheduled. GMCL is required to make five annual contributions of CAD \$200 million, payable in monthly installments, beginning in September 2009. The payments will be allocated between the Canadian hourly defined benefit pension plan and the Canadian salaried defined benefit pension plan as specified in the loan agreement.

### *Delphi Corporation*

In July 2009 we entered into the DMDA with Delphi and other parties. Under the DMDA, we agreed to acquire Nexteer and four domestic facilities. As a result of the DMDA, active Delphi plan participants at the sites covered by the DMDA are now covered under our comparable counterpart plans as new employees with vesting rights. As part of the DMDA, we also assumed liabilities associated with certain international benefit plans.

### *Job Security Programs*

In May 2009 Old GM and the UAW entered into an agreement that suspended the Job Opportunity Bank (JOBS) Program. The Supplemental Unemployment Benefit (SUB) was modified and the Transition Support Program (TSP) was added. These job security programs provide reduced wages and employees continue to receive coverage under certain employee benefit programs. The number of weeks that an employee receives these benefits depends on the employee's classification as well as the number of years of service that the employee has accrued. A similar tiered benefit is provided to CAW employees.

### **Effect of Fresh-Start Reporting**

The application of fresh-start reporting significantly affected certain assets, liabilities, and expenses. As a result, certain financial information at and in the period July 10, 2009 through December 31, 2009 is not comparable to Old GM's financial information. Therefore, we did not combine certain financial information in the period July 10, 2009 through December 31, 2009 with Old GM's financial information in the period January 1, 2009 through July 9, 2009 for comparison to prior periods. We have combined our Total net sales and revenue in the period July 10, 2009 through December 31, 2009 with Old GM's Total net sales and revenue in the period January 1, 2009 through July 9, 2009. Total net sales and revenue was not significantly affected by fresh-start reporting and therefore we combined vehicle sales data comparing the Successor and Predecessor periods. Refer to Note 2 to the consolidated financial statements for additional information on fresh-start reporting.

Because our and Old GM's financial information is not comparable, we are providing additional financial metrics for the periods presented in addition to disclosures concerning significant transactions and trends at December 31, 2009 and in the periods presented.

Total net sales and revenue is primarily comprised of revenue generated from the sales of vehicles, in addition to revenue from OnStar, our customer subscription service, vehicle sales accounted for as operating leases and sales of parts and accessories.

Cost of sales is primarily comprised of material, labor, manufacturing overhead, freight, foreign currency transaction and translation gains and losses, product engineering, design and development expenses, depreciation and amortization, policy and warranty costs, postemployment benefit gains and losses, and separation and impairment charges. Prior to our application of fresh-start reporting, Cost of sales also included gains and losses on derivative instruments. Effective July 10, 2009 gains and losses related to all nondesignated derivatives are recorded in Interest income and other non-operating income, net.

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Selling, general and administrative expense is primarily comprised of costs related to the advertising, selling and promotion of products, support services, including central office expenses, labor and benefit expenses for employees not considered part of the manufacturing process, consulting costs, rental expense for offices, bad debt expense and state and local taxes.

**Consolidated Results of Operations**  
**(Dollars in millions)**

	<u>Successor</u>	<u>Predecessor</u>		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Net sales and revenue</b>				
Sales	\$ 57,329	\$ 46,787	\$ 147,732	\$ 177,594
Other revenue	145	328	1,247	2,390
Total net sales and revenue	<u>57,474</u>	<u>47,115</u>	<u>148,979</u>	<u>179,984</u>
<b>Costs and expenses</b>				
Cost of sales	56,381	55,814	149,257	165,573
Selling, general and administrative expense	6,006	6,161	14,253	14,412
Other expenses, net	15	1,235	6,699	4,308
Total costs and expenses	<u>62,402</u>	<u>63,210</u>	<u>170,209</u>	<u>184,293</u>
Operating loss	(4,928)	(16,095)	(21,230)	(4,309)
Equity in income (loss) of and disposition of interest in GMAC	—	1,380	(6,183)	(1,245)
Interest expense	(694)	(5,428)	(2,525)	(3,076)
Interest income and other non-operating income, net	440	852	424	2,284
Gain (loss) on extinguishment of debt	(101)	(1,088)	43	—
Reorganization gains, net	—	128,155	—	—
Income (loss) from continuing operations before income taxes and equity income	(5,283)	107,776	(29,471)	(6,346)
Income tax expense (benefit)	(1,000)	(1,166)	1,766	36,863
Equity income, net of tax	497	61	186	524
Income (loss) from continuing operations	<u>(3,786)</u>	<u>109,003</u>	<u>(31,051)</u>	<u>(42,685)</u>
<b>Discontinued operations</b>				
Income from discontinued operations, net of tax	—	—	—	256
Gain on sale of discontinued operations, net of tax	—	—	—	4,293
Income from discontinued operations	<u>—</u>	<u>—</u>	<u>—</u>	<u>4,549</u>
<b>Net income (loss)</b>	<u>(3,786)</u>	<u>109,003</u>	<u>(31,051)</u>	<u>(38,136)</u>
Less: Net (income) loss attributable to noncontrolling interests	(511)	115	108	(406)
<b>Net income (loss) attributable to stockholders</b>	<u>(4,297)</u>	<u>109,118</u>	<u>(30,943)</u>	<u>(38,542)</u>
Less: Cumulative dividends on preferred stock	131	—	—	—
<b>Net income (loss) attributable to common stockholders</b>	<u>\$ (4,428)</u>	<u>\$ 109,118</u>	<u>\$ (30,943)</u>	<u>\$ (38,542)</u>

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**Vehicle Sales and Production Volume**

The following tables summarize total production volume and industry sales of new motor vehicles and competitive position (in thousands):

	Combined GM and Old GM	Old GM	
	Year Ended December 31, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Production Volume (a)(b)			
GMNA	1,913	3,449	4,267
GME	1,134	1,550	1,828
GMIO (b)	3,456	3,145	3,191
Worldwide	<u>6,503</u>	<u>8,144</u>	<u>9,286</u>

- (a) Production volume represents the number of vehicles manufactured by our and Old GM's assembly facilities and also includes vehicles produced by certain joint ventures.
- (b) Includes SGM, SGMW and FAW-GM joint venture production. Ownership of 50% in SGM, 34% in SGMW and 50% in FAW-GM, under the joint venture agreements, allows for significant rights as a member as well as the contractual right to report SGMW and FAW-GM production volume in China.

	Year Ended December 31, 2009			Year Ended December 31, 2008			Year Ended December 31, 2007		
	Industry	Combined GM and Old GM	Combined GM and Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry
Vehicle Sales (a)(b)(c)(d)									
GMNA	13,073	2,485	19.0%	16,567	3,565	21.5%	19,634	4,516	23.0%
GME	18,827	1,667	8.9%	21,968	2,043	9.3%	23,123	2,182	9.4%
GMIO (c)	32,358	3,326	10.3%	28,641	2,754	9.6%	28,173	2,672	9.5%
Worldwide	<u>64,257</u>	<u>7,478</u>	11.6%	<u>67,176</u>	<u>8,362</u>	12.4%	<u>70,929</u>	<u>9,370</u>	13.2%

- (a) Vehicle sales primarily represent estimated sales to the ultimate customer.
- (b) Includes HUMMER, Saab, Saturn and Pontiac vehicle sales data.
- (c) Includes SGM, SGMW and FAW-GM joint venture sales. Ownership of 50% in SGM, 34% in SGMW and 50% in FAW-GM, under the joint venture agreements, allows for significant rights as a member as well as the contractual right to report SGMW and FAW-GM joint venture vehicle sales in China as part of global market share.
- (d) Vehicle sales data may include rounding differences.

**Reconciliation of Segment Results**

Management believes earnings before interest and taxes (EBIT) provides meaningful supplemental information regarding our operating results because it excludes amounts that management does not consider part of operating results when assessing and measuring the operational and financial performance of the organization. Management believes these measures allow it to readily view operating trends, perform analytical comparisons, benchmark performance among geographic regions and assess whether our plan to return to profitability is on target. Accordingly, we believe EBIT is useful in allowing for greater transparency of supplemental information used by management in its financial and operational decision-making.

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While management believes that EBIT provides useful information, it is not an operating measure under U. S. GAAP and there are limitations associated with its use. Our calculation of EBIT may not be completely comparable to similarly titled measures of other companies due to potential differences between companies in the method of calculation. As a result, the use of EBIT has limitations and should not be considered in isolation from, or as a substitute for, other measures such as Net income (loss) or Net income (loss) attributable to common stockholders. Due to these limitations, EBIT is used as a supplement to U. S. GAAP measures.

The following table summarizes the reconciliation of Income (loss) attributable to stockholders before interest and taxes to Net income (loss) attributable to stockholders for each of our operating segments (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Operating segments</b>				
GMNA (a)	\$ (4,820)	\$ (11,092)	\$ (12,203)	\$ 1,876
GMIO (a)	1,198	(956)	473	1,911
GME (a)	(805)	(2,823)	(2,637)	(410)
Total operating segments	(4,427)	(14,871)	(14,367)	3,377
Corporate and eliminations (b)	(360)	128,068	(12,940)	(3,208)
<b>Income (loss) attributable to stockholders before interest and income taxes</b>	<b>(4,787)</b>	<b>113,197</b>	<b>(27,307)</b>	<b>169</b>
Interest income	184	183	655	1,228
Interest expense	694	5,428	2,525	3,076
Income tax expense (benefits)	(1,000)	(1,166)	1,766	36,863
<b>Net income (loss) attributable to stockholders</b>	<b>\$ (4,297)</b>	<b>\$ 109,118</b>	<b>\$ (30,943)</b>	<b>\$ (38,542)</b>

(a) Interest and income taxes are recorded centrally in Corporate; therefore, there are no reconciling items for our operating segments between Income (loss) attributable to stockholders before interest and taxes and Net income (loss) attributable to stockholders.

(b) Includes Reorganization gains, net of \$128.2 billion in the period January 1, 2009 through July 9, 2009.

**July 10, 2009 Through December 31, 2009 and January 1, 2009 Through July 9, 2009**  
(Dollars in millions)

*Total Net Sales and Revenue*

	Combined GM and Old GM	Successor	Predecessor		Year Ended 2009 vs. 2008 Change	
	Year Ended December 31, 2009	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Amount	%
Total net sales and revenue	\$ 104,589	\$ 57,474	\$ 47,115	\$ 148,979	\$(44,390)	(29.8)%

In the periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009 several factors have continued to affect global vehicle sales. The continuing tight credit markets, increasing unemployment rates and recessions in the U.S. and many international markets all contributed to significantly lower sales than those in the prior year. Old GM's well publicized liquidity issues, public speculation as to the effects of Chapter 11 proceedings and the actual Chapter 11 Proceedings also negatively affected vehicle sales in several markets.

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In response to these negative conditions, several countries took action to improve vehicle sales. Many countries in the Asia Pacific region have responded to the global recession by lowering interest rates and initiating programs to provide credit to consumers, which had a positive effect on vehicle sales. Certain countries including Germany, China, Brazil, India and South Korea benefited from effective government economic stimulus packages and began showing signs of recovery, and the CARS program initiated by the U.S. government temporarily stimulated vehicle sales in the U.S. We expect that the challenging sales environment resulting from the economic slowdown will continue in 2010, but we anticipate that China and other key emerging markets will continue showing strong sales and market growth.

In the year ended 2009 Total net sales and revenue decreased by \$44.4 billion (or 29.8%) primarily due to: (1) a decrease of revenue of \$36.7 billion in GMNA related to volume reductions; (2) a decrease in domestic wholesale volumes and lower exports of \$11.0 billion in GMIO; (3) a decrease in domestic wholesale volumes of \$4.8 billion in GME; (4) foreign currency translation and transaction losses of \$3.7 billion in GME, primarily due to the strengthening of the U.S. Dollar versus the Euro; (5) a decrease in sales revenue of \$1.2 billion in GME related to Saab; (6) lower powertrain and parts and accessories revenue of \$0.8 billion in GME; and (7) a decrease in other financing revenue of \$0.7 billion related to the continued liquidation of the portfolio of automotive retail leases.

These decreases in Total net sales and revenue were partially offset by: (1) improved pricing, lower sales incentives and improved lease residuals, mostly related to daily rental car vehicles returned from lease and sold at auction, of \$5.4 billion in GMNA; (2) favorable vehicle mix of \$2.8 billion in GMNA; (3) favorable vehicle pricing of \$1.3 billion in GME; (4) gains on derivative instruments of \$0.9 billion in GMIO; (5) favorable pricing of \$0.5 billion in GMIO, primarily due to a 60% price increase in Venezuela due to high inflation; and (6) favorable vehicle mix of \$0.4 billion in GMIO driven by launches of new vehicle models at GM Daewoo.

*Cost of Sales*

	Successor		Predecessor	
	July 10, 2009 Through December 31, 2009	Percentage of Total net sales and revenue	January 1, 2009 Through July 9, 2009	Percentage of Total net sales and revenue
Cost of sales	\$ 56,381	98.3%	\$ 55,814	118.5%
Gross margin	\$ 1,093	1.9%	\$ (8,699)	(18.5)%

Cost of sales for the year ended December 2009, representing our cost of sales combined with Old GM's, is down from historical levels primarily due to reduced volume.

*GM*

In the period July 10, 2009 through December 31, 2009 Cost of sales included: (1) a settlement loss of \$2.6 billion related to the termination of the UAW hourly retiree medical plan and Mitigation Plan; (2) foreign currency translation losses of \$1.3 billion; and (3) separation charges of \$0.2 billion. These expenses were partially offset by foreign currency transaction gains of \$0.5 billion.

*Old GM*

In the period January 1, 2009 through July 9, 2009 Cost of sales included: (1) incremental depreciation charges of \$2.0 billion in GMNA that Old GM recorded prior to the 363 Sale for facilities included in GMNA's restructuring activities and for certain facilities that MLC retained at July 10, 2009; (2) foreign currency translation losses of \$0.7 billion, primarily in GMNA due to the strengthening of the Canadian Dollar versus the U.S. Dollar; and (3) foreign currency transaction losses of \$0.3 billion.

In the period January 1, 2009 through July 9, 2009 Cost of sales included: (1) charges of \$1.1 billion related to the SUB and TSP; (2) separation charges of \$0.7 billion related to hourly employees who participated in the 2009 Special Attrition Program and Second 2009 Special Attrition Program; (3) expenses of \$0.7 billion related to U.S. pension and other postemployment benefit (OPEB) plans

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for hourly and salary employees; (4) separation charges of \$0.3 billion for U.S. salaried workforce reduction programs to allow 6,000 terminated employees to receive ongoing wages and benefits for no longer than 12 months; and (5) expenses of \$0.3 billion related to Canadian pension and OPEB plans for hourly and salary employees and restructuring activities. These costs were partially offset by favorable adjustments of \$0.7 billion primarily related to the suspension of the JOBS Program.

In the period January 1, 2009 through July 9, 2009 negative gross margin reflected the under absorption of manufacturing overhead resulting from declining sales volumes and incremental depreciation of \$2.0 billion and \$0.7 billion in GMNA and GME.

*Selling, General and Administrative Expense*

	Successor		Predecessor	
	July 10, 2009 Through December 31, 2009	Percentage of Total net sales and revenue	January 1, 2009 Through July 9, 2009	Percentage of Total net sales and revenue
Selling, general and administrative expense	\$ 6,006	10.4%	\$ 6,161	13.1%

Selling, general and administrative expense for the year ended December 2009, representing our selling, general and administrative expense combined with Old GM's is down from historical levels due to reduced advertising and other spending.

*GM*

In the period July 10, 2009 through December 31, 2009 Selling, general and administrative expense included charges of \$0.3 billion in GMNA, primarily for dealer wind-down costs for our Saturn dealers after plans to sell the Saturn brand and dealer network were terminated. These expenses were partially offset by reductions on overall spending for media and advertising fees related to our global cost saving initiatives and a decline in Saturn sales and marketing efforts in anticipation of the sale of Saturn, and ultimately, the wind-down of operations.

*Old GM*

In the period January 1, 2009 through July 9, 2009 Selling, general and administrative expense included charges of \$0.5 billion recorded for dealer wind-down costs in GMNA. This was partially offset by the positive effects of various cost savings initiatives, the cancellation of certain sales and promotion contracts as result of the Chapter 11 Proceedings in the U.S. and overall reductions in advertising and marketing budgets.

*Interest Expense*

	Successor July 10, 2009 Through December 31, 2009	Predecessor January 1, 2009 Through July 9, 2009
Interest expense	\$ (694)	\$ (5,428)

*GM*

As a result of the 363 Sale, our debt balance is significantly lower than Old GM's. Accordingly, Interest expense is down from historical levels.

*Old GM*

In the period January 1, 2009 through July 9, 2009 Old GM recorded amortization of discounts related to the UST Loan, EDC Loan and DIP Facilities of \$3.7 billion. In addition, Old GM incurred interest expense of \$1.7 billion primarily related to interest expense of

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

\$0.8 billion on unsecured debt balances, \$0.4 billion on the UST Loan Facility and \$0.2 billion on GMIO debt. Old GM ceased accruing and paying interest on most of its unsecured U.S. and foreign denominated debt on June 1, 2009, the date of its Chapter 11 Proceedings.

*Gain (Loss) on Extinguishment of Debt*

	<u>Successor</u> July 10, 2009 Through December 31, 2009	<u>Predecessor</u> January 1, 2009 Through July 9, 2009
Gain (loss) on extinguishment of debt	\$ (101)	\$ (1,088)

*Old GM*

In the period January 1, 2009 through July 9, 2009 Old GM recorded a loss related to the extinguishment of the UST GMAC Loan of \$2.0 billion when the UST exercised its option to convert outstanding amounts to shares of GMAC's Class B Common Membership Interests. This loss was partially offset by a gain on extinguishment of debt of \$0.9 billion related to an amendment to Old GM's \$1.5 billion U.S. term loan in March 2009.

*Income Tax Expense (Benefit)*

	<u>Successor</u> July 10, 2009 Through December 31, 2009	<u>Predecessor</u> January 1, 2009 Through July 9, 2009
Income tax expense (benefit)	\$ (1,000)	\$ (1,166)

*GM*

In the period July 10, 2009 through December 31, 2009 Income tax expense (benefit) primarily resulted from a \$1.4 billion income tax allocation between operations and Other comprehensive income, partially offset by income tax provisions of \$0.3 billion for profitable entities. In the period July 10, 2009 through December 31, 2009 our U.S. operations incurred losses from operations with no income tax benefit due to full valuation allowances against our U.S. deferred tax assets, and we had Other comprehensive income, primarily due to remeasurement gains on our U.S. pension plans. We recorded income tax expense related to the remeasurement gains in Other comprehensive income and allocated income tax benefit to operations.

*Old GM*

In the period January 1, 2009 through July 9, 2009 Income tax expense (benefit) primarily resulted from the reversal of valuation allowances of \$0.7 billion related to Reorganization gains, net and the resolution of a transfer pricing matter of \$0.7 billion between the U.S. and Canadian governments, offset by income tax provisions of profitable entities.

*Equity Income, net of tax*

	<u>Successor</u>		<u>Predecessor</u>	
	July 10, 2009 Through December 31, 2009	Percentage of Total net sales and revenue	January 1, 2009 Through July 9, 2009	Percentage of Total net sales and revenue
SGM and SGMW	\$ 466	0.8%	\$ 298	0.6%
Other equity interests	31	0.1%	(237)	(0.5)%
Total equity income, net of tax	<u>\$ 497</u>	<u>0.9%</u>	<u>\$ 61</u>	<u>0.1%</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

*GM*

In the period July 10, 2009 through December 31, 2009 equity income, net of tax reflected increased sales volume at SGM and SGMW.

*Old GM*

In the period January 1, 2009 through July 9, 2009 Equity income, net of tax reflected: (1) increased sales volume at SGM; (2) charges of \$0.2 billion related to Old GM's investment in New United Motor Manufacturing, Inc. (NUMMI); and (3) equity losses of \$0.1 billion related to NUMMI and CAMI Automotive, Inc. (CAMI), primarily due to lower volumes.

**2008 Compared to 2007**

**(Dollars in Millions)**

*Automotive Industry*

Global industry vehicle sales decreased in the year ended 2008 by 3.8 million vehicles (or 5.3%) to 67.2 million vehicles. This decline started in North America and extended into the other regions, especially during the second half of 2008, reflecting the effect of slowing economies, tightening credit markets, volatile oil prices and declining consumer confidence around the world. Industry vehicle sales in North America decreased by 3.1 million vehicles (or 15.6%) to 16.6 million vehicles and Europe decreased by 1.2 million vehicles (or 5.0%) to 22.0 million vehicles. These decreases were offset by industry vehicle sales increases in the Asia Pacific and the Latin America, Africa and Middle East (LAAM) regions by 468,000 vehicles (or 1.7%) to 28.6 million vehicles.

*Total Net Sales and Revenue*

	<b>Predecessor</b>			
	<b>Year Ended</b>	<b>Year Ended</b>	<b>Year Ended</b>	
	<b>December 31, 2008</b>	<b>December 31, 2007</b>	<b>2008 vs. 2007 Change</b>	<b>2008 vs. 2007 Change</b>
	<b>December 31, 2008</b>	<b>December 31, 2007</b>	<b>Amount</b>	<b>%</b>
Total net sales and revenue	\$ 148,979	\$ 179,984	\$ (31,005)	(17.2)%

Total net sales and revenue decreased in the year ended 2008 by \$31.0 billion (or 17.2%) primarily due to declining Sales of \$29.9 billion. This decrease reflects the decline in the global automotive industry that resulted from tightening credit markets, a recession in the U.S. and Western Europe, volatile oil prices and declining consumer confidence around the world. These factors first affected the U.S. economy in late 2007 and continued to deteriorate and spread during 2008 to Western Europe and the emerging markets in Asia and South America. Sales decreased by \$26.3 billion in GMNA primarily due to: (1) declining volumes and unfavorable vehicle mix of \$23.1 billion; and (2) an increase in the accrual for residual support programs for leased vehicles of \$1.8 billion related to the decline in residual values of fullsize pick-up trucks and sport utility vehicles in the middle of 2008. Sales also decreased in GME by \$3.1 billion and in GMIO by \$0.2 billion.

*Cost of Sales*

	<b>Predecessor</b>			
	<b>Year Ended</b>	<b>Year Ended</b>	<b>Year Ended</b>	
	<b>December 31, 2008</b>	<b>December 31, 2007</b>	<b>2008 vs. 2007 Change</b>	<b>2008 vs. 2007 Change</b>
	<b>December 31, 2008</b>	<b>December 31, 2007</b>	<b>Amount</b>	<b>%</b>
Cost of sales	\$ 149,257	\$ 165,573	\$ (16,316)	(9.9)%
Gross margin	\$ (278)	\$ 14,411	\$ (14,689)	(101.9)%

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

In the year ended 2008 Cost of sales decreased by \$16.3 billion (or 9.9%) due to: (1) decreased costs related to lower production volumes of \$14.0 billion in GMNA; (2) a net curtailment gain of \$4.9 billion in GMNA related to the 2008 UAW Settlement Agreement; (3) a decrease in wholesale sales volumes of \$3.5 billion in GME; (4) non-recurring pension prior service costs of \$2.2 billion recorded in GMNA in the year ended 2007; (5) manufacturing savings of \$1.4 billion in GMNA from lower manufacturing costs and hourly headcount levels resulting from attrition programs and productivity improvements; and (6) favorable foreign currency translation gains of \$1.4 billion in GMNA, primarily due to the strengthening of the U.S. Dollar versus the Canadian Dollar.

These decreases were partially offset by: (1) charges of \$5.8 billion in GMNA related to restructuring and other costs associated with Old GM's special attrition programs, certain Canadian facility idlings and finalization of Old GM's negotiations with the CAW; (2) foreign currency translation losses of \$2.4 billion in GME, primarily driven by the strengthening of the Euro and Swedish Krona, offset partially by the weakening of the British Pound versus the U.S. Dollar; (3) expenses of \$1.7 billion in GMNA related to the salaried post-65 healthcare settlement; (4) increased content cost of \$0.7 billion in GMIO driven by an increase in imported material costs at Venezuela and high inflation across the region; (5) increased Delphi related charges of \$0.6 billion in GMNA related to certain cost subsidies reimbursed during the year.

*Selling, General and Administrative Expense*

	Predecessor			
	Year Ended	Year Ended	Year Ended	
	December 31, 2008	December 31, 2007	2008 vs. 2007 Change	Amount
	December 31, 2008	December 31, 2007	Amount	%
Selling, general and administrative expense	\$ 14,253	\$ 14,412	\$ (159)	(1.1)%

In the year ended 2008 Selling, general and administrative expense decreased by \$0.2 billion (or 1.1%) primarily due to: (1) reductions in incentive and compensation and profit sharing costs of \$0.4 billion in GMNA; and (2) a decrease in advertising, selling and sales promotion expenses of \$0.3 billion in GMNA. These decreases were partially offset by: (1) a charge of \$0.2 billion related to the 2008 Salaried Window Program in GMNA; (2) increased administrative, marketing and selling expenses of \$0.2 billion in GMIO, primarily due to Old GM's expansion in Russia and other European markets; and (3) bad debt charges of \$0.2 billion.

*Other Expenses, net*

	Predecessor			
	Year Ended	Year Ended	Year Ended	
	December 31, 2008	December 31, 2007	2008 vs. 2007 Change	Amount
	December 31, 2008	December 31, 2007	Amount	%
Other expenses, net	\$ 6,699	\$ 4,308	\$ 2,391	55.5%

In the year ended 2008 Other expenses, net increased \$2.4 billion (or 55.5%) primarily due to: (1) increased charges of \$3.3 billion related to the Delphi Benefit Guarantee Agreements; (2) impairment charges related to goodwill of \$0.5 billion and \$0.2 billion in GME and GMNA; partially offset by (3) a non-recurring charge of \$0.6 billion recorded in the year ended 2007 for pension benefits granted to future and current retirees of Delphi.

*Equity in Income (Loss) of and Disposition of Interest in GMAC*

	Predecessor			
	Year Ended	Year Ended	Year Ended	
	December 31, 2008	December 31, 2007	2008 vs. 2007 Change	Amount
	December 31, 2008	December 31, 2007	Amount	%
Equity in income (loss) of and disposition of interest in GMAC	\$ 916	\$ (1,245)	\$ 2,161	173.6%
Impairment charges related to GMAC Common Membership Interests	(7,099)	—	(7,099)	n.m.
Total equity in income (loss) of and disposition of interest in GMAC	\$ (6,183)	\$ (1,245)	\$ (4,938)	n.m.

n.m. = not meaningful

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

In the year ended 2008 Equity in loss of and disposition of interest in GMAC increased \$4.9 billion due to impairment charges of \$7.1 billion related to Old GM's investment in GMAC Common Membership Interests, offset by an increase in Old GM's proportionate share of GMAC's income from operations of \$2.2 billion.

*Interest Expense*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Interest expense	\$ (2,525)	\$ (3,076)	\$ 551	17.9%

Interest expense decreased in the year ended 2008 by \$0.6 billion (or 17.9%) due to the de-designation of certain derivatives as hedges of \$0.3 billion and an adjustment to capitalized interest of \$0.2 billion.

*Interest Income and Other Non-Operating Income, net*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Interest income and other non-operating income, net	\$ 424	\$ 2,284	\$ (1,860)	(81.4)%

In the year ended 2008 Interest income and other non-operating income, net decreased by \$1.9 billion (or 81.4%) primarily due to impairment charges of \$1.0 billion related to Old GM's GMAC Preferred Membership Interests in the year ended 2008 and a reduction in interest earned on cash balances of \$0.3 billion due to lower market interest rates and lower cash balances on hand.

*Income Tax Expense*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Income tax expense	\$ 1,766	\$ 36,863	\$ (35,097)	(95.2)%

Income tax expense decreased in the year ended 2008 by \$35.1 billion (or 95.2%) due to the effect of recording valuation allowances of \$39.0 billion against Old GM's net deferred tax assets in the United States, Canada and Germany in the year ended 2007, offset by the recording of additional valuation allowances in the year ended 2008 of \$1.9 billion against Old GM's net deferred tax assets in South Korea, the United Kingdom, Spain, Australia, other jurisdictions.

*Equity Income, net of tax*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
SGM and SGMW	\$ 312	\$ 430	\$ (118)	(27.4)%
Other equity interests	(126)	94	(220)	n.m.
Total equity income, net of tax	\$ 186	\$ 524	\$ (338)	n.m.

n.m. = not meaningful

In the year ended 2008 Equity income, net of tax decreased by \$0.3 billion due to: (1) lower earnings at SGM driven by a volume decrease, mix deterioration and higher sales promotion expenses, partially offset by higher earnings at SGMW driven by a volume increase; (2) a decrease of \$0.2 billion in GMNA due to impairment charges and lower income from Old GM's investments in NUMMI and CAMI.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**Changes in Consolidated Financial Condition**  
**(Dollars in millions, except share amounts)**

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
<b>ASSETS</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 22,679	\$ 14,053
Marketable securities	134	141
Total cash, cash equivalents and marketable securities	22,813	14,194
Restricted cash	13,917	672
Accounts and notes receivable (net of allowance of \$250 and \$422)	7,518	7,918
Inventories	10,107	13,195
Assets held for sale	388	—
Equipment on operating leases, net	2,727	5,142
Other current assets and deferred income taxes	1,777	3,146
Total current assets	59,247	44,267
<b>Non-Current Assets</b>		
Restricted cash	1,489	1,917
Equity in net assets of nonconsolidated affiliates	7,936	2,146
Assets held for sale	530	—
Equipment on operating leases, net	3	442
Property, net	18,687	39,665
Goodwill	30,672	—
Intangible assets, net	14,547	265
Deferred income taxes	564	98
Prepaid pension	98	109
Other assets	2,522	2,130
Total non-current assets	77,048	46,772
<b>Total Assets</b>	<b>\$ 136,295</b>	<b>\$ 91,039</b>
<b>LIABILITIES AND EQUITY (DEFICIT)</b>		
<b>Current Liabilities</b>		
Accounts payable (principally trade)	\$ 18,725	\$ 22,259
Short-term debt and current portion of long-term debt	10,221	16,920
Liabilities held for sale	355	—
Postretirement benefits other than pensions	846	4,002
Accrued expenses	22,288	32,427
Total current liabilities	52,435	75,608
<b>Non-Current Liabilities</b>		
Long-term debt	5,562	29,018
Liabilities held for sale	270	—
Postretirement benefits other than pensions	8,708	28,919
Pensions	27,086	25,178
Other liabilities and deferred income taxes	13,279	17,392
Total non-current liabilities	54,905	100,507
<b>Total liabilities</b>	<b>107,340</b>	<b>176,115</b>
Commitments and contingencies		
Preferred stock, \$0.01 par value (1,000,000,000 shares authorized and 360,000,000 shares issued and outstanding at December 31, 2009)	6,998	—
<b>Equity (Deficit)</b>		
<b>Old GM</b>		
Preferred stock, no par value (6,000,000 shares authorized, no shares issued and outstanding)	—	—
Preference stock, \$0.10 par value (100,000,000 shares authorized, no shares issued and outstanding)	—	—
Common stock, \$1 2/3 par value common stock (2,000,000,000 shares authorized, 800,937,541 shares issued and 610,483,231 shares outstanding at December 31, 2008)	—	1,017
<b>General Motors Company</b>		
Common stock, \$0.01 par value (2,500,000,000 shares authorized and 500,000,000 shares issued and outstanding at December 31, 2009)	5	—
Capital surplus (principally additional paid-in capital)	24,050	16,489
Accumulated deficit	(4,394)	(70,727)
Accumulated other comprehensive income (loss)	1,588	(32,339)
Total stockholders' equity (deficit)	21,249	(85,560)
Noncontrolling interests	708	484
Total equity (deficit)	21,957	(85,076)
<b>Total Liabilities and Equity (Deficit)</b>	<b>\$ 136,295</b>	<b>\$ 91,039</b>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****Liquidity Measures**

	<u>Successor</u> December 31, 2009	<u>Predecessor</u> December 31, 2008
Current ratio	1.13	0.59
Days sales outstanding (a)	17	25
Inventory turnover (a)	2.54	1.85
Days payable outstanding (a)	54	68

(a) These measurements show the relationship of the applicable sales or cost of sales activity and the related average balance carried during the quarter ended December 31, 2009 and 2008.

**Current Assets***GM*

At December 31, 2009 Restricted cash of \$13.9 billion was primarily comprised of \$13.4 billion in our UST Credit Agreement and Canadian Health Care Trust escrow accounts. The remainder was primarily comprised of amounts prefunded related to supplier payments and other third parties and other cash collateral requirements.

At December 31, 2009 Accounts and notes receivable, net of \$7.5 billion was affected by lower volumes.

At December 31, 2009 Inventories were \$10.1 billion. Inventories were recorded on a FIFO basis and were affected by efforts to reduce inventory levels globally.

At December 31, 2009 current Assets held for sale of \$0.4 billion were related to Saab. Saab's Assets held for sale were primarily comprised of cash and cash equivalents, inventory and receivables.

At December 31, 2009 Equipment on operating leases, net of \$2.7 billion was comprised of vehicle sales to daily rental car companies and to retail leasing customers. At December 31, 2009 there were 119,000 vehicles leased to U.S. daily rental car companies and 24,000 vehicles leased through the automotive retail portfolio. The numbers of vehicles on lease were at lower levels primarily due to the continued wind-down of our automotive retail portfolio.

*Old GM*

At December 31, 2008 Restricted cash of \$0.7 billion was primarily comprised of amounts pre-funded related to supplier payments and other third parties and other cash collateral requirements.

At December 31, 2008 Inventories were \$13.2 billion. Inventories for certain business units were recorded on a LIFO basis.

At December 31, 2008 Equipment on operating leases, net of \$5.1 billion was comprised of vehicle sales to daily rental car companies and to retail leasing customers. At December 31, 2008 there were 137,000 vehicles leased to U.S. daily rental car companies and 133,000 vehicles leased through the automotive retail portfolio.

**Non-Current Assets***GM*

At December 31, 2009 Restricted cash of \$1.5 billion was primarily comprised of collateral for insurance related activities and other cash collateral requirements.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

At December 31, 2009 Equity in net assets of nonconsolidated affiliates of \$7.9 billion was primarily comprised of our investment in SGM and SGMW. In connection with our application of fresh-start reporting, we recorded Equity in net assets of nonconsolidated affiliates at its fair value of \$5.8 billion. In the three months ended December 31, 2009 we also recorded an investment of \$1.9 billion in New Delphi.

At December 31, 2009 non-current Assets held for sale of \$0.5 billion were related to certain of our operations in India (India Operations). The India Operations Assets held for sale were primarily comprised of cash and cash equivalents, inventory, receivables and property, plant and equipment. We classified these Assets held for sale as long-term at December 31, 2009 because we received a promissory note in exchange for the India Operations that will not convert to cash within one year.

At December 31, 2009 Property, net was \$18.7 billion. In connection with our application of fresh-start reporting, we recorded Property at its fair value of \$18.5 billion at July 10, 2009.

At December 31, 2009 Goodwill was \$30.7 billion. In connection with our application of fresh-start reporting, we recorded Goodwill of \$30.5 billion at July 10, 2009. When applying fresh-start reporting, certain accounts, primarily employee benefit and income tax related, were recorded at amounts determined under specific U.S. GAAP rather than fair value, and the difference between the GAAP and fair value amounts gives rise to goodwill, which is a residual. Further, we recorded valuation allowances against certain of our deferred tax assets, which under ASC 852 also resulted in goodwill. Our employee benefit related accounts were recorded in accordance with ASC 712 and ASC 715 and deferred income taxes were recorded in accordance with ASC 740. There was no goodwill on an economic basis based on the fair value of our equity, liabilities and identifiable assets.

At December 31, 2009 Intangible assets, net were \$14.5 billion. In connection with our application of fresh-start reporting, we recorded Intangible assets at their fair value of \$16.1 billion at July 10, 2009. Newly recorded identifiable intangible assets include brand names, our dealer network, customer relationships, developed technologies, favorable contracts and other intangible assets.

At December 31, 2009 Other assets of \$2.5 billion was primarily comprised of our cost method investments in GMAC common and preferred stock. In connection with our application of fresh-start reporting, we recorded our investments in GMAC common and preferred stock at their fair values of \$1.3 billion and \$0.7 billion at July 10, 2009. In the three months ended December 31, 2009 we recorded an impairment charge of \$0.3 billion related to our investment in GMAC common stock.

### *Old GM*

At December 31, 2008 Restricted cash of \$1.9 billion was primarily comprised of collateral for insurance related activities and other cash collateral requirements.

At December 31, 2008 Equity in net assets of nonconsolidated affiliates of \$2.1 billion was primarily comprised of Old GM's investments in SGM, SGMW and GMAC. In May 2009 Old GM's ownership interest in GMAC's Common Membership Interests was reduced to 24.5% and at June 30, 2009 GMAC converted its status to a C corporation. At that date Old GM began to account for its investment in GMAC using the cost method rather than equity method as Old GM no longer exercised significant influence over GMAC.

At December 31, 2008 Other assets of \$2.1 billion was primarily comprised of taxes other than income, derivative assets and debt issuance expense.

### **Current Liabilities**

At December 31, 2009 Accounts payable was \$18.7 billion. Accounts payable amounts were correlated, in part, with vehicle production and sales volume, which drive purchases of materials, freight costs and advertising expenditures.

At December 31, 2009 Short-term debt and current portion of long-term debt of \$10.2 billion was primarily comprised of amounts we entered into or assumed under various agreements with the U.S. and Canadian governments. In addition, we assumed secured and unsecured debt obligations (including capital leases) owed by our subsidiaries.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

At December 31, 2009 current Liabilities held for sale of \$0.4 billion were related to Saab. Saab's Liabilities held for sale were primarily comprised of accounts payable, warranty and pension obligations and other liabilities.

At December 31, 2009 our current OPEB obligation of \$0.8 billion included the effect of the 2009 Revised UAW Settlement Agreement and other OPEB plan changes.

At December 31, 2009 Accrued expenses were \$22.3 billion. Major components of accrued expenses were dealer and customer allowances, claims and discounts, deposits from rental car companies, policy, product warranty and recall campaigns, accrued payrolls and employee benefits, current pension obligation, taxes other than income taxes and liabilities related to plant closures. Accrued expenses were affected by sales volumes which affect customer deposits, dealer incentives and policy and warranty costs as well as certain liabilities MLC retained as a result of the 363 transaction.

### *Old GM*

At December 31, 2008 Accounts payable was \$22.3 billion. Accounts payable amounts were correlated, in part, with vehicle production and sales volume, which drive purchases of materials, freight costs and advertising expenditures.

At December 31, 2008 Short-term debt and current portion of long-term debt of \$16.9 billion was primarily comprised of UST Loans, a secured revolving credit facility and secured and unsecured debt obligations (including capital leases) owed by Old GM's subsidiaries.

In connection with the 363 Sale, MLC retained Old GM's unsecured U.S. dollar denominated bonds, foreign currency denominated bonds, contingent convertible debt and certain other debt obligations of \$2.4 billion.

At December 31, 2008 the current OPEB obligation of \$4.0 billion represents the liability to provide postretirement medical, dental, legal service and life insurance to eligible U.S. and Canadian retirees and their eligible dependents.

At December 31, 2008 Accrued expenses were \$32.4 billion. Major components of accrued expenses were dealer and customer allowances, claims and discounts, deposits from rental car companies, policy, product warranty and recall campaigns, accrued payrolls and employee benefits, current pension obligation, taxes other than income taxes and liabilities related to plant closures. Other accrued expenses included accruals for advertising and promotion, legal, insurance, and various other items.

### *Non-Current Liabilities*

#### *GM*

At December 31, 2009 Long-term debt of \$5.6 billion was primarily comprised of VEBA Notes and secured and unsecured debt obligations (including capital leases) owed by our subsidiaries. In connection with our application of fresh-start reporting, we recorded a decrease of \$1.5 billion to record Long-term debt at its fair value of \$2.5 billion at July 10, 2009.

At December 31, 2009 non-current Liabilities held for sale of \$0.3 billion were related to certain of our operations in India (India Operations). The India Operations Liabilities held for sale were primarily comprised of accounts payable, warranty and pension obligations and other liabilities. We classified these Liabilities held for sale as long-term at December 31, 2009 because we received a promissory note in exchange for the India Operations that will not convert to cash within one year.

At December 31, 2009 our non-current OPEB obligation of \$8.7 billion included the effect of the 2009 Revised UAW Settlement Agreement and other OPEB plan changes. In May 2009 the UAW, the UST and Old GM agreed to the 2009 Revised UAW Settlement Agreement, subject to the successful completion of the 363 Sale, which related to the 2008 UAW Settlement Agreement that permanently shifted responsibility for providing retiree health care from Old GM to the New Plan funded by the New VEBA. We and the UAW executed the 2009 Revised Settlement Agreement on July 10, 2009 in connection with the 363 Sale closing. The 2009

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

Revised UAW Settlement Agreement significantly reduced our OPEB obligations as a result of changing the amount, form and timing of the consideration to be paid to the New VEBA, eliminating certain coverages and increasing certain cost sharing provisions.

At December 31, 2009 our non-current Pensions obligation of \$27.1 billion included the effects of the 2009 Salaried Window Program, 2009 Special Attrition Program, Second 2009 Special Attrition Program, Delphi Benefit Guarantee Agreements, the 2009 Revised UAW Settlement Agreement and other employee related actions.

At December 31, 2009 Other liabilities and deferred income taxes were \$13.3 billion. Major components of Other liabilities included policy and product warranty, accrued payrolls and employee benefits, postemployment benefits including facility idling reserves, and dealer and customer allowances, claims and discounts.

*Old GM*

At December 31, 2008 Long-term debt of \$29.0 billion was primarily comprised of: (1) unsecured U.S. Dollar denominated bonds of \$14.9 billion; (2) foreign currency denominated bonds of \$4.4 billion; and (3) contingent convertible debt of \$6.4 billion. The remaining balance consisted mainly of secured and unsecured debt obligations (including capital leases) owed by Old GM's subsidiaries.

In connection with the Chapter 11 Proceedings, Old GM's \$4.5 billion secured revolving credit facility, \$1.5 billion U.S. term loan and \$125 million secured credit facility were paid in full on June 30, 2009.

In connection with the 363 Sale, MLC retained Old GM's unsecured U.S. dollar denominated bonds, foreign currency denominated bonds, contingent convertible debt and certain other debt obligations of \$25.5 billion.

At December 31, 2008 the non-current OPEB obligation of \$28.9 billion represented the liability to provide postretirement medical, dental, legal service and life insurance to eligible U.S. and Canadian retirees and their eligible dependents.

At December 31, 2008 the total non-current Pensions obligation of \$25.2 billion included the effect of actual losses on plan assets, the transfer of the Delphi pension liability and other curtailments and amendments.

At December 31, 2008 Other liabilities and deferred income taxes were \$17.4 billion. Major components of Other liabilities included product warranty and recall campaigns, accrued payrolls and employee benefits, insurance reserves, Delphi contingent liabilities, postemployment benefits including facility idling reserves, and dealer and customer allowances, claims and discounts.

Further information on each of our businesses and geographic segments is subsequently discussed.

***GM North America***  
***(Dollars in millions)***

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Total net sales and revenue</b>	\$ 32,426	\$ 24,191	\$ 86,187	\$ 112,448
<b>Income (loss) attributable to stockholders before interest and income taxes</b>	\$ (4,820)	\$ (11,092)	\$ (12,203)	\$ 1,876

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**Vehicle Sales and Production Volume**

The following tables summarize total production volume and industry sales of new motor vehicles and competitive position (in thousands):

	Combined GM and Old GM	Old GM	
	Year Ended December 31, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Production Volume (a)</b>			
Cars	727	1,543	1,526
Trucks	1,186	1,906	2,741
<b>Total</b>	<b>1,913</b>	<b>3,449</b>	<b>4,267</b>

(a) Production volume represents the number of vehicles manufactured by our and Old GM's assembly facilities and also includes vehicles produced by certain joint ventures.

	Year Ended December 31, 2009			Year Ended December 31, 2008			Year Ended December 31, 2007		
	Industry	Combined GM and Old GM	Combined GM and Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry
<b>Vehicle Sales (a)(b)(c)</b>									
Total GMNA	13,073	2,485	19.0%	16,567	3,565	21.5%	19,634	4,516	23.0%
Total U.S.	10,608	2,084	19.6%	13,503	2,981	22.1%	16,473	3,867	23.5%
U.S. – Cars	5,370	874	16.3%	6,756	1,257	18.6%	7,571	1,489	19.7%
U.S. – Trucks	5,238	1,210	23.1%	6,746	1,723	25.5%	8,902	2,377	26.7%
Canada	1,482	254	17.2%	1,674	359	21.4%	1,691	404	23.9%
Mexico	774	138	17.9%	1,071	212	19.8%	1,146	230	20.1%

(a) Vehicle sales represent sales to the ultimate customer.

(b) Includes HUMMER, Saab, Saturn and Pontiac vehicle sales data.

(c) Vehicle sales data may include rounding differences.

**July 10, 2009 Through December 31, 2009 and January 1, 2009 Through July 9, 2009  
(Dollars in millions)**

*Total Net Sales and Revenue*

	Combined GM and Old GM	Successor	Predecessor		Year Ended 2009 vs. 2008 Change	
	Year Ended December 31, 2009	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Amount	%
Total net sales and revenue	\$ 56,617	\$ 32,426	\$ 24,191	\$ 86,187	\$ 29,570	(34.3)%

In the periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009 several factors affected vehicle sales. The continuing tight credit markets, increasing unemployment rates and a recession in North America and GMNA's largest market, the United States, negatively affected vehicle sales. Old GM's well publicized liquidity issues, public speculation as to the effects of Chapter 11 proceedings and the actual Chapter 11 Proceedings negatively affected vehicle sales in North America. These

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

negative factors were partially offset in the period July 10, 2009 through December 31, 2009 by: (1) improved vehicle sales related to the CARS program; and (2) an increase in dealer showroom traffic and related vehicle sales in response to our new 60-Day satisfaction guarantee program, which began in early September 2009 and ended January 4, 2010.

In the year ended December 31, 2009 vehicle sales in the United States decreased by 896,000 vehicles (or 30.1%), U.S. market share decreased from 22.1% to 19.6%, vehicles sales in Canada decreased by 105,000 vehicles (or 29.2%) and vehicle sales in Mexico decreased by 74,000 (or 34.8%). In the year ended 2009 Total net sales and revenue decreased by \$29.6 billion (or 34.3%) primarily due to a decrease in revenue of \$36.7 billion related to volume reductions. The decline in revenue was partially offset by: (1) improved pricing, lower sales incentives and improved lease residuals of \$5.4 billion; and (2) favorable vehicle mix of \$2.8 billion.

### *Income (Loss) Attributable to Stockholders Before Interest and Income Taxes*

Loss attributable to stockholders before interest and income taxes was \$4.8 billion and \$11.1 billion in the periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009.

Cost and expenses includes both fixed costs and costs which generally vary with production levels. Certain fixed costs, primarily labor related, have continued to decrease in relation to historical levels primarily due to various separation and other programs. However, the implementation of various separation programs, as well as reducing the estimated useful lives of Property, net resulted in significant charges in various periods.

In the period July 10, 2009 through December 31, 2009 results included the following:

- A settlement loss of \$2.6 billion related to the termination of our UAW hourly retiree medical plan and Mitigation Plan;
- Foreign currency translation losses of \$1.3 billion driven by the general strengthening of the Canadian Dollar versus the U.S. Dollar;
- Charges of \$0.3 billion primarily related to dealer wind-down costs for our Saturn dealers after plans to sell the Saturn brand and dealership network were terminated; and
- Effects of fresh-start reporting, which included amortization of intangible assets which were established in connection with our application of fresh-start reporting, which was offset by decreased depreciation of fixed assets resulting from lower balances, and the elimination of historical deferred losses related to pension and postretirement obligations.

In the period January 1, 2009 through July 9, 2009 results included the following:

- Incremental depreciation charges of \$2.0 billion recorded by Old GM prior to the 363 sale for facilities included in GMNA's restructuring activities and for certain facilities that MLC retained;
- Charges of \$1.1 billion related to the SUB and TSP, which replaced the JOBS Program;
- Separation charges of \$1.0 billion related to hourly and salaried employees who participated in various separation programs; which were partially offset by favorable adjustments of \$0.7 billion primarily related to the suspension of the JOBS Program;
- Foreign currency translation losses of \$0.7 billion driven by the general strengthening of the Canadian Dollar versus the U.S. Dollar;
- Charges of \$0.5 billion related to dealer wind-down costs; and
- Impairment charges of \$0.2 billion related to Old GM's investment in NUMMI and equity losses of \$0.1 billion related to NUMMI and CAMI. MLC retained the investment in NUMMI, and CAMI has been consolidated since March 1, 2009.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**2008 Compared to 2007**  
**(Dollars in Millions)**

*Total Net Sales and Revenue*

	Predecessor			
	Year Ended	Year Ended	Year Ended	
	December 31, 2008	December 31, 2007	2008 vs. 2007 Change	2008 vs. 2007 Change
	Amount	Amount	Amount	%
Total net sales and revenue	\$ 86,187	\$ 112,448	\$ (26,261)	(23.4)%

In the year ended 2008 industry vehicle sales in North America decreased by 3.1 million vehicles (or 15.6%). Industry vehicle sales decreased progressively in the first three quarters of 2008 with a sharp decline in the fourth quarter. Industry vehicle sales decreased by 331,000 vehicles (or 7.0%), decreased by 520,000 vehicles (or 9.8%) and decreased by 772,000 vehicles (or 15.6%) in the first, second and third quarters of 2008. The sharp fourth quarter decline resulted in decreased vehicle sales of 1.4 million vehicles (or 31.0%). The decrease in industry vehicle sales is directly attributable to the recession in the United States brought about by the tightening of the credit markets, turmoil in the mortgage markets, reductions in housing values and volatile oil prices, all of which contributed to declining consumer confidence.

The economic factors, as previously discussed, and the resulting recession in the United States, caused a similar effect on GMNA's vehicle sales in the year ended 2008. GMNA's vehicle sales decreased by 951,000 vehicles (or 21.1%) to 3.6 million vehicles in 2008, with 379,000 (or 39.9%) of the decrease occurring in the fourth quarter. GMNA's vehicle sales were 948,000 vehicles, 964,000 vehicles, 978,000 vehicles and 675,000 vehicles in the first, second, third and fourth quarters of 2008.

GMNA's U.S. vehicle sales in the year ended 2008 followed the industry trend with steady decreases in the first three quarters with a sharp decline in the fourth quarter. GMNA's U.S. vehicle sales decreased by 103,000 vehicles (or 11.4%), decreased by 214,000 vehicles (or 21.2%) and decreased by 218,000 vehicles (or 20.9%) in the first, second, and third quarters of 2008. The sharp fourth quarter decline resulted in decreased vehicle sales of 350,000 vehicles (or 39.0%). In the year ended 2008 GMNA's vehicle sales also decreased in Canada by 45,000 vehicles (or 11.1%) and decreased in Mexico by 18,000 vehicles (or 7.8%).

In the year ended 2008 Total net sales and revenue decreased by \$26.3 billion (or 23.4%) due primarily to: (1) a decline in volumes and unfavorable vehicle mix of \$23.1 billion resulting from continued market challenges; (2) an increase of \$1.8 billion in the accrual for residual support programs for leased vehicles, primarily due to the decline in residual values of fullsize pick-up trucks and sport utility vehicles in the middle of 2008; (3) unfavorable pricing of \$0.7 billion; (4) a decrease in sales of components, parts and accessories of \$0.6 billion; partially offset by (5) foreign currency translation of \$0.3 billion due to a strengthening of the U.S. Dollar versus the Canadian Dollar. Contributing to the volume decline was revenue of \$0.8 billion that was deferred in the fourth quarter of 2008 related to deliveries to dealers that did not meet the criteria for revenue recognition, either because collectability was not reasonably assured or the risks and rewards of ownership were not transferred at the time of delivery.

*Cost of Sales*

	Predecessor			
	Year Ended	Year Ended	Year Ended	
	December 31, 2008	December 31, 2007	2008 vs. 2007 Change	2008 vs. 2007 Change
	Amount	Amount	Amount	%
Cost of sales	\$ 90,806	\$ 106,619	\$ (15,813)	(14.8)%
Gross margin	\$ (4,619)	\$ 5,829	\$ (10,448)	(179.2)%

In the year ended 2008 Cost of sales decreased \$15.8 billion (or 14.8%) primarily due to: (1) decreased costs related to lower production volumes of \$14.0 billion; (2) net curtailment gain of \$4.9 billion related to the 2008 UAW Settlement Agreement; (3) manufacturing savings of \$1.4 billion from lower manufacturing costs and hourly headcount levels resulting from attrition

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

programs and productivity improvements; (4) favorable foreign currency translation gains of \$1.4 billion due primarily to the appreciation of the U.S. Dollar versus the Canadian Dollar; (5) pension prior service costs of \$2.2 billion recorded in the year ended 2007; and (6) gains of \$0.9 billion related to the fair value of commodity and foreign currency exchange derivatives. These decreases were partially offset by: (1) charges related to restructuring and other costs associated with Old GM's special attrition programs, certain Canadian facility idlings and finalization of Old GM's negotiations with the CAW of \$5.8 billion; (2) expenses of \$1.7 billion related to the salaried post-65 healthcare settlement; (3) commodity derivative losses of \$0.8 billion; (4) increased Delphi related charges of \$0.6 billion related to certain cost subsidies reimbursed during the year; and (5) increased warranty expenses of \$0.5 billion.

*Selling, General and Administrative Expense*

	Predecessor			
	Year Ended	Year Ended	Year Ended	
	December 31, 2008	December 31, 2007	2008 vs. 2007 Change	%
	Amount	Amount	Amount	%
Selling, general and administrative expense	\$ 7,744	\$ 8,368	\$ (624)	(7.5)%

In the year ended 2008 Selling, general and administrative expense decreased by \$0.6 billion (or 7.5%) primarily due to: (1) reductions in incentive compensation and profit sharing costs of \$0.4 billion; and (2) decreased advertising, selling and sales promotion expenses of \$0.3 billion. These decreases were partially offset by \$0.2 billion related to the 2008 Salaried Window Program.

*Other Expenses, net*

	Predecessor			
	Year Ended	Year Ended	Year Ended	
	December 31, 2008	December 31, 2007	2008 vs. 2007 Change	%
	Amount	Amount	Amount	%
Other expenses, net	\$ 154	\$ 552	\$ (398)	(72.1)%

In the year ended 2008 Other expenses, net was comprised of an impairment charge related to goodwill of \$154 million.

In the year ended 2007 Other expenses, net of \$0.6 billion was primarily related to a nonrecurring charge for pension benefits granted to future and current retirees of Delphi.

*Other Non-Operating Income, net*

	Predecessor			
	Year Ended	Year Ended	Year Ended	
	December 31, 2008	December 31, 2007	2008 vs. 2007 Change	%
	Amount	Amount	Amount	%
Other non-operating income, net	\$ 487	\$ 442	\$ 45	10.2%

In the year ended 2008 Other non-operating income, net increased by \$45 million (or 10.2%) primarily due to: (1) exclusivity fee income of \$105 million; (2) a gain on sale of affiliates of \$49 million; (3) miscellaneous income of \$22 million; partially offset by: (4) a decrease in royalty income of \$133 million.

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Equity Income (Loss), net of tax

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
NUMMI	\$ (118)	\$ (5)	\$ (113)	n.m.
CAMI	(72)	32	(104)	n.m.
Other	(11)	(5)	(6)	120.0%
Total equity income (loss), net of tax	\$ (201)	\$ 22	\$ (223)	n.m.

In the year ended 2008 Equity income (loss), net of tax decreased by \$0.2 billion due to impairment charges and lower income from Old GM's investments in NUMMI and CAMI.

**GM International Operations**  
(Dollars in millions)

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Total net sales and revenue	\$ 15,507	\$ 11,678	\$ 36,850	\$ 37,059
Income (loss) attributable to stockholders before interest and income taxes	\$ 1,198	\$ (956)	\$ 473	\$ 1,911

Vehicle Sales and Production Volume

The following tables summarize total production volume and industry sales of new motor vehicles and competitive position (in thousands):

	Combined GM and Old GM	Old GM	
	Year Ended December 31, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Production Volume (a)(b)	3,456	3,145	3,191

- (a) Production volume represents the number of vehicles manufactured by our and Old GM's assembly facilities and also includes vehicles produced by certain joint ventures.
- (b) Includes SGM, SGMW and FAW-GM joint venture production. Ownership of 50% in SGM, 34% in SGMW and 50% in FAW-GM, under the joint venture agreements, allows for significant rights as a member as well as the contractual right to report SGMW and FAW-GM production volume in China.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

	Year Ended December 31, 2009			Year Ended December 31, 2008			Year Ended December 31, 2007		
	Industry	Combined GM and Old GM	Combined GM and Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry
Vehicle Sales (a)(b)(c)(d)									
Total GMIO	32,358	3,326	10.3%	28,641	2,754	9.6%	28,173	2,672	9.5%
China	13,671	1,826	13.4%	9,074	1,095	12.1%	8,457	1,032	12.2%
Brazil	3,141	596	19.0%	2,820	549	19.5%	2,463	499	20.3%
Australia	937	121	12.9%	1,012	133	13.1%	1,050	149	14.2%
Middle East Operations	1,053	117	11.1%	1,118	144	12.9%	1,276	136	10.7%
South Korea	1,455	115	7.9%	1,215	117	9.7%	1,271	131	10.3%
Argentina	517	79	15.2%	616	95	15.5%	573	92	16.1%
India	2,240	69	3.1%	1,971	66	3.3%	1,989	60	3.0%
Colombia	185	67	36.1%	219	80	36.3%	252	93	36.8%
Egypt	204	52	25.6%	262	60	23.1%	227	40	17.5%
Venezuela	137	49	36.1%	272	90	33.2%	492	151	30.7%

- (a) Vehicle sales primarily represent estimated sales to the ultimate customer.
- (b) Includes SGM, SGMW and FAW-GM joint venture vehicle sales. Ownership of 50% in SGM, 34% in SGMW and 50% in FAW-GM, under the joint venture agreements, allows for significant rights as a member as well as the contractual right to report SGMW and FAW-GM joint venture vehicle sales in China as part of global market share. Combined GM and Old GM joint venture sales in China included in vehicle sales and market share data was 1.0 million vehicles in the year ended 2009. Old GM's joint venture vehicle sales in China included in vehicle sales and market share data was 606,000 vehicles and 516,000 vehicles in the years ended 2008 and 2007.
- (c) Vehicle sales and market share data from sales of GM Daewoo produced Chevrolet brand products in Europe are reported as part of GME. Combined GM and Old GM sales of GM Daewoo produced Chevrolet brand products in Europe was 356,000 vehicles in the year ended 2009. Old GM's sales of GM Daewoo produced Chevrolet brand products in Europe was 434,000 vehicles and 400,000 vehicles in the years ended 2008 and 2007.
- (d) Vehicle sales data may include rounding differences.

**July 10, 2009 Through December 31, 2009 and January 1, 2009 Through July 9, 2009  
(Dollars in millions)**

*Total Net Sales and Revenue*

	Combined GM and Old GM		Predecessor		Year Ended 2009 vs. 2008 Change	
	Year Ended December 31, 2009	Successor July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Amount	%
Total net sales and revenue	\$ 27,185	\$ 15,507	\$ 11,678	\$ 36,850	\$ (9,665)	(26.2)%

In the periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009, several factors have continued to affect vehicle sales. The continuing tight credit markets, increasing unemployment rates and recessionary trends in many international markets, resulted in depressed sales. Old GM's well publicized liquidity issues, public speculation as to the effects of Chapter 11 proceedings and the actual Chapter 11 Proceedings negatively affected vehicle sales in several markets. Many countries in GMIO have responded to the global recession by lowering interest rates and initiating programs to provide credit to consumers, which had a positive effect on vehicle sales. Certain countries including China, Brazil, India and South Korea have benefited from effective

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government economic stimulus packages and are showing signs of a recovery. In 2010 we anticipate a challenging sales environment resulting from the global economic slowdown with a partial offset from strong sales in China and Brazil.

In the year ended 2009 Total net sales and revenue decreased by \$9.7 billion (or 26.2%) due to: (1) decreased domestic wholesale sales volume and lower exports from GM Daewoo of \$4.2 billion, Middle East of \$2.4 billion, Australia of \$1.5 billion, Venezuela of \$0.9 billion, Thailand of \$0.6 billion, Argentina of \$0.6 billion, South Africa of \$0.5 billion, and Colombia of \$0.3 billion; partially offset by (2) gains on derivative instruments of \$0.9 billion at GM Daewoo; (3) favorable pricing of \$0.5 billion primarily due to a 60% price increase in Venezuela due to high inflation; and (4) favorable vehicle mix of \$0.4 billion driven by launches of new vehicle models at GM Daewoo.

The increase in vehicle sales related to China joint ventures is not reflected in Total net sales and revenue. The results of our China joint ventures are recorded in Equity income, net of tax.

### *Income ( Loss) Attributable to Stockholders Before Interest and Income Taxes*

Income (loss) attributable to stockholders before interest and income taxes was income of \$1.2 billion and a loss of \$1.0 billion in the periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009.

Costs and expenses include both fixed costs as well as costs which generally vary with production levels. Periodically, we have undertaken various separation programs, which have increased costs in the applicable periods with the goal of reducing labor costs in the long term.

Our results are affected by the earnings of our nonconsolidated equity affiliates, primarily our China joint ventures and noncontrolling interests share of earnings primarily in GM Daewoo.

In the period July 10, 2009 through December 31, 2009 results included the following:

- Separation costs of \$0.1 billion related to voluntary and involuntary separation and early retirement programs;
- Foreign currency transaction gains of \$0.1 billion primarily due to the Australian Dollar and Venezuelan Bolivar versus the U.S. Dollar; and
- Effects of fresh-start reporting, which included amortization of intangible assets, which were partially offset by the reduced value of inventory recorded through Cost of sales which were established in connection with our application of fresh-start reporting and decreased depreciation of fixed assets resulting from lower balances.

In the period January 1, 2009 through July 9, 2009 results included a foreign currency transaction loss of \$0.4 billion related to foreign currency transactions outside of the official exchange market in Venezuela.

In the period ended January 1, 2009 through July 9, 2009 negative gross margin was driven by significant sales volume declines, which was not offset totally by declines in cost of sales due to high fixed manufacturing overhead and foreign currency transaction loss of \$0.4 billion related to foreign currency transactions outside of the official exchange market in Venezuela.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**2008 Compared to 2007  
(Dollars in Millions)**
*Total Net Sales and Revenue*

	<u>Predecessor</u>		<u>Year Ended</u>	
	<u>Year Ended</u>	<u>Year Ended</u>	<u>2008 vs. 2007 Change</u>	
	<u>December 31, 2008</u>	<u>December 31, 2007</u>	<u>Amount</u>	<u>%</u>
Total net sales and revenue	\$ 36,850	\$ 37,059	\$ (209)	(0.6)%

Industry vehicle sales increased in the GMIO region in the first half of 2008 by 1.4 million vehicles (or 9.8%). As the global financial crisis, brought about by the tightening of the credit markets, volatile oil prices, slowdown of economic growth and declining consumer confidence, spread to the region, industry vehicle sales decreased 908,000 vehicles (or 6.4%) in the second half of 2008.

In the year ended 2008 industry vehicle sales in the GMIO region increased by 468,000 vehicles (or 1.7%) primarily due to increases in China of 616,000 vehicles (or 7.3%), in Brazil of 358,000 vehicles (or 14.5%) and Indonesia of 173,000 vehicles (or 39.9%). The growth from these markets more than offset the decline of 271,000 vehicles (or 5.1%) in Japan, 220,000 vehicles (or 44.8%) in Venezuela 158,000 vehicles (or 12.4%) in the Middle East and 124,000 vehicles (or 20.2%) in South Africa.

In the year ended 2008, Total net sales and revenue decreased by \$0.2 billion (or 0.6%) due to: (1) our determination that certain of our derivative cash flow hedge instruments were no longer effective resulting in the termination of hedge accounting treatment of \$2.1 billion; (2) decrease in sales volume driven by decreased wholesale volumes of \$0.3 billion mainly in Venezuela, GM Daewoo, Colombia and South Africa; offset by (3) favorable foreign currency translation effect of \$1.2 billion, related to the Brazilian Real, Euro and Australian Dollar versus the U.S. Dollar; (4) favorable net vehicle pricing of \$0.6 primarily in Venezuela due to high inflation and Brazil as a result of industry growth and high demand in the first half of 2008; and (5) favorable product mix of \$0.4 billion.

The decrease in vehicle sales related to China joint ventures is not reflected in Total net sales and revenue as China joint venture revenue is not consolidated in the financial results.

GMIO's vehicle sales were similar to the industry vehicle sales as their vehicle sales began to moderate in the third quarter and fell sharply during the fourth quarter of 2008. GMIO's vehicle sales increased by 76,000 vehicles (or 11.5%), increased by 102,000 vehicles (or 16.2%) and increased by 19,000 vehicles (or 2.8%) in the first, second and third quarters of 2008. GMIO's vehicle sales decreased by 115,000 vehicles (or 15.9%) in the fourth quarter of 2008. GMIO's China vehicle sales increased by 22,000 vehicles (or 7.4%), increased by 45,000 vehicles (or 19.3%) and increased by 10,000 vehicles (or 4.4%) in the first, second and third quarters of 2008. GMIO's vehicle sales in China decreased by 14,000 vehicles (or 5.1%) in the fourth quarter of 2008. The decline in GMIO's vehicle sales and vehicle sales in China, in the second half of 2008, was attributable to the same global economic factors affecting the GMIO region mentioned above. Despite the downturn in GMIO's vehicle sales in the second half of 2008, GMIO capitalized on the demand in the China passenger and light commercial vehicle markets. GMIO increased its vehicle sales throughout the region in 2008, in part due to strong sales in China where volumes exceeded 1.0 million vehicles for the second consecutive year.

*Cost of Sales*

	<u>Predecessor</u>		<u>Year Ended</u>	
	<u>Year Ended</u>	<u>Year Ended</u>	<u>2008 vs. 2007 Change</u>	
	<u>December 31, 2008</u>	<u>December 31, 2007</u>	<u>Amount</u>	<u>%</u>
Cost of sales	\$ 34,178	\$ 32,963	\$ 1,215	3.7%
Gross margin	\$ 2,672	\$ 4,096	\$ (1,424)	(34.8)%

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

In the year ended 2008 cost of sales increased by \$1.2 billion (or 3.7%) primarily due to: (1) increased content cost of \$0.7 billion driven by an increase in imported material costs at Venezuela and high inflation across the region primarily in Venezuela, Argentina and South Africa; (2) unfavorable product mix of \$0.4 billion; and (3) foreign currency exchange transaction losses on purchases of treasury bills in the region of \$0.2 billion.

*Selling, General and Administrative Expense*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Selling, general and administrative expense	\$ 2,682	\$ 2,482	\$ 200	8.1%

In the year ended 2008 Selling, general and administrative expense increased by \$200 million (or 8.1%) primarily due to Old GM's expansion in Russia and other European markets.

*Other Non-Operating Income, net*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Other non-operating income, net	\$ 101	\$ 175	\$ (74)	(42.3)%

In the year ended 2008 Other non-operating income, net decreased by \$74 million (or 42.3%) primarily due to insurance premiums received of \$89 million, in 2007.

*Equity Income, net of tax*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
SGM and SGMW	\$ 312	\$ 430	\$ (118)	(27.4)%
Other equity interests	17	26	(9)	(34.6)%
Total equity income, net of tax	\$ 329	\$ 456	\$ (127)	(27.9)%

In the year ended 2008 Equity income, net of tax decreased by \$0.1 billion (or 27.9%) due to lower earnings at SGM.

*Net (income) Loss Attributable to Noncontrolling Interests Before Interest and Income Taxes*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Net (income) loss attributable to noncontrolling interests before interest and income taxes	\$ 53	\$ (334)	\$ 387	115.9%

In the year ended 2008 Net (income) loss attributable to noncontrolling interest before interest and income taxes decreased by \$0.4 billion (or 115.7%) due to lower income at GM Daewoo.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

*GM Europe*  
(Dollars in millions)

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Total net sales and revenue</b>	\$ 11,520	\$ 12,590	\$ 34,388	\$ 37,478
<b>Loss attributable to stockholders before interest and income taxes</b>	\$ (805)	\$ (2,823)	\$ (2,637)	\$ (410)

*Vehicle Sales and Production Volume*

The following tables summarize total production volume and industry sales of new motor vehicles and competitive position (in thousands):

	Combined GM and Old GM	Old GM	
	Year Ended December 31, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Production Volume (a)</b>	1,134	1,550	1,828

(a) Production volume represents the number of vehicles manufactured by our and Old GM's assembly facilities and also includes vehicles produced by certain joint ventures.

	Year Ended December 31, 2009			Year Ended December 31, 2008			Year Ended December 31, 2007		
	Industry	Combined GM and Old GM	Combined GM and Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry	Industry	Old GM	Old GM as a % of Industry
<b>Vehicle Sales (a)(b)(c)</b>									
Total GME	18,827	1,667	8.9%	21,968	2,043	9.3%	23,123	2,182	9.4%
Germany	4,049	382	9.4%	3,425	300	8.8%	3,482	331	9.5%
United Kingdom	2,223	287	12.9%	2,485	384	15.4%	2,800	427	15.2%
Italy	2,349	189	8.0%	2,423	202	8.3%	2,778	237	8.5%
Russia	1,494	142	9.5%	3,024	338	11.2%	2,707	260	9.6%
France	2,686	119	4.4%	2,574	114	4.4%	2,584	125	4.8%
Spain	1,075	94	8.7%	1,363	107	7.8%	1,939	171	8.8%

(a) Vehicle sales primarily represent estimated sales to the ultimate customer including sales of Chevrolet brand products in the region. The financial results from sales of GM Daewoo produced Chevrolet brand products are reported as part of GMIO. Combined GM and Old GM sales of GM Daewoo produced Chevrolet brand products included in vehicle sales and market share data was 356,000 vehicles in the year ended 2009. Old GM's sales of GM Daewoo produced Chevrolet brand products included in vehicle sales and market share data was 434,000 and 400,000 vehicles in the years ended 2008 and 2007.

(b) Includes Saab vehicle sales data.

(c) Vehicle sales data may include rounding differences.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

July 10, 2009 Through December 31, 2009 and January 1, 2009 Through July 9, 2009  
(Dollars in millions)

Total Net Sales and Revenue

	Combined GM and Old GM	Successor	Predecessor		Year Ended 2009 vs. 2008 Change	
	Year Ended December 31, 2009	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Amount	%
Total net sales and revenue	\$ 24,110	\$ 11,520	\$ 12,590	\$ 34,388	\$ (10,278)	(29.9)%

In the periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009 several factors have continued to affect vehicle sales. The continuing tight credit markets, increasing unemployment rates and a recession in many international markets, resulted in depressed sales. Old GM's well publicized liquidity issues, public speculation as to the effects of Chapter 11 proceedings and the actual Chapter 11 Proceedings negatively affected vehicle sales in several markets as well as the announcement that Old GM was seeking a majority investor in Adam Opel, which was a condition to receiving financing from the German government. Certain countries including Germany benefited from effective government economic stimulus packages and are showing signs of a recovery. For the remainder of 2010, we anticipate a challenging sales environment resulting from the continuation of the global economic slowdown.

In the year ended 2009 Total net sales and revenue decreased by \$10.3 billion (or 29.9%) due to: (1) decreased domestic wholesale sales volume of \$4.8 billion; (2) net unfavorable effect of \$3.7 billion in foreign currency translation and transaction losses, driven primarily by the strengthening of the U.S. Dollar versus the Euro; (3) decreased sales revenue at Saab of \$1.2 billion; (4) lower powertrain and parts and accessories revenue of \$0.8 billion; partially offset by (5) favorable vehicle pricing of \$1.3 billion.

In line with the industry trends previously noted, revenue decreased due to wholesale volume decreases of 405,000 vehicles (or 24.8%).

Loss Attributable to Stockholders Before Interest and Income Taxes

In the periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009 Loss attributable to stockholders before interest and income taxes was \$0.8 billion and \$2.8 billion.

Cost and expenses includes both fixed costs as well as costs which generally vary with production levels. Certain fixed costs, primarily labor related, have continued to decrease in relation to historical levels primarily due to various separation and other programs implemented in order to reduce labor costs. However, in the period January 1, 2009 through July 9, 2009 the implementation of various separation programs and incremental depreciation contributed to decreased margins. In the period July 10, 2009 through December 31, 2009 the effect of fresh-start reporting, especially the reduced value for inventory favorably affected results.

In the period July 10, 2009 through December 31, 2009 results included the following:

- Effects of fresh-start reporting primarily consisted of the fair value of inventory which was a decrease from the historical book value and was recorded in cost of sales and depreciation and amortization related to the fair value of fixed assets and special tools, partially offset by increased amortization of intangible assets which were established in connection with our application of fresh-start reporting.

In the period January 1, 2009 through July 9, 2009 results included the following:

- Other expenses of \$0.8 billion primarily represented charges related to the deconsolidation of Saab. Saab filed for reorganization protection under the laws of Sweden in February 2009

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**2008 Compared to 2007  
(Dollars in Millions)**
*Total Net Sales and Revenue*

	<u>Predecessor</u>		<u>Year Ended</u>	
	<u>Year Ended</u>	<u>Year Ended</u>	<u>2008 vs. 2007 Change</u>	
	<u>December 31, 2008</u>	<u>December 31, 2007</u>	<u>Amount</u>	<u>%</u>
Total net sales and revenue	\$ 34,388	\$ 37,478	\$ (3,090)	(8.2)%

In the year ended 2008 industry vehicle sales began to decline in the second quarter followed by a sharp decline in the third and fourth quarters. Industry vehicle sales increased by 236,000 vehicles (or 4.1%) and by 134,000 vehicles (or 2.2%) in the first and second quarters of 2008. Industry vehicle sales decreased by 340,000 vehicles (or 6.1%) and by 1.2 million vehicles (or 20.6%) in the third and fourth quarters of 2008. The decline of industry vehicle sales reflected the recession in Western Europe and the indirect effect of the tightening of credit markets, volatile oil prices, slowdown of economic growth and declining consumer confidence around the world.

In the year ended 2008, industry vehicle sales decreased by 1.2 million vehicles (or 5.0%). The decline in industry vehicle sales primarily resulted from a decrease of 577,000 vehicles (or 29.7%) in Spain; a decrease of 354,000 vehicles (or 12.8%) in Italy; a decrease in the United Kingdom of 314,000 vehicles (or 11.2%), a net decrease in various other markets in Western Europe of 225,000 vehicles (or 2.3%); and a decrease in Turkey of 109,000 vehicles (or 17.2%). These decreases were partially offset by an increase of 317,000 vehicles (or 11.7%) in Russia and an increase of 92,000 vehicles (or 15.4%) in Ukraine.

The trend in GME's vehicle sales mirrored that of the industry trend mentioned above. GME's vehicle sales increased by 19,000 vehicles (or 3.4%) and by 16,000 vehicles (or 2.8%) in the first and second quarters of 2008. GME's vehicle sales decreased by 64,000 vehicles (or 12.3%) and by 110,000 vehicles (or 20.7%) in the third and fourth quarters of 2008. The decline with each quarter in GME's vehicle sales was attributable to the same economic factors affecting the industry mentioned above.

In the year ended 2008 Total net sales and revenue decreased by \$3.1 billion (or 8.2%) due to: (1) lower wholesale sales volume outside of Russia of \$4.4 billion; (2) unfavorable vehicle mix of \$0.6 billion; offset by (3) a net favorable effect in foreign currency translation of \$2.0 billion, driven mainly by the strengthening of the Euro and Swedish Krona, offset partially by the weakening of the British Pound versus the U.S. Dollar.

In line with the industry trends noted above, GME's revenue, which excludes sales of Chevrolet brand products, decreased most significantly in Spain, where wholesale volumes decreased by 67,000 vehicles (or 46.9%), followed by the United Kingdom, where wholesale volumes decreased by 43,000 vehicles (or 10.5%), and Italy, where wholesale volumes decreased by 41,000 vehicles (or 21.3%). These decreases were partially offset as wholesale volumes in Russia increased by 22,000 vehicles (or 29.6%).

*Cost of Sales*

	<u>Predecessor</u>		<u>Year Ended</u>	
	<u>Year Ended</u>	<u>Year Ended</u>	<u>2008 vs. 2007 Change</u>	
	<u>December 31, 2008</u>	<u>December 31, 2007</u>	<u>Amount</u>	<u>%</u>
Cost of sales	\$ 33,838	\$ 35,254	\$ (1,416)	(4.0)%
Gross margin	\$ 550	\$ 2,224	\$ (1,674)	(75.3)%

In the year ended 2008 Cost of sales decreased by \$1.4 billion (or 4.0%) due to decreased wholesale sales volumes of \$3.5 billion offset by an unfavorable effect in foreign currency translation of \$2.4 billion, driven mainly by the strengthening of the Euro and Swedish Krona.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

*Selling, General and Administrative Expense*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Selling, general and administrative expense	\$ 2,816	\$ 2,781	\$ 35	1.3%

In the year ended 2008 Selling, general and administrative expense increased by \$35 million (or 1.3%) primarily due to an unfavorable effect in foreign currency translation of \$87 million related to the Euro versus the U.S. Dollar offset by a decrease in administrative and other expenses of \$35 million.

*Other Expenses, net*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Other expenses, net	\$ 456	\$ —	\$ 456	n.m.

n.m. = not meaningful

In the year ended 2008 Other expenses, net increased by \$0.5 billion due to an impairment charge related to goodwill.

*Other Non-Operating Income, net*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Other non-operating income, net	\$ 7	\$ 130	\$ (123)	(94.6)%

In the year ended 2008 Other non-operating income, net decreased by \$123 million primarily as a result of a favorable settlement of value added tax claims with the United Kingdom tax authorities of \$115 million in the year ended 2007.

*Net (Income) Loss Attributable to Noncontrolling Interests Before Interest and Income Taxes*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Net (income) loss attributable to noncontrolling interests before interest and income taxes	\$ 22	\$ (27)	\$ 49	181.5%

In the year ended 2008 Net (income) loss attributable to noncontrolling interests before interest and income taxes increased by \$49 million (or 181.5%) due to declines in profits at Isuzu Motors Polska.

**Corporate  
(Dollars in millions)**

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Total net sales and revenue	\$ 145	\$ 328	\$ 1,247	\$ 2,390
Net income (loss) attributable to stockholders	\$ 167	\$ 123,887	\$ (16,627)	\$ (41,884)

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

Nonsegment operations are classified as Corporate. Corporate includes investments in GMAC, certain centrally recorded income and costs, such as interest, income taxes and corporate expenditures, certain nonsegment specific revenues and expenses, including costs related to the Delphi Benefit Guarantee Agreements and a portfolio of automotive retail leases.

**July 10, 2009 Through December 31, 2009 and January 1, 2009 Through July 9, 2009**  
(Dollars in millions)

*Total Net Sales and Revenue*

	Combined GM and Old GM		Predecessor		Years Ended 2009 vs. 2008 Change	
	Year Ended December 31, 2009	Successor July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Amount	%
Total net sales and revenue	\$ 473	\$ 145	\$ 328	\$ 1,247	\$ (774)	(62.1)%

Total net sales and revenue includes lease financing revenue from a portfolio of automotive retail leases. We anticipate this portfolio of automotive retail leases to be substantially liquidated by December 2010.

In the year ended 2009 Total net sales and revenue decreased by \$0.8 billion (or 62.1%) due to a decrease in other financing revenue of \$0.7 billion (or 68.4%) related to the liquidation of automotive retail leases. Average outstanding leases on-hand for combined GM and Old GM were 73,000 and 236,000 for the year ended 2009 and 2008.

*Net income Attributable to Stockholders*

In the periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009 Net income attributable to stockholders was \$0.2 billion and \$123.9 billion.

In the period July 10, 2009 through December 31, 2009 results included the following:

- Foreign currency transaction and translation gains, net of \$0.3 billion; and
- Interest expense of \$0.7 billion primarily related to interest expense of \$0.3 billion on UST Loans and \$0.2 billion on GMIO debt.

In the period January 1, 2009 through July 9, 2009 results included the following:

- Centrally recorded Reorganization gains, net of \$128.2 billion which is more fully discussed in Note 2 to the consolidated financial statements;
- Charges of \$0.4 billion for settlement with the PBGC associated with the Delphi Benefit Guarantee Agreements;
- Gain recorded on the UST GMAC Loan of \$2.5 billion upon the UST's conversion of the UST GMAC Loan for Class B Common Membership Interests in GMAC. The gain resulted from the difference between the fair value and the carrying amount of the GMAC equity interests given to the UST in exchange for the UST GMAC Loan. The gain was partially offset by Old GM's proportionate share of GMAC's loss from operations of \$1.1 billion;
- Amortization of discounts related to the UST Loan, EDC Loan and DIP Facilities of \$3.7 billion. In addition, Old GM incurred interest expense of \$1.7 billion primarily related to interest expense of \$0.8 billion on unsecured debt balances, \$0.4 billion on the UST Loan Facility and \$0.2 billion on GMIO debt; and
- Loss related to the extinguishment of the UST GMAC Loan of \$2.0 billion when the UST exercised its option to convert outstanding amounts to shares of GMAC's Class B Common Membership Interests. This loss was partially offset by a gain on extinguishment of debt of \$0.9 billion related to an amendment to Old GM's \$1.5 billion U.S. term loan in March 2009.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**2008 Compared to 2007**
*Total Net Sales and Revenue*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Total net sales and revenue	\$ 1,247	\$ 2,390	\$ (1,143)	(47.8)%

In the year ended 2008 Total net sales and revenue decreased by \$1.1 billion (or 47.8%) primarily due to a decrease in other financing revenue for the liquidation of automotive operating leases. Average outstanding leases on-hand for Old GM was 236,000 and 455,000 for the year ended December 31, 2008 and 2007.

*Cost of Sales*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Cost of Sales	\$ 177	\$ 93	\$ 84	90.3%

In the year ended 2008 Cost of sales increased by \$84 million (or 90.3%) primarily due to: (1) loss on foreign exchange and interest rate derivatives of \$252 million; (2) a decrease in foreign exchange gain on a transfer pricing transaction between Corporate and GMCL of \$159 million; offset by (3) a favorable foreign currency translation effect on our debt denominated in Euros of \$267 million.

*Selling, General and Administrative Expense*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Selling, general and administrative expense	\$ 1,012	\$ 780	\$ 232	29.7%

In the year ended 2008 Selling, general and administrative expense increased by \$232 million (or 29.7%) primarily due to an increase in legal expense of \$177 million.

*Other Expenses, net*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Delphi charges	\$ 4,797	\$ 1,547	\$ 3,250	n.m.
Other	1,292	2,208	(916)	(41.5)%
Total other expenses, net	<u>\$ 6,089</u>	<u>\$ 3,755</u>	<u>\$ 2,334</u>	62.2%

n.m. = not meaningful

In the year ended 2008 Other expenses, net increased by \$2.3 billion (or 62.2%) primarily due to increased charges related to the Delphi Benefit Guarantee Agreements of \$3.3 billion offset by a decrease in depreciation of \$0.7 billion related to the liquidation of the portfolio of automotive retail leases.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
*Equity in Income (Loss) of and Disposition of Interest in GMAC*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Equity in income (loss) of and disposition of interest in GMAC	\$ 916	\$ (1,245)	\$ 2,161	173.6%
Impairment charges related to GMAC Common Membership Interests	(7,099)	—	(7,099)	n.m.
Total equity in income (loss) of and disposition of interest in GMAC	<u>\$ (6,183)</u>	<u>\$ (1,245)</u>	<u>\$ (4,938)</u>	n.m.

n.m. = not meaningful

In the year ended 2008 Equity in loss of and disposition of interest in GMAC increased \$4.9 billion due to impairment charges of \$7.1 billion related to Old GM's investment in GMAC Common Membership Interests, offset by an increase in Old GM's proportionate share of GMAC's income from operations of \$2.2 billion.

*Interest Expense*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Interest expense	\$ (2,525)	\$ (3,076)	\$ 551	17.9%

In the year ended 2008 Interest expense decreased by \$0.6 billion (or 17.9%) due to the de-designation of certain derivatives as hedges of \$0.3 billion and adjustment to capitalized interest of \$0.2 billion.

*Interest Income*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Interest income	\$ 655	\$ 1,228	\$ (573)	(46.7)%

In the year ended 2008 Interest income decreased by \$0.6 billion (or 46.7%) due to a reduction in interest earned of \$0.3 billion due to lower market interest rates and lower cash balances on hand and nonrecurring favorable interest of \$0.2 billion recorded in the year ended 2007 resulting from various tax related items.

*Other Non-Operating Income (Expense), net*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Impairment related to GMAC Preferred Membership Interests	\$ (1,001)	\$ —	\$ (1,001)	n.m.
Other	175	308	(133)	(43.2)%
Total other non-operating income (expense), net	<u>\$ (826)</u>	<u>\$ 308</u>	<u>\$ (1,134)</u>	n.m.

n.m. = not meaningful

In the year ended 2008 Other non-operating income (expense), net decreased by \$1.1 billion primarily due to impairment charges of \$1.0 billion related to Old GM's GMAC Preferred Membership Interests.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

*Gain on Extinguishment of Debt*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Gain on extinguishment of debt	\$ 43	\$ —	\$ 43	n.m.

n.m. = not meaningful

In the year ended 2008 Gain on extinguishment of debt related to a settlement gain recorded for the issuance of 44 million shares of common stock in exchange for \$498 million principal amount of our the Series D debentures, which were retired and cancelled.

*Income Tax Expense*

	Predecessor		Year Ended 2008 vs. 2007 Change	
	Year Ended December 31, 2008	Year Ended December 31, 2007	Amount	%
Income tax expense	\$ 1,766	\$ 36,863	\$ (35,097)	(95.2)%

In the year ended 2008 Income tax expense decreased by \$35.1 billion (or 95.2%) due to the effect of recording valuation allowances of \$39.0 billion against Old GM's net deferred tax assets in the United States, Canada and Germany in the year ended 2007, offset by the recording of additional valuation allowances in the year ended 2008 of \$1.9 billion against Old GM's net deferred tax assets in South Korea, the United Kingdom, Spain, Australia, and other jurisdictions.

**Liquidity and Capital Resources***Liquidity Overview*

In the period July 10, 2009 through December 31, 2009 we had positive operating cash flow of \$971 million, and our available liquidity was \$22.8 billion at December 31, 2009, not including funds available under credit facilities of \$618 million or in the UST Credit Agreement and HCT escrow accounts of \$13.4 billion.

Although our cost reduction initiatives have alleviated our short-term cash needs, we still expect to have substantial cash requirements going forward. Our known material future uses of cash include the following:

- Estimated capital expenditures of \$6.1 billion in the year ending 2010;
- The restructuring of the Opel/Vauxhall operations and our other European operations in 2010, which may include costs to implement other long-term cost savings and restructuring plans such as potential capacity reduction programs;
- Quarterly payments to the UST and EDC of \$1.0 billion and \$192 million with a release of equivalent amounts from our escrow funds, which began in the fourth quarter of 2009. In the event of an initial public offering of our equity, this payment schedule would be suspended. In addition, any excess funds in our escrow account at June 30, 2010 must be applied towards the repayment of the UST Loans and Canadian Loan. Any funds remaining in our escrow account after repayment of the loans will be released to us. We also have the right to prepay these loans prior to the stated maturities without premium or penalty;
- Certain payments under the 2009 Revised UAW Settlement Agreement including: (1) VEBA Notes of \$2.5 billion and accrued interest, at an implied interest rate of 9.0% per annum, are scheduled to be repaid in three equal installments of \$1.4 billion on

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

July 15 of 2013, 2015 and 2017. We also have the right to prepay these loans prior to the stated maturities without premium or penalty; (2) dividends payable on 260 million shares of our Series A Preferred Stock which have a liquidation preference of \$25.00 per share and accrue cumulative dividends of 9.0% per annum; and (3) two years funding of claims costs for individuals that elected the Second 2009 Special Attrition Program; and

- Debt payments of \$3.3 billion in 2010 (excluding payments to the UST and EDC and payments on the VEBA Notes).

We believe that our current level of cash and restricted cash will be sufficient to meet our liquidity needs.

However, our liquidity plans are subject to a number of risks and uncertainties, including those discussed in “Risk Factors,” some of which are outside our control. Macro-economic conditions could limit our ability to successfully execute our business plans and, therefore, adversely affect our liquidity plans.

**Available Liquidity**

Available liquidity includes cash balances, marketable securities and readily-available VEBA assets. At December 31, 2009 available liquidity was \$22.8 billion, not including funds available under credit facilities of \$618 million or in the UST Credit Agreement and HCT escrow accounts of \$13.4 billion. The amount of available liquidity is subject to intra-month and seasonal fluctuations and includes balances held by various business units and subsidiaries worldwide that are needed to fund their operations.

At December 31, 2009 we were in the process of changing our payment terms for the majority of our direct material, service parts and logistics suppliers from payments to be made on the second day after the second month end based on the date of purchase, which averages 47 day payment terms, to weekly payments. This change did not affect the average of 47 days that account payables are outstanding, but it did reduce volatility with respect to our intra-month liquidity and reduced our cash balances and liquidity at each month end. The change to weekly payment terms results in a better match between the timing of our receipt and disbursement of cash, which reduces volatility in our cash balances and lowers our minimum cash operating requirements. We estimated that this change reduced our cash balances at December 31, 2009 by approximately \$1.3 billion to \$1.7 billion for suppliers then subject to the revised payment terms. We estimate that if the payment term conversion had been completed for all suppliers subject to this initiative the effect on our cash balance would have been a decrease of approximately \$2.4 billion at December 31, 2009. We are planning to complete the payment term conversion in 2010.

We manage our global liquidity using U.S. cash investments, the UST Credit Agreement and HCT escrow accounts, cash held at our international treasury centers and available liquidity at consolidated overseas subsidiaries. The following table summarizes global liquidity (dollars in millions):

	<u>Successor</u>	<u>Predecessor</u>	
	<u>December 31,</u> <u>2009</u>	<u>December 31,</u> <u>2008</u>	<u>December 31,</u> <u>2007</u>
Cash and cash equivalents	\$ 22,679	\$ 14,053	\$ 24,817
Marketable securities	134	141	2,354
Readily-available VEBA assets	—	—	640
Available liquidity	22,813	14,194	27,811
Available under credit facilities	618	643	7,891
Total available liquidity	23,431	\$ 14,837	\$ 35,702
UST Credit Agreement and HCT escrow accounts (a)	13,430		
Total liquidity including UST Credit Agreement and HCT escrow accounts	\$ 36,861		

- (a) Classified as restricted cash. Refer to Note 14 to the consolidated financial statements for additional information on the classification of the escrow accounts.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES***GM*

Total available liquidity increased by \$2.5 billion in the period July 10, 2009 through December 31, 2009 due to positive cash flows from operating, financing and investing activities of \$3.5 billion which were partially offset by a \$1.1 billion reduction in our borrowing capacity on certain credit facilities. The decrease in credit facilities is primarily attributable to the November 2009 extinguishment of the German Facility.

In November 2009 we provided longer-term financing of \$900 million to Adam Opel. The funding was primarily used to repay the remaining outstanding amounts of the German Facility, as well as to fund the on-going operating requirements of the Opel/Vauxhall operations.

In January 2010 in order to assist in the funding of the Opel/Vauxhall operations, we provided additional support of \$930 million. This support includes the acceleration of certain payments owed under engineering services agreements to Adam Opel, which would normally be paid in April and July, 2010. The payment accelerations serve as a temporary funding source for the Opel/Vauxhall operations until more permanent financing can be arranged.

*Old GM*

Total available liquidity increased by \$6.0 billion in the period January 1, 2009 through July 9, 2009 primarily due to positive cash flows from financing activities partially offset by negative cash flow from operating and investing activities for a net cash flow of \$4.8 billion as well as an increase of \$1.1 billion in available borrowing capacity under credit facilities. This was partially offset by repayments of secured lending facilities.

Available liquidity decreased to \$14.2 billion at December 31, 2008 from \$27.8 billion at December 31, 2007 primarily as a result of negative operating cash flow driven by reduced production in North America and Western Europe, postretirement benefit payments and cash restructuring costs, and payments to Delphi; partially offset by borrowings on Old GM's secured revolver and proceeds from the UST Loan Facility.

**VEBA Assets**

The following table summarizes the VEBA assets (dollars in millions):

	Successor	Predecessor	
	December 31, 2009	December 31, 2008	December 31, 2007
Total VEBA assets	\$ —	\$ 9,969	\$ 16,303
Readily-available VEBA assets	\$ —	\$ —	\$ 640

*GM*

We transferred all of the remaining VEBA assets along with other consideration to the New VEBA within 10 business days after December 31, 2009, in accordance with the terms of the 2009 Revised UAW Settlement Agreement. Under the terms of the 2009 Revised UAW Settlement Agreement we have an obligation for VEBA Notes of \$2.5 billion and accrued interest, at an implied interest rate of 9.0% per annum, scheduled to be repaid in three equal installments of \$1.4 billion in July of 2013, 2015 and 2017.

Under the terms of the 2009 Revised UAW Settlement Agreement, we are released from UAW retiree health care claims incurred after December 31, 2009. All obligations of ours, the New Plan and any other entity or benefit plan of ours for retiree medical benefits for the class and the covered group arising from any agreement between us and the UAW terminated at December 31, 2009. Our obligations to the New Plan and the New VEBA are limited to the terms of the 2009 Revised UAW Settlement Agreement.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### *Old GM*

Total VEBA assets decreased to \$10.0 billion at December 31, 2008 from \$16.3 billion at December 31, 2007 due to negative asset returns and a \$1.4 billion withdrawal of VEBA assets in the year ended 2008. In connection with the 2008 UAW Settlement Agreement a significant portion of the VEBA assets were allocated to a separate account, which also hold the proportional investment returns on that percentage of the trust. No amounts will be withdrawn from the separate account including its investment returns from January 2008 until transfer to the New VEBA. Because of this treatment, Old GM excluded any portion of the separate account from available liquidity at and subsequent to December 31, 2007.

### **Credit Facilities**

#### *GM*

At December 31, 2009 we had committed credit facilities of \$1.7 billion, under which we had borrowed \$1.5 billion leaving \$223 million available. Of these committed credit facilities GM Daewoo held \$1.2 billion and other entities held \$0.5 billion. In addition, at December 31, 2009 we had uncommitted credit facilities of \$842 million, under which we had borrowed \$447 million leaving \$395 million available. We and our subsidiaries use credit facilities to fund working capital needs, product programs, facilities development and other general corporate purposes.

Our largest credit facility is GM Daewoo's \$1.2 billion revolving credit facility, which was established in October 2002 with a syndicate of banks and converts into a term loan in October 2010. All outstanding amounts at October 2010 are required to be paid in four equal annual installments by October 2014. Borrowings under this facility bear interest based on Korean Won denominated certificates of deposit. The average interest rate on outstanding amounts under this facility at December 31, 2009 was 5.69%. The borrowings are secured by certain GM Daewoo property, plant and equipment, and are used by GM Daewoo for general corporate purposes, including working capital needs. At December 31, 2009 the facility was fully utilized with \$1.2 billion outstanding.

The balance of our credit facilities are held by geographically dispersed subsidiaries, with available capacity on the facilities primarily concentrated at a few of our subsidiaries. At December 31, 2009 GM Hong Kong had \$200 million of capacity on a term facility secured by a portion of our equity interest in SGM, with an additional \$200 million revolving facility secured by the same collateral set to become available in late 2010. In addition, we expect \$360 million of capacity on a secured term facility to be available to certain of our subsidiaries in Thailand over 2010 and 2011. The facilities were entered into to fund growth opportunities within GMIO and meet potential cyclical cash needs.

#### *Old GM*

At December 31, 2008 Old GM had unused credit capacity of \$0.6 billion, of which \$32 million was available in the U.S., \$0.1 billion was available in other countries where Old GM did business and \$0.5 billion was available in Old GM's joint ventures.

Old GM had a secured revolving credit facility of \$4.5 billion with a syndicate of banks, which was extinguished in June 2009. At December 31, 2008 under the secured revolving credit facility \$4.5 billion was outstanding. In addition to the outstanding amount at December 31, 2008 there were letters of credit of \$10 million issued under the secured revolving credit facility. Under the \$4.5 billion secured revolving credit facility, borrowings were limited to an amount based on the value of the underlying collateral. In addition to the secured revolving credit facility of \$4.5 billion, the collateral also secured certain lines of credit, automated clearinghouse and overdraft arrangements, and letters of credit provided by the same secured lenders, of \$0.2 billion. At December 31, 2008 Old GM had \$5 million available under this facility.

In August 2007 Old GM entered into a revolving credit agreement that provided for borrowings of up to \$1.0 billion at December 31, 2008, limited to an amount based on the value of the underlying collateral. This agreement provided additional available liquidity that Old GM could use for general corporate purposes, including working capital needs. The underlying collateral supported a borrowing base of \$0.3 billion and \$1.3 billion at December 31, 2008 and 2007. At December 31, 2008 under this agreement \$0.3 billion was outstanding, leaving \$13 million available. This revolving credit agreement expired in August 2009.

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In November 2007 Old GM renewed a revolving secured credit facility that would provide borrowings of up to \$0.3 billion. Under the facility, borrowings were limited to an amount based on the value of underlying collateral, which was comprised of a portion of Old GM's company vehicle fleet. At December 31, 2008 the underlying collateral supported a borrowing base of \$0.1 billion. The amount borrowed under this program was \$0.1 billion, leaving \$3 million available at December 31, 2008. This revolving secured credit facility was terminated in connection with the Chapter 11 Proceedings.

In September 2008 Old GM entered into a one-year revolving on-balance sheet securitization borrowing program that provided financing of up to \$0.2 billion. The program replaced an off-balance sheet trade receivable securitization facility that expired in September 2008. The borrowing program was terminated in connection with the Chapter 11 Proceedings; outstanding amounts were fully paid, lenders' liens on the receivables were released and the receivable assets were transferred to Old GM. This one-year revolving facility was in addition to another existing on-balance sheet securitization borrowing program that provided financing of up to \$0.5 billion, which matured in April 2009 and was fully paid.

### ***Restricted Cash and Marketable Securities***

In connection with the Chapter 11 Proceedings, Old GM obtained funding of \$33.3 billion from the UST and EDC under its DIP Facility. From these proceeds, \$16.4 billion was deposited in escrow, of which \$3.9 billion was distributed to us in the period July 10, 2009 through December 31, 2009. We have used our escrow account to acquire all Class A Membership Interests in New Delphi in the amount of \$1.7 billion and acquire Nexteer and four domestic facilities and other related payments in the amount of \$1.0 billion. In addition, we have made a \$1.2 billion quarterly payment on the UST Loans and Canadian Loan. Any unused amounts in escrow on June 30, 2010 are required to be used to repay the UST Loans and Canadian Loan. The UST Loans and Canadian Loan are recorded in Short-term debt based on these terms.

In July 2009 \$862 million was deposited into an escrow account pursuant to an agreement between Old GM, EDC, and an escrow agent. In July 2009 we subscribed for additional common shares in GMCL and paid the subscription price in cash. As required under certain agreements between GMCL, EDC, and an escrow agent, \$3.6 billion of the subscription price was deposited into an escrow account to fund certain of GMCL's pension plans and HCT obligations pending completion of certain preconditions. In September 2009 GMCL contributed \$3.0 billion to the Canadian hourly defined benefit pension plan and \$651 million to the Canadian salaried defined benefit pension plan, of which \$2.7 billion was funded from the escrow account. In accordance with the terms of the escrow agreement, \$903 million was released from the escrow account to us in September 2009. At December 31, 2009 \$955 million remained in the escrow account.

### ***Cash Flow***

#### *Operating Activities*

##### *GM*

In the period July 10, 2009 through December 31, 2009 we had positive cash flows from continuing operating activities of \$971 million primarily due to: (1) favorable managed working capital of \$4.3 billion primarily driven by the effect of increased sales and production on accounts payable and the timing of certain supplier payments; (2) OPEB expense in excess of cash payments of \$1.7 billion; (3) net income of \$0.6 billion excluding depreciation, impairment charges and amortization expense (including amortization of debt issuance costs and discounts); partially offset by (4) pension contributions of \$4.3 billion primarily to our Canadian hourly and salaried defined benefit pension plans; (5) restructuring cash payments of \$1.2 billion; and (6) sales allowance payments in excess of accruals for sales incentives of \$0.5 billion driven by a reduction in dealer stock.

##### *Old GM*

In the period January 1, 2009 through July 9, 2009 Old GM had negative cash flows from continuing operating activities of \$18.3 billion primarily due to: (1) net loss of \$8.3 billion excluding Reorganization gains, net, and depreciation, impairment charges and

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amortization expense (including amortization of debt issuance costs and discounts); (2) unfavorable managed working capital of \$5.6 billion; (3) change in accrued liabilities of \$6.8 billion; and (4) payments of \$0.4 billion for reorganization costs associated with the Chapter 11 Proceedings.

In the year ended 2008 Old GM had negative cash flows from continuing operating activities of \$12.1 billion on a Loss from continuing operations of \$31.1 billion. That result compares with positive cash flows from continuing operating activities of \$7.5 billion on a Loss from continuing operations of \$42.7 billion in the year ended 2007. Operating cash flows were unfavorably affected by lower volumes and the resulting losses in North America and Western Europe, including the effect that lower production volumes had on working capital balances, and postretirement benefit payments.

### *Investing Activities*

#### *GM*

In the period July 10, 2009 through December 31, 2009 we had positive cash flows from continuing investing activities of \$2.0 billion primarily due to: (1) a reduction in restricted cash of \$5.2 billion primarily related to withdrawals from the UST escrow account; (2) \$0.6 billion related to the liquidation of automotive retail leases; (3) increase as a result of the consolidation of Saab of \$0.2 billion; (4) tax distributions of \$0.1 billion on GMAC common stock; partially offset by (5) net cash payments of \$2.0 billion related to the acquisition of Nexteer, four domestic facilities and Class A Membership Interests in New Delphi; and (6) capital expenditures of \$1.9 billion.

#### *Old GM*

In the period January 1, 2009 through July 9, 2009 Old GM had negative cash flows from continuing investing activities of \$21.1 billion primarily due to: (1) increase in restricted cash of \$18.0 billion driven primarily by the establishment of the UST and Canadian escrow accounts; (2) capital expenditures of \$3.5 billion; and (3) investment in GMAC of \$0.9 billion; partially offset by (4) liquidation of operating leases of \$1.3 billion.

In the year ended 2008 Old GM had negative cash flows from continuing investing activities of \$1.8 billion compared to negative cash flows from continuing investing activities of \$1.7 billion in the year ended 2007. Decreases in cash flows from continuing investing activities primarily related to: (1) the absence of cash proceeds of \$5.4 billion from the sale of the commercial and military operations of its Allison business in 2007; (2) a decrease in the liquidation of marketable securities of \$2.3 billion, which primarily consisted of sales, and maturities of highly liquid corporate, U.S. government, U.S. government agency and mortgage backed debt securities used for cash management purposes; and (3) an increase in notes receivable of \$0.4 billion in 2008. These decreases were offset by: (1) a decrease in acquisitions of marketable securities of \$6.4 billion; (2) a capital contribution of \$1.0 billion to GMAC to restore GMAC's adjusted tangible equity balance to the contractually required levels in 2007; (3) an increase in liquidation of operating leases of \$0.4 billion; and (4) proceeds from the sale of investments of \$0.2 billion in 2008.

Capital expenditures of \$3.5 billion in the period January 1, 2009 through July 9, 2009 and \$7.5 billion in each of the years ended 2008 and 2007 were a significant use of investing cash. Capital expenditures were primarily made for global product programs, powertrain and tooling requirements.

### *Financing Activities*

#### *GM*

In the period July 10, 2009 through December 31, 2009 we had positive cash flows from continuing financing activities of \$542 million primarily due to: (1) funding of \$4.0 billion from the EDC which was converted to our equity; (2) proceeds of \$1.6 billion of other long-term debt; partially offset by (3) the repayment of the German Facility of \$1.8 billion; (4) payment on the UST Loans of

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

\$1.4 billion (including payments of \$0.4 billion related to the warranty program); (5) decrease in short-term debt of \$0.9 billion; (6) payments on other long-term debt of \$0.5 billion; (7) payment on the Canadian Loan of \$0.2 billion; and (8) preferred dividend payments of \$0.1 billion.

*Old GM*

In the period January 1, 2009 through July 9, 2009 Old GM had positive cash flows from continuing financing activities of \$44.2 billion primarily due to: (1) proceeds from the DIP Facility of \$33.3 billion; (2) proceeds from the UST Loan Facility and UST GMAC Loan of \$16.6 billion; (3) proceeds from the EDC Loan Facility of \$2.4 billion; (4) proceeds from the German Facility of \$1.0 billion; (5) proceeds from the issuance of long-term debt of \$0.3 billion; (6) proceeds from the Receivables Program of \$0.3 billion; partially offset by (7) payments on long-term debt of \$6.1 billion; (8) a net decrease in short-term debt of \$2.4 billion; and (9) cash of \$1.2 billion MLC retained as part of the 363 Sale.

In the year ended 2008 Old GM had positive cash flows from continuing financing activities of \$3.8 billion compared to negative cash flows from continuing financing activities of \$5.6 billion in the year ended 2007. The increase in cash flows from continuing financing activities of \$9.4 billion related to: (1) borrowings on available credit facilities of \$4.5 billion and the UST Loan Facility of \$4.0 billion; (2) a decrease in cash dividends paid of \$0.3 billion; and partially offset by (3) an increase in payments on long-term debt of \$0.3 billion.

**Net Asset (Debt)**

The following table summarizes net asset (debt) balances (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
Cash and cash equivalents	\$ 22,679	\$ 14,053
Marketable securities	134	141
UST credit agreement escrow and HCT escrow	13,430	—
Short-term debt and current portion of long-term debt	(10,221)	(16,920)
Long-term debt	(5,562)	(29,018)
Net asset (debt)	<u>\$ 20,460</u>	<u>\$ (31,744)</u>

**Other Liquidity Issues**

In March 2009 the UST announced that it would provide up to \$5.0 billion in financial assistance to automotive suppliers by guaranteeing or purchasing certain of the receivables payable by Old GM (Receivables Program). In connection with the 363 Sale, we assumed the obligation of the Receivables Program. In December 2009 we announced the termination of the Receivables Program, in accordance with its terms, effective in April 2010. At December 31, 2009 our equity contributions were \$55 million and the UST had outstanding loans of \$150 million to the Receivables Program. We do not anticipate making any additional equity contributions.

GMAC currently finances our vehicles while they are in-transit to dealers in a number of markets including the U.S. In the event GMAC significantly limits or ceases to finance in-transit vehicles, our liquidity will be adversely affected.

We have assumed \$100 million of certain loan commitments which Old GM had provided to affiliated companies and critical business partners, and we have subsequently extended an additional \$600 million of loan commitments. These commitments can be triggered under certain conditions and expire in the years 2010, 2011 and 2014. At December 31, 2009 we had a total commitment of \$700 million outstanding with no amounts loaned.

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The UST Credit Agreement and the VEBA Note Agreement contain restrictions on our ability to incur additional indebtedness, including indebtedness secured by a first-priority lien on certain of our assets. The following summarizes the restrictions to incur additional indebtedness (with certain exceptions):

- Secured indebtedness entered into after July 10, 2009 is limited to \$6.0 billion, provided that the aggregate amount of commitments under any secured revolving credit facilities shall not exceed \$4.0 billion. Secured indebtedness exceeding these amounts is subject to an incurrence test under which total debt divided by 12 month trailing EBITDA cannot exceed 3:1 and also triggers repayments of 50% of the amount borrowed;
- Unsecured indebtedness entered into after July 10, 2009 is limited to \$1.0 billion and triggers repayments of 50% of the amount borrowed. Unsecured indebtedness in excess of the \$1.0 billion is subject to the incurrence test previously described; and
- The aggregate principal amount of capital lease obligations and purchase money indebtedness shall not exceed \$2.0 billion.

The UST Credit Agreement, the VEBA Note Agreement and the Canadian Loan Agreement contain various events of default (including cross-default provisions) that entitle the lenders to accelerate the repayment of the loans upon the occurrence and continuation of an event of default.

The negative covenants of the Canadian Loan Agreement are substantially similar to the negative covenants under the UST Credit Agreement and the VEBA Note Agreement, as applicable to GMCL and the Subsidiary Guarantors, and also require GMCL to maintain certain minimum levels of unrestricted cash and cash equivalents and address specific requirements with respect to pension and compensation matters.

Several of our loan facilities include clauses that may be breached by a change in control, a bankruptcy or failure to maintain certain financial metric limits. The Chapter 11 proceedings and the change in control as a result of the 363 Sale triggered technical defaults in certain loans for which we have assumed the obligation. A potential breach in another loan was addressed before default with a waiver we obtained from the lender subject to renegotiation of the terms of the facility. We successfully concluded the renegotiation of these terms in September 2009. In October 2009 we repaid one of the loans in the amount of \$17 million as a remedy to the default. The total amount of the two remaining loan facilities in technical default for these reasons at December 31, 2009 was \$206 million. We continue to negotiate with the lenders to obtain waivers or reach settlements to cure these defaults. We have classified these loans as short-term debt at December 31, 2009.

Two of our loan facilities had financial covenant violations at December 31, 2009 related to exceeding financial ratios limiting the amount of debt held by the subsidiaries. One of these violations was cured within the 30 day cure period through the combination of an equity injection and the capitalization of intercompany loans. The \$72 million loan related to our powertrain subsidiary in Italy remains in default and we continue negotiations with its lenders to cure the default.

Covenants in our UST Credit Agreement, VEBA Note Agreement, Canadian Loan Agreement and other agreements require us to provide our consolidated financial statements by March 31, 2010. We received waivers of this requirement for the agreements with the UST, New VEBA and EDC. We also provided notice to and requested waivers related to three lease facilities. The filing of our 2009 10-K and our Quarterly Report on Form 10-Q for the period ended September 30, 2009 within the automatic 90 day cure period will satisfy the requirements under these lease facility agreements.

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**Non-Cash Charges (Gains)**

The following table summarizes significant non-cash charges (gains) (dollars in millions):

	<u>Successor</u>	<u>Predecessor</u>		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Impairment charges related to investment in GMAC Common Membership Interests	\$ —	\$ —	\$ 7,099	\$ —
Impairment charges related to investment in GMAC common stock	270	—	—	—
Impairment charges related to investment in GMAC Preferred Membership Interests	—	—	1,001	—
Net curtailment gain related to finalization of the 2008 UAW Settlement Agreement	—	—	(4,901)	—
Salaried post-65 healthcare settlement	—	—	1,704	—
Impairment charges related to equipment on operating leases	18	63	759	134
Impairment charges related to long-lived assets	2	566	1,010	259
Impairment charges related to investments in equity and cost method investments	4	28	119	—
Other than temporary impairments charges related to debt and equity securities	—	11	62	72
Impairment charges related to goodwill	—	—	610	—
Change in amortization period for pension prior service costs	—	—	—	1,561
UAW OPEB healthcare settlement	2,571	—	—	—
CAW settlement	—	—	340	—
Loss (gain) on secured debt extinguishment	—	(906)	—	—
Loss on extinguishment of UST GMAC Loan	—	1,994	—	—
Gain on conversion of UST GMAC Loan	—	(2,477)	—	—
Reorganization gains, net	—	(128,563)	—	—
Valuation allowances against deferred tax assets	—	(751)	1,450	37,770
<b>Total significant non-cash charges</b>	<b>\$ 2,865</b>	<b>\$ (130,035)</b>	<b>\$ 9,253</b>	<b>\$ 39,796</b>

**Defined Benefit Pension Plan Contributions**

Plans covering eligible U.S. salaried employees hired prior to January 2001 and hourly employees hired prior to October 15, 2007 generally provide benefits of stated amounts for each year of service as well as supplemental benefits for employees who retire with 30 years of service before normal retirement age. Salaried and hourly employees hired after these dates participate in defined contribution or cash balance plans. Our and Old GM's policy for qualified defined benefit pension plans is to contribute annually not less than the minimum required by applicable law and regulation, or to directly pay benefit payments where appropriate. At December 31, 2009 all legal funding requirements had been met.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

The following table summarizes contributions made to the defined benefit pension plans or direct payments (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
U.S. hourly and salaried	\$ —	\$ —	\$ —	\$ —
Other U.S.	31	57	90	89
Non-U.S.	4,287	529	977	848
Total contributions	\$ 4,318	\$ 586	\$ 1,067	\$ 937

In 2010, we do not have any contributions due to our qualified plans. We are currently considering making a discretionary contribution to our U.S. hourly defined benefit pension plan to offset the effect of the increase to the projected benefit obligation (PBO) resulting from the Delphi Benefit Guarantee Agreements being triggered and to reduce the projected future cash funding requirements. We are currently evaluating the amount, timing and form of assets that may be contributed. We expect to contribute or pay benefits of \$95 million to our other U.S. pension plan and \$355 million to our non-U.S. pension plans in the year ended 2010.

The following table summarizes the funded status of pension plans (dollars in billions):

	Successor	Predecessor
	December 31, 2009	December 31, 2008
U.S. hourly and salaried	\$ (16.2)	\$ (12.4)
U.S. nonqualified	(0.9)	(1.2)
Total U.S. pension plans	(17.1)	(13.6)
Non-U.S.	(10.3)	(11.9)
Total funded (underfunded)	\$ (27.4)	\$ (25.5)

On a U.S. GAAP basis, the U.S. pension plans were underfunded by \$17.1 billion at December 31, 2009 and underfunded by \$19.5 billion at July 10, 2009. The change in funded status was primarily attributable to the actual return on plan assets of \$9.9 billion offset by actuarial losses of \$3.1 billion, service and interest costs of \$2.8 billion and \$1.4 billion principally related to the Delphi Benefit Guarantee Agreements. On a U.S. GAAP basis, the non-U.S. pension plans were underfunded by \$10.3 billion at December 31, 2009 and underfunded by \$12.7 billion at July 10, 2009. The change in funded status was primarily attributable to employer contributions of \$4.3 billion offset by actuarial losses of \$1.6 billion in PBO and net detrimental exchange rate movements of \$0.7 billion.

On a U.S. GAAP basis, the U.S. pension plans were underfunded by \$18.3 billion at July 9, 2009 and underfunded by \$13.6 billion at December 31, 2008. The change in funded status was primarily attributable to service and interest costs of \$3.3 billion, curtailments, settlements and other increases to the PBO of \$1.6 billion and an actual loss on plan assets of \$0.2 billion offset by actuarial gains of \$0.3 billion. On a U.S. GAAP basis, the non-U.S. pension plans were underfunded by \$12.7 billion at July 9, 2009 and underfunded by \$11.9 billion at December 31, 2008. The change in funded status was primarily attributable to actuarial losses of \$1.0 billion in PBO offset by the effect of negative plan amendments of \$0.6 billion.

Hourly and salaried OPEB plans provide postretirement life insurance to most U.S. retirees and eligible dependents and postretirement health coverage to some U.S. retirees and eligible dependents. Certain of the non-U.S. subsidiaries have postretirement benefit plans, although most participants are covered by government sponsored or administered programs.

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The following table summarizes the funded status of OPEB plans (dollars in billions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
U.S. OPEB plans	\$ (5.8)	\$ (30.0)
Non-U.S. OPEB plans	(3.8)	(2.9)
Total funded (underfunded)	<u>\$ (9.6)</u>	<u>\$ (32.9)</u>

In 2008 Old GM withdrew a total of \$1.4 billion from the VEBA plan assets for reimbursement of retiree healthcare and life insurance benefits provided to eligible plan participants, which liquidated this VEBA except for those assets to be transferred to the UAW as part of the 2008 UAW Settlement Agreement.

The following table summarizes net benefit payments we expect to pay, which reflect estimated future employee services, as appropriate, but does not reflect the effect of the 2009 CAW Agreement which includes terms of an independent HCT (dollars in millions):

	<u>Years Ended December 31,</u>			
	<u>Pension Benefits(a)</u>		<u>Other Benefits</u>	
	<u>U.S. Plans</u>	<u>Non- U.S. Plans</u>	<u>U.S. Plans(b)</u>	<u>Non- U.S. Plans</u>
2010	\$ 9,321	\$ 1,414	\$ 489	\$ 177
2011	\$ 8,976	\$ 1,419	\$ 451	\$ 185
2012	\$ 8,533	\$ 1,440	\$ 427	\$ 193
2013	\$ 8,247	\$ 1,461	\$ 407	\$ 201
2014	\$ 8,013	\$ 1,486	\$ 390	\$ 210
2015 – 2019	\$ 37,049	\$ 7,674	\$ 1,801	\$ 1,169

(a) Benefits for most U.S. pension plans and certain non-U.S. pension plans are paid out of plan assets rather than our cash and cash equivalents.

(b) Benefit payments presented in this table reflect the effect of the implementation of the 2009 Revised UAW Settlement Agreement, which releases us from UAW retiree healthcare claims incurred after December 31, 2009.

**Off-Balance Sheet Arrangements**

Off-balance sheet arrangements are used where the economics and sound business principles warrant their use. The principal use of off-balance sheet arrangements occurs in connection with the securitization and sale of financial assets and leases.

Trade receivable securitization programs are utilized in Europe. The banks and factoring companies had a beneficial interest of \$8 million and \$11 million in the participating pool of trade receivables at December 31, 2009 and December 31, 2008.

Old GM participated in a trade receivables securitization program that expired in September 2008 and was not renewed. As part of this program, Old GM sold receivables to a wholly-owned bankruptcy-remote SPE. The SPE was a separate legal entity that assumed the risks and rewards of ownership of those receivables. Receivables were sold under the program at fair value and were excluded from Old GM's consolidated balance sheet. The banks and the bank conduits had no beneficial interest in the eligible pool of receivables at December 31, 2008. Old GM did not have a retained interest in the receivables sold, but performed collection and administrative functions. The gross amount of proceeds received from the sale of receivables under this program was \$1.6 billion in the year ended 2008.

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### Guarantees Provided to Third Parties

We have provided guarantees related to the residual value of operating leases, certain suppliers' commitments, certain product warranty and recall claims and commercial loans made by GMAC and outstanding with certain third parties excluding residual support and risk sharing related to GMAC. The maximum potential obligation under these commitments is \$842 million at December 31, 2009. This amount includes a guarantee provided to GMAC in Brazil in connection with dealer floor plan financing, which is secured by an interest in \$127 million certificates of deposit purchased from GMAC to which we have title.

In May 2009 Old GM and GMAC agreed to expand repurchase obligations for GMAC financed inventory at certain dealers in Europe, Brazil and Mexico. In November 2008 Old GM and GMAC agreed to expand repurchase obligations for GMAC financed inventory at certain dealers in the United States and Canada. Our current agreement with GMAC requires the repurchase of GMAC financed inventory invoiced to dealers after September 1, 2008, with limited exclusions, in the event of a qualifying voluntary or involuntary termination of the dealer's sales and service agreement. Repurchase obligations exclude vehicles which are damaged, have excessive mileage or have been altered. The repurchase obligation ended in August 2009 for vehicles invoiced through August 2008 ends in August 2010 for vehicles invoiced through August 2009 and end in August 2011 for vehicles invoiced through August 2010.

The maximum potential amount of future payments required be made to GMAC under this guarantee would be based on the repurchase value of total eligible vehicles financed by GMAC in dealer stock estimated to be \$14.1 billion at December 31, 2009. If vehicles are required to be repurchased under this arrangement, the total exposure would be reduced to the extent vehicles are able to be resold to another dealer or at auction. The fair value of the guarantee was \$46 million at December 31, 2009, which considers the likelihood of dealers terminating and estimated the loss exposure for the ultimate disposition of vehicles.

Refer to Note 21 to the consolidated financial statements for additional information on guarantees we have provided.

### Contractual Obligations and Other Long-Term Liabilities

We have the following minimum commitments under contractual obligations, including purchase obligations. A purchase obligation is defined as an agreement to purchase goods or services that is enforceable and legally binding on us and that specifies all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum, or variable price provisions; and the approximate timing of the transaction. Other long-term liabilities are defined as long-term liabilities that are recorded on our consolidated balance sheet. Based on this definition, the following table includes only those contracts which include fixed or minimum obligations. The majority of our purchases are not included in the table as they are made under purchase orders which are requirements based and accordingly do not specify minimum quantities.

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The following table summarizes aggregated information about our outstanding contractual obligations and other long-term liabilities at December 31, 2009 (dollars in millions):

	<b>Payments Due by Period</b>				<b>Total</b>
	<b>2010</b>	<b>2011- 2012</b>	<b>2013- 2014</b>	<b>2015 and after</b>	
Debt (a)	\$10,062	\$ 963	\$ 787	\$ 4,986	\$16,798
Capital lease obligations	173	127	75	334	709
Interest payments (b)	550	357	1,225	1,483	3,615
Operating lease obligations	467	569	351	326	1,713
Contractual commitments for capital expenditures	988	67	—	—	1,055
Postretirement benefits (c)	478	611	—	—	1,089
Other contractual commitments:					
Material	969	1,353	159	55	2,536
Information technology	806	91	55	—	952
Marketing	718	197	115	52	1,082
Facilities	264	230	32	3	529
Transportation	118	44	4	—	166
Rental car repurchases	3,195	—	—	—	3,195
Policy, product warranty and recall campaigns liability	3,117	3,212	818	202	7,349
Other	11	10	7	—	28
Total contractual commitments (d)(e)	<u>\$21,916</u>	<u>\$7,831</u>	<u>\$3,628</u>	<u>\$ 7,441</u>	<u>\$40,816</u>
Non-contractual postretirement benefits (f)	\$ 196	\$ 645	\$1,209	\$ 18,512	\$20,562

- (a) Projected future payments on lines of credit were based on outstanding amounts drawn at December 31, 2009.
- (b) Amounts include interest payments based on contractual terms and current interest rates on our debt and capital lease obligations. Interest payments based on variable interest rates were determined using the current interest rate in effect at December 31, 2009.
- (c) Amounts include other postretirement benefit payments under the current U.S. contractual labor agreements for 2010 and 2011 and Canada labor agreements for 2010 through 2012. Post-2009, the UAW hourly medical plan cash payments are capped at the contribution to the New VEBA.
- (d) Future payments in local currency amounts were translated into U.S. Dollars using the balance sheet spot rate at December 31, 2009.
- (e) Amounts do not include future cash payments for long-term purchase obligations which were recorded in Accounts payable or Accrued expenses at December 31, 2009.
- (f) Amount includes all expected future payments for both current and expected future service at December 31, 2009 for other postretirement benefit obligations for salaried employees and hourly postretirement benefit obligations extending beyond the current North American union contract agreements.

In connection with the 363 Sale, we assumed certain but not all of Old GM's contractual obligations at July 10, 2009. However, we did not assume certain other leases held directly by Old GM in connection with the 363 Sale. We are currently engaged in negotiations with the lessors of certain of these leases. In exchange for consideration, MLC has agreed to let us use real estate and equipment covered by these leases until negotiations conclude with the lessors.

The table above does not reflect unrecognized tax benefits of \$5.4 billion due to the high degree of uncertainty regarding the future cash outflows associated with these amounts. Refer to Note 22 to the consolidated financial statements for additional discussion of unrecognized tax benefits.

The table above also does not reflect certain contingent loan and funding commitments that we have made. In connection with the DMDA, we established a secured delayed draw term loan facility for New Delphi in October 2009 and committed to provide loans of

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up to \$500 million. We have not provided any amounts to New Delphi under the secured delayed draw term loan facility at December 31, 2009. In September 2009 we entered into a new agreement with American Axle & Manufacturing Holdings, Inc. (American Axle), in which we provided American Axle with a cash payment of \$110 million and a second lien term loan facility of up to \$100 million in exchange for warrants to purchase 4 million shares of American Axle's common stock. Additional warrants will be granted if amounts are drawn on the second lien term loan facility.

In August 2007 Old GM completed the sale of the commercial and military operations of its Allison business, formerly a division of Old GM's Powertrain Operations. As part of the transaction, Old GM entered into an agreement, which we assumed in the 363 Sale, with the buyers of Allison whereby Old GM may provide the new parent company of Allison with contingent financing of up to \$100 million. This commitment expires on December 31, 2010.

The combined U.S. pension plans were underfunded under U.S. GAAP by \$17.1 billion at December 31, 2009. There is no expected required funding for our U.S. hourly and salaried pension plans during 2010 through 2012. The next pension funding valuation date based on the requirements of the Pension Protection Act (PPA) of 2006 would be October 1, 2010. At that time, based on the PPA, we have the option to select a discount rate for the valuation based on either the Full Yield Curve method or the 3-Segment method, both of which are considered to be acceptable methods. A hypothetical funding valuation at December 31, 2009 using the Full Yield Curve discount rate at that time and for all future funding valuations projects contributions of \$2.5 billion, \$4.6 billion and \$4.8 billion in 2013, 2014 and 2015 and additional contributions may be required thereafter. Alternatively, if the 3-Segment discount rate were used for the hypothetical valuation, no pension funding contributions until a contribution of \$3.3 billion in 2015 are required, and additional contributions may be required thereafter. In both cases, we have assumed that the pension plans earn the expected return of 8.5% in the future. In addition to the discount rate and rate of return on assets, the pension contributions could be affected by various other factors including the effect of any legislative changes. We are currently considering making a discretionary contribution to the U.S. Hourly Defined Benefit Pension Plan. This discretionary contribution is being considered to mitigate the effect of the increase to the PBO of the U.S. Hourly Defined Benefit Pension Plan resulting from the Delphi Benefit Guarantee Agreements being triggered as well as to possibly reduce the projected future cash funding requirements.

### **Fair Value Measurements**

In January 2008 Old GM adopted ASC 820-10, "Fair Value Measurements and Disclosures," for financial assets and financial liabilities, which addresses aspects of fair value accounting. Refer to Note 23 to the consolidated financial statements for additional information regarding the effects of this adoption. In January 2009 Old GM adopted ASC 820-10 for nonfinancial assets and nonfinancial liabilities. Refer to Note 25 to the consolidated financial statements for additional information regarding the effects this adoption.

#### *Fair Value Measurements on a Recurring Basis*

At December 31, 2009 we used Level 3, or significant unobservable inputs, to measure \$33 million (or 0.1%) of the total assets that we measured at fair value, and \$705 million (or 98.7%) of the total liabilities (all of which were derivative liabilities) that we measured at fair value.

At December 31, 2008 Old GM used Level 3, or significant unobservable inputs, to measure \$70 million (or 1.2%) of the total assets that it measured at fair value, and \$2.3 billion (or 65.8%) of the total liabilities (all of which were derivative liabilities) that it measured at fair value.

Significant assets and liabilities classified as Level 3, with the related Level 3 inputs, are as follows:

- Foreign currency derivatives — Level 3 inputs used to determine the fair value of foreign currency derivative liabilities include the appropriate credit spread to measure our nonperformance risk. Given our nonperformance risk is not observable through the credit default swap market we based this measurement on an analysis of comparable industrial companies to determine the appropriate credit spread which would be applied to us and Old GM by market participants in each period.

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- Other derivative instruments — Other derivative instruments include warrants Old GM issued to the UST. Level 3 inputs used to determine fair value include option pricing models which include estimated volatility, discount rates, and dividend yields.
- Mortgage-backed and other securities — Prior to June 30, 2009 Level 3 inputs used to determine fair value include estimated prepayment and default rates on the underlying portfolio which are embedded in a proprietary discounted cash flow projection model.
- Commodity derivatives — Commodity derivatives include purchase contracts from various suppliers that are gross settled in the physical commodity. Level 3 inputs used to determine fair value include estimated projected selling prices, quantities purchased and counterparty credit ratings, which are then discounted to the expected cash flow.

### *Transfers In and/or Out of Level 3*

At June 30, 2009 Old GM's mortgage- and asset-backed securities were transferred from Level 3 to Level 2 as the significant inputs used to measure fair value and quoted prices for similar instruments were determined to be observable in an active market.

For periods presented after June 1, 2009 nonperformance risk for us and Old GM was not observable through the credit default swap market as a result of the Chapter 11 Proceedings and the lack of traded instruments for us after emergence. As a result, foreign currency derivatives with a fair market value of \$1.6 billion were transferred from Level 2 to Level 3. Our nonperformance risk remains not directly observable through the credit default swap market at December 31, 2009 and accordingly the derivative contracts for certain foreign subsidiaries remain classified in Level 3.

In the three months ended March 31, 2009 Old GM determined the credit profile of certain foreign subsidiaries was equivalent to Old GM's nonperformance risk which was observable through the credit default swap market and bond market based on prices for recent trades. Accordingly, foreign currency derivatives with a fair value of \$2.1 billion were transferred from Level 3 into Level 2.

In December 2008 Old GM transferred foreign currency derivatives with a fair value of \$2.1 billion from Level 2 to Level 3. These derivatives relate to certain of Old GM's foreign consolidated subsidiaries where Old GM was not able to determine observable credit ratings. At December 31, 2008 the fair value of these foreign currency derivative contracts was estimated based on the credit rating of comparable local companies with similar credit profiles and observable credit ratings together with internal bank credit ratings obtained from the subsidiary's lenders. Prior to December 31, 2008, these derivatives were valued based on Old GM's credit rating which was observable through the credit default swap market. In the year ended 2008 we recorded a loss of \$775 million related to these derivatives. These losses were excluded from the Level 3 reconciliation as the transfer occurred on December 31, 2008.

Refer to Notes 20 and 23 to the condensed consolidated financial statements for additional information regarding the use of fair value measurements.

### *Level 3 Assets and Liabilities*

At December 31, 2009 we used Level 3 inputs to measure net liabilities of \$672 million (or 0.6%) of our total liabilities. In the period January 1, 2009 through July 9, 2009 net liabilities measured using Level 3 inputs decreased from \$2.3 billion to \$1.4 billion primarily due to unrealized and realized gains on derivatives and the settlement of the UST warrants issued by Old GM. In the period July 10, 2009 through December 31, 2009 net liabilities measured using Level 3 inputs decreased from \$1.4 billion to \$672 million primarily due to unrealized and realized gains on and the settlement of derivatives.

At December 31, 2009 net liabilities of \$672 million measured using Level 3 inputs were primarily comprised of foreign currency derivatives. Foreign currency derivatives were classified as Level 3 due to an unobservable input which relates to our nonperformance risk. Given our nonperformance risk is not observable through the credit default swap market we based this measurement on an analysis of comparable industrial companies to determine the appropriate credit spread which would be applied to us and Old GM by market participants in each period. At December 31, 2009 we included a \$47 million non-performance risk adjustment in the fair

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value measurement of these derivatives which reflects a discount of 6.5% to the fair value before considering our credit risk. We anticipate settling these derivatives at maturity at fair value unadjusted for our nonperformance risk. Credit risk adjustments made to a derivative liability reverse as the derivative contract approaches maturity. This effect is accelerated if a contract is settled prior to maturity.

At December 31, 2008 Old GM used Level 3 inputs to measure net liabilities of \$2.3 billion (or 1.3%) of Old GM's total liabilities. In the year ended 2008 assets and liabilities measured using Level 3 inputs changed from a net asset of \$828 million to a net liability of \$2.3 billion primarily due to foreign currency derivatives of \$2.1 billion transferred from Level 2 to Level 3 in December 2008.

Realized gains and losses related to assets and liabilities measured using Level 3 inputs did not have a material effect on operations, liquidity or capital resources in the periods July 10, 2009 through December 31, 2009, July 1, 2009 through July 9, 2009, January 1, 2009 through July 9, 2009 or in the year ended December 31, 2008.

### Dividends

Since our formation, we have not paid any dividends on our common stock. We have no current plans to pay any dividends on our common stock. So long as any share of our Series A Preferred Stock remains outstanding, no dividend or distribution may be declared or paid on our common stock unless all accrued and unpaid dividends have been paid on our Series A Preferred Stock, subject to exceptions such as dividends on our common stock payable solely in shares of our common stock. In addition, the UST Credit Agreement and the VEBA Note Agreement contain certain restrictions on our ability to pay dividends, other than dividends payable solely in shares of our common stock.

In particular, each of the UST Credit Agreement and the VEBA Note Agreement provides that we may not pay any such dividends on our common stock unless: no default or event of default has occurred under such agreement and is continuing at the time of such payment; and immediately prior to and after giving effect to such dividend, our consolidated leverage ratio is less than 3.00 to 1.00.

The Series A Preferred Stock accrue cumulative dividends at a rate equal to 9.0% per annum (payable quarterly on March 15, June 15, September 15 and December 15) if, as and when declared by our Board of Directors. On September 15, 2009 we paid dividends of \$146 million for the period July 10, 2009 to September 14, 2009, and on December 15, 2009 we paid \$203 million for the period September 15, 2009 to December 14, 2009 following approval by our Board of Directors.

Prior to December 31, 2009 the 260 million shares of Series A Preferred Stock issued to the New VEBA were not considered outstanding for accounting purposes due to the terms of the 2009 Revised UAW Settlement Agreement. As a result, \$105 million of the \$146 million of dividends paid on September 15, 2009 and \$147 million of the \$203 million of dividends paid on December 15, 2009 were recorded as a reduction of Postretirement benefits other than pensions.

Our payment of dividends in the future, if any, will be determined by our Board of Directors and will be paid out of funds legally available for that purpose.

### Critical Accounting Estimates

The consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America, which require the use of estimates, judgments, and assumptions that affect the reported amounts of asset and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses in the periods presented. We believe that the accounting estimates employed are appropriate and the resulting balances are reasonable; however, due to the inherent uncertainties in making estimates actual results could differ from the original estimates, requiring adjustments to these balances in future periods. We have discussed the development, selection and disclosures of our critical accounting estimates with the Audit Committee of the Board of Directors, and the Audit Committee has reviewed the disclosures relating to these estimates.

The critical accounting estimates that affect the consolidated financial statements and that use judgments and assumptions are listed below. In addition, the likelihood that materially different amounts could be reported under varied conditions and assumptions is discussed.

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### *Fresh-Start Reporting*

The Bankruptcy Court did not determine a reorganization value in connection with the 363 Sale. Reorganization value is defined as the value of our assets without liabilities. In order to apply fresh-start reporting, ASC 852 requires that total postpetition liabilities and allowed claims be in excess of reorganization value and prepetition stockholders receive less than 50.0% of our common stock. Based on our estimated reorganization value, we determined that on July 10, 2009 both the criteria of ASC 852 were met and, as a result, we applied fresh-start reporting.

Our reorganization value was determined using the sum of:

- Our discounted forecast of expected future cash flows from our business subsequent to the 363 Sale, discounted at rates reflecting perceived business and financial risks;
- The fair value of operating liabilities;
- The fair value of our non-operating assets, primarily our investments in nonconsolidated affiliates and cost method investments; and
- The amount of cash we maintained at July 10, 2009 that we determined to be in excess of the amount necessary to conduct our normal business activities.

The sum of the first, third and fourth bullet items equals our Enterprise value.

Our discounted forecast of expected future cash flows included:

- Forecasted cash flows for the six months ended December 31, 2009 and the years ending 2010 through 2014, for each of Old GM's former segments (refer to Note 3 for a discussion of our change in segments) and for certain subsidiaries that incorporated:
  - Industry seasonally adjusted annual rate (SAAR) of vehicle sales and our related market share as follows:
    - Worldwide — 59.1 million vehicles and market share of 11.9% in 2010 increasing to 81.0 million vehicles and market share of 12.2% in 2014;
    - North America — 14.2 million vehicles and market share of 17.8% in 2010 increasing to 19.8 million vehicles and decreasing market share of 17.6% in 2014;
    - Europe — 16.8 million vehicles and market share of 9.5% in 2010 increasing to 22.5 million vehicles and 10.3% market share in 2014;
    - LAAM — 6.1 million vehicles and market share of 18.0% in 2010 increasing to 7.8 million vehicles and market share of 18.4% in 2014;
    - AP — 22.0 million vehicles and market share of 8.4% in 2010 increasing to 30.8 million vehicles and market share of 8.6% in 2014;
  - Projected product mix, which incorporates the 2010 introductions of the Chevrolet Volt, Chevrolet/ Holden Cruze, Cadillac CTS Coupe, Opel/Vauxhall Meriva and Opel/Vauxhall Astra Station Wagon;
  - Projected changes in our cost structure due to restructuring initiatives that encompass reduction of hourly and salaried employment levels by approximately 18,000;

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- The terms of the 2009 Revised UAW Settlement Agreement, which released us from UAW retiree healthcare claims incurred after December 31, 2009;
- Projected capital spending to support existing and future products, which range from \$4.9 billion in 2010 to \$6.0 billion in 2014; and
- Anticipated changes in global market conditions.
- A terminal value, which was determined using a growth model that applied long-term growth rates ranging from 0.5% to 6.0% and a weighted average long-term growth rate of 2.6% to our projected cash flows beyond 2014. The long-term growth rates were based on our internal projections as well as industry growth prospects; and
- Discount rates that considered various factors including bond yields, risk premiums, and tax rates to determine a weighted-average cost of capital (WACC), which measures a company's cost of debt and equity weighted by the percentage of debt and equity in a company's target capital structure. We used discount rates ranging from 16.5% to 23.5% and a weighted-average rate of 22.8%.

To estimate the value of our investment in nonconsolidated affiliates we used multiple valuation techniques, but we primarily used a discounted cash flow analyses. Our excess cash of \$33.8 billion, including Restricted cash of \$21.2 billion, represents cash in excess of the amount necessary to conduct our ongoing day-to-day business activities and to keep them running as a going concern. Refer to Note 14 for additional discussion of Restricted cash.

Our estimate of reorganization value assumes the achievement of the future financial results contemplated in our forecasted cash flows, and there can be no assurance that we will realize that value. The estimates and assumptions used are subject to significant uncertainties, many of which are beyond our control, and there is no assurance that anticipated financial results will be achieved.

Assumptions used in our discounted cash flow analysis that have the most significant effect on our estimated reorganization value include:

- Our estimated WACC;
- Our estimated long-term growth rates; and
- Our estimate of industry sales and our market share in each of Old GM's former segments.

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The following table reconciles our enterprise value to our estimated reorganization value and the estimated fair value of our Equity (in millions except per share amounts):

	<u>Successor</u> <u>July 10, 2009</u>
Enterprise value	\$ 36,747
Plus: Fair value of operating liabilities (a)	80,832
Estimated reorganization value (fair value of assets) (b)	117,579
Adjustments to tax and employee benefit-related assets (c)	(6,074)
Goodwill (c)	30,464
Carrying amount of assets	<u>\$ 141,969</u>
Enterprise value	\$ 36,747
Less: Fair value of debt	(15,694)
Less: Fair value of warrants issued to MLC (additional paid-in-capital)	(2,405)
Less: Fair value of liability for Adjustment Shares	(113)
Less: Fair value of noncontrolling interests	(408)
Less: Fair value of Series A Preferred Stock (d)	(1,741)
Fair value of common equity (common stock and additional paid-in capital)	<u>\$ 16,386</u>
Common shares outstanding (d)	412.5
Per share value	\$ 39.72

- (a) Operating liabilities are our total liabilities excluding the liabilities listed in the reconciliation above of our enterprise value to the fair value of our common equity.
- (b) Reorganization value does not include assets with a carrying amount of \$1.8 billion and a fair value of \$2.0 billion at July 9, 2009 that MLC retained.
- (c) The application of fresh-start reporting resulted in the recognition of goodwill. When applying fresh-start reporting, certain accounts, primarily employee benefit and income tax related, were recorded at amounts determined under specific U.S. GAAP rather than at fair value and the difference between the U.S. GAAP and fair value amounts gives rise to goodwill, which is a residual. Further, we recorded valuation allowances against certain of our deferred tax assets, which under ASC 852 also resulted in goodwill. Our employee benefit related obligations were recorded in accordance with ASC 712, "Compensation — Nonretirement Postemployment Benefits" and ASC 715, "Compensation — Retirement Benefits," and deferred income taxes were recorded in accordance with ASC 740, "Income Taxes."
- (d) The 260 million shares of Series A Preferred Stock, 88 million shares of our common stock, and warrant to acquire 15.2 million shares of our common stock issued to the New VEBA on July 10, 2009 were not considered outstanding until the UAW retiree medical plan was settled on December 31, 2009. The fair value of these instruments was included in the liability recognized at July 10, 2009 for this plan. The common shares issued to the New VEBA are excluded from common shares outstanding at July 10, 2009. Refer to Note 19 for a discussion of the termination of our UAW hourly retiree medical plan and Mitigation Plan and the resulting payment terms to the New VEBA.

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The following table summarizes the approximate effects that a change in the WACC and long-term growth rate assumptions would have had on our determination of the fair value of our common equity at July 10, 2009 keeping all other assumptions constant (dollars in billions except per share amounts):

<u>Change in Assumption</u>	<u>Effect on Fair Value of Common Equity at July 10, 2009</u>	<u>Effect on Per Share Value at July 10, 2009</u>
Two percentage point decrease in WACC	+\$ 2.9	+\$ 7.04
Two percentage point increase in WACC	-\$ 2.4	-\$ 5.76
One percentage point increase in long-term growth rate	+\$ 0.5	+\$ 1.21
One percentage point decrease in long-term growth rate	-\$ 0.5	-\$ 1.10

In order to estimate these effects, we adjusted the WACC and long-term growth rate assumptions for each of Old GM's former segments and for certain subsidiaries. The aggregated effect of these assumption changes on each of Old GM's former segments and for certain subsidiaries does not necessarily correspond to assumption changes made at a consolidated level.

**Pensions**

The defined benefit pension plans are accounted for on an actuarial basis, which requires the selection of various assumptions, including an expected rate of return on plan assets and a discount rate. Due to the significant events discussed in Note 19 to the consolidated financial statements, certain of the pension plans were remeasured at various dates in the periods July 10, 2009 through December 31, 2009, January 1, 2009 through July 9, 2009 and in the years ended 2008 and 2007.

Net pension expense is calculated based on the expected return on plan assets and not the actual return on plan assets. The expected return on U.S. plan assets that is included in pension expense is determined from periodic studies, which include a review of asset allocation strategies, anticipated future long-term performance of individual asset classes, risks using standard deviations, and correlations of returns among the asset classes that comprise the plans' asset mix. While the studies give appropriate consideration to recent plan performance and historical returns, the assumptions are primarily long-term, prospective rates of return. Differences between the expected return on plan assets and the actual return on plan assets are recorded in Accumulated other comprehensive income (loss) as an actuarial gain or loss, and subject to possible amortization into net pension expense over future periods. A market-related value of plan assets, which averages gains and losses over a period of years, is utilized in the determination of future pension expense. For substantially all pension plans, market-related value is defined as an amount that initially recognizes 60.0% of the difference between the actual fair value of assets and the expected calculated value, and 10.0% of that difference over each of the next four years. The market-related value of assets used in the calculation of expected return on U.S. pension plan assets for 2010 was \$2.8 billion lower than the actual fair value of plan assets.

Another key assumption in determining net pension expense is the assumed discount rate to be used to discount plan obligations. We estimate this rate for U.S. plans, using a cash flow matching approach, also called a spot rate yield curve approach, which uses projected cash flows matched to spot rates along a high quality corporate yield curve to determine the present value of cash flows to calculate a single equivalent discount rate. Old GM used an iterative process based on a hypothetical investment in a portfolio of high-quality bonds rated AA or higher by a recognized rating agency and a hypothetical reinvestment of the proceeds of such bonds upon maturity using forward rates derived from a yield curve until the U.S. pension obligation was defeased. This reinvestment component was incorporated into the methodology because it was not feasible, in light of the magnitude and time horizon over which U.S. pension obligations extend, to accomplish full defeasance through direct cash flows from an actual set of bonds selected at any given measurement date.

The benefit obligation for pension plans in Canada, the United Kingdom and Germany comprise 91.9% of the non-U.S. pension benefit obligation at December 31, 2009. The discount rates for Canadian plans are determined using a cash flow matching approach, similar to the U.S. The discount rates for plans in the United Kingdom and Germany use published indices and appropriate adjustments to reflect the underlying duration of expected benefit payments.

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The following table summarizes rates used to determine net pension expense:

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Weighted-average expected long-term rate of return on U.S. plan assets	8.50%	8.50%	8.50%	8.50%
Weighted-average expected long-term rate of return on non-U.S. plan assets	7.97%	7.74%	7.78%	7.85%
Weighted-average discount rate for U.S. plan obligations	5.63%	6.27%	6.56%	5.97%
Weighted-average discount rate for non-U.S. plan obligations	5.82%	6.23%	5.77%	4.97%

Significant differences in actual experience or significant changes in assumptions may materially affect the pension obligations. The effect of actual results differing from assumptions and the changing of assumptions are included in unamortized net actuarial gains and losses that are subject to amortization to expense over future periods.

The following table summarizes the unamortized actuarial (gain) loss (before tax) on U.S. and non-U.S. pension plans (dollars in billions):

	Successor	Predecessor
	December 31, 2009	December 31, 2008
Unamortized actuarial (gain) loss	\$ (3.0)	\$ 41.1

The following table summarizes the actual and expected return on pension plan assets (dollars in billions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
U.S. actual return	\$ 9.9	\$ (0.2)	\$ (11.4)	\$ 10.1
U.S. expected return	\$ 3.0	\$ 3.8	\$ 8.0	\$ 8.0
Non-U.S. actual return	\$ 1.2	\$ 0.2	\$ (2.9)	\$ 0.5
Non-U.S. expected return	\$ 0.4	\$ 0.4	\$ 1.0	\$ 1.0

The following table illustrates the sensitivity to a change in certain assumptions for the pension plans, holding all other assumptions constant:

<u>Change in Assumption</u>	U.S. Plans		Non-U.S. Plans	
	Effect on 2010 Pension Expense	Effect on December 31, 2009 PBO	Effect on 2010 Pension Expense	Effect on December 31, 2009 PBO
25 basis point decrease in discount rate	-\$ 96 million	+\$ 2.4 billion	+\$ 7 million	+\$ 0.7 billion
25 basis point increase in discount rate	+\$ 88 million	-\$ 2.3 billion	-\$ 1 million	-\$ 0.7 billion
25 basis point decrease in expected return on assets	+\$193 million	—	+\$32 million	—
25 basis point increase in expected return on assets	-\$193 million	—	-\$32 million	—

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The U.S. pension plans generally provide covered U.S. hourly employees hired prior to October 15, 2007 with pension benefits of negotiated, flat dollar amounts for each year of credited service earned by an individual employee. Early retirement supplements are also provided to those who retire prior to age 62. Hourly employees hired after October 15, 2007 participate in a cash balance pension plan. Formulas providing for such stated amounts are contained in the applicable labor contract. Pension expense in the periods July 10, 2009 through December 31, 2009, January 1, 2009 through July 9, 2009 and in the years ended 2008 and 2007 and the pension obligations at December 31, 2009 and 2008 do not comprehend any future benefit increases or decreases that may occur beyond current labor contracts. The usual cycle for negotiating new labor contracts is every four years. There is not a past practice of maintaining a consistent level of benefit increases or decreases from one contract to the next.

The following data illustrates the sensitivity of changes in pension expense and pension obligation as a result of changes in future benefit units for U.S. hourly employees, effective after the expiration of the current contract:

<u>Change in future benefit units</u>	<u>Effect on 2010 Pension Expense</u>	<u>Effect on December 31, 2009 PBO</u>
One percentage point increase in benefit units	+\$82 million	+\$ 239 million
One percentage point decrease in benefit units	-\$79 million	-\$ 232 million

***Other Postretirement Benefits***

OPEB plans are accounted for on an actuarial basis, which requires the selection of various assumptions, including a discount rate and healthcare cost trend rates. Old GM used an iterative process based on a hypothetical investment in a portfolio of high-quality bonds rated AA or higher by a recognized rating agency and a hypothetical reinvestment of the proceeds of such bonds upon maturity using forward rates derived from a yield curve until the U.S. OPEB obligation was defeased. This reinvestment component was incorporated into the methodology because it was not feasible, in light of the magnitude and time horizon over which the U.S. OPEB obligations extend, to accomplish full defeasance through direct cash flows from an actual set of bonds selected at any given measurement date.

Beginning in September 2008, the discount rate used for the benefits to be paid from the UAW retiree medical plan during the period September 2008 through December 2009 is based on a yield curve which uses projected cash flows of representative high-quality AA rated bonds matched to spot rates along a yield curve to determine the present value of cash flows to calculate a single equivalent discount rate. All other U.S. OPEB plans started using a discount rate based on a yield curve on July 10, 2009. The UAW retiree medical plan was settled on December 31, 2009 and the plan assets were contributed to the New VEBA as part of the payment terms under the 2009 Revised UAW Settlement Agreement. We are released from UAW retiree health care claims incurred after December 31, 2009.

An estimate is developed of the healthcare cost trend rates used to value benefit obligations through review of historical retiree cost data and near-term healthcare outlook which includes appropriate cost control measures that have been implemented. Changes in the assumed discount rate or healthcare cost trend rate can have significant effect on the actuarially determined obligation and related U.S. OPEB expense. As a result of modifications made as part of the 363 Sale, there are no significant uncapped U.S. healthcare plans remaining at December 31, 2009 and, therefore, the healthcare cost trend rate no longer has a significant effect in the U.S.

The primary non-U.S. OPEB plans cover Canadian employees. The discount rates for the Canadian plans are determined using a cash flow matching approach, similar to the U.S. OPEB obligations plans.

Due to the significant events discussed in Note 19 to the consolidated financial statements, the U.S. OPEB obligation plans were remeasured at various dates in the periods July 10, 2009 through December 31, 2009, January 1, 2009 through July 9, 2009 and in the years ended 2008 and 2007.

Significant differences in actual experience or significant changes in assumptions may materially affect the OPEB obligations. The effects of actual results differing from assumptions and the effects of changing assumptions are included in net actuarial gains and losses in Accumulated other comprehensive income (loss) that are subject to amortization over future periods.

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The following table summarizes the weighted-average discount rate used to determine net OPEB expense for the significant plans:

	Successor		Predecessor		
	July 10, 2009 Through December 31, 2009		January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Weighted-average discount rate for U.S. plans	6.81%		8.11%	7.02%	5.90%
Weighted-average discount rate for non-U.S. plans	5.47%		6.77%	5.90%	5.00%

The following table summarizes the health care cost trend rates used in the measurement of the accumulated postretirement benefit obligations (APBO) at December 31:

Assumed Healthcare Trend Rates	Successor		Predecessor	
	December 31, 2009		December 31, 2008	
	U.S. Plans(a)	Non U.S. Plans(b)	U.S. Plans	Non U.S. Plans
Initial healthcare cost trend rate	—%	5.4%	8.0%	5.5%
Ultimate healthcare cost trend rate	—%	3.3%	5.0%	3.3%
Number of years to ultimate trend rate	—	8	6	8

- (a) As a result of modifications made to health care plans in connection with the 363 Sale, there are no significant uncapped U.S. healthcare plans remaining at December 31, 2009 and, therefore, the healthcare cost trend rate does not have a significant effect on the U.S. plans.
- (b) The implementation of the HCT in Canada is anticipated in the near future, which will significantly reduce our exposure to changes in the healthcare cost trend rate.

The following table summarizes the effect that a change in the December 31, 2009 assumptions would have on OPEB expense and obligations on an annual basis:

Change in Assumption	U.S. Plans		Non-U.S. Plans	
	Effect on 2010 OPEB Expense	Effect on December 31, 2009 APBO	Effect on 2010 OPEB Expense	Effect on December 31, 2009 APBO
25 basis point decrease in discount rate	-\$ 4 million	+\$ 0.1 billion	-\$27 million	+\$ 0.1 billion
25 basis point increase in discount rate	+\$3 million	-\$ 0.1 billion	+\$26 million	-\$ 0.1 billion

The following table summarizes the effect of a one-percentage point change in the assumed healthcare trend rates:

Change in Assumption	U.S. Plans(a)		Non-U.S. Plans	
	Effect on 2010 Aggregate Service and Interest Cost	Effect on December 31, 2009 APBO	Effect on 2010 Aggregate Service and Interest Cost	Effect on December 31, 2009 APBO
One percentage point increase	—%	—%	+\$ 14 million	+\$ 413 million
One percentage point decrease	—%	—%	-\$ 11 million	-\$ 331 million

- (a) As a result of modifications made to health care plans in connection with the 363 Sale, there are no significant uncapped U.S. healthcare plans remaining at December 31, 2009 and, therefore, the healthcare cost trend rate does not have a significant effect in the U.S.

**Layoff Benefits**

UAW employees are provided with reduced wages and continued coverage under certain employee benefit programs through the U.S. SUB and TSP job security programs. The number of weeks that an employee receives these benefits depends on the employee's classification as well as the number of years of service that the employee has accrued. A similar tiered benefit is provided to CAW

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

employees. Considerable management judgment and assumptions are required in calculating the related liability, including productivity initiatives, capacity actions and changes in federal and state unemployment and stimulus payments. The assumptions for the related benefit costs include the incidence of mortality, retirement, turnover and the health care trend rate, which are applied on a consistent basis with the U.S. hourly defined benefit pension plan and other U.S. hourly benefit plans. While we believe our judgments and assumptions are reasonable, changes in the assumptions underlying these estimates, which we revise each quarter, could result in a material effect on the financial statements in a given period.

### *Deferred Taxes*

We establish and Old GM established valuation allowances for deferred tax assets based on a more likely than not threshold. The ability to realize deferred tax assets depends on the ability to generate sufficient taxable income within the carryback or carryforward periods provided for in the tax law for each applicable tax jurisdiction. We consider and Old GM considered the following possible sources of taxable income when assessing the realization of deferred tax assets:

- Future reversals of existing taxable temporary differences;
- Future taxable income exclusive of reversing temporary differences and carryforwards;
- Taxable income in prior carryback years; and
- Tax-planning strategies.

The assessment regarding whether a valuation allowance is required or should be adjusted also considers, among other matters, the nature, frequency and severity of recent losses, forecasts of future profitability, the duration of statutory carryforward periods, our and Old GM's experience with tax attributes expiring unused and tax planning alternatives. In making such judgments, significant weight is given to evidence that can be objectively verified.

Concluding that a valuation allowance is not required is difficult when there is significant negative evidence that is objective and verifiable, such as cumulative losses in recent years. We utilize and Old GM utilized a rolling three years of actual and current year anticipated results as the primary measure of cumulative losses in recent years. However, because a substantial portion of those cumulative losses relate to various non-recurring matters, those three-year cumulative results are adjusted for the effect of these items. In addition the near- and medium-term financial outlook is considered when assessing the need for a valuation allowance.

If, in the future, we generate taxable income in jurisdictions where we have recorded full valuation allowances, on a sustained basis, our conclusion regarding the need for full valuation allowances in these tax jurisdictions could change, resulting in the reversal of some or all of the valuation allowances. If our operations generate taxable income prior to reaching profitability on a sustained basis, we would reverse a portion of the valuation allowance related to the corresponding realized tax benefit for that period, without changing our conclusions on the need for a full valuation allowance against the remaining net deferred tax assets.

The valuation of deferred tax assets requires judgment and accounting for deferred tax consequences of events that have been recorded in the financial statements or in the tax returns and our future profitability represents our best estimate of those future events. Changes in our current estimates, due to unanticipated events or otherwise, could have a material effect on our financial condition and results of operations. In 2008 because Old GM concluded there was substantial doubt related to its ability to continue as a going concern, it was determined that it was more likely than not that it would not realize its net deferred tax assets in most jurisdictions even though certain of these entities were not in three-year adjusted cumulative loss positions. In July 2009 with U.S. parent company liquidity concerns resolved in connection with the Chapter 11 Proceedings and the 363 Sale, to the extent there was no other significant negative evidence, we concluded that it is more likely than not that we would realize the deferred tax assets in jurisdictions not in three-year adjusted cumulative loss positions.

See Note 22 to the consolidated financial statements for more information regarding the recording of valuation allowances.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES*****Valuation of Vehicle Operating Leases and Lease Residuals***

In accounting for vehicle operating leases, a determination is made at the inception of a lease of the estimated realizable value (i.e., residual value) of the vehicle at the end of the lease. Residual value represents an estimate of the market value of the vehicle at the end of the lease term, which typically ranges from nine months to four years. A customer is obligated to make payments during the term of a lease to the contract residual. A customer is not obligated to purchase a vehicle at the end of a lease and we and Old GM was exposed to a risk of loss to the extent the value of a vehicle is below the residual value estimated at contract inception.

Residual values are initially determined by consulting independently published residual value guides. Realization of residual values is dependent on the future ability to market vehicles under prevailing market conditions. Over the life of a lease, the adequacy of the estimated residual value is evaluated and adjustments are made to the extent the expected value of a vehicle at lease termination declines. Adjustments may be in the form of revisions to depreciation rates or recognition of impairment charges. Impairment is determined to exist if the undiscounted expected future cash flows are lower than the carrying amount of the asset. Additionally, for automotive retail leases, an adjustment may also be made to the estimate of marketing incentive accruals for residual support and risk sharing programs initially recorded when the vehicles are sold.

With respect to residual values of automotive leases to daily rental car companies, due to the short-term nature of the operating leases, Old GM historically had forecasted auction proceeds at lease termination. In the three months ended December 31, 2008 forecasted auction proceeds in the United States differed significantly from actual auction proceeds due to highly volatile economic conditions, in particular a decline in consumer confidence and available consumer credit, which affected the residual values of vehicles at auction. Due to these significant uncertainties, Old GM determined that it no longer had a reliable basis to forecast auction proceeds in the United States and began utilizing current auction proceeds to estimate the residual values in the impairment analysis for the automotive leases to daily rental car companies, which is consistent with Old GM's impairment analyses for automotive retail leases. As a result of this change in estimate, Old GM recorded an incremental impairment charge of \$144 million in the three months ended December 31, 2008 related to the automotive leases to daily rental car companies that is included in Cost of sales.

In the period January 1, 2009 through July 9, 2009 and in the year ended 2008 Old GM recorded impairment charges of \$16 million and \$377 million (which includes an increase of \$220 million in intersegment residual support and risk sharing reserves) related to its automotive retail leases and \$47 million and \$382 million related to automotive leases to daily rental car companies.

We continue to use the lower of forecasted or current auction proceeds to estimate residual values. Significant differences between the estimate of residual values and actual experience may materially affect impairment charges recorded, if any, and the rate at which vehicles in the Equipment on operating leases, net are depreciated. Significant differences will also affect the residual support and risk sharing reserves established as a result of certain agreements with GMAC, whereby GMAC is reimbursed up to an agreed-upon percentage of certain residual value losses they experience on their operating lease portfolio.

The following table illustrates the effect of changes in our estimate of vehicle sales proceeds at lease termination on residual support and risk sharing reserves related to Equipment on operating leases financed by GMAC at December 31, 2009, holding all other assumptions constant (dollars in millions):

	<b>December 31, 2009 Effect on Residual Support and Risk Sharing Reserves</b>
10% increase in vehicle sales proceeds	-\$ 534 million
10% decrease in vehicle sales proceeds	+\$ 381 million

The critical assumptions underlying the estimated carrying amount of Equipment on operating leases, net include: (1) estimated market value information obtained and used in estimating residual values; (2) proper identification and estimation of business conditions; (3) remarketing abilities; and (4) vehicle and marketing programs. Changes in these assumptions could have a significant effect on the estimate of residual values.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Due to the contractual terms of our residual support and risk sharing agreements with GMAC, which currently limit our maximum obligation to GMAC should vehicle residual values decrease, an increase in sales proceeds does not have the equivalent offsetting effect on our residual support and risk sharing reserves as a decrease in sales proceeds. At December 31, 2009 our maximum obligations to GMAC under our residual support and risk sharing agreements were \$1.2 billion and \$1.4 billion, and our recorded liabilities under our residual support and risk sharing agreements were \$369 million and \$366 million.

When a lease vehicle is returned to us, the asset is reclassified from Equipment on operating leases, net to Inventory at the lower of cost or estimated selling price, less cost to sell.

### *Impairment of Goodwill*

Goodwill is tested for impairment in the fourth quarter of each year for all reporting units, or more frequently if events occur or circumstances change that would warrant such a review. Our reporting units are GMNA, GME, and various components within the GMIO segment. The fair values of the reporting units are determined based on valuation techniques using the best available information, such as discounted cash flow projections. We make significant assumptions and estimates about the extent and timing of future cash flows, growth rates and discount rates. The cash flows are estimated over a significant future period of time, which makes those estimates and assumptions subject to a high degree of uncertainty. While we believe that the assumptions and estimates used to determine the estimated fair values of each of our reporting units are reasonable, a change in assumptions underlying these estimates could result in a material effect on the financial statements.

At December 31, 2009 we had goodwill of \$30.7 billion, which predominately arose upon the application of fresh-start reporting. When applying fresh-start reporting, certain accounts, primarily employee benefit and income tax related, were recorded at amounts determined under specific U.S. GAAP rather than fair value, and the difference between the U.S. GAAP and fair value amounts gives rise to goodwill, which is a residual. Further, we recorded valuation allowances against certain of our deferred tax assets, which under ASC 852 also resulted in goodwill. Our employee benefit related accounts were recorded in accordance with ASC 712 and ASC 715 and deferred income taxes were recorded in accordance with ASC 740. There was no goodwill on an economic basis based on the fair value of our equity, liabilities and identifiable assets.

In the future, we have an increased likelihood of measuring goodwill for possible impairment during our annual or event-triggered goodwill impairment testing that would be required if the fair value of a reporting unit is less than its net book value. Because our reporting units were recorded at their fair values upon application of fresh-start reporting, it is more likely that a decrease in the fair value of our reporting units from their fresh-start reporting values could occur, and such a decrease would trigger the need to measure for possible goodwill impairments.

Future goodwill impairments may occur should the fair value-to-U.S. GAAP adjustments differences decrease. Goodwill resulted from our recorded liabilities for certain employee benefit obligations being higher than the fair value of these obligations because lower discount rates were utilized in determining the U.S. GAAP values compared to those utilized to determine fair values. The discount rates utilized to determine the fair value of these obligations were based on our incremental borrowing rates, which included our nonperformance risk. Further, the recorded amounts of our assets were lower than their fair values because of the recording of valuation allowances on certain of our deferred tax assets. The difference between these fair value-to-U.S. GAAP amounts would decrease upon an improvement in our credit rating, thus resulting in a decrease in the spread between our employee benefit related obligations under U.S. GAAP and their fair values. A decrease will also occur upon reversal of our deferred tax asset valuation allowances. Should the fair value-to-U.S. GAAP adjustments differences decrease for these reasons, the implied goodwill balance will decline. Accordingly, at the next annual or event-triggered goodwill impairment test, to the extent the carrying value of a reporting unit exceeds its fair value, a goodwill impairment could occur.

During the three months ended December 31, 2009 we performed our annual goodwill impairment testing and event driven impairment testing for our GME and certain other reporting units in GMIO. Based on this testing, we determined that goodwill was not impaired. Refer to Notes 12 and 25 to the consolidated financial statements for additional information on goodwill impairments.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES*****Impairment of Long-Lived Assets***

The carrying amount of long-lived assets held and used in the business is periodically evaluated, including finite-lived intangible assets, when events and circumstances warrant. If the carrying amount of a long-lived asset group is considered impaired, a loss is recorded based on the amount by which the carrying amount exceeds the fair value for the asset group. Product-specific long-lived assets are tested at the platform level. Non-product line specific long-lived assets are tested on a regional basis in GMNA and GME and tested at our various reporting units within our GMIO segment. For assets classified as held for sale, such assets are recorded at the lower of carrying amount or fair value less cost to sell. Fair value is determined primarily using the anticipated cash flows discounted at a rate commensurate with the risk involved. We develop anticipated cash flows from historical experience and internal business plans. A considerable amount of management judgment and assumptions are required in performing the long-lived asset impairment tests, principally in determining the fair value of the asset groups and the assets' average estimated useful life. While we believe our judgments and assumptions are reasonable; a change in assumptions underlying these estimates could result in a material effect on the consolidated financial statements. Long-lived assets could become impaired in the future as a result of declines in profitability due to significant changes in volume, pricing or costs. Refer to Note 25 to the consolidated financial statements for additional information on impairments of long-lived assets and intangibles.

***Valuation of Cost and Equity Method Investments***

When events and circumstances warrant, equity investments accounted for under the cost or equity method of accounting are evaluated for impairment. An impairment charge would be recorded whenever a decline in value of an equity investment below its carrying amount is determined to be other than temporary. In determining if a decline is other than temporary we consider and Old GM considered such factors as the length of time and extent to which the fair value of the investment has been less than the carrying amount of the equity affiliate, the near-term and longer-term operating and financial prospects of the affiliate and the intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery.

When available, quoted market prices are used to determine fair value. If quoted market prices are not available, fair value is based upon valuation techniques that use, where possible, market-based inputs. Generally, fair value is estimated using a combination of the income approach and the market approach. Under the income approach, estimated future cash flows are discounted at a rate commensurate with the risk involved using marketplace assumptions. Under the market approach, valuations are based on actual comparable market transactions and market earnings and book value multiples for the same or comparable entities. The assumptions used in the income and market approaches have a significant effect on the determination of fair value. Significant assumptions include estimated future cash flows, appropriate discount rates, and adjustments to market transactions and market multiples for differences between the market data and the investment being valued. Changes to these assumptions could have a significant effect on the valuation of cost and equity method investments.

In the three months ended December 31, 2009 we recorded impairment charges related to our investment in GMAC common stock of \$270 million. We determined the fair value of our investment in GMAC common stock using a market multiple, sum-of-the-parts methodology. This methodology considered the average price/tangible book value multiples of companies deemed comparable to each of GMAC's operations, which were then aggregated to determine GMAC's overall fair value. Based on our analysis, the estimated fair value of our investment in GMAC common stock was determined to be \$970 million, resulting in an impairment charge of \$270 million. The following table illustrates the effect of a 0.1 change in the average price/tangible book value multiple on our impairment charge:

<u>Change in Assumption</u>	<u>Effect on December 31, 2009 Impairment Charge</u>
0.1 increase in average price/tangible book value multiple	+\$ 100 million
0.1 decrease in average price/tangible book value multiple	-\$ 100 million

At December 31, 2009 the balance of our investment in GMAC common stock was \$970 million and the balance of our investment in GMAC preferred stock was \$665 million.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### *Derivatives*

Derivatives are used in the normal course of business to manage exposure to fluctuations in commodity prices and interest and foreign currency exchange rates. Derivatives are accounted for in the consolidated balance sheet as assets or liabilities at fair value.

Significant judgments and estimates are used in estimating the fair values of derivative instruments, particularly in the absence of quoted market prices. Internal models are used to value a majority of derivatives. The models use, as their basis, readily observable market inputs, such as time value, forward interest rates, volatility factors, and current and forward market prices for commodities and foreign currency exchange rates. Certain derivative contracts are valued based upon models with significant unobservable market inputs, primarily estimated forward and prepayment rates.

The valuation of derivative liabilities also takes into account nonperformance risk. At December 31, 2009 our nonperformance risk was not observable through the credit default swap market. Our nonperformance risk was estimated based on an analysis of comparable industrial companies to determine the appropriate credit spread which would be applied to us by market participants. Refer to Note 20 to the consolidated financial statements for additional information on derivative financial instruments.

### *Sales Incentives*

The estimated effect of sales incentives to dealers and customers is recorded as a reduction of revenue, and in certain instances, as an increase to cost of sales, at the later of the time of sale or announcement of an incentive program to dealers. There may be numerous types of incentives available at any particular time, including a choice of incentives for a specific model. Incentive programs are generally brand specific, model specific or region specific, and are for specified time periods, which may be extended. Significant factors used in estimating the cost of incentives include the volume of vehicles that will be affected by the incentive programs offered by product, product mix and the rate of customer acceptance of any incentive program, and the likelihood that an incentive program will be extended, all of which are estimated based on historical experience and assumptions concerning customer behavior and future market conditions. Additionally, when an incentive program is announced, the number of vehicles in dealer inventory eligible for the incentive program is determined, and a reduction of revenue or increase to cost of sales is recorded in the period in which the program is announced. If the actual number of affected vehicles differs from this estimate, or if a different mix of incentives is actually paid, the reduction in revenue or increase to cost of sales for sales incentives could be affected. As discussed previously, there are a multitude of inputs affecting the calculation of the estimate for sales incentives, and an increase or decrease of any of these variables could have a significant effect on recorded sales incentives.

### *Policy, Warranty and Recalls*

The estimated costs related to policy and product warranties are accrued at the time products are sold, and the estimated costs related to product recalls based on a formal campaign soliciting return of that product are accrued when they are deemed to be probable and can be reasonably estimated. These estimates are established using historical information on the nature, frequency, and average cost of claims of each vehicle line or each model year of the vehicle line. However, where little or no claims experience exists for a model year or a vehicle line, the estimate is based on long-term historical averages. Revisions are made when necessary, based on changes in these factors. These estimates are re-evaluated on an ongoing basis. We actively study trends of claims and take action to improve vehicle quality and minimize claims. Actual experience could differ from the amounts estimated requiring adjustments to these liabilities in future periods. Due to the uncertainty and potential volatility of the factors contributing to developing estimates, changes in our assumptions could materially affect our results of operations.

### *Accounting Standards Not Yet Adopted*

Accounting standards not yet adopted are discussed in Note 4 to the consolidated financial statements.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Forward-Looking Statements

In this report and in reports we subsequently file with the SEC on Forms 10-K and 10-Q and file or furnish on Form 8-K, and in related comments by our management, we use words like “anticipate,” “believe,” “continue,” “could,” “designed,” “effect,” “estimate,” “evaluate,” “expect,” “forecast,” “goal,” “initiative,” “intend,” “may,” “objective,” “outlook,” “plan,” “potential,” “priorities,” “project,” “pursue,” “seek,” “should,” “target,” “when,” “would,” or the negative of any of those words or similar expressions to identify forward-looking statements that represent our current judgment about possible future events. In making these statements we rely on assumptions and analyses based on our experience and perception of historical trends, current conditions and expected future developments as well as other factors we consider appropriate under the circumstances. We believe these judgments are reasonable, but these statements are not guarantees of any events or financial results, and our actual results may differ materially due to a variety of important factors, both positive and negative. These factors, which may be revised or supplemented in subsequent reports on SEC Forms 10-K, 10-Q and 8-K, include among others the following:

- Our ability to comply with the requirements of the UST Credit Agreement;
- Our ability to take actions we believe are important to our long-term strategy, including our ability to enter into certain material transactions outside of the ordinary course of business, which may be limited due to significant representations and affirmative and negative covenants in the UST Credit Agreement;
- Our ability to repay the UST Credit Agreement as planned;
- Our ability to realize production efficiencies and to achieve reductions in costs as a result of our restructuring initiatives and labor modifications;
- Our ability to maintain quality control over our vehicles and avoid material vehicle recalls;
- Our ability to maintain adequate liquidity and financing sources and an appropriate level of debt, including as required to fund our planned significant investment in new technology, and, even if funded, our ability to realize successful vehicle applications of new technology;
- The ability of our new executive management team to quickly learn the automotive industry, and adapt and excel in their new management roles;
- The effect of business or liquidity difficulties for us or one or more subsidiaries on other entities in our corporate group as a result of our highly integrated and complex corporate structure and operation;
- Our ability to continue to attract customers, particularly for our new products, including cars and crossover vehicles;
- Availability of adequate financing on acceptable terms to our customers, dealers, distributors and suppliers to enable them to continue their business relationships with us;
- The financial viability and ability to borrow of our key suppliers and their ability to provide systems, components and parts without disruption;
- Our ability to manage the distribution channels for our products, including our ability to consolidate our dealer network;
- Our ability to qualify for federal funding of our advanced technology vehicle programs under Section 136 of EISA;
- The ability of our European operations to successfully restructure and receive adequate financial support from various European governments or other sources;

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

- The continued availability of both wholesale and retail financing from GMAC and its affiliates in the United States, Canada and the other markets in which we operate to support our ability to sell vehicles in those markets, which is dependent on GMAC's ability to obtain funding and which may be suspended by GMAC if GMAC's credit exposure to us exceeds certain limitations provided in our operating arrangements with GMAC;
- Overall strength and stability of general economic conditions and of the automotive industry, both in the United States and in global markets;
- Continued economic and automotive industry instability or poor economic conditions in the United States and global markets, including the credit markets, or changes in economic conditions, commodity prices, housing prices, foreign currency exchange rates or political stability in the markets in which we operate;
- Shortages of and increases or volatility in the price of oil;
- Significant changes in the competitive environment, including the effect of competition in our markets, on our pricing policies or use of incentives and the introduction of new and improved vehicle models by our competitors;
- Changes in the existing, or the adoption of new, laws, regulations, policies or other activities of governments, agencies and similar organizations where such actions may affect the production, licensing, distribution or sale of our products, the cost thereof or applicable tax rates;
- Costs and risks associated with litigation;
- Significant increases in our pension expense resulting from changes in the value of plan assets;
- Changes in accounting principles, or their application or interpretation, and our ability to make estimates and the assumptions underlying the estimates, including the estimates for Delphi pension benefit guarantees, which could have an effect on earnings; and
- Other risks described from time to time in periodic and current reports that we file with the SEC.

We caution readers not to place undue reliance on forward-looking statements. We undertake no obligation to update publicly or otherwise revise any forward-looking statements, whether as a result of new information, future events or other factors that affect the subject of these statements, except where we are expressly required to do so by law.

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## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Item 7A. *Quantitative and Qualitative Disclosures About Market Risk*

Old GM entered into a variety of foreign currency exchange, interest rate and commodity forward contracts and options to manage exposures arising from market risks resulting from changes in foreign currency exchange rates, interest rates and certain commodity prices. We are also subject to these market risks. We do not enter into derivative transactions for speculative or trading purposes.

The overall financial risk management program is under the responsibility of the Risk Management Committee, which reviews and, where appropriate, approves strategies to be pursued to mitigate these risks. A risk management control system is utilized to monitor the strategies, risks and related hedge positions, in accordance with the policies and procedures approved by the Risk Management Committee.

A discussion of our and Old GM's accounting policies for derivative financial instruments is included in Note 4 to the consolidated financial statements. Further information on our exposure to market risk is included in Note 20 to the consolidated financial statements.

In 2008 credit market volatility increased significantly, creating broad credit concerns. In addition, Old GM's credit standing and liquidity position in the first half of 2009 and the Chapter 11 Proceedings severely limited its ability to manage risks using derivative financial instruments as most derivative counterparties were unwilling to enter into transactions with Old GM. Subsequent to the 363 Sale and through December 31, 2009, we remain unable to enter into forward contracts pending the completion of negotiations with potential derivative counterparties. These negotiations include amendments to existing agreements and entering into new agreements that will likely require that we provide cash to collateralize our net liability positions.

In accordance with the provisions of ASC 820-10, "Fair Value Measurements and Disclosures," which requires companies to consider nonperformance risk as part of the measurement of fair value of derivative liabilities, we record changes in the fair value of our derivative liabilities based on our current credit standing. At December 31, 2009 the fair value of derivatives in a net liability position was \$680 million.

The following analyses provide quantitative information regarding exposure to foreign currency exchange rate risk, interest rate risk, commodity price risk and equity price risk. Sensitivity analysis is used to measure the potential loss in the fair value of financial instruments with exposure to market risk. The models used assume instantaneous, parallel shifts in exchange rates, interest rate yield curves and commodity prices. For options and other instruments with nonlinear returns, models appropriate to these types of instruments are utilized to determine the effect of market shifts. There are certain shortcomings inherent in the sensitivity analyses presented, primarily due to the assumption that interest rates and commodity prices change in a parallel fashion and that spot exchange rates change instantaneously. In addition, the analyses are unable to reflect the complex market reactions that normally would arise from the market shifts modeled and do not contemplate the effects of correlations between foreign currency pairs, or offsetting long-short positions in currency pairs which may reduce the potential loss in value.

#### ***Foreign Currency Exchange Rate Risk***

We have and Old GM had foreign currency exposures related to buying, selling and financing in currencies other than the functional currencies of our and Old GM's operations. Derivative instruments, such as foreign currency forwards, swaps and options are used primarily to hedge exposures with respect to forecasted revenues, costs and commitments denominated in foreign currencies. At December 31, 2009 such contracts have remaining maturities of up to 20 months. At December 31, 2009 our three most significant foreign currency exposures were the U.S. Dollar/Korean Won, Euro/British Pound and Euro/Korean Won.

At December 31, 2009 and 2008 the net fair value liability of financial instruments with exposure to foreign currency risk was \$5.9 billion and \$6.3 billion. This presentation utilizes a population of foreign currency exchange derivatives and foreign currency denominated debt and excludes the offsetting effect of foreign currency cash, cash equivalents and other assets. The potential loss in fair value for such financial instruments from a 10% parallel shift in all quoted foreign currency exchange rates would be \$0.9 billion and \$2.3 billion at December 31, 2009 and 2008.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

We are and Old GM was also exposed to foreign currency risk due to the translation of the results of international operations into U.S. Dollars as part of the consolidation process. Fluctuations in foreign currency exchange rates can therefore create volatility in the results of operations and may adversely affect our and Old GM's financial position. The effect of foreign currency exchange rate translation on our consolidated financial position was a net translation gain of \$157 million in the period July 10, 2009 through December 31, 2009. The effect of foreign currency exchange rate translation on Old GM's consolidated financial position was a net translation gain of \$232 million in the period January 1, 2009 through July 9, 2009 and a net translation loss of \$1.2 billion in the year ended 2008. These gains and losses were recorded as an adjustment to Total stockholders' equity (deficit) through Accumulated other comprehensive income (loss). The effects of foreign currency exchange rate transactions were a loss of \$755 million in the period July 10, 2009 through December 31, 2009, a loss of \$1.1 billion in the period January 1, 2009 through July 9, 2009 and a gain of \$1.7 billion in the year ended 2008.

### ***Interest Rate Risk***

We are and Old GM was subject to market risk from exposure to changes in interest rates due to financing activities. Interest rate risk in Old GM was managed primarily with interest rate swaps. The interest rate swaps Old GM entered into usually involved the exchange of fixed for variable rate interest payments to effectively convert fixed rate debt into variable rate debt in order to achieve a target range of variable rate debt. At December 31, 2009 we did not have any interest rate swap derivative positions to manage interest rate exposures.

At December 31, 2009 we had fixed rate short-term debt of \$592 million and variable rate short-term debt of \$9.6 billion. Of this fixed rate short-term debt, \$232 million was denominated in U.S. Dollars and \$360 million was denominated in foreign currencies. Of the variable rate short-term debt, \$6.2 billion was denominated in U.S. Dollars and \$3.4 billion was denominated in foreign currencies.

At December 31, 2009 we had fixed rate long-term debt of \$4.7 billion and variable rate long-term debt of \$873 million. Of this fixed rate long-term debt, \$3.4 billion was denominated in U.S. Dollars and \$1.3 billion was denominated in foreign currencies. Of the variable rate long-term debt, \$551 million was denominated in U.S. Dollars and \$322 million was denominated in foreign currencies.

At December 31, 2009 and 2008 the net fair value liability of financial instruments with exposure to interest rate risk was \$16.0 billion and \$17.0 billion. The potential increase in fair value at December 31, 2009 resulting from a 10% decrease in quoted interest rates would be \$402 million. The potential increase in fair value at December 31, 2008 resulting from a 10 percentage point increase in quoted interest rates would have been \$3.6 billion.

### ***Commodity Price Risk***

We are and Old GM was exposed to changes in prices of commodities used in the automotive business, primarily associated with various non-ferrous and precious metals for automotive components and energy used in the overall manufacturing process. Certain commodity purchase contracts meet the definition of a derivative. Old GM entered into various derivatives, such as commodity swaps and options, to offset its commodity price exposures. We resumed Old GM's commodity hedging program using options in December 2009.

At December 31, 2009 and 2008 the net fair value asset (liability) of commodity derivatives was \$11 million and (\$553) million. The potential loss in fair value resulting from a 10% adverse change in the underlying commodity prices would be \$6 million and \$109 million at December 31, 2009 and 2008. This amount excludes the offsetting effect of the commodity price risk inherent in the physical purchase of the underlying commodities.

### ***Equity Price Risk***

We are and Old GM was exposed to changes in prices of equity securities held. We typically do not attempt to reduce our market exposure to these equity instruments. Our exposure includes certain investments we hold in warrants of other companies. At

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

December 31, 2009 the fair value of these warrants was \$25 million. Our exposure also includes investments of \$32 million in equity securities classified as trading. At December 31, 2008 Old GM had investments of \$24 million in equity securities classified as available-for-sale. These amounts represent the maximum exposure to loss from these investments.

At December 31, 2009 the carrying amount of cost method investments was \$1.7 billion, of which the carrying amounts of our investments in GMAC common stock and GMAC preferred stock were \$970 million and \$665 million. At December 31, 2008 the carrying amount of cost method investments was \$98 million, of which the carrying amount of the investment in GMAC Preferred Membership Interests was \$43 million. These amounts represent the maximum exposure to loss from these investments. On June 30, 2009 GMAC converted its status to a C corporation and, as a result, our equity ownership in GMAC was converted from membership interests to shares of capital stock. Also, on June 30, 2009 Old GM began to account for its investment in GMAC common stock as a cost method investment. On July 10, 2009 in connection with our application of fresh-start reporting, we recorded an increase of \$1.3 billion and \$629 million to the carrying amounts of our investments in GMAC common stock and GMAC preferred stock to reflect their estimated fair value of \$1.3 billion and \$665 million. In the period July 10, 2009 through December 31, 2009 we recorded impairment charges of \$270 million related to our investment in GMAC common stock and \$4 million related to other cost method investments. In the year ended 2008 Old GM recorded impairment charges of \$1.0 billion related to its investment in GMAC Preferred Membership Interests.

***Counterparty Risk***

We are exposed to counterparty risk, which is the loss we could incur if a counterparty to a derivative contract defaulted. We enter into agreements with counterparties that allow the set-off of certain exposures in order to manage this risk. At December 31, 2009 our counterparty risk exposure is related to derivative contracts we use to manage exposure to foreign currency exchange rate risk and commodity prices.

Our counterparty risk is managed by our Risk Management Committee, which establishes exposure limits by counterparty. We monitor and report our exposures to the Risk Management Committee and our Treasurer on a periodic basis. At December 31, 2009 substantially all of our counterparty exposures are with counterparties that are rated A or higher.

***Concentration of Credit Risk***

We are exposed to concentration of credit risk primarily through holding cash and cash equivalents (which include money market funds), short- and long-term investments and derivatives. As part of our risk management process, we monitor and evaluate the credit standing of the financial institutions with which we do business. The financial institutions with which we do business are generally highly rated and geographically dispersed.

We are exposed to risk related to the potential inability to access liquidity in money market funds we invested in if the funds were to deny redemption requests. As part of our risk management process, we invest in large funds that are managed by reputable financial institutions. We also follow investment guidelines to limit our exposure to individual funds and financial institutions.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

General Motors Company, its Directors, and Stockholders:

We have audited the internal control over financial reporting of General Motors Company and subsidiaries (the Company) as of December 31, 2009, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting in Item 9A. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on that risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. A material weakness related to ineffective controls over the period-end financial reporting process has been identified and included in management's assessment. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the Consolidated Balance Sheet of General Motors Company and subsidiaries as of December 31, 2009 (Successor) and the related Consolidated Statements of Operations, Cash Flows and Equity (Deficit) for the period July 10, 2009 through December 31, 2009 (Successor) and the period January 1, 2009 through July 9, 2009 (Predecessor). Our audit also included the financial statement schedule listed in the Index at Item 15. This report does not affect our report on such financial statements and financial statement schedule.

In our opinion, because of the effect of the material weakness identified above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2009, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the accompanying Consolidated Balance Sheet of General Motors Company and subsidiaries as of December 31, 2009 (Successor) and the related Consolidated Statements of Operations, Cash Flows and Equity (Deficit) for the period July 10, 2009 through December 31, 2009 (Successor) and the period January 1, 2009 through July 9, 2009 (Predecessor). Our audit also included the financial statement schedule listed in the Index at Item 15. Our report dated April 7, 2010 expressed an unqualified opinion on those financial statements and financial statement schedule and included explanatory paragraphs relating to (a) the Successor's acquisition of substantially all of the assets and assumption of certain liabilities of the Predecessor in accordance with the Amended and Restated Master Sale and Purchase Agreement pursuant to Section 363(b) of the Bankruptcy Code and the Bankruptcy Court sale order dated July 5, 2009 and the application of fresh-start reporting, which resulted in a lack of comparability between the financial statements of the Successor and Predecessor; and (b) the Predecessor's adoption of new or revised accounting standards.

/s/ DELOITTE & TOUCHE LLP  
DELOITTE & TOUCHE LLP  
Detroit, Michigan  
April 7, 2010

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

General Motors Company, its Directors, and Stockholders:

We have audited the accompanying Consolidated Balance Sheets of General Motors Company and subsidiaries as of December 31, 2009 (Successor) and General Motors Corporation and subsidiaries as of December 31, 2008 (Predecessor), and the related Consolidated Statements of Operations, Cash Flows and Equity (Deficit) for the period July 10, 2009 through December 31, 2009 (Successor), the period January 1, 2009 through July 9, 2009 (Predecessor) and each of the two years in the period ended December 31, 2008 (Predecessor) (Successor and Predecessor collectively, the Company). Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of General Motors Company and subsidiaries at December 31, 2009 (Successor) and General Motors Corporation and subsidiaries at December 31, 2008 (Predecessor), and the results of their operations and their cash flows for the period July 10, 2009 through December 31, 2009 (Successor), the period January 1, 2009 through July 9, 2009 (Predecessor) and each of the two years in the period ended December 31, 2008 (Predecessor), in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Note 2 to the consolidated financial statements, on July 10, 2009 the Successor completed the acquisition of substantially all of the assets and assumed certain of the liabilities of the Predecessor in accordance with the Amended and Restated Master Sale and Purchase Agreement pursuant to Section 363(b) of the Bankruptcy Code and the Bankruptcy Court sale order dated July 5, 2009. Accordingly, the accompanying consolidated financial statements have been prepared in accordance with Accounting Standards Codification (ASC) Topic 852, *Reorganizations*. The Successor applied fresh-start reporting and recognized the acquired net assets at fair value, resulting in a lack of comparability with the prior period financial statements of the Predecessor.

As discussed in Note 4 to the consolidated financial statements, the Predecessor adopted ASC Topic 820-10, *Fair Value Measurements and Disclosures*, effective January 1, 2008 and adopted amendments to ASC Topic 805, *Business Combinations*, effective January 1, 2009. In addition, on January 1, 2009, the Predecessor retrospectively adjusted the consolidated financial statements for all prior periods presented for the adoption of amendments to ASC Topic 810-10, *Consolidation*, which affect the reporting of non-controlling interests in partially-owned consolidated subsidiaries, and for the adoption of ASC Topic 470-20, *Debt with Conversion and Other Options*.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Successor's internal control over financial reporting as of December 31, 2009, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated April 7, 2010 expressed an adverse opinion on the Successor's internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP

DELOITTE & TOUCHE LLP

Detroit, Michigan

April 7, 2010

GENERAL MOTORS COMPANY AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

(In millions, except per share amounts)

Item 8. Financial Statements and Supplementary Data

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Net sales and revenue</b>				
Sales	\$ 57,329	\$ 46,787	\$ 147,732	\$ 177,594
Other revenue	145	328	1,247	2,390
Total net sales and revenue	<u>57,474</u>	<u>47,115</u>	<u>148,979</u>	<u>179,984</u>
<b>Costs and expenses</b>				
Cost of sales	56,381	55,814	149,257	165,573
Selling, general and administrative expense	6,006	6,161	14,253	14,412
Other expenses, net	15	1,235	6,699	4,308
Total costs and expenses	<u>62,402</u>	<u>63,210</u>	<u>170,209</u>	<u>184,293</u>
Operating loss	(4,928)	(16,095)	(21,230)	(4,309)
Equity in income (loss) of and disposition of interest in GMAC	—	1,380	(6,183)	(1,245)
Interest expense	(694)	(5,428)	(2,525)	(3,076)
Interest income and other non-operating income, net	440	852	424	2,284
Gain (loss) on extinguishment of debt	(101)	(1,088)	43	—
Reorganization gains, net (Note 2)	—	128,155	—	—
Income (loss) from continuing operations before income taxes and equity income	(5,283)	107,776	(29,471)	(6,346)
Income tax expense (benefit)	(1,000)	(1,166)	1,766	36,863
Equity income, net of tax	497	61	186	524
Income (loss) from continuing operations	(3,786)	109,003	(31,051)	(42,685)
<b>Discontinued operations (Note 5)</b>				
Income from discontinued operations, net of tax	—	—	—	256
Gain on sale of discontinued operations, net of tax	—	—	—	4,293
Income from discontinued operations	—	—	—	4,549
<b>Net income (loss)</b>	(3,786)	109,003	(31,051)	(38,136)
Less: Net (income) loss attributable to noncontrolling interests	(511)	115	108	(406)
<b>Net income (loss) attributable to stockholders</b>	(4,297)	109,118	(30,943)	(38,542)
Less: Cumulative dividends on preferred stock	131	—	—	—
<b>Net income (loss) attributable to common stockholders</b>	<u>\$ (4,428)</u>	<u>\$ 109,118</u>	<u>\$ (30,943)</u>	<u>\$ (38,542)</u>
<b>Earnings (loss) per share (Note 28)</b>				
<b>Basic</b>				
Income (loss) from continuing operations attributable to common stockholders	\$ (10.73)	\$ 178.63	\$ (53.47)	\$ (76.16)
Income from discontinued operations attributable to common stockholders	—	—	—	8.04
Net income (loss) attributable to common stockholders	<u>\$ (10.73)</u>	<u>\$ 178.63</u>	<u>\$ (53.47)</u>	<u>\$ (68.12)</u>
Weighted-average common shares outstanding	413	611	579	566
<b>Diluted</b>				
Income (loss) from continuing operations attributable to common stockholders	\$ (10.73)	\$ 178.55	\$ (53.47)	\$ (76.16)
Income from discontinued operations attributable to common stockholders	—	—	—	8.04
Net income (loss) attributable to common stockholders	<u>\$ (10.73)</u>	<u>\$ 178.55</u>	<u>\$ (53.47)</u>	<u>\$ (68.12)</u>
Weighted-average common shares outstanding	413	611	579	566
Cash dividends per common share	\$ —	\$ —	\$ 0.50	\$ 1.00
<b>Amounts attributable to common stockholders:</b>				
Income (loss) from continuing operations, net of tax	\$ (4,428)	\$ 109,118	\$ (30,943)	\$ (43,091)
Income from discontinued operations, net of tax	—	—	—	4,549
Net income (loss)	<u>\$ (4,428)</u>	<u>\$ 109,118</u>	<u>\$ (30,943)</u>	<u>\$ (38,542)</u>

Reference should be made to the notes to consolidated financial statements.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

(In millions, except share amounts)

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
<b>ASSETS</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 22,679	\$ 14,053
Marketable securities	134	141
Total cash, cash equivalents and marketable securities	22,813	14,194
Restricted cash	13,917	672
Accounts and notes receivable (net of allowance of \$250 and \$422)	7,518	7,918
Inventories	10,107	13,195
Assets held for sale	388	—
Equipment on operating leases, net	2,727	5,142
Other current assets and deferred income taxes	1,777	3,146
Total current assets	59,247	44,267
<b>Non-Current Assets</b>		
Restricted cash	1,489	1,917
Equity in net assets of nonconsolidated affiliates	7,936	2,146
Assets held for sale	530	—
Equipment on operating leases, net	3	442
Property, net	18,687	39,665
Goodwill	30,672	—
Intangible assets, net	14,547	265
Deferred income taxes	564	98
Prepaid pension	98	109
Other assets	2,522	2,130
Total non-current assets	77,048	46,772
<b>Total Assets</b>	<b>\$ 136,295</b>	<b>\$ 91,039</b>
<b>LIABILITIES AND EQUITY (DEFICIT)</b>		
<b>Current Liabilities</b>		
Accounts payable (principally trade)	\$ 18,725	\$ 22,259
Short-term debt and current portion of long-term debt	10,221	16,920
Liabilities held for sale	355	—
Postretirement benefits other than pensions	846	4,002
Accrued expenses	22,288	32,427
Total current liabilities	52,435	75,608
<b>Non-Current Liabilities</b>		
Long-term debt	5,562	29,018
Liabilities held for sale	270	—
Postretirement benefits other than pensions	8,708	28,919
Pensions	27,086	25,178
Other liabilities and deferred income taxes	13,279	17,392
Total non-current liabilities	54,905	100,507
<b>Total liabilities</b>	<b>107,340</b>	<b>176,115</b>
Commitments and contingencies (Note 21)		
Preferred stock, \$0.01 par value (1,000,000,000 shares authorized and 360,000,000 shares issued and outstanding at December 31, 2009) (Notes 2 and 19)	6,998	—
<b>Equity (Deficit)</b>		
<b>Old GM</b>		
Preferred stock, no par value (6,000,000 shares authorized, no shares issued and outstanding)	—	—
Preference stock, \$0.10 par value (100,000,000 shares authorized, no shares issued and outstanding)	—	—
Common stock, \$1 2/3 par value common stock (2,000,000,000 shares authorized, 800,937,541 shares issued and 610,483,231 shares outstanding at December 31, 2008)	—	1,017
<b>General Motors Company</b>		
Common stock, \$0.01 par value (2,500,000,000 shares authorized and 500,000,000 shares issued and outstanding at December 31, 2009) (Notes 2 and 19)	5	—
Capital surplus (principally additional paid-in capital)	24,050	16,489
Accumulated deficit	(4,394)	(70,727)
Accumulated other comprehensive income (loss)	1,588	(32,339)
Total stockholders' equity (deficit)	21,249	(85,560)
Noncontrolling interests	708	484
Total equity (deficit)	21,957	(85,076)
<b>Total Liabilities and Equity (Deficit)</b>	<b>\$ 136,295</b>	<b>\$ 91,039</b>

Reference should be made to the notes to consolidated financial statements.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(In millions)**

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Cash flows from operating activities</b>				
Net income (loss)	\$ (3,786)	\$ 109,003	\$ (31,051)	\$ (38,136)
Income (loss) income from discontinued operations	—	—	—	4,549
Income (loss) from continuing operations	(3,786)	109,003	(31,051)	(42,685)
<b>Adjustments to reconcile income (loss) from continuing operations to net cash provided by (used in) continuing operating activities</b>				
Depreciation, impairment charges and amortization expense	4,241	6,873	10,014	9,513
Goodwill impairment charges	—	—	610	—
Delphi charges	—	—	4,797	1,547
Foreign currency translation and transaction (gain) loss	755	1,077	(1,705)	661
Impairment charges related to investments in GMAC	270	—	8,100	—
Amortization of discount and issuance costs on debt issues	140	3,897	189	177
(Gain) loss related to Saab deconsolidation and bankruptcy filing	(59)	478	—	—
Undistributed earnings of nonconsolidated affiliates	(497)	1,036	(727)	293
OPEB expense	3,206	193	(2,115)	2,362
OPEB payments	(1,514)	(1,886)	(3,831)	(3,751)
VEBA withdrawals	—	9	1,355	1,694
Contributions to New VEBA	(252)	—	—	—
Pension expense	364	3,041	4,862	1,799
Pension contributions	(4,318)	(586)	(1,067)	(937)
Gain on extinguishment of U.S. term loan	—	(906)	—	—
Loss on extinguishment of UST GMAC Loan	—	1,994	—	—
Loss on extinguishment of other debt	101	—	—	—
Gain on disposition of GMAC Common Membership Interests	—	(2,477)	—	—
Cash payments related to reorganizations gains, net	—	(408)	—	—
Reorganization gains, net	—	(128,155)	—	—
Provisions for deferred taxes	(1,427)	(600)	1,163	36,717
Change in other investments and miscellaneous assets	303	596	(395)	651
Change in other operating assets and liabilities, net of acquisitions and disposals	2,605	(10,229)	94	(3,412)
Other	839	(1,253)	(2,358)	2,878
<b>Net cash provided by (used in) continuing operating activities</b>	<b>971</b>	<b>(18,303)</b>	<b>(12,065)</b>	<b>7,507</b>
Cash provided by discontinued operating activities	—	—	—	224
<b>Net cash provided by (used in) operating activities</b>	<b>971</b>	<b>(18,303)</b>	<b>(12,065)</b>	<b>7,731</b>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS — (Continued)**  
(In millions)

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Cash flows from investing activities</b>				
Expenditures for property	(1,914)	(3,517)	(7,530)	(7,542)
Investments in marketable securities, acquisitions	(158)	(202)	(3,771)	(10,155)
Investments in marketable securities, liquidations	171	185	5,866	8,119
Investment in GMAC	—	(884)	—	(1,022)
Investment in stock warrants	(25)	—	—	—
Acquisition of companies, net of cash acquired	(2,127)	—	(1)	(46)
Increase in cash due to consolidation of CAMI	—	46	—	—
Decrease in cash due to deconsolidation of Saab in February 2009	—	(41)	—	—
Increase in cash due to consolidation of Saab in August 2009	222	—	—	—
Distributions from GMAC received on GMAC common stock	72	—	—	—
Operating leases, liquidations	564	1,307	3,610	3,165
Proceeds from sale of discontinued operations	—	—	—	5,354
Proceeds from sale of business units/equity investments	—	—	232	—
Proceeds from sale of real estate, plants, and equipment	67	38	347	332
Change in notes receivable	(31)	(23)	(430)	34
Change in restricted cash	5,171	(18,043)	(87)	23
<b>Net cash provided by (used in) continuing investing activities</b>	2,012	(21,134)	(1,764)	(1,738)
Cash used in discontinued investing activities	—	—	—	(22)
<b>Net cash provided by (used in) investing activities</b>	2,012	(21,134)	(1,764)	(1,760)
<b>Cash flows from financing activities</b>				
Net decrease in short-term debt	(909)	(2,364)	(4,100)	(5,749)
Proceeds from UST Loan Facility and UST GMAC Loan	—	16,645	4,000	—
Proceeds from funding by EDC	4,042	—	—	—
Proceeds from the Receivables Program	30	260	—	—
Proceeds from DIP Facility	—	33,300	—	—
Proceeds from EDC Loan Facility	—	2,407	—	—
Proceeds from issuance of long-term debt	873	345	5,928	2,131
Proceeds from German Facility	716	992	—	—
Payments on the UST Loans	(1,361)	—	—	—
Payments on Canadian Loan	(192)	—	—	—
Payments on Receivables Program	(140)	—	—	—
Payments on German Facility	(1,779)	—	—	—
Payments on other long-term debt	(541)	(6,072)	(1,702)	(1,403)
Cash, cash equivalents and restricted cash retained by MLC	—	(1,216)	—	—
Payments to acquire noncontrolling interest	(100)	(5)	—	—
Fees paid for debt modification	—	(63)	—	—
Cash dividends paid to GM preferred stockholders	(97)	—	—	—
Cash dividends paid to Old GM common stockholders	—	—	(283)	(567)
<b>Net cash provided by (used in) continuing financing activities</b>	542	44,229	3,843	(5,588)
Cash provided by (used in) discontinued financing activities	—	—	—	(5)
<b>Net cash provided by (used in) financing activities</b>	542	44,229	3,843	(5,593)
Effect of exchange rate changes on cash and cash equivalents	532	168	(778)	316
Net increase (decrease) in cash and cash equivalents	4,057	4,960	(10,764)	694
Cash and cash equivalents reclassified as assets held for sale	(391)	—	—	—
Cash and cash equivalents at beginning of the year	19,013	14,053	24,817	24,123
<b>Cash and cash equivalents at end of the year</b>	<b>\$ 22,679</b>	<b>\$ 19,013</b>	<b>\$ 14,053</b>	<b>\$ 24,817</b>

Reference should be made to the notes to consolidated financial statements.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF EQUITY (DEFICIT)**  
(In millions)

	Common Stockholders'			Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interests	Comprehensive Income (Loss)	Total Equity (Deficit)
	Common Stock	Capital Surplus	Accumulated Equity (Deficit)				
<b>Balance at December 31, 2006, Predecessor</b>	\$ 943	\$ 15,946	\$ (29)	\$ (22,126)	\$ 1,190	\$ (38,136)	\$ (4,076)
Net income (loss)	—	—	(38,542)	—	406	(38,136)	(38,136)
<b>Other comprehensive income (loss)</b>							
Foreign currency translation adjustments	—	—	—	998	29	1,027	
Cash flow hedging losses, net	—	—	—	(38)	(272)	(310)	
Unrealized loss on securities	—	—	—	(17)	—	(17)	
Defined benefit plans, net (Note 27)	—	—	—	6,043	—	6,043	
Other comprehensive income (loss)	—	—	—	6,986	(243)	6,743	6,743
Comprehensive income (loss)	—	—	—	—	—	<u>\$ (31,393)</u>	
Effects of accounting change regarding pension plans and OPEB plans measurement dates pursuant to ASC 715-20, net of tax	—	—	(425)	1,153	—	—	728
Cumulative effect of a change in accounting principle — adoption of ASC 740-10, net of tax	—	—	137	—	—	—	137
Stock options	—	55	—	—	—	—	55
Conversion of GMAC Preferred Membership Interests	—	27	—	—	—	—	27
Cash dividends paid to Old GM common stockholders	—	—	(567)	—	—	—	(567)
Cash dividends paid to noncontrolling interests	—	—	—	—	(88)	—	(88)
Dealership investments	—	—	—	—	(51)	—	(51)
Purchase of capped call option on Old GM common stock	—	(99)	—	—	—	—	(99)
Issuance of Series D debentures	—	171	—	—	—	—	171
Other	—	—	—	—	4	—	4
<b>Balance at December 31, 2007, Predecessor</b>	943	16,100	(39,426)	(13,987)	1,218	\$ (31,051)	(35,152)
Net income (loss)	—	—	(30,943)	—	(108)	(31,051)	(31,051)
<b>Other comprehensive income (loss)</b>							
Foreign currency translation adjustments	—	—	—	(1,155)	(161)	(1,316)	
Cash flow hedging losses, net	—	—	—	(811)	(420)	(1,231)	
Unrealized loss on securities	—	—	—	(298)	—	(298)	
Defined benefit plans, net (Note 27)	—	—	—	(16,088)	—	(16,088)	
Other comprehensive income (loss)	—	—	—	(18,352)	(581)	(18,933)	(18,933)
Comprehensive income (loss)	—	—	—	—	—	<u>\$ (49,984)</u>	
Effects of GMAC adoption of ASC 820-10 and ASC 825-10	—	—	(76)	—	—	—	(76)
Stock options	—	32	1	—	—	—	33
Common stock issued for settlement of Series D debentures	74	357	—	—	—	—	431
Cash dividends paid to Old GM common stockholders	—	—	(283)	—	—	—	(283)
Cash dividends paid to noncontrolling interests	—	—	—	—	(46)	—	(46)
Other	—	—	—	—	1	—	1
<b>Balance December 31, 2008, Predecessor</b>	1,017	16,489	(70,727)	(32,339)	484	\$ (85,076)	(85,076)
Net income (loss)	—	—	109,118	—	(115)	109,003	109,003
<b>Other comprehensive income (loss)</b>							
Foreign currency translation adjustments	—	—	—	232	(85)	147	
Cash flow hedging gains, net	—	—	—	99	177	276	
Unrealized gain on securities	—	—	—	46	—	46	
Defined benefit plans, net (Note 27)	—	—	—	(3,408)	—	(3,408)	
Other comprehensive income (loss)	—	—	—	(3,031)	92	(2,939)	(2,939)
Comprehensive income (loss)	—	—	—	—	—	<u>\$ 106,064</u>	
Cash dividends paid to noncontrolling interests	—	—	—	—	(26)	—	(26)
Other	1	5	(1)	—	(27)	—	(22)
<b>Balance July 9, 2009, Predecessor</b>	1,018	16,494	38,390	(35,370)	408	\$ 20,940	20,940

Reference should be made to the notes to consolidated financial statements.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF EQUITY (DEFICIT)**  
(In millions)

	Common Stockholders'					Comprehensive Income (Loss)	Total Equity (Deficit)
	Common Stock	Capital Surplus	Accumulated Equity (Deficit)	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interests		
<b>Balance July 9, 2009, Predecessor</b>	1,018	16,494	38,390	(35,370)	408		20,940
Fresh-start reporting adjustments:							
Elimination of predecessor common stock, capital surplus and accumulated deficit	(1,018)	(16,494)	(38,390)	—	—		(55,902)
Elimination of accumulated other comprehensive loss	—	—	—	35,370	—		35,370
Issuance of GM common stock	4	18,787	—	—	—		18,791
<b>Balance July 10, 2009 Successor</b>	4	18,787	—	—	408		19,199
Net income (loss)	—	—	(4,297)	—	511	\$ (3,786)	(3,786)
<b>Other comprehensive income (loss)</b>							
Foreign currency translation adjustments	—	—	—	157	(33)	124	
Unrealized gain on derivatives	—	—	—	(1)	—	(1)	
Unrealized gain on securities	—	—	—	2	—	2	
Defined benefit plans, net (Note 27)	—	—	—	1,430	—	1,430	
Other comprehensive income (loss)	—	—	—	1,588	(33)	1,555	1,555
Comprehensive income (loss)						<u>\$ (2,231)</u>	
Common stock related to settlement of UAW hourly retiree medical plan	1	4,935	—	—	—		4,936
Common stock warrants related to settlement of UAW hourly retiree medical plan	—	220	—	—	—		220
Participation in GM Daewoo equity rights offering	—	108	—	—	(108)		—
Purchase of noncontrolling interest in CAMI	—	—	—	—	(100)		(100)
Cash dividends paid to GM preferred stockholders	—	—	(97)	—	—		(97)
Other	—	—	—	—	30		30
<b>Balance December 31, 2009, Successor</b>	<u>\$ 5</u>	<u>\$ 24,050</u>	<u>\$ (4,394)</u>	<u>\$ 1,588</u>	<u>\$ 708</u>		<u>\$ 21,957</u>

Reference should be made to the notes to consolidated financial statements.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Nature of Operations**

General Motors Company was formed by the United States Department of the Treasury (UST) in 2009 originally as a Delaware limited liability company, Vehicle Acquisition Holdings LLC, and subsequently converted to a Delaware corporation, NGMCO, Inc. This company, which on July 10, 2009 acquired substantially all of the assets and assumed certain liabilities of General Motors Corporation (363 Sale) and changed its name to General Motors Company, is sometimes referred to in this Annual Report on Form 10-K (2009 10-K) for the periods on or subsequent to July 10, 2009 as “we,” “our,” “us,” “ourselves,” the “Company,” “General Motors,” or “GM,” and is the successor entity solely for accounting and financial reporting purposes (Successor). General Motors Corporation is sometimes referred to in this 2009 10-K, for the periods on or before July 9, 2009, as “Old GM.” Prior to July 10, 2009 Old GM operated the business of the Company, and pursuant to the agreement with the SEC Staff, the accompanying consolidated financial statements include the financial statements and related information of Old GM as it is our predecessor entity solely for accounting and financial reporting purposes (Predecessor). On July 10, 2009 in connection with the 363 Sale, General Motors Corporation changed its name to Motors Liquidation Company, which is sometimes referred to in this 2009 10-K for the periods on or after July 10, 2009 as “MLC.” MLC continues to exist as a distinct legal entity for the sole purpose of liquidating its remaining assets and liabilities.

We develop, produce and market cars, trucks and parts worldwide. We analyze the results of our business through our three segments, which are GM North America (GMNA), GM Europe (GME), and General Motors International Operations (GMIO). Nonsegment operations are classified as Corporate. Corporate includes investments in GMAC, certain centrally recorded income and costs, such as interest, income taxes and corporate expenditures, certain nonsegment specific revenues and expenses, including costs related to the Delphi Benefit Guarantee Agreements (as subsequently defined in Note 19) and a portfolio of automotive retail leases.

We also own a 16.6% equity interest in GMAC Inc. (GMAC), which is accounted for as a cost method investment because we cannot exercise significant influence over GMAC. GMAC provides a broad range of financial services, including consumer vehicle financing, automotive dealership and other commercial financing, residential mortgage services, and automobile service contracts.

**Note 2. Chapter 11 Proceedings and the 363 Sale**

**Background**

Over time as Old GM’s market share declined in North America, Old GM needed to continually restructure its business operations to reduce cost and excess capacity. In addition, legacy labor costs and obligations and capacity in its dealer network made Old GM less competitive than new entrants into the U.S. market. These factors continued to strain Old GM’s liquidity. In 2005 Old GM incurred significant losses from operations and from restructuring activities such as providing support to Delphi Corporation (Delphi) and other efforts intended to reduce operating costs. Old GM managed its liquidity during this time through a series of cost reduction initiatives, capital markets transactions and sales of assets. However, the global credit market crisis had a dramatic effect on Old GM and the automotive industry. In the second half of 2008, the increased turmoil in the mortgage and overall credit markets (particularly the lack of financing for buyers or lessees of vehicles), the continued reductions in U.S. housing values, the volatility in the price of oil, recessions in the United States and Western Europe and the slowdown of economic growth in the rest of the world created a substantially more difficult business environment. The ability to execute capital markets transactions or sales of assets was extremely limited, vehicle sales in North America and Western Europe contracted severely, and the pace of vehicle sales in the rest of the world slowed. Old GM’s liquidity position, as well as its operating performance, were negatively affected by these economic and industry conditions and by other financial and business factors, many of which were beyond its control.

As a result of these economic conditions and the rapid decline in sales in the three months ended December 31, 2008 Old GM determined that, despite the actions it had then taken to restructure its U.S. business, it would be unable to pay its obligations in the normal course of business in 2009 or service its debt in a timely fashion, which required the development of a new plan that depended on financial assistance from the U.S. government.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In December 2008 Old GM requested and received financial assistance from the U.S. government and entered into a loan and security agreement with the UST, which was subsequently amended (UST Loan Agreement). In early 2009 Old GM's business results and liquidity continued to deteriorate, and, as a result, Old GM obtained additional funding from the UST under the UST Loan Agreement. Old GM also received funding from Export Development Canada (EDC), a corporation wholly-owned by the government of Canada, under a loan and security agreement entered into in April 2009 (EDC Loan Facility).

As a condition to obtaining the loans under the UST Loan Agreement, Old GM was required to submit a Viability Plan in February 2009 that included specific actions intended to result in the following:

- Repayment of all loans, interest and expenses under the UST Loan Agreement, and all other funding provided by the U.S. government;
- Compliance with federal fuel efficiency and emissions requirements and commencement of domestic manufacturing of advanced technology vehicles;
- Achievement of a positive net present value, using reasonable assumptions and taking into account all existing and projected future costs;
- Rationalization of costs, capitalization and capacity with respect to its manufacturing workforce, suppliers and dealerships; and
- A product mix and cost structure that is competitive in the U.S. marketplace.

The UST Loan Agreement also required Old GM to, among other things, use its best efforts to achieve the following restructuring targets:

*Debt Reduction*

- Reduction of its outstanding unsecured public debt by not less than two-thirds through conversion of existing unsecured public debt into equity, debt and/or cash or by other appropriate means.

*Labor Modifications*

- Reduction of the total amount of compensation paid to its U.S. employees so that, by no later than December 31, 2009, the average of such total amount is competitive with the average total amount of such compensation paid to U.S. employees of certain foreign-owned, U.S. domiciled automakers (transplant automakers);
- Elimination of the payment of any compensation or benefits to U.S. employees who have been fired, laid-off, furloughed or idled, other than customary severance pay; and
- Application of work rules for U.S. employees in a manner that is competitive with the work rules for employees of transplant automakers.

*VEBA Modifications*

- Modification of its retiree healthcare obligations arising under the 2008 UAW Settlement Agreement under which responsibility for providing healthcare for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) retirees, their spouses and dependents would permanently shift from Old GM to the New Plan funded by the UAW Retiree Medical Benefits Trust (New VEBA), such that payment or contribution of not less than one-half of the value of each future payment was to be made in the form of Old GM common stock, subject to certain limitations.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The UST Loan Agreement provided that if, by March 31, 2009 or a later date (not to exceed 30 days after March 31, 2009) as determined by the President's Designee (Certification Deadline), the President's Designee had not certified that Old GM had taken all steps necessary to achieve and sustain its long-term viability, international competitiveness and energy efficiency in accordance with the Viability Plan, then the loans and other obligations under the UST Loan Agreement were to become due and payable on the thirtieth day after the Certification Deadline.

On March 30, 2009 the President's Designee determined that the plan was not viable and required substantial revisions. In conjunction with the March 30, 2009 announcement, the administration announced that it would offer Old GM adequate working capital financing for a period of 60 days while it worked with Old GM to develop and implement a more accelerated and aggressive restructuring that would provide a sound long-term foundation. On March 31, 2009 Old GM and the UST agreed to postpone the Certification Deadline to June 1, 2009.

Old GM made further modifications to its Viability Plan in an attempt to satisfy the President's Designee's requirement that it undertake a substantially more accelerated and aggressive restructuring plan (Revised Viability Plan). The following is a summary of significant cost reduction and restructuring actions contemplated by the Revised Viability Plan, the most significant of which included reducing Old GM's indebtedness and VEBA obligations.

*Indebtedness and VEBA obligations*

In April 2009 Old GM commenced exchange offers for certain unsecured notes to reduce its unsecured debt in order to comply with the debt reduction condition of the UST Loan Agreement.

Old GM also commenced discussions with the UST regarding the terms of a potential restructuring of its debt obligations under the UST Loan Agreement, the UST GMAC Loan Agreement (as subsequently defined), and any other debt issued or owed to the UST in connection with those loan agreements pursuant to which the UST would exchange at least 50% of the total outstanding debt Old GM owed to it at June 1, 2009 for Old GM common stock.

In addition, Old GM commenced discussions with the UAW and the VEBA-settlement class representative regarding the terms of potential VEBA modifications.

*Other cost reduction and restructuring actions*

In addition to the efforts to reduce debt and modify the VEBA obligations, the Revised Viability Plan also contemplated the following cost reduction efforts:

- Extended shutdowns of certain North American manufacturing facilities in order to reduce dealer inventory;
- Refocus its resources on four core U.S. brands: Chevrolet, Cadillac, Buick and GMC;
- Acceleration of the resolution for Saab Automobile AB (Saab), HUMMER and Saturn and no planned future investment for Pontiac, which was to be phased out by the end of 2010;
- Acceleration of the reduction in U.S. nameplates to 34 by 2010;
- A reduction in the number of U.S. dealers from 6,246 in 2008 to 3,605 in 2010;
- A reduction in the total number of plants in the U.S. to 34 by the end of 2010 and 31 by 2012; and
- A reduction in the U.S. hourly employment levels from 61,000 in 2008 to 40,000 in 2010 as a result of the nameplate reductions, operational efficiencies and plant capacity reductions.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Old GM had previously announced that it would reduce salaried employment levels on a global basis by 10,000 during 2009 and had instituted several programs to effect reductions in salaried employment levels. Old GM had also negotiated a revised labor agreement with the Canadian Auto Workers Union (CAW) to reduce its hourly labor costs to approximately the level paid to the transplant automakers; however, such agreement was contingent upon receiving longer term financial support for its Canadian operations from the Canadian federal and Ontario provincial governments.

**Chapter 11 Proceedings**

Old GM was not able to complete the cost reduction and restructuring actions in its Revised Viability Plan, including the debt reductions and VEBA modifications, which resulted in extreme liquidity constraints. As a result, on June 1, 2009 Old GM and certain of its direct and indirect subsidiaries filed voluntary petitions for relief under Chapter 11 (Chapter 11 Proceedings) of the U.S. Bankruptcy Code (Bankruptcy Code) in the U.S. Bankruptcy Court for the Southern District of New York (Bankruptcy Court).

In connection with the Chapter 11 Proceedings, Old GM entered into a secured superpriority debtor-in-possession credit agreement with the UST and EDC (DIP Facility) and received additional funding commitments from EDC to support Old GM's Canadian operations.

The following table summarizes the total funding and funding commitments Old GM received from the U.S. and Canadian governments and the additional notes Old GM issued related thereto in the period December 31, 2008 through July 9, 2009 (dollars in millions):

<u>Description of Funding Commitment</u>	<u>Funding and Funding Commitments</u>	<u>Additional Notes Issued(a)</u>	<u>Total Obligation</u>
UST Loan Agreement (b)	\$ 19,761	\$ 1,172	\$ 20,933
EDC funding (c)	6,294	161	6,455
DIP Facility	33,300	2,221	35,521
Total	<u>\$ 59,355</u>	<u>\$ 3,554</u>	<u>\$ 62,909</u>

- (a) Old GM did not receive any proceeds from the issuance of these promissory notes, which were issued as additional compensation to the UST and EDC.
- (b) Includes debt of \$361 million, which the UST loaned to Old GM under the warranty program.
- (c) Includes approximately \$2.4 billion from the EDC Loan Facility received in the period January 1, 2009 through July 9, 2009 and funding commitments of CAD \$4.5 billion (equivalent to \$3.9 billion when entered into) that were immediately converted into our equity. This funding was received on July 15, 2009.

**363 Sale**

On July 10, 2009 we completed the acquisition of substantially all of the assets and assumed certain liabilities of Old GM and certain of its direct and indirect subsidiaries (collectively, the Sellers). The 363 Sale was consummated in accordance with the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, as amended, (Purchase Agreement) between us and the Sellers, and pursuant to the Bankruptcy Court's sale order dated July 5, 2009.

In connection with the 363 Sale, the purchase price paid to Old GM was comprised of:

- A credit bid in an amount equal to the total of: (1) debt of \$19.8 billion under Old GM's UST Loan Agreement, plus notes of \$1.2 billion issued as additional compensation for the UST Loan Agreement, plus interest on such debt Old GM owed as of the closing date of the 363 Sale; and (2) debt of \$33.3 billion under Old GM's DIP Facility, plus notes of \$2.2 billion issued as additional compensation for the DIP Facility, plus interest Old GM owed as of the closing date, less debt of \$8.2 billion owed under the DIP Facility;

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- The UST's return of the warrants Old GM previously issued to it;
- The issuance to MLC of 50 million shares (or 10%) of our common stock and warrants to acquire newly issued shares of our common stock initially exercisable for a total of 91 million shares of our common stock (or 15% on a fully diluted basis); and
- Our assumption of certain specified liabilities of Old GM (including debt of \$7.1 billion owed under the DIP Facility).

Under the Purchase Agreement, we are obligated to issue additional shares of our common stock to MLC (Adjustment Shares) in the event that allowed general unsecured claims against MLC, as estimated by the Bankruptcy Court, exceed \$35.0 billion. The maximum Adjustment Shares equate to 2% (or 10 million shares) of our common stock. The number of Adjustment Shares to be issued is calculated based on the extent to which estimated general unsecured claims exceed \$35.0 billion with the maximum number of Adjustment Shares issued if estimated general unsecured claims total \$42.0 billion or more. We determined that it is probable that general unsecured claims allowed against MLC will ultimately exceed \$35.0 billion by at least \$2.0 billion. In that circumstance, we would be required to issue 2.9 million Adjustment Shares to MLC as an adjustment to the purchase price. At July 10, 2009 we accrued \$113 million in Other liabilities and deferred income taxes related to this contingent obligation.

***Agreements with the UST, UAW Retiree Medical Benefits Trust and Export Development Canada***

On July 10, 2009 we entered into the UST Credit Agreement and assumed debt of \$7.1 billion that Old GM incurred under its DIP Facility (UST Loans). Immediately after entering into the UST Credit Agreement, we made a partial prepayment, reducing the UST Loans principal balance to \$6.7 billion. We also entered into the VEBA Note Agreement and issued a note in the principal amount of \$2.5 billion (VEBA Notes) to the New VEBA. Through our wholly-owned subsidiary General Motors of Canada Limited (GMCL), we also entered into the amended and restated Canadian Loan Agreement with EDC, as a result of which GMCL has a CAD \$1.5 billion (equivalent to \$1.3 billion when entered into) term loan (Canadian Loan).

Refer to Note 18 for additional information on the UST Loans, VEBA Notes and the Canadian Loan.

***Issuance of Common Stock, Preferred Stock and Warrants***

On July 10, 2009 we issued the following securities to the UST, Canada GEN Investment Corporation (formerly 7176384 Canada Inc.), a corporation organized under the laws of Canada (Canada Holdings), the New VEBA and MLC:

*UST*

- 304.1 million shares of our common stock;
- 83.9 million shares of our Series A Fixed Rate Cumulative Perpetual Preferred Stock (Series A Preferred Stock);

*Canada Holdings*

- 58.4 million shares of our common stock;
- 16.1 million shares of Series A Preferred Stock;

*New VEBA*

- 87.5 million shares of our common stock;
- 260.0 million shares of Series A Preferred Stock;
- Warrant to acquire 15.2 million shares of our common stock;

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*MLC*

- 50.0 million shares of our common stock; and
- Two warrants, each to acquire 45.5 million shares of our common stock.

*Preferred Stock*

The shares of Series A Preferred Stock have a liquidation preference of \$25.00 per share and accrue cumulative dividends at 9.0% per annum (payable quarterly on March 15, June 15, September 15 and December 15) that are payable if, as and when declared by our Board of Directors. So long as any share of the Series A Preferred Stock remains outstanding, no dividend or distribution may be declared or paid on our common stock unless all accrued and unpaid dividends have been paid on the Series A Preferred Stock, subject to exceptions, such as dividends on our common stock payable solely in shares of our common stock. On or after December 31, 2014 we may redeem, in whole or in part, the shares of Series A Preferred Stock outstanding, at a redemption price per share equal to \$25.00 per share plus any accrued and unpaid dividends, subject to limited exceptions.

The Series A Preferred Stock is classified as temporary equity because one of the holders, the UST, controls our Board of Directors and could compel us to call the Preferred Stock for redemption in 2014. We are not accreting the Preferred Stock to its redemption amount of \$9.0 billion because we believe it is not probable that the UST will control our Board of Directors in 2014.

*Warrants*

The first tranche of warrants issued to MLC is exercisable at any time prior to July 10, 2016, with an exercise price of \$30.00 per share. The second tranche of warrants issued to MLC is exercisable at any time prior to July 10, 2019, with an exercise price of \$55.00 per share. The warrant issued to the New VEBA is exercisable at any time prior to December 31, 2015, with an exercise price of \$126.92 per share. The number of shares of our common stock underlying each of the warrants issued to MLC and the New VEBA and the per share exercise price are subject to adjustment as a result of certain events, including stock splits, reverse stock splits and stock dividends.

***Additional Modifications to Pension and Other Postretirement Plans Contingent upon the Emergence from Bankruptcy***

We modified the U.S. hourly pension plan, the U.S. executive retirement plan, the U.S. salaried life plan, the non-UAW hourly retiree medical plan and the U.S. hourly life plan. These modifications became effective upon the completion of the 363 Sale. The key modifications were:

- Elimination of the post 65 benefits and capping the pre 65 benefits in the non-UAW hourly retiree medical plan;
- Capping the life benefit for non-UAW retirees and future retirees at \$10,000 in the U.S. hourly life plan;
- Capping the life benefit for existing salaried retirees at \$10,000, reduced the retiree benefit for future salaried retirees and eliminated the executive benefit for the U.S. salaried life plan;
- Elimination of a portion of nonqualified benefits in the U.S. executive retirement plan; and
- Elimination of the flat monthly special lifetime benefit of \$66.70 that was to commence on January 1, 2010 for the U.S. hourly pension plan.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Accounting for the Effects of the Chapter 11 Proceedings and the 363 Sale

*Chapter 11 Proceedings*

Accounting Standards Codification (ASC) 852, “Reorganizations,” (ASC 852) is applicable to entities operating under Chapter 11 of the Bankruptcy Code. ASC 852 generally does not affect the application of U.S. GAAP that we and Old GM followed to prepare the consolidated financial statements, but it does require specific disclosures for transactions and events that were directly related to the Chapter 11 Proceedings and transactions and events that resulted from ongoing operations.

Old GM prepared its consolidated financial statements in accordance with the guidance in ASC 852 in the period June 1, 2009 through July 9, 2009. Revenues, expenses, realized gains and losses, and provisions for losses directly related to the Chapter 11 Proceedings were recorded in Reorganization gains, net. Reorganization gains, net do not constitute an element of operating loss due to their nature and due to the requirement of ASC 852 that they be reported separately. Old GM’s balance sheet prior to the 363 Sale distinguished prepetition liabilities subject to compromise from prepetition liabilities not subject to compromise and from postpetition liabilities. Cash amounts provided by or used in the Chapter 11 Proceedings are separately disclosed in the statement of cash flows.

*Application of Fresh-Start Reporting*

The Bankruptcy Court did not determine a reorganization value in connection with the 363 Sale. Reorganization value is defined as the value of our assets without liabilities. In order to apply fresh-start reporting, ASC 852 requires that total postpetition liabilities and allowed claims be in excess of reorganization value and prepetition stockholders receive less than 50.0% of our common stock. Based on our estimated reorganization value, we determined that on July 10, 2009 both the criteria of ASC 852 were met and, as a result, we applied fresh-start reporting.

Our reorganization value was determined using the sum of:

- Our discounted forecast of expected future cash flows from our business subsequent to the 363 Sale, discounted at rates reflecting perceived business and financial risks;
- The fair value of operating liabilities;
- The fair value of our non-operating assets, primarily our investments in nonconsolidated affiliates and cost method investments; and
- The amount of cash we maintained at July 10, 2009 that we determined to be in excess of the amount necessary to conduct our normal business activities.

The sum of the first, third and fourth bullet items equals our Enterprise value.

Our discounted forecast of expected future cash flows included:

- Forecasted cash flows for the six months ended December 31, 2009 and the years ending 2010 through 2014, for each of Old GM’s former segments (refer to Note 3 for a discussion of our change in segments) and for certain subsidiaries that incorporated:
  - Industry seasonally adjusted annual rate (SAAR) of vehicle sales and our related market share as follows:
    - Worldwide — 59.1 million vehicles and market share of 11.9% in 2010 increasing to 81.0 million vehicles and market share of 12.2% in 2014;

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- North America — 14.2 million vehicles and market share of 17.8% in 2010 increasing to 19.8 million vehicles and decreasing market share of 17.6% in 2014;
- Europe — 16.8 million vehicles and market share of 9.5% in 2010 increasing to 22.5 million vehicles and 10.3% market share in 2014;
- LAAM — 6.1 million vehicles and market share of 18.0% in 2010 increasing to 7.8 million vehicles and market share of 18.4% in 2014;
- AP — 22.0 million vehicles and market share of 8.4% in 2010 increasing to 30.8 million vehicles and market share of 8.6% in 2014;
- Projected product mix, which incorporates the 2010 introductions of the Chevrolet Volt, Chevrolet/Holden Cruze, Cadillac CTS Coupe, Opel/Vauxhall Meriva and Opel/Vauxhall Astra Station Wagon;
- Projected changes in our cost structure due to restructuring initiatives that encompass reduction of hourly and salaried employment levels by approximately 18,000;
- The terms of the 2009 Revised UAW Settlement Agreement, which released us from UAW retiree healthcare claims incurred after December 31, 2009;
- Projected capital spending to support existing and future products, which range from \$4.9 billion in 2010 to \$6.0 billion in 2014; and
- Anticipated changes in global market conditions.
- A terminal value, which was determined using a growth model that applied long-term growth rates ranging from 0.5% to 6.0% and a weighted average long-term growth rate of 2.6% to our projected cash flows beyond 2014. The long-term growth rates were based on our internal projections as well as industry growth prospects; and
- Discount rates that considered various factors including bond yields, risk premiums, and tax rates to determine a weighted-average cost of capital (WACC), which measures a company's cost of debt and equity weighted by the percentage of debt and equity in a company's target capital structure. We used discount rates ranging from 16.5% to 23.5% and a weighted-average rate of 22.8%.

To estimate the value of our investment in nonconsolidated affiliates we used multiple valuation techniques, but we primarily used discounted cash flow analyses. Our excess cash of \$33.8 billion, including Restricted cash of \$21.2 billion, represents cash in excess of the amount necessary to conduct our ongoing day-to-day business activities and to keep them running as a going concern. Refer to Note 14 for additional discussion of Restricted cash.

Our estimate of reorganization value assumes the achievement of the future financial results contemplated in our forecasted cash flows, and there can be no assurance that we will realize that value. The estimates and assumptions used are subject to significant uncertainties, many of which are beyond our control, and there is no assurance that anticipated financial results will be achieved. Assumptions used in our discounted cash flow analysis that have the most significant effect on our estimated reorganization value include:

- Our estimated WACC;
- Our estimated long-term growth rates; and
- Our estimate of industry sales and our market share in each of Old GM's former segments.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table reconciles our enterprise value to our estimated reorganization value and the estimated fair value of our Equity (in millions except per share amounts):

	<u>Successor</u> <u>July 10, 2009</u>
Enterprise value	\$ 36,747
Plus: Fair value of operating liabilities (a)	80,832
Estimated reorganization value (fair value of assets) (b)	117,579
Adjustments to tax and employee benefit-related assets (c)	(6,074)
Goodwill (c)	30,464
Carrying amount of assets	<u>\$ 141,969</u>
Enterprise value	\$ 36,747
Less: Fair value of debt	(15,694)
Less: Fair value of warrants issued to MLC (additional paid-in-capital)	(2,405)
Less: Fair value of liability for Adjustment Shares	(113)
Less: Fair value of noncontrolling interests	(408)
Less: Fair value of Series A Preferred Stock (d)	(1,741)
Fair value of common equity (common stock and additional paid-in capital)	<u>\$ 16,386</u>
Common shares outstanding (d)	412.5
Per share value	\$ 39.72

- (a) Operating liabilities are our total liabilities excluding the liabilities listed in the reconciliation above of our enterprise value to the fair value of our common equity.
- (b) Reorganization value does not include assets with a carrying amount of \$1.8 billion and a fair value of \$2.0 billion at July 9, 2009 that MLC retained.
- (c) The application of fresh-start reporting resulted in the recognition of goodwill. When applying fresh-start reporting, certain accounts, primarily employee benefit and income tax related, were recorded at amounts determined under specific U.S. GAAP rather than at fair value and the difference between the U.S. GAAP and fair value amounts gives rise to goodwill, which is a residual. Further, we recorded valuation allowances against certain of our deferred tax assets, which under ASC 852 also resulted in goodwill. Our employee related obligations were recorded in accordance with ASC 712 and ASC 715, and deferred income taxes were recorded in accordance with ASC 740.
- (d) The 260 million shares of Series A Preferred Stock, 88 million shares of our common stock, and warrant to acquire 15.2 million shares of our common stock issued to the New VEBA on July 10, 2009 were not considered outstanding until the UAW retiree medical plan was settled on December 31, 2009. The fair value of these instruments was included in the liability recognized at July 10, 2009 for this plan. The common shares issued to the New VEBA are excluded from common shares outstanding at July 10, 2009. Refer to Note 19 for a discussion of the termination of our UAW hourly retiree medical plan and Mitigation Plan and the resulting payment terms to the New VEBA.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**
**Effect of 363 Sale Transaction and Application of Fresh-Start Reporting**

The following table summarizes the adjustments to Old GM's consolidated balance sheet as a result of the 363 Sale and the application of fresh-start reporting and presents our consolidated balance sheet at July 10, 2009 (dollars in millions):

	Predecessor July 9, 2009	Reorganization via 363 Sale Adjustments	Fresh-Start Reporting Adjustments	Successor after Reorganization via 363 Sale and Fresh- Start Reporting Adjustments July 10, 2009
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash and cash equivalents	\$ 19,054	\$ (41)	\$ —	\$ 19,013
Marketable securities	139	—	—	139
Total cash and marketable securities	19,193	(41)	—	19,152
Restricted cash and marketable securities	20,290	(1,175)	—	19,115
Accounts and notes receivable, net	8,396	3,859	(79)	12,176
Inventories	9,802	(140)	(66)	9,596
Equipment on operating leases, net	3,754	2	90	3,846
Other current assets and deferred income taxes	1,874	75	69	2,018
Total current assets	63,309	2,580	14	65,903
<b>Non-Current Assets</b>				
Restricted cash and marketable securities	1,401	(144)	—	1,257
Equity in net assets of nonconsolidated affiliates	1,972	4	3,822	5,798
Equipment on operating leases, net	23	—	3	26
Property, net	36,216	(137)	(17,579)	18,500
Goodwill	—	—	30,464	30,464
Intangible assets, net	210	—	15,864	16,074
Deferred income taxes	79	550	43	672
Prepaid pension	121	—	(24)	97
Other assets	1,244	(12)	1,946	3,178
Total non-current assets	41,266	261	34,539	76,066
<b>Total Assets</b>	<b>\$ 104,575</b>	<b>\$ 2,841</b>	<b>\$ 34,553</b>	<b>\$ 141,969</b>
<b>LIABILITIES AND EQUITY (DEFICIT)</b>				
<b>Current Liabilities</b>				
Accounts payable (principally trade)	\$ 13,067	\$ (42)	\$ 42	\$ 13,067
Short-term debt and current portion of long-term debt	43,412	(30,179)	(56)	13,177
Postretirement benefits other than pensions	187	1,645	124	1,956
Accrued expenses	25,607	(81)	(1,132)	24,394
Total current liabilities	82,273	(28,657)	(1,022)	52,594
<b>Non-Current Liabilities</b>				
Long-term debt	4,982	(977)	(1,488)	2,517
Postretirement benefits other than pensions	3,954	14,137	310	18,401
Pensions	15,434	14,432	2,113	31,979
Liabilities subject to compromise	92,611	(92,611)	—	—
Other liabilities and deferred income taxes	14,449	278	811	15,538
Total non-current liabilities	131,430	(64,741)	1,746	68,435
<b>Total Liabilities</b>	<b>213,703</b>	<b>(93,398)</b>	<b>724</b>	<b>121,029</b>
Preferred stock	—	1,741	—	1,741
<b>Equity (Deficit)</b>				
<b>Old GM</b>				
Preferred stock	—	—	—	—
Preference stock	—	—	—	—
Common stock	1,018	—	(1,018)	—
Capital surplus (principally additional paid-in capital)	16,494	—	(16,494)	—
<b>General Motors Company</b>				
Common stock	—	4	—	4
Capital surplus (principally additional paid-in capital)	—	18,787	—	18,787
Retained earnings (Accumulated deficit)	(91,602)	63,492	28,110	—
Accumulated other comprehensive income (loss)	(35,370)	12,295	23,075	—
Total stockholders' equity (deficit)	(109,460)	94,578	33,673	18,791
Noncontrolling interests	332	(80)	156	408
Total equity (deficit)	(109,128)	94,498	33,829	19,199
<b>Total Liabilities and Equity (Deficit)</b>	<b>\$ 104,575</b>	<b>\$ 2,841</b>	<b>\$ 34,553</b>	<b>\$ 141,969</b>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**
**Reorganization Via 363 Sale Adjustments**

The following table summarizes the reorganization adjustments previously discussed including the liabilities that were extinguished or reclassified from liabilities subject to compromise as part of the 363 Sale (dollars in millions):

	UST(a)	Canada Holdings(b)	New VEBA(c)	Pension and OPEB(d)	MLC(e)	Other(f)	Total
Assets MLC retained, net	\$ —	\$ —	\$ —	\$ —	\$ 1,797	\$ —	\$ 1,797
Accounts payable (principally trade)	—	—	—	—	(42)	—	(42)
Short-term debt and current portion of long-term debt extinguished	(31,294)	(5,972)	—	—	(1,278)	—	(38,544)
Short-term debt and current portion of long-term debt assumed	7,073	1,292	—	—	—	—	8,365
Net reduction to short-term debt and current portion of long-term debt	(24,221)	(4,680)	—	—	(1,278)	—	(30,179)
Postretirement benefits other than pensions, current	—	—	1,409	236	—	—	1,645
Accrued expenses	(54)	—	—	219	(310)	64	(81)
Total current liabilities	(24,275)	(4,680)	1,409	455	(1,630)	64	(28,657)
Long-term debt extinguished	—	—	—	—	(977)	—	(977)
Postretirement benefits other than pensions, non-current	—	—	10,547	3,590	—	—	14,137
Pensions	—	—	—	14,432	—	—	14,432
Liabilities subject to compromise	(20,824)	—	(19,687)	(23,453)	(28,553)	(94)	(92,611)
Other liabilities and deferred income taxes	—	—	—	391	(184)	71	278
Total liabilities	(45,099)	(4,680)	(7,731)	(4,585)	(31,344)	41	(93,398)
Accumulated other comprehensive income balances relating to entities MLC retained	—	—	—	—	(21)	—	(21)
Additional EDC funding	—	(3,887)	—	—	—	—	(3,887)
Fair value of preferred stock issued	1,462	279	—	—	—	—	1,741
Fair value of common stock issued	12,076	2,324	—	—	1,986	—	16,386
Fair value of warrants	—	—	—	—	2,405	—	2,405
Release of valuation allowances and other tax adjustments	—	—	—	—	—	(751)	(751)
Reorganization gain	(31,561)	(5,964)	(7,731)	(4,585)	(25,177)	(710)	(75,728)
Amounts attributable to noncontrolling interests	—	—	—	—	(80)	—	(80)
Amounts recorded in Accumulated other comprehensive income as part of Reorganization via 363 Sale adjustments	—	—	7,731	4,585	—	—	12,316
Total retained earnings adjustment	<u>\$ (31,561)</u>	<u>\$ (5,964)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ (25,257)</u>	<u>\$ (710)</u>	<u>\$ (63,492)</u>

(a) Liabilities owed to the UST under the UST Loan Agreement of \$20.6 billion, with accrued interest of \$251 million, and under the DIP Facility of \$30.9 billion with accrued interest of \$54 million and borrowings related to the warranty program of \$361 million were extinguished in connection with the 363 Sale through the assumption of the UST Loans of \$7.1 billion and the issuance of 304 million shares of our common stock with a fair value of \$12.1 billion and 84 million shares of Series A Preferred Stock with a fair value of \$1.5 billion.

(b) Liabilities owed to Canada Holdings under the EDC Loan Facility of \$2.6 billion and under the DIP Facility of \$3.4 billion were extinguished in connection with the 363 Sale through the assumption of the Canadian Loan of CAD \$1.5 billion (equivalent of

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

\$1.3 billion when entered into) and the issuance of 58 million shares of our common stock with a fair value of \$2.3 billion and 16 million shares of Series A Preferred Stock with a fair value of \$279 million. In addition, we recorded an increase in Accounts and notes receivable, net of \$3.9 billion at July 10, 2010 for amounts to be received from the EDC in exchange for the equity Canada Holdings received in connection with the 363 Sale.

- (c) As a result of modifications to the UAW hourly retiree medical plan that became effective upon the 363 Sale, we recorded a reorganization gain of \$7.7 billion that represented the difference between the carrying amount of our \$19.7 billion plan obligation at July 9, 2009 and the July 10, 2009 actuarially determined value of \$12.0 billion for our modified plan based on the revised terms of the 2009 Revised UAW Settlement Agreement. Our obligation to the UAW hourly retiree medical plan was settled on December 31, 2009. Prior to the December 31, 2009 settlement, the VEBA Notes, Series A Preferred Stock, common stock and warrants contributed to the New VEBA were not considered outstanding. Refer to Note 19 for additional information on the 2009 Revised UAW Settlement Agreement.
- (d) As a result of modifications to benefit plans that became effective upon the 363 Sale, we recorded a reorganization gain of \$4.6 billion, which represented the difference between the carrying amount of our obligations under certain plans at July 9, 2009, and our new actuarially determined obligations at July 10, 2009. Major changes include:
- For the non-UAW hourly retiree health care plan, we recorded a \$2.7 billion gain resulting from elimination of post 65 benefits and placing a cap on pre 65 benefits;
  - For retiree life insurance we recorded a \$923 million gain, resulting from capping benefits at \$10,000 for non-UAW hourly retirees and future retirees, capping benefits at \$10,000 for existing salaried retirees, reducing benefits for future salaried retirees, and elimination of executive benefits;
  - For the U.S. supplemental executive retirement plan, we recorded a \$221 million gain from the elimination of a portion of nonqualified benefits; and
  - For the U.S. hourly defined benefit pension plan, we recorded a \$675 million gain, representing the net of a \$3.3 billion obligation decrease resulting from the elimination of the flat monthly special lifetime benefit that was to commence on January 1, 2010, offset by an obligation increase of \$2.6 billion from a discount rate decrease from 6.25% to 5.83% and other assumption changes.
- (e) Represents the net liabilities MLC retained in connection with the 363 Sale, primarily consisting of Old GM's unsecured debt and amounts owed to the UST under the DIP Facility of \$1.2 billion. These net liabilities were settled in exchange for assets retained by MLC with a carrying amount of \$1.8 billion and a fair value of \$2.0 billion, 50 million shares of our common stock with a fair value of \$2.0 billion, warrants to acquire an additional 91 million shares of our common stock with a fair value of \$2.4 billion and the right to contingently receive the Adjustment Shares. We increased Other liabilities and deferred income taxes to reflect the estimated fair value of \$113 million for our obligation to issue the Adjustment Shares to MLC.

The following table summarizes the carrying amount of the assets MLC retained (dollars in millions):

	<u>Predecessor</u> <u>Carrying amount at</u> <u>July 9, 2009</u>
Cash and cash equivalents	\$ 41
Restricted cash and marketable securities, current	1,175
Accounts and notes receivable, net	28
Inventories	140
Equipment on operating leases, net	(2)
Other current assets and deferred income taxes	46
Restricted cash and marketable securities, non-current	144
Equity in net assets of nonconsolidated affiliates	(4)
Property, net	137
Deferred income taxes	80
Other assets, non-current	12
Total assets	<u>\$ 1,797</u>

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- (f) We assumed \$94 million of certain employee benefit obligations that were included in Liabilities subject to compromise that are now included in Accrued expenses (\$64 million) and Other liabilities (\$30 million). These primarily relate to postemployment benefits not modified as a part of the 363 Sale. In addition, in connection with the 363 Sale, we concluded that it was more likely than not that certain net deferred tax assets, primarily in Brazil, will be realized. Therefore, we reversed the existing valuation allowances related to such deferred tax assets resulting in an increase of \$121 million in Other current assets and an increase of \$630 million in Deferred income taxes, non-current. To record other tax effects of the 363 Sale, we recorded an increase to Other liabilities of \$41 million. We recorded a net reorganization gain of \$710 million in Income tax expense (benefit) as a result of these adjustments.

*Fresh-Start Reporting Adjustments*

In applying fresh-start reporting at July 10, 2009, which generally follows the provisions of ASC 805, "Business Combinations" (ASC 805), we recorded the assets acquired and the liabilities assumed from Old GM at fair value except for deferred income taxes and certain liabilities associated with employee benefits. These adjustments are final and no determinations of fair value are considered provisional. The significant assumptions related to the valuations of our assets and liabilities recorded in connection with fresh-start reporting are subsequently discussed.

*Accounts and notes receivable*

We recorded Accounts and notes receivable at their fair value of \$12.2 billion, which resulted in a decrease of \$79 million.

*Inventory*

We recorded Inventory at its fair value of \$9.6 billion, which was determined as follows:

- Finished goods were determined based on the estimated selling price of finished goods on hand less costs to sell including disposal and holding period costs, and a reasonable profit margin on the selling and disposal effort for each specific category of finished goods being evaluated. Finished goods primarily include new vehicles, off-lease and company vehicles and service parts and accessories;
- Work in process was determined based on the estimated selling price once completed less total costs to complete the manufacturing process, costs to sell including disposal and holding period costs, a reasonable profit margin on the remaining manufacturing, selling and disposal effort; and
- Raw materials were determined based on current replacement cost.

Compared to amounts recorded by Old GM, finished goods increased by \$622 million, including elimination of Old GM's LIFO reserve of \$1.1 billion, work in process decreased by \$555 million, raw materials decreased by \$39 million and sundry items with nominal individual value decreased by \$94 million.

*Equipment on Operating Leases, current and non-current*

We recorded Equipment on operating leases, current and non-current at its fair value of \$3.9 billion, which was determined as follows: (1) automotive leases to daily rental car companies were determined based on the market value of comparable vehicles; and (2) automotive retail leases were determined by discounting the expected future cash flows generated by the automotive retail leases including the estimated residual value of the vehicles when sold. Equipment on operating leases, current and non-current increased from that recorded by Old GM by \$93 million as a result of our determination of fair value.

*Other Current Assets and Deferred Income Taxes*

We recorded Other current assets which included prepaid assets and other current assets at their fair value of \$1.5 billion and deferred income taxes of \$487 million. These amounts are \$69 million higher than the amounts recorded by Old GM.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Equity in Net Assets of Nonconsolidated Affiliates*

We recorded Equity in net assets of nonconsolidated affiliates at its fair value of \$5.8 billion. Fair value of these investments was determined using discounted cash flow analyses, which included the following assumptions and estimates:

- Forecasted cash flows for the seven months ended December 31, 2009 and the years ending 2010 through 2013, which incorporated projected sales volumes, product mixes, projected capital spending to support existing and future products, research and development of new products and technologies and anticipated changes in local market conditions;
- A terminal value, which was calculated by assuming a maintainable level of after-tax debt-free cash flow and multiplying it by a capitalization factor that reflected the investor's WACC adjusted for the estimated long-term perpetual growth rate;
- A discount rate of 13.4% that considered various factors including risk premiums and tax rates to determine the investor's WACC given the assumed capital structure of comparable companies; and
- The fair value of investment property and investments in affiliates was determined using market comparables.

Equity in net assets of nonconsolidated affiliates was higher than Old GM's by \$3.8 billion as a result of our determination of fair value.

*Property*

We recorded Property, which includes land, buildings and land improvements, machinery and equipment, construction in progress and special tools, at its fair value of \$18.5 billion. Fair value was based on the highest and best use of specific properties. To determine fair value we considered and applied three approaches:

- The market or sales comparison approach which relies upon recent sales or offerings of similar assets on the market to arrive at a probable selling price. Certain adjustments were made to reconcile differences in attributes between the comparable sales and the appraised assets. This method was utilized for certain assets related to land, buildings and land improvements and information technology.
- The cost approach which considers the amount required to construct or purchase a new asset of equal utility at current prices, with adjustments in value for physical deterioration, functional obsolescence and economic obsolescence. This method was primarily utilized for certain assets related to land, buildings and land improvements, leasehold interests, and the majority of our machinery and equipment and tooling. Economic obsolescence represents a loss in value due to unfavorable external conditions such as the economics of our industry and was a factor in establishing fair value. Our machinery, equipment and special tools amounts, determined under the cost approach, were adjusted for economic obsolescence. Due to the downturn in the automotive industry, significant excess capacity exists and the application of the cost approach generally requires the replacement cost of an asset to be adjusted for physical deterioration, and functional and economic obsolescence. We estimated economic obsolescence as the difference between the discounted cash flows expected to be realized from our utilization of the assets as a group, compared to the initial estimate of value from the cost approach method. We did not reduce any fixed asset below its liquidation in place value as a result of economic obsolescence; however the effects of economic obsolescence caused some of our fixed assets to be recorded at their liquidation in place values.
- The income approach which considers value in relation to the present worth of future benefits derived from ownership, usually measured through the capitalization of a specific level of income which can be derived from the subject asset. This method assumed fair value could not exceed the present value of the cash flows the assets generate discounted at a risk related rate of return commensurate with the level of risk inherent in the subject asset. This method was used to value certain assets related to buildings and improvements, leasehold interest, machinery and equipment and tooling.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes the components of Property as a result of the application of fresh-start reporting at July 10, 2009 and Property, net at July 9, 2009:

	<u>Successor</u> <u>July 10,</u> <u>2009</u>	<u>Predecessor</u> <u>July 9,</u> <u>2009</u>
Land	\$ 2,524	\$ 1,040
Buildings and land improvements, net	3,731	8,490
Machinery and equipment, net	5,915	13,597
Construction in progress	1,838	2,307
Real estate, plants, and equipment, net	14,008	25,434
Special tools, net	4,492	10,782
Total property, net	<u>\$18,500</u>	<u>\$ 36,216</u>

*Goodwill*

We recorded Goodwill of \$30.5 billion upon application of fresh-start reporting. When applying fresh-start reporting, certain accounts, primarily employee benefit and income tax related, were recorded at amounts determined under specific U.S. GAAP rather than fair value and the difference between the U.S. GAAP and fair value amounts gives rise to goodwill, which is a residual. Further, we recorded valuation allowances against certain of our deferred tax assets, which under ASC 852 also resulted in goodwill. Our employee benefit related accounts were recorded in accordance with ASC 712 and ASC 715 and deferred income taxes were recorded in accordance with ASC 740. There was no goodwill on an economic basis based on the fair value of our equity, liabilities and identifiable assets. None of the goodwill from this transaction is deductible for tax purposes.

*Intangible assets*

We recorded Intangible assets of \$16.1 billion at their fair values. The following is a summary of the approaches used to determine the fair value of our significant intangible assets:

- We recorded \$7.9 billion for the fair value of technology. The relief from royalty method was used to calculate the \$7.7 billion fair value of developed technology. The significant assumptions used included:
  - Forecasted revenue for each technology category by Old GM's former segments;
  - Royalty rates based on licensing arrangements for similar technologies and obsolescence factors by technology category;
  - Discount rates ranging from 24.0% to 26.0% based on our WACC and adjusted for perceived business risks related to these developed technologies; and
  - Estimated economic lives, which ranged from 7 to twenty years.
- The excess earnings method was used to determine the fair value of in-process research and development of \$175 million. The significant assumptions used in this approach included:
  - Forecasted revenue for certain technologies not yet proven to be commercially feasible;
  - The probability and cost of obtaining commercial feasibility;
  - Discount rates ranging from 4.2% (when the probability of obtaining commercial feasibility was considered elsewhere in the model) to 36.0%; and
  - Estimated economic lives ranging from approximately 10 to 20 years.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- The relief from royalty method was also used to calculate the fair value of brand names of \$5.5 billion. The significant assumptions used in this method included:
  - Forecasted revenue for each brand name by Old GM's former segments;
  - Royalty rates based on licensing arrangements for the use of brands and trademarks in the automotive industry and related industries;
  - Discount rates ranging from 22.8% to 27.0% based on our WACC and adjusted for perceived business risks related to these intangible assets; and
  - Indefinite economic lives for our ongoing brands.
- Our most significant brands included Buick, Cadillac, Chevrolet, GMC, Opel/Vauxhall and OnStar. We also recorded defensive intangible assets associated with brands we eliminated, which included Pontiac, Saturn and Oldsmobile.
- A cost approach was used to calculate the fair value of our dealer networks and customer relationships of \$2.1 billion. The estimated fair value of our dealer networks of \$1.6 billion was determined by multiplying our estimated costs to recreate our dealer networks by our estimate of an optimal number of dealers. An income approach was used to calculate the fair value of our customer relationships of \$508 million. The significant assumptions used in this approach included:
  - Forecasted revenue;
  - Customer retention rates;
  - Profit margins; and
  - A discount rate of 20.8% based on an appropriate WACC and adjusted for perceived business risks related to these customer relationships.
- We recorded other intangible assets of \$560 million primarily related to existing contracts, including leasehold improvements, that were favorable relative to available market terms.

The following table summarizes the components of our intangible assets and their weighted-average amortization periods.

	<b>Weighted-Average Amortization Period (years)</b>	<b>Recorded Value</b>
Technology and related intellectual property	5	\$ 7,889
Brands	38	5,476
Dealer network and customer relationships	21	2,149
Favorable contracts	28	543
Other intangible assets	3	17
Total intangible assets		<u>\$ 16,074</u>

*Deferred Income Taxes, non-current*

We recorded Deferred income taxes, non-current of \$672 million which was an increase of \$43 million compared to that recorded by Old GM.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Other Assets, non-current*

We recorded Other assets, non-current of \$3.2 billion. Other assets, non-current differed from Old GM's primarily related to: (1) an increase of \$1.3 billion and \$629 million in the value of our investments in GMAC common stock and preferred stock; (2) an increase of \$175 million in the value of our investment in Saab; partially offset by (3) an elimination of \$191 million for certain prepaid rent balances and other adjustments.

We calculated the fair value of our investment in GMAC common stock of \$1.3 billion using a market multiple sum-of-the-parts methodology, a market approach. This approach considered the average price/tangible book value multiples of companies deemed comparable to each of GMAC's Auto Finance, Commercial Finance and Insurance operations in determining the fair value of each of these operations, which were then aggregated to determine GMAC's overall fair value. The significant inputs used in our fair value analysis were as follows:

- GMAC's June 30, 2009 financial statements, as well as the financial statements of comparable companies in the Auto Finance, Commercial Finance and Insurance industries;
- Expected performance of GMAC, as well as our view on its ability to access capital markets; and
- The value of GMAC's mortgage operations, taking into consideration the continuing challenges in the housing markets and mortgage industry, and its need for additional liquidity to maintain business operations.

We calculated the fair value of our investment in GMAC preferred stock of \$665 million using a discounted cash flow approach. The present value of the cash flows was determined using assumptions regarding the expected receipt of dividends on GMAC preferred stock and the expected call date. The discount rate of 16.9% was determined based on yields of similar GMAC securities.

*Accounts Payable*

We recorded Accounts payable at its fair value of \$13.1 billion.

*Debt*

We recorded short-term debt, current portion of long-term debt and long-term debt at their total fair value of \$15.7 billion, which was calculated using a discounted cash flow methodology using our implied credit rating of CCC for most of our debt instruments (our credit rating was not observable as a result of the Chapter 11 Proceedings), adjusted where appropriate for any security interests. For the UST Loans and the Canadian Loan, carrying amount was determined to approximate fair value because these loans were fully collateralized by the restricted cash placed in escrow and were entered into on July 10, 2009 at market terms. Short-term debt, current portion of long-term debt and long-term debt decreased \$1.5 billion as a result of our calculation of fair value. Refer to Note 14 for additional information on the escrow arrangement.

*Pensions, Postretirement Benefits Other than Pensions, current and non-current, and Prepaid Pensions*

We recorded Pensions of \$32.0 billion and Prepaid pensions of \$97 million, which includes the actuarial measurement of those benefit plans that were not modified in connection with the 363 Sale. As a result of these actuarial measurements, our recorded value was \$2.1 billion higher than Old GM's for Pensions and Prepaid pensions for those plans not modified in connection with the 363 Sale. When the pension plans were measured at July 10, 2009, the weighted-average return on assets was 8.5% and 8.0% for U.S. and Non-U.S. plans. The weighted-average discount rate utilized to measure the plans at July 10, 2009 was 5.9% and 5.8% for U.S. and Non-U.S. plans.

We also recorded Postretirement benefits other than pensions, current and non-current of \$20.4 billion, which is an increase of \$434 million compared to the amounts recorded by Old GM for those plans not modified in connection with the 363 Sale. When the other non-UAW postretirement benefit plans were measured at July 10, 2009, the weighted average discount rate used was 6.0% and 5.5%

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

for the U.S. and Non-U.S. plans. For the U.S. there are no significant uncapped healthcare plans remaining at December 31, 2009, and therefore, the healthcare cost trend rate does not have a significant effect on our U.S. plans. For Non-U.S. plans the initial healthcare cost trend used was 5.4% and the ultimate healthcare cost trend rate was 3.3% with 8 years to the ultimate trend rate.

*Accrued Expenses, Other Liabilities, and Deferred Income Taxes, current and non-current*

We recorded Accrued expenses of \$24.4 billion and Other liabilities and deferred income taxes of \$15.5 billion. Accrued expenses and Other liabilities differed from those of Old GM primarily relating to:

- \$1.2 billion less in deferred revenue, the fair value of which was determined based on our remaining performance obligations considering future costs associated with these obligations;
- \$349 million decrease in warranty liability, the fair value of which was determined by discounting the forecasted future cash flows based on historical claims experience using rates ranging from 1.4% in 2009 to 4.3% in 2017;
- A decrease of \$179 million to lease-related obligations;
- A decrease of \$162 million related to certain customer deposits;
- \$582 million increase in deferred income taxes; and
- \$980 million of recorded unfavorable contractual obligations, primarily related to the Delphi-GM Settlement Agreements. The fair value of the unfavorable contractual obligations was determined by discounting forecasted cash flows representing the unfavorable portions of contractual obligations at our implied credit rating. Refer to Note 21 for further information on the Delphi-GM Settlement Agreements.

*Equity (Deficit) and Preferred Stock*

The changes to Equity (Deficit) reflect our recapitalization, the elimination of Old GM's historical equity, the issuance of our common stock, preferred stock and warrants to the UST, Canada Holdings and MLC at fair value, and the application of fresh-start reporting.

*Noncontrolling Interests*

We recorded the fair value of our Noncontrolling interests at \$408 million which was \$156 million higher than Old GM.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**363 Sale and Fresh-Start Reporting Adjustments**

The following table summarizes Old GM's Reorganization gains, net, arising from the 363 Sale and fresh-start reporting that primarily resulted from the adjustments previously discussed (dollars in millions):

	<u>Predecessor</u> <u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>
Change in net assets resulting from the application of fresh-start reporting	\$ 33,829
Fair value of New GM's Series A Preferred Stock, common shares and warrants issued in 363 Sale	20,532
Gain from the conversion of debt owed to UST to equity	31,561
Gain from the conversion of debt owed to EDC to equity	5,964
Gain from the modification and measurement of our VEBA obligation	7,731
Gain from the modification and measurement of other employee benefit plans	4,585
Gain from the settlement of net liabilities retained by MLC via the 363 Sale	25,177
Income tax benefit for release of valuation allowances and other tax adjustments	710
Other 363 Sale adjustments	(21)
Total adjustment from 363 Sale Transaction and fresh-start reporting	130,068
Adjustment recorded to Income tax benefit for release of valuation allowances and other tax adjustments	(710)
Other losses, net	(1,203)
Total Reorganization gains, net	<u>\$ 128,155</u>

Other losses, net of \$1.2 billion primarily relate to costs incurred during our Chapter 11 Proceedings, including:

- Losses of \$958 million on extinguishments of debt resulting from Old GM's repayment of its secured revolving credit facility, its U.S. term loan, and its secured credit facility;
- Losses of \$398 million on contract rejections, settlements of claims and other lease terminations;
- Professional fees of \$38 million; and
- Gain of \$247 million related to the release of Accumulated other comprehensive income (loss) associated with previously designated derivative financial instruments.

**Note 3. Basis of Presentation****Principles of Consolidation**

Our consolidated financial statements include our accounts and those of our subsidiaries that we control due to ownership of a majority voting interest. In addition, we continually evaluate our involvement with variable interest entities (VIEs) to determine whether we have variable interests and are the primary beneficiary of the VIE. When this criteria is met, we are required to consolidate the VIE. Our share of earnings or losses of nonconsolidated affiliates is included in our consolidated operating results using the equity method of accounting when we are able to exercise significant influence over the operating and financial decisions of the affiliate. We use the cost method of accounting if we are not able to exercise significant influence over the operating and financial decisions of the affiliate. All intercompany balances and transactions have been eliminated in consolidation. Old GM utilized the same principles of consolidation in its consolidated financial statements.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Use of Estimates in the Preparation of the Financial Statements**

The consolidated financial statements are prepared in conformity with U.S. GAAP, which requires the use of estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses in the periods presented. We believe that the accounting estimates employed are appropriate and the resulting balances are reasonable; however, due to the inherent uncertainties in making estimates actual results could differ from the original estimates, requiring adjustments to these balances in future periods.

**Change in Segments**

Old GM's operations included four segments consisting of GMNA, GME, GM Latin America/Africa/Middle-East and GM Asia Pacific. In order to streamline our business and speed our decision making processes, we have revised our operational structure, combining Old GM's Latin America/Africa/Middle East and Asia Pacific segments into one segment, GMIO. We have revised the segment presentation for all periods presented.

**Note 4. Significant Accounting Policies**

In connection with our application of fresh-start reporting, we established a set of accounting policies which, unless otherwise indicated, utilized the accounting policies of our predecessor entity, Old GM.

**Revenue Recognition**

Net sales and revenue are primarily comprised of revenue generated from the sale of vehicles. Vehicle sales are recorded when title and risks and rewards of ownership have passed, which is generally when a vehicle is released to the carrier responsible for transporting it to a dealer and when collectability is reasonably assured. Provisions for recurring dealer and customer sales and leasing incentives, consisting of allowances and rebates, are recorded as reductions to Net sales and revenue at the time of vehicle sales. All other incentives, allowances, and rebates related to vehicles previously sold are recorded as reductions to Net sales and revenue when announced.

Vehicle sales to daily rental car companies with guaranteed repurchase obligations are accounted for as operating leases. Estimated lease revenue is recorded ratably over the term of the lease based on the difference between net sales proceeds and the guaranteed repurchase amount. The difference between the cost of the vehicle and estimated residual value is depreciated on a straight-line basis over the estimated term of the lease agreement.

Sales of parts and accessories to GM dealers are recorded when the goods arrive at the dealership and when collectability is reasonably assured. Sales of aftermarket products and powertrain components are recorded when title and risks and rewards of ownership have passed, which is generally when the product is released to the carrier responsible for transporting them to the customer and when collectability is reasonably assured.

Revenue from OnStar, comprised of customer subscriptions related to comprehensive in-vehicle security, communications and diagnostic systems in our vehicles, is deferred and recorded on a straight-line basis over the subscription period. A one-year OnStar subscription is offered as part of the sale or lease of a new vehicle. The fair value of the subscription is recorded as deferred revenue when a vehicle is sold, and amortized over the one-year subscription period. Prepaid minutes for the Hands-Free Calling system are deferred and recorded on a straight-line basis over the life of the contract.

Payments received from banks for credit card programs in which there is a redemption liability are recorded on a straight-line basis over the estimated period of time the customer will accumulate and redeem their rebate points. This time period is estimated to be 60 months for the majority of the credit card programs. This redemption period is reviewed periodically to determine if it remains appropriate. The redemption liability anticipated to be paid to the dealer is estimated and accrued at the time specific vehicles are sold to the dealer. The redemption cost is classified as a reduction of Net sales and revenue.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Inventory**

Inventories are stated at the lower of cost or market (LCM). In connection with fresh-start reporting, we elected to use the FIFO costing method for all inventories previously accounted for by Old GM using the LIFO costing method. Old GM determined cost using the LIFO costing method for 21% of its inventories at December 31, 2008 and used the FIFO costing method or average cost method for all other inventories.

Inventory is analyzed and the carrying amount is adjusted downward if it is determined to be carried above market. Market, which represents selling price less cost to sell, considers general market and economic conditions, periodic reviews of current profitability of vehicles, and the effect of current incentive offers at the balance sheet date. Off-lease and other vehicles are compared to current auction sales proceeds less disposal and warranty costs. Productive material, work in process, supplies and service parts are reviewed to determine if inventory quantities are in excess of forecasted usage, or if they have become obsolete. If the estimated market value is less than cost, as determined by the inventory costing methodology, the carrying amount of the affected inventory is reduced to market value.

**Advertising**

Advertising costs of \$2.1 billion in the period July 10, 2009 through December 31, 2009, \$1.5 billion in the period January 1, 2009 through July 9, 2009, \$5.3 billion in the year ended 2008 and \$5.5 billion in the year ended 2007 were expensed as incurred.

**Research and Development Expenditures**

Research and development expenditures of \$3.0 billion in the period July 10, 2009 through December 31, 2009, \$3.0 billion in the period January 1, 2009 through July 9, 2009, \$8.0 billion in the year ended 2008 and \$8.1 billion in the year ended 2007 were expensed as incurred.

**Property, net**

Property, plants and equipment, including internal use software, is recorded at cost. Major improvements that extend the useful life or add functionality of property are capitalized. Expenditures for repairs and maintenance are charged to expense as incurred. We depreciate all assets using the straight-line method. Leasehold improvements are amortized over the period of lease or the life of the asset, whichever is shorter. For assets placed in service before January 2001, Old GM used accelerated depreciation methods. For assets placed in service after January 2001, Old GM used the straight-line method. Upon retirement or disposition of property, plants and equipment, the cost and related accumulated depreciation are removed from the accounts and any resulting gain or loss is recorded in earnings. Impairment charges related to Property, net are recorded in Cost of sales. Refer to Notes 11 and 25 for additional information on property and impairments.

**Special Tools**

Special tools represent product-specific powertrain and non-powertrain related tools, dies, molds and other items used in the manufacturing process of vehicles. Expenditures for special tools are capitalized. In connection with our application of fresh-start reporting, we began amortizing all non-powertrain special tools using an accelerated amortization method. Powertrain special tools are amortized over their estimated useful lives using the straight-line method. Old GM amortized all special tools using the straight-line method over their estimated useful lives. Refer to Note 11 for additional information on special tools.

**Goodwill**

Goodwill arises from the application of fresh-start reporting and other business acquisitions. Goodwill is tested for impairment for all reporting units on an annual basis during the fourth quarter, or more frequently, if events occur or circumstances change that would warrant such a review. An impairment charge is recorded for the amount, if any, by which the carrying amount of goodwill exceeds its

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

implied fair value. Fair values of reporting units are established using a discounted cash flow method. Our reporting units are GMNA, GME, and various components within the GMIO segment. Where available and as appropriate, comparative market multiples are used to corroborate the results of the discounted cash flow method. Refer to Note 25 for additional information on goodwill impairments.

**Intangible Assets, net**

Intangible assets, excluding Goodwill, primarily include brand names (including defensive intangibles associated with discontinued brands), technology and intellectual property, customer relationships, dealer network and favorable contracts.

All intangible assets are amortized on a straight-line or an accelerated method of amortization over their estimated useful lives. An accelerated amortization method reflecting the pattern in which the asset will be consumed is utilized if that pattern can be reliably determined. If that pattern cannot be reliably determined, a straight-line amortization method is used. In selecting a useful life, we consider the period of expected cash flows and underlying data used to measure the fair value of the intangible assets.

Amortization of developed technology and intellectual property is recorded in Cost of sales. Amortization of brand names, customer relationships and our dealer network is recorded in Selling, general and administrative expense. Refer to Notes 2 and 13 for additional information on intangible assets.

**Valuation of Long-Lived Assets**

When events and circumstances warrant, the carrying amount of long-lived assets and finite-lived intangible assets to be held and used in the business are evaluated for impairment. If the carrying amount of a long-lived asset group is considered impaired, a loss is recorded based on the amount by which the carrying amount exceeds the fair value for the asset group to be held and used. Product-specific long-lived asset groups are tested for impairment at the platform level. Non-product specific long-lived assets are generally tested for impairment on a regional basis in GMNA and GME and tested at our various reporting units within our GMIO segment. Assets classified as held for sale are recorded at the lower of carrying amount or fair value less cost to sell. Fair value is determined primarily using the anticipated cash flows discounted at a rate commensurate with the risk involved. Long-lived assets to be disposed of other than by sale are considered held for use until disposition. Product-specific assets may become impaired as a result of declines in profitability due to changes in volume, pricing or costs.

We tested certain long-lived assets for impairment in the period July 10, 2009 through December 31, 2009 and Old GM tested certain long-lived assets for impairment in the period January 1, 2009 through July 9, 2009 and in the years ended 2008 and 2007. Based on the results of the analyses, long-lived asset impairment charges were recorded. Refer to Note 25 for additional information on impairments.

**Valuation of Cost and Equity Method Investments**

When events and circumstances warrant, investments accounted for under the cost or equity method of accounting are evaluated for impairment. An impairment charge is recorded whenever a decline in value of an investment below its carrying amount is determined to be other than temporary. In determining if a decline is other than temporary, factors such as the length of time and extent to which the fair value of the investment has been less than the carrying amount of the investment, the near-term and longer-term operating and financial prospects of the affiliate and the intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery are considered. Impairment charges related to equity method investments are recorded in Equity income, net of tax. Impairment charges related to cost method investments are recorded in Interest income and other non-operating income, net.

**Equipment on Operating Leases, net**

Equipment on operating leases, net is reported at cost, less accumulated depreciation and net of origination fees or costs. Estimated income from operating lease assets, which includes lease origination fees, net of lease origination costs, is recorded as operating lease revenue on a straight-line basis over the term of the lease agreement. Depreciation of vehicles is generally provided on a straight-line basis to an estimated residual value over the term of the lease agreement.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

We have and Old GM had significant investments in vehicles in operating lease portfolios, which are comprised of vehicle leases to retail customers with lease terms of up to 48 months and vehicles leased to rental car companies with lease terms that average 11 months or less. We and Old GM was exposed to changes in the residual values of those assets. The residual values represent estimates of the values of the assets at the end of the lease contracts and are determined based on the lower of forecasted or current auction proceeds in the United States and Canada and forecasted auction proceeds outside of the United States and Canada when there is a reliable basis to make such a determination. Realization of the residual values is dependent on the future ability to market the vehicles under the prevailing market conditions. Over the life of the lease, the adequacy of the estimate of the residual value is evaluated and adjustments may be made to the extent the expected value of the vehicle at lease termination changes. Adjustments may be in the form of revisions to the depreciation rate or recognition of an impairment charge. Impairment is determined to exist if the undiscounted expected future cash flows, which include estimated residual values, are lower than the carrying amount of the asset. If the carrying amount is considered impaired, an impairment charge is recorded for the amount by which the carrying amount exceeds the fair value. Fair value is determined primarily using the anticipated cash flows, including estimated residual values.

When a lease vehicle is returned the asset is reclassified from Equipment on operating leases, net to Inventory at the lower of cost or estimated selling price, less costs to sell.

Impairment charges related to Equipment on operating leases, net are recorded in Cost of sales. Refer to Notes 25 and 30 for additional information on impairments and operating lease arrangements with GMAC.

**Foreign Currency Transactions and Translation**

The assets and liabilities of foreign subsidiaries, using the local currency as their functional currency, are translated to U.S. Dollars based on the current exchange rate prevailing at each balance sheet date and any resulting translation adjustments are included in Other comprehensive income (loss). The assets and liabilities of foreign subsidiaries which do not use the local currency as their functional currency are remeasured from their local currency to their functional currency, and then translated to U.S. Dollars. Revenues and expenses are translated into U.S. Dollars using the average exchange rates prevailing for each period presented.

Gains and losses arising from foreign currency transactions, which include the effects of remeasurements discussed previously, are recorded in Cost of sales. The effects of foreign currency transactions were a loss of \$755 million in the period July 10, 2009 through December 31, 2009, a loss of \$1.1 billion in the period January 1, 2009 through July 9, 2009, a gain of \$1.7 billion in the year ended 2008 and a loss of \$661 million in the year ended 2007.

**Policy and Warranty**

The estimated costs related to policy and product warranties are accrued at the time products are sold. These estimates are established using historical information on the nature, frequency, and average cost of claims of each vehicle line or each model year of the vehicle line. Revisions are made when necessary, based on changes in these factors. Trends of claims are actively studied and actions are taken to improve vehicle quality and minimize claims.

**Recall Campaigns**

The estimated costs related to product recalls based on a formal campaign soliciting return of that product are accrued when they are deemed to be probable and can be reasonably estimated.

**Environmental Costs**

A liability for environmental remediation costs is recorded when a loss is probable and can be reasonably estimated. For environmental sites where there are potentially multiple responsible parties, a liability for the allocable share of the costs related to involvement with the site is recorded, as well as an allocable share of costs related to insolvent parties or unidentified shares, neither of which are reduced for possible recoveries from insurance carriers. For environmental sites where we and Old GM are the only

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

potentially responsible parties, a liability is recorded for the total estimated costs of remediation before consideration of recovery from insurers or other third parties. The process of estimating environmental remediation 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 potentially responsible parties at multi-party sites.

There is an established process to develop environmental liabilities that is used globally. This process consists of a number of phases that begins with visual site inspections and an examination of historical site records. Once a potential problem is identified, physical sampling of the site, which may include analysis of ground water and soil borings, is performed. The evidence obtained is then evaluated and if necessary, a remediation strategy is developed and submitted to the appropriate regulatory body for approval. The final phase of this process involves the commencement of remediation activities according to the approved plan.

When applicable, estimated liabilities for costs relating to ongoing operating, maintenance, and monitoring at environmental sites where remediation has commenced are recorded. Subsequent adjustments to initial estimates are recorded as necessary based upon additional information obtained. In future periods, new laws or regulations, advances in remediation technologies and additional information about the ultimate remediation methodology to be used could significantly change our estimates.

**Cash Equivalents**

Cash equivalents are defined as short-term, highly-liquid investments with original maturities of 90 days or less.

**Fair Value Measurements**

A three-level valuation hierarchy is used for fair value measurements. The three-level valuation hierarchy is based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions based on the best evidence available. These two types of inputs create the following fair value hierarchy:

- Level 1 — Quoted prices for *identical* instruments in active markets;
- Level 2 — Quoted prices for *similar* instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose significant inputs are observable; and
- Level 3 — Instruments whose significant inputs are *unobservable*.

Financial instruments are transferred in and/or out of Level 3 in the valuation hierarchy based upon the significance of the unobservable inputs to the overall fair value measurement. Level 3 financial instruments typically include, in addition to the unobservable inputs, observable components that are validated to external sources.

**Marketable Securities**

We classify marketable securities as available-for-sale or trading. Various factors, including turnover of holdings and investment guidelines, are considered in determining the classification of investments. Available-for-sale securities are recorded at fair value, with unrealized gains and losses reported, net of related income taxes, in Accumulated other comprehensive income (loss) until realized. Trading securities are recorded at fair value. We determine realized gains and losses for all securities using the specific identification method.

Old GM classified marketable securities as available-for-sale, except for certain mortgage-related securities, that were classified as held-to-maturity. Held-to-maturity securities were recorded at amortized cost.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Securities are classified in Level 1 of the valuation hierarchy when quoted prices in an active market for identical securities are available. If quoted market prices are not available, fair values of securities are determined using prices from a pricing vendor, pricing models, quoted prices of securities with similar characteristics or discounted cash flow models and are generally classified in Level 2 of the valuation hierarchy. Our pricing vendor utilizes industry-standard pricing models that consider various inputs, including benchmark yields, reported trades, broker/dealer quotes, issuer spreads and benchmark securities as well as other relevant economic measures. U.S. government and agency securities, certificates of deposit, commercial paper, and corporate debt securities are classified in Level 2 of the valuation hierarchy. Securities are classified in Level 3 of the valuation hierarchy in certain cases where there are unobservable inputs to the valuation in the marketplace.

Annually, we conduct a review of our pricing vendor. This review includes discussion and analysis of the inputs used by the pricing vendor to provide prices for the types of securities we hold.

An evaluation is made monthly to determine if unrealized losses related to non-trading investments in debt and equity securities are other than temporary. Factors considered in determining whether a loss on a debt security is other than temporary include: (1) the length of time and extent to which the fair value has been below cost; (2) the financial condition and near-term prospects of the issuer; and (3) the intent to sell or likelihood to be forced to sell the security before any anticipated recovery. Prior to April 1, 2009 Old GM considered its ability and intent to hold the investment for a sufficient period of time to allow for any anticipated recovery. Factors considered in determining whether a loss on an equity security is other than temporary include the length of time and extent to which the fair value has been below cost, the financial condition and near-term prospects of the issuer and the ability and intent to hold the investment for a period of time sufficient to allow for any anticipated recovery. If losses are determined to be other than temporary, the loss is recorded and the investment carrying amount is adjusted to a revised fair value.

**Derivative Instruments**

We are party to a variety of foreign currency exchange rate, interest rate and commodity derivative contracts entered into in connection with the management of exposure to fluctuations in foreign currency exchange rates, interest rates and certain commodity prices. These financial exposures are managed in accordance with corporate policies and procedures and a risk management control system is used to assist in monitoring hedging programs, derivative positions and hedging strategies. Hedging documentation includes hedging objectives, practices and procedures and the related accounting treatment. Derivatives that received hedge accounting treatment prior to October 1, 2008 were evaluated for effectiveness at the time they were designated as well as throughout the hedging period. We do not hold derivative financial instruments for speculative purposes.

All derivatives are recorded at fair value in the consolidated balance sheets. Internal models are used to value a majority of derivatives. The models use, as their basis, readily observable market inputs, such as time value, forward interest rates, volatility factors, and current and forward market prices for commodities and foreign currency exchange rates. In Level 2 of the valuation hierarchy, we include foreign currency derivatives, commodity derivatives, interest rate swaps, cross currency swaps and warrants. Derivative contracts that are valued based upon models with significant unobservable market inputs, primarily estimated forward and prepayment rates, are classified in Level 3 of the valuation hierarchy. In Level 3 of the valuation hierarchy, we include warrants issued to the UST, certain foreign currency derivatives, certain long-dated commodity derivatives and interest rate swaps with notional amounts that fluctuated over time.

The valuation of derivative liabilities takes into account our nonperformance risk. For the periods presented after June 1, 2009, our nonperformance risk was not observable through the credit default swap market, and an analysis of comparable industrial companies was used to determine the appropriate credit spread which would be applied to us by market participants. In these periods, all derivatives whose fair values contained a significant credit adjustment based on our nonperformance risk were classified in Level 3 of the valuation hierarchy.

We recorded the earnings effect resulting from the change in fair value of all derivative instruments not receiving hedge accounting in Interest income and other non-operating income, net.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Prior to October 1, 2008 Old GM recorded effective changes in fair value of derivatives designated as cash flow hedges in net unrealized gains (losses) on derivatives within a separate component of Accumulated other comprehensive income (loss). Amounts were reclassified from Accumulated other comprehensive income (loss) when the underlying hedged item affected earnings. All ineffective changes in fair value were recorded in earnings. Prior to October 1, 2008 changes in fair value of derivatives designated as fair value hedges were recorded in earnings offset by changes in fair value of the hedged item to the extent the derivative was effective as a hedge. Changes in fair value of derivatives not designated as hedging instruments were recorded in earnings. The earnings effect resulting from the change in fair value of derivative instruments was recorded in the same line item in the consolidated statements of operations as the underlying exposure being hedged.

As part of Old GM's quarterly tests for hedge effectiveness in the three months ended December 31, 2008, Old GM was unable to conclude that its cash flow and fair value hedging relationships continued to be highly effective. Therefore, Old GM discontinued the application of hedge accounting for derivative instruments used in cash flow and fair value hedging relationships. Accordingly, all derivatives were recorded at fair value in the consolidated balance sheets and subsequent changes in fair value of derivatives were recorded in earnings. Certain releases of deferred gains and losses arising from previously designated cash flow and fair value hedges were also recorded in earnings by Old GM. The earnings effect resulting from the change in fair value of derivative instruments was recorded in the same line item in the consolidated statements of operations as the underlying exposure being hedged.

The cash flows from derivative instruments receiving hedge accounting treatment are classified in the same categories as the hedged items in the consolidated statement of cash flows.

Refer to Note 20 for additional information related to derivative transactions.

**Income Taxes**

The liability method is used in accounting for income taxes. Deferred tax assets and liabilities are recorded for temporary differences between the tax basis of assets and liabilities and their reported amounts in the consolidated financial statements, using the statutory tax rates in effect for the year in which the differences are expected to reverse. The effect on deferred tax assets and liabilities of a change in tax rates is recorded in the results of operations in the period that includes the enactment date under the law.

Deferred income tax assets are evaluated quarterly to determine if valuation allowances are required or should be adjusted. All available evidence, both positive and negative using a more likely than not standard, is considered to determine if valuation allowances should be established against deferred tax assets. This assessment considers, among other matters, the nature, frequency and severity of recent losses, forecasts of future profitability, the duration of statutory carryforward periods, previous experience with tax attributes expiring unused and tax planning alternatives. In making such judgments, significant weight is given to evidence that can be objectively verified.

The ability to realize deferred tax assets depends on the ability to generate sufficient taxable income in the carryback or carryforward periods provided for in the tax law for each applicable tax jurisdiction. The following possible sources of taxable income have been considered when assessing the realization of deferred tax assets:

- Future reversals of existing taxable temporary differences;
- Future taxable income exclusive of reversing temporary differences and carryforwards;
- Taxable income in prior carryback years; and
- Tax-planning strategies.

Income tax expense (benefit) for the year is allocated between continuing operations and other categories of income such as Discontinued operations or Other comprehensive income (loss). In periods in which there is a pre-tax loss from continuing operations

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

and pre-tax income in another income category, the tax benefit allocated to continuing operations is determined by taking into account the pre-tax income of other categories.

We record interest and penalties on uncertain tax positions in Income tax expense (benefit). Old GM recorded interest income on uncertain tax positions in Interest income and Other non-operating income, net, interest expense in Interest expense and penalties in Selling, general and administrative expense.

**Pension and Other Postretirement Plans**

***Attribution, Methods and Assumptions***

The cost of benefits provided by defined benefit pension plans is recorded in the period employees provide service. The cost of pension plan amendments that provide for benefits already earned by plan participants is amortized over the expected period of benefit which may be: (1) the duration of the applicable collective bargaining agreement specific to the plan; (2) expected future working lifetime; or (3) the life expectancy of the plan participants.

The cost of medical, dental, legal service and life insurance benefits provided through postretirement benefit plans is recorded in the period employees provide service. The cost of postretirement plan amendments that provide for benefits already earned by plan participants is amortized over the expected period of benefit which may be the average expected future working lifetime to full eligibility or the average life expectancy of the plan participants.

U.S. salaried retiree medical plan amendments on or after July 2008 are amortized over the period to full eligibility and actuarial gains and losses are amortized over the average remaining years of future service.

Actuarial (gains) losses and new prior service costs (credits) for the U.S. hourly healthcare plans are currently amortized over a time period corresponding with the average life expectancy of the plan participants.

An expected return on plan asset methodology is utilized to calculate future pension expense for certain significant funded benefit plans. A market-related value of plan assets methodology is also utilized that averages gains and losses on the plan assets over a period of years to determine future pension expense. The methodology recognizes 60.0% of the difference between the fair value of assets and the expected calculated value in the first year and 10.0% of that difference over each of the next four years.

The discount rate assumption is established for each of the retirement-related U.S. benefit plans at their respective measurement dates. We use a cash flow matching approach, also called a spot rate yield curve approach, that uses projected cash flows matched to spot rates along a zero coupon yield curve to determine the present value of cash flows to calculate a single equivalent discount rate. Old GM established a discount rate assumption to reflect the yield of a hypothetical portfolio of high quality, fixed-income debt instruments that would produce cash flows sufficient in timing and amount to satisfy projected future benefits.

The discount rate assumption is established for each of the retirement-related non-U.S. benefit plans at their respective measurement dates utilizing published indices with adjustments made to reflect the underlying duration of expected benefit payments.

***Plan Asset Valuation***

Equity and debt securities, including asset backed securities, held by the investment pools are valued based upon the last traded or current bid price where market quotations are readily available. Securities which are not traded on an exchange, such as structured debt, are valued primarily using independent pricing vendors, using dealer or counterparty supplied valuations, or at their fair value as determined by an internal valuation committee. A periodic review of the pricing vendors that includes discussion and analysis of the inputs used to provide prices is held to ensure the integrity of the third-party valuations used in fair value estimates.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Real estate investments are valued using information such as independent real estate appraisals, internal appraisals prepared by investment managers and other market-based information about the individual property. The independent real estate appraisals are prepared at least once every three years and include detailed market studies and multiple valuation methodologies typical in the real estate industry such as sales comparison approach, replacement cost approach and income capitalization approach. For periods in which independent appraisals are not prepared, models using one or more of these approaches are developed for each property by asset managers as a means of determining changes in fair value. The fair values for each investment are reviewed quarterly and, if warranted by market or property level changes or other factors, are appropriately adjusted by the internal valuation committee based on management's best estimate of changes in fair value.

Private market investments which have not traded during the most recent period are recorded using the investment sponsor's valuation at the end of the prior quarter plus net cash flows and excluding fees during the most recent quarter. The investment sponsor's valuation will not be used if the sponsor's valuation does not reflect fair value in management's opinion. In this case, an internal valuation committee determines fair value considering factors that include valuations by other investors (including write-downs), review of an internal valuation committee's recommendation, and follow-on investments and financings, mergers, and bankruptcies or other events which in the opinion of management suggest material impairment or improvement in the investment.

Derivative instruments are priced primarily through independent pricing vendors, dealers or counterparty-supplied valuations and are typically based on industry standard derivative valuation models. Derivative instruments primarily include financial futures contracts, options including foreign currency options, swaps including options, interest rate swaps and credit default swaps and forward foreign currency contracts.

Valuations for fund investments that do not have a readily determinable fair value are typically estimated using a net asset value (NAV) provided by a third party administrator as a practical expedient. In certain circumstances, a fund's NAV may be adjusted to fair value as determined by an internal valuation committee. Fund investments with readily determinable fair values are priced primarily through independent pricing vendors, dealers or counterparty supplied valuations. Investments in these funds are specific to asset allocation strategies and include global fixed income, real estate, private equity, index, hedge and other funds.

Due to the lack of timely available market information for certain investments and the inherent uncertainty of valuation, reported fair values may differ from fair values that would have been used had readily available market information been available.

**Early Retirement Programs**

An early retirement program was offered to certain German employees that allows these employees to transition from employment into retirement before their legal retirement age. Eligible employees who elect to participate in this pre-retirement leave program work full time in half of the pre-retirement period, the active period, and then do not work for the remaining half, the inactive period, and receive 50.0% of their salary in this pre-retirement period. These employees also receive a bonus equal to 35.0% of their annual net pay at the beginning of the pre-retirement period. Contributions were required to be made into the government pension program for participants in the pre-retirement period, and participants are entitled to a government subsidy if certain conditions are met. The bonus and additional contributions into the government pension plan were recognized over the period from when the employee signed the program contract until the end of the employee's active service period.

**Extended Disability Benefits**

Estimated extended disability benefits are accrued ratably over the employee's active service period using measurement provisions similar to those used to measure our other postemployment benefits (OPEB) obligations. The liability is comprised of the future obligations for income replacement, healthcare costs and life insurance premiums for employees currently disabled and those in the active workforce who may become disabled. Future disabilities are estimated in the current workforce using actuarial methods based on historical experience. We record actuarial gains and losses immediately in earnings. Old GM amortized net actuarial gains and losses over the remaining duration of the obligation.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Labor Force**

On a worldwide basis, we have and Old GM had a concentration of the workforce working under the guidelines of unionized collective bargaining agreements. The current labor contract with the UAW is effective for a four-year term that began in October 2007 and expires in September 2011. The contract included a \$3,000 lump sum payment in the year ended 2007 and performance bonuses of 3.0%, 4.0% and 3.0% of wages in the years ended 2008, 2009 and 2010 for each UAW employee. These payments are amortized over the 12-month period following the respective payment dates. Active UAW employees and current retirees and surviving spouses were also granted pension benefit increases. In February 2009 Old GM and the UAW agreed to suspend the 2009 and 2010 performance bonus payments.

**Job Security Programs**

In May 2009 Old GM and the UAW entered into an agreement that suspended the Job Opportunity Bank (JOBS) Program, modified the Supplemental Unemployment Benefit (SUB) program and added the Transitional Support Program (TSP). These job security programs provide employee reduced wages and continued coverage under certain employee benefit programs depending on the employee's classification as well as the number of years of service that the employee has accrued. A similar tiered benefit is provided to CAW employees. We recognize a liability for these SUB/TSP benefits over the expected service period of employees, based on our best estimate of the probable liability at the measurement date.

Prior to the implementation of the modified job security programs, costs for postemployment benefits to hourly employees idled on an other than temporary basis were accrued based on our best estimate of the wage, benefit and other costs to be incurred, and costs related to the temporary idling of employees were generally expensed as incurred.

**Stock Incentive Plans**

***GM***

We measure and record compensation expense for all share-based payment awards based on the award's estimated fair value. We intend to grant awards to our employees through the 2009 Long Term Incentive Plan and have granted and will continue to grant awards under the GM Salary Stock Plan. Our policy is to record compensation expense over the applicable vesting period of an award.

The fair value of awards granted is based on the estimated fair value of our common stock. Since there currently is no observable publicly traded price for our common stock, we estimate the value of our common stock based on a discounted cash flow model. Refer to Note 29 for additional information.

Salary stock awards granted are fully vested and nonforfeitable upon grant, therefore compensation cost is recorded on the date of grant.

***Old GM***

All of Old GM's awards for the period January 1, 2009 through July 9, 2009, and the years ended 2008 and 2007 were accounted for at fair value, and compensation expense was recorded based on the award's estimated fair value. No share-based compensation expense was recorded for the top 25 most highly compensated employees in the year ended 2009, in compliance with the Loan and Security Agreement with the UST.

Stock options granted were measured on the date of grant using the Black-Scholes option-pricing model to determine fair value. Compensation expense was recorded on a graded vesting schedule. Old GM issued treasury shares upon exercise of employee stock options.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Option awards contingent on performance and market conditions were measured on the date of grant using a Monte-Carlo simulation model to determine fair value. Vesting was contingent upon a one-year service period and multiple performance and market requirements and was recorded on a graded vesting schedule over a weighted average derived service period.

Market condition based cash-settled awards were granted to participants based on a minimum percentile ranking of Old GM's total stockholder return compared to all other companies in the S&P 500 for the same performance period. The fair value of each market condition based cash-settled award was estimated on the date of grant, and for each subsequent reporting period, remeasured using a Monte-Carlo simulation model that used multiple input variables.

Cash restricted stock units were granted to certain of Old GM's global executives that provided cash equal to the value of underlying restricted share units at predetermined vesting dates. Compensation expense was recorded on a straight-line basis over the requisite service period for each separately vesting portion of the award. The fair value of each cash-settled award was remeasured at the end of each reporting period and the liability and related expense adjusted based on the new fair value of Old GM's common stock.

All outstanding Old GM awards remained with Old GM and they were not replaced by us in the 363 Sale.

**Recently Adopted Accounting Principles**

*Accounting for Uncertainty in Income Taxes*

In January 2007 Old GM adopted the provisions of ASC 740-10, "Income Taxes," related to uncertain tax positions. ASC 740 requires that the tax effect(s) of a position be recorded only if it is more likely than not to be sustained based solely on its technical merits at the reporting date. If a tax position is not considered more likely than not to be sustained based solely on its technical merits, no benefits of the tax position are recorded. With the adoption of ASC 740, companies were required to adjust their financial statements to reflect only those tax positions that are more likely than not to be sustained. Upon adoption, Old GM recorded a decrease to Accumulated deficit of \$137 million as a cumulative effect of a change in accounting principle with a corresponding decrease to the liability for uncertain tax positions.

*Fair Value Measurements*

In January 2009 Old GM adopted ASC 820-10, "Fair Value Measurements and Disclosures" for nonfinancial assets and nonfinancial liabilities that are recorded or disclosed at fair value in the financial statements on a nonrecurring basis. ASC 820-10 provides a consistent definition of fair value that focuses on exit price and prioritizes, within a measurement of fair value, the use of market-based inputs over company-specific inputs. The effect of Old GM's adoption of ASC 820-10 in January 2009 for nonfinancial assets and nonfinancial liabilities was not material and no adjustment to Accumulated deficit was required.

In April 2009 the Financial Accounting Standards Board (FASB) provided additional application and disclosure guidance regarding fair value measurements and impairments of debt securities. ASC 320-10, "Investments — Debt and Equity Securities," was amended and modified the other than temporary impairment guidance for debt securities and the presentation and disclosure requirements for all other than temporary impairments. ASC 820-10 was further amended and provides guidelines for consistently determining fair value measurements when the volume and level of activity for an asset or liability has significantly decreased, and provides guidance on identifying circumstances that indicate that a transaction is not orderly. ASC 825-10, "Financial Instruments" was also amended to expand fair value disclosures to interim reporting periods for certain financial instruments not recorded at fair value in the statement of financial position. Old GM adopted these standards in June 2009. The adoption of these standards did not have a material effect on the consolidated financial statements.

In September 2009 the FASB issued Accounting Standards Update (ASU) 2009-12, "Investments in Certain Entities That Calculate Net Asset Value per Share (or Its Equivalent)," which permits a reporting entity to utilize, without adjustment, the NAV provided by a third party investee as a practical expedient to measure the fair value of certain investments. We adopted this standard in December 2009. ASU 2009-12 did not have a material effect on the consolidated financial statements.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In October 2009 we adopted ASU 2009-5, “Measuring Liabilities at Fair Value.” ASU 2009-5 provides additional guidance for the fair value measurement of liabilities. The adoption did not have a material effect on our consolidated financial statements.

In December 2009 we adopted disclosure updates to ASC 715-20, “Employers’ Disclosures about Postretirement Benefit Plan Assets,” that requires the following additional disclosures about plan assets for a defined benefit or postretirement plan: (1) narrative providing greater insight as to investment policies and strategies; (2) the fair value of pension plan assets by major category; (3) inputs and valuation techniques used to develop fair value measurement; and (4) discussion of concentration of risk. Refer to Note 19 for more information on the adoption of this guidance.

***Business Combinations***

In January 2009 Old GM adopted the revised ASC 805, “Business Combinations,” which retained the underlying concepts of existing standards that all business combinations be accounted for at fair value under the acquisition method of accounting. However, ASC 805 changes the method of applying the acquisition method in a number of significant aspects. It requires that: (1) for all business combinations, the acquirer record all assets and liabilities of the acquired business, including goodwill, generally at their fair values; (2) certain pre-acquisition contingent assets and liabilities acquired be recorded at their fair values on the acquisition date; (3) contingent consideration be recorded at its fair value on the acquisition date and, for certain arrangements, changes in fair value be recorded in earnings until settled; (4) acquisition-related transaction and restructuring costs be expensed rather than treated as part of the cost of the acquisition and included in the amount recorded for assets acquired; (5) in step acquisitions, previous equity interests in an acquiree held prior to obtaining control be remeasured to their acquisition-date fair values, with any gain or loss recorded in earnings; and (6) when making adjustments to finalize initial accounting, companies revise any previously issued post-acquisition financial information in future financial statements to reflect any adjustments as if they had been recorded on the acquisition date. ASC 805 amended ASC 740, such that adjustments made to valuation allowances on deferred tax assets and acquired tax contingencies associated with acquisitions that closed prior to the effective date of ASC 805 should also apply the provisions of this standard. This standard applies to all business combinations entered into on or after January 1, 2009. In connection with the application of fresh-start reporting, we applied the guidance in this standard.

In January 2009 Old GM also adopted other amendments to ASC 805, related to the initial recognition and measurement, subsequent measurement and disclosures for assets and liabilities arising from contingencies in business combinations. In connection with our application of fresh-start reporting, we applied this guidance when measuring contingent assets and liabilities.

In January 2009 Old GM adopted amendments to ASC 350, “Intangibles — Goodwill and Other,” and ASC 805 which clarified the accounting for defensive intangible assets. In connection with our application of fresh-start reporting, we applied this guidance when measuring and recording defensive intangible assets (e.g., Pontiac and Saturn brands).

In January 2009 Old GM also adopted amendments to ASC 275, “Risks and Uncertainties,” and ASC 350 which provided new guidance for the determination of the useful life of intangible assets. The new guidance amended the factors that should be considered in developing the renewal or extension assumptions used to determine the useful life of a recognized intangible asset. In connection with our application of fresh-start reporting, we applied this guidance in selecting estimated useful lives for intangible assets.

***Noncontrolling Interests in Consolidated Financial Statements***

In January 2009 Old GM adopted certain amendments to ASC 810-10, “Consolidation,” that govern the accounting for and reporting of noncontrolling interests in partially-owned consolidated subsidiaries and the loss of control of subsidiaries. Also, this standard requires that: (1) noncontrolling interest, previously referred to as minority interest, be reported as part of equity in the consolidated financial statements; (2) losses be allocated to a noncontrolling interest even when such allocation might result in a deficit balance, reducing the losses attributed to the controlling interest; (3) changes in ownership interests be treated as equity transactions if control is maintained; (4) changes in ownership interests resulting in gain or loss be recorded in earnings if control is gained or lost; and (5) in a business combination, a noncontrolling interest’s share of net assets acquired be recorded at fair value,

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

including its share of goodwill. The provisions of this standard were prospective upon adoption, except for the presentation and disclosure requirements. The presentation and disclosure requirements have been applied retrospectively for all periods presented. Accordingly, prior period amounts have been adjusted to apply the new method of accounting.

***Accounting for Convertible Debt Instruments***

In January 2009 Old GM adopted ASC 470-20, “Debt with Conversion and Other Options,” which requires issuers of convertible debt securities within its scope to separate these securities into a debt component and an equity component, resulting in the debt component being recorded at fair value without consideration given to the conversion feature. Issuance costs are allocated between the debt and equity components. ASC 470-20 requires that convertible debt within its scope reflect a company’s nonconvertible debt borrowing rate when interest expense is recorded. The provisions of ASC 470-20 have been applied retrospectively upon adoption, and prior period amounts have been adjusted to apply the new method of accounting. As a result of the adoption of ASC 470-20, Interest expense increased and Net income attributable to common stockholders decreased by \$50 million in the period January 1, 2009 through July 9, 2009. Net Income attributable to common stockholders, per share, basic and diluted decreased by \$0.08 in the period January 1, 2009 through July 9, 2009. Effective July 10, 2009 MLC retained Old GM’s convertible debt. As a result, there was no effect on Interest expense, Net loss attributable to common stockholders, and Net loss attributable to common stockholders, per share, basic and diluted in the period July 10, 2009 through December 31, 2009 upon the adoption of ASC 470-20.

**Accounting Standards Not Yet Adopted**

In June 2009 the FASB issued certain amendments to ASC 860-10, “Transfers and Servicing.” ASC 860-10 eliminates the concept of a qualifying special-purpose entity (SPE), establishes a new definition of participating interest that must be met for transfers of portions of financial assets to be eligible for sale accounting, clarifies and amends the derecognition criteria for a transfer of financial assets to be accounted for as a sale, and changes the amount that can be recorded as a gain or loss on a transfer accounted for as a sale when beneficial interests are received by the transferor. This statement is effective for financial asset transfers occurring after the beginning of a reporting entity’s first annual reporting period that begins after November 15, 2009. Earlier application is prohibited. The adoption of this standard will not have a material affect on the consolidated financial statements.

In June 2009 the FASB issued an amendment to ASC 810-10. This amendment requires an enterprise to qualitatively assess the determination of the primary beneficiary of a VIE based on whether the enterprise: (1) has the power to direct the activities of a VIE that most significantly effect the entity’s economic performance; and (2) has the obligation to absorb losses of the entity or the right to receive benefits from the entity that could potentially be significant to the VIE. ASC 810-10, as amended, requires an ongoing reconsideration of the primary beneficiary, and amends the events that trigger a reassessment of whether an entity is a VIE. This statement is effective as of the beginning of a reporting entity’s first annual reporting period that begins after November 15, 2009. Earlier application is prohibited. Retrospective application is optional. We are currently evaluating the effects, if any, that ASC 810-10 will have on the consolidated financial statements.

In September 2009 the FASB issued ASU 2009-13, “Multiple-Deliverable Revenue Arrangements.” ASU 2009-13 addresses the unit of accounting for multiple-element arrangements. In addition, ASU 2009-13 revises the method by which consideration is allocated among the units of accounting. Specifically, the overall consideration is allocated to each deliverable by establishing a selling price for individual deliverables based on a hierarchy of evidence, involving vendor-specific objective evidence, other third party evidence of the selling price, or the reporting entity’s best estimate of the selling price of individual deliverables in the arrangement. ASU 2009-13 will be effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. We are currently evaluating the effects, if any, that ASU 2009-13 will have on the consolidated financial statements.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 5. Acquisition and Disposal of Businesses**

**Sale of India Operations**

In December 2009 we and SAIC Motor Hong Kong Investment Limited (SAIC) entered into a joint venture (HKJV) to invest in automotive projects outside of markets in China, initially focusing on markets in India. On February 1, 2010 HKJV purchased certain of our operations in India (India Operations), part of our GMIO segment, in exchange for a promissory note due in 2013, the value of which is contingent on the India Operation's earnings before interest and taxes in the years ending 2010 through 2012.

As a result of the sale agreement, the India Operation's assets and liabilities were classified as held for sale at December 31, 2009 and were determined to be non-current because we received a promissory note in exchange for the India Operations that will not convert to cash within one year. The India Operation's total assets of \$530 million primarily included cash and cash equivalents, accounts receivable, inventory, and real estate, plants and equipment. Its total liabilities of \$270 million primarily included accounts payable and other accrued liabilities.

**Acquisition of Delphi Businesses**

In July 2009 we entered into the Delphi Master Disposition Agreement (DMDA) with Delphi Corporation (Delphi) and other parties. Under the DMDA, we agreed to acquire Delphi's global steering business (Nexteer), which supplies us and other Original Equipment Manufacturers (OEMs) with steering systems and columns, and four domestic facilities that manufacture a variety of automotive components, primarily sold to us. In addition, we and several third party investors who held the Delphi Tranche DIP facilities (collectively the Investors) agreed to acquire substantially all of Delphi's remaining assets through DIP HOLDCO, LLP, subsequently named Delphi Automotive LLP (New Delphi). Certain excluded assets and liabilities have been retained by a Delphi entity (DPH) to be sold or liquidated. In connection with the DMDA, we agreed to pay or assume Delphi obligations of \$1.0 billion related to Delphi's senior DIP credit facility, including certain outstanding derivative instruments, its junior DIP credit facility, and other Delphi obligations, including certain administrative claims. At the closing of the transactions contemplated by the DMDA, we waived administrative claims associated with the advance agreements with Delphi, the payment terms acceleration agreement with Delphi, and the claims associated with previously transferred pension costs for hourly employees. Refer to Note 21 for additional information on the DMDA.

We agreed to acquire, prior to the consummation of the transactions contemplated by the DMDA, all Class A Membership Interests in New Delphi for a cash contribution of \$1.7 billion with the Investors acquiring Class B Membership Interests and the PBGC receiving Class C Membership Interests. We and the Investors also agreed to establish: (1) a secured delayed draw term loan facility for New Delphi, with us and the Investors each committing to provide loans of up to \$500 million; and (2) a note of \$41 million to be funded at closing by the Investors. In addition, the DMDA settled outstanding claims and assessments against and from MLC, us and Delphi, including the settlement of commitments under the MRA (as defined in Note 21) with limited exceptions, and establishes an ongoing commercial relationship with New Delphi. We also agreed to continue all existing Delphi supply agreements and purchase orders for GMNA to the end of the related product program, and New Delphi agreed to provide us with access rights designed to allow us to operate specific sites on defined triggering events to provide us with protection of supply.

In October 2009 we consummated the transactions contemplated by the DMDA. The terms of the DMDA provided a means for Delphi to emerge from bankruptcy and to effectively serve its customers by focusing on its core business. The DMDA also enabled us to access essential components and steering technologies through the businesses we acquired.

We funded the acquisitions, transaction related costs and settlements of certain pre-existing arrangements through net cash payments of \$2.7 billion and assumption of liabilities and wind-down obligations of \$120 million. Additionally, we waived our rights to \$550 million and \$300 million previously advanced to Delphi under the advance agreements and the payment terms acceleration agreement and our rights to claims associated with previously transferred pension costs for hourly employees. Of these amounts, we contributed \$1.7 billion to New Delphi and paid the Pension Benefit Guarantee Corporation (PBGC) \$70 million.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The terms of the DMDA resulted in the settlement of certain obligations related to various commitments accrued as of the transaction date under the Delphi-GM Settlement Agreements. A settlement loss of \$127 million was recorded upon consummation of the DMDA. Additional net charges of \$49 million were recorded in the three months ended December 31, 2009 associated with the DMDA. Refer to Note 21 for additional information on the Delphi-GM Settlement Agreements.

The following table summarizes the consideration provided under the DMDA and the allocation to its various elements based on their estimated fair values (dollars in millions):

	<u>Successor October 6, 2009</u>
Net cash paid	\$ 2,656
Waived advance agreements, payment terms acceleration agreement and other administrative claims (a)	966
Wind-down obligations and assumed liabilities	120
Total consideration provided	<u>\$ 3,742</u>
Fair value of Nexteer and four facilities	\$ 287
Fair value of Class A Membership Interests in New Delphi	1,912
Separately acquired assets of Delphi	41
Settlement of obligation to PBGC	387
Settlement of other obligations to Delphi	1,066
Expenses of the transaction	49
Allocation of fair value to DMDA elements	<u>\$ 3,742</u>

(a) Previously advanced amounts of \$850 million and value of other administrative claims of \$116 million.

The Class A Membership Interests in New Delphi are accounted for using the equity method of accounting. Refer to Note 10 for additional information on our Membership Interests in New Delphi.

The following table summarizes the amounts allocated to the fair value of the assets acquired and liabilities assumed of Nexteer and the four domestic facilities, which are included in the results of our GMNA segment (dollars in millions):

	<u>Successor October 6, 2009</u>
Cash and cash equivalents	\$ 40
Accounts and notes receivable, net	541
Inventories	245
Other current assets and deferred income taxes	28
Property, net	202
Deferred income taxes	39
Other assets	3
Goodwill (a)	61
Accounts payable (principally trade)	(316)
Short-term debt and current portion of long-term debt	(67)
Accrued expenses	(101)
Long-term debt	(10)
Other liabilities and deferred income taxes	(364)
Noncontrolling interests	(14)
Fair value of Nexteer and four domestic facilities	<u>\$ 287</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- (a) Goodwill of \$61 million arises from the difference between the economic value of long-term employee related liabilities and their recorded amounts at the time of acquisition and deferred taxes. Goodwill deductible for tax purposes is \$646 million. The difference between book goodwill and tax goodwill results from different allocations for tax purposes than that utilized for book purposes.

Nexteer and the four domestic facilities had revenue of \$3.7 billion in the year ended December 31, 2008 of which 68% was related to sales to Old GM. Furthermore, through the terms of the MRA, we provided Delphi labor cost subsidies and production cash burn support to many of the facilities acquired. Refer to Note 21 for additional information on the MRA. Since we and Old GM accounted for a significant portion of Nexteer's and the four domestic facilities' sales and because we were providing subsidies to Delphi related to these facilities, the acquisition of these businesses will not have a significant effect on our financial results as the costs associated with these facilities have historically been reflected as inventory costs and recorded in Cost of sales. Additionally, we did not provide pro forma financial information because we do not believe this information would be material given the intercompany nature of Nexteer and the four domestic facilities sales activity.

In January 2010 we announced that we intend to pursue a sale of Nexteer. We continue to pursue this sale and have not yet entered into a definitive sales agreement.

**Saab Bankruptcy and Sale**

In February 2009 Saab, part of the GME segment, filed for protection under the reorganization laws of Sweden in order to reorganize itself into a stand-alone entity. Old GM determined that the reorganization proceeding resulted in a loss of the elements of control necessary for consolidation and therefore Old GM deconsolidated Saab in February 2009. Old GM recorded a loss of \$824 million in Other expenses related to the deconsolidation. The loss reflects the remeasurement of Old GM's net investment in Saab to its estimated fair value of \$0, costs associated with commitments and obligations to suppliers and others, and a commitment to provide up to \$150 million of DIP financing. We acquired Old GM's investment in Saab in connection with the 363 Sale. In August 2009 Saab exited its reorganization proceeding, and we regained the elements of control and consolidated Saab at an insignificant net book value.

At September 30, 2009 we had obtained approval from our Board of Directors, met other necessary criteria to classify Saab's assets and liabilities as held for sale and had identified Koenigsegg Group AB as a potential buyer. In November 2009 the proposed sale of Saab was terminated at the discretion of the buyer. Subsequent to the conclusion of negotiations with Koenigsegg Group AB, our Board of Directors received expressions of interest in Saab from potential buyers including Spyker Cars NV. In February 2010 we completed the sale of Saab to Spyker Cars NV. As part of the agreement, Saab and Spyker Cars NV will operate under the Spyker Cars NV umbrella and Spyker Cars NV will assume responsibility for Saab operations. Previously announced wind-down activities of Saab operations have ended.

Saab's assets and liabilities are classified as held for sale at December 31, 2009. Saab's total assets of \$388 million include cash and cash equivalents, inventory and receivables, and its total liabilities of \$355 million include accounts payable, warranty and pension obligations and other liabilities.

**Sale of Allison Transmission Business**

In August 2007 Old GM completed the sale of the commercial and military operations of its Allison business, formerly a division of Old GM's Powertrain Operations. The negotiated purchase price of \$5.6 billion in cash plus assumed liabilities was paid at closing. The purchase price was subject to adjustment based on the amount of Allison's net working capital and debt on the closing date, which resulted in an adjusted purchase price of \$5.4 billion. A gain on the sale of Allison in the amount of \$5.3 billion, \$4.3 billion after-tax, inclusive of the final purchase price adjustments, was recorded in the year ended 2007. Allison designs and manufactures commercial and military automatic transmissions and is a global provider of commercial vehicle automatic transmissions for

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

on-highway vehicles, including trucks, specialty vehicles, buses and recreational vehicles, off-highway and military vehicles, as well as hybrid propulsion systems for transit buses. Old GM retained the Powertrain Operations' facility near Baltimore, Maryland which manufactures automatic transmissions primarily for trucks and hybrid propulsion systems.

The results of operations and cash flows of Allison have been reported in the consolidated financial statements as Discontinued operations in the year ended 2007. Historically, Allison was reported within GMNA.

The following table summarizes the results of discontinued operations (dollars in millions):

	<u>Predecessor</u> <u>Year Ended</u> <u>December 31,</u> <u>2007</u>
Net sales	\$ 1,225
Income from discontinued operations before income taxes	\$ 404
Income tax provision	\$ 148
Income from discontinued operations, net of tax	\$ 256
Gain on sale of discontinued operations, net of tax	\$ 4,293

As part of the transaction, Old GM entered into an agreement, which we assumed in the 363 Sale, with the buyers of Allison whereby Old GM may provide the new parent company of Allison with contingent financing of up to \$100 million. Such financing would be made available if, during a defined period of time, Allison was not in compliance with its financial maintenance covenant under a separate credit agreement. Old GM's financing would be contingent on the stockholders of the new parent company of Allison committing to provide an equivalent amount of funding to Allison, either in the form of equity or a loan, and, if a loan, such loan would be granted on the same terms as Old GM's loan to the new parent company of Allison. At December 31, 2009 we have not provided financing pursuant to this agreement. This commitment expires on December 31, 2010. Additionally, both parties have entered into non-compete arrangements for a term of 10 years in the United States and for a term of five years in Europe.

**Note 6. Marketable Securities**

The following tables summarize information regarding investments in marketable securities (dollars in millions):

	<u>Successor</u>		
	<u>December 31, 2009</u>		
	<u>Unrealized</u>		<u>Fair</u>
	<u>Gains</u>	<u>Losses</u>	<u>Value</u>
Trading securities:			
Equity	\$ 4	\$ 2	\$ 32
United States government and agencies	1	—	17
Mortgage- and asset-backed	—	2	22
Foreign government	1	—	24
Corporate debt	1	1	29
Total trading securities	<u>\$ 7</u>	<u>\$ 5</u>	<u>\$124</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Successor				Predecessor			
	December 31, 2009				December 31, 2008			
	Cost	Unrealized		Fair Value	Cost	Unrealized		Fair Value
Gains		Losses	Gains			Losses		
Available-for-sale securities:								
Equity	\$—	\$—	\$—	\$—	\$ 24	\$—	\$—	\$ 24
United States government and agencies	2	—	—	2	4	—	—	4
Mortgage- and asset-backed	—	—	—	—	65	1	—	66
Certificates of deposit	8	—	—	8	11	—	—	11
Foreign government	—	—	—	—	19	—	—	19
Corporate debt	—	—	—	—	17	—	—	17
Total available-for-sale securities	<u>\$10</u>	<u>\$—</u>	<u>\$—</u>	<u>\$ 10</u>	<u>\$140</u>	<u>\$ 1</u>	<u>\$—</u>	<u>\$141</u>

We and Old GM maintained \$79 million of the above securities as compensating balances to support letters of credit of \$66 million at December 31, 2009 and 2008. We and Old GM had access to these securities in the normal course of business; however the letters of credit may be withdrawn if the minimum collateral balance is not maintained.

In addition to the securities previously discussed, securities of \$11.2 billion and \$4.0 billion with original maturity dates within 90 days of the acquisition date were classified as cash equivalents at December 31, 2009 and 2008.

The following table summarizes proceeds from and realized gains and losses on disposals of investments in marketable securities classified as available-for-sale (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Sales proceeds	\$ 3	\$ 185	\$ 4,001	\$ 955
Realized gains	\$ —	\$ 3	\$ 44	\$ 10
Realized losses	\$ —	\$ 10	\$ 88	\$ 4

The following table summarizes the fair value of investments classified as available-for-sale securities by contractual maturity at December 31, 2009 (dollars in millions):

Contractual Maturities of Debt Securities	Successor	
	Amortized Cost	Fair Value
Due in one year or less	\$ 8	\$ 8
Due after one year through five years	2	2
Due after five years through ten years	—	—
Due after ten years	—	—
Total contractual maturities of debt securities	<u>\$ 10</u>	<u>\$ 10</u>

Refer to Note 25 for the amounts recorded as a result of other than temporary impairments on debt and equity securities.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Note 7. Securitizations**

Receivables are generated from sales of vehicles through the dealer network, as well as from service parts and powertrain sales. Certain of these receivables are sold to wholly-owned bankruptcy-remote SPEs. The SPEs are separate legal entities that assume the risks and rewards of ownership of the receivables.

On-balance sheet securitization programs are entered into in which certain trade accounts receivable related to vehicle sales are isolated in wholly-owned bankruptcy-remote SPEs, which in turn pledge the receivables to lending institutions. The receivables pledged are not recorded separately from other trade accounts receivable but are recorded in Accounts and notes receivable, net. Borrowings are recorded in Short-term debt and current portion of long-term debt.

Certain trade accounts receivable related to vehicle sales to dealers primarily in the Middle East were pledged as collateral under an on-balance sheet securitization program. The amount of receivables pledged under this program was \$504 million at December 31, 2008. The outstanding borrowing under this program was \$395 million at December 31, 2008. This facility matured in April 2009 and was fully paid.

In September 2008 Old GM entered into a one-year revolving on-balance sheet securitization program related to vehicle sales to dealers in the United States. This program provided financing of up to \$197 million. The program replaced an off-balance sheet trade accounts receivable securitization facility that expired in September 2008. The outstanding borrowing under this program was \$140 million at December 31, 2008. The program was terminated in connection with the Chapter 11 Proceedings in June 2009; outstanding amounts were fully paid and lenders' liens on the receivables were released.

Trade receivable securitization programs are utilized in Europe. The banks and factoring companies had a beneficial interest of \$8 million and \$11 million in the participating pool of trade receivables at December 31, 2009 and December 31, 2008.

**Securitizations of Vehicles Subject to Automotive Retail Leases**

In connection with the 363 Sale, we acquired vehicles subject to automotive retail leases and assumed the outstanding secured debt previously held by two of Old GM's bankruptcy-remote SPEs. These entities issued secured debt collateralized by vehicles subject to automotive retail leases. The secured debt has recourse solely to the vehicles subject to automotive retail leases and related assets. The outstanding secured debt was \$19.8 million and \$1.2 billion at December 31, 2009 and 2008.

**Note 8. Inventories**

The following table summarizes the components of inventory (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
Productive material, work in process and supplies	\$ 4,201	\$ 4,849
Finished product, including service parts	5,906	9,579
Total inventories	10,107	14,428
Less LIFO allowance	—	(1,233)
Total inventories, net	<u>\$ 10,107</u>	<u>\$ 13,195</u>

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes adjustments recorded to inventories as a result of LCM analyses (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
LCM adjustments on inventories (a)	\$ 168	\$ 103	\$ 336	\$ 249

(a) Amounts represent LCM adjustments related to company vehicles and vehicles returned from lease awaiting sale at auction.

In the period January 1, 2009 through July 9, 2009 and in the years ended 2008 and 2007 Old GM's U.S. LIFO eligible inventory quantities were reduced. These reductions resulted in liquidations of LIFO inventory quantities, which were carried at lower costs prevailing in prior years as compared with the cost of purchases in the period January 1, 2009 through July 9, 2009, and in the years ended 2008 and 2007. These liquidations decreased Old GM's Cost of sales by \$5 million in the period January 1, 2009 through July 9, 2009 and by \$355 million and \$100 million in the years ended 2008 and 2007.

**Note 9. Equipment on Operating Leases, net**

Equipment on operating leases, net is comprised of vehicle sales to daily rental car companies and to retail customers.

The following table summarizes information related to Equipment on operating leases, net and the related accumulated depreciation (dollars in millions):

	Successor	Predecessor
	December 31, 2009	December 31, 2008
<b>Current</b>		
Equipment on operating leases	\$ 3,070	\$ 6,737
Less accumulated depreciation	(343)	(1,595)
Equipment on operating leases, net	<u>\$ 2,727</u>	<u>\$ 5,142</u>
<b>Noncurrent</b>		
Equipment on operating leases	\$ 3	\$ 674
Less accumulated depreciation	—	(232)
Equipment on operating leases, net	<u>\$ 3</u>	<u>\$ 442</u>

The following table summarizes depreciation expense related to Equipment on operating leases, net (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Years Ended December 31, 2008	Years Ended December 31, 2007
Depreciation expense	\$ 437	\$ 338	\$ 1,575	\$ 2,350

Refer to Note 25 for additional information on impairments related to Equipment on operating leases, net.

We are to receive minimum rental payments for Equipment on operating leases, net of \$33 million in 2010 and \$0 thereafter. The minimum rental payments on vehicle sales to daily rental car companies are paid at lease inception.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Note 10. Equity in Net Assets of Nonconsolidated Affiliates**

Nonconsolidated affiliates are entities in which an equity ownership interest is maintained and for which the equity method of accounting is used, due to the ability to exert significant influence over decisions relating to their operating and financial affairs.

The following table summarizes information regarding equity in income (loss) of and disposition of interest in nonconsolidated affiliates (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
GMAC (a)	\$ —	\$ (1,097)	\$ 916	\$ (1,245)
Gain on conversion of UST GMAC Loan (b)	—	2,477	—	—
GMAC Common Membership Interest impairment charges (a)	—	—	(7,099)	—
Total equity in income (loss) of and disposition of interest in GMAC (a)	—	1,380	(6,183)	(1,245)
Other significant nonconsolidated affiliates (c)	466	298	312	430
New United Motor Manufacturing, Inc. (50%) (d)	—	(243)	(118)	(5)
Others	31	6	(8)	99
Total equity in income (loss) of and disposition of interest in nonconsolidated affiliates	<u>\$ 497</u>	<u>\$ 1,441</u>	<u>\$ (5,997)</u>	<u>\$ (721)</u>

- (a) GMAC converted its status to a C corporation effective June 30, 2009. At that date, Old GM began to account for its investment in GMAC using the cost method rather than the equity method as Old GM no longer exercised significant influence over GMAC. In connection with GMAC's conversion into a C corporation, each unit of each class of GMAC Membership Interests was converted into shares of capital stock of GMAC with substantially the same rights and preferences as such Membership Interests.
- (b) In May 2009 the UST exercised its option to convert the outstanding amounts owed on the UST GMAC Loan into shares of GMAC's Class B Common Membership Interests.
- (c) Includes Shanghai General Motors Co., Ltd. (SGM) (50%), SAIC-GM-Wuling Automobile Co., Ltd. (SGMW) (34%).
- (d) New United Motor Manufacturing (NUMMI) (50%) was retained by MLC as part of the 363 Sale.

**Investment in SGM**

On July 10, 2009 our investments in SGM and its subsidiaries were adjusted to their fair values. Our investment in SGM was increased by fresh-start reporting adjustments of \$3.5 billion. This fair value adjustment of \$3.5 billion was allocated as follows: (1) goodwill of \$2.9 billion; (2) intangible assets of \$0.6 billion; and (3) property of \$38 million. The increase in basis related to intangible assets is being amortized on a straight-line basis over the remaining useful lives of the assets ranging from seven to 25 years, with amortization expense of \$24 million per year. The increase in basis related to property is being depreciated on a straight-line basis over the remaining useful lives of the assets ranging from three to 14 years, with depreciation expense of \$5 million per year.

**Investment in New Delphi**

In October 2009 we agreed to acquire, prior to the consummation of the transactions contemplated by the DMDA, all Class A Membership Interests in New Delphi. The New Delphi operating agreement contains specific "waterfall" provisions for the allocation of distributions among the Class A, Class B and Class C Membership Interests of New Delphi at varying percentages based on

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

cumulative amounts of distributions. Once the cumulative amount distributed by New Delphi exceeds \$7.0 billion, our Class A Membership Interests will represent 35% of New Delphi with the Class B Membership Interests representing the remaining 65% of New Delphi's equity. Our Class A Membership Interests entitles us to 49.12% of the first \$1.0 billion of cumulative distributions and 57.78% of the next \$1.0 billion of cumulative distributions. Additional distribution percentages are applied to specified distribution levels until the cumulative of \$7.0 billion has been distributed. New Delphi does not expect to pay any cash distributions for the foreseeable future. Refer to Note 5 for additional information on New Delphi and the DMDA.

**Investment in GMAC**

As part of the approval process for GMAC to obtain Bank Holding Company status in December 2008, Old GM agreed to reduce its ownership in GMAC to less than 10.0% of the voting and total equity of GMAC by December 24, 2011. At December 31, 2009 our equity ownership in GMAC was 16.6% as subsequently discussed.

In December 2008 Old GM and FIM Holdings, an assignee of Cerberus ResCap Financing LLC, entered into a subscription agreement with GMAC under which each agreed to purchase additional Common Membership Interests in GMAC, and the UST committed to provide Old GM with additional funding in order to purchase the additional interests. In January 2009 Old GM entered into the UST GMAC Loan Agreement pursuant to which it borrowed \$884 million (UST GMAC Loan) and utilized those funds to purchase 190,921 Class B Common Membership Interests of GMAC. The UST GMAC Loan was scheduled to mature in January 2012 and bore interest, payable quarterly, at the same rate of interest as the UST Loans. The UST GMAC Loan was secured by Old GM's Common and Preferred Membership Interests in GMAC. As part of this loan agreement, the UST had the option to convert outstanding amounts into a maximum of 190,921 shares of GMAC's Class B Common Membership Interests on a pro rata basis.

In May 2009 the UST exercised this option, the outstanding principal and interest under the UST GMAC Loan was extinguished, and Old GM recorded a net gain of \$483 million. The net gain was comprised of a gain on the disposition of GMAC Common Membership Interests of \$2.5 billion recorded in Equity in income (loss) of and disposition of interest in GMAC and a loss on extinguishment of the UST GMAC Loan of \$2.0 billion recorded in Gain (loss) on extinguishment of debt. After the exchange, Old GM's ownership was reduced to 24.5% of GMAC's Common Membership Interests.

GMAC converted its status to a C corporation effective June 30, 2009. At that date, Old GM began to account for its investment in GMAC using the cost method rather than the equity method as Old GM no longer exercised significant influence over GMAC. In connection with GMAC's conversion into a C corporation, each unit of each class of GMAC Membership Interests was converted into shares of capital stock of GMAC with substantially the same rights and preferences as such Membership Interests. On July 10, 2009 we acquired the investments in GMAC's common and preferred stocks in connection with the 363 Sale.

In December 2009 the UST made a capital contribution to GMAC of \$3.8 billion consisting of the purchase of trust preferred securities of \$2.5 billion and mandatory convertible preferred securities of \$1.3 billion. The UST also exchanged all of its existing GMAC non-convertible preferred stock for newly issued mandatory convertible preferred securities valued at \$5.3 billion. In addition the UST converted mandatory convertible preferred securities valued at \$3.0 billion into GMAC common stock. These actions resulted in the dilution of our investment in GMAC common stock from 24.5% to 16.6%, of which 6.7% is held directly and 9.9% is held in an independent trust. Pursuant to previous commitments to reduce influence over and ownership in GMAC, the trustee, who is independent of us, has the sole authority to vote and is required to dispose of our 9.9% ownership in GMAC common stock held in the trust by December 24, 2011.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following tables summarize financial information of GMAC for the periods GMAC was accounted for as an equity method investee (dollars in millions):

	Six Months Ended June 30, 2009 (unaudited)	Years Ended December 31,	
		2008	2007
<b>Consolidated Statements of Income</b>			
Total financing revenue and other interest income	\$ 7,450	\$18,918	\$22,741
Interest expense	\$ 4,269	\$11,297	\$14,406
Depreciation expense on operating lease assets	\$ 2,409	\$ 5,478	\$ 4,552
Gain on extinguishment of debt	\$ 657	\$12,628	\$ 563
Total other revenue	\$ 2,453	\$14,510	\$ 5,964
Total noninterest expense	\$ 4,809	\$ 8,649	\$ 8,486
Income (loss) before income tax expense (benefit)	\$ (3,588)	\$ 3,376	\$ (1,806)
Income tax expense (benefit)	\$ 990	\$ (60)	\$ 395
Net income (loss)	\$ (4,578)	\$ 1,868	\$ (2,332)
Net income (loss) available to members	\$ (4,933)	\$ 1,868	\$ (2,524)
		June 30, 2009 (unaudited)	December 31, 2008
<b>Condensed Consolidated Balance Sheets</b>			
Loans held for sale		\$ 11,440	\$ 7,919
Total finance receivables and loans, net		\$ 87,520	\$ 98,295
Investment in operating leases, net		\$ 21,597	\$ 26,390
Other assets		\$ 22,932	\$ 26,922
Total assets		\$181,248	\$ 189,476
Total debt		\$105,175	\$ 126,321
Accrued expenses and other liabilities		\$ 41,363	\$ 32,533
Total liabilities		\$155,202	\$ 167,622
Senior preferred interests		\$ 12,500	\$ 5,000
Preferred interests		\$ 1,287	\$ 1,287
Total equity		\$ 26,046	\$ 21,854

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**GMAC — Preferred and Common Membership Interests**

The following tables summarize the activity with respect to the investment in GMAC Common and Preferred Membership Interests for the periods GMAC was accounted for as an equity method investee (dollars in millions):

	Predecessor	
	GMAC Common Membership Interests	GMAC Preferred Membership Interests
Balance at January 1, 2008	\$ 7,079	\$ 1,044
Old GM's proportionate share of GMAC's income	916	—
Conversion of GMAC Participation Agreement to Common Membership Interests	362	—
Impairment charges	(7,099)	(1,001)
Other, primarily accumulated other comprehensive loss	(767)	—
Balance at December 31, 2008	491	43
Old GM's proportionate share of GMAC's losses (a)	(1,130)	(7)
Investment in GMAC Common Membership Interests	884	—
Gain on disposition of GMAC Common Membership Interests (b)	2,477	—
Conversion of GMAC Common Membership Interests (b)	(2,885)	—
Other, primarily accumulated other comprehensive loss	163	—
Balance at June 30, 2009	<u>\$ —</u>	<u>\$ 36</u>

- (a) Due to impairment charges and Old GM's proportionate shares of GMAC's losses, the carrying amount of Old GM's investments in GMAC Common Membership Interest was reduced to \$0. Old GM recorded its proportionate share of GMAC's remaining losses to its investment in GMAC Preferred Membership Interests.
- (b) Due to the exercise of the UST's option to convert the UST GMAC Loan into GMAC Common Membership Interests, in connection with the UST GMAC Loan conversion, Old GM recorded a gain of \$2.5 billion on disposition of GMAC Common Membership Interests and a \$2.0 billion loss on extinguishment based on the carrying amount of the UST GMAC Loan and accrued interest of \$0.9 billion.

**Investment in Other Nonconsolidated Affiliates**

The following tables summarize information regarding other significant nonconsolidated affiliates including SGM and SGMW (dollars in millions):

	Successor December 31, 2009	Predecessor December 31, 2008
	Carrying amount of investments in significant affiliates	\$ 5,516
Total assets of significant affiliates	\$ 10,197	\$ 6,555
Total liabilities of significant affiliates	\$ 6,737	\$ 3,802

	Successor July 10, 2009 Through December 31, 2009	Predecessor		
		January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Proportionate share of net income	\$ 466	\$ 298	\$ 312	\$ 430

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Transactions with Nonconsolidated Affiliates

Nonconsolidated affiliates are involved in various aspects of the development, production and marketing of cars, trucks and parts. The following tables summarize the effects of transactions with nonconsolidated affiliates which are not eliminated in consolidation (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Results of Operations</b>				
Sales	\$ 560	\$ 596	\$ 1,076	\$ 793
Cost of sales	\$ 1,137	\$ 737	\$ 3,815	\$ 3,850
Selling, general and administrative expense	\$ (19)	\$ (19)	\$ 62	\$ 81
Interest expense	\$ —	\$ —	\$ —	\$ 1
Interest income and other non-operating income, net	\$ 14	\$ (9)	\$ 231	\$ 816

	Successor	Predecessor
	December 31, 2009	December 31, 2008
<b>Financial Position</b>		
Accounts and notes receivable, net	\$ 594	\$ 394
Accounts payable (principally trade)	\$ 396	\$ 112

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Cash Flows</b>				
Operating	\$ 77	\$ 546	\$ (1,014)	\$ (1,837)
Investing	\$ (67)	\$ —	\$ 370	\$ 254
Financing	\$ —	\$ —	\$ —	\$ 1

**Note 11. Property, net**

The following table summarizes the components of Property, net (dollars in millions):

	Successor		Predecessor	
	Estimated Useful Lives (Years)	December 31, 2009	Estimated Useful Lives (Years)	December 31, 2008
Land	—	\$ 2,602	—	\$ 1,162
Buildings and land improvements	2-40	4,292	2-40	18,974
Machinery and equipment	3-30	6,686	3-30	49,529
Construction in progress	—	1,649	—	2,938
Real estate, plants, and equipment		15,229		72,603
Less accumulated depreciation		(1,285)		(43,712)
Real estate, plants, and equipment, net		13,944		28,891
Special tools, net	1-13	4,743	1-10	10,774
Total property, net		<u>\$ 18,687</u>		<u>\$ 39,665</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes the amount of net capitalized software and capitalized interest included in Property, net (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
Capitalized software in use	\$ 263	\$ 537
Capitalized software in the process of being developed	\$ 81	\$ 175
Capitalized interest	\$ 26	\$ 576

The following table summarizes depreciation, impairment charges and amortization expense related to Property, net, recorded in Cost of sales, Selling, general and administrative expense and Other expenses, net (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>	<u>Predecessor</u>		
		<u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>	<u>Year Ended</u> <u>December 31, 2008</u>	<u>Year Ended</u> <u>December 31, 2007</u>
Depreciation and impairment of long-lived assets	\$ 1,355	\$ 4,352	\$ 4,863	\$ 3,846
Amortization and impairment of special tools	865	2,139	3,493	3,243
Total depreciation, impairment charges and amortization expense	<u>\$ 2,220</u>	<u>\$ 6,491</u>	<u>\$ 8,356</u>	<u>\$ 7,089</u>
Capitalized software amortization expense (a)	\$ 132	\$ 136	\$ 209	\$ 192
Capitalized interest amortization expense (a)	\$ —	\$ 46	\$ 77	\$ 48

(a) Included in Total depreciation, impairment charges and amortization expense.

Old GM initiated restructuring plans prior to the 363 Sale to reduce the total number of powertrain, stamping and assembly plants and to eliminate certain brands and nameplates. In addition, MLC retained certain assets that we did not acquire in connection with the 363 Sale and were deemed not to have a useful life beyond July 9, 2009. As a result, Old GM recorded incremental depreciation and amortization on certain of these assets as they were expected to be utilized over a shorter period of time than their previously estimated useful lives. We record incremental depreciation and amortization for changes in useful lives subsequent to the initial determination. In the period July 10, 2009 through December 31, 2009 we recorded incremental depreciation and amortization of approximately \$20 million. Old GM recorded incremental depreciation and amortization of approximately \$2.8 billion, \$0.8 billion and \$0.2 billion in the period January 1, 2009 through July 9, 2009 and the years ended 2008 and 2007.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Note 12. Goodwill**

The following table summarizes the changes in the carrying amounts of Goodwill (dollars in millions):

	Successor			Total
	GMNA	GME	GMIO	
Balance at July 10, 2009 (a)	\$26,348	\$3,262	\$ 854	\$30,464
Goodwill acquired	61	—	—	61
Effect of foreign currency translation on goodwill	—	73	87	160
Goodwill included in Assets held for sale	—	—	(13)	(13)
Balance at December 31, 2009	26,409	3,335	928	30,672
Accumulated impairment charges	—	—	—	—
Goodwill	<u>\$26,409</u>	<u>\$3,335</u>	<u>\$ 928</u>	<u>\$30,672</u>

  

	Predecessor			Total
	GMNA	GME	GMIO	
Balance at January 1, 2008	\$ 173	\$ 563	\$ —	\$ 736
Accumulated impairment charges	—	—	—	—
Goodwill	173	563	—	736
Effect of foreign currency translation on goodwill	(19)	(107)	—	(126)
Impairment charges (b)	(154)	(456)	—	(610)
Balance at December 31, 2008	154	456	—	610
Accumulated impairment charges	(154)	(456)	—	(610)
Goodwill	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

- (a) We recorded Goodwill of \$30.5 billion upon application of fresh-start reporting. When applying fresh-start reporting, certain accounts, primarily employee benefit and income tax related, were recorded at amounts determined under specific U.S. GAAP rather than fair value and the difference between the U.S. GAAP and fair value amounts gives rise to goodwill, which is a residual. Further, we recorded valuation allowances against certain of our deferred tax assets, which under ASC 852 also resulted in goodwill. Our employee benefit related accounts were recorded in accordance with ASC 712 and ASC 715 and deferred income taxes were recorded in accordance with ASC 740. There was no goodwill on an economic basis based on the fair value of our equity, liabilities and identifiable assets. None of the goodwill from this transaction is deductible for tax purposes.
- (b) Goodwill impairment charges of \$154 million and \$456 million were recorded at GMNA and GME in the year ended 2008 related to sharply reduced forecasts of automotive sales in the near- and medium-term. Refer to Note 25 for additional information on Old GM's impairment charges related to Goodwill in 2008. We had no goodwill during the period January 1, 2009 to July 9, 2009.

In the three months ended December 31, 2009 we performed our annual goodwill impairment analysis of our reporting units as of October 1, 2009, which resulted in no goodwill impairment charges. In addition, during the three months ended December 31, 2009, we determined that certain additional events and circumstances related to certain reporting units had changed such that interim goodwill impairment tests were necessary as of December 31, 2009. For our GME reporting unit, these changes related to our decision to retain sole ownership of our GME reporting unit and the additional restructuring actions necessary and expected higher overhead costs due to decisions to delay or cancel certain previously planned facility closures. For other identified reporting units in GMIO, the changes related to deterioration in expected future operating results from those anticipated in our annual impairment analysis. The results of this testing indicated that goodwill was not impaired for any of the reporting units tested.

Refer to Note 25 for additional information on goodwill impairments in prior periods.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Note 13. Intangible Assets, net**

The following table summarizes the components of amortizable intangible assets (dollars in millions):

	Successor				Predecessor			
	December 31, 2009				December 31, 2008			
	Weighted-Average Remaining Amortization Period (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Remaining Amortization Period (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Technology and intellectual property (a)	4	\$ 7,916	\$ 1,460	\$ 6,456	8	\$ 598	\$ 333	\$ 265
Brands	38	5,508	72	5,436	—	—	—	—
Dealer network and customer relationships	21	2,205	67	2,138	—	—	—	—
Favorable contracts	24	542	39	503	—	—	—	—
Other	3	17	3	14	—	—	—	—
Total amortizable intangible assets	20	<u>\$16,188</u>	<u>\$ 1,641</u>	<u>\$14,547</u>	8	<u>\$ 598</u>	<u>\$ 333</u>	<u>\$ 265</u>

(a) Technology and intellectual property includes nonamortizing in-process research and development of \$175 million at December 31, 2009.

The following table summarizes the amortization expense related to intangible assets (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Amortization expense related to intangible assets (a)	\$ 1,584	\$ 44	\$ 83	\$ 74

(a) Amortization expense in the period July 10, 2009 through December 31, 2009 includes an impairment charge of \$21 million related to technology and intellectual property. Refer to Note 25 for additional information related to the impairment charge.

The following table summarizes estimated amortization expense related to intangible assets in each of the next five years (dollars in millions):

	Estimated Amortization Expense
2010	\$ 2,550
2011	\$ 1,785
2012	\$ 1,560
2013	\$ 1,227
2014	\$ 610

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Note 14. Restricted Cash**

Cash subject to contractual restrictions and not readily available is classified as restricted cash. Funds held in the UST Credit Agreement and Canadian Health Care Trust (HCT) escrow accounts are invested in government securities and money market funds in accordance with the terms of the escrow agreements. The following table summarizes the components of restricted cash (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
<b>Current</b>		
UST Credit Agreement (a)	\$ 12,475	\$ —
Canadian Health Care Trust (b)	955	—
Receivables Program (c)	187	—
Securitization trusts	191	450
Pre-funding disbursements	94	222
Other (d)	15	—
Total current restricted cash	<u>13,917</u>	<u>672</u>
<b>Non-current</b>		
Collateral for insurance related activities	658	679
Other non-current (d)	831	1,238
Total restricted cash	<u>\$ 15,406</u>	<u>\$ 2,589</u>

- (a) Under the terms of the UST Credit Agreement funds are held in escrow and will be distributed to us at our request if certain conditions are met. Any unused amounts in escrow on June 30, 2010 are required to be used to repay the UST Loans and Canadian Loan. Upon repayment of the UST Loans and Canadian Loan any funds remaining in escrow will be returned to us. Refer to Notes 2 and 18 for additional information on the UST Credit Agreement.
- (b) Under the terms of an escrow agreement between GMCL, the EDC and an escrow agent, GMCL established a CAD \$1.0 billion (equivalent to \$893 million when entered into) escrow to fund its healthcare obligations.
- (c) In March 2009 the UST announced that it will provide financial assistance to automotive suppliers by guaranteeing or purchasing certain receivables payable by us (Receivables Program). Under the terms of the Receivables Program, the use of funds is limited to purchasing receivables from suppliers that have elected to participate in the program. This program will terminate in accordance with its terms in April 2010. Refer to Note 18 for additional information on the Receivables Program.
- (d) Includes amounts related to various letters of credit, deposits, escrows and other cash collateral requirements.

**Note 15. Other Assets**

The following table summarizes the components of Other assets (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
Investment in GMAC (a)	\$ 1,635	\$ 43
Taxes other than income taxes	297	612
Derivative assets	44	583
Other	546	892
Total other assets	<u>\$ 2,522</u>	<u>\$ 2,130</u>

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- (a) December 31, 2009 balance includes the investment in GMAC common stock of \$970 million, which prior to June 30, 2009 was accounted for by Old GM as an equity method investment and recorded in Equity of net assets of nonconsolidated affiliates. The December 31, 2009 balance also includes the investment in GMAC preferred stock with a carrying amount of \$665 million and a fair value of \$989 million. Refer to Note 10 for additional information on the investment in GMAC.

**Note 16. Variable Interest Entities**

**Consolidated VIEs**

VIEs that were consolidated because we or Old GM were the primary beneficiary primarily included: (1) previously divested and current suppliers for which we or Old GM made significant guarantees or provided financial support; (2) the Receivables Program; (3) vehicle sales and marketing joint ventures that manufacture, market and sell vehicles in certain markets; (4) leasing SPEs which held real estate assets and related liabilities for which residual guarantees were provided; and (5) an entity which managed certain private equity investments held by our and Old GM's pension plans and previously held by our and Old GM's OPEB plans, along with six associated general partner entities. Certain creditors and beneficial interest holders of these VIEs have or had limited, insignificant recourse to our general credit or Old GM's general credit, in which we or Old GM could be held liable for certain of the VIE's obligations.

***CAMI***

In March 2009 Old GM determined that due to changes in contractual arrangements related to CAMI Automotive Inc. (CAMI), it was required to reconsider its previous conclusion that CAMI was not a VIE. As a result of Old GM's analysis, it determined that CAMI was a VIE and Old GM was the primary beneficiary, and therefore Old GM consolidated CAMI. As the consolidation date occurred near the end of the reporting period, the consolidation was based on estimates of the fair values for all assets and liabilities acquired. Based on Old GM's estimates, the equity interests it held and held by the noncontrolling interest had a fair value of approximately \$12 million. Total assets were approximately \$472 million comprised primarily of property, plant, and equipment and related party accounts receivable and inventory. Total liabilities were approximately \$460 million, comprised primarily of long-term debt, accrued liabilities and pension and other post-employment benefits. We completed our purchase price accounting for CAMI at July 10, 2009 and determined that the amounts estimated as of the initial consolidation date of March 1, 2009 did not require adjustment. Supplemental pro forma information is omitted as the effect is immaterial. In December 2009 we acquired the remaining noncontrolling interest of CAMI from Suzuki for \$100 million increasing our ownership interest from 50% to 100%. Subsequent to this acquisition, CAMI became a wholly-owned subsidiary and is not included in the tabular disclosures below.

***Receivables Program***

We determined that the Receivables Program was a VIE. We also determined that we are the primary beneficiary because we are the only party to the Receivables Program with equity at risk, we have a greater risk of loss than the UST and we are more closely related to the Receivables Program as its primary purpose is to support our supply base, thereby helping ensure that our production needs are met.

In December 2009 we announced the termination of the Receivables Program in April 2010. Upon termination, we will share any residual capital in the program equally with the UST. At December 31, 2009 our equity contributions were \$55 million and the UST had outstanding loans of \$150 million to the Receivables Program. We do not anticipate making any additional equity contributions. Refer to Note 18 for additional information on the Receivables Program.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes the carrying amount of consolidated VIE assets and liabilities (dollars in millions):

	<u>Successor</u> <u>December 31, 2009</u>	<u>Predecessor</u> <u>December 31, 2008</u>
<b>Assets:</b>		
Cash and cash equivalents	\$ 15	\$ 22
Accounts and notes receivable, net	14	15
Inventory	15	—
Other current assets	—	—
Property, net	5	71
Restricted cash	191	—
Other assets	33	28
<b>Total assets</b>	<b>\$ 273</b>	<b>\$ 136</b>
<b>Liabilities:</b>		
Accounts payable (principally trade)	\$ 17	\$ 6
Short-term borrowings and current portion of long-term debt	205	105
Accrued expenses	10	20
Other liabilities	23	15
<b>Total liabilities</b>	<b>\$ 255</b>	<b>\$ 146</b>

The following table summarizes the amounts recorded in earnings related to consolidated VIEs (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>	<u>Predecessor</u> <u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>	<u>Year Ended</u> <u>December 31, 2008</u>
Sales	\$ 24	\$ 14	\$ 8
Other revenue	17	17	32
Cost of sales	8	(1)	5
Selling, general administrative expense	8	5	(11)
Other expenses, net	9	10	19
Interest expense	14	22	—
Reorganization losses (gains), net	—	26	—
Income tax expense	1	—	—
<b>Net income (loss)</b>	<b>\$ 1</b>	<b>\$ (31)</b>	<b>\$ 27</b>

**Nonconsolidated VIEs**

VIEs that were not consolidated because we or Old GM were not the primary beneficiary primarily included: (1) troubled suppliers for which guarantees were made or financial support was provided; (2) vehicle sales and marketing joint ventures that manufacture, market and sell vehicles in certain markets; (3) leasing entities for which residual value guarantees were made; and (4) GMAC.

Guarantees and financial support are provided to certain current or previously divested suppliers in order to ensure that supply needs for production were not disrupted due to a supplier's liquidity concerns or possible shutdowns. Types of financial support that we and Old GM provided include, but are not limited to: (1) funding in the form of a loan from us or Old GM; (2) guarantees of the supplier's debt or credit facilities; (3) one-time payments to fund prior losses of the supplier; (4) indemnification agreements to fund the suppliers' future losses or obligations; (5) agreements to provide additional funding or liquidity to the supplier in the form of price

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

increases or change in payment terms; and (6) assisting the supplier in finding additional investors. The maximum exposure to loss related to these VIEs was generally limited to the amount of accounts and notes receivable recorded with the suppliers and any related guarantees.

We have and Old GM had investments in joint ventures that manufacture, market and sell vehicles in certain markets. These joint ventures were self-funded and financed with no contractual terms that would require future financial support to be provided. The maximum exposure to loss is limited to the carrying amount of the investments recorded in Equity in net assets of nonconsolidated affiliates.

***American Axle***

In September 2009 we paid \$110 million to American Axle and Manufacturing Holdings, Inc. (American Axle), a former subsidiary and current supplier, to settle and modify existing commercial arrangements and acquired warrants to purchase 4 million shares of American Axle's common stock. This payment was made in response to the liquidity needs of American Axle and our desire to modify the terms of our ongoing commercial arrangement. Under the new agreement, we also provided American Axle with a second lien term loan facility of up to \$100 million. Additional warrants will be granted if amounts are drawn on the second lien term loan facility.

As a result of these transactions, we concluded that American Axle was a VIE for which we were not the primary beneficiary. Our variable interests in American Axle include the warrants we received and the second lien term loan facility, which exposes us to possible future losses depending on the financial performance of American Axle. At December 31, 2009 no amounts were outstanding under the second lien term loan. At December 31, 2009 our maximum exposure to loss related to American Axle was \$125 million, which represented the fair value of the warrants of \$25 million recorded in Non-current assets and the potential exposure of \$100 million related to the second lien term loan facility.

***GMAC***

In the three months ended December 31, 2008, GMAC engaged in or agreed to several transactions, including an exchange and cash tender offers to purchase and/or exchange certain of its and its subsidiaries' outstanding notes for new notes and 9% Cumulative Perpetual Preferred Stock, the issuance of Series D-2 Fixed Rate Cumulative Perpetual Preferred Membership Interests to the UST, the conversion of the Participation Agreement to Common Membership Interests, and the issuance of additional Common Membership Interests to Old GM. As a result of these changes to GMAC's capital structure, Old GM was required to reconsider its previous conclusion that GMAC was a voting interest entity and it did not hold a controlling financial interest in GMAC. As part of Old GM's qualitative and quantitative analyses, Old GM determined that GMAC was a VIE as it did not have sufficient equity at risk. Old GM also determined that a related party group, as that term is defined in ASC 810-10, existed between Old GM and the UST under the de facto agency provisions of ASC 810-10. However, Old GM determined based on both qualitative and quantitative analysis that the related party group to which it belonged did not absorb the majority of GMAC's expected losses or residual returns and therefore no member of the related party group was the primary beneficiary of GMAC. Accordingly Old GM did not consolidate GMAC at December 31, 2008.

Old GM's quantitative analysis was performed using a Black-Scholes model to compute the price of purchasing a hypothetical put on GMAC's net assets exclusive of variable interests to estimate expected losses of the variable interests of GMAC. The same Black-Scholes model was used to estimate the expected losses allocated to each of the individual variable interests identified in GMAC's capital structure. Significant estimates, assumptions, and judgments used in Old GM's analysis included that the outstanding unsecured debt of GMAC was a variable interest in GMAC because it was trading at a sufficient discount to face value to indicate that it was absorbing a significant portion of GMAC's expected losses and receiving a portion of its expected returns; that the expected return on GMAC's net assets exclusive of variable interests were normally distributed with a mean return equal to the risk-free rate of return and an expected volatility of approximately 22%; estimates of the fair value of each of GMAC's variable interests and other components of its the capital structure; and estimates of the expected outstanding term of each of GMAC's non-perpetual variable

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

interests, which Old GM estimated to have a weighted average term of approximately 5 years. Other qualitative considerations included the fact that Old GM was required to reduce its common investment in GMAC to below 10% within three years, had no voting members on the GMAC Board of Managers, and under other contractual provisions, could not attempt to influence the operations of GMAC or the manner in which its Common Membership Interests were voted.

In connection with GMAC's conversion to a C corporation on June 30, 2009, each unit of each class of GMAC Membership Interests was converted into shares of capital stock of GMAC with substantially the same rights and preferences as such Membership Interests. On July 10, 2009 we acquired the investments in GMAC's common and preferred stock in connection with the 363 Sale.

In December 2009, the UST made a capital contribution to GMAC of \$3.8 billion consisting of the purchase of trust preferred securities in aggregate liquidation amount of \$2.5 billion and mandatory convertible preferred securities in aggregate liquidation amount of \$1.3 billion. The UST also exchanged all of its existing GMAC non-convertible preferred stock for newly issued mandatory convertible preferred securities with an aggregate liquidation preference of \$5.3 billion. In addition, the UST converted mandatory convertible preferred securities with an aggregate liquidation preference of \$3.0 billion into GMAC common stock. After these actions, we and the UST owned 16.6% and 56.3% of GMAC's common stock. The UST also owns preferred stock of GMAC with a liquidation value of \$11.4 billion, and we own preferred stock with a liquidation value of \$1.0 billion. This transaction constituted a reconsideration event and we determined that GMAC continued to be a VIE as it does not have sufficient equity at risk. Although the related party group to which we and the UST belong absorbs a majority of the expected losses, we are not the primary beneficiary because the UST absorbs more expected losses than us, we were not involved in the redesign of GMAC, and we are controlled by the UST. Furthermore, we do not believe we will be the primary beneficiary upon adoption of modifications of ASC 810-10, effective January 1, 2010, because we lack the power through voting or similar rights to direct those activities of GMAC that most significantly affect its economic performance. As a result of previous agreements Old GM entered into during GMAC's approval process to obtain Bank Holding Company status and whose terms and conditions we assumed in connection with the 363 Sale, we do not have significant influence over GMAC. Our principal variable interests in GMAC are our investments in GMAC preferred and common stock. Refer to Notes 10 and 30 for additional information on our investment in GMAC, our significant agreements with GMAC and our maximum exposure under those agreements.

The following table summarizes the amounts recorded for nonconsolidated VIEs, and the related off-balance sheet guarantees and maximum exposure to loss, excluding GMAC (dollars in millions):

	Successor		Predecessor	
	December 31, 2009		December 31, 2008	
	Carrying Amount	Maximum Exposure to Loss(a)	Carrying Amount	Maximum Exposure to Loss(b)
<b>Assets:</b>				
Accounts and notes receivable, net	\$ 8	\$ 8	\$ 10	\$ 10
Investment in nonconsolidated affiliates	96	50	40	40
Other assets	26	26	6	6
<b>Total assets</b>	<b>\$ 130</b>	<b>\$ 84</b>	<b>\$ 56</b>	<b>\$ 56</b>
<b>Liabilities:</b>				
Accrued expenses	—	—	11	—
<b>Total liabilities</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 11</b>	<b>\$ —</b>
<b>Off-Balance Sheet:</b>				
Residual value guarantees		32		79
Other guarantees		4		5
Other liquidity arrangements (c)		115		—
<b>Total guarantees and liquidity arrangements</b>		<b>\$ 151</b>		<b>\$ 84</b>

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- (a) Amounts at December 31, 2009 included \$139 million related to troubled suppliers.
- (b) Amounts at December 31, 2008 included \$21 million related to troubled suppliers.
- (c) Amount includes second lien term loan facility provided to American Axle of \$100 million and other loan commitments of \$15 million.

**Note 17. Accrued Expenses, Other Liabilities and Deferred Income Taxes**

The following table summarizes the components of Accrued expenses, other liabilities and deferred income taxes:

	Successor December 31, 2009	Predecessor December 31, 2008
<b>Current</b>		
Dealer and customer allowances, claims and discounts	\$ 6,444	\$ 8,939
Deposits from rental car companies	4,583	6,142
Deferred revenue	892	1,493
Policy, product warranty and recall campaigns	2,965	3,792
Delphi liability	—	150
Payrolls and employee benefits excluding postemployment benefits	1,325	1,591
Insurance reserves	243	388
Taxes (other than income taxes)	1,031	1,312
Derivative liability	568	2,726
Postemployment benefits including facility idling reserves	985	1,727
Interest	142	779
Pensions	430	430
Income taxes	219	186
Deferred income taxes	57	87
Other	2,404	2,685
Total accrued expenses	<u>\$ 22,288</u>	<u>\$ 32,427</u>
<b>Noncurrent</b>		
Dealer and customer allowances, claims and discounts	\$ 1,311	\$ 1,578
Deferred revenue	480	1,265
Policy, product warranty and recall campaigns	4,065	4,699
Delphi liability	—	1,570
Payrolls and employee benefits excluding postemployment benefits	1,818	2,314
Insurance reserves	269	1,324
Derivative liability	146	817
Postemployment benefits including facility idling reserves	1,944	1,626
Income taxes	944	430
Deferred income taxes	807	563
Other	1,495	1,206
Total other liabilities and deferred income taxes	<u>\$ 13,279</u>	<u>\$ 17,392</u>

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes activity for policy, product warranty, recall campaigns and certified used vehicle warranty liabilities (dollars in millions):

	Successor	Predecessor	
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008
Beginning balance	\$ 7,193	\$ 8,491	\$ 9,615
Warranties issued and assumed in period	1,598	1,069	4,277
Payments	(2,232)	(1,851)	(5,068)
Adjustments to pre-existing warranties	291	(153)	294
Effect of foreign currency translation	180	63	(627)
Liability adjustment, net due to the deconsolidation of Saab (a)	—	(77)	—
Ending balance	7,030	7,542	8,491
Effect of application of fresh-start reporting	—	(349)	—
Ending balance including effect of application of fresh-start reporting	\$ 7,030	\$ 7,193	\$ 8,491

(a) In August 2009 Saab met the criteria to be classified as held for sale and, as a result, Saab's warranty liability was classified as held for sale at December 31, 2009.

In March 2009 the U.S. government announced that it would create a warranty program to pay for repairs covered by Old GM's warranty on each new vehicle sold in the U.S. and Mexico during Old GM's restructuring period. In May 2009 pursuant to the terms of the warranty program, Old GM and the UST contributed \$410 million to fund the program. Old GM contributed \$49 million in cash. The UST contributed the remaining required cash as part of a \$361 million loan. On July 10, 2009 in connection with the 363 Sale, we assumed the obligations of the warranty program and entered into the UST Credit Agreement assuming debt of \$7.1 billion, which Old GM incurred under its DIP Facility. Immediately after entering into the UST Credit Agreement, we made a partial repayment of \$361 million due to the termination of the U.S. government sponsored warranty program, reducing the UST Loans balance to \$6.7 billion. The original estimate of the warranty period was March 30, 2009 through July 31, 2009, which was based on a requirement that the UST approve the termination of the warranty program prior to July 31, 2009. The UST allowed repayment of the full amount of the \$361 million loan on July 10, 2009 effectively terminating the warranty program. Subsequently, the cash contribution of \$49 million and interest earned to date were repaid to us from the warranty program.

**Note 18. Short-Term and Long-Term Debt**

**Short-Term Debt and Current Portion of Long-Term Debt**

The following table summarizes the components of short-term debt (dollars in millions):

	Successor December 31, 2009	Predecessor December 31, 2008
UST Loans	\$ 5,712	\$ —
UST Loan Facility (a)	—	3,836
Canadian Loan	1,233	—
Short-term debt — third parties	1,475	2,567
Short-term debt — related parties (b)	1,077	2,067
Current portion of long-term debt (c)	724	8,450
Total short-term debt	\$ 10,221	\$ 16,920
Available under short-term line of credit agreements (d)	\$ 220	\$ 186
Interest rate range on outstanding short-term debt (e)	0.0 – 19.0%	0.0 – 28.0%
Weighted-average interest rate on outstanding short-term debt (f)	6.5%	5.6%

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- (a) UST Loan Facility (as subsequently defined) is net of a \$913 million discount which is comprised of \$749 million for the UST Additional Note (as subsequently defined) and \$164 million for the fair value of the warrants issued in connection with the loans under the UST Loan Agreement. At May 31, 2009 the carrying amount of the debt was accreted to the full face value of the UST Loan Facility and the UST Additional Note with the discount charged to Interest expense.
- (b) Primarily dealer financing from GMAC for dealerships we own and Old GM owned.
- (c) Amounts owed at December 31, 2009 include various secured and unsecured debt instruments. Amounts owed at December 31, 2008 include a secured revolving credit facility of \$4.5 billion and a U.S. term loan of \$1.5 billion.
- (d) Commitment fees are paid on credit facilities at rates negotiated in each agreement. Amounts paid and expensed for these commitment fees are insignificant.
- (e) Includes zero coupon debt.
- (f) Includes coupon rates on debt denominated in various foreign currencies. At December 31, 2009 the weighted average effective interest rate on outstanding short-term debt was 8.0%.

**Long-term debt**

The following table summarizes the components of long-term debt (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
U.S. dollar denominated bonds	\$ —	\$ 14,882
VEBA Notes	2,825	—
Contingent convertible debt	—	7,339
Foreign currency denominated bonds	—	4,375
Other long-term debt (a)	3,461	10,841
Total debt	6,286	37,437
Less current portion of long-term debt	(724)	(8,450)
Fair value adjustment (b)	—	31
Total long-term debt	<u>\$ 5,562</u>	<u>\$ 29,018</u>
Available under long-term line of credit agreements (c)	\$ 398	\$ 457

- (a) Old GM amounts include a secured revolving credit facility of \$4.5 billion and a U.S. term loan of \$1.5 billion, which are included in the current portion of long-term debt.
- (b) To adjust hedged fixed rate debt for fair value changes attributable to the hedged risk. Refer to Note 20 for additional information on fair value hedges.
- (c) Commitment fees are paid on credit facilities at rates negotiated in each agreement. Amounts paid and expensed for these commitment fees are insignificant.

**GM**

***UST Loans and VEBA Notes***

Old GM received total proceeds of \$19.4 billion (\$15.4 billion subsequent to January 1, 2009) from the UST under the UST Loan Agreement entered into on December 31, 2008. In connection with the Chapter 11 Proceedings, Old GM obtained additional funding of \$33.3 billion from the UST and EDC under its DIP Facility. From these proceeds, \$12.5 billion remained deposited in escrow at December 31, 2009.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Amounts remaining in the escrow account will be distributed to us at our request upon certain conditions as outlined in the UST Credit Agreement. Any unused amounts in escrow on June 30, 2010 are required to be used to repay the UST Loans and Canadian Loan on a pro rata basis. Upon repayment of the UST Loans and Canadian Loan any funds in escrow will be returned to us. The UST Loans and Canadian Loan have been classified as short-term debt based on these terms.

On July 10, 2009 we entered into the UST Credit Agreement and assumed debt of \$7.1 billion maturing on July 10, 2015 which Old GM incurred under its DIP Facility. Immediately after entering into the UST Credit Agreement, we made a partial repayment due to the termination of the U.S. government sponsored warranty program, reducing the UST Loans principal balance to \$6.7 billion.

In November 2009 we signed amendments to the UST Credit Agreement and Canadian Loan Agreement to provide for quarterly repayments of our UST Loans and Canadian Loan. Under these amendments, we agreed to make quarterly payments of \$1.0 billion and \$192 million to the UST and EDC. In December 2009 we made a payment on the UST Loans of \$1.0 billion.

The UST Loans accrue interest equal to the greater of the three month LIBOR rate or 2.0%, plus 5.0%, per annum, unless the UST determines that reasonable means do not exist to ascertain the LIBOR rate or that the LIBOR rate will not adequately reflect the UST's cost to maintain the loan. In such a circumstance, the interest rate will be the greatest of: (1) the prime rate plus 4%; (2) the federal funds rate plus 4.5%; or (3) the three month LIBOR rate (which will not be less than 2%) plus 5%. We are required to prepay the UST Loans on a pro rata basis (between the UST Loans, VEBA Notes and Canadian Loan), in an amount equal to the amount of net cash proceeds received from certain asset dispositions, casualty events, extraordinary receipts and the incurrence of certain debt. We may also voluntarily repay the UST Loans in whole or in part at any time. Once repaid, amounts borrowed under the UST Credit Agreement may not be reborrowed. At December 31, 2009 the UST Loans accrued interest at 7.0%.

In connection with the 363 Sale, we entered into the VEBA Note Agreement and issued VEBA Notes of \$2.5 billion. The VEBA Notes have an implied interest rate of 9.0% per annum. The VEBA Notes and accrued interest are scheduled to be repaid in three equal installments of \$1.4 billion on July 15 of 2013, 2015, and 2017. The VEBA Notes are considered outstanding debt on December 31, 2009 due to the settlement of the UAW hourly retiree medical plan pursuant to the 2009 Revised UAW Settlement Agreement and were recorded at their fair value of \$2.8 billion, a premium of \$325 million to the face value. We determined the fair value of the VEBA Notes based on market information for similar instruments. Refer to Note 19 for additional information on the 2009 Revised UAW Settlement Agreement.

The obligations under the UST Credit Agreement and the VEBA Note Agreement are secured by substantially all of our assets, subject to certain exceptions, including our equity interests in certain of our foreign subsidiaries, limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries due to tax considerations.

The UST Credit Agreement and the VEBA Note Agreement contain various representations and warranties that we made on the effective date and, with respect to the UST Credit Agreement, we will be required to make on certain other dates. The UST Credit Agreement and the VEBA Note Agreement also contain various affirmative covenants requiring us to take certain actions and negative covenants restricting our ability to take certain actions. The affirmative covenants impose obligations on us with respect to, among other things:

- Financial and other reporting to the UST, including periodic confirmation of compliance with certain expense policies;
- Executive privileges and compensation requirements;
- Corporate existence;
- Preservation of the collateral and other property subject to the UST Credit Agreement and VEBA Note Agreement;
- Payment of taxes; and
- Compliance with certain laws.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In addition, the affirmative covenants include a vitality commitment, which requires us to use our commercially reasonable best efforts, subject to certain considerations and exceptions, to ensure that the volume of manufacturing conducted in the United States is at least 90% of the level contemplated in our business plan provided to the UST in July 2009. The vitality commitment is in effect until the later of December 31, 2014 or the date the UST Loans are repaid in full. In addition, certain covenants such as periodic confirmation of compliance with certain expense policies, executive privileges and compensation requirements are in effect until the UST ceases to own direct or indirect equity interests in us and the UST Loans are paid in full.

The negative covenants in the UST Credit Agreement and the VEBA Note Agreement restrict us with respect to, among other things, fundamental changes, liens, restricted payments and restrictions on subsidiary distributions, amendments or waivers of certain documents, negative pledge clauses, use of proceeds from sales of assets and indebtedness.

The UST Credit Agreement and the VEBA Note Agreement contain restrictions on our ability to incur additional indebtedness, including indebtedness secured by a first-priority lien on certain of our assets. The following table summarizes the restrictions to incur additional indebtedness (with certain exceptions):

- Secured indebtedness entered into after July 10, 2009 is limited to \$6.0 billion provided that the aggregate amount of commitments under any secured revolving credit facilities shall not exceed \$4.0 billion. Secured indebtedness exceeding these amounts is subject to an incurrence test under which total debt divided by 12 month trailing EBITDA cannot exceed 3:1 and also triggers repayments of 50% of the amount borrowed;
- Unsecured indebtedness entered into after July 10, 2009 is limited to \$1.0 billion and triggers repayments of 50% of the amount borrowed. Unsecured indebtedness in excess of \$1.0 billion is subject to the incurrence test previously described; and
- The aggregate principal amount of capital lease obligations and purchase money indebtedness shall not exceed \$2.0 billion.

At December 31, 2009 we were significantly below all restrictions previously described.

In addition if such indebtedness is to be secured by a first-priority lien on certain of our assets, the obligations under the UST Credit Agreement and the VEBA Note Agreement will be restructured to be secured by a second-priority lien on any such assets.

The UST Credit Agreement and the VEBA Note Agreement also contain various events of default (including cross-default provisions) that entitle the UST or the New VEBA to accelerate the repayment of the UST Loans and the VEBA Notes upon the occurrence and continuation of an event of default. In addition, upon the occurrence and continuation of any event of default, interest under the UST Credit Agreement accrues at a rate per annum equal to 2.0% plus the interest rate otherwise applicable to the UST Loans and the implied interest rate on the VEBA Notes increases to a rate equal to 11.0% per annum, compounded annually. The events of default relate to, among other things:

- Our failure to pay principal or interest on the UST Loans or to make payments on the VEBA Notes;
- Certain of our domestic subsidiaries' failure to pay on their guarantees;
- The failure to pay other amounts due under the loan documents or the secured note documents;
- The failure to perform the covenants in the loan documents or the secured note documents;
- The representations and warranties in the UST Credit Agreement or the VEBA Note Agreement being false or misleading in any material respect;
- Undischarged judgments in excess of \$100 million;

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- Certain bankruptcy events;
- The termination of any loan documents or secured note documents;
- The invalidity of security interests in our assets;
- Certain prohibited transactions under the Employee Retirement Income Security Act of 1974, as amended (ERISA);
- A change of control without the permission of the UST;
- A default under the Canadian Loan Agreement other than the vitality commitment; and
- A default under other indebtedness if the default, including a default of the vitality commitment under the Canadian Loan Agreement, results in the holder accelerating the maturity of indebtedness in excess of \$100 million in the aggregate.

The following table summarizes interest expense and interest paid on the UST Loans (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>
Interest expense	\$ 226
Interest paid	\$ 137

***Canadian Loan Agreement***

On July 10, 2009 we entered into the Canadian Loan Agreement and assumed a CAD \$1.5 billion (equivalent to \$1.3 billion when entered into) term loan maturing on July 10, 2015. The Canadian Loan accrues interest at the greater of the three-month Canadian Dealer Offered Rate or 2.0%, plus 5.0% per annum. Accrued interest is payable quarterly. At December 31, 2009 the Canadian Loan accrued interest at 7.0%.

As discussed previously, we signed an amendment to the Canadian Loan Agreement and in December 2009 we made a payment on the Canadian Loan of \$192 million.

GMCL may voluntarily repay the Canadian Loan in whole or in part at any time. Once repaid, GMCL cannot reborrow under the Canadian Loan Agreement. We and 1908 Holdings Ltd., Parkwood Holdings Ltd., and GM Overseas Funding LLC, each of which is a Subsidiary Guarantor of GMCL, have guaranteed the Canadian Loan. Our guarantee of GMCL's obligations under the Canadian Loan Agreement is secured by a lien on the equity of GMCL. Because 65% of our ownership interest in GMCL was previously pledged to secure the obligations under the UST Credit Agreement and the VEBA Note Agreement, EDC received a first priority lien on 35% of our equity interest in GMCL and a second priority lien on the remaining 65%. With certain exceptions, GMCL's obligations under the Canadian Loan Agreement are secured by a first lien on substantially all of its and the Subsidiary Guarantors' assets, including GMCL's ownership interests in the Subsidiary Guarantors and a portion of GMCL's equity interests in General Motors Product Services Inc., a subsidiary of ours.

The Canadian Loan Agreement contains various representations and warranties GMCL and the Subsidiary Guarantors made on the effective date. The Canadian Loan Agreement also contains various affirmative covenants requiring GMCL and the Subsidiary Guarantors to take certain actions and negative covenants restricting the ability of GMCL and the Subsidiary Guarantors to take certain actions. The affirmative covenants impose obligations on GMCL and the Subsidiary Guarantors with respect to, among other things, financial and other reporting to EDC, reporting on and preservation of the collateral pledged in connection with the Canadian Loan Agreement, executive privileges and compensation, restrictions on expenses and compliance with applicable laws. In addition,

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

GMCL has committed, among other things, to meet certain capital and research and development investment levels, and to produce a certain percentage (based on North American and/or total United States and Canada production levels) of vehicles and vehicle components in Canada until the later of the date that the amounts outstanding under the Canadian Loan Agreement are paid in full or December 31, 2016.

The negative covenants and various events of default in the Canadian Loan Agreement are substantially similar to the negative covenants under the UST Credit Agreement and the VEBA Note Agreement, as applicable to GMCL and the Subsidiary Guarantors, and also require GMCL to maintain certain minimum levels of unrestricted cash and cash equivalents and address specific requirements with respect to pension and compensation matters.

The following table summarizes interest expense and interest paid on the Canadian Loan (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>
Interest expense	\$ 46
Interest paid	\$ 46

***German Revolving Bridge Facility***

In May 2009 Old GM entered into a revolving bridge facility with the German government and certain German states (German Facility) with a total commitment of up to Euro 1.5 billion (equivalent to \$2.1 billion when entered into) and maturing November 30, 2009. On November 24, 2009 the debt was paid in full and extinguished.

The following table summarizes interest expense and interest paid on the German Facility, including amortization of related discounts (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>
Interest expense (a)	\$ 32
Interest paid	\$ 37

(a) Old GM recorded interest expense of \$5 million in the period January 1, 2009 through July 9, 2009.

***Other Long-Term Debt***

Other long-term debt of \$3.5 billion (net of a \$1.6 billion discount) at December 31, 2009 is comprised of unsecured debt of \$1.2 billion, secured debt of \$1.6 billion, and capital leases of \$693 million. The weighted average coupon rate of other long-term debt was 5.8% at December 31, 2009.

In connection with the purchase of the noncontrolling interest in CAMI, we recorded a loss on extinguishment of debt of \$101 million related to the repayment of secured long-term debt of \$400 million in the period July 10, 2009 through December 31, 2009.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Long-Term Debt Maturities**

The following table summarizes long-term debt maturities including capital leases at December 31, 2009 (dollars in millions):

	<b>Debt Maturities</b>
2010	\$ 750
2011	\$ 445
2012	\$ 645
2013	\$ 737
2014	\$ 125
Thereafter	\$ 5,320

At December 31, 2009 future interest payments on capital lease obligations was \$687 million.

**Receivables Program**

The Receivables Program was developed in March 2009 to provide liquidity and access to credit to automotive suppliers by guaranteeing or purchasing certain receivables we owe or Old GM owed. Amounts borrowed from the UST and used to pay suppliers are recorded in Short-term debt with a corresponding decrease in Accounts payable or Accrued expenses. We and Old GM was responsible for paying interest on any loans the UST provided at an annual rate of LIBOR plus 3.5%, with a minimum of 5.5%, and for paying administrative fees of 25 basis points per annum of the average daily program balance to a third party administrator. A termination fee of 4.0% of the outstanding commitment is due to the UST upon expiration or termination of the Receivables Program. We will share any residual capital in the program equally with the UST. At December 31, 2009 our equity contributions were \$55 million and the UST had outstanding loans of \$150 million to the Receivables Program.

The following table summarizes interest expense related to the Receivables Program, including amortization of related discounts (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>	<u>Predecessor</u> <u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>
Amortization of loan discount related to termination fee	\$ 3	\$ 21
Interest expense	12	1
Total interest expense	<u>\$ 15</u>	<u>\$ 22</u>

**Technical Defaults and Covenant Violations**

Several of our loan facilities include clauses that may be breached by a change in control, a bankruptcy or failure to maintain certain financial metric limits. The Chapter 11 proceedings and the change in control as a result of the 363 Sale triggered technical defaults in certain loans for which we have assumed the obligation. A potential breach in another loan was addressed before default with a waiver we obtained from the lender subject to renegotiation of the terms of the facility. We successfully concluded the renegotiation of these terms in September 2009. In October 2009 we repaid one of the loans in the amount of \$17 million as a remedy to the default. The total amount of the two remaining loan facilities in technical default for these reasons at December 31, 2009 was \$206 million. We continue to negotiate with the lenders to obtain waivers or reach settlements to cure these defaults. We have classified these loans as short-term debt at December 31, 2009.

Two of our loan facilities had financial covenant violations at December 31, 2009 related to exceeding financial ratios limiting the amount of debt held by the subsidiaries. One of these violations was cured within the 30 day cure period through the combination of an equity injection and the capitalization of intercompany loans. The \$72 million related to our powertrain subsidiary in Italy remains in default and we continue negotiations with its lenders to cure the default.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Covenants in our UST Credit Agreement, VEBA Note Agreement, Canadian Loan Agreement and other agreements require us to provide our consolidated financial statements by March 31, 2010. We received waivers of this requirement for the agreements with the UST, New VEBA and EDC. We also provided notice to and requested waivers related to three lease facilities. The filing of our 2009 10-K and our Quarterly Report on Form 10-Q for the period ended September 30, 2009 within the automatic 90 day cure period will satisfy the requirements under these lease facility agreements.

**Old GM*****United States Department of the Treasury Loan Facility***

On December 31, 2008 Old GM entered into the UST Loan Agreement pursuant to which the UST agreed to provide Old GM with the UST Loan Facility and as a result received total proceeds of \$19.4 billion (\$15.4 billion in the period January 1, 2009 through July 9, 2009). In addition Old GM issued a promissory note to the UST in the amount of \$749 million (UST Additional Note) for no additional consideration.

In connection with the Chapter 11 Proceedings, Old GM obtained additional funding of \$33.3 billion from the UST and EDC under its DIP Facility.

In connection with the 363 Sale, amounts borrowed under the UST Loan Agreement and the DIP Facility, excluding the UST Loans of \$7.1 billion that we assumed, were converted into our equity. The UST Additional Note was also converted into our equity.

The following table summarizes interest expense and interest paid on the UST Loan Facility and the DIP Facility, including amortization of related discounts (dollars in millions):

	<b>Predecessor</b>	
	<b>January 1, 2009 Through July 9, 2009</b>	<b>Year Ended December 31, 2008</b>
Interest expense	\$ 4,006	\$ —
Interest paid	\$ 144	\$ —

Refer to Note 2 for additional information on the Chapter 11 Proceedings and the 363 Sale.

***Export Development Canada Loan Facility***

In April 2009 Old GM entered into the EDC Loan Facility pursuant to which Old GM received total proceeds of \$2.4 billion in the period January 1, 2009 through July 9, 2009. In the period January 1, 2009 through July 9, 2009 Old GM also issued promissory notes to the EDC in the amount of \$161 million for no additional consideration. In connection with the Chapter 11 Proceedings and the 363 Sale, amounts borrowed under these agreements were converted into our equity.

The following table summarizes interest expense and interest paid on amounts borrowed under these agreements, including amortization of related discounts (dollars in millions):

	<b>Predecessor January 1, 2009 Through July 9, 2009</b>
Interest expense	\$ 173
Interest paid	\$ 6

Refer to Note 2 for additional information on the Chapter 11 Proceedings and the 363 Sale.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**German Revolving Bridge Facility**

The following table summarizes interest expense and interest paid on the German Facility, including amortization of related discounts (dollars in millions):

	<u>Predecessor</u> <u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>
Interest expense	\$ 5
Interest paid	\$ —

**Secured Revolving Credit Facility, U.S. Term Loan and Secured Credit Facility**

In connection with the preparation of Old GM's consolidated financial statements for the year ended 2008, Old GM concluded there was substantial doubt about its ability to continue as a going concern and its independent auditors included a statement in their audit report related to the existence of substantial doubt about its ability to continue as a going concern. Because Old GM's auditors included such a statement in their audit report, Old GM would have been in violation of the debt covenants for the \$4.5 billion secured revolving credit facility, the \$1.5 billion U.S. term loan and the \$125 million secured credit facility and Old GM therefore secured amendments and waivers related to those obligations as subsequently discussed.

In February 2009 Old GM entered into an agreement to amend its \$4.5 billion secured revolving credit facility. The amendment included a waiver of the going concern covenant in the year ended 2008, revised borrowing and default interest rates, and cross-default provisions to the UST Loan Facility. Old GM accounted for the amendment as a debt modification and therefore capitalized the additional fees paid to acquire the amendment. The additional fees were amortized through the date of extinguishment.

In March 2009 Old GM entered into an agreement to amend its \$1.5 billion U.S. term loan. The amendment included a waiver of the going concern covenant in the year ended 2008, revised borrowing and default rates, and cross-default provisions to the UST Loan Facility. Because the terms of the amended U.S. term loan were substantially different than the original terms, primarily due to the revised borrowing rate, Old GM accounted for the amendment as a debt extinguishment. As a result, Old GM recorded the amended U.S. term loan at fair value and recorded a gain on the extinguishment of the original loan facility of \$906 million in the three months ended March 31, 2009.

In February 2009 Old GM entered into an agreement to amend its \$125 million secured credit facility. The amendment included a waiver of the going concern covenant in the year ended 2008, revised borrowing and default rates, cross-default provisions to the UST Loan Facility, and an extension of the maturity date to November 2010. As a result of the terms of the amendment, Old GM accounted for the amendment as a troubled debt restructuring and therefore amortized the outstanding debt balance using the revised effective interest rate calculated in accordance with the new loan terms through the date of extinguishment.

In connection with the Chapter 11 Proceedings, Old GM's \$4.5 billion secured revolving credit facility, \$1.5 billion U.S. term loan and \$125 million secured credit facility were paid in full on June 30, 2009. Old GM recorded a loss of \$958 million in Reorganization gains, net related to the extinguishments of the debt primarily due to the face value of the U.S. term loan exceeding the carrying amount.

**Lease Asset Securitization**

Old GM held bankruptcy-remote SPEs that are parties to lease asset securitizations. The secured debt of \$1.2 billion at December 31, 2008 was primarily comprised of the asset-backed debt securities issued by these SPEs. Amounts are included in the current portion of long-term debt.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Contingent Convertible Debt**

The following table summarizes Old GM's unsecured contingent convertible debt (dollars in millions, except conversion price):

	Due	Conversion Price	Outstanding Amount December 31, 2008
4.50% Series A debentures	2032	\$ 70.20	\$ 39
5.25% Series B debentures	2032	\$ 64.90	2,384
6.25% Series C debentures	2033	\$ 47.62	3,940
1.50% Series D debentures	2009	\$ 40.11	976
			<u>\$ 7,339</u>

Old GM had unilaterally and irrevocably waived and relinquished the right to use common stock, and had committed to use cash to settle the principal amount of the debentures if: (1) holders chose to convert the debentures; or (2) Old GM was required by holders to repurchase the debentures. Old GM retained the right to use either cash or its common stock to settle any amount that may become due to debt holders in excess of the principal amount. In connection with the 363 Sale, MLC retained the contingent convertible debt.

At December 31, 2008 the number of shares on which the aggregate consideration to be delivered upon conversion would have been determined for the Series A, Series B, Series C and Series D debentures was 1 million, 40 million, 90 million and 25 million.

In connection with the issuance of the Series D debentures, Old GM purchased a capped call option for the Series D debentures in a private transaction, pursuant to which Old GM had the right to purchase 5 million of Old GM's shares from a third party. Exercise of the capped call option was expected to reduce the potential dilution with respect to Old GM's common stock upon conversion of the Series D debentures to the extent that the market value per share of Old GM's common stock did not exceed a specified cap, resulting in an effective conversion price of \$45.71 per share. In connection with the 363 Sale, MLC retained both the Series D debentures which matured on June 1, 2009 and the capped call option.

In September 2008 Old GM entered into agreements with a qualified institutional holder of the Series D debentures. Pursuant to these agreements, Old GM issued an aggregate of 44 million shares of common stock in exchange for \$498 million principal amount of the Series D debentures. In accordance with the agreements, the amount of common stock exchanged for the Series D debentures was based on the daily volume weighted-average price of Old GM's common stock on the New York Stock Exchange in the contractual three and four day pricing periods. Old GM entered into the agreements, in part, to reduce Old GM's debt and interest costs, increase Old GM's equity, and thereby, improve Old GM's liquidity. Old GM did not receive any cash proceeds from the exchange of the common stock for the Series D debentures, which were retired and cancelled. As a result of this exchange, Old GM recorded a settlement gain of \$43 million.

Old GM adopted the provisions of ASC 470-20 in January 2009, with retrospective application to prior periods. Upon adoption of ASC 470-20, the effective interest rate on Old GM's outstanding contingent convertible debt ranged from 7.0% to 7.9%. Refer to Note 3 for additional information on the adoption of ASC 470-20.

At December 31, 2008 the net carrying amount of the conversion feature for all contingent convertible debt outstanding recorded in Capital surplus was \$734 million. At December 31, 2008 the principal amount of each note exceeded the if-converted value.

The following table summarizes the components of contingent convertible debt outstanding (dollars in millions):

	Predecessor December 31, 2008
Principal	\$ 7,941
Unamortized discounts (a)	(602)
Outstanding balance	<u>\$ 7,339</u>

(a) Discounts being amortized through the maturity dates or the initial put dates of the related debt, ranging from 2009 to 2018.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes the components of Interest expense related to contingent convertible debt (dollars in millions):

	Predecessor		
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Interest accrued or paid (a)	\$ 176	\$ 427	\$ 429
Amortization of discounts	51	136	107
Interest expense	\$ 227	\$ 563	\$ 536

- (a) Contractual interest expense not accrued or recorded on pre-petition debt as a result of the Chapter 11 Proceedings totaled \$44 million in the period January 1, 2009 through July 9, 2009.

**U.S. Dollar Denominated Bonds**

U.S. dollar denominated bonds represented obligations having various annual coupons ranging from 6.75% to 9.45% and maturities ranging from 2011 to 2052. These bonds were unsecured. In connection with the 363 Sale, MLC retained the U.S. dollar denominated bonds.

**Foreign Currency Denominated Bonds**

Foreign currency denominated bonds were unsecured and included bonds denominated in Euros with annual coupons ranging from 7.25% to 8.375% and maturity dates ranging from 2013 to 2033. Also included within foreign currency denominated bonds were bonds denominated in British Pounds with annual coupons ranging from 8.375% to 8.875% and maturity dates ranging from 2015 to 2023. To mitigate the foreign currency exchange exposure created by these bonds, Old GM entered into cross currency swaps. The notional value of these swaps was \$2.3 billion at December 31, 2008. In connection with the 363 Sale, MLC retained the foreign currency denominated bonds.

**Other Long-Term Debt**

Other long-term debt of \$9.7 billion at December 31, 2008 was comprised of revolving credit agreements, a U.S. term loan, capital leases, municipal bonds, and other long-term obligations. In connection with the 363 Sale, we assumed certain capital lease obligations, municipal bonds, and other long-term obligations. MLC retained the remainder of the debt not assumed by us. Refer to Note 2 for additional information on other long-term debt we assumed in connection with the 363 Sale.

**Revolving Credit Agreements**

In August 2007 Old GM entered into a revolving credit agreement that provided for borrowings of up to \$1.0 billion. The facility expired in June 2009. Borrowings under this facility bore interest based on either the commercial paper rate or LIBOR. The borrowings were to be used for general corporate purposes, including working capital needs. Under the facility, borrowings were limited to an amount based on the value of underlying collateral, which was comprised of residual interests in trusts that own leased vehicles and issued asset-backed securities collateralized by the vehicles and the associated leases. The underlying collateral was held by bankruptcy-remote SPEs and pledged to a trustee for the benefit of the lender. The underlying collateral supported a borrowing base of \$323 million at December 31, 2008. Old GM consolidated the bankruptcy-remote SPEs and trusts. At December 31, 2008 \$310 million was outstanding under this agreement, leaving \$13 million available.

Old GM had a \$4.5 billion standby revolving credit facility with a syndicate of banks, which was paid in full on June 30, 2009. At December 31, 2008 \$4.5 billion was outstanding under this credit facility, with availability of \$5 million. In addition to the outstanding amount at December 31, 2008 there were \$10 million of letters of credit issued under the credit facility. Borrowings were

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

limited to an amount based on the value of the underlying collateral, which was comprised of certain North American accounts receivable; certain inventory of Old GM, Saturn Corporation, and GMCL; certain facilities; property and equipment of GMCL; and a pledge of 65% of the stock of the holding company for Old GM's indirect subsidiary GM de Mexico. The carrying amount of these assets was \$5.6 billion at December 31, 2008. The collateral also secured \$155 million of certain lines of credit, automatic clearinghouse and overdraft arrangements and letters of credit provided by the same secured lenders. At December 31, 2008 in addition to the \$10 million letters of credit issued under the revolving credit facility, \$81 million was utilized to secure other facilities.

***Interest Rate Risk Management***

To achieve the desired balance between fixed and variable rate debt, Old GM entered into interest rate swaps. The notional amount of pay variable swap agreements at December 31, 2008 was \$4.5 billion.

Additionally, Old GM entered into interest rate swaps and cap agreements at bankruptcy-remote subsidiaries. The notional amount of such agreements at December 31, 2008 was \$469 million pay floating and the fixed interest rates ranged from 4.5% to 5.7%.

At December 31, 2008 long-term debt included obligations of \$24.7 billion with fixed interest rates and obligations of \$4.9 billion with variable interest rates (primarily LIBOR), after interest rate swap agreements.

***Other***

Contractual interest expense not accrued or recorded on pre-petition debt totaled \$200 million in the period January 1, 2009 through July 9, 2009 (includes contractual interest expense related to contingent convertible debt of \$44 million).

Old GM had other financing arrangements consisting principally of obligations in connection with sale-leaseback transactions, derivative contracts and other lease obligations (including off-balance sheet arrangements). In view of the 2006 restatement of Old GM's prior financial statements, Old GM evaluated the effect of the restatement under these agreements, including its legal rights (such as its ability to cure) with respect to any claims that could be asserted. Based on Old GM's review, it was believed that amounts subject to possible claims of acceleration, termination or other remedies were not likely to exceed \$3.6 billion (primarily comprised of off-balance sheet arrangements and derivative contracts) although no assurances can be given as to the likelihood, nature or amount of any claims that may be asserted. Based on this review, Old GM reclassified \$187 million of these obligations from long-term debt to short-term debt at December 31, 2008.

**Note 19. Pensions and Other Postretirement Benefits**

**Employee Pension and Other Postretirement Benefit Plans**

***Defined Benefit Pension Plans***

Defined benefit pension plans covering eligible U.S. (hired prior to October 15, 2007) and Canadian hourly employees generally provide benefits of negotiated, stated amounts for each year of service and supplemental benefits for employees who retire with 30 years of service before normal retirement age. Non-skilled trades hourly employees hired after October 15, 2007 participate in a defined benefit cash balance plan. The benefits provided by the defined benefit pension plans covering eligible U.S. (hired prior to January 1, 2001) and Canadian salaried employees and salaried employees in certain other non-U.S. locations are generally based on years of service and compensation history. There is also an unfunded nonqualified pension plan covering certain U.S. executives for service prior to January 1, 2007 and it is based on an "excess plan" for service after that date. Refer to the subsequent section "Significant Plan Amendments, Benefit Modifications and Related Events" concerning changes to defined benefit pension plans for certain U.S. and Canadian hourly and salaried employees.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Defined Contribution Plans**

The Savings-Stock Purchase Plan (S-SPP) is a defined contribution retirement savings plan for eligible U.S. salaried employees. The S-SPP provides discretionary matching contributions up to certain predefined limits based upon eligible base salary. The matching contribution for the S-SPP was suspended by Old GM in November 2008 and reinstated by us in October 2009. A benefit contribution equal to 1.0% of eligible base salary for U.S. salaried employees with a service commencement date in or after January 1993 was discontinued effective in January 2010. A retirement contribution to the S-SPP equal to 4.0% of eligible base salary is provided for eligible U.S. salaried employees with a service commencement date in or after January 2001. Contributions are also made to certain non-U.S. defined contribution plans. There is also an unfunded nonqualified defined contribution savings plan covering certain U.S. executives that is based on contributions in excess of qualified plan limits.

U. S. hourly employees hired on or after October 15, 2007 are not eligible for postretirement health care. Such employees receive a \$1.00 per compensated hour contribution into their personal saving plan account. The contributions are not significant.

The following table summarizes significant contributions to defined contribution plans (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
S-SPP	\$ 39	\$ 12	\$ 128	\$ 82
Non-U.S. defined contribution plans	61	58	169	153
<b>Total contributions</b>	<b>\$ 100</b>	<b>\$ 70</b>	<b>\$ 297</b>	<b>\$ 235</b>

**Other Postretirement Benefit Plans**

Certain hourly and salaried defined benefit plans provide postretirement medical, dental, legal service and life insurance to eligible U.S. and Canadian retirees and their eligible dependents. Refer to the subsequent section "Significant Plan Amendments, Benefit Modifications and Related Events" concerning changes to postretirement benefit plans for certain U.S. and Canadian hourly and salaried employees. Certain other non-U.S. subsidiaries have postretirement benefit plans, although most non-U.S. employees are covered by government sponsored or administered programs.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Significant Plan Amendments, Benefit Modifications and Related Events

2009

The following tables summarize the significant 2009 defined benefit plan interim remeasurements, the related changes in accumulated postretirement benefit obligations (APBO), projected benefit obligations (PBO) and the associated curtailments, settlements and termination benefits recorded in our earnings in the period July 10, 2009 through December 31, 2009 and the earnings of Old GM in the period January 1, 2009 through July 9, 2009, which are subsequently discussed (dollars in millions):

Event and Remeasurement Date When Applicable	Affected Plans	Change in Discount Rate		Increase (Decrease) Since the Most Recent Remeasurement Date(c)	Gain (Loss)			Termination Benefits and Other
		From	To		Curtailments	Settlements		
					PBO/APBO			
2009 Special Attrition Programs (a)	U.S. hourly defined benefit pension plan	—	—	\$ 58	\$ —	\$ —	\$ (58)	
Global salaried workforce reductions (a)	U.S. salaried defined benefit pension plan	—	—	175	—	—	(175)	
2009 Revised UAW Settlement Agreement — December 31	UAW hourly retiree medical plan	—	—	(22,236)	—	(2,571)	—	
IUE-CWA and USW Settlement Agreement — November 1 (b)	U.S. hourly defined benefit pension plan	5.58%	5.26%	1,897	—	—	—	
	Non-UAW hourly retiree health care plan	6.21%	5.00%	360	—	—	—	
	U.S. hourly life plan	5.41%	5.56%	53	—	—	—	
Delphi Benefit Guarantee Agreements — August 1 (b)	U.S. hourly defined benefit pension plan	5.83%	5.58%	2,548	—	—	—	
Total				<u>\$ (17,145)</u>	<u>\$ —</u>	<u>\$ (2,571)</u>	<u>\$ (233)</u>	

(a) Reflects the effect on PBO. There was no remeasurement.

(b) Includes reclassification of contingent liability to benefit plan obligation.

(c) The increase/decrease includes the effect of the event, the gain or loss from remeasurement, net periodic benefit cost and benefit payments.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Event and Remeasurement Date When Applicable	Affected Plans	Predecessor		Increase (Decrease) Since the Most Recent Remeasurement Date	Gain (Loss)			
		Change in Discount Rate			PBO/APBO	Curtailments	Settlements	Termination Benefits and Other
		From	To					
2009 Special Attrition Programs — June 30	U.S. hourly defined benefit pension plan	6.15%	6.25%	\$ 7	\$ (1,390)	\$ —	\$ (12)	
Global salaried workforce reductions — June 1	U.S. salaried defined benefit pension plan	6.50%	6.50%	24	(327)	—	—	
Global salaried workforce reductions — March 1	Canadian salaried defined benefit pension plan	6.75%	6.25%	15	(20)	—	—	
U.S. salaried benefits changes — February 1	U.S. salaried retiree life insurance plan	7.25%	7.15%	(420)	—	—	—	
U.S. salaried benefits changes — June 1	U.S. salaried retiree health care program	6.80%	6.80%	(265)	—	—	—	
2009 CAW Agreement — June 1	Canadian hourly defined benefit pension plan	6.75%	5.65%	340	—	—	(26)	
2009 CAW Agreement — June 1	CAW hourly retiree healthcare plan and CAW retiree life plan	7.00%	5.80%	(143)	93	—	—	
Total				<u>\$ (442)</u>	<u>\$ (1,644)</u>	<u>\$ —</u>	<u>\$ (38)</u>	

**2009 Special Attrition Programs**

In February and June 2009 Old GM announced the 2009 Special Attrition Programs for eligible UAW-represented employees, offering cash and other incentives for individuals who elected to retire or voluntarily terminate employment. In the period January 1, 2009 through July 9, 2009 Old GM recorded postemployment benefit charges for 13,000 employees. Refer to Note 24 for additional information on the postemployment benefit charges.

Old GM remeasured the U.S. hourly defined benefit pension plan in June 2009 based on the 7,800 irrevocable acceptances through that date as these acceptances to the 2009 Special Attrition Programs yielded a significant reduction in the expected future years of service of active participants. An additional 180 employees accepted the terms of the 2009 Special Attrition Programs in the period July 1, 2009 through July 9, 2009.

In the period July 10, 2009 through December 31, 2009 5,000 employees accepted the terms of the 2009 Special Attrition Programs. We recorded special termination benefit charges for 1,000 of those employees based upon their elections. Plan remeasurement was not required because the July 10, 2009 plan assumptions included the effects of special attrition programs.

**Global Salaried Workforce Reductions**

In February and June 2009 Old GM announced its intention to reduce global salaried headcount. In March 2009 Old GM remeasured the Canadian salaried defined benefit pension plan as part of this initiative based upon an estimated significant reduction in the expected future years of service of active participants. In June 2009 Old GM remeasured the U.S. salaried defined benefit pension plan based upon an estimated significant reduction in the expected future years of service of active participants.

The U.S. salaried employee reductions related to this initiative were to be accomplished primarily through the 2009 Salaried Window Program or through a severance program funded from operating cash flows. These programs were involuntary programs

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

subject to management approval where employees were permitted to express interest in retirement or separation, for which the charges for the 2009 Salaried Window Program were recorded as special termination benefits funded from the U.S. salaried defined benefit pension plan and other applicable retirement benefit plans. The cost associated with the total targeted headcount reductions expected under the programs was determined to be probable and estimable and severance charges of \$250 million were recorded in the period January 1, 2009 through July 9, 2009. Refer to Note 24 for additional information on the severance accrual.

In the period July 10, 2009 through December 31, 2009 1,500 salaried employees irrevocably accepted the terms of the 2009 Salaried Window Program. We reduced the severance accrual previously recorded by Old GM by \$64 million and recorded special termination benefits.

A net reduction of 9,000 salaried employees was achieved globally, excluding 2,000 salaried employees acquired with our acquisition of Nexteer and four domestic facilities. Global salaried headcount decreased from 73,000 salaried employees at December 31, 2008 to 66,000 at December 31, 2009, including a reduction of 5,500 U.S. salaried employees. Refer to Note 5 for additional information on the acquisition of Nexteer and four domestic facilities.

***U.S. Salaried Benefits Changes***

In February 2009 Old GM reduced salaried retiree life benefits for U.S. salaried employees and remeasured its U.S. salaried retiree life insurance plan. In June 2009 Old GM approved and communicated negative plan amendments associated with the U.S. salaried retiree health care program including reduced coverage and increases to cost sharing. The plan was remeasured in June 2009.

In June 2009 Old GM communicated additional changes in benefits for retired salaried employees including an acceleration and further reduction in retiree life insurance, elimination of the supplemental executive life insurance benefit, and reduction in the supplemental executive retirement plan. These plan changes were contingent on completion of the 363 Sale and the effects of these amendments were included in the fresh start remeasurements.

***2009 Revised UAW Settlement Agreement***

In May 2009 Old GM and the UAW agreed to a 2009 Revised UAW Settlement Agreement that related to the UAW hourly retiree medical plan and the 2008 UAW Settlement Agreement, as subsequently discussed, that permanently shifted responsibility for providing retiree health care from Old GM to the New Plan funded by the New VEBA. The 2009 Revised UAW Settlement Agreement was subject to the successful completion of the 363 Sale and we and the UAW executed the 2009 Revised UAW Settlement Agreement on July 10, 2009 in connection with the 363 Sale. Details of the most significant changes to the agreement are:

- The Implementation Date changed from January 1, 2010 to the later of December 31, 2009 or the emergence from bankruptcy, which occurred on July 10, 2009;
- The timing of payments to the New VEBA changed as subsequently discussed;
- The form of consideration changed as subsequently discussed;
- The contribution of employer securities changed such that they were contributed directly to the New VEBA in connection with the 363 Sale on July 10, 2009;
- Certain coverages will be eliminated and certain cost sharing provisions will increase; and
- The flat monthly special lifetime pension benefit that was scheduled to commence on January 1, 2010 was eliminated.

There was no change to the timing of our existing internal Voluntary Employee Benefit Association (VEBA) asset transfer to the New VEBA in that the internal VEBA asset transfer occurred within 10 business days after December 31, 2009 in accordance with the terms of both the 2008 UAW Settlement Agreement and the 2009 Revised UAW Settlement Agreement.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The new payment terms to the New VEBA under the 2009 Revised UAW Settlement Agreement are:

- VEBA Notes of \$2.5 billion and accrued interest, at an implied interest rate of 9.0% per annum, are scheduled to be repaid in three equal installments of \$1.4 billion in July of 2013, 2015 and 2017;
- 260 million shares of our Series A Preferred Stock that accrues cumulative dividends at 9.0% per annum;
- 88 million shares (17.5%) of our common stock;
- A warrant to acquire 15 million shares (2.5%) of our common stock at \$126.92 per share at any time prior to December 31, 2015;
- Two years funding of claims costs for certain individuals that elected to participate in the 2009 Special Attrition Programs; and
- The existing internal VEBA assets.

The modifications to the UAW Settlement Agreement and the new payment terms resulted in a reorganization gain of \$7.7 billion. Refer to Note 2 for additional information on the reorganization gain.

Under the terms of the 2009 Revised UAW Settlement Agreement, we are released from UAW retiree health care claims incurred after December 31, 2009. All obligations of ours, the New Plan and any other entity or benefit plan of ours for retiree medical benefits for the class and the covered group arising from any agreement between us and the UAW terminated at December 31, 2009. Our obligations to the New Plan and the New VEBA are limited to the terms of the 2009 Revised UAW Settlement Agreement.

From July 10, 2009 to December 31, 2009 we recorded net periodic postretirement healthcare cost, including service cost for UAW hourly retiree medical plan participants working toward eligibility. After December 31, 2009 no service cost will be recorded for active UAW participants who continue to work toward eligibility in the New Plan.

At December 31, 2009 we accounted for the termination of our UAW hourly retiree medical plan and Mitigation Plan, under which we agreed that an independent VEBA would be formed to pay certain healthcare costs of UAW hourly retirees and their beneficiaries, as a settlement. The resulting settlement loss of \$2.6 billion recorded on December 31, 2009 represented the difference between the sum of the accrued OPEB liability of \$10.6 billion and the existing internal VEBA assets of \$12.6 billion, and \$25.8 billion representing the fair value of the consideration transferred at December 31, 2009, including the contribution of the existing internal VEBA assets. Upon the settlement of the UAW hourly retiree medical plan at December 31, 2009 the VEBA Notes, Series A Preferred Stock, common stock, and warrants contributed to the New VEBA were recorded at fair value and classified as outstanding debt and equity instruments.

Prior to December 31, 2009 the 260 million shares of Series A Preferred Stock issued to the New VEBA were not considered outstanding for accounting purposes due to the terms of the 2009 Revised UAW Settlement Agreement. As a result, \$105 million of the \$146 million of dividends paid on September 15, 2009 and \$147 million of the \$203 million of dividends paid on December 15, 2009 were recorded as a reduction of Postretirement benefits other than pensions.

***IUE-CWA and USW Settlement Agreement***

In September 2009 we entered into a settlement agreement with MLC, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers — Communication Workers of America (IUE-CWA), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW). Under the settlement agreement, the IUE-CWA and the USW agreed to withdraw and release all claims against us and MLC relating to retiree healthcare benefits and basic life insurance benefits. In exchange, the IUE-CWA, the USW and any additional union that agrees to the terms of the settlement

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

agreement will be granted an allowed pre-petition unsecured claim in MLC's Chapter 11 proceedings in the amount of \$1.0 billion with respect to retiree health and life insurance benefits for the post-age-65 retirees, post-age-65 surviving spouses and under-age-65 medicare eligible retirees or surviving spouses disqualified for retiree health care benefits from us under the settlement agreement. For participants remaining eligible for health care, certain coverages were eliminated and cost sharing will increase. These modifications became effective upon completion of the 363 Sale and resulted in a reorganization gain of \$2.7 billion. Refer to Note 2 for additional information on the reorganization gain.

The settlement agreement was expressly conditioned upon and did not become effective until approved by the Bankruptcy Court in MLC's Chapter 11 proceedings, which occurred in November 2009. Several additional unions representing MLC hourly retirees joined the IUE-CWA and USW settlement agreement with respect to healthcare and life insurance. We remeasured the U.S. hourly defined benefit pension plan, non-UAW hourly retiree health care plan and the U.S. hourly life plan in November 2009 to reflect the terms and acceptances of the IUE-CWA and USW Settlement Agreement. The remeasurement of these plans resulted in a decrease in our related accrual and an offsetting increase in the PBO or APBO of the benefit plan.

***2009 CAW Agreement***

In March 2009 Old GM announced that the members of the CAW had ratified the 2009 CAW Agreement intended to reduce manufacturing costs in Canada by closing the competitive gap with transplant automakers in the United States on active employee labor costs and reducing legacy costs through introducing co-payments for healthcare benefits, increasing employee healthcare cost sharing, freezing pension benefits and eliminating cost of living adjustments to pensions for retired hourly workers. The 2009 CAW Agreement was conditioned on Old GM receiving longer term financial support from the Canadian and Ontario governments.

GMCL subsequently entered into additional negotiations with the CAW which resulted in a further addendum to the 2008 collective agreement which was ratified by the CAW members in May 2009. In June 2009 the Ontario and Canadian governments agreed to the terms of a loan agreement, approved the GMCL viability plan and provided funding to GMCL. The Canadian hourly defined benefit pension plan was remeasured in June 2009.

As a result of the termination of the employees from the former Oshawa, Ontario truck facility, the CAW hourly retiree healthcare plan and the CAW retiree life plan were remeasured in June 2009 and a curtailment gain associated with the CAW hourly retiree healthcare plan was also recorded in the three months ended June 30, 2009.

In June 2009 GMCL and the CAW agreed to the terms of an independent HCT to provide retiree health care benefits to certain active and retired employees represented by the CAW. The HCT will be implemented when certain preconditions are achieved, including certain changes to the Canadian Income Tax Act. The preconditions have not been achieved and the HCT is not yet implemented at December 31, 2009. Under the terms of the HCT agreement, GMCL is obligated to make a payment of CAD \$1.0 billion on the HCT implementation date which it will fund out of its CAD \$1.0 billion escrow funds, adjusted for the net difference between the amount of retiree monthly contributions received during the period December 31, 2009 through the HCT implementation date less the cost of benefits paid for claims incurred by covered employees during this period. GMCL will provide a CAD \$800 million note payable to the HCT on the HCT implementation date which will accrue interest at an annual rate of 7.0% with five equal annual installments of CAD \$256 million due December 31 of 2014 through 2018. Concurrent with the implementation of the HCT, GMCL will be legally released from all obligations associated with the cost of providing retiree health care benefits to current employees and retired plan participants, and we will account for the termination of our CAW hourly retiree healthcare plan as a settlement, based upon the difference between the fair value of the notes and cash contributed and the health care plan obligation at the settlement date.

***Delphi***

In July 2009 we and Delphi entered into an agreement with the PBGC regarding the settlement of the PBGC's claims from the termination of the Delphi pension plans. As part of that agreement, we maintained the obligation to provide the difference between pension benefits paid by the PBGC according to regulation and those originally guaranteed by Old GM under the Delphi Benefit

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Guarantee Agreements. We had a legal obligation to provide this benefit to eligible UAW plan participants at July 10, 2009. We remeasured the U.S. hourly defined benefit pension plan in August 2009 for eligible UAW plan participants, which coincided with Delphi's transfer of its pension plan obligations to the PBGC. We did not agree to provide this benefit to eligible Delphi IUE-CWA and USW retirees until the IUE-CWA and USW Settlement Agreement was approved by the Bankruptcy Court in MLC's Chapter 11 proceedings, which occurred in November 2009; however a contingent liability had been recorded. We remeasured the U.S. hourly defined benefit pension plan in November 2009 for eligible IUE-CWA and USW plan participants that coincided with the approval of the IUE-CWA and USW Settlement Agreement by the Bankruptcy Court. The remeasurements of the U.S. hourly defined benefit pension plan resulted in a \$1.4 billion increase in the plan PBO to the U.S. hourly defined benefit pension plan and an offsetting decrease principally related to our Delphi related accrual. Refer to Note 21 for additional information on the Delphi Benefit Guarantee Agreements.

**2008**

The following table summarizes Old GM's significant 2008 defined benefit plan interim remeasurements, the related changes in obligations and the associated curtailments, settlements and termination benefits, as applicable, recorded in earnings in the year ended 2008, which are subsequently discussed:

Event and Remeasurement Date When Applicable	Affected Plans	Predecessor		Increase (Decrease) Since the Most Recent Remeasurement Date	Gain (Loss)			Termination Benefits and Other	
		Change in Discount Rate			PBO/APBO	Curtailments	Settlements		
		From	To						
2008 UAW Settlement Agreement — September 1	UAW hourly retiree medical plan	—	—	\$ (13,135)	\$ 6,326	\$ —	\$ —		
	Mitigation Plan	—	—	(137)	(1,424)	—	—		
	U.S. hourly defined benefit pension plan	6.45%	6.70%	563	—	—	—		
2008 Special Attrition Programs — May 31	U.S. hourly defined benefit pension plan	6.30%	6.45%	842	(2,441)	—	(800)		
	Various OPEB plans	—	—	—	104	—	(68)		
2008 CAW Agreement and facility idlings — May 31	Canadian hourly and salaried defined benefit pension plans	5.75%	6.00%	262	(177)	—	(37)		
Salaried retiree benefit plan changes — July 1	U.S. salaried retiree medical plan	6.40%	6.75%	(3,993)	—	(1,706)	—		
	U.S. salaried defined benefit pension plan	6.45%	6.60%	3,159	—	—	—		
Delphi-GM Settlement Agreement — September 30	Various U.S. hourly retiree medical plans	6.40%	6.85%	1,236	—	—	—		
	U.S. hourly defined benefit pension plan	6.70%	7.10%	1,070	—	—	—		
Total				<u>\$ (10,133)</u>	<u>\$ 2,388</u>	<u>\$ (1,706)</u>	<u>\$ (905)</u>		

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In addition to the events listed previously, a number of events related to benefit plans occurred that did not result in interim remeasurements including:

- IUE-CWA agreements related to the closure of the Moraine, Ohio facility resulted in increased cost of \$255 million for pension benefit enhancements and a \$257 million curtailment gain as a result of accelerating substantially all of the IUE-CWA retiree healthcare plan's negative prior service cost.
- Salaried workforce reduction resulted in special termination benefit charges of \$311 million as a result of 3,700 employees accepting the 2008 Salaried Window Program, which was a voluntary early retirement program extended to certain U.S. salaried employees.

***2008 UAW Settlement Agreement***

In February 2008 Old GM entered into the 2008 UAW Settlement Agreement which provided that responsibility for providing retiree healthcare would permanently shift from Old GM to the New Plan funded by the New VEBA as of the Implementation Date. The 2008 UAW Settlement Agreement became effective in September 2008 with an implementation date of January 1, 2010. As a result of the 2008 UAW Settlement Agreement, Old GM's obligation to provide retiree healthcare coverage for UAW retirees and beneficiaries was to terminate at January 1, 2010. The obligation for retiree medical claims incurred on or after this date would be the responsibility of the New Plan and New VEBA. This agreement was revised in 2009 as discussed previously in the section "2009 Revised UAW Settlement Agreement."

The U.S. hourly defined benefit pension plan was amended as part of the 2008 UAW Settlement Agreement to reflect a flat monthly special lifetime benefit to be paid to plan participants commencing January 1, 2010 to help offset the retiree's increased costs of monthly contributions and other cost sharing increases required under the terms of the New VEBA. Effective with the 363 Sale, the additional pension flat monthly lifetime benefit was eliminated and was recorded as a component of the Reorganization gain, net upon our application of fresh-start reporting.

***2008 Special Attrition Programs***

In February 2008 Old GM entered into agreements with the UAW and the IUE-CWA regarding special attrition programs which were intended to further reduce the number of hourly employees. The 2008 UAW Special Attrition Program offered to 74,000 UAW-represented employees was comprised of wage and benefit packages for normal and early voluntary retirements or buyouts or pre-retirement leaves. In addition to their vested pension benefits, those employees who were retirement eligible received a lump sum payment that was funded from the U.S. hourly defined benefit pension plan, the amount of which depended upon their job classification. For those employees not retirement eligible, other buyout options were offered and funded from operating cashflow. The terms of the 2008 IUE-CWA Special Attrition Program, which was offered to 2,300 IUE-CWA represented employees, were similar to those offered under the 2008 UAW Special Attrition Program.

***2008 CAW Agreement and Facility Idlings***

In May 2008 Old GM entered into the 2008 CAW Agreement which resulted in increased pension benefits. Old GM subsequently announced its plan to cease production at the Oshawa, Ontario truck facility, which triggered a curtailment of Old GM's Canadian hourly and salaried defined benefit pension plans.

Prior to the 2008 CAW Agreement, Old GM amortized prior service cost related to its Canadian hourly defined benefit pension plan over the remaining service period for active employees, previously estimated to be 10 years. In conjunction with entering into the 2008 CAW Agreement, Old GM evaluated the 2008 CAW Agreement and the relationship with the CAW and determined that the contractual life of the labor agreements is a more appropriate reflection of the period of future economic benefit received from pension plan amendments negotiated as part of the collectively bargained agreement. This change accelerated the recognition of prior

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

service cost to three years, resulting in additional net periodic pension expense of \$334 million recorded in Cost of sales in the year ended 2008 related to pension increases in Canada from prior collectively bargained agreements.

***Salaried Retiree Benefit Plan Changes***

In July 2008 Old GM amended its U.S. salaried retiree medical and defined benefit pension plans to eliminate healthcare coverage for U.S. salaried retirees over age 65, effective January 2009. Upon reaching age 65, affected retirees and surviving spouses were to receive a pension increase of \$300 per month to partially offset the retiree's increased cost of Medicare and supplemental healthcare coverage. For participants who were under the age of 65, the future elimination of healthcare benefits upon turning age 65 and the increased pension benefits provided resulted in a negative plan amendment to the U.S. salaried retiree medical plan and a positive plan amendment to the U.S. salaried defined benefit pension plan, both of which will be amortized over seven years, which represents the average remaining years to full eligibility for U.S. salaried retiree medical plan participants.

***Delphi-GM Settlement Agreements***

Old GM and Delphi reached agreements in the three months ended September 30, 2008 with each of Delphi's unions regarding the plan to freeze the benefits related to the Delphi's hourly rate employee pension plan (Delphi HRP); the cessation by Delphi of OPEB for Delphi hourly union-represented employees and retirees; and transfers of certain assets and obligations from the Delphi HRP to Old GM's U.S. hourly defined benefit pension plan. As a result of assuming Delphi's OPEB obligation, Old GM reclassified liabilities of \$2.8 billion from its Delphi related accrual to its U.S. OPEB obligation. Old GM remeasured certain of its OPEB plans in September 2008 to include Delphi hourly union-represented employees, the effects of other announced facility idlings in the U.S., as well as changes in certain actuarial assumptions.

The transfer of certain assets and obligations from the Delphi HRP to Old GM's U.S. hourly defined benefit pension plan resulted in a decrease in Old GM's Delphi related accrual and an offsetting increase in the PBO of \$2.8 billion. Old GM remeasured its U.S. hourly defined benefit pension plan in September 2008 to include: (1) assets and liabilities of certain employees transferred in accordance with the Delphi Settlement Agreement; (2) its obligation under the Delphi Benefit Guarantee Agreement to provide up to seven years of credited service to covered employees; (3) the effects of other announced facility idlings in the U.S.; and (4) changes in certain actuarial assumptions including a discount rate increase.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following tables summarize the change in benefit obligations and related plan assets (dollars in millions):

	Successor			
	U.S. Plans Pension Benefits	Non-U.S. Plans Pension Benefits(a) July 10, 2009 Through December 31, 2009	U.S. Plans Other Benefits	Non-U.S. Plans Other Benefits
<b>Change in benefit obligations</b>				
Beginning benefit obligation	\$ 98,012	\$ 21,392	\$ 27,639	\$ 3,420
Service cost	216	157	62	17
Interest cost	2,578	602	886	94
Plan participants' contributions	—	4	172	—
Amendments	(13)	(9)	1	(89)
Actuarial (gains) losses	3,102	1,592	1,732	64
Benefits paid	(3,938)	(714)	(1,700)	(70)
Medicare Part D receipts	—	—	84	—
IUE-CWA & USW related liability transfer	—	—	514	—
Foreign currency translation adjustments	—	1,469	—	376
Delphi benefit guarantee and other	1,365	—	—	—
UAW retiree medical plan settlement	—	—	(25,822)	—
Curtailments, settlements, and other (b)	249	(119)	2,220	(15)
Ending benefit obligation	<u>101,571</u>	<u>24,374</u>	<u>5,788</u>	<u>3,797</u>
<b>Change in plan assets</b>				
Beginning fair value of plan assets	78,493	8,616	10,702	—
Actual return on plan assets	9,914	1,201	1,909	—
Employer contributions	31	4,287	1,528	70
Plan participants' contributions	—	4	172	—
Benefits paid	(3,938)	(714)	(1,700)	(70)
UAW hourly retiree medical plan asset settlement	—	—	(12,586)	—
Foreign currency translation adjustments	—	765	—	—
Other	—	(132)	6	—
Ending fair value of plan assets	<u>84,500</u>	<u>14,027</u>	<u>31</u>	<u>—</u>
Ending funded status	<u>\$ (17,071)</u>	<u>\$ (10,347)</u>	<u>\$ (5,757)</u>	<u>\$ (3,797)</u>
<b>Amounts recorded in the consolidated balance sheet are comprised of:</b>				
Noncurrent asset	\$ —	\$ 98	\$ —	\$ —
Current liability	(93)	(337)	(685)	(161)
Noncurrent liability	(16,978)	(10,108)	(5,072)	(3,636)
Net amount recorded	<u>\$ (17,071)</u>	<u>\$ (10,347)</u>	<u>\$ (5,757)</u>	<u>\$ (3,797)</u>
<b>Amounts recorded in Accumulated other comprehensive Income (loss) are comprised of:</b>				
Net actuarial loss (gain)	\$ (3,803)	\$ 833	\$ 212	\$ 65
Net prior service cost (credit)	(13)	(9)	(1)	(89)
Total recorded in Accumulated other comprehensive income (loss)	<u>\$ (3,816)</u>	<u>\$ 824</u>	<u>\$ 211</u>	<u>\$ (24)</u>

(a) Table does not include other non-U.S. employee benefit arrangements with a total PBO of \$76 million at December 31, 2009.

(b) U.S. other benefits includes the \$2.6 billion settlement loss resulting from the termination of the UAW hourly retiree medical plan and Mitigation Plan.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Predecessor							
	U.S. Plans Pension Benefits		Non-U.S. Plans Pension Benefits(a)		U.S. Plans Other Benefits		Non-U.S. Plans Other Benefits	
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008						
<b>Change in benefit obligations</b>								
Beginning benefit obligation	\$ 98,135	\$ 85,277	\$ 19,995	\$ 23,753	\$ 39,960	\$ 59,703	\$ 2,930	\$ 4,310
Service cost	243	527	155	410	69	241	12	32
Interest cost	3,077	5,493	596	1,269	1,615	3,519	102	225
Plan participants' contributions	—	—	8	29	169	401	—	—
Amendments	(8)	1,218	(584)	218	(705)	(1,108)	(482)	(185)
Actuarial (gains) losses	(260)	5,684	959	(965)	77	(18,918)	436	(443)
Benefits paid	(5,319)	(8,862)	(769)	(1,390)	(2,115)	(4,759)	(90)	(175)
Medicare Part D receipts	—	—	—	—	150	240	—	—
Foreign currency translation adjustments	—	—	856	(3,981)	—	—	159	(833)
Delphi obligation transfer	—	2,753	—	—	—	2,654	—	—
Curtailments, settlements, and other	1,559	6,045	(76)	652	8	(2,013)	(15)	(1)
Ending benefit obligation	97,427	98,135	21,140	19,995	39,228	39,960	3,052	2,930
Effect of application of fresh-start reporting	585	—	252	—	(11,589)	—	368	—
Ending benefit obligation including effect of application of fresh-start reporting	98,012	98,135	21,392	19,995	27,639	39,960	3,420	2,930
<b>Change in plan assets</b>								
Beginning fair value of plan assets	84,545	104,070	8,086	13,308	9,969	16,303	—	—
Actual return on plan assets	(203)	(11,350)	227	(2,863)	444	(4,978)	—	—
Employer contributions	57	90	529	977	1,947	3,002	90	175
Plan participants' contributions	—	—	8	29	169	401	—	—
Benefits paid	(5,319)	(8,862)	(769)	(1,390)	(2,115)	(4,759)	(90)	(175)
Foreign currency translation adjustments	—	—	516	(2,342)	—	—	—	—
Delphi plan asset transfer	—	572	—	—	—	—	—	—
Other	41	25	(197)	367	(10)	—	—	—
Ending fair value of plan assets	79,121	84,545	8,400	8,086	10,404	9,969	—	—
Effect of application of fresh-start reporting	(628)	—	216	—	298	—	—	—
Ending fair value of plan assets including effect of application of fresh-start reporting	78,493	84,545	8,616	8,086	10,702	9,969	—	—
Ending funded status	(18,306)	(13,590)	(12,740)	(11,909)	(28,824)	(29,991)	(3,052)	(2,930)
Effect of application of fresh-start reporting	(1,213)	—	(36)	—	11,887	—	(368)	—
Ending funded status including effect of application of fresh-start reporting	\$ (19,519)	\$ (13,590)	\$ (12,776)	\$ (11,909)	\$ (16,937)	\$ (29,991)	\$ (3,420)	\$ (2,930)
<b>Amounts recorded in the consolidated balance sheet are comprised of:</b>								
Noncurrent assets	\$ —	\$ —	\$ 97	\$ 109	\$ —	\$ —	\$ —	\$ —
Current liability	(74)	(108)	(339)	(322)	(1,809)	(3,848)	(147)	(154)
Noncurrent liability	(19,445)	(13,482)	(12,534)	(11,696)	(15,128)	(26,143)	(3,273)	(2,776)
Net amount recorded	\$ (19,519)	\$ (13,590)	\$ (12,776)	\$ (11,909)	\$ (16,937)	\$ (29,991)	\$ (3,420)	\$ (2,930)
<b>Amounts recorded in Accumulated other comprehensive income (loss) are comprised of:</b>								
Net actuarial loss	\$ 38,007	\$ 34,940	\$ 7,387	\$ 6,188	\$ 1,631	\$ 1,651	\$ 1,005	\$ 569
Net prior service cost (credit)	1,644	2,277	(754)	(170)	(5,028)	(5,305)	(860)	(519)
Transition obligation	—	—	7	7	—	—	—	—
Total recorded in Accumulated other comprehensive income (loss)	\$ 39,651	\$ 37,217	\$ 6,640	\$ 6,025	\$ (3,397)	\$ (3,654)	\$ 145	\$ 50
Effect of application of fresh-start reporting	(39,651)	—	(6,640)	—	3,397	—	(145)	—
Total recorded in Accumulated other comprehensive income (loss)	\$ —	\$ 37,217	\$ —	\$ 6,025	\$ —	\$ (3,654)	\$ —	\$ 50

(a) The table does not include other non-U.S. employee benefit arrangements with a total PBO of \$94 million and \$95 million at July 9, 2009 and December 31, 2008.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In the period July 10, 2009 through December 31, 2009 we experienced actual return on plan assets on our U.S. pension plan assets of \$9.9 billion compared to expected returns of \$3.0 billion that were recognized as a component of our net pension expense during this period. As a result of the U.S. hourly and salaried defined benefit pension plan interim remeasurements, a portion of the effect of the actual plan asset gains was recognized in the market-related value of plan assets during the remainder of the period subsequent to the interim remeasurements. The market related value of plan assets used in the calculation of expected return on pension plan assets at December 31, 2009 is \$2.8 billion lower than the actual fair value of plan assets for U.S. pension plans and \$294 million lower than the actual fair value of plan assets for non-U.S. pension plans. Therefore, the effect of the improvement in the financial markets will not fully affect net pension expense in the year ended 2010. Refer to Note 4 for additional information on the market-related value of plan assets methodology utilized.

The following table summarizes the total accumulated benefit obligations (ABO), the ABO and fair value of plan assets for defined benefit pension plans with ABO in excess of plan assets, and the PBO and fair value of plan assets for defined benefit pension plans with PBO in excess of plan assets (dollars in millions):

	Successor		Predecessor	
	December 31, 2009		December 31, 2008	
	U.S. Plans	Non-U.S. Plans	U.S. Plans	Non-U.S. Plans
ABO	\$101,397	\$23,615	\$98,003	\$19,547
Plans with ABO in excess of plan assets				
ABO	\$101,397	\$22,708	\$98,003	\$19,229
Fair value of plan assets	\$84,500	\$12,721	\$84,545	\$7,648
Plans with PBO in excess of plan assets				
PBO	\$101,571	\$23,453	\$98,135	\$19,664
Fair value of plan assets	\$84,500	\$13,008	\$84,545	\$7,649

The following tables summarize the components of net periodic pension and OPEB expense from continuing operations along with the assumptions used to determine benefit obligations (dollars in millions):

	Successor			
	U.S. Plans	Non-U.S. Plans	U.S.	Non-U.S. Plans
	Pension Benefits	Pension Benefits	Other Benefits	Other Benefits
		July 10, 2009 Through December 31, 2009		
<b>Components of expense</b>				
Service cost (a)	\$254	\$157	\$62	\$17
Interest cost	2,578	602	886	94
Expected return on plan assets	(3,047)	(438)	(432)	—
Amortization of prior service cost (credit)	—	—	—	(1)
Curtailments, settlements, and other losses	249	9	2,580	—
Net periodic pension and OPEB expense	<u>\$34</u>	<u>\$330</u>	<u>\$3,096</u>	<u>\$110</u>
<b>Weighted-average assumptions used to determine benefit obligations at December 31 (b)</b>				
Discount rate	5.52%	5.31%	5.57%	5.22%
Rate of compensation increase	3.94%	3.27%	1.48%	4.45%
<b>Weighted-average assumptions used to determine net expense for period ended December 31 (c)</b>				
Discount rate	5.63%	5.82%	6.81%	5.47%
Expected return on plan assets	8.50%	7.97%	8.50%	—
Rate of compensation increase	3.94%	3.23%	1.48%	4.45%

(a) U. S. pension plan service cost includes plan administrative expenses of \$38 million.

(b) Determined at the end of the period.

(c) Determined at the beginning of the period and updated for remeasurements. Appropriate discount rates were used to measure the effects of curtailments and plan amendments on various plans.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Predecessor											
	U.S. Plans Pension Benefits			Non-U.S. Plans Pension Benefits			U.S. Plans Other Benefits			Non-U.S. Other Benefits		
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>Components of expense</b>												
Service cost	\$ 243	\$ 527	\$ 627	\$ 155	\$ 410	\$ 486	\$ 69	\$ 241	\$ 370	\$ 12	\$ 32	\$ 45
Interest cost	3,077	5,493	4,931	596	1,269	1,143	1,615	3,519	3,609	102	225	199
Expected return on plan assets	(3,810)	(8,043)	(7,983)	(364)	(969)	(984)	(444)	(1,281)	(1,400)	—	—	—
Amortization of prior service cost (credit)	429	1,077	2,167	(12)	407	32	(1,051)	(1,918)	(1,830)	(63)	(86)	(86)
Amortization of transition obligation	—	—	—	2	6	8	—	—	—	—	—	—
Recognized net actuarial loss	715	317	764	193	275	407	32	508	1,352	23	110	122
Curtailments, settlements, and other losses (gains)	1,720	3,823	75	97	270	156	21	(3,476)	(213)	(123)	11	(17)
Divestiture of Allison (a)	—	—	(30)	—	—	—	—	—	211	—	—	—
Net periodic pension and OPEB (income) expense	\$ 2,374	\$ 3,194	\$ 551	\$ 667	\$ 1,668	\$ 1,248	\$ 242	\$ (2,407)	\$ 2,099	\$ (49)	\$ 292	\$ 263
<b>Weighted-average assumptions used to determine benefit obligations at period end (b)</b>												
Discount rate	5.86%	6.27%	6.35%	5.82%	6.22%	5.72%	6.86%	8.25%	6.35%	5.47%	7.00%	5.75%
Rate of compensation increase	3.94%	5.00%	5.25%	3.23%	3.59%	3.60%	1.48%	2.10%	3.30%	4.45%	4.45%	4.00%
<b>Weighted-average assumptions used to determine net expense for the period (c)</b>												
Discount rate	6.27%	6.56%	5.97%	6.23%	5.77%	4.97%	8.11%	7.02%	5.90%	6.77%	5.90%	5.00%
Expected return on plan assets	8.50%	8.50%	8.50%	7.74%	7.78%	7.85%	8.50%	8.40%	8.40%	—	—	—
Rate of compensation increase	5.00%	5.00%	5.00%	3.08%	3.59%	3.46%	1.87%	3.30%	4.60%	4.45%	4.00%	4.00%

(a) As a result of the Allison divestiture, Old GM recorded an adjustment to the unamortized prior service cost of the U.S. hourly defined benefit pension plan and U.S. salaried defined benefit pension plan of \$18 million and the U.S. hourly and salaried OPEB plans of \$223 million in the year ended 2007. Those adjustments were included in the determination of the gain recognized on the sale of Allison. The net periodic pension and OPEB benefit expenses related to Allison were reported as a component of discontinued operations. All such amounts related to Allison are reflected in the table above, and the effects of those amounts are shown as an adjustment to arrive at net periodic pension and OPEB (income) expense from continuing operations.

(b) Determined at the end of the period.

(c) Determined at the beginning of the period and updated for remeasurements. Appropriate discount rates were used to measure the effects of curtailments and plan amendments on various plans.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes estimated amounts to be amortized from Accumulated other comprehensive income (loss) into net periodic benefit cost in the year ended 2010 based on December 31, 2009 plan measurements (dollars in millions):

	U.S. Pension Plans	Non-U.S. Pension Plans	U.S. Other Benefit Plans	Non-U.S. Other Benefit Plans
Amortization of prior service credit	\$ (1)	\$ (1)	\$ —	\$ (1)
Amortization of net actuarial loss	—	9	—	—
	<u>\$ (1)</u>	<u>\$ 8</u>	<u>\$ —</u>	<u>\$ (1)</u>

**Assumptions**

**Healthcare Trend Rate**

	Successor December 31, 2009		Predecessor December 31, 2008	
	U.S. Plans(a)	Non U.S. Plans(b)	U.S. Plans	Non U.S. Plans
<b>Assumed Healthcare Trend Rates</b>				
Initial healthcare cost trend rate	—%	5.4%	8.0%	5.5%
Ultimate healthcare cost trend rate	—%	3.3%	5.0%	3.3%
Number of years to ultimate trend rate	—	8	6	8

- (a) As a result of modifications made to healthcare plans in connection with the 363 Sale, there are no significant uncapped U.S. healthcare plans remaining at December 31, 2009 and, therefore, the healthcare cost trend rate does not have a significant effect on our U.S. plans.
- (b) The implementation of the HCT in Canada is anticipated in the near future, which will significantly reduce our exposure to changes in the healthcare cost trend rate.

Healthcare trend rate assumptions are determined for inclusion in healthcare OPEB valuation at each remeasurement. The healthcare trend rates are developed using historical cash expenditures for retiree healthcare. This information is supplemented with information gathered from actuarial based models, information obtained from healthcare providers and known significant events.

The effect of aggregate healthcare trend rates does not include healthcare trend data subsequent to December 31, 2009 associated with the UAW hourly retiree medical plan due to the December 31, 2009 Implementation Date of the New VEBA as the plan is now settled.

The following table summarizes the effect of a one-percentage point change in the assumed healthcare trend rates:

Change in Assumption	U.S. Plans(a)		Non-U.S. Plans(b)	
	Effect on 2010 Aggregate Service and Interest Cost	Effect on December 31, 2009 APBO	Effect on 2010 Aggregate Service and Interest Cost	Effect on December 31, 2009 APBO
One percentage point increase	—	—	+\$ 14 million	+\$ 413 million
One percentage point decrease	—	—	-\$ 11 million	-\$ 331 million

- (a) As a result of modifications made to healthcare plans in connection with the 363 Sale, there are no significant uncapped U.S. healthcare plans remaining at December 31, 2009 and, therefore, the healthcare cost trend rate does not have a significant effect in the U.S.
- (b) The implementation of the HCT in Canada is anticipated in the near future, which will significantly reduce our exposure to changes in the healthcare cost trend rate.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Investment Strategies and Long-Term Rate of Return**

Detailed periodic studies conducted by outside actuaries and an internal asset management group are used to determine the long-term strategic mix among asset classes, risk mitigation strategies, and the expected return on asset assumptions for U.S. pension plans. The U.S. study includes a review of alternative asset allocation and risk mitigation strategies, anticipated future long-term performance of individual asset classes, risks evaluated using standard deviation techniques and correlations among the asset classes that comprise the plans' asset mix. Similar studies are performed for the significant non-U.S. pension plans with the assistance of outside actuaries and asset managers. While the studies incorporate data from recent fund performance and historical returns, the expected return on plan asset assumptions are determined based on long-term, prospective rates of return.

The strategic asset mix and risk mitigation strategies for the U.S. and non-U.S. pension plans are tailored specifically for each plan. Individual plans have distinct liabilities, liquidity needs, and regulatory requirements. Consequently, there are different investment policies set by individual plan fiduciaries. Although investment policies and risk mitigation strategies may differ among certain U.S. and non-U.S. pension and OPEB plans, each investment strategy is considered to be optimal in the context of the specific factors affecting each plan.

In setting a new strategic asset mix, consideration is given to the likelihood that the selected mix will effectively fund the projected pension plan liabilities while aligning with the risk tolerance of the plans' fiduciaries. The strategic asset mix for U.S. defined benefit pension plans is intended to reduce exposure to equity market risks, to utilize asset classes which reduce volatility and to utilize asset classes where active management has historically generated excess returns above market returns. Therefore, the expected long-term return assumption has been developed with the expectation that we will achieve excess returns above market returns through active management. The results of an asset and liability study approved by the U.S. pension plans' fiduciaries in May 2009 confirmed that the expected long-term annual rate of return assumption of 8.5% for U.S. defined benefit plans continued to be appropriate.

The expected return on plan asset assumptions used in determining pension expense for non-U.S. pension plans is determined in a similar manner to the U.S. plans.

**Target Allocation Percentages**

An asset and liability study of the U.S. target allocation percentages was approved in May 2009. No significant changes were made to the target allocation percentages by asset category as a result of this study. However, due to the partial elimination of the derivative overlay for the absolute return strategies with the May 2009 study, the absolute return strategies no longer provided bond or bond-like exposures. Therefore they were reclassified from debt securities to the other asset category resulting in a 15 percentage point shift between asset categories. This change does not reflect a change in investment policy.

The following table summarizes the target allocations by asset category for U.S. and non-U.S. defined benefit pension plans and U.S. OPEB plans:

Asset Categories	Successor December 31, 2009			Predecessor December 31, 2008		
	U.S. Plans	Non-U.S. Plans	U.S. OPEB(c)	U.S. Plans	Non-U.S. Plans	U.S. OPEB
Equity securities	28.0%	64.0%	—%	28.0%	60.0%	53.0%
Debt securities (a)	42.0%	24.0%	—%	57.0%	24.0%	25.0%
Real estate	9.0%	9.0%	—%	9.0%	12.0%	4.5%
Other (b)	21.0%	3.0%	—%	6.0%	4.0%	17.5%
Total	100.0%	100.0%	—%	100.0%	100.0%	100.0%

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- (a) Includes absolute return strategies at December 31, 2008.
- (b) Includes private equity at December 31, 2008 and December 31, 2009 and absolute return strategies at December 31, 2009.
- (c) There are no significant U.S. OPEB assets at December 31, 2009 following the settlement of the UAW hourly retiree medical plan.

**Pension Plan Assets and Fair Value Measurements**

The following table summarizes the fair value of defined benefit pension plan assets by asset category (dollars in millions):

	Fair Value Measurements of U.S. Plan Assets at December 31, 2009				Fair Value Measurements of Non-U.S. Plan Assets at December 31, 2009				Total U.S. and Non-U.S. Plan Assets
	Successor			Total U.S. Plan Assets	Successor			Total Non-U.S. Plan Assets	
	Level 1	Level 2	Level 3		Level 1	Level 2	Level 3		
<b>Direct investments:</b>									
Cash equivalents and other short-term investments	\$ —	\$ —	\$ —	\$ —	\$ 137	\$ 463	\$ —	\$ 600	\$ 600
Common and preferred stock	—	—	—	—	3,002	56	—	3,058	3,058
Government and agency debt securities (a)	—	—	—	—	93	4,136	65	4,294	4,294
Corporate debt securities (b)	—	—	—	—	2	483	109	594	594
Agency mortgage and asset-backed securities	—	—	—	—	—	62	7	69	69
Non-agency mortgage and asset-backed securities	—	—	—	—	—	42	16	58	58
Private equity and debt investments	—	—	—	—	—	—	110	110	110
Real estate assets (c)	—	—	—	—	14	—	825	839	839
Derivatives (d)	—	—	—	—	—	23	—	23	23
<b>Total direct investments</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>3,248</b>	<b>5,265</b>	<b>1,132</b>	<b>9,645</b>	<b>9,645</b>
<b>Investment funds:</b>									
Cash equivalent funds	—	—	—	—	19	4	—	23	23
Equity funds	—	14,495	—	14,495	1	2,575	75	2,651	17,146
High quality fixed income funds	—	9,643	—	9,643	—	1,012	—	1,012	10,655
High yield fixed income funds	—	—	4,221	4,221	—	—	—	—	4,221
Blended funds (e)	—	71	—	71	—	18	—	18	89
Real estate funds	—	916	—	916	—	35	217	252	1,168
Other funds (f)	—	2,266	—	2,266	—	8	95	103	2,369
<b>Total investment funds</b>	<b>—</b>	<b>27,391</b>	<b>4,221</b>	<b>31,612</b>	<b>20</b>	<b>3,652</b>	<b>387</b>	<b>4,059</b>	<b>35,671</b>
Other	—	—	—	—	—	206	—	206	206
<b>Assets before Investment Trusts</b>	<b>\$ —</b>	<b>\$ 27,391</b>	<b>\$ 4,221</b>	<b>31,612</b>	<b>\$ 3,268</b>	<b>\$ 9,123</b>	<b>\$ 1,519</b>	<b>13,910</b>	<b>45,522</b>
<b>Investment Trusts (g)</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>53,043</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>53,043</b>
<b>Total assets</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>84,655</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>13,910</b>	<b>98,565</b>
Other plan assets and liabilities (h)	—	—	—	(155)	—	—	—	117	(38)
<b>Net plan assets</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>\$ 84,500</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>\$ 14,027</b>	<b>\$ 98,527</b>

- (a) Includes U.S. and sovereign government and agency issues; excludes mortgage and asset-backed securities

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- (b) Includes bank debt obligations.
- (c) Includes public and private real estate investment trusts.
- (d) Includes net futures, forwards, options, swaps, rights, and warrants.
- (e) Primarily investments in blended equity and fixed income fund-of-funds.
- (f) Primarily investments in alternative investment funds.
- (g) Refer to the subsequent discussion of Investment Trusts for the leveling of the underlying assets of the Investment Trusts.
- (h) Primarily investment manager fees, custody fees and other expenses paid directly by the plans.

The following tables summarize the activity for U.S. plan assets classified in Level 3 of the valuation hierarchy (dollars in millions):

	<b>Successor</b>					
	<b>Level 3 U.S. Plan Asset Activity</b>					
	<u>Balance at July 10, 2009</u>	<u>Net Unrealized Gains (Losses)</u>	<u>Net Realized Gains (Losses)</u>	<u>Purchases, Sales and Settlements</u>	<u>Transfers into (out of) Level 3</u>	<u>Balance at December 31, 2009</u>
High yield fixed income funds	\$ 5,488	\$ 910	\$ 158	\$ (2,335)	\$ —	\$ 4,221

  

	<b>Predecessor</b>					
	<b>Level 3 U.S. Plan Asset Activity</b>					
	<u>Balance at January 1, 2009</u>	<u>Net Unrealized Gains (Losses)</u>	<u>Net Realized Gains (Losses)</u>	<u>Purchases, Sales and Settlements</u>	<u>Transfers into (out of) Level 3</u>	<u>Balance at July 9, 2009</u>
High yield fixed income funds	\$ 4,508	\$ 998	\$ 7	\$ (25)	\$ —	\$ 5,488

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following tables summarize the activity for non-U.S. plan assets classified in Level 3 of the valuation hierarchy (dollars in millions):

	Successor						
	Level 3 Non-U.S. Plan Asset Activity						
	Balance at July 10, 2009	Net Unrealized Gains (Losses)	Net Realized Gains (Losses)	Purchases, Sales and Settlements	Transfers into (out of) Level 3	Exchange Rate Movements	Balance at December 31, 2009
<b>Direct investments:</b>							
Government and agency debt securities	\$ 8	\$ (1)	\$ —	\$ 60	\$ (3)	\$ 1	\$ 65
Corporate debt securities	17	6	1	37	43	5	109
Agency mortgage and asset-backed securities	6	—	—	—	1	—	7
Non-agency mortgage and asset-backed securities	10	19	(6)	(11)	3	1	16
Private equity and debt investments	149	(1)	—	(52)	—	14	110
Real estate assets	785	(52)	—	11	—	81	825
Total direct investments	975	(29)	(5)	45	44	102	1,132
<b>Investment funds:</b>							
Equity funds	27	12	(9)	43	(2)	4	75
Real estate funds	199	25	(2)	(4)	—	(1)	217
Other investment funds	107	3	1	(16)	—	—	95
Total investment funds	333	40	(10)	23	(2)	3	387
Total non-U.S. plan assets	\$ 1,308	\$ 11	\$ (15)	\$ 68	\$ 42	\$ 105	\$ 1,519

	Predecessor						
	Level 3 Non-U.S. Plan Asset Activity						
	Balance at January 1, 2009	Net Unrealized Gains (Losses)	Net Realized Gains (Losses)	Purchases, Sales and Settlements	Transfers into (out of) Level 3	Exchange Rate Movements	Balance at July 9, 2009
<b>Direct investments:</b>							
Government and agency debt securities	\$ —	\$ —	\$ —	\$ 4	\$ 4	\$ —	\$ 8
Corporate debt securities	16	—	2	(2)	—	1	17
Agency mortgage and asset-backed securities	6	—	—	—	—	—	6
Non-agency mortgage and asset-backed securities	1	(3)	—	(2)	14	—	10
Private equity and debt investments	163	(33)	—	11	—	8	149
Real estate assets	831	(99)	—	12	—	41	785
Total direct investments	1,017	(135)	2	23	18	50	975
<b>Investment funds:</b>							
Equity funds	33	2	(1)	10	(19)	2	27
Real estate funds	206	(21)	(3)	(3)	—	20	199
Other investment funds	94	2	—	1	—	10	107
Total investment funds	333	(17)	(4)	8	(19)	32	333
Total non-U.S. plan assets	\$ 1,350	\$ (152)	\$ (2)	\$ 31	\$ (1)	\$ 82	\$ 1,308

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***Fund Investment Strategies***

A significant portion of the defined benefit pension plan assets, as previously discussed, are invested in a variety of investment funds. The following information describes the significant investment strategies of those funds.

Cash equivalent funds typically seek a high level of current income consistent with the preservation of capital and the maintenance of liquidity. In furtherance of these investment objectives, the funds invest primarily in short-term, high quality securities including U.S. government securities, U.S. dollar-denominated obligations of the U.S. and foreign depository institutions, commercial paper, corporate bonds and asset-backed securities. The funds seek to be fully invested and to achieve the objectives by using fundamental security valuation methodologies and quantitative investment models.

Equity funds typically seek long-term growth through capital appreciation and current income primarily through investments in companies that are believed by the investment manager to be attractively priced relative to fundamental characteristics such as earnings, book value or cash flow. The funds invest primarily in U.S. equities but may also have exposure to equity securities issued by companies incorporated, listed, or domiciled in developed and/or emerging markets. The funds seek to be fully invested and achieve their objectives by using fundamental security valuation methodologies and quantitative models.

High quality fixed income funds typically seek a high level of current income that is consistent with reasonable risk and moderate capital appreciation, primarily through investments in U.S. high quality fixed income securities. In furtherance of these investment objectives, the funds invest primarily in U.S. government securities, investment-grade corporate bonds, mortgages and asset-backed securities. The funds seek to be fully invested and achieve their objectives by using fundamental security valuation methodologies and quantitative models.

High yield fixed income funds typically seek a high level of current income and capital appreciation primarily through investments in U.S. high yield fixed income securities. The funds invest primarily in U.S. high yield fixed income securities issued by corporations which are rated below investment grade by one or more nationally recognized rating agencies, are unrated but are believed by the investment manager to have similar risk characteristics, or are rated investment grade or higher but are priced at yields comparable to securities rated below investment grade and believed to have similar risk characteristics. The funds seek to be fully invested and achieve their objectives by using fundamental security valuation methodologies and quantitative models.

Blended funds typically seek long-term growth through capital appreciation and current income primarily through investments in a broadly diversified portfolio of stocks and bonds. The funds invest in other investment funds pursuant to an asset allocation strategy that seeks to provide diversification across a range of asset classes. The asset classes of the funds may include U.S. large cap stocks, U.S. small cap stocks, international stocks, emerging markets stocks, U.S. high quality bonds, U.S. high yield bonds and cash. The funds seek to be fully invested and achieve their objectives by using fundamental security valuation methodologies and quantitative models.

Real estate funds typically seek long-term growth of capital and current income that is above average relative to public equity funds. The funds invest primarily in the equity-oriented securities of companies which are principally engaged in the ownership, acquisition, development, financing, sale and/or management of income-producing real estate properties, both commercial and residential. The funds seeks to achieve their objective by selecting securities based on an analysis of factors affecting the performance of real estate investments such as local market conditions, asset quality and management expertise, and an assessment of value based on fundamental security valuation methodologies and other real estate valuation metrics.

The plans also have limited exposure to alternative investment funds with broad-ranging strategies and styles. Typically, the objective of such funds is to deliver returns having relatively low volatility and correlation to movements in major equity and bond markets. Fund strategies in this category typically include private equity, venture capital, commodities, hedged, or absolute return strategies.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Investment Trusts**

A significant portion of the U.S. hourly and salaried pension plan assets are invested through a series of group trusts (Investment Trusts) which permit the commingling of assets from more than one employer. The group trust structure permitted the formation of a series of group trust investment accounts. Each group trust has a beneficial interest in the assets of the underlying investment accounts which are invested to achieve an investment strategy based on the desired plan asset targeted allocations. For purposes of fair value measurement, each plan's interests in the group trusts are classified as a plan asset.

A plan's interest in an Investment Trust is determined based on the Investment Trust's beneficial interest in the underlying net assets. Beneficial interests in the individual Investment Trusts owned by the plans are 97.4% on a combined basis at December 31, 2009.

The following table summarizes the U.S. plans' interest in certain net assets of the Investment Trusts (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>
U.S. pension plans' funded beneficial interest	\$ 53,043
OPEB 401(h) plans' funded beneficial interest	3
Interests held in trusts by plans of other employers	1,403
Total fair value of underlying assets of Investment Trusts	54,449
Assets of Investment Trusts not subject to leveling:	
Cash	(3,022)
Net non-security assets	(323)
Total net assets of the Investment Trusts subject to leveling	<u>\$ 51,104</u>

The following table summarizes the fair value of the individual investments held by the investment accounts owned by the Investment Trusts (dollars in millions):

	<u>Successor</u>			
	<u>Fair Value Measurements of Investment</u>			
	<u>Trust Underlying Assets</u>			
	<u>at December 31, 2009(a)</u>			
	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Cash equivalents and other short-term investments	\$ —	\$ 5,003	\$ —	\$ 5,003
Common and preferred stock	2,512	169	51	2,732
Government and agency debt securities (b)	—	2,866	1,552	4,418
Corporate debt securities (c)	—	4,984	1,761	6,745
Agency mortgage and asset-backed securities	—	380	6	386
Non-agency mortgage and asset-backed securities	—	861	1,525	2,386
Investment funds (d)	999	3,463	13,916	18,378
Private equity and debt investments	—	1	7,210	7,211
Real estate assets (e)	292	—	5,209	5,501
Derivatives (f)	57	(1,825)	112	(1,656)
Total underlying assets	<u>\$3,860</u>	<u>\$15,902</u>	<u>\$31,342</u>	<u>\$51,104</u>

(a) Underlying assets are reported at the overall trust level, which includes our plan assets as well as plan assets of non-affiliated plan sponsors.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- (b) Includes U.S. and sovereign government and agency issues; excludes mortgage and asset-backed securities.
- (c) Includes bank debt obligations.
- (d) Includes common, collective, pooled and hedge funds.
- (e) Includes public and private real estate investment trusts.
- (f) Includes net futures, forwards, options, swaps, rights, and warrants.

The following tables summarize the activity of the underlying assets of the Investment Trusts classified in Level 3 of the valuation hierarchy (dollars in millions):

	Successor					Balance at December 31, 2009
	Level 3 Investment Trust Underlying Asset Activity					
	Balance at July 10, 2009	Net Unrealized Gains (Losses)	Net Realized Gains (Losses)	Purchases, Sales and Settlements	Transfers into (out of) Level 3	
Common and preferred stock	\$ 13	\$ 11	\$ (6)	\$ 37	\$ (4)	\$ 51
Government and agency debt securities	29	140	28	66	1,289	1,552
Corporate debt securities	749	173	(6)	612	233	1,761
Agency mortgage and asset-backed securities	3	5	(3)	3	(2)	6
Non-agency mortgage and asset-backed securities	544	455	(162)	393	295	1,525
Investment funds	10,874	1,379	(218)	1,379	502	13,916
Private equity and debt investments	6,618	264	205	123	—	7,210
Real estate assets	5,701	(1,086)	364	230	—	5,209
Derivatives	(314)	(8)	(22)	66	390	112
Total Investment Trust Level 3	<u>\$ 24,217</u>	<u>\$ 1,333</u>	<u>\$ 180</u>	<u>\$ 2,909</u>	<u>\$ 2,703</u>	<u>\$ 31,342</u>

	Predecessor					Balance at July 9, 2009
	Level 3 Investment Trust Underlying Asset Activity					
	Balance at January 1, 2009	Net Unrealized Gains (Losses)	Net Realized Gains (Losses)	Purchases, Sales and Settlements	Transfers into (out of) Level 3	
Common and preferred stock	\$ 10	\$ (1)	\$ 3	\$ 1	\$ —	\$ 13
Government and agency debt securities	9	3	—	17	—	29
Corporate debt securities	604	172	(47)	15	5	749
Agency mortgage and asset-backed securities	5	—	—	(1)	(1)	3
Non-agency mortgage and asset-backed securities	717	(147)	(16)	9	(19)	544
Investment funds	12,753	1,899	(1,193)	(2,585)	—	10,874
Private equity and debt investments	7,564	(1,049)	(64)	167	—	6,618
Real estate assets	7,899	(2,440)	(10)	252	—	5,701
Derivatives	1,420	(1,469)	(229)	(36)	—	(314)
Total Investment Trust Level 3	<u>\$ 30,981</u>	<u>\$ (3,032)</u>	<u>\$ (1,556)</u>	<u>\$ (2,161)</u>	<u>\$ (15)</u>	<u>\$ 24,217</u>

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**OPEB Plan Assets and Fair Value Measurements**

The existing OPEB plan assets were no longer recognized as plan assets due to the UAW hourly retiree medical plan settlement. The following table summarizes the fair value of OPEB plan assets by asset category (dollars in millions):

	Successor			Total U.S. Plan Assets
	Fair Value Measurements of OPEB Plan Assets at December 31, 2009			
	Level 1	Level 2	Level 3	
<b>Direct investments:</b>				
Cash equivalents and other short-term investments	\$ —	\$ 28	\$ —	\$ 28
Investment Funds	—	37	—	37
Other	—	—	2	2
<b>Total assets</b>	<u>\$ —</u>	<u>\$ 65</u>	<u>\$ 2</u>	67
Employee-owned assets				(10)
Net non-security liabilities				(26)
<b>Total OPEB net assets</b>				<u>\$ 31</u>

The following tables summarize the activity for the OPEB plan assets classified in Level 3 of the valuation hierarchy (dollars in millions):

	Successor					Balance at December 31, 2009
	Level 3 OPEB Plan Asset Activity					
	Balance at July 10, 2009	Net Unrealized Gains (Losses)	Net Realized Gains (Losses)	Purchases, Sales and Settlements	Transfers into (out of) Level 3	
Common and preferred stock	\$ 3	\$ 3	\$ (2)	\$ (4)	\$ —	\$ —
Government and agency debt securities	1	21	4	(248)	222	—
Corporate debt securities	122	51	3	(344)	168	—
Non-agency mortgage and asset-backed securities	18	(29)	(1)	(2)	14	—
Investment funds	2,188	154	(17)	(2,315)	(10)	—
Private equity and debt investments	243	36	—	(279)	—	—
Real estate assets	356	(78)	—	(136)	(142)	—
Other	2	—	—	—	—	2
<b>Total OPEB Level 3</b>	<u>\$ 2,933</u>	<u>\$ 158</u>	<u>\$ (13)</u>	<u>\$ (3,328)</u>	<u>\$ 252</u>	<u>\$ 2</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Predecessor					Balance at July 9, 2009
	Level 3 OPEB Plan Asset Activity					
	Balance at January 1, 2009	Net Unrealized Gains (Losses)	Net Realized Gains (Losses)	Purchases, Sales and Settlements	Transfers into (out of) Level 3	
Common and preferred stock	\$ —	\$ (5)	\$ —	\$ 8	\$ —	\$ 3
Government and agency debt securities	—	—	—	—	1	1
Corporate debt securities	89	26	(5)	12	—	122
Non-agency mortgage and asset-backed securities	24	—	(1)	(5)	—	18
Investment funds	2,403	333	(104)	(272)	(172)	2,188
Private equity and debt investments	245	17	(16)	(3)	—	243
Real estate assets	415	(71)	1	11	—	356
Other	2	—	—	—	—	2
<b>Total OPEB Level 3</b>	<b>\$ 3,178</b>	<b>\$ 300</b>	<b>\$ (125)</b>	<b>\$ (249)</b>	<b>\$ (171)</b>	<b>\$ 2,933</b>

**Significant Concentrations of Risk**

The pension plan Investment Trusts include investments in privately negotiated equity and debt securities and derivative instruments which may be illiquid. The asset managers may be unable to quickly liquidate some of these investments at an amount close or equal to fair value in order to meet a plan's liquidity requirements or to respond to specific events such as deterioration in the creditworthiness of any particular issuer or counterparty.

A portion of the assets underlying the Investment Trusts include non-readily liquid assets, which generally have long-term durations that complement the long-term nature of pension obligations, are not used to fund benefit payments when currently due. Plan management monitors liquidity risk on an ongoing basis and has procedures in place that are designed to maintain flexibility in addressing plan-specific, broader industry, and market liquidity events.

The pension plan Investment Trusts may invest in financial instruments and enter into transactions denominated in currencies other than the plans' functional currencies. Consequently, the plans might be exposed to risks that the foreign currency exchange rates might change in a manner that has an adverse effect on the value of that portion of the plans' assets or liabilities denominated in currencies other than the functional currency. The plans use forward currency contracts to manage foreign currency risk.

The pension plan Investment Trusts may invest in fixed income securities for which any change in the relevant interest rates for particular securities might result in an investment manager being unable to secure similar returns on the expiration of contracts or the sale of securities. In addition, changes to prevailing interest rates or changes in expectations of future interest rates might result in an increase or decrease in the fair value of the securities held. In general, as interest rates rise, the fair value of fixed income securities declines, and vice-versa. The plan Investment Trusts use interest rate swaps and other financial derivative instruments to manage interest rate risk.

A counterparty to a financial instrument may fail or default on a commitment that it has entered into with the plan Investment Trusts. Counterparty risk is primarily related to over-the-counter derivative instruments used to manage exposures related to interest rates on long-term debt securities and foreign currency exchange rate fluctuations. The plan Investment Trusts enter into agreements with counterparties that allow the set-off of certain exposures to the risk that the issuer or guarantor of a debt security will be unable to meet principal and interest payments on its obligations and also to the price risk related to factors such as interest rate sensitivity, market perception of the creditworthiness of the issuer, and general market liquidity. The plan Investment Trusts may invest in debt securities that are investment grade, non-investment grade, or unrated. High yield debt securities have historically experienced greater default rates than investment grade securities. The plan Investment Trusts have credit policies and processes to manage exposure to credit risk on an ongoing basis and manage concentrations of counterparty risk by seeking to undertake transactions with large well-capitalized counterparties and by monitoring the creditworthiness of these counterparties.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Plan Funding Policy and Contributions**

The funding policy for qualified defined benefit pension plans is to contribute annually not less than the minimum required by applicable law and regulations or to directly pay benefit payments where appropriate. At December 31, 2009, all legal funding requirements had been met.

The following table summarizes pension contributions to the defined benefit pension plans or direct payments (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
U.S. hourly and salaried	\$ —	\$ —	\$ —	\$ —
Other U.S.	31	57	90	89
Non-U.S.	4,287	529	977	848
Total contributions	\$ 4,318	\$ 586	\$ 1,067	\$ 937

In the year ending 2010 we do not have any U.S. contributions due to our qualified plans. The next pension funding valuation date based on the requirements of the Pension Protection Act (PPA) of 2006 would be October 1, 2010. At that time, based on the PPA, we have the option to select a discount rate for the valuation based on either the Full Yield Curve method or the 3-Segment method, both of which are considered to be acceptable methods. A hypothetical funding valuation at December 31, 2009 using the Full Yield Curve discount rate at that time and for all future funding valuations projects contributions of \$2.5 billion, \$4.6 billion and \$4.8 billion in 2013, 2014 and 2015 and additional contributions may be required thereafter. Alternatively, if the 3-Segment discount rate were used for the hypothetical valuation, no pension funding contributions until a contribution of \$3.3 billion in 2015 are required, and additional contributions may be required thereafter. In both cases, we have assumed that the pension plans earn the expected return of 8.5% in the future. In addition to the discount rate and rate of return on assets, the pension contributions could be affected by various other factors including the effect of any legislative changes. We are currently considering making a discretionary contribution to our U.S. hourly defined benefit pension plan to offset the effect of the increase to the PBO resulting from the Delphi Benefit Guarantee Agreements being triggered and to reduce the projected future cash funding requirements. We are currently evaluating the amount, timing and form of assets that may be contributed. We expect to contribute or pay benefits of \$95 million to our other U.S. defined benefit pension plans and \$355 million to our non-U.S. pension plans in the year ended 2010.

In July 2009 \$862 million was deposited into an escrow account pursuant to an agreement between Old GM, EDC and an escrow agent. In July 2009 we subscribed for additional common shares in GMCL and paid the subscription price in cash. As required under certain agreements between GMCL, EDC, and an escrow agent, \$3.6 billion of the subscription price was deposited into an escrow account to fund certain of GMCL's pension plans and HCT obligations pending completion of certain preconditions. In September 2009 GMCL contributed \$3.0 billion to the Canadian hourly defined benefit pension plan and \$651 million to the Canadian salaried defined benefit pension plan, of which \$2.7 billion was funded from the escrow account. In accordance with the terms of the escrow agreement, \$903 million was released from the escrow account to us in September 2009. At December 31, 2009 \$955 million remained in the escrow account.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes net contributions to the U.S. OPEB plans (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Employer (a)(b)	\$ 1,528	\$ 1,947	\$ (1,356)	\$ (1,929)
Plan participants' contributions.	172	169	401	354
<b>Total contributions</b>	<b>\$ 1,700</b>	<b>\$ 2,116</b>	<b>\$ (955)</b>	<b>\$ (1,575)</b>

(a) Withdrawals were from plan assets of non-UAW hourly and salaried VEBAs in the years ended 2008 and 2007.

(b) Both the U.S. non-UAW hourly and salaried VEBAs were effectively liquidated by December 31, 2008.

**Benefit Payments**

The following table summarizes net benefit payments expected to be paid in the future, which include assumptions related to estimated future employee service, as appropriate, but does not reflect the effect of the 2009 CAW Agreement which provides for our independent HCT (dollars in millions):

	Years Ended December 31,			
	Pension Benefits(a)		Other Benefits	
	U.S. Plans	Non-U.S. Plans	U.S. Plans(b)	Non-U.S. Plans
2010	\$ 9,321	\$ 1,414	\$ 489	\$ 177
2011	\$ 8,976	\$ 1,419	\$ 451	\$ 185
2012	\$ 8,533	\$ 1,440	\$ 427	\$ 193
2013	\$ 8,247	\$ 1,461	\$ 407	\$ 201
2014	\$ 8,013	\$ 1,486	\$ 390	\$ 210
2015-2019	\$37,049	\$ 7,674	\$ 1,801	\$ 1,169

(a) Benefits for most U.S. pension plans and certain non-U.S. pension plans are paid out of plan assets rather than our cash and cash equivalents.

(b) Benefit payments presented in this table reflect the effect of the implementation of the 2009 Revised UAW Settlement Agreement which releases us from UAW retiree healthcare claims incurred after December 31, 2009.

**Note 20. Derivative Financial Instruments and Risk Management**

**Risk Management**

Foreign currency exchange risk, interest rate risk and commodity price risk are managed by using derivative instruments, typically including forward contracts, swaps and options, in accordance with our current and Old GM's previous risk management policies. The objective of these risk management policies is to offset the gains and losses on the underlying exposures resulting from these risks with the related gains and losses on the derivatives used to hedge them. These risk management policies limit the use of derivative instruments to managing these risks and do not allow the use of derivative instruments for speculative purposes.

A risk management control system is used to assist in monitoring the hedging program, derivative positions and hedging strategies. Hedging documentation includes hedging objectives, practices and procedures, and the related accounting treatment. Hedges that receive designated hedge accounting treatment are evaluated for effectiveness at the time they are designated as well as throughout the hedging period.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Counterparty Credit Risk**

Derivative financial instruments contain an element of credit risk attributable to the counterparties' ability to meet the terms of the agreements. The maximum amount of loss due to credit risk that we would incur if the counterparties to the derivative instruments failed completely to perform according to the terms of the contract was \$159 million at December 31, 2009. Agreements are entered into with counterparties that allow the set-off of certain exposures in order to manage the risk. The total net derivative asset position for all counterparties with which we were in a net asset position at December 31, 2009 was \$125 million.

Counterparty credit risk is managed and monitored by our Risk Management Committee, which establishes exposure limits by counterparty. At December 31, 2009 substantially all counterparty exposures were with counterparties that were rated A or higher.

**Credit Risk Related Contingent Features**

Agreements with counterparties to derivative instruments do not contain covenants requiring the maintenance of certain credit rating levels or credit risk ratios that would require the posting of collateral in the event that certain standards are violated or when a derivative instrument is in a liability position. No collateral was posted related to derivative instruments at December 31, 2009. We are currently in negotiations with counterparties to amend or enter into new derivative agreements that will likely require us to provide cash collateral for any net liability positions that we would have with these counterparties.

**Derivatives and Hedge Accounting**

Our derivative instruments consist of nondesignated derivative contracts or economic hedges. At December 31, 2009 and 2008 no outstanding derivative contracts were designated in hedging relationships. In the period July 10, 2009 through December 31, 2009 we accounted for changes in the fair value of all outstanding contracts by recording the gains and losses in earnings.

**Cash Flow Hedges**

We and Old GM was exposed to certain foreign currency exchange risks associated with buying and selling automotive parts and vehicles and foreign currency exposure to long-term debt. We partially manage these risks through the use of derivative instruments that we acquired from Old GM. At December 31, 2009 we did not have any financial instruments designated as cash flow hedges for accounting purposes.

Due to Old GM's credit standing and the Chapter 11 Proceedings, our ability to manage risks using derivative financial instruments is severely limited as most derivative counterparties are unwilling to enter into transactions with us. Subsequent to the 363 Sale, we remain unable to enter into forward contracts pending the completion of negotiations for new agreements and credit terms with potential derivative counterparties. In December 2009 we began purchasing commodity and foreign currency exchange options. These nondesignated derivatives have original expiration terms of up to 13 months.

Old GM previously designated certain financial instruments as cash flow hedges to manage its exposure to foreign currency exchange risks. For foreign currency transactions, Old GM typically hedged forecasted exposures for up to three years in the future. For foreign currency exposure on long-term debt, Old GM typically hedged exposures for the life of the debt.

For derivatives that were previously designated as qualifying cash flow hedges, the effective portion of the unrealized and realized gains and losses resulting from changes in fair value were recorded as a component of Accumulated other comprehensive income (loss). Subsequently, those cumulative gains and losses were reclassified to earnings contemporaneously with and to the same line item as the earnings effects of the hedged item. However, if it became probable that the forecasted transaction would not occur, the cumulative change in the fair value of the derivative recorded in Accumulated other comprehensive income (loss) was reclassified into earnings immediately.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

On October 1, 2008 Old GM ceased hedge accounting treatment for derivatives that were previously designated as qualifying cash flow hedges. Subsequent to this date Old GM recorded gains and losses arising from changes in the fair value of the derivative instruments in earnings, resulting in a net gain of \$157 million in the three months ended December 31, 2008. This gain was recorded in Sales and Cost of sales in the amounts of \$127 million and \$30 million.

The following table summarizes amounts reclassified from Accumulated other comprehensive income (loss) into earnings for the effective portion of a hedging relationship (dollars in millions):

	Predecessor	
	Gain (Loss) Reclassified	
	Year Ended December 31, 2008	Year Ended December 31, 2007
From accumulated other comprehensive income (loss) to sales	\$ 198	\$ 225
From accumulated other comprehensive income (loss) to cost of sales	\$ 205	\$ 51

To the extent that prior hedging relationships were not effective, the ineffective portion of the change in fair value of the derivative instrument was recorded immediately in earnings. Hedge ineffectiveness related to instruments designated as cash flow hedges was insignificant in the years ended 2008 and 2007.

The following table summarizes total activity in Accumulated other comprehensive income (loss) associated with cash flow hedges, primarily related to the reclassification of previously deferred cash flow hedge gains and losses from Accumulated other comprehensive income (loss) into earnings (dollars in millions):

<u>Derivatives in Original Cash Flow Hedging Relationship</u>	Location of Gain (Loss) Reclassified into Earnings	Predecessor Gain (Loss) Reclassified
		January 1, 2009 Through July 9, 2009
Foreign currency exchange contracts	Sales	\$ (351)
Foreign currency exchange contracts	Cost of sales	19
Foreign currency exchange contracts	Reorganization gains, net	247
Total activity in accumulated other comprehensive income (loss)		\$ (85)

In connection with the Chapter 11 Proceedings, at June 1, 2009 Accumulated other comprehensive income (loss) balances of \$247 million associated with previously designated financial instruments were reclassified into Reorganization gains, net because the underlying forecasted debt and interest payments were probable not to occur.

In connection with our application of fresh-start reporting, the remaining previously deferred cash flow hedge gains and losses in Accumulated other comprehensive income (loss) were adjusted to \$0 at July 10, 2009.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes gains and (losses) that were reclassified from Accumulated other comprehensive income (loss) for cash flow hedges associated with previously forecasted transactions that subsequently became probable not to occur (dollars in millions):

	<u>Predecessor</u> <u>Gain (Loss)</u> <u>Reclassified</u> <u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>
Sales	\$ (182)
Reorganization gains, net	247
Total gains (losses) reclassified from accumulated other comprehensive income (loss)	<u>\$ 65</u>

***Fair Value Hedges***

We and Old GM was subject to market risk from exposures to changes in interest rates that affect the fair value of long-term, fixed rate debt. At December 31, 2009 we did not have any financial instruments designated as fair value hedges to manage this risk.

Old GM previously used interest rate swaps designated as fair value hedges to manage certain of its exposures associated with these borrowings. Old GM hedged its exposures to the maturity date of the underlying interest rate exposure.

Gains and losses on derivatives designated and qualifying as fair value hedges, as well as the offsetting gains and losses on the debt attributable to the hedged interest rate risk, were recorded in Interest expense to the extent the hedge was effective. The gains and losses related to the hedged interest rate risk were recorded as an adjustment to the carrying amount of the debt. Previously recorded adjustments to the carrying amount of the debt were amortized to Interest expense over the remaining debt term. In the period January 1, 2009 through July 9, 2009 Old GM amortized previously deferred fair value hedge gains and losses of \$3 million to Interest expense. Old GM recorded no hedging ineffectiveness in the years ended 2008 and 2007.

On October 1, 2008 Old GM ceased hedge accounting treatment for derivatives that were previously designated as qualifying fair value hedges. Subsequent to this date Old GM recorded gains and losses arising from changes in the fair value of the derivative instruments in earnings, resulting in a net gain of \$279 million recorded in Interest expense in the three months ended December 31, 2008.

In connection with the Chapter 11 Proceedings, at June 1, 2009 Old GM had basis adjustments of \$18 million to the carrying amount of debt that ceased to be amortized to Interest expense. At June 1, 2009 the debt related to these basis adjustments was classified as Liabilities subject to compromise and no longer subject to interest accruals or amortization. We did not assume this debt from Old GM in connection with the 363 Sale.

***Net Investment Hedges***

We and Old GM was subject to foreign currency exposure related to net investments in certain foreign operations. At December 31, 2009 we did not have any hedges of a net investment in a foreign operation.

Old GM previously used foreign currency denominated debt to hedge this foreign currency exposure. For nonderivative instruments that were designated as, and qualified as, a hedge of a net investment in a foreign operation, the effective portion of the unrealized and realized gains and losses were recorded as a Foreign currency translation adjustment in Accumulated other comprehensive income (loss). In connection with the 363 Sale, MLC retained the foreign currency denominated debt and it ceased to operate as a hedge of net investments in foreign operations. In connection with our application of fresh-start reporting, the effective portions of unrealized gains and losses previously recorded to Accumulated other comprehensive income (loss) were adjusted to \$0 at July 10, 2009.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes the gains and (losses) related to net investment hedges recorded as a Foreign currency translation adjustment in Accumulated other comprehensive income (loss) (dollars in millions):

	Predecessor		
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Effective portion of net investment hedge gains (losses)	\$ 5	\$ 106	\$ (224)

**Derivatives Not Designated for Hedge Accounting**

Derivatives not designated in a hedging relationship, such as forward contracts, swaps, and options, are used to economically hedge certain risk exposures. Unrealized and realized gains and losses related to these nondesignated derivative hedges are recorded in earnings.

In connection with our application of fresh-start reporting, we elected a new policy with respect to the classification of nondesignated derivative gains and losses in earnings. Effective July 10, 2009 gains and losses related to all nondesignated derivatives, regardless of type of exposure, are recorded to Interest income and other non-operating income, net. Refer to Notes 2 and 4 for additional information on fresh-start reporting and our derivative accounting policies.

Old GM previously entered into a variety of foreign currency exchange, interest rate and commodity forward contracts and options to maintain a desired level of exposure arising from market risks resulting from changes in foreign currency exchange rates, interest rates and certain commodity prices. In May 2009 Old GM reached agreements with certain of the counterparties to its derivative contracts to terminate the derivative contracts prior to stated maturity. Old GM made cash payments of \$631 million to settle the related commodity, foreign currency exchange, and interest rate forward contracts, resulting in a loss of \$537 million. The loss was recorded in Sales, Cost of sales and Interest expense in the amounts of \$22 million, \$457 million and \$58 million.

When an exposure economically hedged with a derivative contract is no longer forecasted to occur, in some cases a new derivative instrument is entered into to offset the exposure related to the existing derivative instrument. In some cases, counterparties are unwilling to enter into offsetting derivative instruments and, as such, there is exposure to future changes in the fair value of these derivatives with no underlying exposure to offset this risk.

The following table summarizes gains and (losses) recorded for nondesignated derivatives originally entered into to hedge exposures that subsequently became probable not to occur (dollars in millions):

	Successor July 10, 2009 Through December 31, 2009	Predecessor January 1, 2009 Through July 9, 2009
	Interest income and other non-operating income, net	\$ 1

**Commodity Derivatives**

Certain raw materials, parts with significant commodity content, and energy comprising various commodities are purchased for use in production. At December 31, 2009 our exposure to commodity prices was partially managed through the use of nondesignated commodity options. At December 31, 2009 we had not entered into any commodity forward contracts.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes the notional amounts of our nondesignated commodity derivative contracts (units in thousands):

<u>Commodity</u>	<u>Successor</u>	
	<u>December 31, 2009</u>	
	<u>Contract Notional</u>	<u>Units</u>
Aluminum and aluminum alloy	39	Metric tons
Copper	4	Metric tons
Lead	7	Metric tons
Heating oil	10,797	Gallons
Natural gas	1,355	MMBTU
Natural gas	150	Gigajoules

Old GM previously hedged commodity price risk by entering into derivative instruments such as forward and option contracts. Gains and losses related to commodity derivatives were recorded in Cost of sales.

**Interest Rate Swap Derivatives**

At December 31, 2009 we did not have any interest rate swap derivatives.

Old GM previously used interest rate swap derivatives to economically hedge exposure to changes in the fair value of fixed rate debt. Gains and losses related to the changes in the fair value of these nondesignated derivatives were recorded in Interest expense.

**Foreign Currency Exchange Derivatives**

Foreign currency exchange derivatives are used to economically hedge exposure to foreign currency exchange risks associated with: (1) forecasted foreign currency denominated purchases and sales of parts and vehicles; and (2) variability in cash flows related to interest and principal payments on foreign currency denominated debt. At December 31, 2009 we partially managed foreign currency exchange risk through the use of foreign currency options and forward contracts we acquired from Old GM in connection with the 363 Sale.

The following table summarizes the total notional amounts of our nondesignated foreign currency exchange derivatives (dollars in millions):

	<u>Successor</u>
	<u>December 31,</u>
	<u>2009</u>
Nondesignated foreign currency exchange derivatives	\$ 6,333

Old GM recorded gains and losses related to these foreign currency exchange derivatives in: (1) Sales for derivatives that economically hedged sales of parts and vehicles; (2) Cost of sales for derivatives that economically hedged purchases of parts and vehicles; and (3) Cost of sales for derivatives that economically hedged foreign currency risk related to foreign currency denominated debt.

**Other Derivatives**

In September 2009 in connection with an agreement with American Axle, we received warrants to purchase 4 million shares of American Axle common stock exercisable at \$2.76 per share. The fair value of the warrants on the date of receipt was recorded as a Non-current asset. Gains and losses related to these warrants were recorded in Interest income and other non-operating income, net. At December 31, 2009 the fair value of these warrants was \$25 million.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

On July 10, 2009 in connection with the 363 Sale, we issued warrants to MLC and the New VEBA to acquire shares of our common stock. These warrants are being accounted for as equity.

In connection with the UST Loan Agreement, Old GM granted warrants to the UST for 122 million shares of its common stock exercisable at \$3.57 per share. Old GM recorded the warrants as a liability and recorded gains and losses related to this derivative in Interest income and other non-operating income, net. In connection with the 363 Sale, the UST returned the warrants and they were cancelled.

**Fair Value of Nondesignated Derivatives**

The following table summarizes the fair value of our nondesignated derivative instruments (dollars in millions):

<u>Nondesignated Derivative Instruments</u>	<u>Successor</u> <u>December 31, 2009</u>	
	<u>Asset</u> <u>Derivatives(a)(c)</u>	<u>Liability</u> <u>Derivatives(b)(d)</u>
<b>Current Portion</b>		
Foreign currency exchange derivatives	\$ 104	\$ 568
Commodity derivatives	11	—
Total current portion	<u>\$ 115</u>	<u>\$ 568</u>
<b>Non-Current Portion</b>		
Foreign currency exchange derivatives	\$ 19	\$ 146
Other derivatives	25	—
Total non-current portion	<u>\$ 44</u>	<u>\$ 146</u>

(a) Current portion recorded in Other current assets and deferred income taxes.

(b) Current portion recorded in Accrued expenses.

(c) Non-current portion recorded in Other assets.

(d) Non-current portion recorded in Other liabilities and deferred income taxes.

**Gains and (Losses) on Nondesignated Derivatives**

The following table summarizes gains and (losses) recorded in earnings on nondesignated derivatives (dollars in millions):

<u>Derivatives Not Designated as</u> <u>Hedging Instruments</u>	<u>Statement of Operations Line</u>	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>	<u>Predecessor</u> <u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>
Foreign currency exchange derivatives	Sales	\$ —	\$ (688)
Foreign currency exchange derivatives	Cost of sales	—	(211)
Foreign currency exchange derivatives	Interest income and other non-operating income, net	279	91
Interest rate swap derivatives	Interest expense	(1)	(38)
Commodity derivative contracts	Cost of sales	—	(332)
Other derivatives	Interest income and other non-operating income, net	—	164
Total gains (losses) recorded in earnings		<u>\$ 278</u>	<u>\$ (1,014)</u>

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Derivatives Not Meeting a Scope Exception from Fair Value Accounting**

We enter into purchase contracts to hedge physical exposure to the availability of certain commodities used in the production of vehicles. At December 31, 2009 we did not have any purchase contracts accounted for as derivatives.

Old GM previously entered into purchase contracts that were accounted for as derivatives with changes in fair value recorded in Cost of sales, as these contracts did not qualify for the normal purchases and normal sales scope exception in ASC 815-10, "Derivatives and Hedging." Certain of these contracts were terminated in the period January 1, 2009 through July 9, 2009. MLC retained the remainder of these purchase contracts in connection with the 363 Sale.

**Net Change in Accumulated Other Comprehensive Income (Loss)**

The following table summarizes the net change in Accumulated other comprehensive income (loss) related to cash flow hedging activities (dollars in millions):

	January 1, 2009 Through July 9, 2009	Predecessor	
		Year Ended December 31, 2008	Year Ended December 31, 2007
Beginning net unrealized gain (loss) on derivatives	\$ (490)	\$ 321	\$ 359
Change in fair value	—	(1,054)	140
Reclassification to earnings	99	243	(178)
Ending net unrealized gain (loss) on derivatives	\$ (391)	\$ (490)	\$ 321

In connection with our application of fresh-start reporting, previously deferred cash flow hedge gains and losses in Accumulated other comprehensive income (loss) were adjusted to \$0 at July 10, 2009.

**Note 21. Commitments and Contingencies**

The following tables summarize information related to commitments and contingencies (dollars in millions):

	Successor December 31, 2009		Predecessor December 31, 2008	
	Liability Recorded	Maximum Liability(a)	Liability Recorded	Maximum Liability(a)
<b>Guarantees</b>				
Operating lease residual values (b)	\$ —	\$ 79	\$ —	\$ 118
Supplier commitments and other related obligations	\$ 3	\$ 43	\$ 5	\$ 23
GMAC commercial loans (c)(d)	\$ 2	\$ 167	\$ 19	\$ 539
Product warranty and recall claims	\$ 54	\$ 553	\$ —	\$ —

(a) Calculated as future undiscounted payments.

(b) Excludes residual support and risk sharing programs related to GMAC.

(c) At December 31, 2009 includes \$127 million related to a guarantee provided to GMAC in Brazil in connection with dealer floor plan financing. This guarantee is collateralized by an interest in certificates of deposit of \$127 million purchased from GMAC to which we have title and which were recorded in Restricted cash. The purchase of the certificates of deposit was funded in part by contributions from dealers for which we have recorded a corresponding deposit liability of \$104 million, which was recorded in Other liabilities.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- (d) At December 31, 2008 included \$481 million related to a guarantee provided to GMAC in Brazil in connection with dealer floor plan financing. This guarantee was secured by an interest in certificates of deposit of \$481 million purchased from GMAC to which Old GM had title and which were recorded in Restricted cash. The purchase of the certificates of deposit was funded in part by contributions from dealers for which Old GM recorded a corresponding deposit liability of \$358 million, which was recorded in Other liabilities.

	<u>Successor</u> <u>December 31, 2009</u> <u>Liability Recorded</u>	<u>Predecessor</u> <u>December 31, 2008</u> <u>Liability Recorded</u>
Credit card programs		
Rebates available (a)	\$ 3,140	\$ 3,421
Redemption liability (b)	\$ 140	\$ 145
Deferred revenue (c)	\$ 464	\$ 500
Environmental liability (d)	\$ 190	\$ 297
Product liability (e)	\$ 319	\$ 921
Asbestos-related liability	\$ —	\$ 648
Other litigation-related liability (f)	\$ 1,192	\$ 831

- (a) Rebates available include amounts available to qualified cardholders, net of deferred program income.
- (b) Redemption liabilities are recorded in Accrued expenses.
- (c) Deferred revenue is recorded in Other liabilities and deferred income taxes. At December 31, 2009 deferred revenue includes an unfavorable contract liability recorded in applying fresh-start reporting at July 10, 2009.
- (d) Includes \$28 million and \$97 million recorded in Accrued expenses at December 31, 2009 and December 31, 2008, and the remainder was recorded in Other liabilities.
- (e) At December 31, 2008 Old GM included legal fees of \$154 million expected to be incurred in connection with product liability loss contingencies. In connection with our application of fresh-start reporting, we adopted a policy to expense legal fees as incurred related to product liability contingencies.
- (f) Consists primarily of tax related litigation not recorded pursuant to ASC 740-10 as well as various non-U.S. labor related matters.

**Guarantees**

In connection with the 363 Sale, we assumed liabilities for certain agreements and guarantees.

We have provided guarantees related to the residual value of certain operating leases. These guarantees terminate in years ranging from 2011 to 2035. Certain leases contain renewal options.

We have agreements with third parties that guarantee the fulfillment of certain suppliers' commitments and other related obligations. These guarantees expire in years ranging from 2010 to 2014, or upon the occurrence of specific events, such as a company's cessation of business.

In some instances, certain assets of the party whose debt or performance we have guaranteed may offset, to some degree, the cost of the guarantee. The offset of certain of our payables to guaranteed parties may also offset certain guarantees, if triggered.

We provide payment guarantees on commercial loans made by GMAC to certain third parties, such as dealers or rental car companies. The guarantees either expire in years ranging from 2010 to 2029 or are ongoing. We determined the value ascribed to the guarantees to be insignificant based on the credit worthiness of the third parties. Refer to Note 30 for additional information on guarantees that we provide to GMAC.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In connection with certain divestitures of assets or operating businesses, we have entered into agreements indemnifying certain buyers and other parties with respect to environmental conditions pertaining to real property we owned. In connection with such divestitures, we have provided guarantees with respect to benefits to be paid to former employees relating to pensions, postretirement health care and life insurance. Also, we periodically enter into agreements that incorporate indemnification provisions in the normal course of business. It is not possible to estimate our maximum exposure under these indemnifications or guarantees due to the conditional nature of these obligations. No amounts have been recorded for such obligations as they are not probable or estimable at this time.

In addition to the guarantees and indemnifying agreements previously discussed, we indemnify dealers for certain product liability related claims as subsequently discussed.

With respect to product warranty and recall claims involving products manufactured by certain joint ventures, it is believed that expenses will be adequately covered by recorded accruals. At December 31, 2009 our maximum potential liability which we ultimately may be responsible for was \$553 million.

**Credit Card Programs**

Credit card programs offer rebates that can be applied primarily against the purchase or lease of our vehicles.

**Environmental Liability**

In connection with the 363 Sale, we acquired certain properties that are subject to environmental remediation.

Automotive operations, like operations of other companies engaged in similar businesses, are subject to a wide range of environmental protection laws, including laws regulating air emissions, water discharges, waste management and environmental remediation. We are in various stages of investigation or remediation for sites where contamination has been alleged. We and Old GM was involved in a number of actions to remediate hazardous wastes as required by federal and state laws. Such statutes require that responsible parties fund remediation actions regardless of fault, legality of original disposal or ownership of a disposal site.

The future effect of environmental matters, including potential liabilities, is often difficult to estimate. An environmental reserve is recorded when it is probable that a liability has been incurred and the amount of the liability can be reasonably estimated. This practice is followed whether the claims are asserted or unasserted. Liabilities have been recorded for the expected costs to be paid over the periods of remediation for the applicable sites, which typically range from two to 30 years.

For many sites, the remediation costs and other damages for which we ultimately may be responsible may vary because of uncertainties with respect to factors such as the connection to the site or to materials there, the involvement of other potentially responsible parties, the application of laws and other standards or regulations, site conditions, and the nature and scope of investigations, studies and remediation to be undertaken (including the technologies to be required and the extent, duration and success of remediation).

The final outcome of environmental matters cannot be predicted with certainty at this time. Accordingly, it is possible that the resolution of one or more environmental matters could exceed the amounts accrued in an amount that could be material to our or Old GM's financial condition and results of operations. At December 31, 2009 we estimate the remediation losses could range from \$130 million to \$320 million.

**Product Liability**

With respect to product liability claims involving our and Old GM's products, we believe that any judgment for actual damages will be adequately covered by recorded accruals and, where applicable, excess insurance coverage. Although punitive damages are

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

claimed in some of these lawsuits, and such claims are inherently unpredictable, accruals incorporate historic experience with these types of claims. Liabilities have been recorded for the expected cost of all known product liability claims plus an estimate of the expected cost for all product liability claims that have already been incurred and are expected to be filed in the future for which we are and Old GM was self-insured. These amounts were recorded in Accrued expenses and exclude Old GM's asbestos claims, which are discussed separately.

In connection with the 363 Sale, we assumed certain liabilities related to product liability which arise directly out of accidents, incidents or other distinct and discrete occurrences that occur on or after July 10, 2009 and that arise from our and Old GM vehicles' operation or performance. Further, in accordance with our assumption of dealer sales and service agreements, we indemnify dealers for certain product liability related claims. Our experience related to dealer indemnification obligations for activity on or after July 10, 2009 is limited. We have estimated our product liability given the information currently available concerning the projected number and value of such claims. It is not possible to estimate our maximum exposure under these indemnifications due to the conditional nature of these obligations. We did not assume the product liabilities of Old GM arising in whole or in part from any accidents, incidents or other occurrences that occurred prior to July 10, 2009.

**Asbestos-Related Liability**

In connection with the 363 Sale, MLC retained substantially all of the asbestos-related claims outstanding.

Like most automobile manufacturers, Old GM had been subject to asbestos-related claims in recent years. These claims primarily arose from three circumstances:

- A majority of these claims sought damages for illnesses alleged to have resulted from asbestos used in brake components;
- Limited numbers of claims have arisen from asbestos contained in the insulation and brakes used in the manufacturing of locomotives; and
- Claims brought by contractors who allege exposure to asbestos-containing products while working on premises Old GM owned.

Old GM had resolved many of the asbestos-related cases over the years for strategic litigation reasons such as avoiding defense costs and possible exposure to excessive verdicts. The amount expended on asbestos-related matters in any period depended on the number of claims filed, the amount of pre-trial proceedings and the number of trials and settlements in the period.

Old GM recorded the estimated liability associated with asbestos personal injury claims where the expected loss was both probable and could reasonably be estimated. Old GM retained a firm specializing in estimating asbestos claims to assist Old GM in determining the potential liability for pending and unasserted future asbestos personal injury claims. The analyses relied on and included the following information and factors:

- A third party forecast of the projected incidence of malignant asbestos-related disease likely to occur in the general population of individuals occupationally exposed to asbestos;
- Old GM's Asbestos Claims Experience, based on data concerning claims filed against Old GM and resolved, amounts paid, and the nature of the asbestos-related disease or condition asserted during approximately the four years prior;
- The estimated rate of asbestos-related claims likely to be asserted against MLC in the future based on Old GM's Asbestos Claims Experience and the projected incidence of asbestos-related disease in the general population of individuals occupationally exposed to asbestos;

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- The estimated rate of dismissal of claims by disease type based on Old GM's Asbestos Claims Experience; and
- The estimated indemnity value of the projected claims based on Old GM's Asbestos Claims Experience, adjusted for inflation.

Old GM reviewed a number of factors, including the analyses provided by the firm specializing in estimating asbestos claims in order to determine a reasonable estimate of the probable liability for pending and future asbestos-related claims projected to be asserted over the next 10 years, including legal defense costs. Old GM monitored actual claims experience for consistency with this estimate and made periodic adjustments as appropriate.

Old GM believed that the analyses were based on the most relevant information available combined with reasonable assumptions, and that Old GM may prudently rely on their conclusions to determine the estimated liability for asbestos-related claims. Old GM noted, however, that the analyses were inherently subject to significant uncertainties. The data sources and assumptions used in connection with the analyses may not prove to be reliable predictors with respect to claims asserted against Old GM. Old GM's experience in the past included substantial variation in relevant factors, and a change in any of these assumptions — which include the source of the claiming population, the filing rate and the value of claims — could significantly increase or decrease the estimate. In addition, other external factors such as legislation affecting the format or timing of litigation, the actions of other entities sued in asbestos personal injury actions, the distribution of assets from various trusts established to pay asbestos claims and the outcome of cases litigated to a final verdict could affect the estimate.

**Other Litigation-Related Liability**

In connection with the 363 Sale, we assumed liabilities for various legal matters.

Various legal actions, governmental investigations, claims and proceedings are pending against one or more of us, Old GM or MLC, including a number of shareholder class actions, bondholder class actions and class actions under the Employee Retirement Income Security Act of 1974, as amended, and other matters arising out of alleged product defects, including asbestos-related claims; employment-related matters; governmental regulations relating to safety, emissions, and fuel economy; product warranties; financial services; dealer, supplier and other contractual relationships; tax-related matters not recorded pursuant to ASC 740-10 and environmental matters.

With regard to the litigation matters discussed in the previous paragraph, reserves have been established for matters in which it is believed that losses are probable and can be reasonably estimated, the majority of which are associated with tax-related matters not recorded pursuant to ASC 740-10 as well as various non U.S. labor-related matters. Tax related matters not recorded pursuant to ASC 740-10 are items being litigated globally pertaining to value added taxes, customs, duties, sales, property taxes and other non-income tax related tax exposures. The various non U.S. labor-related matters include claims from current and former employees related to alleged unpaid wage, benefit, severance, and other compensation matters. Some of the matters may involve compensatory, punitive, or other treble damage claims, environmental remediation programs, or sanctions, that if granted, could require us to pay damages or make other expenditures in amounts that could not be reasonably estimated at December 31, 2009. It is believed that appropriate accruals have been established for such matters in accordance with ASC 450, "Contingencies," based on information currently available. Reserves for litigation losses are recorded in Accrued expenses and Other liabilities and deferred income taxes. These accrued reserves represent the best estimate of amounts believed to be our and Old GM's liability in a range of expected losses. Litigation is inherently unpredictable, however, and unfavorable resolutions could occur. Accordingly, it is possible that an adverse outcome from such proceedings could exceed the amounts accrued in an amount that could be material to our or Old GM's financial condition, results of operations and cash flows in any particular reporting period.

In July 2008 Old GM reached a tentative settlement of the General Motors Securities Litigation suit and recorded an additional charge of \$277 million, of which \$139 million was paid in the year ended 2008. Also in the year ended 2008, Old GM recorded \$215 million as a reduction to Selling, general and administrative expense associated with insurance-related indemnification proceeds for previously recorded litigation related costs, including the cost incurred to settle the General Motors Securities Litigation suit.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Asset Retirement Obligations**

Conditional asset retirement obligations relate to legal obligations associated with retirement of tangible long-lived assets that result from acquisition, construction, development, or normal operation of a long-lived asset. An analysis is performed of such obligations associated with all real property owned or leased, including facilities, warehouses, and offices. Estimates of conditional asset retirement obligations relate, in the case of owned properties, to costs estimated to be necessary for the legally required removal or remediation of various regulated materials, primarily asbestos. Asbestos abatement was estimated using site-specific surveys where available and a per square foot estimate where surveys were unavailable. For leased properties, such obligations relate to the estimated cost of contractually required property restoration.

Recording conditional asset retirement obligations results in increased fixed asset balances with a corresponding increase to liabilities. Asset balances of \$97 million and \$132 million at December 31, 2009 and 2008 are recorded in buildings and land improvements, a component of Property, net, while the related liabilities are included in Other liabilities. The following table summarizes the activity related to asset retirement obligations (dollars in millions):

	Successor	Predecessor	
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008
Beginning balance	\$ 97	\$ 237	\$ 222
Accretion expense	4	12	19
Liabilities incurred	21	5	2
Liabilities settled or disposed	(9)	(2)	(24)
Effect of foreign currency translation	3	5	(17)
Revisions to estimates	(14)	1	35
Reclassified to liabilities subject to compromise (a)	—	(121)	—
Ending balance	102	137	237
Effect of application of fresh-start reporting	—	(40)	—
Ending balance including effect of application of fresh-start reporting	<u>\$ 102</u>	<u>\$ 97</u>	<u>\$ 237</u>

(a) Represents the asset retirement obligations associated with assets MLC retained.

**Noncancelable Operating Leases**

The following table summarizes our minimum commitments under noncancelable operating leases having remaining terms in excess of one year, primarily for property (dollars in millions):

	2010	2011	2012	2013	2014	2015 and after
Minimum commitments (a)(b)	\$552	\$414	\$309	\$261	\$226	\$ 960
Sublease income	(85)	(80)	(74)	(70)	(66)	(634)
Net minimum commitments	<u>\$467</u>	<u>\$334</u>	<u>\$235</u>	<u>\$191</u>	<u>\$160</u>	<u>\$ 326</u>

(a) Certain of the leases contain escalation clauses and renewal or purchase options.

(b) In March 2010 we renegotiated certain leases which will increase our 2010 minimum payments by \$12 million and decrease our 2011 and after minimum payments by \$195 million.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Rental expense under operating leases	\$ 255	\$ 369	\$ 934	\$ 812

**Delphi Corporation**

***Benefit Guarantee***

In 1999, Old GM spun-off Delphi Automotive Systems Corporation, which became Delphi. Prior to the consummation of the DMDA, Delphi was our and Old GM's largest supplier of automotive systems, components and parts, and we and Old GM were Delphi's largest customer. From 2005 to 2008 Old GM's annual purchases from Delphi ranged from approximately \$6.5 billion to approximately \$10.2 billion. At the time of the spin-off, employees of Delphi Automotive Systems Corporation became employees of Delphi. As part of the separation agreements, Delphi assumed the pension and other postretirement benefit obligations for the transferred U.S. hourly employees who retired after October 1, 2000 and Old GM retained pension and other postretirement obligations for U.S. hourly employees who retired on or before October 1, 2000. Additionally at the time of the spin-off, Old GM entered into the Delphi Benefit Guarantee Agreements with the UAW, the IUE-CWA and the USW providing contingent benefit guarantees whereby, under certain conditions, Old GM would make payments for certain pension and OPEB benefits to certain former U.S. hourly employees that became employees of Delphi. The Delphi Benefit Guarantee Agreements provided, in general, that in the event that Delphi or its successor companies ceased doing business, terminated its pension plan or ceased to provide credited service or OPEB benefits at certain levels due to financial distress, Old GM could be liable to provide the corresponding benefits at the required level. With respect to pension benefits, the guarantee arises only to the extent the pension benefits Delphi and the PBGC provided fall short of the guaranteed amount.

In October 2005 Old GM received notice from Delphi that it was more likely than not that Old GM would become obligated to provide benefits pursuant to the Delphi Benefit Guarantee Agreements, in connection with Delphi's commencement in October 2005 of Chapter 11 proceedings under the Bankruptcy Code. In June 2007 Old GM entered into a memorandum of understanding with Delphi and the UAW (Delphi UAW MOU) that included terms relating to the consensual triggering, under certain circumstances, of the Delphi Benefit Guarantee Agreements as well as additional terms relating to Delphi's restructuring. Under the Delphi UAW MOU, Old GM also agreed to pay for certain healthcare costs of Delphi retirees and their beneficiaries in order to provide a level of benefits consistent with those provided to Old GM's retirees and their beneficiaries under the Mitigation Plan, if Delphi terminated OPEB benefits. In August 2007 Old GM also entered into memoranda of understanding with Delphi and the IUE-CWA and with Delphi and the USW containing terms consistent with the comprehensive Delphi UAW MOU.

***Delphi-GM Settlement Agreements***

In September 2007 and as amended at various times through September 2008, Old GM and Delphi entered into the Delphi-GM Settlement Agreements consisting of the Global Settlement Agreement (GSA), the Master Restructuring Agreement (MRA) and the Implementation Agreements with the UAW, IUE-CWA and the USW (Implementation Agreements). The GSA was intended to resolve outstanding issues between Delphi and Old GM that arose before Delphi's emergence from its Chapter 11 proceedings. The MRA was intended to govern certain aspects of Old GM's ongoing commercial relationship with Delphi. The Implementation Agreements addressed a limited transfer of pension assets and liabilities, and the triggering of the benefit guarantees on the basis set forth in term sheets to the Implementation Agreements. In September 2008 the Bankruptcy Court entered an order in Delphi's Chapter 11 proceedings approving the Amended Delphi-GM Settlement Agreements which then became effective.

The more significant items contained in the Amended Delphi-GM Settlement Agreements included Old GM's commitment to:

- Reimburse Delphi for its costs to provide OPEB to certain of Delphi's hourly retirees from December 31, 2006 through the date that Delphi ceases to provide such benefits and assume responsibility for OPEB going forward;

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- Reimburse Delphi for the normal cost of credited service in Delphi's pension plan between January 1, 2007 and the date its pension plans are frozen;
- First hourly pension transfer — Transfer net liabilities of \$2.1 billion from the Delphi HRP to Old GM's U.S. hourly pension plan in September 2008;
- Second hourly pension transfer — Transfer the remaining Delphi HRP net liabilities upon Delphi's substantial consummation of its plan of reorganization (POR) subject to certain conditions being met;
- Reimburse Delphi for all retirement incentives and half of the buyout payments made pursuant to the various attrition program provisions and to reimburse certain U.S. hourly buydown payments made to certain hourly employees of Delphi;
- Award certain future product programs to Delphi, provide Delphi with ongoing preferential sourcing for other product programs, eliminate certain previously agreed upon price reductions, and restrict the ability to re-source certain production to alternative suppliers;
- Labor cost subsidy — Reimburse certain U.S. hourly labor costs incurred to produce systems, components and parts for GM vehicles from October 2006 through September 2015 at certain U.S. facilities owned or to be divested by Delphi;
- Production cash burn support — Reimburse Delphi's cash flow deficiency attributable to production at certain U.S. facilities that continue to produce systems, components and parts for GM vehicles until the facilities are either closed or sold by Delphi;
- Facilitation support — Pay Delphi \$110 million in both 2009 and 2010 in quarterly installments in connection with certain U.S. facilities owned by Delphi until Delphi's emergence from its Chapter 11 proceedings;
- Temporarily accelerate payment terms for Delphi's North American sales to Old GM upon substantial consummation of its POR, until 2012;
- Reimburse Delphi, beginning in January 2009, for actual cash payments related to workers compensation, disability, supplemental unemployment benefits and severance obligations for all current and former UAW-represented hourly active and inactive employees; and
- Guarantee a minimum recovery of the net working capital that Delphi has invested in certain businesses held for sale.

The GSA also resolved all claims in existence at its effective date (with certain limited exceptions) that either Delphi or Old GM had or may have had against the other. The GSA and related agreements with Delphi's unions released us, Old GM and our related parties (as defined), from any claims of Delphi and its related parties (as defined), as well as any employee benefit related claims of Delphi's unions and hourly employees. Additionally, the GSA provided that Old GM would receive certain administrative claims against the Delphi bankruptcy estate or preferred stock in the emerged entity.

As a result of the September 2008 implementation of the Delphi-GM Settlement Agreements Old GM paid \$1.0 billion and \$1.4 billion to Delphi in the period January 1, 2009 through July 9, 2009 and the year ended 2008 in settlement of amounts accrued to date against Old GM commitments. We paid \$288 million in 2009 prior to the consummation of the DMDA in settlement of amounts accrued to date against our commitments.

Upon consummation of the DMDA, the MRA was terminated with limited exceptions, and we and Delphi waived all claims against each other under the GSA.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***IUE-CWA and USW Settlement Agreement***

As more fully discussed in Note 19, in September 2009 we entered into a settlement agreement with MLC, the IUE-CWA and the USW that resolved the Delphi Benefit Guarantee Agreements with these unions. The settlement agreement provides for a measure of retiree health care and life insurance to be provided to certain retirees represented by these unions. The agreement also provides certain IUE-CWA and USW retirees from Delphi a pension “top up” equal to the difference between the amount of PBGC pension payments and the amount of pension benefits that otherwise would have been paid by the Delphi HRP according to its terms had it not been terminated. Further, the settlement agreement provided certain current employees of Delphi or Delphi divested units up to seven years credited service in Old GM’s U.S. hourly defined benefit pension plan, commencing November 30, 2008, the date that Delphi froze the Delphi HRP. The agreement was approved by the Bankruptcy Court in November 2009.

***Advance Agreements***

In the years ended 2008 and 2009 Old GM entered into various agreements and amendments to such agreements to advance a maximum of \$950 million to Delphi, subject to Delphi’s continued satisfaction of certain conditions and milestones. Through the consummation of the DMDA, we entered into further amendments to the agreements, primarily to extend the deadline for Delphi to satisfy certain milestones, which if not met, would have prevented Delphi from continued access to the credit facility. At October 6, 2009 \$550 million had been advanced under the credit facility. Upon consummation of the DMDA, we waived our rights to the advanced amounts that became consideration to Delphi and other parties under the DMDA. Refer to Note 5 for additional information on the consummation of the DMDA.

***Payment Terms Acceleration Agreement***

In October 2008 subject to Delphi obtaining an extension or other accommodation of its DIP financing through June 30, 2009, Old GM agreed to temporarily accelerate payment of North American payables to Delphi in the three months ended June 30, 2009. In January 2009 Old GM agreed to immediately accelerate \$50 million in advances towards the temporary acceleration of North American payables. Additionally, Old GM agreed to accelerate \$150 million and \$100 million of North American payables to Delphi in March and April of 2009 bringing the total amount accelerated to the total agreed upon \$300 million. Upon consummation of the DMDA, we waived our rights to the accelerated payments that became consideration to Delphi and other parties under the DMDA.

***Delphi Master Disposition Agreement***

In July 2009 we, Delphi and the PBGC negotiated an agreement to be effective upon consummation of the DMDA regarding the settlement of PBGC’s claims from the termination of the Delphi pension plans and the release of certain liens with the PBGC against Delphi’s foreign assets. In return, the PBGC received a payment of \$70 million from us and was granted a 100% interest in Class C Membership Interests in New Delphi which provide for the PBGC to participate in predefined equity distributions. We maintain the obligation to provide the difference between pension benefits paid by the PBGC according to regulation and those originally guaranteed by Old GM under the Delphi Benefit Guarantee Agreements.

In October 2009 we consummated the transaction contemplated by the DMDA with Delphi, New Delphi, Old GM and other sellers and other buyers that are party to the DMDA, as more fully described in Note 5. Upon consummation of the DMDA, the MRA was terminated with limited exceptions, and we and Delphi waived all claims against each other under the GSA. Upon consummation of the DMDA we settled our commitments to Delphi accrued to date except for the obligation to provide the difference between pension benefits paid by the PBGC according to regulation and those originally guaranteed by Old GM under the Delphi Benefit Guarantee Agreements that we continue to maintain. In addition, the DMDA establishes an ongoing commercial relationship with New Delphi. We also agreed to continue all existing Delphi supply agreements and purchase orders for GMNA to the end of the related product program, and New Delphi agreed to provide us with access rights designed to allow us to operate specific sites on defined triggering events to provide us with protection of supply.

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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Delphi Charges**

The following table summarizes charges that have been recorded with respect to the various agreements with Delphi (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Other expenses, net	\$ 8	\$ 184	\$ 4,797	\$ 1,547
Cost of sales	193	142	555	53
Reorganization gains, net	—	662	—	—
Total Delphi charges	\$ 201	\$ 988	\$ 5,352	\$ 1,600

These charges reflect the best estimate of obligations associated with the various Delphi agreements, including obligations under the Delphi Benefit Guarantee Agreements, updated to reflect the DMDA. At July 9, 2009 these charges reflect the obligation to the PBGC upon consummation of the DMDA, consisting of the estimated fair value of the PBGC Class C Membership Interests in New Delphi of \$317 million and the payment of \$70 million due from us. Further, at July 9, 2009 these charges reflect an estimated value of \$966 million pertaining to claims we have against Delphi that were waived upon consummation of the DMDA. The estimated value of the claims represents the excess after settlement of certain pre-existing commitments to Delphi of the fair value of Nexteer, the four domestic facilities and the investment in New Delphi over the cash consideration paid under the DMDA. Refer to Note 5 for additional information on the total consideration paid under the DMDA and the allocation of such consideration to the various units of account.

The charges recorded in the year ended 2008 primarily related to estimated losses associated with the guarantee of Delphi's hourly pension plans and the write off of any estimated recoveries from Delphi. The charges also reflected a benefit of \$622 million due to a reduction in the estimated liability associated with Delphi OPEB related costs for Delphi active employees and retirees, based on the terms of the New VEBA, who were not previously participants in Old GM's plans. The terms of the New VEBA also reduced Old GM's OPEB obligation for Delphi employees who returned to Old GM and became participants in the UAW hourly medical plan primarily in 2006. Such benefit is included in the actuarial gain recorded in our UAW hourly medical plan. Refer to Note 19 for additional information on the Delphi benefit plans.

**Note 22. Income Taxes**

The following table summarizes Income (loss) from continuing operations before income taxes and equity income (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
U.S. income (loss)	\$ (6,647)	\$ 105,420	\$ (26,742)	\$ (9,448)
Non-U.S. income (loss)	1,364	2,356	(2,729)	3,102
Income (loss) from continuing operations before income taxes and equity income	\$ (5,283)	\$ 107,776	\$ (29,471)	\$ (6,346)

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Provision (Benefit) for Income Taxes**

The following table summarizes the provision (benefit) for income taxes (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Current income tax expense (benefit)				
U.S. federal	\$ 7	\$ (60)	\$ (31)	\$ (131)
Non-U.S.	421	(522)	668	295
U.S. state and local	(1)	16	(34)	21
Total current	427	(566)	603	185
Deferred income tax expense (benefit)				
U.S. federal	(1,204)	110	(163)	32,058
Non-U.S.	(52)	(716)	1,175	5,064
U.S. state and local	(171)	6	151	(444)
Total deferred	(1,427)	(600)	1,163	36,678
Total income tax expense (benefit)	\$ (1,000)	\$ (1,166)	\$ 1,766	\$ 36,863

Annual tax provisions include amounts considered sufficient to pay assessments that may result from examination of prior year tax returns.

The following table summarizes the cash paid (received) for income taxes (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Cash paid (received) for income taxes	\$ (65)	\$ (1,011)	\$ 718	\$ 404

Provisions are made for estimated U.S. and non-U.S. income taxes, less available tax credits and deductions, which may be incurred on the remittance of our and Old GM's share of basis differences in investments in foreign subsidiaries and corporate joint ventures not deemed to be permanently reinvested. Taxes have not been provided on basis differences in investments in foreign subsidiaries and corporate joint ventures which are deemed permanently reinvested, of \$5.5 billion and \$6.3 billion at December 31, 2009 and 2008. Quantification of the deferred tax liability, if any, associated with permanently reinvested earnings is not practicable.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes a reconciliation of the provision (benefit) for income taxes compared with the amounts at the U.S. federal statutory rate (dollars in millions):

	<u>Successor</u>	<u>Predecessor</u>		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Tax at U.S. federal statutory income tax rate	\$ (1,849)	\$ 37,721	\$ (10,315)	\$ (2,222)
State and local tax expense	(559)	(260)	(1,151)	(275)
Foreign income taxed at rates other than 35%	412	—	314	418
Taxes on unremitted earnings of subsidiaries	(151)	(12)	(235)	(135)
Change in valuation allowance (a)	1,338	6,609	13,064	38,625
Change in statutory tax rates (b)	163	1	151	885
Medicare prescription drug adjustment	—	18	(104)	(199)
Other adjustments	(26)	321	42	(234)
VEBA contribution	(328)	—	—	—
Non-taxable reorganization gain	—	(45,564)	—	—
Total income tax expense (benefit)	<u>\$ (1,000)</u>	<u>\$ (1,166)</u>	<u>\$ 1,766</u>	<u>\$ 36,863</u>

(a) See analysis related to valuation allowances on certain deferred tax assets subsequently discussed.

(b) Changes in the tax laws of two jurisdictions in 2007 had a significant effect on Old GM's consolidated financial statements as follows:

- In December 2007 the Canadian government enacted legislation to reduce its combined statutory corporate tax rates by 3.5% in addition to a 0.5% rate reduction enacted in June 2007. The combined 4.0% reduction will be phased in gradually over a period of five years which began in 2008. The valuation allowance subsequently discussed has been adjusted to reflect this change in statutory rates.
- In July 2007 the German Parliament passed legislation to lower its statutory corporate tax rate. This legislation was signed into law in August 2007. This new law reduces by 9.0%, effective at January 1, 2008, the combined German business tax rate, which is comprised of the corporate tax rate, the local trade tax rate, and the solidarity levy tax rate. The effect of this change was a reduction in the carrying amount of Old GM's German deferred tax assets of \$475 million, which is included in the charge related to the valuation allowance subsequently discussed.

**Deferred Income Tax Assets and Liabilities**

Deferred income tax assets and liabilities at December 31, 2009 and 2008 reflect the effect of temporary differences between amounts of assets, liabilities and equity for financial reporting purposes and the bases of such assets, liabilities and equity as measured by tax laws, as well as tax loss and tax credit carryforwards.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes the components of temporary differences and carryforwards that give rise to deferred tax assets and liabilities (dollars in millions):

	Successor December 31, 2009 Deferred Tax		Predecessor December 31, 2008 Deferred Tax	
	Assets	Liabilities	Assets	Liabilities
Postretirement benefits other than pensions	\$ 4,194	\$ —	\$ 11,610	\$ —
Pension and other employee benefit plans	8,876	406	16,171	8,648
Warranties, dealer and customer allowances, claims and discounts	3,940	75	6,682	90
Property, plants and equipment	7,709	278	7,429	3,197
Intangible assets	1,650	4,984	780	—
Tax carryforwards	18,880	—	18,080	—
Miscellaneous U.S.	5,844	1,269	8,122	288
Miscellaneous non-U.S.	3,306	1,944	3,485	773
Subtotal	54,399	8,956	72,359	12,996
Valuation allowances	(45,281)	—	(59,777)	—
Total deferred taxes	9,118	\$ 8,956	12,582	\$ 12,996
Net deferred tax assets (liabilities)	\$ 162		\$ (414)	

The following table summarizes deferred tax assets and liabilities (dollars in millions):

	Successor December 31, 2009	Predecessor December 31, 2008
Current deferred tax assets	\$ 462	\$ 138
Current deferred tax liabilities	(57)	(87)
Non-current deferred tax assets	564	98
Non-current deferred tax liabilities	(807)	(563)
Net deferred tax assets (liabilities)	\$ 162	\$ (414)

The following table summarizes the amount and expiration dates of our operating loss and tax credit carryforwards at December 31, 2009 (dollars in millions):

	Expiration Dates	Amounts
U.S. federal and state net operating loss carryforwards	2010-2029	\$ 9,115
Non-U.S. net operating loss and tax credit carryforwards	Indefinite	1,830
Non-U.S. net operating loss and tax credit carryforwards	2009-2029	3,027
U.S. alternative minimum tax credit	Indefinite	660
U.S. general business credits (a)	2012-2029	1,689
U.S. foreign tax credits	2011-2018	2,559
Total		\$ 18,880

(a) The general business credits are principally comprised of research and experimentation credits.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**
**Valuation Allowances**

The valuation allowances recognized relate to certain net deferred tax assets in U.S. and non-U.S. jurisdictions. The following table summarizes the change in the valuation allowance and related considerations (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Beginning balance	\$ 42,666	\$ 59,777	\$ 42,208	\$ 6,523
Additions (Reversals)				
U.S.	2,226	(14,474)	14,146	31,072
Canada	405	(802)	759	2,435
Germany	67	(792)	140	1,927
Spain	(40)	(200)	1,109	31
Brazil	1	(442)	(135)	16
South Korea	(221)	321	724	—
Australia	7	190	340	—
U.K.	109	62	330	—
Sweden	33	(1,057)	(58)	1,232
Other	28	83	214	(1,028)
Ending balance	<u>\$ 45,281</u>	<u>\$ 42,666</u>	<u>\$ 59,777</u>	<u>\$ 42,208</u>

In July 2009, as a result of the 363 Sale and fresh-start reporting, adjustments were required to valuation allowances, which resulted in a net decrease in valuation allowances of \$20.7 billion. The net decrease was primarily the result of a U.S. federal and state tax attribute reduction of \$12.2 billion related to debt cancellation income, a net difference of \$5.5 billion between the fresh-start reporting fair value and tax bases of assets and liabilities at entities with valuation allowances, net valuation allowances of \$1.7 billion associated with assets and liabilities retained by Old GM, and a foreign tax attribute reduction of \$0.9 billion and release of allowances of \$0.7 billion.

**Old GM Valuation Allowance Reversals**

*Brazil* – In 2005 Old GM recorded full valuation allowances against its net deferred tax assets in Brazil. Old GM generated taxable income in Brazil in each of the years 2006 through 2008 and, accordingly, reversed a portion of these valuation allowances. Although Old GM was forecasting future taxable income for its Brazilian operation at the end of 2008, as a result of liquidity concerns at the U.S. parent company and the increasing instability of the global economic environment, Old GM concluded that it was more likely than not that it would not realize the net deferred tax assets in Brazil at December 31, 2008. The U.S. parent company liquidity concerns were resolved in connection with the Chapter 11 Proceedings and the 363 Sale, and the Brazilian operations continue to demonstrate the ability to generate taxable income. As it is now more likely than not that the net deferred tax assets in Brazil will be realized, Old GM reversed the associated valuation allowance of \$465 million. This amount is included in Income tax expense (benefit) in the period January 1, 2009 through July 9, 2009.

*Other jurisdictions* – In the three months ended December 31, 2008 significant additional concerns arose related to the U.S. parent company's liquidity and the increasing instability of the global economic environment. As a result, Old GM determined that it was more likely than not that it would not realize the net deferred tax assets in most remaining jurisdictions, even though these entities were not in three-year adjusted cumulative loss positions. Old GM established additional valuation allowances of \$481 million against net deferred tax assets of entities in Argentina, Austria, Belgium, Brazil (separate legal entity from that previously discussed), Chile, Colombia, Ecuador, Finland, Germany (separate legal entities from that subsequently discussed), Hungary, Indonesia, Ireland, Italy, Kenya, South Korea (separate legal entity from that subsequently discussed), Netherlands, New Zealand, Norway, Peru, Philippines,

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Poland, Portugal, Russia, South Africa, Switzerland, Taiwan, Turkey, Uruguay, U.S. state jurisdiction (Texas), and Venezuela. The U.S. parent company liquidity concerns were resolved in connection with the Chapter 11 Proceedings and the 363 Sale, and many of these entities continue to generate and forecast taxable income. Therefore, to the extent there was no other significant negative evidence, Old GM concluded that it is more likely than not that Old GM will realize the deferred tax assets in these jurisdictions and reversed valuation allowances of \$286 million. This amount is included in Income tax expense (benefit) in the period January 1, 2009 through July 9, 2009.

**Other Valuation Allowances**

*South Korea* – In the three months ended December 31, 2008 Old GM determined that it was more likely than not that it would not realize its net deferred tax assets, in whole or in part, in South Korea and recorded full valuation allowances of \$725 million against its net deferred tax assets in South Korea. Old GM was in a three-year adjusted cumulative loss position and its near-term and mid-term financial outlook for automotive market conditions was more challenging than believed in the three months ended September 30, 2008.

*Australia* – In the three months ended December 31, 2008 Old GM determined that it was more likely than not that it would not realize its net deferred tax assets, in whole or in part, in Australia and recorded a full valuation allowance of \$284 million against Old GM's net deferred tax assets in these tax jurisdictions. Old GM was in a three-year adjusted cumulative loss position in 2008 and anticipated being in such a position throughout the mid-term forecast period. The current economic downturn has affected Australian forecasted production volumes and caused significant actual and forecast pre-tax profit deterioration in the three months ended December 31, 2008.

*United Kingdom and Spain* – In the three months ended March 31, 2008 Old GM determined that it was more likely than not that it would not realize its net deferred tax assets, in whole or in part, in Spain and the United Kingdom and recorded full valuation allowances of \$379 million against Old GM's net deferred tax assets in these tax jurisdictions.

In the United Kingdom, Old GM was in a three-year adjusted cumulative loss position and its near-term and mid-term financial outlook for automotive market conditions was more challenging than believed in the three months ended December 31, 2007. Old GM's outlook deteriorated based on its projections of the combined effects of the challenging foreign currency exchange environment and unfavorable commodity prices. Additionally, Old GM increased its estimate of the potential costs that may arise from the regulatory and tax environment relating to CO<sub>2</sub> emissions in the European Union (EU), including legislation enacted or announced in 2008.

In Spain, although Old GM was not in a three-year adjusted cumulative loss position its near-term and mid-term financial outlook deteriorated significantly in the three months ended March 31, 2008 such that Old GM anticipated being in a three-year adjusted cumulative loss position in the near- and mid-term. In Spain, as in the United Kingdom, Old GM's outlook deteriorated based on its projections of the combined effects of the foreign currency exchange environment and commodity prices, including its estimate of the potential costs that may arise from the regulatory and tax environment relating to CO<sub>2</sub> emissions.

Old GM established a valuation allowance in the year ended 2007 against its Spanish deferred tax assets related to investment tax credits, which Old GM does not expect will be realizable under a more likely than not threshold.

*United States, Canada and Germany* – In the three months ended September 30, 2007 Old GM recorded a charge of \$39.0 billion related to establishing full valuation allowances against its net deferred tax assets in the U.S., Canada and Germany. Concluding that a valuation allowance is not required is difficult when there is significant negative evidence which is objective and verifiable, such as cumulative losses in recent years. Old GM utilized a rolling twelve quarters of results as a measure of its cumulative losses in recent years. Old GM then adjusted those historical results to remove certain unusual items and charges. In the U.S., Canada and Germany, Old GM's analysis performed in the three months ended September 30, 2007 indicated that it had cumulative three year historical losses on an adjusted basis. This is considered significant negative evidence which is objective and verifiable and therefore, difficult

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

to overcome. In addition, Old GM's near-term financial outlook in the U.S., Canada and Germany deteriorated in the three months ended December 31, 2007. While Old GM's long-term financial outlook in the U.S., Canada and Germany was positive at the time of the analysis, Old GM concluded that its ability to rely on its long-term outlook as to future taxable income was limited due to uncertainty created by the weight of the negative evidence, particularly:

- The possibility for continued or increasing price competition in the highly competitive U.S. market. This was seen in the three months ended September 30, 2007 when a competitor introduced its new fullsize trucks and offered customer incentives to gain market share. Accordingly, Old GM increased customer incentives on its recently launched fullsize trucks, which were not previously anticipated;
- Continued volatile oil prices and the possible effect that may have on consumer preferences related to Old GM's most profitable products, fullsize trucks and sport utility vehicles;
- Uncertainty over the effect on Old GM's cost structure from more stringent U.S. fuel economy and global emissions standards which may require Old GM to sell a significant volume of alternative fuel vehicles across its portfolio;
- Uncertainty as to the future operating results of GMAC's mortgage business, and
- Acceleration of tax deductions for OPEB liabilities as compared to prior expectations due to changes associated with the 2008 UAW Settlement Agreement.

Accordingly, based on these circumstances and uncertainty regarding Old GM's future taxable income, Old GM recorded full valuation allowances against these net deferred tax assets in the three months ended September 30, 2007.

*Sweden* – Saab filed for bankruptcy protection under the laws of Sweden in February 2009 and was deconsolidated. Though reconsolidated in August, Saab's assets and liabilities were classified as held for sale. As a result, Saab deferred income taxes and associated valuation allowances, included in our consolidated amounts in years prior to 2009, are not included subsequent to its February 2009 deconsolidation.

If, in the future, we generate three-year adjusted cumulative profits in tax jurisdictions where we have recorded full valuation allowances, our conclusion regarding the need for valuation allowances in these tax jurisdictions could change, resulting in the reversal of some or all of such valuation allowances. If we generate taxable income in tax jurisdictions prior to overcoming negative evidence such as a three-year adjusted cumulative loss, we would reverse a portion of the valuation allowance related to the corresponding realized tax benefit for that period, without changing our conclusions on the need for a full valuation allowance against the remaining net deferred tax assets.

**Uncertain Tax Positions**

At December 31, 2009 the amount of gross unrecognized tax benefits before valuation allowances and the amount that would favorably affect the effective income tax rate in future periods after valuation allowances was \$5.4 billion and \$618 million. At December 31, 2008 the amount of gross unrecognized tax benefits before valuation allowances and the amount that would favorably affect the effective income tax rate in future periods after valuation allowances was \$2.8 billion and (\$26) million. At December 31, 2009 and 2008 \$4.0 billion and \$1.2 billion of the liability for uncertain tax positions reduced deferred tax assets relating to the same tax jurisdictions. The remaining uncertain tax positions are classified as a non-current asset or liability.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes a reconciliation of the total amounts of unrecognized tax benefits (dollars in millions):

	<u>Successor</u>	<u>Predecessor</u>	
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008
Beginning balance	\$ 4,096	\$ 2,803	\$ 2,754
Additions to tax positions recorded in the current year	1,454	1,493	208
Additions to tax positions recorded in prior years	22	594	751
Reductions to tax positions recorded in the current year	(44)	(25)	(47)
Reductions to tax positions recorded in prior years	(128)	(626)	(725)
Reductions in tax positions due to lapse of statutory limitations	—	(281)	—
Settlements	(111)	(16)	(275)
Other	121	154	137
Ending balance	<u>\$ 5,410</u>	<u>\$ 4,096</u>	<u>\$ 2,803</u>

The following tables summarize information regarding interest and penalties (dollars in millions):

	<u>Successor</u>	<u>Predecessor</u>	
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008
Interest income	\$ —	\$ 249	\$ 26
Interest expense (benefit)	\$ 30	\$ (31)	\$ 13
Penalties	\$ —	\$ 30	\$ 4

	<u>Successor</u>	<u>Predecessor</u>
	December 31, 2009	December 31, 2008
Accrued interest receivable	\$ 10	\$ 129
Accrued interest payable	\$ 275	\$ 198
Accrued penalties	\$ 137	\$ 90

**Other Matters**

Most of the tax attributes generated by Old GM and its domestic and foreign subsidiaries (net operating loss carryforwards and various income tax credits) survived the Chapter 11 Proceedings, and we expect to use the tax attributes to reduce future tax liabilities. The ability to utilize certain of the U.S. tax attributes in future tax periods could be limited by Section 382(a) of the Internal Revenue Code. In Germany, we have net operating loss carryforwards for corporate income tax and trade tax purposes. We have applied for, and expect approval of a ruling from the German tax authorities regarding the availability of those losses. If approved, we should be able to continue to carry over those losses despite the reorganizations that have taken place in Germany in 2008 and 2009. In Australia, we have net operating loss carryforwards which are now subject to meeting an annual "Same Business Test" requirement. We will have to assess the ability to utilize these carryforward losses annually.

In the U.S., Old GM federal income tax returns for 2004 through 2006 were audited by the Internal Revenue Service (IRS), and the review was concluded in February 2010. The IRS is currently auditing Old GM federal tax returns for 2007 and 2008. The IRS is also reviewing the January 1 through July 9, 2009 Old GM tax year as part of the IRS Compliance Assurance Process (CAP), a pre-file examination process. Our July 10, 2009 through December 31, 2009 tax year is also under IRS CAP review. In addition to the U.S., income tax returns are filed in multiple jurisdictions and are subject to examination by taxing authorities throughout the world. We have open tax years from 2001 to 2009 with various significant tax jurisdictions. These open years contain matters that could be

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

subject to differing interpretations of applicable tax laws and regulations as they relate to the amount, character, timing or inclusion of revenue and expenses or the sustainability of income tax credits for a given audit cycle. We have continuing responsibility for Old GM's open tax years. We record, and Old GM previously recorded, a tax benefit only for those positions that meet the more likely than not standard.

In May 2009 the U.S. and Canadian governments resolved a transfer pricing matter for Old GM which covered the tax years 2001 through 2007. In the three months ended June 30, 2009 this resolution resulted in a tax benefit of \$692 million and interest of \$229 million. Final administrative processing of the Canadian case closing occurred in late 2009, and final administrative processing of the U.S. case closing occurred in February 2010. We do not anticipate significant adjustments will result from these final closings.

Within the next twelve months, we expect to reach agreement with the IRS on all issues affecting Old GM federal returns and our July 10, 2009 through December 31, 2009 federal return. We believe we have adequate reserves established, and any outcome will not have a material effect on our results of operations, financial position or cash flows. At December 31, 2009 it is not possible to reasonably estimate the expected change to the total amount of unrecognized tax benefits over the next 12 months.

**Note 23. Fair Value Measurements**
**Fair Value Measurements on a Recurring Basis**

The following tables summarize the financial instruments measured at fair value on a recurring basis (dollars in millions):

	Successor			
	Fair Value Measurements on a Recurring Basis at December 31, 2009			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Cash equivalents				
United States government and agency	\$ —	\$ 580	\$ —	\$ 580
Certificates of deposit	—	2,140	—	2,140
Money market funds	7,487	—	—	7,487
Commercial paper	—	969	—	969
Marketable securities				
Equity	15	17	—	32
United States government and agency	—	19	—	19
Mortgage and asset-backed	—	22	—	22
Certificates of deposit	—	8	—	8
Foreign government	—	24	—	24
Corporate debt	—	29	—	29
Restricted cash				
Money market funds	12,662	—	—	12,662
Government of Canada bonds	—	955	—	955
Other assets				
Equity	13	—	—	13
Derivatives				
Commodity	—	11	—	11
Foreign currency	—	90	33	123
Other	—	25	—	25
Total assets	<u>\$ 20,177</u>	<u>\$ 4,889</u>	<u>\$ 33</u>	<u>\$25,099</u>
<b>Liabilities</b>				
Derivatives				
Foreign currency	\$ —	\$ 9	\$ 705	\$ 714
Total liabilities	<u>\$ —</u>	<u>\$ 9</u>	<u>\$ 705</u>	<u>\$ 714</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Predecessor			
	Fair Value Measurements on a Recurring Basis at December 31, 2008			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Cash equivalents				
Certificates of deposit	\$ —	\$ 2,375	\$ —	\$ 2,375
Commercial paper	—	1,645	—	1,645
Marketable securities				
Equity	9	15	—	24
United States government and agency	—	4	—	4
Mortgage- and asset-backed	—	—	66	66
Certificates of deposit	—	11	—	11
Foreign government	—	19	—	19
Corporate debt	—	17	—	17
Restricted cash				
Certificates of deposit	—	26	—	26
Commercial paper	—	59	—	59
Other assets				
Equity	5	—	—	5
Derivatives				
Interest rate swaps	—	368	3	371
Foreign currency	—	1,228	—	1,228
Commodity	—	35	1	36
<b>Total assets</b>	<b>\$ 14</b>	<b>\$ 5,802</b>	<b>\$ 70</b>	<b>\$ 5,886</b>
<b>Liabilities</b>				
Derivatives				
Cross currency swaps	\$ —	\$ 377	\$ —	\$ 377
Interest rate swaps	—	3	3	6
Foreign currency	—	258	2,144	2,402
Commodity	—	571	18	589
Other	—	—	164	164
<b>Total liabilities</b>	<b>\$ —</b>	<b>\$ 1,209</b>	<b>\$ 2,329</b>	<b>\$ 3,538</b>

**Transfers In and/or Out of Level 3**

At June 30, 2009 Old GM's mortgage- and asset-backed securities were transferred from Level 3 to Level 2 as the significant inputs used to measure fair value and quoted prices for similar instruments were determined to be observable in an active market.

For periods presented after June 1, 2009 nonperformance risk for us and Old GM was not observable through the credit default swap market as a result of the Chapter 11 Proceedings and the lack of traded instruments for us after the 363 Sale. As a result, foreign currency derivatives with a fair market value of \$1.6 billion were transferred from Level 2 to Level 3. Our nonperformance risk remains not directly observable through the credit default swap market at December 31, 2009 and accordingly the derivative contracts for certain foreign subsidiaries remain classified in Level 3.

In the three months ended March 31, 2009 Old GM determined the credit profile of certain foreign subsidiaries was equivalent to Old GM's nonperformance risk which was observable through the credit default swap market and bond market based on prices for recent trades. Accordingly, foreign currency derivatives with a fair value of \$2.1 billion were transferred from Level 3 into Level 2.

In December 2008 Old GM transferred foreign currency derivatives with a fair value of \$2.1 billion from Level 2 to Level 3. These derivatives relate to certain of Old GM's foreign consolidated subsidiaries where Old GM was not able to determine observable credit

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

ratings. Prior to December 31, 2008, these derivatives were valued based on our credit rating which was observable through the credit default swap market. At December 31, 2008 the fair value of these foreign currency derivative contracts was estimated based on the credit rating of comparable local companies with similar credit profiles and observable credit ratings together with internal bank credit ratings obtained from the subsidiary's lenders.

The following tables summarize the activity in the balance sheet accounts for financial instruments classified in Level 3 of the valuation hierarchy (dollars in millions):

	Successor					Total Net Assets (Liabilities)
	Level 3 Financial Assets and (Liabilities)					
	Mortgage-backed Securities(a)	Commodity Derivatives, Net(b)	Foreign Currency Derivatives(c)	Other Derivative Instruments(a)	Other Securities(a)	
Balance at July 10, 2009	\$ —	\$ —	\$ (1,430)	\$ —	\$ —	\$ (1,430)
Total realized/unrealized gains (losses)						
Included in earnings	—	—	238	—	—	238
Included in Other comprehensive loss	—	—	(103)	—	—	(103)
Purchases, issuances and settlements	—	—	623	—	—	623
Transfer in and/or out of Level 3	—	—	—	—	—	—
Balance at December 31, 2009	\$ —	\$ —	\$ (672)	\$ —	\$ —	\$ (672)
Amount of total gains and (losses) in the period included in earnings attributable to the change in unrealized gains or (losses) relating to assets still held at the reporting date	\$ —	\$ —	\$ 214	\$ —	\$ —	\$ 214
	Predecessor					Total Net Assets (Liabilities)
	Level 3 Financial Assets and (Liabilities)					
	Mortgage-backed Securities(a)	Commodity Derivatives, Net(b)	Foreign Currency Derivatives(c)	Other Derivative Instruments(a)	Other Securities(a)	
Balance at January 1, 2009	\$ 49	\$ (17)	\$ (2,144)	\$ (164)	\$ 17	\$ (2,259)
Total realized/unrealized gains (losses)						
Included in earnings	(2)	13	26	164	(5)	196
Included in Other comprehensive loss	—	—	(2)	—	—	(2)
Purchases, issuances and settlements	(14)	4	105	—	(7)	88
Transfer in and/or out of Level 3	(33)	—	585	—	(5)	547
Balance at July 9, 2009	\$ —	\$ —	\$ (1,430)	\$ —	\$ —	\$ (1,430)
Amount of total gains and (losses) in the period included in earnings attributable to the change in unrealized gains or (losses) relating to assets still held at the reporting date	\$ —	\$ —	\$ 28	\$ —	\$ —	\$ 28

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Predecessor						Total Net Assets (Liabilities)
	Level 3 Financial Assets and (Liabilities)						
	Mortgage-backed Securities(a)	Commodity Derivatives(b)	Foreign Currency Derivatives(c)	Corporate Debt Securities(a)	Other Derivative Instruments(a)	Other Securities(a)	
Balance at January 1, 2008	\$ 283	\$ 257	\$ —	\$ 28	\$ —	\$ 260	\$ 828
Total realized/unrealized gains (losses)							
Included in earnings	(39)	28	—	23	—	(65)	(53)
Included in Other comprehensive loss	1	—	—	—	—	7	8
Purchases, issuances and settlements	(196)	(302)	—	(51)	(164)	(185)	(898)
Transfer in and/or out of Level 3	—	—	(2,144)	—	—	—	(2,144)
Balance at December 31, 2008	\$ 49	\$ (17)	\$ (2,144)	\$ —	\$ (164)	\$ 17	\$ (2,259)
Amount of total gains and (losses) in the period included in earnings attributable to the change in unrealized gains or (losses) relating to assets still held at the reporting date	\$ (6)	\$ 28	\$ (775)	\$ —	\$ —	\$ (1)	\$ (754)

- (a) Realized gains (losses) and other than temporary impairments on marketable securities (including the UST warrants outstanding until the closing of the 363 Sale) are recorded in Interest income and other non-operating income, net.
- (b) Prior to July 10, 2009 realized and unrealized gains (losses) on commodity derivatives are recorded in Cost of sales. Changes in fair value are attributable to changes in base metal and precious metal prices. Beginning July 10, 2009 realized and unrealized gains (losses) on commodity derivatives are recorded in Interest income and other non-operating income, net.
- (c) Prior to July 10, 2009 realized and unrealized gains (losses) on foreign currency derivatives are recorded in the line item associated with the economically hedged item. Beginning July 10, 2009 realized and unrealized gains (losses) on foreign currency derivatives are recorded in Interest income and other non-operating income, net and foreign currency translation gains (losses) are recorded in Accumulated other comprehensive income (loss).

**Short-Term and Long-Term Debt**

We determined the fair value of debt based on a discounted cash flow model which used benchmark yield curves plus a spread that represented the yields on traded bonds of companies with comparable credit ratings and risk profiles.

Old GM determined the fair value of debt based on quoted market prices for the same or similar issues or based on the current rates offered for debt of similar remaining maturities.

The following table summarizes the carrying amount and estimated fair values of short-term and long-term debt including capital leases for which it is practical to estimate fair value (dollars in millions):

	Successor December 31, 2009	Predecessor December 31, 2008
Carrying amount (a)	\$ 15,783	\$ 45,938
Fair value (a)	\$ 16,024	\$ 16,986

- (a) Accounts and notes receivable, net and Accounts payable (principally trade) are not included because the carrying amount approximates fair value due to their short-term nature.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Note 24. Restructuring and Other Initiatives**

We have and Old GM had previously executed various restructuring and other initiatives, and we plan to execute additional initiatives in the future, if necessary, in order to preserve adequate liquidity, to align manufacturing capacity and other costs with prevailing global automotive production and to improve the utilization of remaining facilities. Related charges are primarily recorded in Cost of sales and Selling, general and administrative expense.

In May 2009 Old GM and the UAW entered into an agreement that suspended the JOBS Program which was replaced with the SUB and TSP. These job security programs provide reduced wages and employees continue to receive coverage under certain employee benefit programs. The number of weeks that an employee receives these benefits depends on the employee's classification as well as the number of years of service that the employee has accrued. A similar tiered benefit is provided to CAW employees.

As part of achieving and sustaining long-term viability and the viability of our dealer network, we determined that a reduction in the number of GMNA dealerships was necessary. In determining which dealerships would remain in our network we performed careful analyses of volumes and consumer satisfaction indexes, among other criteria. Wind-down agreements with over 2,000 retail dealers have been executed. The retail dealers executing wind-down agreements have agreed to terminate their dealer agreements with us prior to October 31, 2010. Our plan was to reduce dealerships in the United States and Canada to approximately 3,600 to 4,000 and 450 to 480 in the long-term. However, in December 2009 President Obama signed legislation giving U.S. dealers access to neutral arbitration should they decide to contest the wind-down of their dealership. Under the terms of the legislation we have informed dealers as to why their dealership received a wind-down agreement. In turn, dealers were given a timeframe to file for reinstatement through the American Arbitration Association. Under the law decisions in these arbitration proceedings must generally be made by June 2010 and are binding and final. We have sent letters to over 2,000 of our dealers explaining the reasons for their wind-down agreements and over 1,100 dealers have filed for arbitration. In response to the arbitration filings we reviewed each of the dealer reinstatement claims filed with the American Arbitration Association. Our review resulted in over 600 letters of intent sent to dealers, containing our core business criteria for operation of a dealership, which upon compliance by the dealer, would result in reinstatement of the dealership. We expect to have the overall arbitration and reinstatement process fundamentally resolved in 2010. Due to the reinstatement of dealerships and the uncertainty of the outcome of the remaining binding arbitration cases we expect the number of dealerships in our network to exceed the previously estimated range.

Refer to Note 25 for asset impairment charges related to our restructuring initiatives and Note 19 for pension and other postretirement benefit charges resulting from our hourly and salaried employee separation initiatives, including special attrition programs.

The following table summarizes restructuring reserves (excluding restructuring reserves related to dealer wind-down agreements) and charges by segment, including postemployment benefit reserves and charges (dollars in millions):

	Successor			Total
	GMNA	GME	GMIO	
Balance at July 10, 2009	\$2,905	\$433	\$ 48	\$ 3,386
Additions	44	37	85	166
Interest accretion and other	15	35	—	50
Payments	(994)	(61)	(128)	(1,183)
Revisions to estimates	30	—	(2)	28
Effect of foreign currency	88	7	4	99
Balance at December 31, 2009 (a)	<u>\$2,088</u>	<u>\$451</u>	<u>\$ 7</u>	<u>\$ 2,546</u>

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Predecessor			Total
	GMNA	GME	GMIO	
Balance at January 1, 2007	\$ 1,339	\$ 407	\$ 5	\$ 1,751
Additions	382	537	63	982
Interest accretion and other	21	30	—	51
Payments	(872)	(439)	(65)	(1,376)
Revisions to estimates	(67)	(15)	—	(82)
Effect of foreign currency	65	60	1	126
Balance at December 31, 2007	868	580	4	1,452
Additions	2,165	242	130	2,537
Interest accretion and other	41	62	—	103
Payments	(745)	(368)	(53)	(1,166)
Revisions to estimates	320	(18)	(3)	299
Effect of foreign currency	(193)	(30)	(20)	(243)
Balance at December 31, 2008	2,456	468	58	2,982
Additions	1,835	20	65	1,920
Interest accretion and other	16	11	—	27
Payments	(1,014)	(65)	(91)	(1,170)
Revisions to estimates	(401)	—	9	(392)
Effect of foreign currency	50	(1)	7	56
Balance at July 9, 2009	2,942	433	48	3,423
Effect of application of fresh-start reporting	(37)	—	—	(37)
Ending balance including effect of application of fresh-start reporting	\$ 2,905	\$ 433	\$ 48	\$ 3,386

(a) The remaining cash payments related to these restructuring reserves primarily relate to postemployment benefits to be paid.

**GM**

GMNA recorded charges, interest accretion and other, and revisions to estimates that increased the restructuring reserves by \$89 million in the period July 10, 2009 through December 31, 2009 for separation programs primarily related to the following initiatives:

- The restructuring reserves were increased by \$213 million due to an increase in the SUB and TSP accrual of \$183 million related to capacity actions, productivity initiatives, acquisition of Nexteer and four domestic facilities and Canadian restructuring activities of \$30 million.
- The salaried and hourly workforce severance accruals were reduced by \$146 million as a result of elections subsequently made by terminating employees, such amounts were reclassified as special termination benefits and were funded from the U.S. defined benefit pension plans and other applicable retirement benefit plans.

GME recorded charges, interest accretion and other, and revisions to estimates of \$72 million in the period July 10, 2009 through December 31, 2009 primarily related to separation charges for early retirement programs and additional liability adjustments, primarily in Germany.

GMIO recorded charges, interest accretion and other, and revisions to estimates of \$83 million in the period July 10, 2009 through December 31, 2009, which includes separation charges of \$72 million related to restructuring programs in Australia for salaried and hourly employees.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes GMNA's restructuring reserves related to dealer wind-down agreements in the period July 10, 2009 through December 31, 2009 (dollars in millions):

	Successor		Total
	U.S.	Canada and Mexico	
Balance at July 10, 2009	\$ 398	\$ 118	\$ 516
Additions	229	46	275
Payments	(167)	(118)	(285)
Transfer to legal reserve	—	(17)	(17)
Effect of foreign currency	—	12	12
Balance at December 31, 2009	<u>\$ 460</u>	<u>\$ 41</u>	<u>\$ 501</u>

Restructuring reserves related to dealer wind-down agreements in the period July 10, 2009 through December 31, 2009 increased primarily due to additional accruals recorded for wind-down payments to Saturn dealerships related to the decision in September 2009 to wind-down the Saturn brand and dealership network in accordance with the deferred termination agreements that Saturn dealers have signed with us.

**Old GM**

GMNA recorded charges, interest accretion and other, and revisions to estimates of \$1.5 billion in the period January 1, 2009 through July 9, 2009 for separation programs related to the following initiatives:

- Postemployment benefit charges in the U.S. of \$825 million related to 13,000 hourly employees who participated in the 2009 Special Attrition Program and the Second 2009 Special Attrition Program.
- SUB and TSP related charges in the U.S. of \$707 million, recorded as an additional liability determined by an actuarial analysis at the implementation of the SUB and TSP and related suspension of the JOBS Program.
- Revisions to estimates of \$401 million to decrease the reserve, primarily related to \$335 million for the suspension of the JOBS Program and \$141 million for estimated future wages and benefits due to employees who participated in the 2009 Special Attrition Programs; offset by a net increase of \$86 million related to Canadian salaried workforce reductions and other restructuring initiatives in Canada.
- Separation charges of \$250 million for a U.S. salaried severance program to allow 6,000 terminated employees to receive ongoing wages and benefits for up to 12 months.
- Postemployment benefit charges in Canada of \$38 million related to 380 hourly employees who participated in a special attrition program at the Oshawa Facility.

GME recorded charges, interest accretion and other, and revisions to estimates of \$31 million in the period January 1, 2009 through July 9, 2009 primarily related to separation charges for early retirement programs and additional liability adjustments, primarily in Germany.

GMIO recorded charges, interest accretion and other, and revisions to estimates of \$74 million in the period January 1, 2009 through July 9, 2009 for separation programs primarily related to the following initiatives:

- Separation charges of \$48 million related to voluntary and involuntary separation programs in South America affecting 3,300 salaried and hourly employees.
- Separation charges in Australia of \$19 million related to a facility idling. The program affects employees who left through December 2009.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes GMNA's restructuring reserves related to dealer wind-down agreements in the period January 1, 2009 through July 9, 2009 (dollars in millions):

	Predecessor		Total
	U.S.	Canada and Mexico	
Balance at January 1, 2009	\$ —	\$ —	\$ —
Additions	398	120	518
Payments	—	(2)	(2)
Balance at July 9, 2009	<u>\$398</u>	<u>\$ 118</u>	<u>\$516</u>

GMNA recorded charges, interest accretion and other, and revisions to estimates of \$2.5 billion in the year ended 2008 for separation programs related to the following initiatives:

- Postemployment benefit costs in the U.S. and Canada of \$2.1 billion, which was comprised of \$1.7 billion related to previously announced capacity actions and \$407 million for special attrition programs.
- Revisions to estimates that increased the reserve of \$320 million.
- Separation charges of \$40 million for a U.S. salaried severance program, which allowed terminated employees to receive ongoing wages and benefits for up to 12 months.

GME recorded charges, interest accretion and other, and revisions to estimates of \$286 million in the year ended 2008 for separation programs related to the following initiatives:

- Separation charges in Germany of \$107 million related to early retirement programs, along with additional minor separations under other current programs.
- Separation charges in Belgium of \$92 million related to current and previously announced programs, having previously recorded \$341 million in the year ended 2007.
- Separation charges of \$43 million related to separation programs and the cost of previously announced initiatives, which include voluntary separations, in Sweden, the United Kingdom, Spain and France.

GMIO recorded charges and revisions to estimates of \$127 million in the year ended 2008 primarily related to separation charges of \$51 million in South Africa and South America, and separation charges of \$76 million related to a facility idling in Australia.

GMNA recorded charges, interest accretion and other, and revisions to estimates of \$336 million in the year ended 2007 for separation programs related to the following initiatives:

- Postemployment benefit costs of \$364 million, which was comprised of \$333 million for previously announced capacity actions in the U.S. and Canada and \$31 million for special attrition programs.
- Revisions to estimates to decrease the reserve of \$67 million.
- Separation charges of \$18 million for a U.S. salaried severance program, which allowed terminated employees to receive ongoing wages and benefits for up to 12 months.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

GME recorded charges, interest accretion and other, and revisions to estimates of \$552 million in the year ended 2007 for separation programs related to the following initiatives:

- Separation charges in Belgium of \$341 million related to current and previously announced programs.
- Separation charges in Germany of \$151 million and postemployment liability adjustments of \$21 million. These charges and adjustments were primarily related to early retirement programs, along with additional minor separations.
- Separation charges of \$45 million related to initiatives announced in 2006. These included separations in Sweden and the United Kingdom and the closure of the Portugal assembly facility.
- Revisions to estimates to decrease the reserve of \$15 million related to programs in Germany and Belgium.

GMIO recorded charges of \$63 million in the year ended 2007 primarily related to charges of \$22 million for employee separations in Brazil and charges of \$41 million related to a voluntary employee separation program in Australia.

**Note 25. Impairments**

The following table summarizes impairment charges (dollars in millions):

	<u>Successor</u>	<u>Predecessor</u>		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
<b>GMNA</b>				
Goodwill	\$ —	\$ —	\$ 154	\$ —
Intangibles assets	21	—	—	—
Product-specific tooling assets	1	278	291	240
Cancelled powertrain programs	—	42	120	—
Equity and cost method investments	4	28	119	—
Vehicles leased to rental car companies	—	11	160	44
Automotive retail leases (a)	—	—	220	—
Other than temporary impairment charges on debt and equity securities (b)	—	—	47	72
Total GMNA impairment charges	26	359	1,111	356
<b>GME</b>				
Goodwill	—	—	456	—
Product-specific tooling assets	—	237	497	—
Vehicles leased to rental car companies	18	36	222	90
Total GME impairment charges	18	273	1,175	90
<b>GMIO</b>				
Product-specific tooling assets	1	7	72	19
Asset impairment charges related to restructuring initiatives	—	—	30	—
Other long-lived assets	—	2	—	—
Total GMIO impairment charges	1	9	102	19
<b>Corporate</b>				
Other than temporary impairment charges on debt and equity securities (b)	—	11	15	—
Automotive retail leases	—	16	157	—
GMAC Common Membership Interests	—	—	7,099	—
GMAC common stock	270	—	—	—
GMAC Preferred Membership Interests	—	—	1,001	—
Total Corporate impairment charges	270	27	8,272	—
Total impairment charges	\$ 315	\$ 668	\$ 10,660	\$ 465

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- (a) The year ended 2008 includes an increase in intersegment residual support and risk sharing reserves of \$220 million recorded as a reduction of revenue in GMNA.
- (b) Refer to Note 6 and Note 23 for additional information on marketable securities and financial instruments measured at fair value on a recurring basis. The impairment charges were recorded in Interest income and other non-operating income, net.

The following tables summarize assets measured at fair value (all of which utilized Level 3 inputs) on a nonrecurring basis subsequent to initial recognition (dollars in millions):

	Fair Value Measurements Using				July 10, 2009 Through December 31, 2009 Total Losses
	Period Ended December 31, 2009 (a)	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Product-specific tooling assets (b)	\$ —	—	—	\$ —	\$ (2)
Equity and cost method investments (other than GMAC)	\$ 1	—	—	\$ 1	\$ (4)
Vehicles leased to rental car companies (c)	\$ 543-567	—	—	\$ 543-567	\$ (18)
GMAC common stock	\$ 970	—	—	\$ 970	\$ (270)
Intangible assets	\$ —	—	—	\$ —	\$ (21)
					\$ (315)

- (a) Amounts represent the fair value measure (or range of measures) during the period.
- (b) In the period July 10, 2009 through September 30, 2009 and in the fourth quarter of 2009 we recorded impairment charges of \$1 million each to write down product-specific tooling assets to their fair value of \$0.
- (c) In the period July 10, 2009 through September 30, 2009 we recorded impairment charges of \$12 million to write down vehicles leased to rental car companies to their fair value of \$543 million. In the fourth quarter we recorded an impairment charge of \$6 million to write down vehicles leased to rental car companies to their fair value of \$567 million.

	Fair Value Measurements Using				January 1, 2009 Through July 9, 2009 Total Losses
	Period Ended July 9, 2009 (a)	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Product-specific tooling assets(b)	\$ 0-85	—	—	\$ 0-85	\$ (522)
Cancelled powertrain programs	\$ —	—	—	\$ —	\$ (42)
Other long-lived assets	\$ —	—	—	\$ —	\$ (2)
Equity and cost method investments (other than GMAC)	\$ —	—	—	\$ —	\$ (28)
Vehicles leased to rental car companies(c)	539-			539-	
Automotive retail leases	\$ 2,057	—	—	\$ 2,057	\$ (47)
	\$ 1,519	—	—	\$ 1,519	\$ (16)
					\$ (657)

- (a) Amounts represent the fair value measure (or range of measures) during the period.
- (b) In the first quarter we recorded impairment charges of \$285 million to write down product-specific tooling assets to their fair value of \$85 million. In the second quarter we recorded impairment charges of \$237 million to write down product-specific tooling assets to their fair value of \$0.
- (c) In the first quarter we recorded impairment charges of \$29 million to write down vehicles leased to rental car companies to their fair value \$2.1 billion. In the second quarter we recorded impairment charges of \$17 million to write down vehicles leased to

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

rental car companies to their fair value of \$543 million. In the period July 1, 2009 through July 9, 2009 we recorded impairment charges of \$1 million to write down vehicles leased to rental car companies to their fair value of \$539 million.

	Fair Value Measurements Using				Year Ended December 31, 2008 Total Losses
	Year Ended December 31, 2008 (a)	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
GMAC Common Membership interests (b)	612-			612-	
GMAC Preferred Membership interests (c)	\$ 5,391	—	—	\$ 5,391	\$ (7,099)
	\$ 43-902	—	—	\$ 43-902	\$ (1,001)
Equity and Cost Method Investments (other than GMAC) (d)	\$ 0-6	—	—	\$ 0-6	\$ (119)
					<u>\$ (8,219)</u>

- (a) Amounts represent the fair value measure (or range of measures) during the period.
- (b) In the first quarter we recorded an impairment charge of \$1.3 billion to write down our investment in GMAC Common Membership Interests to its fair value of \$5.4 billion. In the second quarter we recorded an impairment charge of \$726 million to write down our investment in GMAC Common Membership Interests to its fair value of \$3.5 billion. In the fourth quarter we recorded an impairment charge of \$5.1 billion to write down our investment in GMAC Common Membership Interests to its fair value of \$612 million.
- (c) In the first quarter we recorded an impairment charge of \$142 million to write down our investment in GMAC Preferred Membership Interests to its fair value of \$902 million. In the second quarter we recorded an impairment charge of \$608 million to write down our investment in GMAC Preferred Membership Interests to its fair value of \$294 million. In the third quarter we recorded an impairment charge of \$251 million to write down our investment in GMAC Preferred Membership Interests to its fair value of \$43 million.
- (d) In the fourth quarter, we recorded an impairment charge related to our investment in NUMMI of \$94 million to write our investment down to its fair value of \$0 and an impairment charge related to our investment in CAMI of \$25 million to write our investment down to its fair value of \$6 million.

As a result of the adoption of ASC 820-10 in January 2009 fair value disclosures related to nonfinancial assets and liabilities measured on a nonrecurring basis for the periods January 1, 2009 through July 9, 2009 and July 10, 2009 through December 31, 2009 are subsequently discussed.

**GM**

**July 10, 2009 Through December 31, 2009**

*GMNA*

Intangible assets related to product-specific technology were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$21 million in the period July 10, 2009 through December 31, 2009. Fair value measurements utilized projected cash flows, discounted at a rate commensurate with the perceived business risks related to technology.

GMNA recorded contract cancellation charges of \$80 million related to the cancellation of certain product programs.

*GME*

Equipment on operating leases, net is comprised of vehicles leased to rental car companies, which were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$18 million in the period July 10, 2009 through December 31, 2009. Fair value measurements utilized projected cash flows from vehicle sales at auction.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*GMIO*

GMIO recorded contract cancellation charges of \$2 million related to the cancellation of certain product programs.

*Corporate*

At July 10, 2009 our application of fresh-start reporting resulted in adjustments of \$1.3 billion and \$629 million to our investments in GMAC common and GMAC preferred stock to record these investments at their estimated fair value of \$1.3 billion and \$665 million. In the period July 10, 2009 through December 31, 2009 we received distributions on GMAC common stock of \$72 million which decreased the carrying amount of our investment in GMAC common stock.

At December 31, 2009 we determined that indicators were present that suggested our investments in GMAC common and preferred stock could be impaired. Such indicators included the continuing deterioration in GMAC's mortgage operations, as evidenced by the strategic actions GMAC took in December 2009 to position itself to sell certain mortgage assets. These actions resulted in GMAC recording an increase in its provision for loan losses of \$2.4 billion in the fourth quarter of 2009. These indicators also included GMAC's receipt of \$3.8 billion of additional financial support from the UST on December 30, 2009, which diluted our investment in GMAC common stock from 24.5% to 16.6%.

As a result of these impairment indicators, we evaluated the fair value of our investments in GMAC common and preferred stock and recorded an impairment charge of \$270 million related to our GMAC common stock to record the investment at its estimated fair value of \$970 million. We determined the fair value of these investments using valuation methodologies that were consistent with those we used in our application of fresh-start reporting. In applying these valuation methodologies at December 31, 2009, however, we updated the analyses to reflect changes in market comparables and other relevant assumptions.

**Old GM**

*January 1, 2009 Through July 9, 2009*

*GMNA*

Product-specific tooling assets were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$278 million in the period January 1, 2009 through July 9, 2009. Fair value measurements utilized projected cash flows, discounted at rates commensurate with the perceived business risks related to the assets involved.

Cancelled powertrain programs were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$42 million in the period January 1, 2009 through July 9, 2009. Fair value measurements utilized discounted projected cash flows.

GMNA recorded contract cancellation charges of \$157 million related to the cancellation of certain product programs.

CAMI at the time an equity method investee, was adjusted to its fair value, resulting in an impairment charge of \$28 million in the three months ended March 31, 2009. The fair value measurement utilized projected cash flows discounted at a rate commensurate with the perceived business risks related to the investment. In March 2009 Old GM determined that due to changes in contractual arrangements, CAMI became a VIE and Old GM was the primary beneficiary, and therefore CAMI was consolidated.

Equipment on operating leases, net is comprised of vehicles leased to rental car companies, which were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$11 million in the period January 1, 2009 through July 9, 2009. Fair value measurements utilized projected cash flows from vehicle sales at auction.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*GME*

Product-specific tooling assets were adjusted to their fair value at the time of impairments, resulting in impairment charges of \$237 million in the period January 1, 2009 through July 9, 2009. Fair value measurements utilized projected cash flows, discounted at rates commensurate with the perceived business risks related to the assets involved.

GME recorded contract cancellation charges of \$12 million related to the cancellation of certain product programs.

Equipment on operating leases, net is comprised of vehicles leased to rental car companies, which were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$36 million in the period January 1, 2009 through July 9, 2009. Fair value measurements utilized projected cash flows from vehicle sales at auction.

*GMIO*

Product-specific tooling assets were adjusted to their fair value at the time of impairments, resulting in impairment charges of \$7 million in the period January 1, 2009 through July 9, 2009. Fair value measurements utilized certain Level 3 inputs, which included projected cash flows, discounted at rates commensurate with the perceived business risks related to the assets involved.

GMIO recorded contract cancellation charges of \$8 million related to the cancellation of certain product programs.

*Corporate*

Automotive retail leases were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$16 million in the period January 1, 2009 through July 9, 2009. Fair value measurements utilized discounted projected cash flows from lease payments and anticipated future auction proceeds.

**2008**

*GMNA*

Goodwill impairment charges of \$154 million in the year ended 2008 related to sharply reduced forecasts of automotive sales in the near- and medium-term. Fair value measurements utilized discounted projected cash flows.

NUMMI and CAMI, at the time were equity method investees involved in various aspects of the development and production of vehicles, were adjusted to their fair value, resulting in impairment charges of \$94 million and \$25 million in the year ended 2008. Fair value measurements utilized projected cash flows, discounted at a rate commensurate with the perceived business risks related to the investments.

*GME*

Goodwill impairment charges of \$456 million in the year ended 2008 related to sharply reduced forecasts of automotive sales in the near- and medium-term. Fair value measurements utilized discounted projected cash flows.

*Corporate*

In 2008 recessions in the United States and Western Europe and a slowdown in economic growth in the rest of the world negatively affected residential and homebuilding markets and consumer demand for less fuel efficient vehicles, particularly fullsize trucks and sport utility vehicles. In addition, instability of the credit and mortgage markets resulted in an extreme lack of liquidity resulting in prominent North American financial institutions declaring bankruptcy, being seized by the Federal Deposit Insurance Corporation or being sold at distressed valuations, and culminated in the U.S. and foreign governments providing various forms of capital infusions

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

to financial institutions. These economic factors negatively affected GMAC's global automotive business as well as GMAC's mortgage operations, which resulted in significant losses including impairment charges of \$1.2 billion on GMAC's portfolio of automotive retail leases in the year ended 2008. As a result of these events, Old GM evaluated its investments in GMAC Common and Preferred Membership Interests, determined that they were impaired and recorded impairment charges on these investments of \$7.1 billion and \$1.0 billion in the year ended 2008.

In order to determine the fair value of Old GM's investment in GMAC Common Membership Interests at March 31, June 30 and September 30, 2008, Old GM determined GMAC's fair value by applying various valuation techniques, which used Level 3 inputs, to its significant business units and then applied its 49% equity interest to the resulting fair value.

- Auto Finance – Old GM obtained industry data, such as equity and earnings ratios for other industry participants, and developed average multiples for these companies based upon a comparison of their businesses to Auto Finance.
- Insurance – Old GM developed a peer group, based upon such factors as equity and earnings ratios and developed average multiples for these companies.
- Mortgage Operations – Old GM previously obtained industry data for an industry participant that Old GM believed to be comparable, and also utilized the implied valuation based on an acquisition of an industry participant who was believed to be comparable. Due to prevailing market conditions at September 30, 2008 Old GM did not believe that comparable industry participants existed; however, Old GM believed that previously available data, in conjunction with certain publicly available information incorporated into the analysis, resulted in an appropriate valuation at September 30, 2008.
- Commercial Finance Group – Old GM obtained industry data, such as price to earnings ratios, for other industry participants, and developed average multiples for these companies based upon a comparison of their businesses to the Commercial Finance Group.

At December 31, 2008 Old GM's determination of the fair value of GMAC Common Membership Interests used data from GMAC's discussions with the Board of Governors of the Federal Reserve System for approval to become a Bank Holding Company under the Bank Holding Company Act of 1956, as amended, in addition to Old GM's and GMAC's negotiations with the UST regarding potential borrowings or other capital infusions under the Automotive Industry Financing Program. As part of this process, Old GM and FIM Holdings agreed to convert Old GM's interests in the GMAC Participation Agreement to GMAC Common Membership Interests in December 2008, and to purchase additional GMAC Common Membership Interests subsequent to December 2008. The conversion of the GMAC Participation Agreement and the subsequent purchase of additional GMAC Common Membership Interests utilized a specified value per GMAC Common Membership Interest as determined and agreed to by the relevant parties to the various transactions, which Old GM subsequently utilized in its determination of GMAC's fair value, as it was believed the per share value was representative of fair value. Refer to Note 30 for additional information on the GMAC Participation Agreement.

In order to determine the fair value of Old GM's investment in GMAC Preferred Membership Interests at December 31, 2008, Old GM applied valuation techniques, which used certain Level 3 inputs, to various characteristics of the GMAC Preferred Membership Interests as follows:

- Using information as to the pricing on similar investments and changes in yields of other GMAC securities, Old GM developed a discount rate for the valuation.
- Using assumptions as to the receipt of dividends on the GMAC Preferred Membership Interests, the expected call date and a discounted cash flow model, Old GM developed a present value of the related cash flows.

At March 31, June 30, and September 30, 2008 Old GM also used these valuation techniques but the assumptions used at each valuation date varied due to differing market conditions in these periods.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 26. Other Expenses, net**

The following table summarizes the components of Other expenses, net (dollars in millions):

	Successor	Predecessor		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Operating and other expenses (income)	\$ (35)	\$ 22	\$ 409	\$ 545
Pension benefits for certain current and future retirees of				
Delphi	—	—	—	552
Deconsolidation of Saab expenses, net	(60)	824	—	—
Saab impairment charges	—	88	—	—
Delphi related charges (Note 21)	8	184	4,797	1,547
Depreciation and amortization expense	89	101	749	1,259
Goodwill impairment charges (Note 25)	—	—	610	—
Interest expense	13	16	134	405
<b>Total other expenses, net</b>	<b>\$ 15</b>	<b>\$ 1,235</b>	<b>\$ 6,699</b>	<b>\$ 4,308</b>

Interest expense and depreciation and amortization expense recorded in Other expenses, net relates to a portfolio of automotive retail leases.

**Note 27. Stockholders' Equity (Deficit) and Noncontrolling Interests**

**GM**

**Common Stock**

We have 2.5 billion shares of common stock authorized, with a par value of \$0.01 per share. At December 31, 2009 we had 500 million shares issued and outstanding. Holders of our common stock are entitled to dividends at the sole discretion of our Board of Directors. However, the terms of the Series A Preferred Stock prohibit, subject to exceptions, the payment of dividends on our common stock, unless all accrued and unpaid dividends on the Series A Preferred Stock are paid in full. Holders of common stock are entitled to one vote per share on all matters submitted to our stockholders for a vote. The liquidation rights of holders of our common stock are secondary to the payment or provision for payment of all our debts and liabilities and to holders of our preferred stock, if any such shares are then outstanding. Pursuant to the terms of a Stockholders Agreement we entered into with certain of our stockholders, certain holders of our common stock are entitled to preemptive rights under certain circumstances.

**Warrants**

In connection with the 363 Sale, we issued two warrants, each to acquire 45.5 million shares of common stock, to MLC and one warrant to acquire 15.2 million shares of common stock to the New VEBA. The first of the MLC warrants is exercisable at any time prior to July 10, 2016 at an exercise price of \$30.00 per share, and the second of the MLC warrants is exercisable at any time prior to July 10, 2019 at an exercise price of \$55.00 per share. The New VEBA warrant is exercisable at any time prior to December 31, 2015 at an exercise price of \$126.92 per share. The number of shares of common stock underlying each of the warrants and the per share exercise price thereof are subject to adjustment as a result of certain events, including stock splits, reverse stock splits and stock dividends.

**Noncontrolling Interests**

In October 2009 we completed our participation in an equity rights offering in GM Daewoo, a majority-owned and consolidated subsidiary, for KRW 491 billion (equivalent to \$417 million when entered into). As a result of the participation in the equity rights

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

offering, our ownership interest in GM Daewoo increased from 50.9% to 70.1%. Funds from our UST escrow were utilized for this rights offering.

In December 2009 we acquired the remaining noncontrolling interest of CAMI from Suzuki for \$100 million increasing our ownership interest from 50% to 100%. This transaction resulted in no charge to Capital surplus.

The table below summarizes the changes in equity resulting from Net loss attributable to common stockholders and transfers from (to) noncontrolling interests (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> Through <u>December 31, 2009</u>
Net loss attributable to common stockholders	\$ (4,428)
Increase in capital surplus resulting from GM Daewoo equity rights offering	108
Changes from net loss attributable to common stockholders and transfers from (to) noncontrolling interests	<u>\$ (4,320)</u>

**Old GM*****Preferred Stock***

Old GM had 6 million shares of preferred stock authorized, without par value. The preferred stock ranked senior to its common stock and any other class of stock it previously issued. Holders of preferred stock were entitled to receive cumulative dividends, when and as declared by Old GM's Board of Directors on a quarterly basis. Old GM had no shares of preferred stock issued and outstanding at December 31, 2008.

***Preference Stock***

Old GM had 100 million shares of preference stock authorized, with a par value of \$0.10. The preference stock was issuable in series with such voting powers, designations, powers, privileges, and rights and such qualifications, limits, or restrictions as may be determined by Old GM's Board of Directors, without stockholder approval. The preference stock ranked junior to Old GM's preferred stock and senior to its common stock. Holders of preference stock were entitled to receive dividends, which may or may not have been cumulative when and as declared by Old GM's Board of Directors. Old GM had no shares of preference stock issued and outstanding at December 31, 2008.

***Common Stock***

Old GM had 2.0 billion shares of common stock authorized, with a par value of \$1 2/3. Old GM had 801 million shares issued and 610 million shares outstanding at December 31, 2008.

***Warrants***

As additional consideration for entering into the UST Loan Agreement, Old GM issued warrants to the UST for 122 million shares of common stock exercisable at \$3.57 per share, which was 19.99% of the number of shares of common stock outstanding at December 31, 2008. The warrants were perpetual and were assigned a fair value of \$164 million at December 31, 2008. In determining this value, Old GM utilized the observable market value of tradable call options on its common stock. The difference in terms between the warrants and the observable call options on its common stock was determined to have an insignificant effect on the value of the warrants. Key inputs in the value of the call options were Old GM's common stock price and its expected volatility on common stock returns. An increase of 10% in Old GM's common stock price would have increased the fair value of the warrants by

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

\$28 million and a decrease of 10% in Old GM's common stock price would have decreased the fair value of the warrants by \$26 million. An increase or decrease in volatility of 10% would have caused an increase or decrease in the fair value of the warrants of \$16 million. As the warrants did not meet the accounting requirements to be classified as an equity instrument, the warrants were recorded in Other liabilities and because the warrants met the definition of a derivative, they were recorded at fair value prospectively, with changes in fair value recognized in earnings. Old GM was entitled to repurchase the warrants or shares issued through the exercise of the warrants at fair value once it had repaid amounts outstanding under the UST Loan Agreement. In connection with the 363 Sale, the UST returned the warrants previously issued to it from Old GM.

**Treasury Stock**

Old GM held 190 million shares of treasury stock, net of re-issuances, at December 31, 2008. Old GM accounted for treasury stock at cost, with the amount in excess of par value charged to Capital surplus (principally additional paid-in capital).

**Accumulated Other Comprehensive Income (Loss)**

The following table summarizes the components of Accumulated other comprehensive income (loss), net of taxes:

	Successor	Predecessor	
	December 31, 2009	December 31, 2008	December 31, 2007
Foreign currency translation adjustments	\$ 157	\$ (2,122)	\$ (967)
Net unrealized gain (loss) on derivatives	(1)	(490)	321
Net unrealized gain (loss) on securities	2	(33)	265
Defined benefit plans, net	1,430	(29,694)	(13,606)
Accumulated other comprehensive income (loss)	<u>\$ 1,588</u>	<u>\$ (32,339)</u>	<u>\$ (13,987)</u>

**Other Comprehensive Income (Loss)**

The following tables summarize the components of Other comprehensive income (loss) attributable to common stockholders:

	Successor		
	July 10, 2009 Through December 31, 2009		
	Pre-tax Amount	Tax Expense (Credit)	Net Amount
Foreign currency translation adjustments	\$ 135	\$ 11	\$ 124
Net unrealized gain on derivatives	(1)	—	(1)
Unrealized gain on securities	7	5	2
Defined benefit plans			
Prior service cost from plan amendments	112	130	(18)
Actuarial gain from plan measurements	2,702	1,247	1,455
Less: amortization of actuarial loss included in net periodic benefit cost	(6)	1	(7)
Net actuarial amounts	2,696	1,248	1,448
Defined benefit plans, net	2,808	1,378	1,430
Other comprehensive income (loss)	2,949	1,394	1,555
Less: other comprehensive (income) loss attributable to noncontrolling interests	(33)	—	(33)
Other comprehensive income (loss) attributable to common stockholders	<u>\$ 2,982</u>	<u>\$ 1,394</u>	<u>\$ 1,588</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Predecessor								
	January 1, 2009 Through July 9, 2009			Years Ended December 31,					
	Pre-tax Amount	Tax Expense (Credit)	Net Amount	2008			2007		
Pre-tax Amount				Tax Expense (Credit)	Net Amount	Pre-tax Amount	Tax Expense (Credit)	Net Amount	
Foreign currency translation gain (loss)	\$ 187	\$ 40	\$ 147	\$ (1,289)	\$ 27	\$ (1,316)	\$ 807	\$ (220)	\$ 1,027
Net unrealized gain (loss) on derivatives	145	(131)	276	(1,284)	(53)	(1,231)	(452)	(142)	(310)
Unrealized gain (loss) on securities	46	—	46	(298)	—	(298)	(23)	(6)	(17)
Defined benefit plans									
Prior service benefit (cost) from plan amendments	(3,882)	(1,551)	(2,331)	449	(1)	450	(2,813)	(700)	(2,113)
Amortization of prior service cost included in net periodic benefit cost	5,162	3	5,159	(5,063)	284	(5,347)	(5)	73	(78)
Net prior service benefit (cost)	1,280	(1,548)	2,828	(4,614)	283	(4,897)	(2,818)	(627)	(2,191)
Actuarial gain (loss) from plan measurements	(2,574)	1,532	(4,106)	(14,684)	(120)	(14,564)	8,910	2,066	6,844
Amortization of actuarial loss included in net periodic benefit cost	(2,109)	22	(2,131)	3,524	159	3,365	1,723	331	1,392
Net actuarial amounts	(4,683)	1,554	(6,237)	(11,160)	39	(11,199)	10,633	2,397	8,236
Net transition assets from plan initiations	6	1	5	—	—	—	—	—	—
Amortization of transition asset /obligation included in net periodic benefit cost	(5)	(1)	(4)	11	3	8	2	4	(2)
Net transition amounts	1	—	1	11	3	8	2	4	(2)
Defined benefit plans, net	(3,402)	6	(3,408)	(15,763)	325	(16,088)	7,817	1,774	6,043
Other comprehensive income (loss)	(3,024)	(85)	(2,939)	(18,634)	299	(18,933)	8,149	1,406	6,743
Less: other comprehensive (income) loss attributable to noncontrolling interests	92	—	92	(581)	—	(581)	(340)	(97)	(243)
Other comprehensive income (loss) attributable to common stockholders	<u>\$ (3,116)</u>	<u>\$ (85)</u>	<u>\$ (3,031)</u>	<u>\$ (18,053)</u>	<u>\$ 299</u>	<u>\$ (18,352)</u>	<u>\$ 8,489</u>	<u>\$ 1,503</u>	<u>\$ 6,986</u>

**Note 28. Earnings (Loss) Per Share**

Basic and diluted earnings (loss) per share have been computed by dividing Income (loss) from continuing operations attributable to common stockholders, Income from discontinued operations attributable to common stockholders or Net income (loss) attributable to common stockholders by the weighted-average common shares outstanding in the period.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes basic and diluted earnings (loss) per share (in millions, except for per share amounts):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>	<u>January 1, 2009</u> <u>Through</u> <u>July 9, 2009</u>	<u>Predecessor</u> <u>Year Ended</u> <u>December 31,</u> <u>2008</u>	<u>Year Ended</u> <u>December 31,</u> <u>2007</u>
<b>Basic</b>				
Income (loss) from continuing operations attributable to common stockholders (a)	\$ (10.73)	\$ 178.63	\$ (53.47)	\$ (76.16)
Income from discontinued operations attributable to common stockholders	—	—	—	8.04
Net income (loss) attributable to common stockholders (a)	<u>\$ (10.73)</u>	<u>\$ 178.63</u>	<u>\$ (53.47)</u>	<u>\$ (68.12)</u>
Weighted-average common shares outstanding	413	611	579	566
<b>Diluted</b>				
Income (loss) from continuing operations attributable to common stockholders (a)	\$ (10.73)	\$ 178.55	\$ (53.47)	\$ (76.16)
Income from discontinued operations attributable to common stockholders	—	—	—	8.04
Net income (loss) attributable to common stockholders (a)	<u>\$ (10.73)</u>	<u>\$ 178.55</u>	<u>\$ (53.47)</u>	<u>\$ (68.12)</u>
Weighted-average common shares outstanding	413	611	579	566

(a) The period July 10, 2009 through December 31, 2009 includes accumulated but unearned dividends of \$34 million on Series A Preferred Stock, which increases Net loss attributable to common stockholders, and excludes dividends of \$252 million on Series A Preferred Stock, which were paid to the New VEBA prior to December 31, 2009. The 260 million shares of Series A Preferred Stock issued to the New VEBA were not considered outstanding until December 31, 2009 due to the terms of the 2009 Revised UAW Settlement Agreement.

**GM**

Due to our net loss in the period July 10, 2009 through December 31, 2009 the assumed exercise of warrants outstanding had an antidilutive effect and were therefore excluded from the computation of diluted loss per share. The number of such warrants not included in the computation of diluted loss per share was 106 million in the period July 10, 2009 through December 31, 2009.

In connection with the 363 Sale, we issued 88 million shares of our common stock to the New VEBA, which were not considered outstanding for accounting purposes until December 31, 2009 as they did not qualify as plan assets. Because these shares were not considered outstanding until December 31, 2009 they did not affect the calculation of the weighted-average common shares outstanding. Refer to Note 19 for additional information on the 2009 Revised UAW Settlement Agreement.

Under the Purchase Agreement, we are obligated to issue Adjustment Shares in the event that allowed general unsecured claims against MLC, as estimated by the Bankruptcy Court, exceed \$35.0 billion. The maximum Adjustment Shares equate to 2% (or 10 million shares) of our common stock. The number of Adjustment Shares to be issued is calculated based on the extent to which estimated general unsecured claims exceed \$35.0 billion with the maximum Adjustment Shares issued if estimated general unsecured claims total \$42.0 billion or more. We determined that it is probable that general unsecured claims allowed against MLC will ultimately exceed \$35.0 billion by at least \$2.0 billion. In that circumstance, under the terms of the Purchase Agreement, we would be required to issue 2.9 million Adjustment Shares to MLC as an adjustment to the purchase price. These Adjustment Shares were excluded from the computation of basic and diluted loss per share as they were not issued or outstanding at December 31, 2009 and the effect would have been anti-dilutive, however, they may be dilutive in the future.

In November and December 2009 we granted restricted stock units (RSUs) to certain global executives. Since awards will be payable in cash if settled prior to six months after a completion of a successful initial public offering, the salary stock awards are

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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

excluded from the computation of diluted loss per share. At December 31, 2009 0.3 million RSUs were outstanding. Refer to Note 29 for additional information on RSUs.

**Old GM**

In the period January 1, 2009 through July 9, 2009 diluted earnings per share included the potential effect of the assumed exercise of certain stock options. The number of stock options and warrants that were excluded in the computation of diluted earnings per share because the exercise price was greater than the average market price of the common shares was 208 million.

Due to Old GM's net losses in the years ended 2008 and 2007, the assumed exercise of stock options and warrants had an antidilutive effect and therefore was excluded from the computation of diluted loss per share. The number of such options and warrants not included in the computation of diluted loss per share was 101 million and 104 million in the years ended 2008 and 2007.

No shares potentially issuable to satisfy the in-the-money amount of Old GM's convertible debentures have been included in the computation of diluted income (loss) per share for the period January 1, 2009 through July 9, 2009 and in the years ended 2008 and 2007 as the conversion options in various series of convertible debentures were not in-the-money.

**Note 29. Stock Incentive Plans****GM**

Our stock incentive plans consist of the 2009 Long-Term Incentive Plan (2009 GMLTIP) and the Salary Stock Plan (GMSSP). Both plans are administered by the Executive Compensation Committee of our Board of Directors. No awards were granted under the 2009 GMLTIP in the year ended 2009.

The following table summarizes compensation expense and total Income tax expense recorded for the GMSSP (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>
Compensation expense	\$ 23
Income tax expense	\$ 8

**Long-Term Incentive Plan**

The 2009 GMLTIP consists of RSUs that may be granted to global executives. The RSUs provide participants with the opportunity to earn shares of stock determined by dividing the award value by the fair market value per share on the grant date. The aggregate number of shares that may be granted under this plan and the GMSSP discussed below shall not exceed 10 million shares. There were no RSUs granted under this plan in the year ended 2009.

Awards granted under the 2009 GMLTIP will generally vest over a three year service period. Compensation cost for these awards will be recorded on a straight line basis over the vesting period. The awards for the Top 25 highest compensated employees will settle in 25% increments in conjunction with each 25% of our Troubled Asset Relief Program (TARP) obligations that are repaid. The awards for the non-top 25 highest compensated employees will settle in 25% increments in conjunction with each 25% of the U.S. and Canadian Government loans that are repaid.

Retirement eligible participants that are non-top 25 highest compensated employees, who retire during the service period, will retain and vest a pro-rata portion of RSUs. The vested award will be payable on the third anniversary date of the grant. Compensation cost for these employees will be recognized on a straight-line basis over the requisite service period.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

All awards will be payable in cash if settled prior to six months after completion of an initial public offering, therefore awards granted will be classified as a liability until the completion of an initial public offering. In the event an initial public offering is completed, awards expected to settle six months after the initial public offering will be accounted for as a modification from a liability to equity award since the awards will then be required to be settled in our common stock.

**Salary Stock**

In November 2009 we began granting salary stock to certain global executives under the GMSSP. Under the GMSSP, a portion of each participant's total annual compensation is accrued and converted to RSUs at each salary payment date. Effective in 2010, a portion of each participant's salary accrued on each salary payment date will be converted to RSUs on a quarterly basis. The aggregate number of shares that may be granted under this plan and the 2009 GMLTIP shall not exceed 10 million shares.

The awards are fully vested and nonforfeitable upon grant, therefore compensation cost is fully recognized on the date of grant. The awards will be settled on each of the second, third, and fourth anniversary dates of grant with each installment redeemable one year earlier if we repay the financial assistance we received from the UST under the TARP program. The awards will be payable in cash if settled prior to six months after completion of an initial public offering; therefore, these awards will be classified as a liability until the completion of an initial public offering. In the event an initial public offering is completed, awards expected to settle six months after the initial public offering will be accounted for as a modification from a liability to equity award since the awards will then be required to be settled in our common stock.

The fair value of each RSU under the 2009 GMLTIP and GMSSP is based on the fair value of our common stock. Since there currently is no observable publicly traded price for our common stock, we have developed a methodology to calculate the value of our common stock based on our discounted cash flow analysis updated through December 31, 2009. Refer to Note 2 for additional information on the key assumptions used to estimate our reorganization value at July 10, 2009 and our discounted cash flow analysis.

The following table summarizes our RSU activity under the GMSSP in the period July 10, 2009 through December 31, 2009 (RSUs in millions):

	Successor RSUs			
	Shares	Weighted-Average Grant Date Fair Value	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
RSUs outstanding at July 10, 2009	—	\$ —		
Granted	0.3	\$ 49.16		
Exercised	—	\$ —		
Forfeited or expired	—	\$ —		
RSUs outstanding at December 31, 2009	<u>0.3</u>	\$ 49.16	—	\$ —
RSUs expected to vest at December 31, 2009	<u>0.3</u>	\$ 49.16	—	\$ —
RSUs exercisable at December 31, 2009	<u>—</u>	\$ —	—	\$ —

**Old GM**

Old GM's stock incentive plans were comprised of the 2007 Old GM Long-Term Incentive Plan (GMLTIP), the 2002 Old GM Stock Incentive Plan (GMSIP), the 2002 GMLTIP, the 1998 Old GM Salaried Stock Option Plan (GMSSOP), the 2007 Old GM Cash-Based Restricted Stock Unit Plan (GMCRSU) and the 2006 GMCRSU, or collectively the Old GM Stock Incentive Plans. The GMLTIP, GMSIP and the GMCRSU plans were administered by Old GM's Executive Compensation Committee of its Board of

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Directors. The GMSSOP was administered by Old GM's Vice President of Global Human Resources. In connection with the 363 Sale, MLC retained the awards granted under the Old GM Stock Incentive Plans.

The following table summarizes compensation expense (benefit) and total Income tax expense (benefit) recorded for the Old GM Stock Incentive Plans (dollars in millions):

	Predecessor		
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Compensation expense (benefit)	\$ (10)	\$ (65)	\$ 136
Income tax expense (benefit) (a)	\$ —	\$ 3	\$ (21)

(a) Income tax expense (benefit) does not include U.S. and non-U.S. jurisdictions which have full valuation allowances.

In 2008 Old GM extended voluntary early retirement offers under its 2008 Salaried Window Program to certain of its U.S. salaried employees, including certain U.S. executives, as part of its plan to reduce salary related expenses. Under the terms of the 2008 Salaried Window Program, option awards granted to executives were modified to vest immediately and remain exercisable until the expiration date of the grant. Approximately 200 U.S. executives accepted the 2008 Salaried Window Program. The modifications of the stock option awards were accounted for as a cancellation of the original award and the issuance of a new award. The effect of this award modification on compensation expense was \$6 million.

In August 2007 Old GM completed the sale of the commercial and military operations of its Allison business. Allison employees who participated in Old GM's stock incentive plans were considered terminated employees on the date of sale. Based on this change in employment status, certain outstanding nonvested share-based payment awards were forfeited. The remaining outstanding share-based payment awards were prorated for previous employment services as provided for under the original terms of the award and would remain exercisable for the earlier of three years from the date of termination, or the expiration of the option.

**Stock Options**

Under the GMSIP, 27 million shares of Old GM's common stock were eligible for grants from June 2002 through May 2007. Stock option grants awarded since 1997 were generally exercisable one-third after one year, another one-third after two years and fully exercisable three years from the date of grant. Option prices were 100% of fair value on the date of grant, and the options generally expired 10 years from the date of grant, subject to earlier termination under certain conditions. Old GM's policy was to issue treasury shares upon exercise of employee stock options.

In 2007 the GMSIP was replaced with the 2007 GMLTIP. Under the 2007 GMLTIP, 16 million shares of Old GM's common stock were eligible for grants from June 2007 through May 2012. Stock options granted under this plan were generally exercisable one-third after one year, another one-third after two years and fully exercisable three years from the date of grant. Option prices were 100% of fair value on the date of grant, and the options generally expired 10 years from the date of grant, subject to earlier termination under certain conditions. Old GM's policy was to issue treasury shares upon exercise of employee stock options.

The GMSSOP commenced in January 1998 and no shares were available for grants after December 2006. The number of shares that could be awarded each year was determined by Old GM's management and stock options awarded under this plan were exercisable two years from the date of grant. There were no option grants made under the plan after 2004. Option prices were 100% of fair value on the date of grant, and the options generally expired 10 years and two days from the date of grant subject to earlier termination under certain conditions.

The fair value of each option grant, except for the performance-contingent option awards as subsequently discussed, was estimated on the date of grant using the Black-Scholes option-pricing model with the weighted-average assumptions discussed in the following table. Expected volatility was based on both the implied and historical volatilities of Old GM's common stock. The expected term of

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

options represented the period of time that the options were expected to be outstanding. Old GM used historical data to estimate option exercise and employee termination within the valuation model. For option grants made prior to 2008 Old GM used the modified prospective application method. The dividend yield was based on Old GM's stock price at the date of grant. The interest rate during the expected term of the option was based on the U.S. Treasury yield curve in effect at the time of the grant.

The following table summarizes assumptions used to estimate the date of grant fair value of Old GM's stock options:

	Predecessor		
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
	2007 GMLTIP	2007 GMLTIP	GMSIP
Interest rate	—%	3.0%	5.0%
Expected term (years)	—	7.3	6.0
Expected volatility	—%	44.6%	35.8%
Dividend yield	—%	4.3%	3.4%

The following table summarizes changes in the status of Old GM's outstanding stock options, including performance-contingent stock options which are subsequently discussed (options in millions):

	Predecessor			
	2007 GMLTIP			
	Shares Under Option	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term	Aggregate Intrinsic Value
Options outstanding at January 1, 2009	76	\$ 50.90		
Granted	—	\$ —		
Exercised	—	\$ —		
Forfeited or expired	(11)	\$ 68.50		
Options outstanding at July 9, 2009	65	\$ 47.92	3.5	\$ —
Options expected to vest at July 9, 2009	4	\$ 24.69	8.4	\$ —
Options vested and exercisable at July 9, 2009	61	\$ 49.24	3.2	\$ —

  

	Predecessor			
	GMSSOP			
	Shares Under Option	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term	Aggregate Intrinsic Value
Options outstanding at January 1, 2009	22	\$ 55.44		
Granted	—	\$ —		
Exercised	—	\$ —		
Forfeited or expired	(4)	\$ 67.40		
Options outstanding at July 9, 2009	18	\$ 52.90	2.6	\$ —
Options vested and exercisable at July 9, 2009	18	\$ 52.90	2.6	\$ —

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes Old GM's stock options granted or exercised under the 2007 GMLTIP and GMSIP (options in millions):

	Predecessor		GMSIP
	2007 GMLTIP		
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Options granted	—	4	3
Weighted-average grant date fair value	\$ —	\$ 7.29	\$ 8.76
Options exercised	—	—	—
Intrinsic value of options exercised	\$ —	\$ —	\$ 3

There were no GMSSOP options granted or exercised in the period January 1, 2009 through July 9, 2009, and the years ended 2008 and 2007. There were no tax benefits realized from the exercise of share-based payment arrangements in the period January 1, 2009 through July 9, 2009, and the years ended 2008 and 2007.

**Market-Contingent Stock Options**

In March 2008 Old GM granted market-contingent option awards under the 2007 GMLTIP. These awards had a minimum one-year service vesting period followed by a four-year performance period in which all options would vest once Old GM's common stock traded at or above \$40 for any 10 days within a 30 day trading period. If both vesting conditions were met, the option would expire seven years from the date of grant. If, however, the market condition was not met, the option would expire five years from the date of grant. Option prices were 100% of the fair value on the date of grant.

Old GM recognized the fair value of these options over the weighted-average derived service period of 1.8 years in the year ended 2008. The interest rates that Old GM used to determine the grant date fair value of these options were based on the term structure of the U.S. Treasury yield curve on the grant date. The volatility used was a blend of implied and historical volatilities of Old GM's common stock. The expected term was derived using the Monte-Carlo simulation model to determine fair value. The dividend yield was based upon historical dividend yields.

The following table summarizes the assumptions used to estimate the grant date fair value of the market-contingent stock options:

	Predecessor	
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008
Interest rate	—	1.7% - 3.1%
Expected term (years)	—	1.8
Expected volatility	—	44.0%
Dividend yield	—	3.2%

The following tables summarize Old GM's market-contingent stock options (options in millions):

	Predecessor	
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008
Options granted	—	0.7
Weighted-average grant date fair value	—	\$ 7.00
Options exercised	—	—
Weighted-average exercise price	—	\$ 23.13
Options forfeited or expired	—	—

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	<u>Predecessor</u> <u>July 9, 2009</u>
Options outstanding	0.7
Aggregate intrinsic value	\$ —
Weighted-average contractual term (years)	5.7

**Summary of Nonvested Awards**

The following table summarizes the status of Old GM's nonvested awards (option awards in millions):

	<u>Predecessor</u>
	Weighted-Average Grant-Date Fair Value
	Shares
Nonvested at January 1, 2009	7
Granted	—
Vested	(3)
Forfeited	—
Nonvested at July 9, 2009	<u>4</u>
	\$ 7.67
	\$ —
	\$ 7.65
	\$ 8.15
	\$ 7.68

At July 9, 2009 the total unrecognized compensation expense related to nonvested option awards granted under the Old GM Stock Incentive Plans was \$2 million. This expense was expected to be recorded over a weighted-average period of 1.2 years.

The following table summarizes cash received from option exercises (dollars in millions):

	<u>Predecessor</u>		
	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Cash received	\$ —	\$ —	\$ 1

**Stock Performance Plans**

The 2007 GMLTIP, formerly the 2002 GMLTIP, was comprised of awards granted to participants based on a minimum percentile ranking of Old GM's total stockholder return compared to all other companies in the S&P 500 for the same performance period. The target number of shares of Old GM's common stock that could be granted each year was determined by Old GM's management. The 2008 and 2007 grants each had four separate performance periods consisting of three one-year performance periods and one three-year performance period. The final award payouts could vary based on Old GM's total shareholder return, as previously discussed. There were no stock performance plan shares granted in the period January 1, 2009 to July 9, 2009.

The following table summarizes outstanding stock performance plan shares at July 9, 2009 (shares in millions):

	<u>Predecessor</u>
	Weighted-Average Grant-Date Fair Value
	Shares(a)
<u>Granted</u>	
2007	1
2008	1
Total outstanding	<u>2</u>
	\$ 33.70
	\$ 18.43

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

(a) Excludes shares that have not met performance condition.

Old GM was required to settle these awards in cash. As a result, these cash-settled awards were recorded as a liability until the date of final award payout. The fair value of each cash-settled award was remeasured at the end of each reporting period and the liability and expense adjusted based on the change in fair value. The shares indicated in the preceding table were the targeted number of shares that would be used in the final award calculation should the targeted performance condition have been achieved. Final payout was subject to approval by Old GM's Executive Compensation Committee of the Board of Directors.

The fair value of each cash-settled award under the GMLTIP plans was estimated on the date of grant, and for each subsequent reporting period, remeasured using a Monte-Carlo simulation model that used the multiple input variables. Expected volatility was based upon a combination of the implied volatility from Old GM's tradable options and historical volatility, including the historical volatilities of other stocks in the S&P 500. The expected term of these target awards represented the remaining time in the performance period. The risk-free rate for periods during the contractual life of the performance shares was based on the U.S. Treasury yield curve in effect at the time of valuation. Since the payout depended on Old GM's total stockholder return performance ranked with the total stockholder return performance of all other S&P 500 companies, the valuation also depended on the performance of all stocks in the S&P 500 from the date of grant to the exercise date as well as estimates of the correlations among their future performance. The fair value of the performance plan shares was \$0 at July 9, 2009 for the awards granted in the years ended 2008 and 2007.

The weighted-average remaining contractual term was 0.8 years for target awards outstanding at July 9, 2009. As the threshold performance required for a payment under the 2006-2008 award was not achieved, there were no cash payments made for this award in the period January 1, 2009 through July 9, 2009. There will be no cash payments for the 2007-2009 and 2008-2010 performance periods.

**Cash-Based Restricted Stock Units**

The 2007 and 2006 GMCRSU plans provided cash equal to the value of underlying restricted share units to certain of Old GM's global executives at predetermined vesting dates. Awards under the plan vested and were paid in one-third increments on each anniversary date of the award. Compensation expense was recorded on a straight-line basis over the requisite service period for each separately vesting portion of the award. Since the awards were settled in cash, they were recorded as a liability until the date of payment. The fair value of each cash-settled award was remeasured at the end of each reporting period and the liability and related expense adjusted based on the new fair value.

The fair value of each GMCRSU was based on Old GM's common stock price on the date of grant and each subsequent reporting period until the date of settlement.

The following tables summarize GMCRSUs (GMCRSUs in millions):

	January 1, 2009 Through July 9, 2009	Predecessor Year Ended December 31, 2008	Year Ended December 31, 2007
Number of GMCRSUs granted	—	6	5
Weighted-average date of grant fair value	\$ 2.24	\$ 23.01	\$ 29.39
Total payments made for GMCRSUs vested (millions)	\$ 10	\$ 60	\$ 42
			Predecessor July 9, 2009
GMCRSUs outstanding			5
Fair value per share			\$ 0.84
Weighted-average remaining contractual term (years)			1.4

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Note 30. Transactions with GMAC**

Old GM entered into various operating and financing arrangements with GMAC (GMAC Services Agreements). In connection with the 363 Sale, we assumed the terms and conditions of the GMAC Services Agreements. The following tables describe the financial statement effects of and maximum obligations under these agreements (dollars in millions):

	<u>Successor</u> December 31, 2009	<u>Predecessor</u> December 31, 2008
Operating lease residuals		
Residual support (a)		
Liabilities recorded	\$ 369	\$ 705
Maximum obligation	\$ 1,159	\$ 1,432
Risk sharing (a)		
Liabilities recorded	\$ 366	\$ 1,233
Maximum obligation	\$ 1,392	\$ 1,724
Note payable to GMAC	\$ 35	\$ 35
Vehicle repurchase obligations		
Maximum obligations	\$ 14,058	\$ 19,836
Fair value of guarantee	\$ 46	\$ 8

(a) Represents liabilities recorded and maximum obligations for agreements entered into prior to December 31, 2008. Agreements entered into in 2009 do not include residual support or risk sharing programs.

	<u>Successor</u> July 10, 2009 Through December 31, 2009	<u>Predecessor</u> January 1, 2009 Through July 9, 2009	<u>Year Ended</u> December 31, 2008	<u>Year Ended</u> December 31, 2007
Marketing incentives and operating lease residual payments (a)	\$ 695	\$ 601	\$ 3,400	\$ 4,533
Exclusivity fee revenue	\$ 47	\$ 52	\$ 105	\$ 105
Royalty income	\$ 7	\$ 8	\$ 16	\$ 18

(a) Payments to GMAC related to U.S. marketing incentive and operating lease residual programs. Excludes payments to GMAC related to the contractual exposure limit, as subsequently discussed.

**Marketing Incentives and Operating Lease Residuals**

As a marketing incentive, interest rate support, residual support, risk sharing, capitalized cost reduction and lease pull-ahead programs are initiated as a way to lower customers' monthly lease and retail contractual payments.

Under an interest rate support program, GMAC is paid an amount at the time of lease or retail contract origination to adjust the interest rate in the retail contract or implicit in the lease below GMAC's standard interest rate. Such marketing incentives are referred to as rate support or subvention and the amount paid at contract origination represents the present value of the difference between the customer's contractual rate and GMAC's standard rate for a given program.

Under a residual support program, a customer's contract residual value is adjusted above GMAC's standard residual value. GMAC is reimbursed to the extent that sales proceeds are less than the customer's contract residual value, limited to GMAC's standard residual value. As it relates to GMAC's U.S. lease originations and U.S. balloon retail contract originations occurring after April 30, 2006, Old GM agreed to pay the present value of the expected residual support owed to GMAC at the time of contract origination as opposed to after contract termination when the off-lease vehicles are sold. The actual residual support amount owed to GMAC is calculated as the contracts terminate and, in cases where the actual amount differs from the expected amount paid at contract

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

origination, the difference is paid to or paid by GMAC, depending if sales proceeds are lower or higher than estimated at contract origination.

Under a risk-sharing arrangement, residual losses are shared equally with GMAC to the extent that remarketing proceeds are below GMAC's standard residual value (limited to a floor). As a result of revisions to the risk-sharing arrangement, Old GM agreed to pay GMAC a quarterly fee through 2014. Old GM accrued \$108 million in the year ended 2008 related to this arrangement.

In the event it is publicly announced that a GM vehicle brand will be discontinued, phased-out, sold or other strategic options are being considered, the residual value of the related vehicles may change. If such an announcement in the U.S. or Canada results in an estimated decrease in the residual value of the related vehicles, GMAC will be reimbursed for the estimated decrease for certain vehicles for a certain period of time. If such an announcement results in an increase in the residual value of the related vehicles, GMAC will pay the increase in the sale proceeds received at auction. Announcements made in the periods January 1, 2009 through July 9, 2009 and July 10, 2009 through December 31, 2009 to discontinue, phase-out or sell a GM vehicle brand did not have a significant effect on residual values of the related vehicles. In the year ended 2008 we recorded a liability of \$148 million related to announcements to discontinue, phase-out or sell certain GM vehicle brands.

Under a capitalized cost reduction program, GMAC is paid an amount at the time of lease or retail contract origination to reduce the principal amount implicit in the lease or retail contract below the standard manufacturers' suggested retail price.

Under a lease pull-ahead program, a customer is encouraged to terminate their lease early and buy or lease a new GM vehicle. As part of such a program, GMAC waives the customer's remaining payment obligation under their current lease, and GMAC is compensated for any foregone revenue from the waived payments. Since these programs generally accelerate the resale of the vehicle, the proceeds are typically higher than if the vehicle had been sold at contract maturity. The reimbursement to GMAC for the foregone payments is reduced by the amount of this benefit. Anticipated payments are made to GMAC each month based on the estimated number of customers expected to participate in a lease-pull ahead program. These estimates are adjusted once all vehicles that could have been pulled-ahead have terminated and the vehicles have been sold. Any differences between the estimates and the actual amounts owed to or from GMAC are subsequently settled.

The terms and conditions of interest rate support, residual support, risk sharing, capitalized cost reduction, and lease pull-ahead programs are included in the GMAC Services Agreements. In December 2008 Old GM and GMAC agreed, among other things, to modify certain terms and conditions of the GMAC Services Agreements pursuant to a preliminary term sheet (GMAC Term Sheet). A primary objective of the GMAC Services Agreements continues to be supporting the distribution and marketing of our and previously Old GM's products. In May 2009 Old GM entered into the Amended and Restated United States Consumer Financing Services Agreement (Amended Financing Agreement) with an effective date of December 29, 2008. The terms of the Amended Financing Agreement were consistent with the GMAC Term Sheet.

**Exclusivity Arrangement**

In November 2006 Old GM granted GMAC exclusivity for U.S., Canadian and international GM-sponsored consumer and wholesale marketing incentives for products in specified markets around the world, with the exception of Saturn branded products. In return for exclusivity, GMAC paid an annual exclusivity fee of \$105 million (\$75 million for the U.S. retail business, \$15 million for the Canadian retail business, \$10 million for the international operations retail business, and \$5 million for the dealer business).

As a result of the Amended Financing Agreement, Old GM and GMAC agreed to modify certain terms related to the exclusivity arrangements: (1) for a two-year period, retail financing incentive programs can be offered through a third party financing source under certain specified circumstances, and in some cases subject to the limitation that pricing offered by such third party meets certain restrictions, and after such two-year period any such incentive programs can be offered on a graduated basis through third parties on a non-exclusive, side-by-side basis with GMAC provided that pricing with such third parties meets certain requirements; (2) GMAC has no obligation to provide financing; and (3) GMAC has no targets against which it could be assessed penalties. After December 24,

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

2013, we will have the right to offer retail financing incentive programs through any third party financing source, including GMAC, without any restrictions or limitations.

Beginning in 2009 under the Amended Financing Agreement, Old GM agreed to pro-rate the exclusivity fee in the U.S. and Canada under certain circumstances if incentives were offered through a third party financing source. The international exclusivity fee arrangement remains unchanged and the dealer exclusivity fee was terminated.

**Participation Agreement**

In June 2008 Old GM, along with FIM Holdings entered into the GMAC Participation Agreement with GMAC, which provided that both parties would provide specified loan amounts to GMAC to fund ResCap. Through December 2008 Old GM funded the maximum obligation of \$368 million. Old GM recorded interest income of \$21 million in the year ended 2008 related to the GMAC Participation Agreement.

In December 2008 Old GM and FIM Holdings entered into the GMAC Exchange Agreement with GMAC. Pursuant to the GMAC Exchange Agreement, Old GM and FIM Holdings exchanged their respective amounts funded under the GMAC Participation Agreement for 79,368 Class B Common Membership Interests and 82,608 Class A Common Membership Interests. As the carrying amount of the amount funded under the GMAC Participation Agreement approximated fair value, Old GM did not recognize a gain or loss on the exchange.

**Contractual Exposure Limit**

An agreement between GMAC and Old GM limited certain unsecured obligations to GMAC in the U.S. arising from the GMAC Services Agreements to \$1.5 billion. In accordance with the Amended Financing Agreement, Old GM and GMAC agreed to increase the probable potential unsecured exposure limit from \$1.5 billion in the United States to \$2.1 billion globally. In addition, GMAC's maximum potential unsecured exposure to us cannot exceed \$4.1 billion globally. Old GM and GMAC also agreed to reduce the global unsecured obligation limit from \$2.1 billion to \$1.5 billion by December 30, 2010. Additionally, Old GM and GMAC agreed that the sum of the maximum unsecured and committed secured exposures at December 30, 2010 will not exceed the greater of \$3.0 billion or 15% of GMAC's capital.

**Vehicle Repurchase Obligations**

In May 2009 Old GM and GMAC agreed to expand Old GM's repurchase obligations for GMAC financed inventory at certain dealers in Europe, Brazil and Mexico. In November 2008 Old GM and GMAC agreed to expand repurchase obligations for GMAC financed inventory at certain dealers in the United States and Canada. Prior to November 2008, Old GM was obligated, pursuant to dealer agreements, to repurchase certain GMAC financed inventory, limited to current model year vehicles and prior model year vehicles in dealer inventory less than 120 days, in the event of a termination of the related dealer's sales and service agreement. The current agreement with GMAC requires the repurchase of GMAC financed inventory invoiced to dealers after September 1, 2008, with limited exclusions, in the event of a qualifying voluntary or involuntary termination of the dealer's sales and service agreement. Repurchase obligations exclude vehicles which are damaged, have excessive mileage or have been altered. The repurchase obligation ended in August 2009 for vehicles invoiced through August 2008, ends in August 2010 for vehicles invoiced through August 2009 and ends August 2011 for vehicles invoiced through August 2010.

The maximum potential amount of future payments required to be made to GMAC under this guarantee would be based on the repurchase value of total eligible vehicles financed by GMAC in dealer stock. If vehicles are required to be repurchased under this arrangement, the total exposure would be reduced to the extent vehicles are able to be resold to another dealer. The fair value of the guarantee, which considers the likelihood of dealers terminating and estimated loss exposure for ultimate disposition of vehicles, was recorded as a reduction of revenue.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Automotive Retail Leases**

In November 2006 GMAC transferred automotive retail leases to Old GM, along with related debt and other assets. GMAC retained an investment in a note, which is secured by the automotive retail leases. GMAC continues to service the portfolio of automotive retail leases and related debt and receives a servicing fee. GMAC is obligated, as servicer, to repurchase any equipment on operating leases that are in breach of any of the covenants in the securitization agreements. In addition, in a number of the transactions securitizing the equipment on operating leases, the trusts issued one or more series of floating rate debt obligations and entered into derivative transactions to eliminate the market risk associated with funding the fixed payment lease assets with floating interest rate debt. To facilitate these securitization transactions, GMAC entered into secondary derivative transactions with the primary derivative counterparties, essentially offsetting the primary derivatives. As part of the transfer, Old GM assumed the rights and obligations of the primary derivative while GMAC retained the secondary, leaving both companies exposed to market value movements of their respective derivatives. Old GM subsequently entered into derivative transactions with GMAC that are intended to offset the exposure each party has to its component of the primary and secondary derivatives.

**Royalty Arrangement**

For certain insurance products, Old GM entered into 10-year intellectual property license agreements with GMAC giving GMAC the right to use the GM name on certain products. In exchange, GMAC pays a royalty fee of 3.25% of revenue, net of cancellations, related to these products with a minimum annual guarantee of \$15 million in the United States.

**Balance Sheet**

The following table summarizes the balance sheet effects of transactions with GMAC (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>	<u>Predecessor</u> <u>December 31,</u> <u>2008</u>
<b>Assets</b>		
Accounts and notes receivable, net (a)	\$ 404	\$ 661
Restricted cash (b)	\$ 127	\$ 481
Other assets (c)	\$ 27	\$ 3
<b>Liabilities</b>		
Accounts payable (d)	\$ 131	\$ 294
Short-term debt and current portion of long-term debt (e)	\$ 1,077	\$ 2,295
Accrued expenses and other liabilities (f)	\$ 817	\$ 569
Long-term debt (g)	\$ 59	\$ 101
Other non-current liabilities (h)	\$ 383	\$ 1,389

(a) Represents wholesale settlements due from GMAC, amounts owed by GMAC with respect to automotive retail leases and receivables for exclusivity fees and royalties.

(b) Represents certificates of deposit purchased from GMAC that are pledged as collateral for certain guarantees provided to GMAC in Brazil in connection with dealer floor plan financing.

(c) Primarily represents distributions due from GMAC on our investments in GMAC preferred stock and Preferred Membership Interests.

(d) Primarily represents amounts billed to us and Old GM and payable related to incentive programs.

(e) Represents wholesale financing, sales of receivable transactions and the short-term portion of term loans provided to certain dealerships which Old GM owned and which we subsequently purchased or in which we have and Old GM had an equity interest. In addition, it includes borrowing arrangements with various foreign locations and arrangements related to GMAC's

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

funding of company-owned vehicles, rental car vehicles awaiting sale at auction and funding of the sale of vehicles to which title is retained while the vehicles are consigned to GMAC or dealers, primarily in the United Kingdom. Financing remains outstanding until the title is transferred to the dealers. This amount also includes the short-term portion of a note payable related to automotive retail leases.

- (f) Primarily represents accruals for marketing incentives on vehicles which are sold, or anticipated to be sold, to customers or dealers and financed by GMAC in North America. This includes the estimated amount of residual support accrued under the residual support and risk sharing programs, rate support under the interest rate support programs, operating lease and finance receivable capitalized cost reduction incentives paid to GMAC to reduce the capitalized cost in automotive lease contracts and retail automotive contracts, and amounts owed under lease pull-ahead programs. In addition it includes interest accrued on the transactions in (e) above.
- (g) Primarily represents the long-term portion of term loans from GMAC to certain consolidated dealerships and a note payable with respect to automotive retail leases.
- (h) Primarily represents long-term portion of liabilities for marketing incentives on vehicles financed by GMAC.

**Statement of Operations**

The following table summarizes the income statement effects of transactions with GMAC (dollars in millions):

	<u>Successor</u>	<u>Predecessor</u>		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Net sales revenue (reduction) (a)	\$ (259)	\$ 207	\$ (2,350)	\$ (4,041)
Cost of sales and other expenses (b)	\$ 113	\$ 180	\$ 688	\$ 590
Interest income and other non-operating income, net (c)	\$ 127	\$ 166	\$ 192	\$ 433
Interest expense (d)	\$ 121	\$ 100	\$ 221	\$ 229
Servicing expense (e)	\$ 22	\$ 16	\$ 144	\$ 167
Derivative gains (losses) (f)	\$ (1)	\$ (2)	\$ (4)	\$ 19

- (a) Primarily represents the (reduction) or increase in net sales and revenues for marketing incentives on vehicles which are sold, or anticipated to be sold, to customers or dealers and financed by GMAC. This includes the estimated amount of residual support accrued under residual support and risk sharing programs, rate support under the interest rate support programs, operating lease and finance receivable capitalized cost reduction incentives paid to GMAC to reduce the capitalized cost in automotive lease contracts and retail automotive contracts, and costs under lease pull-ahead programs. This amount is offset by net sales for vehicles sold to GMAC for employee and governmental lease programs and third party resale purposes.
- (b) Primarily represents cost of sales on the sale of vehicles to GMAC for employee and governmental lease programs and third party resale purposes. Also includes miscellaneous expenses on services performed by GMAC.
- (c) Represents income on our investments in GMAC preferred stock and Preferred Membership Interests, exclusivity and royalty fee income and reimbursements by GMAC for certain services provided to GMAC. Included in this amount is rental income related to GMAC's primary executive and administrative offices located in the Renaissance Center in Detroit, Michigan. The lease agreement expires in November 2016.
- (d) Represents interest incurred on term loans, notes payable and wholesale settlements.
- (e) Represents servicing fees paid to GMAC on certain automotive retail leases.
- (f) Represents amounts recorded in connection with a derivative transaction entered into with GMAC as the counterparty.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**Note 31. Transactions with MLC**

In connection with the 363 Sale, we and MLC entered into a Transition Services Agreement (TSA), pursuant to which, among other things, we provide MLC with certain transition services and support functions in connection with their operation and ultimate liquidation in bankruptcy. MLC is required to pay the applicable usage fees specified with respect to various types of services under the TSA. The obligation to provide services under the TSA will terminate on the applicable dates specified in the agreement with respect to each such service, the latest such date being December 31, 2013. Types of services provided under the TSA included: (1) property management; (2) assistance in idling certain facilities; (3) provisions of access rights and storage of personal property at certain facilities; (4) security; (5) administrative services including accounting, treasury and tax; (6) purchasing; (7) information systems and services support; (8) communication services to the public; and (9) splinter union services including payroll and benefits administration. Services MLC provides to us under the TSA include: (1) provisions of access rights and storage of personal property at certain facilities; (2) assistance in obtaining certain permits and consents to permit us to own and operate purchased assets in connection with the 363 Sale; (3) allowing us to manage and exercise our rights under the TSA; and (4) use of certain real estate and equipment while we are in negotiation to assume or renegotiate certain leases or enter into agreements to purchase certain lease-related assets. At December 31, 2009 we are only obligated to provide tax services under the TSA.

**Statement of Operations**

The following table summarizes the income statement effects of transactions with MLC (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>
Cost of sales (a)	\$ (8)
Interest income and other non-operating income, net	\$ 1

(a) Primarily related to royalty income partially offset by reimbursements for engineering expenses incurred by MLC.

**Balance Sheet**

The following table summarizes the balance sheet effects of transactions with MLC (dollars in millions):

	<u>Successor</u> <u>December 31,</u> <u>2009</u>
Accounts and notes receivable, net (a)	\$ 16
Other assets	\$ 1
Accounts payable (a)	\$ 59
Accrued expenses and other liabilities	\$ (1)

(a) Primarily related to the purchase and sale of component parts.

**Cash Flow**

The following table summarizes the cash flow effects of transactions with MLC (dollars in millions):

	<u>Successor</u> <u>July 10, 2009</u> <u>Through</u> <u>December 31, 2009</u>
Operating (a)	\$ (88)
Financing (b)	\$ 25

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- (a) Primarily includes payments to and from MLC related to the purchase and the sale of component parts.
- (b) Funding provided to a facility in Strasbourg, France, that MLC retained. We have reserved \$16 million against the advanced amounts.

**Note 32. Supplementary Quarterly Financial Information (Unaudited)**

The following tables summarize supplementary quarterly financial information (dollars in millions, except for per share amounts):

	Successor		Predecessor		
	July 10, 2009 Through September 30, 2009	4th Quarter	1st Quarter	2nd Quarter	July 1, 2009 Through July 9, 2009
<b>2009</b>					
Net sales and revenue	\$ 25,147	\$ 32,327	\$ 22,431	\$ 23,047	\$ 1,637
Gross margin (loss)	\$ 1,593	\$ (500)	\$ (2,180)	\$ (6,337)	\$ (182)
Net income (loss)	\$ (571)	\$ (3,215)	\$ (5,899)	\$ (13,237)	\$ 128,139
Net income (loss) attributable to common stockholders	\$ (908)	\$ (3,520)	\$ (5,975)	\$ (12,905)	\$ 127,998
Net income (loss) attributable to common stockholders, per share, basic	\$ (2.20)	\$ (8.53)	\$ (9.78)	\$ (21.12)	\$ 209.49
Net income (loss) attributable to common stockholders, per share, diluted	\$ (2.20)	\$ (8.53)	\$ (9.78)	\$ (21.12)	\$ 209.38

	Predecessor Quarters			
	1st	2nd	3rd	4th
<b>2008</b>				
Net sales and revenue	\$42,383	\$ 38,010	\$37,808	\$30,778
Gross margin (loss)	\$ 4,231	\$ (5,482)	\$ 3,287	\$ (2,314)
Net loss	\$ (3,209)	\$ (15,580)	\$ (2,610)	\$ (9,652)
Net loss attributable to common stockholders	\$ (3,282)	\$ (15,513)	\$ (2,552)	\$ (9,596)
Net loss attributable to common stockholders, per share, basic and diluted	\$ (5.80)	\$ (27.40)	\$ (4.47)	\$ (15.71)

**GM**

Results for the three months ended December 31, 2009 included:

- Impairment charges of \$270 million related to our investment in GMAC common stock.
- Settlement loss of \$2.6 billion related to the 2009 UAW Settlement Agreement.

Results for the period July 10, 2009 through September 30, 2009 included:

- Charges of \$195 million related to dealer wind-down agreements.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Old GM**

Results for the period July 1, 2009 through July 9, 2009 included:

- Accelerated debt discount amortization of \$600 million on the DIP Facility.
- Reorganization gains, net of \$129.3 billion. Refer to Note 2 for additional information on these gains.
- Charges of \$398 million related to dealer wind-down agreements.

Results for the three months ended June 30, 2009 included:

- Gain of \$2.5 billion on the disposition of GMAC Common Membership Interests partially offset by a loss on extinguishment of the UST GMAC Loan of \$2.0 billion.
- Accelerated debt discount amortization of \$1.6 billion on the DIP Facility.
- Charges of \$1.9 billion related to U.S. salaried and hourly headcount reduction programs.
- Restructuring charges of \$1.1 billion related to SUB and TSP.
- Reorganization costs of \$1.1 billion, primarily related to loss on extinguishment of debt of \$958 million.
- Impairment charges of \$239 million related to product-specific tooling assets.

Results for the three months ended March 31, 2009 included:

- Old GM amended the terms of its U.S. term loan and recorded a gain of \$906 million on the extinguishment of the original loan facility.
- Upon Saab's filing for reorganization, Old GM recorded charges of \$618 million related to its net investment in, and advances to, Saab and other commitments and obligations.
- Impairment charges of \$327 million related to product-specific tooling assets and cancelled powertrain programs.

Results for the three months ended December 31, 2008 included:

- Impairment charges of \$5.1 billion related to Old GM's investment in GMAC Common Membership Interests and its proportionate share of GMAC's net income of \$3.7 billion which included a \$5.6 billion gain related to GMAC's bond exchange.
- Charges of \$1.1 billion related to establishing valuation allowances against Old GM's net deferred tax assets in various tax jurisdictions.
- Impairment charges of \$2.5 billion related to long-lived assets, Equipment on operating leases, net and goodwill.
- Charges of \$662 million related to Old GM's estimated obligations under the Delphi-GM Settlement Agreements and Delphi Benefit Guarantee Agreements.
- Charges of \$604 million related to capacity actions in the U.S. and Canada.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Results for the three months ended September 30, 2008 included:

- Impairment charges of \$251 million related to Old GM's investment in GMAC Preferred Membership Interests.
- Charges of \$652 million related to Old GM's estimated obligations under the Delphi-GM Settlement Agreements and Delphi Benefit Guarantee Agreements.
- A net curtailment gain of \$4.9 billion related to the accelerated recognition of unamortized net prior service credit due to the 2008 UAW Settlement Agreement becoming effective.
- Charges of \$1.7 billion related to the settlement loss associated with the elimination of healthcare coverage for U.S. salaried retirees over age 65.
- Charges of \$591 million related to capacity actions in the U.S. and Canada.

Results for the three months ended June 30, 2008 included:

- Impairment charges of \$1.3 billion related to Old GM's investment in GMAC Common and Preferred Membership Interests.
- Charges of \$2.8 billion related to Old GM's estimated obligations under the Delphi-GM Settlement Agreements and Delphi Benefit Guarantee Agreements.
- Curtailment and other charges of \$3.3 billion related to the 2008 UAW and IUE-CWA Special Attrition Programs.
- Charges of \$1.1 billion related to capacity actions in the U.S. and Canada.
- An immaterial correction of Old GM's previous accounting for derivatives by recording in Net sales and revenue losses of \$407 million which had been inappropriately deferred in Accumulated other comprehensive income (loss). Of this amount, \$250 million should have been recorded in earnings in the three months ended March 31, 2008 and the remainder should have been recorded in prior periods, predominantly in the year ended 2007.

Results for the three months ended March 31, 2008 included:

- Impairment charges of \$1.5 billion related to Old GM's investment in GMAC Common and Preferred Membership Interests.
- Charges of \$394 million related to deferred tax asset valuation allowances in Spain and the United Kingdom.

**Note 33. Segment Reporting**

We develop, produce and market cars, trucks and parts worldwide. We do so through our three segments: GMNA, GME and GMIO.

Substantially all of the cars, trucks and parts produced are marketed through retail dealers in North America, and through distributors and dealers outside of North America, the substantial majority of which are independently owned.

In addition to the products sold to dealers for consumer retail sales, cars and trucks are also sold to fleet customers, including daily rental car companies, commercial fleet customers, leasing companies and governments. Sales to fleet customers are completed through the network of dealers and in some cases sold directly to fleet customers. Retail and fleet customers can obtain a wide range of aftersale vehicle services and products through the dealer network, such as maintenance, light repairs, collision repairs, vehicle accessories and extended service warranties.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

GMNA primarily meets the demands of customers in North America with vehicles developed, manufactured and/or marketed under the following core brands:

- Buick
- Cadillac
- Chevrolet
- GMC

The demands of customers outside of North America are primarily met with vehicles developed, manufactured and/or marketed under the following brands:

- Buick
- Cadillac
- Chevrolet
- Daewoo
- GMC
- Holden
- Isuzu
- Opel
- Vauxhall

At December 31, 2009 we also had equity ownership stakes directly or indirectly through various regional subsidiaries, including GM Daewoo, SGM, SGMW and FAW-GM Light Duty Commercial Vehicle Co., Ltd. (FAW-GM). These companies design, manufacture and market vehicles under the following brands:

- Buick
- Cadillac
- Chevrolet
- Daewoo
- FAW
- GMC
- Holden
- Jiefang
- Wuling

Nonsegment operations are classified as Corporate. Corporate includes investments in GMAC, certain centrally recorded income and costs, such as interest, income taxes and corporate expenditures, certain nonsegment specific revenues and expenses, including costs related to the Delphi Benefit Guarantee Agreements and a portfolio of automotive retail leases.

All intersegment balances and transactions have been eliminated in consolidation.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following tables summarize key financial information by segment (dollars in millions):

	Successor					Total
	GMNA	GME	GMIO	Eliminations	Corporate	
<b>At and For the Period July 10, 2009 Through December 31, 2009</b>						
<b>Sales</b>						
External customers	\$31,454	\$11,340	\$14,535	\$ —	\$ —	\$ 57,329
Intersegment	972	180	972	(2,124)	—	—
<b>Total sales</b>	<b>32,426</b>	<b>11,520</b>	<b>15,507</b>	<b>(2,124)</b>	<b>—</b>	<b>57,329</b>
Other revenue	—	—	—	—	145	145
<b>Total net sales and revenue</b>	<b>\$32,426</b>	<b>\$11,520</b>	<b>\$15,507</b>	<b>\$ (2,124)</b>	<b>\$ 145</b>	<b>\$ 57,474</b>
Income (loss) attributable to common stockholders before interest and income taxes	\$ (4,719)	\$ (805)	\$ 1,198	\$ (37)	\$ (323)	\$ (4,686)
Interest income	—	—	—	—	184	184
Interest expense	—	—	—	—	694	694
Loss on extinguishment of debt	(101)	—	—	—	—	(101)
Income (loss) attributable to stockholders before income taxes	(4,820)	(805)	1,198	(37)	(833)	(5,297)
Income tax expense (benefit)	—	—	—	—	(1,000)	(1,000)
<b>Net income (loss) attributable to stockholders</b>	<b>\$ (4,820)</b>	<b>\$ (805)</b>	<b>\$ 1,198</b>	<b>\$ (37)</b>	<b>\$ 167</b>	<b>\$ (4,297)</b>
Equity in net assets of nonconsolidated affiliates	\$ 1,928	\$ 287	\$ 5,694	\$ —	\$ 27	\$ 7,936
<b>Total assets</b>	<b>\$78,719</b>	<b>\$19,140</b>	<b>\$26,362</b>	<b>\$ (25,192)</b>	<b>\$ 37,266</b>	<b>\$136,295</b>
Goodwill	\$26,409	\$ 3,335	\$ 928	\$ —	\$ —	\$ 30,672
Expenditures for property	\$ 959	\$ 573	\$ 381	\$ —	\$ 1	\$ 1,914
Depreciation, amortization and impairment	\$ 2,732	\$ 952	\$ 447	\$ —	\$ 110	\$ 4,241
Equity income (loss), net of tax	\$ (7)	\$ 32	\$ 472	\$ —	\$ —	\$ 497
<b>Significant noncash charges</b>						
Impairment charges related to investment in GMAC common stock	\$ —	\$ —	\$ —	\$ —	\$ 270	\$ 270
UAW OPEB healthcare settlement	2,571	—	—	—	—	2,571
<b>Total significant noncash charges</b>	<b>\$ 2,571</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 270</b>	<b>\$ 2,841</b>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

At and For the Period January 1, 2009 Through July 9, 2009	Predecessor					Total
	GMNA	GME	GMIO	Eliminations	Corporate	
<b>Sales</b>						
External customers	\$ 23,490	\$12,419	\$10,878	\$ —	\$ —	\$ 46,787
Intersegment	701	171	800	(1,672)	—	—
<b>Total sales</b>	<u>24,191</u>	<u>12,590</u>	<u>11,678</u>	<u>(1,672)</u>	<u>—</u>	<u>46,787</u>
Other revenue	—	—	—	—	328	328
<b>Total net sales and revenue</b>	<u>\$ 24,191</u>	<u>\$12,590</u>	<u>\$11,678</u>	<u>\$ (1,672)</u>	<u>\$ 328</u>	<u>\$ 47,115</u>
Income (loss) attributable to common stockholders before interest and income taxes	\$(11,092)	\$(2,823)	\$(956)	\$ 102	\$ 899	\$(13,870)
Interest income	—	—	—	—	183	183
Interest expense	—	—	—	—	5,428	5,428
Reorganization gains, net (a)	—	—	—	—	128,155	128,155
Loss on extinguishment of debt	—	—	—	—	(1,088)	(1,088)
Income (loss) attributable to stockholders before income taxes	(11,092)	(2,823)	(956)	102	122,721	107,952
Income tax expense (benefit)	—	—	—	—	(1,166)	(1,166)
<b>Net income (loss) attributable to stockholders</b>	<u>\$(11,092)</u>	<u>\$(2,823)</u>	<u>\$(956)</u>	<u>\$ 102</u>	<u>\$ 123,887</u>	<u>\$ 109,118</u>
Expenditures for property	\$ 2,282	\$ 830	\$ 381	\$ —	\$ 24	\$ 3,517
Depreciation, amortization and impairment	\$ 4,759	\$ 1,496	\$ 476	\$ —	\$ 142	\$ 6,873
Equity in income (loss) of and disposition of interest in GMAC	\$ —	\$ —	\$ —	\$ —	\$ 1,380	\$ 1,380
Equity income (loss), net of tax	\$ (277)	\$ 30	\$ 307	\$ —	\$ 1	\$ 61
<b>Significant noncash charges (gains)</b>						
Gain on extinguishment of debt	\$ —	\$ —	\$ —	\$ —	\$ (906)	\$ (906)
Loss on extinguishment of UST GMAC Loan	—	—	—	—	1,994	1,994
Gain on conversion of UST GMAC Loan	—	—	—	—	(2,477)	(2,477)
Reversal of valuation allowances against deferred tax assets	—	—	—	—	(751)	(751)
Impairment charges related to equipment on operating leases	11	36	—	—	16	63
Impairment charges related to long-lived assets	320	237	9	—	—	566
Reorganization gains, net (a)	—	—	—	—	(128,563)	(128,563)
<b>Total significant noncash charges (gains)</b>	<u>\$ 331</u>	<u>\$ 273</u>	<u>\$ 9</u>	<u>\$ —</u>	<u>\$(130,687)</u>	<u>\$(130,074)</u>

(a) Refer to Note 2 for additional information on Reorganization gains, net.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Predecessor					Total
	GMNA	GME	GMIO	Eliminations	Corporate	
<b>At and For the Year Ended December 31, 2008</b>						
<b>Sales</b>						
External customers	\$ 82,938	\$32,440	\$32,354	\$ —	\$ —	\$147,732
Intersegment	3,249	1,948	4,496	(9,693)	—	—
Total sales	<u>86,187</u>	<u>34,388</u>	<u>36,850</u>	<u>(9,693)</u>	<u>—</u>	<u>147,732</u>
Other revenue	—	—	—	—	1,247	1,247
Total net sales and revenue	<u>\$ 86,187</u>	<u>\$34,388</u>	<u>\$36,850</u>	<u>\$ (9,693)</u>	<u>\$ 1,247</u>	<u>\$148,979</u>
Income (loss) attributable to common stockholders before interest and income taxes	\$(12,203)	\$(2,637)	\$ 473	\$ 51	\$(13,034)	\$(27,350)
Interest income	—	—	—	—	655	655
Interest expense	—	—	—	—	2,525	2,525
Gain on extinguishment of debt	—	—	—	—	43	43
Income (loss) attributable to stockholders before income taxes	<u>(12,203)</u>	<u>(2,637)</u>	<u>473</u>	<u>51</u>	<u>(14,861)</u>	<u>(29,177)</u>
Income tax expense (benefit)	—	—	—	—	1,766	1,766
Net income (loss) attributable to stockholders	<u>\$(12,203)</u>	<u>\$(2,637)</u>	<u>\$ 473</u>	<u>\$ 51</u>	<u>\$(16,627)</u>	<u>\$(30,943)</u>
Equity in net assets of nonconsolidated affiliates	\$ 32	\$ 279	\$ 1,321	\$ —	\$ 514	\$ 2,146
Total assets	\$ 63,207	\$22,643	\$18,301	\$ (70,539)	\$ 57,427	\$ 91,039
Expenditures for property	\$ 4,242	\$ 1,563	\$ 1,188	\$ —	\$ 537	\$ 7,530
Depreciation, amortization and impairment	\$ 5,910	\$ 2,358	\$ 938	\$ —	\$ 808	\$ 10,014
Equity in income (loss) of and disposition of interest in GMAC	\$ —	\$ —	\$ —	\$ —	\$ (6,183)	\$ (6,183)
Equity income (loss), net of tax	\$ (201)	\$ 56	\$ 329	\$ —	\$ 2	\$ 186
<b>Significant noncash charges (gains)</b>						
Impairment charges related to investment in GMAC						
Common Membership Interests	\$ —	\$ —	\$ —	\$ —	\$ 7,099	\$ 7,099
Impairment charges related to investment in GMAC						
Preferred Membership Interests	—	—	—	—	1,001	1,001
Impairment charges related to equipment on operating leases	380	222	—	—	157	759
Impairment charges related to investments in NUMMI and CAMI	119	—	—	—	—	119
Other than temporary impairment charges related to debt and equity securities	47	—	—	—	15	62
Impairment charges related to goodwill	154	456	—	—	—	610
Impairment charges related to long-lived assets	411	497	102	—	—	1,010
Net curtailment gain related to finalization of Settlement Agreement	(4,901)	—	—	—	—	(4,901)
Salaried post-65 healthcare settlement	1,704	—	—	—	—	1,704
CAW settlement	340	—	—	—	—	340
Valuation allowances against deferred tax assets	—	—	—	—	1,450	1,450
Total significant noncash charges (gains)	<u>\$ (1,746)</u>	<u>\$ 1,175</u>	<u>\$ 102</u>	<u>\$ —</u>	<u>\$ 9,722</u>	<u>\$ 9,253</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Predecessor					Total
	GMNA	GME	GMIO	Eliminations	Corporate	
<b>At and For the Year Ended December 31, 2007</b>						
<b>Sales</b>						
External customers	\$ 109,024	\$ 35,562	\$ 33,008	\$ —	\$ —	\$ 177,594
Intersegment	3,424	1,916	4,051	(9,391)	—	—
Total sales	<u>112,448</u>	<u>37,478</u>	<u>37,059</u>	<u>(9,391)</u>	<u>—</u>	<u>177,594</u>
Other revenue	—	—	—	—	2,390	2,390
Total net sales and revenue	<u>\$ 112,448</u>	<u>\$ 37,478</u>	<u>\$ 37,059</u>	<u>\$ (9,391)</u>	<u>\$ 2,390</u>	<u>\$ 179,984</u>
Income (loss) attributable to common stockholders before interest and income taxes	\$ (2,673)	\$ (410)	\$ 1,911	\$ (35)	\$ (3,173)	\$ (4,380)
Interest income	—	—	—	—	1,228	1,228
Interest expense	—	—	—	—	3,076	3,076
Loss on extinguishment of debt	—	—	—	—	—	—
Income (loss) attributable to stockholders before income taxes	<u>(2,673)</u>	<u>(410)</u>	<u>1,911</u>	<u>(35)</u>	<u>(5,021)</u>	<u>(6,228)</u>
Income tax expense (benefit)	—	—	—	—	36,863	36,863
Income from discontinued operations, net of tax	256	—	—	—	—	256
Gain on sale of discontinued operations, net of tax	4,293	—	—	—	—	4,293
Net income (loss) attributable to stockholders	<u>\$ 1,876</u>	<u>\$ (410)</u>	<u>\$ 1,911</u>	<u>\$ (35)</u>	<u>\$ (41,884)</u>	<u>\$ (38,542)</u>
Expenditures for property	\$ 5,029	\$ 1,311	\$ 1,119	\$ —	\$ 83	\$ 7,542
Depreciation, amortization and impairment	\$ 5,660	\$ 1,679	\$ 878	\$ —	\$ 1,296	\$ 9,513
Equity in income (loss) of and disposition of interest in GMAC	\$ —	\$ —	\$ —	\$ —	\$ (1,245)	\$ (1,245)
Equity income (loss), net of tax	\$ 22	\$ 44	\$ 456	\$ —	\$ 2	\$ 524
<b>Significant noncash charges</b>						
Impairment charges related to equipment on operating leases	\$ 44	\$ 90	\$ —	\$ —	\$ —	\$ 134
Impairment charges related to long-lived assets	240	—	19	—	—	259
Other than temporary impairment charges related to debt and equity securities	72	—	—	—	—	72
Change in amortization period for pension prior service cost	1,561	—	—	—	—	1,561
Valuation allowances against deferred tax assets	—	—	—	—	37,770	37,770
Total significant noncash charges	<u>\$ 1,917</u>	<u>\$ 90</u>	<u>\$ 19</u>	<u>\$ —</u>	<u>\$ 37,770</u>	<u>\$ 39,796</u>

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Revenue is attributed to geographic areas based on the country in which the product is sold, except for revenue from certain joint ventures. In such case, the revenue is attributed based on the geographic location of the joint venture. The following table summarizes information concerning principal geographic areas (dollars in millions):

	Successor		Predecessor					
	At and For the Period July 10, 2009 Through December 31, 2009		At and For the Period January 1, 2009 Through July 9, 2009		At and For the Year Ended 2008		At and for the Year Ended 2007	
	Net Sales & Revenue	Long Lived Assets	Net Sales & Revenue	Long Lived Assets	Net Sales & Revenue	Long Lived Assets	Net Sales & Revenue	Long Lived Assets
<b>North America</b>								
U.S.	\$28,007	\$ 9,487	\$21,152	\$ 20,742	\$ 75,382	\$25,105	\$100,144	\$32,293
Canada and Mexico	4,682	2,728	3,486	5,943	12,983	5,898	14,758	5,772
Total North America	32,689	12,215	24,638	26,685	88,365	31,003	114,902	38,065
<b>Europe</b>								
France	923	17	1,024	67	2,629	264	2,699	309
Germany	2,851	2,299	3,817	3,670	6,663	4,013	6,147	4,172
Italy	1,119	192	1,221	169	3,169	183	3,671	256
Russia	246	118	430	264	2,061	237	1,516	81
Spain	862	778	609	1,206	1,711	1,230	2,911	1,359
Sweden	—	—	76	—	1,195	833	2,330	1,207
United Kingdom	2,531	815	2,749	1,189	7,142	1,066	7,950	1,214
Other	2,800	797	2,518	1,557	7,939	1,332	8,273	2,266
Total Europe	11,332	5,016	12,444	8,122	32,509	9,158	35,497	10,864
<b>International Operations</b>								
Brazil	4,910	1,142	3,347	1,081	8,329	890	6,477	1,026
Venezuela	850	46	981	43	2,107	43	3,169	41
Australia	1,653	388	1,201	1,066	3,355	1,014	3,744	1,452
Korea	3,014	982	2,044	1,941	7,131	2,115	9,219	2,443
Thailand	166	151	103	383	560	395	457	433
Other	2,210	411	1,825	580	5,201	501	5,072	514
Total International Operations	12,803	3,120	9,501	5,094	26,683	4,958	28,138	5,909
All Other	650	1,066	532	92	1,422	130	1,447	187
Total consolidated	\$57,474	\$ 21,417	\$47,115	\$ 39,993	\$148,979	\$45,249	\$179,984	\$55,025

The following table summarizes the aggregation of principal geographic information by U.S. and non-U.S. (dollars in millions):

	Successor		Predecessor					
	At and For the Period July 10, 2009 Through December 31, 2009		At and For the Period January 1, 2009 Through July 9, 2009		At and For the Year Ended 2008		At and For the Year Ended 2007	
	Net Sales & Revenue	Long Lived Assets	Net Sales & Revenue	Long Lived Assets	Net Sales & Revenue	Long Lived Assets	Net Sales & Revenue	Long Lived Assets
U.S.	\$28,007	\$ 9,487	\$21,152	\$ 20,742	\$ 75,382	\$25,105	\$100,144	\$32,293
Non-U.S.	29,467	11,930	25,963	19,251	73,597	20,144	79,840	22,732
Total U.S. and non-U.S.	\$57,474	\$ 21,417	\$47,115	\$ 39,993	\$148,979	\$45,249	\$179,984	\$55,025

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 34. Supplemental Information for Consolidated Statements of Cash Flows**

The following table summarizes the sources (uses) of cash provided by changes in other operating assets and liabilities (dollars in millions):

	<u>Successor</u>	<u>Predecessor</u>		
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Accounts receivable	\$ 178	\$ (268)	\$ 1,315	\$ (821)
Prepaid expenses and other deferred charges	433	1,416	(287)	(660)
Inventories	(906)	3,509	77	(768)
Accounts payable	5,051	(8,846)	(4,556)	1,119
Income taxes payable	589	606	1,044	(1,311)
Accrued expenses and other liabilities	(2,913)	(6,815)	1,607	(851)
Fleet rental — acquisitions	(1,198)	(961)	(4,157)	(6,443)
Fleet rental — liquidations	1,371	1,130	5,051	6,323
<b>Total</b>	<b>\$ 2,605</b>	<b>\$ (10,229)</b>	<b>\$ 94</b>	<b>\$ (3,412)</b>
Cash paid for interest	\$ 618	\$ 2,513	\$ 2,484	\$ 3,346

**Note 35. Subsequent Events**

**Venezuela's Highly Inflationary Economy**

In November 2009 the cumulative inflation of Venezuela's economy was greater than 100% over a 3-year period. As a result, we considered it to be highly inflationary. We used a blended rate approach, blending Venezuela's National Consumer Price Index and Consumer Price Index, for purposes of determining the cumulative three-year inflation rate.

Because Venezuela's economy was deemed to be highly inflationary, our Venezuelan subsidiaries will change their functional currency from the Bolivar Fuerte (BsF), the local currency, to our reporting currency, the U.S. dollar, on January 1, 2010, the first day of the reporting period following the period in which the blended rate exceeded 100%. The translation of our Venezuelan subsidiaries' financial statements from the BsF to the U.S. dollar will be made at the rate at which dividends are expected to be remitted.

In January 2010 the Venezuelan government announced that the official fixed exchange rate of 2.15 BsF to \$1.00 would be changed to a dual rate system that includes a 2.60 BsF to \$1.00 essentials rate for food, technology and heavy machine importers and a 4.30 BsF to \$1.00 non-essentials rate for all others. This devaluation required remeasurement of our Venezuelan subsidiaries' non-U.S. dollar denominated monetary assets and liabilities. We used a rate of 4.30 BsF to \$1.00 to determine the remeasurement, which resulted in a charge of \$25 million recorded in Cost of sales in the three months ended March 31, 2010.

Prior to 2010 our Venezuelan subsidiaries held certain assets and liabilities that were denominated in currencies other than the BsF. For financial reporting purposes, these assets and liabilities were remeasured into BsF at a parallel exchange rate and then translated to the U.S. dollar at the official fixed exchange rate. The parallel exchange rate is a result of the creation of an indirect, parallel foreign currency market in Venezuela that enables entities to use brokers in Venezuela to obtain foreign currency without having to purchase the currency from the Commission for the Administration of Foreign Exchange (CADIVI). As a result of this remeasurement and translation, the asset and liability balances determined for financial reporting purposes differed from the underlying non-BsF denominated values. On January 1, 2010 when our Venezuelan subsidiaries changed their reporting currency to the U.S. dollar, we recorded an insignificant charge due to this difference.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Receivables Program**

In December 2009 we announced the termination of the Receivables Program, in accordance with its terms, effective in April 2010. At December 31, 2009 the UST had outstanding loans of \$150 million to the Receivables Program. In the three months ended March 31, 2010 these loans were paid in full.

**Sale of 1% Interest in Shanghai General Motors Co., Ltd.**

In February 2010 we sold a 1% ownership interest in SGM to SAIC, reducing our ownership interest to 49%. The sale of the 1% ownership interest to SAIC was predicated on our ability to work with SAIC to put in place a \$400 million loan from a commercial bank to us. In exchange for the sale of the 1% ownership interest, we primarily received cash and a call option to repurchase the 1% under certain conditions with SAIC having a put option to sell the 1% ownership interest back to us at any time. As part of the loan arrangement SAIC provided a commitment whereby, in the event of default, SAIC will purchase the ownership interest in SGM that we pledged as collateral for the loan. A portion of the proceeds from the sale of the 1% ownership interest will be allocated to the fair value of the credit enhancement provided by SAIC.

**HUMMER**

In February 2010 we announced Tengzhong Heavy Industrial Machinery Co., Ltd. was unable to complete the acquisition of HUMMER. We will now work closely with HUMMER employees, dealers and suppliers to wind-down the business in an orderly and responsible manner.

**Sale of Saab**

As previously discussed, in February 2010 we completed the sale of Saab to Spyker Cars N.V. Of the negotiated cash purchase price of \$74 million, we received \$50 million at closing and will receive the remaining \$24 million in July 2010. We also received preference shares in Saab with a face value of \$326 million and an estimated fair value that is insignificant. In addition, we received \$114 million as a repayment of the DIP financing that we previously provided to Saab during 2009.

**Opel/Vauxhall Restructuring Activities**

In February 2010 we presented our plan for the long-term viability of our Opel/Vauxhall operations to the German government. Adam Opel GmbH (Adam Opel) is in discussions with European governments to receive funding support. Our plan includes:

- Funding requirement estimate of Euro 3.7 billion (equivalent to \$5.1 billion) including original estimate of Euro 3.3 billion plus an additional Euro 0.4 billion, requested by European governments, to offset the potential effect of adverse market developments;
- Financing contributions from us of Euro 1.9 billion (equivalent to \$2.6 billion), representing more than 50% of the overall funding requirements;
- Requested total funding support/loan guarantees from European governments of Euro 1.8 billion (equivalent to \$2.5 billion);
- We plan to make investments in capital and engineering of Euro 11.0 billion (equivalent to \$15.0 billion) over the next five years; and
- Reduced capacity to adjust to current and forecasted market conditions including headcount reductions of 1,300 employees in sales and administration, 7,000 employees in manufacturing and the idling of our Antwerp, Belgium facility.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

With these restructuring initiatives complete, we plan to have 80% of our carlines at an age of three years or less by 2012. This would be accomplished by eight product launches in 2010 and another four product launches in 2011. In addition, we plan to invest Euro 1.0 billion to introduce innovative fuel efficient powertrain technologies including an additional extended-range electric vehicle and introducing battery-electric vehicles in smaller-size segments.

If our Opel/Vauxhall operations cannot secure the government-sponsored financing package above, we would be responsible for its remaining funding requirements and this could have a significant negative effect on our liquidity position. To the extent our liquidity is not available to finance the Opel/Vauxhall operations and we fail to secure government-sponsored financing or other financing, the long term viability of the Opel/Vauxhall operations could be negatively affected.

**Repayment of UST Loans and Canadian Loan**

In March 2010 we made payments of \$1.0 billion and \$192 million on the UST Loans and Canadian Loan. Upon making such payments, equivalent amounts were released to us from escrow. At March 31, 2010 the carrying amounts of the UST Loans and Canadian Loan were \$4.7 billion and \$1.0 billion.

**Patient Protection and Affordable Care Act**

The Patient Protection and Affordable Care Act (the Act) was signed into law on March 23, 2010. Certain provisions of the Act eliminate future tax deductions of certain expenditures which were reimbursed under the Medicare Part D retiree drug subsidy program. Elimination of this tax deduction will not significantly affect us, because effective January 1, 2010 we no longer provide actuarially equivalent prescription drug coverage to post-age 65 Medicare-eligible participants, and we have a full valuation allowance against our net deferred tax assets in the U.S. We are in the process of assessing the other provisions of the Act, and have not yet determined whether they will have a material effect on our consolidated financial statements.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None

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**Item 9A. Controls and Procedures**

**Disclosure Controls and Procedures**

We maintain disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed in reports filed under the Securities Exchange Act of 1934, as amended (Exchange Act) is recorded, processed, summarized and reported within the specified time periods and accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chairman and CEO and our Vice Chairman and CFO, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) promulgated under the Exchange Act) at December 31, 2009. Based on that evaluation, our CEO and CFO concluded that, as of that date, our disclosure controls and procedures required by paragraph (b) of Rules 13a-15 or 15d-15 were not effective at the reasonable assurance level because of the identification of a material weakness in our internal control over financial reporting, which we view as an integral part of our disclosure controls and procedures.

**Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining effective internal control over financial reporting. This system is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with U.S. GAAP.

Our internal control over financial reporting includes those policies and procedures that: (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect our transactions and dispositions of our assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of consolidated financial statements in accordance with U.S. GAAP, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the consolidated financial statements.

Our management performed an assessment of the effectiveness of our internal control over financial reporting at December 31, 2009, utilizing the criteria discussed in the "Internal Control — Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission. The objective of this assessment was to determine whether our internal control over financial reporting was effective at December 31, 2009.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis. In our assessment of the effectiveness of internal control over financial reporting at December 31, 2009, we identified the following material weakness:

Controls over the period-end financial reporting process were not effective. Specifically, certain controls designed and implemented to address the identified material weakness in the period-end financial reporting process, as subsequently discussed, have not had a sufficient period of time to operate for our management to conclude that they are operating effectively. This inability to conclude is largely due to the challenging accounting environment associated with the combination of the Chapter 11 Proceedings, the related application of fresh-start reporting at a mid-month date, and the need for concurrent preparation of U.S. GAAP financial statements for multiple accounting periods during the six month period after the completion of the 363 Sale. As such, it is reasonably possible that our consolidated financial statements could contain a material misstatement or that we could miss a filing deadline in the future.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Based on our assessment, and because of the material weakness previously discussed, we have concluded that our internal control over financial reporting was not effective at December 31, 2009.

The effectiveness of our internal control over financial reporting has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in its report which is included herein.

### Material Weakness, Remediation and Changes in Internal Controls

At December 31, 2008, Old GM determined that its internal control over financial reporting was not effective because of a material weakness related to ineffective controls over the period-end financial reporting process. This ineffective process resulted in a significant number and magnitude of out-of-period adjustments to Old GM's consolidated financial statements. Specifically, controls were not effective to ensure that accounting estimates and other adjustments were appropriately reviewed, analyzed and monitored by competent accounting staff on a timely basis. Additionally, some of the adjustments recorded related to account reconciliations not being performed effectively. These ineffective controls continued to exist at the Company after the 363 Sale.

In the year ended 2009, there was significant progress made in remediating the material weakness, including the following:

- Improved trial balance and account ownership;
- Improved adherence to account reconciliation policies and procedures;
- Documented roles and responsibilities for close processes;
- Implemented new consolidation software;
- Implemented consolidation procedures;
- Improved management reporting and analysis procedures;
- Implemented a new issue management process;
- Implemented a standardized account reconciliation quality assurance program;
- Implemented improved manual journal entry procedures; and
- Implemented improved disclosure procedures.

We believe that the remediation activities previously discussed would have been sufficient to allow us to conclude that the previously identified material weakness no longer existed at December 31, 2009. However, as discussed in Note 2 to the consolidated financial statements, in the year ended 2009 Old GM entered into the Chapter 11 Proceedings and we acquired substantially all of Old GM's assets and certain of its liabilities in the 363 Sale, necessitating the development and implementation of additional processes related to accounting for bankruptcy and subsequent fresh-start reporting. We introduced additional processes and controls designed to ensure the accuracy, validity and completeness of the fresh-start reporting adjustments. Additionally, we prepared financial statements for multiple accounting periods concurrently during the six month period after the completion of the 363 Sale. The sheer complexity of the fresh-start reporting adjustments, and the number of accounting periods open at one time, did not allow our management to have clear visibility into the operational effectiveness of the newly remediated controls within the period-end financial reporting process and in some cases did not provide our management with sufficient opportunities to test the operating effectiveness of these remediated controls prior to year-end. Because of the inability to sufficiently test the operating effectiveness of certain remediated internal controls, we concluded that a material weakness in the period-end financial reporting process exists at December 31, 2009.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

Corporate Accounting and other key departments augmented their resources by utilizing external resources and performing additional closing and bankruptcy related procedures in the year ended 2009. As a result, we believe that there are no material inaccuracies or omissions of material fact and, to the best of our knowledge, believe that our consolidated financial statements at and for the period July 10, 2009 through December 31, 2009 and Old GM's consolidated financial statements at and for the period January 1, 2009 through July 9, 2009, fairly present in all material respects the financial condition and results of operations in conformity with U.S. GAAP.

Other than as previously discussed, there have not been any other changes in our internal control over financial reporting in the three months ended December 31, 2009, which have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

/s/ EDWARD E. WHITACRE, JR.

Edward E. Whitacre, Jr.  
Chairman and Chief Executive Officer

April 7, 2010

/s/ CHRISTOPHER P. LIDDELL

Christopher P. Liddell  
Vice Chairman and Chief Financial Officer

April 7, 2010

**Limitations on the Effectiveness of Controls**

Our management, including our CEO and CFO, does not expect that our disclosure controls and procedures or internal control over financial reporting will prevent or detect all errors and all fraud. A control system cannot provide absolute assurance due to its inherent limitations; it is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. A control system also can be circumvented by collusion or improper management override. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of such limitations, disclosure controls and procedures and internal control over financial reporting cannot prevent or detect all misstatements, whether unintentional errors or fraud. However, these inherent limitations are known features of the financial reporting process, therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

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**Item 9B. Other Information**

None

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GENERAL MOTORS COMPANY AND SUBSIDIARIES

PART III

**Item 10. Directors, Executive Officers and Corporate Governance**

We have adopted a code of ethics that applies to the Corporation's directors, officers, and employees, including the Chief Executive Officer, Chief Financial Officer, Controller and Chief Accounting Officer and any other persons performing similar functions. The text of our code of ethics, "Winning With Integrity," has been posted on our website at <http://investor.gm.com> at "Investor Information — Corporate Governance." We will provide a copy of the code of ethics without charge upon request to Corporate Secretary, General Motors Corporation, Mail Code 482-C38-B71, 300 Renaissance Center, P.O. Box 300, Detroit, MI 48265-3000.

**Stockholders Agreement**

On October 15, 2009, in connection with the holding company merger, we, the UST, the New VEBA and Canada Holdings entered into a Stockholders Agreement, which replaced and is substantially identical to the prior Stockholders Agreement dated as of July 10, 2009 that we entered into in connection with the 363 Sale. The Stockholders Agreement provides that our Board of Directors shall initially consist of 13 members and that our initial Board of Directors will consist of 10 members designated by the UST, one member designated by the New VEBA, one member designated by Canada Holdings and our Chief Executive Officer. At all times prior to the termination of the Stockholders Agreement, at least two-thirds of the directors must be determined by our Board of Directors to be independent within the meaning of New York Stock Exchange (NYSE) rules, whether or not any of our shares of common stock are listed on the NYSE.

So long as the New VEBA holds at least 50% of the shares of our common stock it held at the closing of the 363 Sale, the New VEBA shall have the right to designate one nominee to our Board of Directors (which designation shall be subject to the consent of the UAW and, if the designated nominee is not independent within the meaning of NYSE rules, to the consent of the UST, which consent of the UST is not to be unreasonably withheld). Pursuant to the Stockholders Agreement, until the Public Distribution Date (as subsequently defined), our Board of Directors agrees to nominate and the stockholder parties to the Stockholders Agreement agree to appoint the director designated by the New VEBA to our Board of Directors. After the Public Distribution Date, subject to our Board of Directors' approval, our Board of Directors shall nominate the New VEBA nominee to be elected a member of our Board of Directors and include the New VEBA nominee in our proxy statement and related materials in respect of the election to which the nomination pertains.

So long as Canada Holdings holds at least 50% of the shares of our common stock issued to it at the closing of the 363 Sale, Canada Holdings shall have the right, until the Public Distribution Date, to designate one nominee to our Board of Directors, who shall be independent within the meaning of NYSE rules (or if such nominee is not independent, the UST and Canada Holdings shall consult with each other in good faith prior to the election or appointment of such non-independent nominee of Canada Holdings). Pursuant to the Stockholders Agreement, our Board of Directors agrees to nominate and the stockholder parties to the Stockholders Agreement agree to appoint the director designated by Canada Holdings to our Board of Directors.

The Stockholders Agreement provides that, until the earlier of the Public Distribution Date and the respective termination of their obligations under the Stockholders Agreement, the UST and Canada Holdings (Government Holders) may vote their shares of our common stock at any meeting (whether annual or special) or by written consent on each matter presented to our stockholders in such manner as such Government Holder determines, provided that each Government Holder shall vote "for" any nominee designated by the New VEBA or Canada Holdings as described above that is standing for election. The Stockholders Agreement also provides that, after the Public Distribution Date and until the respective termination of their obligations under the Stockholders Agreement, the Government Holders will not vote their shares of our common stock at any meeting (whether annual or special) or by written consent, except that each Government Holder may vote its shares:

- As its desires in a vote with respect to any removal of directors;
- In a vote with respect to any election of directors as it desires only with respect to any candidates that are nominated by the Board of Directors, nominated by third parties or nominated by either Government Holder pursuant to a joint slate procedure (provided that each Government Holder will vote "for" any nominee designated by the New VEBA as described above that is standing for election);

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

- As it desires in a vote with respect to any acquisition or purchase of our capital stock, or of all or substantially all of our assets or any merger, consolidation, business combination, recapitalization or other extraordinary business transaction involving or otherwise relating to the Company, in each case, which would require a stockholder vote under Delaware law or our certificate of incorporation;
- As it desires in a vote with respect to any amendment or modification to our certificate of incorporation or bylaws that would affect any matters relating to (1), (2) or (3) above; and
- On each other matter presented to our stockholders, solely to the extent that the vote of the Government Holders is required for the stockholders to take action at a meeting at which a quorum is present and in that instance, in the same proportionate manner as the holders of common stock (other than the UST, Canada Holdings, New VEBA and its affiliates and the directors and executive officers of the Company) that were present and entitled to vote on such matter voted or consented in connection with each such matter.

The Stockholders Agreement provides that, until the termination of the Stockholders Agreement with respect to the New VEBA, the New VEBA will vote its shares at any meeting (whether annual or special) or by written consent on each matter presented to our stockholders in the same proportionate manner as the holders of our common stock (other than the New VEBA and its affiliates and our directors and executive officers) that were present and entitled to vote on such matter voted or consented in connection with each such matter.

The Stockholders Agreement also provides for special preemptive rights. Pursuant to the Stockholders Agreement, prior to a Public Distribution, we may not issue any shares of common stock unless, prior to such issuance, we offer such shares to each stockholder party to the Stockholders Agreement at the same price per share and upon the same terms and conditions. These preemptive rights do not apply to: (1) common stock issued as incentive shares to or for the benefit of employees, officers, directors and other service providers of the Company or any of our subsidiaries in accordance with the terms of the Stockholders Agreement or any applicable incentive plan of the Company; (2) securities issued upon conversion of convertible or exchangeable securities (including warrants) of the Company or any of our subsidiaries that were outstanding as of the date of the Stockholders Agreement or were not issued in violation of the Stockholders Agreement; and (3) a subdivision of shares of common stock (including any share distribution or split), any combination of shares of common stock (including any reverse share split), shares issued as a dividend or other distribution on the shares of common stock or any recapitalization, reorganization, reclassification or conversion of the Company or any of our subsidiaries.

The Stockholders Agreement also provides that the UST and Canada Holdings shall use their reasonable best efforts to exercise their demand registration rights under the equity registration rights agreement and cause a Public Distribution to occur no later than July 10, 2010, unless we are already taking steps and proceeding with reasonable diligence to effect a Public Distribution. In addition, pursuant to the Stockholders Agreement, until the Public Distribution Date, so long as Canada Holdings beneficially owns at least 5% of our outstanding common stock, we may not, without the prior written consent of Canada Holdings, take any action to effectuate: (1) a sale of all or substantially all of our assets; (2) any voluntary liquidation, dissolution or winding up of the Company; or (3) an issuance of our common stock at a price per share less than fair market value, as determined in good faith by our Board of Directors, other than pursuant to an employee benefit plan.

For purposes of this summary the term Public Distribution Date means the effective date of the registration statement relating to the Public Distribution, and the term Public Distribution means the earlier to occur of:

- The initial underwritten initial public offering of our common stock, or
- The later of the date on which a Company registration statement filed under the Exchange Act becomes effective and the date of distribution of the shares of our common stock owned by MLC pursuant to its plan of reorganization.

The rights, restrictions and obligations under the Stockholders Agreement shall terminate with respect to a stockholder party to the Stockholders Agreement when such stockholder party beneficially owns less than 2% of the shares of our common stock then issued and outstanding.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****Directors of the Registrant**

The names and ages, as of March 31, 2010, of our directors and their positions and offices are as follows:

<u>Name and (Age)</u>	<u>Positions and Offices</u>
Daniel F. Akerson (61)	Managing Director and Head of Global Buyout, The Carlyle Group
David Bonderman (67)	Co-Founding Partner and Managing General Partner, TPG
Erroll B. Davis, Jr. (65)	Chancellor, University System of Georgia
Stephen J. Girsky (47)	Vice Chairman, Corporate Strategy and Business Development, General Motors Company
E. Neville Isdell (66)	Retired Chairman and Chief Executive Officer, The Coca-Cola Company
Robert D. Krebs (67)	Retired Chairman and Chief Executive Officer, Burlington Northern Santa Fe Corporation
Kent Kresa (72)	Chairman Emeritus, Northrop Grumman Corporation
Philip A. Laskawy (69)	Retired Chairman and Chief Executive Officer, Ernst & Young LLP
Kathryn V. Marinello (53)	Former Chairman and Chief Executive Officer, Ceridian Corporation
Patricia F. Russo (57)	Former Chief Executive Officer, Alcatel-Lucent
Carol M. Stephenson (59)	Dean, Richard Ivey School of Business, The University of Western Ontario
Edward E. Whitacre, Jr. (68)	Chairman and Chief Executive Officer, General Motors Company

There are no family relationships, as defined in Item 401 of Regulation S-K, between any of the directors named above. Other than as set forth in the Stockholders Agreement dated as of July 10, 2009 and amended October 15, 2009 by and among the Company, the UST, the New VEBA and Canada Holdings (Stockholders Agreement), which is described below, there is no arrangement or understanding between any of the directors named above and any other person pursuant to which he or she was elected as a director.

Daniel F. Akerson has been a member of our Board of Directors since July 24, 2009 and serves on the Directors and Corporate Governance (Chair) and Audit Committees. He has been Managing Director and Head of Global Buyout of The Carlyle Group since July 2009. He served as Managing Director and Co-Head of the U.S. Buyout Fund from 2003 to 2009. Prior to joining Carlyle, Mr. Akerson served as Chairman and Chief Executive Officer of XO Communications, Inc. from 1999 to January 2003. XO Communications, Inc. filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code in June 2002 and emerged from bankruptcy proceedings in January 2003. Mr. Akerson also served as Chairman of Nextel Communications from 1996 to 2001 and Chairman and Chief Executive Officer from 1996 to 1999. He held the offices of Chairman and Chief Executive Officer of General Instrument Corporation from 1993 to 1995. He is currently a director of American Express Company.

David Bonderman has been a member of our Board of Directors since July 24, 2009 and serves on the Directors and Corporate Governance and Executive Compensation Committees. He is Co-Founding Partner and Managing General Partner of TPG, a private investment firm he founded in 1992. Prior to forming TPG, Mr. Bonderman served as Chief Operating Officer of Robert M. Bass Group (now doing business as Keystone Group, L.P.) from 1983 to 1991. Mr. Bonderman currently serves as Chairman of the Board of Directors of Ryanair Holdings PLC and as a director of Armstrong Worldwide Industries, Inc., CoStar Group, Inc., a marketing and information services company in the commercial real estate industry, and Gemalto N.V., a digital security company. He also served as a director of Washington Mutual, Inc. (April 2008-December 2008), Burger King Holdings, Inc. (2002-2008), Seagate Technology, a hard drive and storage solutions manufacturer (2000-2004), and Continental Airlines, Inc. (1993-2004).

Erroll B. Davis, Jr. has been a member of our Board of Directors since July 10, 2009 and serves on the Audit and Investment Funds Committees. He was also a member of the Board of Old GM from 2007 to July 2009. Mr. Davis has served as Chancellor of the

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

University System of Georgia, the governing and management authority of public higher education in Georgia, since 2006. From 2000 to 2006, Mr. Davis served as Chairman of Alliant Energy Corporation, and he held the offices of President and Chief Executive Officer from 1998 to 2005. He is currently a director of BP p.l.c., and Union Pacific Corporation. Mr. Davis also served as a director of PPG Industries, Inc. (1994-2007).

Stephen J. Girsky has been a member of our Board of Directors since July 10, 2009 and serves on the Investment Funds and Public Policy Committees. He has been GM Vice Chairman of Corporate Strategy and Business Development since March 1, 2010. Prior to that, he served as Senior Advisor to the Office of the Chairman of our company from December 2009 to February 2010 and President of S. J. Girsky & Company, an advisory firm, from January 2009 to March 1, 2010. From November 2008 to June 2009, Mr. Girsky was an advisor to the UAW. He served as President of Centerbridge Industrial Partners, LLC (Centerbridge), an affiliate of Centerbridge Partners, L.P., a private investment firm from 2006 to 2009. Prior to joining Centerbridge, Mr. Girsky was a special advisor to the Chief Executive Officer and the Chief Financial Officer of Old GM from 2005 to June 2006. From 1995 to 2005, he served as Managing Director at Morgan Stanley and a Senior Analyst of the Morgan Stanley Global Automotive and Auto Parts Research Team. Mr. Girsky also served as lead director of Dana Holding Corporation (2008-2009). He has been a member of the Adam Opel GmbH Supervisory Board since January 2010.

E. Neville Isdell has been a member of our Board of Directors since July 10, 2009 and serves on the Public Policy (Chair) and Directors and Corporate Governance Committees. He was also a member of the Board of Old GM from 2008 to July 2009. Mr. Isdell served as Chairman of The Coca-Cola Company from July 2008 until his retirement in April 2009. Prior to that, he held the offices of Chairman and Chief Executive Officer from 2004 to 2008. From 2002 to May 2004, he was an International Consultant to The Coca-Cola Company and head of his investment company, Collines Investments in Barbados. Mr. Isdell served as Chief Executive Officer of Coca-Cola Hellenic Bottling Company from 2000 to May 2001 and Vice Chairman from May 2001 to December 2001. He was Chairman and Chief Executive Officer of Coca-Cola Beverages Plc from 1998 to September 2000. Mr. Isdell also served as a director of SunTrust Banks, Inc. (2004-2008).

Robert D. Krebs has been a member of our Board of Directors since July 24, 2009 and serves on the Directors and Corporate Governance and Executive Compensation Committees. He served as Chairman of Burlington Northern Santa Fe Corporation (BNSF) from December 2000 until his retirement in 2002. Prior to that, he served as Chairman and Chief Executive Officer of BNSF from June 1999 until 2000. He held the offices of Chairman, President and Chief Executive Officer from 1997 to 1999. Mr. Krebs is currently a director of UAL Corporation. He also served as a director of Phelps Dodge Corporation, a mining company (now doing business as Freeport-McMoRan Copper & Gold, Inc.), from 1987 to 2006.

Kent Kresa has been a member of our Board of Directors since July 10, 2009 and serves on the Investment Funds (Chair) and Audit Committees. He was also a member of the Board of Old GM from 2003 to July 2009 and served as interim non-executive Chairman from March 2009 to July 2009. Mr. Kresa has served as Chairman Emeritus of Northrop Grumman Corporation since 2003. He held the offices of Chairman and Chief Executive Officer from 1990 to 2003. He currently serves as non-executive Chairman of the Board of Directors of Avery Dennison Corporation and as a director of Fluor Corporation and MannKind Corporation, a biopharmaceutical company.

Philip A. Laskawy has been a member of our Board of Directors since July 10, 2009 and serves on the Audit (Chair) and Investment Funds Committees. He was also a member of the Board of Old GM from 2003 to July 2009. Mr. Laskawy served as Chairman and Chief Executive Officer of Ernst & Young LLP from 1994 to 2001. Mr. Laskawy is non-executive Chairman of the Board of Directors of the Federal National Mortgage Association and a director of Henry Schein, Inc., Lazard Ltd, and Loews Corporation. He also served as a director of The Progressive Corporation (2001-2007) and Discover Financial Services (2007-2008).

Kathryn V. Marinello has been a member of our Board of Directors since July 10, 2009 and serves on the Investment Funds and Public Policy Committees. She was also a member of the Board of Old GM from 2007 to July 2009. Ms. Marinello served as Chairman and Chief Executive Officer of Ceridian Corporation, an information services company in the human resource, retail, and transportation markets from December 2007 to January 2010. Prior to that, she held the offices of President and Chief Executive Officer from 2006 to 2007. Before joining Ceridian, Ms. Marinello served as President and Chief Executive Officer of GE Fleet Services, a division of General Electric Company, from 2002 to October 2006.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Patricia F. Russo has been a member of our Board of Directors since July 24, 2009. She is Lead Director and serves on the Executive Compensation (Chair) and Directors and Corporate Governance Committees. She served as Chief Executive Officer of Alcatel-Lucent from 2006 to 2008. Prior to the merger of Alcatel and Lucent in 2006, she served as Chairman and Chief Executive Officer of Lucent Technologies, Inc. from February 2003 to 2006 and President and Chief Executive Officer from 2002 to 2003. Before rejoining Lucent in January 2002, Ms. Russo was President and Chief Operating Officer of Eastman Kodak Company from March 2001 to December 2001. Ms. Russo is currently a director of Alcoa Inc., and Merck & Co. Inc.

Carol M. Stephenson has been a member of our Board of Directors since July 24, 2009 and serves on the Investment Funds and Public Policy Committees. She has been Dean of the Richard Ivey School of Business at The University of Western Ontario (Ivey) since 2003. Prior to joining Ivey, Ms. Stephenson served as President and Chief Executive Officer of Lucent Technologies Canada from 1999 to 2003. Ms. Stephenson is currently a director of Intact Financial Services Corporation (formerly ING Canada), a provider of property and casualty insurance in Canada, and Manitoba Telecom Services Inc., a communications provider in Canada. She was a member of the General Motors of Canada Advisory Board from 2005 to July 2009.

Edward E. Whitacre, Jr. has been the Chairman of our Board of Directors since July 10, 2009. He has held the offices of Chairman and Chief Executive Officer of our company since December 1, 2009. He is also Chairman Emeritus of AT&T Inc., where he served as Chairman and Chief Executive Officer from 2005 until his retirement in 2007. Prior to the merger with AT&T, Mr. Whitacre served as Chairman and Chief Executive Officer of SBC Communications from 1990 to 2005. He is currently a director of Exxon Mobil Corporation. He also served as a director of Burlington Northern Santa Fe Corporation (1993-February 2010), Anheuser-Busch Companies, Inc. (1988-2008), Emerson Electric Co. (1990-2004), and The May Department Stores Company, now doing business as Macy's Inc. (1989-2004).

### *Executive Officers of the Registrant*

The names and ages, as of March 31, 2010, of our executive officers, other than Messrs. Whitacre and Girsky who are discussed above, and their positions and offices with General Motors are as follows:

<u>Name and (Age)</u>	<u>Positions and Offices</u>
Christopher P. Liddell (51)	Vice Chairman and Chief Financial Officer
Robert A. Lutz (78)	Vice Chairman
Thomas G. Stephens (61)	Vice Chairman, Global Product Operations
Timothy E. Lee (59)	President, GM International Operations
David N. Reilly (60)	President, GM Europe
Mark L. Reuss (46)	President, GM North America
Mary T. Barra (48)	Vice President, Global Human Resources
Selim Bingol (49)	Vice President, Communications
Walter G. Borst (48)	Vice President and Treasurer
Nicholas S. Cyprus (56)	Vice President, Controller and Chief Accounting Officer
Terry S. Kline (48)	Vice President, Information Technology and Chief Information Officer
Michael P. Millikin (61)	Vice President and General Counsel

There are no family relationships, as defined in Item 401 of Regulation S-K, between any of the officers named above, and there is no arrangement or understanding between any of the officers named above and any other person pursuant to which he or she was selected as an officer. Each of the officers named above was elected by the Board of Directors or a committee of the Board to hold office until the next annual election of officers and until his or her successor is elected and qualified or until his or her earlier resignation or removal. The Board of Directors elects the officers immediately following each annual meeting of the stockholders and may appoint other officers between annual meetings.

Christopher P. Liddell joined GM as Vice Chairman and Chief Financial Officer in January, 2010, and leads our financial and accounting operations on a global basis. Before joining GM, Liddell was CFO for Microsoft from May 2005 until December 2009, where he was responsible for leading their worldwide finance organization. Mr. Liddell had previously served as CFO at International Paper Co.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Robert A. Lutz was named Vice Chairman, specially assigned to advise on design and global product development on December 4, 2009. He was first associated with Old GM in 1963. Mr. Lutz rejoined Old GM on September 4, 2001, as Vice Chairman, Product Development, after a career with BMW, Ford, Chrysler and Exide Technologies. He was named Chairman of GM North America on November 13, 2001, and served in that capacity until April 4, 2005, when he assumed responsibility for Global Product Development. He was appointed Vice Chairman and Senior Advisor on April 1, 2009. He had served as Vice Chairman, Marketing and Communications since August 4, 2009. Mr. Lutz will retire effective May 1, 2010.

Thomas G. Stephens was named Vice Chairman, Global Product Operations in December 2009. He had been associated with Old GM since 1969. Mr. Stephens had been Vice Chairman, Global Product Development since July 10, 2009, and Vice Chairman, Global Product Development for Old GM since April 1, 2009. On January 1, 2007, Mr. Stephens was appointed Group Vice President Global Powertrain and Global Quality and became Executive Vice President on March 3, 2008. He was named Group Vice President for Global Powertrain on July 1, 2001.

Timothy E. Lee was named President, GM International Operations on December 4, 2009. He had been associated with Old GM since 1969. He had been Group Vice President, Global Manufacturing and Labor since October 1, 2009. He was named GM North America Vice President, Manufacturing in January 2006. Mr. Lee became Vice President of Manufacturing of GM Europe, on June 1, 2002.

David N. Reilly was named President, GM Europe on December 4, 2009. He had been associated with Old GM since 1975. He had been Executive Vice President, GM International Operations since August 4, 2009. He was appointed Group Vice President and President, of our former segment, GM Asia Pacific, in July 2006 and had previously been President and Chief Executive Officer of GM Daewoo Auto and Technology Company (GM Daewoo) after leading our transition team in the formation of GM Daewoo beginning in January 2002. Mr. Reilly served as Vice President, for Sales, Marketing, and Aftersales of GM Europe beginning in August 2001.

Mark L. Reuss was appointed President of GM North America on December 4, 2009. He had been associated with Old GM since 1983. Before this appointment, he served briefly as Vice President of Engineering. He managed GM's operations in Australia and New Zealand as the President and Managing Director of GM Holden, Ltd., from February 2008 until July 2009. In October 2005, Reuss was appointed Executive Director of North America vehicle systems and architecture, and the following year, he was named Executive Director of global vehicle integration, safety, and virtual development. In June, 2001, he was named Executive Director, architecture engineering and GM Performance Division.

Mary T. Barra was named Vice President, Global Human Resources on July 30, 2009. She had been associated with Old GM since 1980. Prior to this appointment, she had been Vice President, Global Manufacturing Engineering since February 2008. She had been Executive Director, Vehicle Manufacturing Engineering since January 2005, with global responsibility for General Assembly; Controls, Conveyors, Robotics and Welding; Paint and Polymer, and Advanced Vehicle Development Centers; Industrial Engineering, Global Manufacturing System Implementation, and Pre-Production Operations.

Selim Bingol was appointed Vice President, Communications on March 8, 2010, with overall responsibility for our global communications. Most recently, he served as Senior Vice President and senior partner with Fleishman-Hillard, where he specialized as a senior communications strategist to large international clients across diverse industries. He was Senior Vice President-Corporate Communications at AT&T Corporation from December 2004 until August 2007.

Walter G. Borst was appointed Vice President and Treasurer on August 4, 2009. He had been associated with Old GM since 1980. He was named Treasurer of Old GM in February 2003. From October 2000 to February 2003, Mr. Borst was Executive Director of Finance and Chief Financial Officer for our German subsidiary, Adam Opel GmbH. He is Chairman of the Supervisory Board of Adam Opel GmbH.

Nicholas S. Cyprus was named Vice President, Controller and Chief Accounting Officer on August 4, 2009. He had been associated with Old GM since December 2006, when he became Controller and Chief Accounting Officer. Prior to joining Old GM, he was

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Senior Vice President, Controller and Chief Accounting Officer for the Interpublic Group of Companies from May 2004 to March 2006. From 1999 to 2004, Mr. Cyprus was Vice President, Controller and Chief Accounting Officer at AT&T Corporation.

Terry S. Kline was named Vice President, Information Technology and Chief Information Officer on October 1, 2009. He had been associated with Old GM since December 2000. Previously, Mr. Kline was the Global Product Development Process Information Officer and was responsible for coordinating product development process re-engineering activities and the implementation of associated information systems across GM business sectors. From December 2004 until December 2007, he served as the Chief Information Officer for Asia Pacific.

Michael P. Millikin was appointed Vice President and General Counsel on July 20, 2009, with overall global responsibility for the legal affairs of GM. He had been associated with Old GM since 1977. Mr. Millikin was appointed Assistant General Counsel in June 2001 and became Associate General Counsel in June 2005. He is a member of the board of directors of GM Daewoo and the Supervisory Board of Adam Opel GmbH.

### Stockholders Agreement

Pursuant to the Stockholders Agreement, our initial 13-person Board of Directors consisted of 10 directors designated by the UST, one director designated by Canada Holdings, one director designated by the New VEBA and our Chief Executive Officer. Daniel F. Akerson, David Bonderman, Erroll B. Davis, Jr., E. Neville Isdell, Robert D. Krebs, Kent Kresa, Philip A. Laskawy, Kathryn V. Marinello, Patricia F. Russo, and Edward E. Whitacre, Jr. were designated to the Board of Directors by the UST; Carol M. Stephenson was designated by Canada Holdings; and Stephen J. Girsky was designated by the New VEBA. Because our Board was contractually obligated to nominate the persons designated under the Stockholders Agreement to form the initial Board of Directors, the Board did not perform a detailed assessment of their backgrounds to form a conclusion that each of them should serve as a director. In the future, as the Board selects nominees, we will disclose the particular experience, qualifications, attributes, or skills that led the Board to conclude that he or she should serve.

The Stockholders Agreement provides, for each of the New VEBA and Canada Holdings, that so long as it holds at least 50% of the shares of our common stock it held at the closing of the 363 Sale, it has the right to designate one nominee to our Board of Directors, each of whom will be nominated by the Board (unless the nomination would be inconsistent with the Board's fiduciary duties). The UAW must provide prior written consent of the nominee designated by the New VEBA. If its nominee is not independent according to the criteria established in the NYSE Corporate Governance Standards, the New VEBA must obtain the prior written consent of the UST, and Canada Holdings must consult in good faith with the UST prior to making its designation. Until an initial public offering (IPO), the UST and Canada Holdings will vote for the nominees designated by the New VEBA and Canada Holdings; after an IPO, the UST and Canada Holdings will vote only in certain circumstances. As long as the Stockholders Agreement is effective, the New VEBA will vote in the same proportion as all shares voted (except for any shares held by the New VEBA or by our directors or executive officers).

### Corporate Governance

Our Board of Directors believes that it should be free to choose a leadership structure that it determines is best for the Company at any specific time. On December 1, 2009 our Board requested Mr. Whitacre, the Chairman, to assume the role of CEO, following the resignation of Frederick A. Henderson, and in January 2010 our Board and Mr. Whitacre reaffirmed this decision. In our Board's judgment, the rapid and severe changes in our business and our management that we have undergone during the past year and the importance of reestablishing ourselves as a successful, stable company demands the continuity, efficiency, and centralized control that is provided by having a single individual act both as Chairman and CEO. Our Board will reconsider this determination from time to time based on changes in our circumstances and on the individuals available to lead the Company.

On March 2, 2010 our Board designated Patricia F. Russo as its Lead Director. During the time that the roles of Chairman and Chief Executive Officer are combined in one person, our Board believes that a Lead Director will provide guidance to the non-management directors in their active oversight of management, including the Chairman and CEO. Under the policy adopted on the same day, the Board's Lead Director calls all executive sessions of our non-management directors, sets the agendas, chairs the

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

sessions, and advises the Chairman and CEO of any actions taken. Agendas for Board meetings, which are established by the Chairman using input from other directors, are reviewed and approved by the Lead Director, along with Board meeting schedules and materials. The Lead Director also serves as a liaison between the Chairman and CEO and other directors, assists the Chairman and CEO in the recruiting and orientation of new directors, presides at Board meetings when the Chairman is not present, and assumes additional responsibilities as determined by our non-management directors. Finally, the Lead Director is available for consultation and direct communication with major stockholders, if requested.

Pursuant to our Stockholders Agreement, all of our current directors were selected by the UST, the New VEBA and Canada Holdings, as described above. Only our stockholders have the ability to remove directors, with or without cause. Following an IPO, nominations for the election of directors shall be made by the Board in accordance with the Stockholders Agreement and pursuant to the recommendations by the Board's Directors and Corporate Governance Committee (Governance Committee), or by any stockholder entitled to vote for the election of directors who complies with the requirements of applicable law and of our Bylaws.

The Governance Committee is responsible for identifying potential candidates for Board membership and making its recommendations to the full Board. In assessing potential candidates the Governance Committee seeks to consider individuals with a broad range of business experience and diverse backgrounds. The Governance Committee also considers it desirable that each candidate contribute to the Board's overall diversity—diversity being broadly defined to mean a variety of opinions, perspectives, personal and professional experiences and backgrounds, such as gender, race, ethnicity or country of origin.

The selection of qualified directors is complex and crucial to our long-term success. Potential candidates for election to the Board are evaluated based upon criteria that include:

- The nature and depth of their experience in business, government, and non-profit organizations, and whether they are likely to be able to make a meaningful and constructive contribution to the Board's discussion and decision making concerning the broad array of complex issues facing the Company;
- Their demonstrated commitment to the highest ethical standards and the values of the Company;
- Their special skills, judgment, expertise, and experience that would complement or expand that of the current directors in monitoring the performance and strategic direction of the Company;
- Their ability to take into account and balance the legitimate interests and concerns of all our stockholders and other stakeholders effectively, consistently, and appropriately in reaching decisions; and
- Their global business and social perspective, personal integrity, and sound judgment.

In addition, directors must have time available to devote to Board activities and to enhance their knowledge of our Company and the global automotive industry. To assist in the identification and evaluation of qualified director candidates, the Governance Committee, on occasion, has engaged search firms that specialize in providing services for the identification and evaluation of candidates for election to corporate boards.

Our Board's primary function is oversight of management, directly and through its various committees, so that identifying and addressing the risks and vulnerabilities that we face is an important component of the Board's responsibilities, whether monitoring ordinary operations or considering significant plans, strategies or proposed transactions. Management has implemented a formal risk management process, which is directed by a risk management committee comprised of members of senior leadership. This formal risk management process is overseen by the Board's Audit Committee, which is also responsible for oversight of risk issues associated with our overall financial reporting and disclosure process and with legal compliance, as well as reviewing policies on risk control assessment and accounting risk exposure. In addition, each of our Board committees oversees the risks within its area of responsibility. For example, the Executive Compensation Committee (Compensation Committee) considers the risks that may be implicated by our executive compensation programs. While the Board is ultimately responsible for risk management, our management is responsible for day-to-day risk management processes. We believe this division of responsibilities is the most effective approach for addressing the risks facing our Company and that our Board leadership structure supports this approach.

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### Compliance with Section 16(a) of the Exchange Act

Federal securities laws require that directors and certain officers and stockholders who own more than 10% of the common stock of companies subject to the Exchange Act report certain changes in ownership and ownership information within specified periods. While these laws were applicable to Old GM, they will not apply to us until we register our securities under the Exchange Act. Based upon information furnished by the stockholders, directors and officers of Old GM, we believe that all required filings for 2009 were made in a timely manner.

### Code of Ethics

We have adopted a code of ethics that applies to our directors, officers, and employees, including the Chairman and Chief Executive Officer, the Vice Chairman and Chief Financial Officer, the Vice President, Controller and Chief Accounting Officer and any other persons performing similar functions. The text of our code of ethics, "Winning With Integrity," is posted on our Web site at <http://investor.gm.com>, under "Corporate Governance." We will provide a copy of the code of ethics without charge upon request to the Corporate Secretary, General Motors Company, Mail Code 482-C38-B71, 300 Renaissance Center, P. O. Box 300, Detroit, MI 48265-3000.

### Audit Committee

Our Board of Directors has a standing Audit Committee to assist the Board in fulfilling its oversight responsibilities with respect to the financial reports and other financial information provided by us to stockholders and others; our system of internal controls; our compliance procedures for the employee code of ethics and standards of business conduct; and our audit, accounting, and financial reporting processes. Daniel F. Akerson, Erroll B. Davis, Jr., Kent Kresa and Philip A. Laskawy comprise the Audit Committee. Our Board has determined that all of the members of the Audit Committee are independent, financially literate, and have accounting or related financial management expertise as required by the NYSE. The Board also has determined that Mr. Akerson, Mr. Davis, Mr. Kresa, and Mr. Laskawy (Chair) all qualify as "audit committee financial experts" as defined by the SEC.

### Executive Compensation Committee

Our Board of Directors has a standing Compensation Committee. The members of our Compensation Committee are:

David Bonderman  
Robert D. Krebs  
Patricia F. Russo — Chair

Although Mr. Whitacre was a member of the Compensation Committee during 2009, he is no longer a member. His membership was suspended when he initially agreed to serve as CEO in December 2009, and he resigned from the Compensation Committee after the Board reaffirmed his appointment as CEO in January 2010. The Chair of the Compensation Committee has invited Mr. Whitacre to participate in meetings of the Compensation Committee, as appropriate. None of the members of our Compensation Committee are eligible to participate in any of the compensation plans or programs it administers.

The Compensation Committee's overall objective is to ensure that our compensation policies and practices support the recruitment, development, and retention of the executive talent needed for the long-term success of the Company. In doing this, the Compensation Committee must balance the need to provide competitive compensation and benefits with the guidelines and requirements of the UST Credit Agreement and the TARP regulations as they apply to Exceptional Assistance Recipients. Working with the Office of the Special Master for TARP Compensation (Special Master), the Compensation Committee reviewed and approved corporate goals and objectives related to compensation and set individual award targets for the CEO and Named Executive Officers, as well as our Senior Leadership Group (SLG) and certain other employees subject to its review.

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## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Item 11. *Executive Compensation*

#### **Compensation Committee Report**

The Compensation Committee has reviewed and discussed with management the following Compensation Discussion and Analysis (CD&A) and, based on that review and discussion, has recommended to the Board of Directors that the CD&A be included in this 2009 Annual Report on Form 10-K.

Under the terms of the UST Credit Agreement the Compensation Committee is required to review the incentive compensation arrangements of our Named Executive Officers with the senior risk officer within 120 days of the completion of each fiscal year in which the UST Credit Agreement remains outstanding to ensure that the incentive compensation arrangements for these officers do not encourage them to take unnecessary and excessive risks that may threaten the value of the company.

In addition, the Compensation Committee is also required to review employee compensation plans and make all reasonable efforts to eliminate unnecessary risks that the plans may pose to us, and eliminate any features of these plans that would encourage the manipulation of our reported earnings to enhance the compensation of any employees.

#### **Executive Compensation Structure Risk Assessment**

##### **Risk Assessment Process – Old GM**

On April 6, 2009 the Old GM Compensation Committee met with the Chief Financial Officer in his capacity as chief risk officer to review and discuss the short-term and long-term risks that could threaten the value of Old GM and the features of Old GM's compensation arrangements for Named Executive Officers and other employees in light of those risks. At the conclusion of this review the Old GM Compensation Committee concluded that the Old GM compensation structure provided incentive for executives to appropriately balance risk and reward, and certified to the UST that the design of the Old GM incentive compensation structure for Named Executive Officers did not encourage these individuals to take unnecessary or excessive risks that threatened the value of the Old GM.

##### **Risk Assessment Process — GM**

During the period from July 10 to December 31, 2009, the Compensation Committee met quarterly with the Chief Financial Officer in his capacity as chief risk officer to review and discuss the short-term and long-term risks that could threaten the value of the Company and the features of GM's compensation arrangements for Named Executive Officers and other employees in light of those risks. The 2009 annual review was completed on March 1, 2010. At the conclusion of these reviews, the Compensation Committee concluded that the compensation structure provides incentive for executives to appropriately balance risk and reward, and certified to the UST that the design of the incentive compensation structure for our Named Executive Officers does not encourage these individuals to take unnecessary or excessive risks that threaten the value of the Company.

Working in collaboration with the Special Master, the following risk considerations were taken into account as we developed incentive plans:

- Incentive plan metrics are aligned with our business strategy;
- Performance objectives are balanced with the quality and sustainability of such performance;
- The full range of potential payouts under each plan are understood;
- Payouts are capped;
- Appropriate leverage and ratio of incentive compensation to total compensation are established;

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- Performance, structure, and incentive plan payouts are consistent with those of industry/peers;
- The Committee may exercise discretion where appropriate;
- Our focus on long-term performance aligns with stockholder interests;
- Our recoupment policy provides for clawback of incentive payouts based on revised financials that would result in lower incentive payout;
- The Committee reviews and discusses risk when considering incentive programs; and
- The timeframe for repaying government loans is considered.

In conducting its quarterly reviews of the proposed compensation structure, including annual cash salary, the incentive compensation recoupment provision, and the limit on severance pay, the Committee found that:

- The various performance and retention elements of the awards align the interests of the executives with the long-term health of the Company, the quality of earnings, the interests of stockholders, and the interests of the UST as a lender.
- The mix of cash and equity awards provides an appropriate balance between short-term and long-term risk and reward decisions.
- The incentive compensation recoupment feature supports the accuracy of our financial statements and encourages the executives to focus on maintaining accurate financial records and on complying with relevant accounting policies.

Executive Compensation Committee

Patricia F. Russo (Chair)  
David Bonderman  
Robert D. Krebs

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### Executive Compensation

#### Compensation Discussion and Analysis

The following section contains a discussion of our executive compensation programs and our analysis of the compensation decisions affecting our Named Executive Officers during fiscal year 2009, as well as a review of executive compensation programs related to Old GM.

#### Compensation Discussion and Analysis — Old GM

Prior to the Old GM bankruptcy and 363 Sale, Old GM's Compensation Committee had overall responsibility for the development and administration of Old GM's executive compensation program and executive benefit plans. Old GM's Compensation Committee established the compensation philosophy and strategy; set the base salary and incentive opportunities for Old GM's CEO and SLG; established performance measures and objectives for Old GM's CEO and SLG; determined whether, and to what extent, the performance objectives were achieved; recommended to the Old GM Board the amount of incentive compensation to be paid to the Old GM CEO and Old GM SLG; and was responsible for amending and modifying Old GM's executive compensation benefit plan. Old GM's Compensation Committee also recommended to the Old GM Board perquisites and non-qualified benefits for the Old GM CEO, and approved such benefits for the Old GM SLG, as well as any employment or consulting agreements and severance arrangements for Old GM SLG members.

Prior to Old GM's bankruptcy, the Old GM Compensation Committee consisted of the following directors: Mr. John H. Bryan (Chair), Mr. Erskine B. Bowles, Mr. Armando Codina, Mr. George M. C. Fisher, and Ms. Karen Katen. The Old GM Compensation Committee met five times between January 1 and July 9, 2009. All the members of the Old GM Compensation Committee resigned from the Board by July 10, 2009.

**Resignation of Mr. Wagoner and Appointment of Mr. Henderson.** On March 29, 2009, Mr. Wagoner resigned as a director and stepped down from his positions as Chairman of the Board and Chief Executive Officer of Old GM. On the same date, Mr. Henderson was appointed President and Chief Executive Officer and elected to the Board of Directors of Old GM.

**UST Loan Agreement Executive Compensation Limitations.** Under the terms of the UST Loan Agreement, first effective on December 31, 2008, Old GM was required to comply with certain limitations on executive compensation. The most significant of these included:

- Prohibition of any severance payable to an SEO (Senior Executive Officer who is also a Named Executive Officer) and the next five most highly compensated employees (MHCEs);
- No tax deduction for any compensation in excess of \$500,000 paid to an SEO;
- Prohibition of any bonus or incentive compensation payments to or accruals for the 25 MHCEs (including the SEOs), unless otherwise approved by the UST;
- Prohibition from adopting or maintaining any compensation plan that would encourage manipulation of reported earnings;
- Clawback of any bonuses or other compensation paid to any SEO in violation of any of the executive compensation provisions of the UST Loan Agreement;
- Prohibitions on incentives for SEOs that might encourage them to take unnecessary or excessive risks and a requirement that the Committee review SEO compensation arrangements with the chief risk officer within 120 days of entering into the UST Loan Agreement and quarterly thereafter; and
- Prohibition on owning or leasing private aircraft and limitations on expenditures for corporate events, travel, consultants, real estate, and corporate offices.

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These provisions also prohibited the payment of all outstanding equity awards granted prior to December 31, 2008 and disclosed in the “Outstanding Awards at Fiscal Year-End” table to the Named Executive Officers unless approved by the UST.

**Bankruptcy Proceedings.** On June 1, 2009, Old GM filed a motion for reorganization under the provisions of Chapter 11 of the United States Bankruptcy Code, as amended. In connection with the bankruptcy proceedings on July 10, 2009 we completed the 363 Sale and executed the UST Credit Agreement. The UST Credit Agreement reiterated the provisions of the UST Loan Agreement with respect to executive compensation and incorporated the requirements of the TARP Standards.

**UST Interim Final Rule on TARP Standards for Compensation and Corporate Governance and Appointment of Special Master.** On June 15, 2009 the UST published its Interim Final Rule on TARP Standards for Compensation and Corporate Governance, including the appointment of a Special Master and requirements for the approval by him of all compensation plans and payments for Old GM’s CEOs and the next 20 MHCEs, as well as the compensation structure for Old GM’s top 100 executives.

**Base Salaries.** At Mr. Wagoner’s recommendation, and with the concurrence of the other executives, Old GM’s Compensation Committee had reduced the base salaries of Old GM’s most senior executives as follows on January 1, 2009:

• Mr. G. Richard Wagoner, Jr. — Chairman and Chief Executive Officer	\$1.00 Annual Salary
• Mr. Frederick A. Henderson — President and Chief Operating Officer	30% Annual Salary Reduction
• Mr. Ray G. Young — Executive Vice President and Chief Financial Officer	20% Annual Salary Reduction

The remaining three Old GM Named Executive Officers (Mr. Robert S. Osborne, Mr. Carl-Peter Forster, and Mr. Nick S. Cyprus) received 10% salary reductions on May 1, 2009.

**Annual Incentive Plan (AIP).** Due to the severe economic downturn and Old GM’s financial condition, no AIP target awards were established for Old GM’s CEO and Old GM’s SLG for 2009.

**Long-Term Incentive Awards.** In conjunction with Old GM’s bankruptcy, all unexercised Old GM stock options, unvested restricted stock units, and unvested equity incentive plan awards were left in MLC with no consideration paid to the employees. Old GM did not make any new long-term award grants during 2009.

**Prerequisites and Benefits.** Also as a result of the bankruptcy filing, Old GM reduced or eliminated certain employee benefits, including the following:

- Executive Retirement Plan (ERP) — For executives that were still active employees, ERP benefit accruals were reduced by 10% effective with the closing of the 363 Sale. For executives that were retired from Old GM with an annual pension benefit below \$100,000, ERP benefits were reduced by 10% effective with the closing of the 363 Sale. In addition, executives that were retired from Old GM with an annual pension benefit above \$100,000, the ERP benefit payable above \$100,000 was reduced by two-thirds effective with the closing of the 363 Sale. Additional modifications to the ERP are discussed in the “Retirement Program Applicable to Executive Officers.”
- Supplemental Life Benefits Program (SLBP) — The SLBP benefit for certain executive retirees was reduced by 50% effective May 1, 2009. Additional modifications to the SLBP are discussed in footnote (4) of the “All Other Compensation” section.

### Compensation Discussion and Analysis — GM

Our Board of Directors was appointed in July 2009, following the 363 Sale. Upon its appointment, our Board began a review of the senior leadership team to assure that we have the right leadership to return the Company to sustained profitability. Our new leadership team was selected for their strategic orientation and ability to implement decisions quickly and effectively.

**Objectives and Elements of GM’s Compensation Program** As discussed in the “Executive Compensation Committee” section, the Committee must balance the need to provide competitive compensation and benefits with the guidelines and requirements of the

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

UST Credit Agreement and in the TARP regulations as they apply to Exceptional Assistance Recipients. Working with the Special Master for TARP Compensation the Committee reviewed and approved corporate goals and objectives related to compensation and set individual compensation amounts for the CEO and Named Executive Officers.

Between July 10 and December 31, 2009, representatives of management and the Compensation Committee met frequently and participated in several telephonic discussions with the Special Master to establish TARP compliant compensation, benefit, and incentive plans. Overall, “TARP compliant” compensation structures for our senior executives, including the Named Executive Officers, must be consistent with the following six general principles articulated by TARP regulations:

- **Risk.** The compensation structure should avoid incentives to take unnecessary and excessive risk, e.g., should be paid over a time horizon that takes into account the appropriate risk horizon;
- **Taxpayer Return.** The compensation paid should recognize the need for GM to remain viable and competitive, and to retain and recruit critical talent;
- **Appropriate Allocation.** The structure should appropriately allocate total compensation to fixed and variable pay elements resulting in an appropriate mix of long- and short-term pay elements;
- **Performance-Based Compensation.** An appropriate portion of total compensation should be performance based over a relevant performance period;
- **Comparable Structures and Payments.** Structures and amounts should be competitive with those paid to persons in similar positions at similarly situated companies; and
- **Employee Contribution to TARP Recipient Value.** Compensation should reflect the current and prospective contributions of the individual employee to the value of the Company.

### *Total Compensation Framework*

With these principles in mind, the Special Master determined that the following standards would be applied in setting compensation for our Named Executive Officers:

- **Cash** — Base salary should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Guarantees of “bonus” or “retention” awards are not permitted for Named Executive Officers. Overall, cash compensation for senior executives was reduced 31% from 2008 levels.
- **Salary stock** – comprises the majority of each senior executive’s total annual compensation. Salary stock units (SSUs) vest immediately and are payable in three equal, annual installments beginning on the second anniversary of the quarter in which they were deemed to have been granted, or one year earlier upon certification by our Compensation Committee that repayment of our TARP obligations has commenced.
- **Long-term restricted stock units** — should not exceed one-third of total annual compensation and will be based on annual business performance. The restricted stock units will be forfeited unless the employee remains with the Company for at least three years following grant, and will only be redeemed after the third anniversary date of the grant in 25% installments for each 25% installment of our TARP obligations that is repaid.
- **Benefits and perquisites** –All “other” compensation and perquisites may not exceed \$25,000 for Named Executive Officers except in exceptional circumstances for good cause shown (e.g., payments related to expatriate assignments). No severance benefits may be accrued or tax “gross-ups” paid, and no additional amounts under supplemental executive retirement plans or other “non-qualified deferred compensation” plans could be credited after October 22, 2009 for Messrs. Young, Cole, and Henderson, and after December 11, 2009 for Messrs. Stephens and Lutz.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

Total annual compensation for each senior executive reflects the individual's value to GM and was targeted at the 50<sup>th</sup> percentile of total compensation provided to persons in similar positions or roles at similar companies. Total direct compensation, excluding benefits and perquisites, for senior executives was decreased 24.7% from 2008 levels. All incentives paid to these Named Executive Officers are subject to recovery or "clawback" if payments are later found to be based on materially inaccurate financial statements or other materially inaccurate performance metrics, or if the executive is terminated due to any misconduct that occurred during the period in which the incentive was earned.

**Assessing Compensation Competitiveness**

With the completion of the 363 Sale, the starting point for our compensation planning was assuring compensation competitiveness and leadership strength. For this reason, although recognizing that our 2009 program would be shaped by the parameters of the TARP regulations for Exceptional Assistance Recipients, we began our planning with a review of our compensation program in comparison to compensation opportunities provided by other large companies. We cannot limit the group to our industry alone because compensation information is not available from most of our major competitors. We also believe it is important to understand the compensation practices for Named Executive Officers at other U.S. based multinationals as it affects our ability to attract and retain diverse talent around the globe.

During 2009 we used a comparator group of 23 companies whose selection was based on the following criteria:

- Large Fortune 100 companies (annual revenue from \$18.4 billion to \$477.3 billion);
- Complex business operations, including significant research and development, design, engineering, and manufacturing functions with large numbers of employees;
- Global enterprises;
- Broad representation across several industries of companies that produce products, rather than services.

**2009 Comparator Companies**

<b>Company</b>	<b>GICS Category</b>	<b>Company</b>	<b>GICS Category</b>
Ford Motor Company	Consumer Discretionary	Johnson & Johnson	Consumer Staples
Johnson Controls Inc.	Consumer Discretionary	Pepsico, Inc.	Consumer Staples
Dell	IT	The Procter & Gamble Company	Consumer Staples
Hewlett-Packard Company	IT	Chevron Corporation	Energy
International Business Machines Corporation	IT	Conoco Phillips	Energy
Alcoa, Inc.	Industrial	Exxon Mobil Corporation	Energy
The Boeing Company	Industrial	Abbott Laboratories	Healthcare
Caterpillar Inc.	Industrial	Pfizer	Healthcare
General Electric Company	Industrial	Archer Daniels Midland Company	Materials
Honeywell International Inc.	Industrial	E.I. du Pont De Nemours & Company	Materials
Lockheed Martin	Industrial	The Dow Chemical Company	Materials
United Technologies Corporation	Industrial		

**Role of Management in Compensation Decisions**

During his tenure as CEO, Mr. Henderson believed compensation had an important function in aligning and motivating the executive team to achieve key corporate objectives, and he played an active role in the development of our compensation plans. He personally reviewed the proposed individual compensation of our SLG. Mr. Henderson attended Compensation Committee meetings at the invitation of the Chairman and provided input to the Compensation Committee regarding the compensation of the Named Executive Officers reporting to him.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****2009 Compensation for Named Executive Officers**

Based on the compensation objectives and elements described above, and in cooperation with the Special Master for TARP Compensation, 2009 compensation was established for our Named Executive Officers listed below and described in the tables that follow this report:

Edward E. Whitacre, Jr.	Chairman of the Board and Chief Executive Officer
Thomas G. Stephens	Vice Chairman, Global Product Operations
Robert A. Lutz	Vice Chairman
Ray G. Young	Executive Vice President and Chief Financial Officer
Kenneth W. Cole	Vice President, Global Public Policy and Government Relations
Frederick A. Henderson	President and Chief Executive Officer (Separated)
G. Richard Wagoner, Jr.	Chairman of the Board and Chief Executive Officer (Retired)

**Base Salaries and Salary Stock**

As noted above in our discussion of TARP principles and Special Master guidelines, cash base salaries for Named Executive Officers of TARP Exceptional Assistance Recipients are not allowed to exceed \$500,000 per year, except in appropriate cases approved by the Special Master for good cause shown (e.g., the retention of critical talent and competitive compensation data for individuals in comparable positions). We relied on our comparator information for similar positions to support our recommendations for setting base salaries for each Named Executive Officer. Although cash salaries exceeded the \$500,000 guideline in all cases except Mr. Young and Mr. Cole as shown in the table below, they are well below the cash base salaries paid at comparator companies and are supplemented by the amounts set for SSUs for each senior executive.

We finalized our compensation planning for Named Executive Officers with the Special Master in late 2009. Although base salaries had been impacted by reductions earlier in 2009, in determining the total annual compensation, including new salary amounts, for Messrs. Stephens, Lutz, Young, Cole, and Henderson, we relied on the comparator data for total compensation at the 50<sup>th</sup> percentile for each respective position. We then excluded one-third of the value for long-term restricted stock units, and adjusted the allocation between cash and SSUs in accordance with TARP guidelines as follows:

	<u>Cash Salary</u>	<u>SSUs</u>	<u>Total</u>
Mr. Stephens	\$ 900,000	\$ 945,833	\$ 1,845,833
Mr. Lutz	\$ 900,000	\$ 1,070,833	\$ 1,970,833
Mr. Young	\$ 500,000	\$ 576,668	\$ 1,076,668
Mr. Cole	\$ 500,000	\$ 935,543	\$ 1,435,543
Mr. Henderson	\$ 950,000	\$ 2,421,668	\$ 3,371,668

SSUs were granted to senior executives each pay period following approval by the Special Master. SSUs are determined as a dollar amount through the date salary is earned, accrued at the same time as salary would otherwise be paid, and vest immediately upon grant, with the number of SSUs based on the most current value of the Company on the date of the grant. To assure that our compensation structure appropriately allocates a portion of compensation to long-term incentives, these vested units will become payable in three equal, annual installments beginning on the second anniversary of the quarter in which they were deemed to have been granted, with each installment payable one year earlier upon certification by our Compensation Committee that repayment of our TARP obligations has commenced. As the compensation plans were not finalized until late in 2009, amounts earned for earlier 2009 pay periods will become payable on their anniversary dates as if they had been credited on a *nunc pro tunc* basis throughout 2009 beginning January 1, and will be paid on the anniversary of the quarter in which they were deemed to have been granted.

Mr. Whitacre was named CEO on December 1, 2009. He received no 2009 cash salary or SSU grant as he was not an employee of the Company during the 2009 fiscal year. His compensation was paid in the form of a director's retainer as described in the following "Summary Compensation Table."

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Mr. Wagoner retired on August 1, 2009. His compensation was reduced to \$1 on January 1, 2009, and he did not receive a salary increase or an SSU grant in 2009. His retirement benefit was determined under the provisions of Old GM SRP and Old GM ERP plans.

### Long-Term Restricted Stock

Long-term restricted stock unit grants were planned and reviewed with the Special Master as part of our overall compensation structure. These grants are based on 2009 operating cash flow results against targeted performance, and were granted on March 15, 2010, to Named Executive Officers in the following amounts: Mr. Stephens, \$1,016,667 and Mr. Young, \$630,000.

### “Other” Compensation, Benefits, and Perquisites

Pursuant to TARP regulations, the Special Master determined that no more than \$25,000 in total “other” compensation and perquisites may be provided to Named Executive Officers, absent exceptional circumstances for good cause shown. Payments related to expatriate assignments are not included in this total. Detailed disclosure of these items for the Named Executive officers appears in footnote (9) to the “Summary Compensation Table,” and any exceptions to this guideline were reviewed and approved by the Special Master.

2009 accruals for non-qualified supplemental executive retirement and deferred compensation plans for Named Executive Officers ceased as described in “Summary Compensation Table” footnote (9). No severance payment to which a Named Executive Officer becomes entitled in the future may take into account any salary increase or payment of salary stock awarded during 2009, and none of the Named Executive Officers may receive a severance payment of any kind during the TARP period.

### Stock Ownership Guidelines

We continue to believe it is important to align the interests of senior executives with those of stockholders, and will review our stock ownership guidelines and practices after an IPO has been completed.

### Employment Agreements

We had no employment agreements with Messrs. Stephens, Young, or Henderson that provided them with special compensation arrangements. In addition, we do not maintain any plan providing benefits related to a change-in-control of the Company, and none of our current incentive plans contain such provisions. Employment arrangements with Messrs. Whitacre, Lutz, and Cole are discussed following the “Potential Payments Upon Termination or Change in Control” section.

### Recoupment Policy on Incentive Compensation

In October 2006, the Old GM Board adopted a policy regarding the recoupment of incentive compensation paid to executive officers after January 1, 2007 and unvested portions of awards previously granted in situations involving financial restatement due to employee fraud, negligence, or intentional misconduct. The policy was published on Old GM’s Web site. In addition, Old GM included provisions in all executive incentive and deferred compensation plans referencing Old GM’s Board compensation policies, and required that the compensation of all executives covered by this policy be subject to this recoupment clause.

On September 8, 2009, our Board reaffirmed this policy and re-published it on our Web site, consistent with the requirements for TARP recipients. Our recoupment policy now provides that if our Board or an appropriate committee thereof has determined that any bonus, retention award, or incentive compensation has been paid to any Senior Executive Officer or any of the next 20 MHCEs of the Company based on materially inaccurate misstatement of earnings, revenues, gains, or other criteria, the Board or Compensation Committee shall take, in its discretion, such action as it deems necessary to recover the compensation paid, remedy the misconduct, and prevent its recurrence. For this purpose, a financial statement or performance metric shall be treated as materially inaccurate with respect to any employee who knowingly engaged in providing inaccurate information or knowingly failed to timely correct information relating to those financial statements or performance metrics.

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### Luxury Expense Policy

As required by TARP regulations, we have adopted a luxury expense policy and published it on our Web site. The policy's governing principles establish expectations for every business expense, embodying the integrity and values that promote the best interests of the enterprise.

Luxury or excessive expenditures are not reimbursable under the policy. Such expenditures may include, but are not limited to expenditures on entertainment or events, office and facility renovations, aviation, transportation services, or other activities or events that are not reasonable expenditures for staff development, performance incentives, or other similar measures conducted in the normal course of business operations. Guidelines relating to transportation expenses are discussed in the "All Other Compensation" table that follows this report.

### Tax Considerations

As a recipient of TARP funds, 2009 base salaries for Named Executive Officers, up to an individual maximum of \$500,000 were tax deductible. No tax deductions for performance-based incentive awards are allowable.

### 2010 Compensation for Named Executive Officers

We have developed our 2010 compensation structure for our Named Executive Officers pursuant to the provisions of the UST Credit Agreement, Special Master Determinations, and TARP regulations. The elements of these plans are based on the same principles as our 2009 plans:

- Avoidance of incentives to take unnecessary and excessive risk;
- Recognition of the need for us to remain viable and competitive, and to retain and recruit critical talent;
- Appropriate allocation of total compensation to fixed, variable, long term, and short term pay elements;
- Pay is performance-based over a relevant performance period;
- Structures and amounts are competitive with those paid to employees in comparable positions by similarly situated companies; and
- The employee's contribution to enterprise value is recognized.

With these principles as a foundation, we will again compensate our Named Executive Officers with cash salary, SSUs, and performance-based long-term restricted stock units, consistent with proportions and guidelines utilized in our 2009 plans and determinations made by the Special Master.

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2009 SUMMARY COMPENSATION TABLE

(a) Name and Principal Position	(b) Year	(c) Salary \$	(d) Bonus \$	(e) Stock Awards (6)	(f) Stock Options (7) \$	(g) Non-Equity Incentive Plan Compensation \$	(h) Pension Value and N Q Deferred Compensation (8) \$	(i) All Other Compensation (9) \$	(j) TOTAL \$
<b>Whitacre, Jr., E.E. (1)</b> Chairman and CEO	2009							\$ 181,308	\$ 181,308
<b>Stephens, T.G.</b> Vice Chairman - Global Product Operations	2009	\$1,087,500	\$ 0	\$ 945,833	\$ 0	\$ 0	\$ 0	\$ 78,785	\$ 2,112,118
	2008	\$ 970,833	\$ 0	\$1,375,000	\$ 637,875	\$ 0	\$ 644,300	\$ 140,621	\$ 3,768,629
	2007	\$ 825,000	\$ 0	\$2,218,637	\$ 437,500	\$ 468,000	\$ 1,528,100	\$ 112,499	\$ 5,589,736
<b>Lutz, R.A.</b> Vice Chairman	2009	\$1,379,167	\$ 0	\$1,070,833	\$ 0	\$ 0	\$ 0	\$ 175,854	\$ 2,625,854
	2008	\$1,678,000	\$ 0	\$4,387,800	\$1,822,500	\$ 0	\$ 0	\$ 674,199	\$ 8,562,499
	2007	\$1,279,167	\$ 0	\$4,018,283	\$2,187,500	\$ 1,026,000	\$ 0	\$ 516,506	\$ 9,027,456
<b>Young, R.G. (2)</b> Executive Vice President and Chief Financial Officer	2009	\$ 683,333	\$ 0	\$ 576,668	\$ 0	\$ 0	\$ 345,200	\$ 21,573	\$ 1,626,774
	2008	\$ 850,000	\$ 0	\$1,007,234	\$ 637,875	\$ 0	\$ 85,000	\$ 93,003	\$ 2,673,112
<b>Cole, K.W. (3)</b> Vice President Global Public Policy and Gov't. Rel.	2009	\$ 643,417	\$785,000	\$ 935,543	\$ 0	\$ 0	\$ 0	\$ 49,907	\$ 2,413,867
<b>Henderson, F.A. (4)</b> President and CEO (Sep)	2009	\$1,208,333	\$ 0	\$2,421,668	\$ 0	\$ 0	\$ 0	\$ 400,764	\$ 4,030,765
	2008	\$1,719,667	\$ 0	\$3,422,030	\$3,222,500	\$ 0	\$ 264,500	\$ 348,710	\$ 8,977,407
	2007	\$1,279,167	\$ 0	\$4,018,283	\$2,187,500	\$ 1,026,000	\$ 748,300	\$ 805,848	\$10,065,098
<b>Wagoner, Jr., G.R. (5)</b> Chairman and CEO (Ret)	2009	\$ 1	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 2,833,809	\$ 2,833,810
	2008	\$2,108,333	\$ 0	\$4,786,076	\$7,145,000	\$ 0	\$ 1,583,800	\$ 836,703	\$16,459,912
	2007	\$1,558,333	\$ 0	\$7,308,783	\$4,375,000	\$ 1,802,000	\$ 4,020,400	\$ 697,358	\$19,761,874

- (1) Mr. Whitacre was named Chairman and CEO effective December 1, 2009. He was elected Chairman of our Board of Directors on July 10, 2009. The compensation shown in All Other Compensation reflects retainer amounts paid to him for his service as Board member, Governance Committee Chair, and Chairman of the Board during fiscal year ending December 31, 2009.
- (2) Mr. Young was appointed Vice President-International Operations in Shanghai, China on February 1, 2010. During the fiscal year ending December 31, 2009 he served as Executive Vice President and Chief Financial Officer of Old GM and GM. Mr. Christopher P. Liddell was appointed Vice Chairman and Chief Financial Officer on January 1, 2010.
- (3) On December 30, 2009, Mr. Cole announced that he would retire in 2010. He will continue to provide public policy support as a special advisor until his retirement. Mr. Cole's guaranteed payment of \$785,000 was made pursuant to the terms of his employment agreement with Old GM and pre-dated the UST Credit Agreement. This payment was reviewed with the UST as part of our 2009 compensation planning and the agreement was terminated on September 4, 2009.
- (4) Mr. Henderson was appointed President and CEO of Old GM on March 29, 2009. He had been President and Chief Operating Officer of Old GM since March 3, 2008. He was subsequently appointed President and CEO of GM on July 10, 2009. He resigned as a director and as President and CEO of GM on December 1, 2009. His employment terminated on December 31, 2009. As a result of his employment termination, Mr. Henderson is only eligible for a deferred vested pension benefit from the SRP.
- (5) Mr. Wagoner resigned as a director and as Chairman and CEO of Old GM on March 29, 2009. He retired on August 1, 2009.
- (6)(7) For 2009, the amounts shown in this column reflect the value of SSUs at their grant dates to each of the Named Executive Officers. Individual grants are discussed previously in the "CD&A", as well as in the "2009 Grants of Plan Based Awards" table and narrative. We describe the valuation assumptions used in measuring the expense in Note 29 to the consolidated financial statements, "Stock Incentive Plans."

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The 2008 and 2007 awards include equity awards and stock options granted by Old GM to the Named Executive Officers. These 2008 and 2007 awards are included in the Summary Compensation Table above at their grant date fair value and we describe the valuation assumptions used in measuring the expense in Note 29 to the consolidated financial statements, "Stock Incentive Plans." These Old GM awards have no future value as we did not assume them on July 10, 2009. A more accurate reflection of their expected value is shown in the following table:

<u>Name and Principal Position</u>	<u>Year</u>	<u>Salary</u> <u>\$</u>	<u>Bonus</u> <u>\$</u>	<u>Stock</u> <u>Awards</u>	<u>Stock</u> <u>Options</u> <u>\$</u>	<u>Non-Equity</u> <u>Incentive Plan</u> <u>Compensation</u> <u>\$</u>	<u>Change in</u> <u>Pension Value</u> <u>and NQ</u> <u>Deferred</u> <u>Compensation</u> <u>\$</u>	<u>All Other</u> <u>Compensation</u> <u>\$</u>	<u>TOTAL</u> <u>\$</u>
<b>Stephens, T.G.</b>	2008	\$ 970,833	\$ 0	\$ 0	\$ 0	\$ 0	\$ 644,300	\$ 140,621	\$1,755,754
Vice Chairman - Global Product Operations	2007	\$ 825,000	\$ 0	\$ 0	\$ 0	\$ 468,000	\$ 1,528,100	\$ 112,499	\$2,933,599
<b>Lutz, R.A.</b>	2008	\$1,678,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 674,199	\$2,352,199
Vice Chairman	2007	\$1,279,167	\$ 0	\$ 0	\$ 0	\$ 1,026,000	\$ 0	\$ 516,506	\$2,821,673
<b>Young, R.G.</b>	2008	\$ 850,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 85,000	\$ 93,003	\$1,028,003
Executive Vice President and Chief Financial Officer									
<b>Henderson, F.A.</b>	2008	\$1,719,667	\$ 0	\$ 0	\$ 0	\$ 0	\$ 264,500	\$ 348,710	\$2,332,877
President and CEO (Sep)	2007	\$1,279,167	\$ 0	\$ 0	\$ 0	\$ 1,026,000	\$ 748,300	\$ 805,848	\$3,859,315
<b>Wagoner, Jr., G.R.</b>	2008	\$2,108,333	\$ 0	\$ 0	\$ 0	\$ 0	\$ 1,583,800	\$ 836,703	\$4,528,836
Chairman and CEO (Ret)	2007	\$1,558,333	\$ 0	\$ 0	\$ 0	\$ 1,802,000	\$ 4,020,400	\$ 697,358	\$8,078,091

(8) Pension values actuarially decreased during 2009 for Messrs. Stephens, Lutz, Cole, Henderson, and Wagoner but are shown in column (h) as \$0, consistent with SEC reporting guidelines.

(9) **All Other Compensation** — Totals for amounts reported as All Other Compensation in column (i) are described below. Mr. Whitacre did not participate in these plans during 2009; the amount reported as his All Other Compensation reflects the amount paid to him as a director.

	<u>E. E. Whitacre, Jr.</u>	<u>T. G. Stephens</u>	<u>R. A. Lutz</u>	<u>R. G. Young</u>	<u>K. W. Cole</u>	<u>F. A. Henderson</u>	<u>G. R. Wagoner, Jr.</u>
(i) Personal Benefits	\$ 2,091	\$ 15,735	\$ 55,829	\$ 11,829	\$ 11,888	\$ 377,924	\$ 289,660
(ii) Tax Reimbursements		\$ 5,294	\$ 5,626	\$ 1,798	\$ 3,139	\$ 2,039	\$ 5,687
(iii) Savings Plan Contributions		\$ 9,334	\$ 36,049	\$ 1,650	\$ 15,540	\$ 2,888	\$ 0
(iv) Insurance and Death Benefits		\$ 47,322	\$ 77,250	\$ 5,196	\$ 18,915	\$ 16,813	\$ 2,537,362
(v) Other	\$ 179,217	\$ 1,100	\$ 1,100	\$ 1,100	\$ 425	\$ 1,100	\$ 1,100
<b>Total All Other Compensation</b>	<u>\$ 181,308</u>	<u>\$ 78,785</u>	<u>\$175,854</u>	<u>\$ 21,573</u>	<u>\$ 49,907</u>	<u>\$ 400,764</u>	<u>\$ 2,833,809</u>

(i) See "Personal Benefits" table below for additional information.

(ii) Includes payments made on the executives' behalf by the Company for the payment of taxes related to executive company program vehicles from January 1 until June 15, 2009, and for spousal accompaniment on business travel.

(iii) Includes employer contributions to tax-qualified and non-qualified savings and excess benefit plans. For Messrs. Lutz and Cole, amounts also include tax-qualified retirement plan contributions and post-retirement healthcare contributions; the non-qualified retirement plan contributions are included in the "2009 Pension Benefits" table. Non-qualified employer contributions were suspended for Messrs. Young, Cole, and Henderson on October 22, 2009, and for Messrs. Stephens and Lutz on December 11, 2009.

(iv) Includes Supplemental Life Benefits Program cash benefits paid upon the death of an active executive at three times annual salary for executives appointed prior to January 1, 1989 and two times annual salary for executives appointed on January 1, 1989

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or later. No income is imputed to the executive and the benefit is taxable as ordinary income to survivors when paid. The incremental cost reflects amounts contained in IRS Table 1 for insurance premiums at comparable coverage limits based on the executive's age. SLBP benefits were eliminated for retirees on August 1, 2009. SLBP benefits for active executives will be eliminated effective May 1, 2010 and benefits will be provided under a Group Variable Universal Life insurance plan. The amount shown for Mr. Wagoner represents the taxable cash value proceeds of a split dollar life insurance policy maintained for him by the Company. The Company terminated the policy, received a return of the cash value, and paid the proceeds to him following his retirement.

- (v) Includes the cost of premiums for personal umbrella liability insurance. Program coverage was eliminated January 1, 2010, and existing program participants were allowed to continue coverage on a self-paid basis. For Mr. Whitacre, cost includes annual retainer, Governance Committee Chair, and Chairman of the Board fees and personal accident insurance premium.

**Personal Benefits** — Amounts shown below for personal benefits include the incremental costs for executive security services and systems, the executive company vehicle program, executive health evaluations, and financial counseling. During 2009 we divested ourselves of any private passenger aircraft or any interest in such aircraft, and private passenger aircraft leases, and we did not maintain company aircraft for employees' business or personal use.

	<u>E. E. Whitacre, Jr.</u>	<u>T. G. Stephens</u>	<u>R. A. Lutz</u>	<u>R. G. Young</u>	<u>K. W. Cole</u>	<u>F. A. Henderson</u>	<u>G. R. Wagoner, Jr.</u>
(i) Security	\$ 0	\$ 1,924	\$ 45,313	\$ 1,313	\$ 0	\$ 364,428	\$ 276,144
(ii) Company Vehicle Program	\$ 2,091	\$ 1,516	\$ 1,516	\$ 1,516	\$ 1,516	\$ 1,516	\$ 1,516
(iii) Financial Counseling	\$ 0	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 12,000
(iv) Medical Evaluations	\$ 0	\$ 3,295	\$ 0	\$ 0	\$ 1,372	\$ 2,980	\$ 0
<b>Total</b>	<b>\$ 2,091</b>	<b>\$ 15,735</b>	<b>\$ 55,829</b>	<b>\$ 11,829</b>	<b>\$ 11,888</b>	<b>\$ 377,924</b>	<b>\$ 289,660</b>

- (i) As part of a comprehensive security study, residential security systems and services were maintained for Messrs. Wagoner and Henderson and vehicles and drivers are available for business-related functions. The associated cost includes the actual costs of the residential systems including installation and monitoring of security systems and allocation of staffing expenses for personal protection during 2009. Vehicle and driver costs associated with daily commuting are deemed "personal benefits," and, as such, are imputed as income to the executives and are included at their full incremental cost in these security expenses. In 2009 they totaled \$22,799 for Mr. Lutz, \$996 for Mr. Stephens, \$1,313 for Mr. Young, \$16,752 for Mr. Henderson, and \$4,559 for Mr. Wagoner.
- (ii) Includes the incremental cost to maintain the executive company vehicle program fleet that is allocated to each executive and includes lost sales opportunity and incentive costs, if any; fuel, maintenance, and repair costs; insurance claims, if any; licensing and registration fees; and use taxes. Executives electing to participate in the program are required to purchase or lease at least one GM vehicle every four years and asked to evaluate the vehicles they drive, thus providing feedback about our products. Participants are required to pay a monthly administration fee of \$300 and are charged with imputed income based on the value of the vehicle they choose to drive. During part of 2009, participants were reimbursed for taxes on this income, subject to a maximum vehicle value. Beyond this maximum amount, taxes assessed on imputed income are the responsibility of the participant. Tax "gross-ups" were eliminated on June 15, 2009 for Named Executive Officers and on February 1, 2010 for other executives. Mr. Whitacre's vehicle was provided under the provisions of the vehicle program for directors.
- (iii) Costs associated with financial counseling and estate planning services with one of several approved providers.
- (iv) Costs for medical services incurred by the Corporation in providing executive health evaluations with one of several approved providers.

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**2009 GRANTS OF PLAN BASED AWARDS**

As a TARP recipient under the jurisdiction of the Special Master, we have adopted a new equity compensation plan, the Salary Stock Plan. Pursuant to plan terms and upon approval of the Special Master, Named Executive Officers receive a portion of their total annual compensation in the form of salary stock units (SSUs). In 2009 SSUs were granted on each salary payment date to Named Executive Officers in lieu of a portion of their total annual compensation based on the most current valuation of the Company as determined by an independent third party. SSUs are non-forfeitable and will be paid in three equal installments at each of the second, third, and fourth anniversary of the quarter in which they were deemed to have been granted, and may be paid one year earlier upon certification by our Compensation Committee that repayment of our TARP obligations has commenced.

Name (1)	Award Type	Grant Date	Approval Date (2)	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/Share)	Grant Date Fair Value of Stock and Option Awards (\$)
				Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)	Maximum (#)				
T. G. Stephens	SSU	12/31/2009	11/2/2009							17,522		<u>945,833</u>	
R. A. Lutz	SSU	12/31/2009	11/2/2009							19,838		<u>1,070,833</u>	
R. G. Young	SSU	11/13/2009	11/2/2009							3,709		144,167	
	SSU	11/30/2009	11/2/2009							3,709		144,167	
	SSU	12/15/2009	11/2/2009							3,709		144,167	
	SSU	12/31/2009	11/2/2009							2,671		<u>144,167</u>	
												<u>576,668</u>	
K. W. Cole	SSU	11/13/2009	11/2/2009							2,632		102,306	
	SSU	11/30/2009	11/2/2009							2,632		102,306	
	SSU	12/15/2009	11/2/2009							2,632		102,306	
	SSU	12/31/2009	11/2/2009							11,646		<u>628,625</u>	
												<u>935,543</u>	
F. A. Henderson	SSU	11/13/2009	11/2/2009							15,576		605,417	
	SSU	11/30/2009	11/2/2009							15,576		605,417	
	SSU	12/15/2009	11/2/2009							15,576		605,417	
	SSU	12/31/2009	11/2/2009							11,216		<u>605,417</u>	
												<u>2,421,668</u>	

(1) Messrs. Whitacre and Wagoner are not included in this table as they did not receive grants under this plan during 2009

(2) On November 2, 2009 the ECC took action to approve grants of SSUs to be made on various salary payment dates as determined by and subject to the approval of the Special Master. The unit value for the November 13, November 30, and December 15 grant dates was \$38.87 based on the July 10, 2009 valuation. The unit value for the December 31 grant date was \$53.98, based on the December 31, 2009 valuation. When salary amounts were converted to SSUs, fractional shares were rounded up to the nearest whole share.

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**OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END 2009**

All of the awards reflected in the table below were granted by Old GM and all obligations in respect thereto were retained by Old GM. The awards reflected in this table, while valued as required by SEC rules, are expected to have a realized value of \$0. This table does not include any SSUs we granted in 2009 to our Named Executive Officers.

(a)	Option Awards (1)					Stock Awards					
	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)		
Name	Grant Date	Number of Securities Underlying Unexercised Options (# Exercisable)	Number of Securities Underlying Unexercised Options (# Unexercisable)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Expiration Date	Grant Date	Number of Shares or Units of Stock That Have Not Vested (2) (#)	Market Value of Shares or Units of Stock That Have Not Vested (2) (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units, or Other Rights That Have Not Vested (3) (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units, or Other Rights That Have Not Vested (3) (\$)
T. G. Stephens	3/05/2008	29,168	58,332		23.13	3/06/2018	3/05/2008	22,688	10,686		
	3/20/2007	33,334	16,666		29.11	3/21/2017	3/20/2007	15,000	7,065		1,300
	2/23/2006	36,000			20.90	2/24/2016					
	1/24/2005	32,000			36.37	1/25/2015					
	1/23/2004	32,000			53.92	1/24/2014					
	1/21/2003	40,000			40.05	1/22/2013	6/02/2003	9,000	4,239		
	2/04/2002	20,000			50.82	2/05/2012					
	1/07/2002	40,000			50.46	1/08/2012					
	1/08/2001	20,000			52.35	1/09/2011					
	1/10/2000	18,000			75.50	1/11/2010					
R. A. Lutz	3/05/2008	83,334	166,666		23.13	3/06/2018	3/05/2008	60,000	28,260	18,396	8,665
	3/20/2007	166,667	83,333		29.11	3/21/2017	3/20/2007	36,000	16,956		
	2/23/2006	106,664			20.90	2/24/2016					
	1/24/2005	160,000			36.37	1/25/2015					
	1/23/2004	160,000			53.92	1/24/2014					
	1/21/2003	200,000			40.05	1/22/2013					
	2/04/2002	100,000			50.82	2/05/2012					
	1/07/2002	100,000			50.46	1/08/2012					
	9/04/2001	200,000			54.91	9/05/2011					
R. G. Young	3/05/2008	29,168	58,332		23.13	3/06/2018	3/05/2008	20,236	9,531	2,760	1,300
	3/20/2007	10,000	5,000		29.11	3/21/2017	3/20/2007	3,651	1,720		
	2/23/2006	10,000			20.90	2/24/2016					
	1/24/2005	12,800			36.37	1/25/2015	6/06/2005	29,412	13,853		
	1/23/2004	12,800			53.92	1/24/2014					
	1/21/2003	16,000			40.05	1/22/2013					
	2/04/2002	7,000			50.82	2/05/2012					
	1/07/2002	14,000			50.46	1/08/2012					
	1/08/2001	7,500			52.35	1/09/2011					
	1/10/2000	6,000			75.50	1/11/2010					
K. W. Cole	3/05/2008	11,459	22,916		23.13	3/06/2018	3/05/2008	10,890	5,129	1,153	543
	3/20/2007	13,334	6,666		29.11	3/21/2017	3/20/2007	3,651	1,720		
	2/23/2006	15,000			20.90	2/24/2016					
	1/24/2005	16,000			36.37	1/25/2015					
	1/23/2004	16,000			53.92	1/24/2014					
	1/21/2003	20,000			40.05	1/22/2013					
	2/04/2002	10,000			50.82	2/05/2012					
	1/07/2002	20,000			50.46	1/08/2012					
	8/06/2001	20,000			63.76	8/07/2011					
G. R. Wagoner, Jr.	3/05/2008		500,000		23.13	3/05/2013					
	3/05/2008	500,000			23.13	3/06/2018					
	3/20/2007	500,000			29.11	3/21/2017	3/20/2007	57,000	26,847		
	2/23/2006	400,000			20.90	2/24/2016					
	1/24/2005	400,000			36.37	1/25/2015					
	1/23/2004	400,000			53.92	1/24/2014					
	1/21/2003	500,000			40.05	1/22/2013					
	2/04/2002	100,000			50.82	2/05/2012					
	1/07/2002	500,000			50.46	1/08/2012					
	1/08/2001	400,000			52.35	1/09/2011					
6/01/2000	50,000			70.10	6/02/2010						
1/10/2000	200,000			75.50	1/11/2010						

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END 2009**  
**Old GM Plans**

We did not assume any of the Old GM plans and we do not expect to pay any awards under these plans.

(1) The stock options in columns (b) and (c) above were granted by Old GM to the Named Executive Officers in a combination of non-qualified and Incentive Stock Options (ISOs) up to the IRC maximum limit on ISOs, on the grant dates shown. Options become exercisable in three equal annual installments commencing on the first anniversary of the date of grant. The ISOs expire ten years from the date of grant, and the non-qualified options expire two days later. However, we assumed none of these outstanding stock options and they are not expected to vest, be exercised, or have any future value.

(2) The amounts in columns (g) and (h) for 2008 and 2007 reflect RSU and CRSU grants by Old GM that, under their original terms, would vest ratably at various dates over several years. The awards are valued in column (h) based on the closing price of MLC Common Stock which is still being traded under the symbol MTLQQ (Pink Sheets) on December 31, 2009 (\$0.471). However, we assumed none of these outstanding awards and they are not expected to vest, be earned, pay out, or have any future value.

(3) Amounts in columns (i) and (j) reflect long term incentive awards granted by Old GM to Named Executive Officers. Award opportunities cover the 2008-2010 performance period and were granted under the Old General Motors 2007 Long-Term Incentive Plan. Each unit in the table refers to a share of MLC Common Stock. The SPP grant may be earned in four discrete installments based on the Total Shareholder Return (TSR) ranking results of three one-year periods and one three-year period. Each installment, if earned, would have been credited as share equivalents and, at the end of the three-year performance period, the value of the number of share equivalents credited would be paid in cash based on the stock price at the end of the performance period. For the 2008-2010 plan, no amount was credited for the 2008 or 2009 periods, and the shares shown also reflect two remaining installments at the threshold (50%) level. The awards are valued in column (j) based on the closing price of MLC Common Stock on December 31, 2009 (\$0.471). However, we assumed none of these outstanding awards and they are not expected to vest, be earned, pay out, or have any future value.

Mr. Henderson terminated employment on December 31, 2009, and forfeited all outstanding unvested equity awards.

**2009 OPTION EXERCISES AND STOCK VESTED**

[a] Name	Option Awards		Stock Awards	
	[b] Number of Shares Acquired on Exercise (#)	[c] Value Realized on Exercise (\$)	[d] Number of Shares Acquired on Vesting (#)	[e] Value Realized on Vesting (\$)
T. G. Stephens	0	0	17,522	945,833
R. A. Lutz	0	0	19,838	1,070,833
R. G. Young	0	0	13,798	576,668
K. W. Cole	0	0	19,542	935,543
F. A. Henderson	0	0	57,944	2,421,668

**Old GM Plans**

The Named Executive Officers exercised no stock options and did not acquire any shares or receive any cash payments as a result of vesting of RSUs, CRSUs, or outstanding performance shares. We assumed none of these outstanding stock options or equity awards. Pursuant to the UST Credit Agreement, we cannot pay or accrue any incentive compensation to Named Executive Officers. No awards granted prior to 2009 were paid out in 2009 when vesting or payment dates occurred and none are expected to pay out at any time in the future.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Our Plans

During 2009, SSUs shown in columns (d) and (e) above were awarded to Named Executive Officers as a portion of their total annual compensation on each salary payment date as described in the "Grants of Plan Based Awards" table. SSUs are non-forfeitable and will be paid in three equal installments at each of the second, third, and fourth anniversary of the quarter in which they were deemed to have been granted. Although the compensation plans were not finalized until late in 2009, these SSUs are deemed to have been issued throughout 2009 on a *nunc pro tunc* basis (as if granted on various salary payroll dates beginning January 1, 2009) and will become payable beginning March 31, 2011, or one year earlier upon certification by our Compensation Committee that repayment of our TARP obligations has commenced.

### RETIREMENT PROGRAMS APPLICABLE TO EXECUTIVE OFFICERS

In 2006, benefit accruals under Old GM's U.S. pension plans were frozen effective December 31, 2006, and new pension plan formulas for U.S. and Canadian executive and salaried employees became effective for service on and after January 1, 2007. The implementation of these changes has had a significant impact on expected retirement benefit levels for executives, resulting in reductions generally ranging from 18% to greater than 50%, depending on the age of the executive at the time the new plan was implemented. We assumed these plans as amended on July 10, 2009.

Benefits for our U.S. executives may be from both a tax-qualified plan that is subject to the requirements of ERISA and from a non-qualified plan that provides supplemental benefits. Tax-qualified benefits are pre-funded and paid out of the trust assets of the Salaried Retirement Program (SRP) for executives with a length of service date prior to January 1, 2001. For executives with a length of service date between January 1, 2001 and December 31, 2006, tax-qualified benefits are pre-funded and paid out of the trust assets of the SRP for service prior to January 1, 2007 and are paid out of the Savings-Stock Purchase Program (S-SPP) for service after December 31, 2006. For executives with a length of service date on or after January 1, 2007, all tax-qualified benefits are paid out of the S-SPP. Non-qualified benefits are not pre-funded and are paid out of our general assets.

U.S. executive employees must be at least age 55 with a minimum of ten years of eligible service to be vested in the U.S. non-qualified ERP, and must have been an executive employee on the active payroll as of December 31, 2006 to be eligible for any frozen accrued non-qualified ERP benefit. As of December 31, 2009, Messrs. Stephens, Lutz, and Cole were eligible to retire under these provisions.

In May 2009, Old GM non-qualified ERP benefits for all executive retirees were reduced by 10%. In June and July of 2009, as a result of Old GM's amendment of ERP and the Old GM bankruptcy and 363 Sale, a number of ERP recipients had their non-qualified benefit further reduced. Effective August 1, 2009, following the 363 Sale, Old GM executive retirees with an annual combined qualified SRP benefit plus non-qualified ERP benefit over \$100,000, had the portion of their ERP benefit above \$100,000 reduced by two-thirds, inclusive of the 10% reduction to ERP benefits effective in May 2009. Also effective August 1, 2009, non-qualified ERP benefits accrued as of that date for active executives were frozen and reduced by 10%. Accruals resumed after August 1, 2009, based on the applicable ERP benefits formula described below. On October 22, 2009 and December 11, 2009 benefit accruals and company contributions under our deferred compensation plans were suspended by the Special Master pursuant to the UST Credit Agreement for SEOs and MHCEs.

Effective for service rendered on and after January 1, 2007, non-qualified retirement benefits for executive employees are determined under one of two methods, depending on an executive's length of service date. Executives retiring on and after January 1, 2007, will have all vested non-qualified retirement benefits (benefits accrued both before and after January 1, 2007) paid as a five-year annuity. Should the executive die within the five-year period, any remaining five-year annuity payments will be converted to a present value lump sum for payment to the executive's surviving spouse or, in the event there is no surviving spouse, the executive's estate. Should an executive die prior to retirement, any vested non-qualified benefits will be converted to a present value lump sum for payment to the executive's surviving spouse or, in the event there is no surviving spouse, the executive's estate. The interest rate used in determining the non-qualified five-year annuity retirement benefits referenced above is the average of the 30-year U.S. Treasury Securities rate for the month of July and is re-determined annually. This annual interest rate is then effective for retirements commencing October 1 through September 30 of the succeeding year.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

For executives with a length of service date prior to January 1, 2001, including Messrs. Stephens, Young, and Henderson, retirement benefits are calculated using a 1.25% Career Average Pay formula. Tax-qualified benefits will accrue for such executives with respect to the total of actual base salary plus eligible AIP final awards received while employed as an executive for service on and after January 1, 2007 equal to 1.25% of base salary plus eligible AIP final awards received up to the IRC 401(a)(17) compensation limit. Non-qualified benefits equal to 1.25% will accrue for such executives with respect to the total of actual base salary plus eligible AIP final awards received in excess of the IRC 401(a)(17) compensation limit. Eligible AIP final awards are defined as those paid with respect to annual incentive compensation performance periods commencing on and after January 1, 2007. Pro-rata annual incentive awards attributable to the year of retirement are not used in the calculation of any non-qualified benefits.

For executives with a length of service date on or after January 1, 2001, including Messrs. Lutz and Cole, retirement benefits are accumulated using a 4% defined contribution formula. Tax-qualified benefits are accrued for such executives with respect to the total of actual base salary and eligible AIP final awards received while employed as an executive for service on and after January 1, 2007, consisting of company contributions equal to 4% of base salary and eligible AIP final awards received up to the IRC 401(a)(17) compensation limit. Non-qualified benefits are accrued for executive service on or after January 1, 2007 consisting of notional contributions equal to 4% of base salary and eligible AIP final awards received in excess of the IRC 401(a)(17) compensation limit. Eligible AIP final awards are defined as those paid with respect to annual incentive compensation performance periods commencing on and after January 1, 2007. Pro-rata annual incentive awards attributable to the year of retirement are not used in the calculation of any non-qualified benefits. The notional contributions are credited into an unfunded individual defined contribution account for each executive. These individual accounts are credited with earnings based on investment options selected by the executive from a list approved by the Executive Compensation Committee.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

2009 Pension Benefits

(a) Name	(b) Plan Name	(c) No. of Years of Eligible Service as of December 31, 2009(1) (#)	(d) Present Value of Accumulated Benefit(2) (\$)	(e) Annual or Five Year Annuity Payable on December 31, 2009 Under GM Pension Plans (\$)	(f) Present Value of December 31, 2009 Plan Benefits (\$)
T. G. Stephens (3)	SRP	40.84	1,601,400	120,600	1,601,400
	ERP	40.84	6,785,100	1,534,400	6,785,100
			<u>8,386,500</u>		<u>8,386,500</u>
R. A. Lutz (4)	SRP	8.33	142,400	18,500	142,400
	ERP	17.33	4,345,600	982,700	4,345,600
			<u>4,488,000</u>		<u>4,488,000</u>
R. G. Young (5)	SRP	23.42	481,200	76,500	357,500
	ERP	23.42	1,000,300	0	0
			<u>1,481,500</u>		<u>357,500</u>
K. W. Cole (4)	SRP	8.42	144,900	11,500	144,900
	ERP	20.75	2,534,600	573,200	2,534,600
			<u>2,679,500</u>		<u>2,679,500</u>
F. A. Henderson (5)	SRP	25.50	631,500	85,200	468,500
	ERP	25.50	0	0	0
			<u>631,500</u>		<u>468,500</u>
G. R. Wagoner, Jr. (6)	SRP	32.00	1,105,400	70,100	1,105,400
	ERP	32.00	7,281,400	1,646,600	7,281,400
			<u>8,386,800</u>		<u>8,386,800</u>

- (1) Eligible service recognizes credited service under the frozen qualified SRP, in addition to service under the new plan formulas. The 35-year cap on ERP service used in calculating the frozen accrued ERP benefits still applies. Also, as noted below, Mr. Cole was approved for 12 years and 4 months of additional service under the non-qualified ERP, and Mr. Lutz was approved for nine additional years of service.
- (2) The present value of the SRP benefit amounts shown takes into consideration the ability of the executive to elect a joint and survivor annuity form of payment. For SRP and ERP benefits, the present value represents the value of the benefit accrued through December 31, 2009 and payable at age 60 (or immediately if over age 60). Benefits and present values reflect the provisions of the SRP and ERP as of December 31, 2009. Present values shown here are based on the mortality and discount rate assumptions used in the December 31, 2009 disclosures contained in footnotes to the consolidated financial statements.
- (3) As of December 31, 2009, Mr. Stephens is eligible to retire under both the qualified and non-qualified GM retirement plans. The amounts shown in column (d) represent the present value of benefits accrued through December 31, 2009, payable at age 60 (or immediately if over age 60) as a lifetime annuity form of payment for the SRP and payable as a five year annuity form of payment for the ERP. The amounts shown in column (e) are payable immediately, with the SRP benefit reduced from age 62. The ERP benefit is unreduced at age 60. The amounts in column (f) are the present values of the benefits shown in column (e).
- (4) Beginning January 1, 2007, benefits for Messrs. Cole and Lutz are accumulated using the 4% defined contribution formula and are included in the "2009 All Other Compensation Table." The SRP amounts shown in column (d) only reflect their frozen Account Balance Plans, valued and payable immediately as a lifetime annuity.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

In addition, beginning January 1, 2007, benefits under the ERP for Messrs. Cole and Lutz are accumulated using the 4% defined contribution formula on the total of actual base and eligible AIP final awards received in excess of the IRS 401(a)(17) compensation limit. The ERP amounts in column (d) for Messrs. Cole and Lutz include their accumulated benefit under the 4% ERP defined contribution formula plus the frozen ERP benefit, valued and payable immediately as a five-year annuity form of payment. For purposes of calculating benefits under the frozen ERP, the Committee approved a combined total award of 12 years and 4 months of additional service credits for Mr. Cole on February 5, 2001 and February 6, 2006 and awarded nine additional years of service credits for Mr. Lutz on December 4, 2006.

- (5) As of December 31, 2009, Messrs. Henderson and Young are not eligible to retire under any qualified or non-qualified retirement plan. Amounts shown in column (d) for Messrs. Henderson and Young represent the present value of benefits accrued through December 31, 2009 payable at age 60 as a lifetime annuity form of payment for the SRP with reduction from age 62, and payable as a five year annuity form of payment for the ERP. Upon termination of employment prior to retirement eligibility, Messrs. Henderson and Young are only eligible for a deferred vested benefit from the SRP, reduced for age if received prior to age 65. The amount shown in column (e) represents the annual deferred vested SRP benefit that would be payable commencing at age 65. The present value benefit shown in column (f) represents the amount that would be payable per SRP plan rules if taken at year-end 2009 as a lump sum. They would not have been eligible for ERP benefits if service terminated on December 31, 2009. Mr. Henderson did terminate employment on December 31, 2009, and, therefore, forfeited the ERP benefit, reflecting a zero value in column (d). He may elect to receive his deferred vested SRP benefit at any time.
- (6) Mr. Wagoner retired from the Company on August 1, 2009, and commenced receipt of retirement benefits pursuant to the Old GM plan provisions applicable to Mr. Wagoner. His SRP benefit shown above in column (e) comprehends his election of a joint and survivor annuity form of payment. A significant portion of his non-qualified ERP benefits was reduced by two-thirds, consistent with the ERP reductions adopted by Old GM and applicable to Mr. Wagoner. Because Mr. Wagoner is a specified employee as defined by IRC 409A, he was subject to a six month waiting period before payment of his ERP benefits commenced.

## 2009 NONQUALIFIED DEFERRED COMPENSATION PLANS

### Old GM Plans

Old GM maintained the following nonqualified deferred compensation plans for executives:

- The Deferred Compensation Plan (DCP) described below, and
- The Benefit Equalization Plan (BEP) included in “Our Plans” on the following pages.

In addition, certain incentive awards earned and vested under the incentive plans were subject to mandatory deferral.

The DCP permitted senior executives to defer a portion of their base salary, AIP, SPP, and RSU earnings into the plan. The plan included eight investment options, one of which was Old GM common stock. No deferrals into the plan have been allowed since December 31, 2005. Dividend equivalents were credited and paid on Old GM common stock units until suspended on July 14, 2008. We did not assume the DCP on July 10, 2009 and the DCP will be included in the liquidation and asset distribution of MLC.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

Old GM Nonqualified Deferred Compensation Plans

Name (a)	Plan	Executive Contributions in the Last Fiscal Year (b)	Registrant Contributions in the Last Fiscal Year (c)	Aggregate Earnings in the Last Fiscal Year (d)	Aggregate Withdrawals and Distributions (e)	Aggregate Balance at 2009 Fiscal Year End (f)
T. G. Stephens (1)	DCP	\$ 0	\$ 0	\$ (108,757)	\$ (48,080)	\$ 0
R. A. Lutz (2)	DCP	\$ 0	\$ 0	\$ (297,034)	\$ (131,316)	\$ 0
	RSU			\$ (204,675)		\$ 35,325
						\$ 35,325
R. G. Young (3)	DCP	\$ 0	\$ 0	\$ (4,196)	\$ (33,934)	\$ 0
F. A. Henderson (4)	DCP	\$ 0	\$ 0	\$ (135,369)	\$ (291,896)	\$ 47,683
G. R. Wagoner, Jr. (5)	DCP	\$ 0	\$ 0	\$ (35,921)	\$ (362,634)	\$ 0
	RSU			\$ (341,125)		\$ 58,875
						\$ 58,875

The table above reflects year-end balances and contributions, earnings, and withdrawals during the year for the DCP, as well as vested, but unpaid, RSUs for the Named Executive Officers. The plan does not provide for interest or earnings to be paid at above-market rates, so none of the amounts in column (d) have been reported in the Summary Compensation Table. Mr. Cole did not participate in the DCP and had no vested, but unpaid, incentive awards.

- (1) On May 15, 2009 Mr. Stephens elected to receive an unscheduled distribution of all assets from the DCP as permitted under IRC 409A. The gross distribution included 44,110 shares of Old GM common stock at a share price of \$1.09 and was subject to a 10% penalty pursuant to plan terms.
- (2) On May 15, 2009 Mr. Lutz elected to receive an unscheduled distribution of all assets from the DCP as permitted under IRC 409A. The gross distribution included 120,473 shares of Old GM common stock at a share price of \$1.09 and was subject to a 10% penalty pursuant to plan terms. 75,000 RSUs were granted to Mr. Lutz on January 21, 2003, in lieu of cash bonus, deliverable upon retirement or mutual separation. We did not assume any obligation in respect of these incentive awards. The amount shown is based on the December 31, 2009 MLC share price of \$0.471. We estimate that the actual realizable value of these shares is \$0.
- (3) On May 15, 2009 Mr. Young elected to receive an unscheduled distribution of all assets from the DCP as permitted under IRC 409A. This gross withdrawal amount was subject to a 10% penalty pursuant to plan terms.
- (4) On May 15, 2009 Mr. Henderson elected to receive an unscheduled distribution of cash assets from the DCP as permitted under IRC 409A. This gross withdrawal amount was subject to a 10% penalty pursuant to plan terms. Mr. Henderson's remaining DCP balance includes 101,238 shares of MLC at a December 31, 2009 share price of \$0.471. We estimate that the actual realizable value of these shares is \$0.
- (5) On April 21, 2009 Mr. Wagoner elected to receive an unscheduled distribution of all assets from the DCP as permitted under IRC 409A. This gross withdrawal amount was subject to a 10% penalty pursuant to plan terms. 125,000 RSUs were granted to Mr. Wagoner on January 21, 2003, in lieu of cash bonus, deliverable upon retirement or mutual separation. We did not assume these RSUs and the amount shown in Column (f) is their value based on the closing price of MLC common stock on December 31, 2009 of \$0.471. Even though Mr. Wagoner retired effective August 1, 2009, pursuant to the UST Credit Agreement his awards cannot be paid out and are not expected to be paid out at any time in the future.
- (6) All amounts reported in column (f), except earnings at prevailing market rates, have been reported in the Summary Compensation Table in previous years when earned if that officer's compensation was required to be disclosed in the applicable year. Amounts previously reported in such years include previously earned, but deferred salary and incentives and Company matching contributions.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

The total reflects the cumulative value of these deferrals, contributions, and investment choices.

Pursuant to our UST Credit Agreement, we cannot pay or accrue any incentive compensation to Named Executive Officers. No awards granted prior to 2009 were vested or paid out in 2009 when vesting or payment dates occurred and none are expected to vest or pay out at any time in the future.

### Our Plans

We maintain certain deferred compensation programs and arrangements for executives, including the Named Executive Officers.

**BEP** — The BEP is a non-qualified plan that allows for the equalization of benefits for certain highly compensated salaried employees under the SRP and the S-SPP when such employees' contribution and benefit levels exceed the maximum limitations on contributions and benefits imposed by Section 2004 of the Employee Retirement Income Security Act of 1974, as amended, and Section 401(a)(17) and 415 of the IRC, as amended. The plan is maintained as an unfunded plan and we bear all expenses for administration of the plan and payment of amounts to participants. Our contributions to employee accounts are currently invested in one or more of six investment options. Company contributions to the BEP were suspended on October 22, 2009 for Messrs. Young, Cole, and Henderson and on December 11, 2009 for Messrs. Stephens and Lutz.

**Salary Stock Plan** — Pursuant to plan terms and upon approval of the Special Master, Named Executive Officers receive a portion of their total annual compensation in the form of SSUs. SSUs are granted on each salary payment date to Named Executive Officers based on the most current valuation of the Company as determined by an independent third party. SSUs are non-forfeitable and will be paid in three equal installments at each of the second, third, and fourth anniversary of the quarter in which they were deemed to be granted, and may become payable one year earlier upon certification by our Compensation Committee that repayment of our TARP obligations has commenced.

The table below reflects year-end balances and all contributions, earnings and withdrawals during the year for the BEP, as well as vested but unpaid SSUs for the Named Executive Officers.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

Contributions include amounts credited to employee BEP accounts for both pre- and post- bankruptcy periods. We have included them below in column (c) for greater continuity and because we assumed all obligations in respect of the BEP from Old GM in the 363 Sale.

**2009 GM Nonqualified Deferred Compensation Plans**

<u>Name</u> <u>(a)</u>	<u>Plan</u>	<u>Executive Contributions in the Last Fiscal Year</u> <u>(b)</u>	<u>Registrant Contributions in the Last Fiscal Year (7)</u> <u>(c)</u>	<u>Aggregate Earnings in the Last Fiscal Year (8)</u> <u>(d)</u>	<u>Aggregate Withdrawals and Distributions</u> <u>(e)</u>	<u>Aggregate Balance at 2009 Fiscal Year End (9)</u> <u>(f)</u>
T. G. Stephens (1)	SSU	\$ 0	\$ 945,833			\$ 945,833
	BEP	\$ 0	\$ 9,334	\$ 5,362		\$ 59,563
						<u>\$1,005,396</u>
R. A. Lutz (2)	SSU	\$ 0	\$ 1,070,833			\$ 1,070,833
	BEP	\$ 0	\$ 23,799	\$ 23,244		\$ 152,543
						<u>\$1,223,376</u>
R. G. Young (3)	SSU	\$ 0	\$ 576,668			\$ 576,668
	BEP	\$ 0	\$ 1,650	\$ 3,863		\$ 39,731
						<u>\$ 616,399</u>
K. W. Cole (4)	SSU	\$ 0	\$ 935,543			\$ 935,543
	BEP	\$ 0	\$ 8,628	\$ 7,802		\$ 63,860
						<u>\$ 999,403</u>
F. A. Henderson (5)	SSU	\$ 0	\$ 2,421,668			\$ 2,421,668
	BEP	\$ 0	\$ 2,888	\$ 9,012	\$ 6,987	\$ 0
						<u>\$2,421,668</u>
G. R. Wagoner, Jr. (6)	SSU	\$ 0	\$ 0			\$ 0
	BEP	\$ 0	\$ 0	\$ (7,693)	\$ (128,379)	\$ 0
						<u>\$ 0</u>

As described in the "2009 Grants of Plan Based Awards" table and narrative, each of the grants described below will be treated as having been granted, *nunc pro tunc*, throughout 2009 beginning January 1 and will be paid on the anniversary of the quarter in which it was deemed to have been granted.

- (1) The amount shown for Mr. Stephens consists of a grant of 17,522 SSUs on December 31, 2009.
- (2) The amount shown for Mr. Lutz consists of a grant of 19,838 SSUs on December 31, 2009.
- (3) The amount shown for Mr. Young consists of SSUs grants on each of the following dates: 3,709 on November 13, 2009; 3,709 on November 30, 2009; 3,709 on December 15, 2009; and 2,671 on December 31, 2009.
- (4) The amount shown for Mr. Cole consists of SSU grants on each of the following dates: 2,632 on November 13, 2009; 2,632 on November 30, 2009; 2,632 on December 15, 2009; and 11,646 on December 31, 2009.
- (5) The amount shown for Mr. Henderson consists of SSU grants on each of the following dates: 15,576 on November 13, 2009; 15,576 on November 30, 2009; 15,576 on December 15, 2009; and 11,216 on December 31, 2009.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

At the time of his termination on December 31, 2009, Mr. Henderson had both vested and unvested BEP benefits. Unvested benefits in the amount of \$78,249 were forfeited and his vested benefits in the amount of \$6,987 will be paid as a lump sum pursuant to plan provisions that provide for this form of payment when the present value of the benefit is less than the dollar limit under IRC 402(g). Because Mr. Henderson was a specified employee as defined by IRC 409A, he is subject to a six month waiting period before payment of his BEP benefits can commence.

- (6) Effective August 1, 2009 Mr. Wagoner retired. Pursuant to Plan provisions, his vested benefits under the BEP were withdrawn and converted to a 5-year monthly annuity form of payment. Because Mr. Wagoner was a specified employee as defined by IRC 409A, he was subject to a six month waiting period before payment of his BEP benefits commenced in February 2010.
- (7) For each of the Named Executive Officers, the BEP amount reported here in column (c) is included within the amount reported in column (i) and footnote (9) of the 2009 Summary Compensation Table. The amounts reported in the Summary Compensation Table are larger because they also include our contributions to the S-SPP (tax-qualified plan). The SSU amount reported here in column (c) is included within the amount reported in column (e) and footnote (6) of the Summary Compensation Table.
- (8) None of the amounts reported above in column (d) are reported in column (h) of the 2009 Summary Compensation Table because we do not pay guaranteed, above-market earnings on deferred compensation.
- (9) All amounts reported in column (f), except earnings at prevailing market rates, have been reported in the Summary Compensation Table in previous years when earned if that officer's compensation was required to be disclosed in the applicable year. Amounts previously reported in such years include previously earned Company matching contributions. The total reflects the cumulative value of these contributions, and investment choices.

### POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE IN CONTROL

#### Potential Termination Payments — GM

We maintain compensation and benefit plans that will provide payment of compensation in the event of termination of employment due to retirement, death, and mutually-agreed-upon separation. These provisions are generally applicable to all plan participants and are not reserved only for Named Executive Officers. The amount of compensation payable to each Named Executive Officer in these situations is described in the tables that follow. We do not provide a change in control severance plan for executives, and, pursuant to TARP regulations, no severance payments may be made to Named Executive Officers.

**Retirement and Pension Benefits.** Plan provisions are described in the "2009 Pension Benefits" discussion, along with pension benefits for Named Executive Officers. No other individualized arrangements exist with Named Executive Officers except those disclosed in the "Employment Agreements" section below.

As of December 31, 2009, Mr. Stephens was eligible to retire pursuant to the provisions of both the qualified SRP and the non-qualified ERP.

As of December 31, 2009, Messrs. Cole and Lutz were eligible to retire pursuant to the provisions of the qualified SRP. Both were also eligible to receive non-qualified ERP benefits pursuant to the Compensation Committee's action in 2001 and 2004, respectively, to grant full vesting rights with five years of service.

As of December 31, 2009, Mr. Young was not eligible to retire under any qualified or non-qualified retirement plan. Upon termination of employment, he could receive a deferred vested benefit from the qualified SRP, reduced for age if received prior to age 65. This benefit is available to any participant in the plan. His non-qualified ERP benefits would have been forfeited.

Mr. Wagoner retired August 1, 2009 and was eligible for benefits under the qualified SRP and the non-qualified ERP.

Mr. Henderson terminated employment on December 31, 2009. At that time, he was not eligible to retire under any qualified or non-qualified retirement plan. He will receive a deferred vested benefit from the qualified SRP, reduced for age if received prior to age 65.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

**Benefits Payable at Death.** Upon death of an active employee, we provide one month salary to certain dependents including surviving spouses, members of employee's family, or other individuals who are to be responsible for payment of funeral expenses. This benefit is provided generally for all salaried employees. In addition, pursuant to SRP plan terms we provide eligible survivors a monthly pension benefit based on a percentage of the monthly retirement benefit payable to the employee where the survivor option has been elected. Under the terms of the ERP, survivor benefits, if applicable, are payable as a lump sum. Supplemental Life Benefits are provided for all executives.

**Incentive Plans.** Under the provisions of the Salary Stock Plan, awards are vested when earned, and will continue to be paid in accordance with their terms as described in the "Options Exercised and Stock Vested" table upon separation, other than "For Cause."

**Vacation Pay.** Salaried employees may receive pay in lieu of unused vacation in the calendar year of termination of employment. Totals assume all vacation entitlement has been used as of December 31, 2009.

**Health Care Coverage Continuation.** Under provisions of the General Motors Salaried Health Care Program covering all U.S. salaried employees, Messrs. Cole, Lutz, and Young could continue health care coverage as provided under applicable federal laws (i.e., COBRA). Based on his eligibility to retire, Mr. Stephens would be eligible to receive financial contributions toward health care coverage in retirement until age 65. Mr. Wagoner retired and is receiving financial contributions toward health care coverage in retirement until age 65. Mr. Henderson terminated employment and is receiving health care coverage under COBRA.

### Employment Agreements

Although we have described the material elements of certain employment arrangements with Named Executive Officers below, we are currently prohibited by the UST Credit Agreement from paying any severance or bonus and incentive compensation amounts to Named Executive Officers. The Named Executive Officers have waived their contractual entitlement to any payment that would violate the terms of the UST Loan Agreement.

**Edward E. Whitacre, Jr.** As disclosed in Form 8-K filed February 19, 2009, the following terms describe our employment arrangement with Mr. Whitacre. Mr. Whitacre's annual cash base salary is \$1,700,000, and he participates in the benefit plans currently available to executive officers as described on Form 8-K, filed August 7, 2009, and as set forth as exhibits to various periodic filings by the Company. He also receives a portion of his total annual compensation in the form of salary stock, awarded pursuant to the provisions of the Salary Stock Plan, in the amount of \$5,300,000, which will be delivered ratably over three years beginning in 2012, or one year earlier upon certification by our Compensation Committee that repayment of our TARP obligations has commenced, and will be granted TARP compliant restricted stock units valued at \$2,000,000. This arrangement does not provide for any special post-employment compensation or benefits.

**Robert A. Lutz** In June 2004, Old GM's Compensation Committee agreed to permit Mr. Lutz to become eligible for an ERP benefit after a minimum of five years of eligible service. On December 4, 2006, Old GM's Compensation Committee also approved the recognition of nine additional years of service credits for purposes of calculating benefits under the ERP for Mr. Lutz. This action, taken in recognition of Mr. Lutz's ongoing contribution to the Company, permits the accumulation of all service rendered to the Company by Mr. Lutz, including a prior period of Old GM employment from 1963 to 1972, for the purpose of determining his frozen ERP benefit, included in the ERP and disclosed in column (c) of the "2009 Pension Benefits" table. We assumed these arrangements on July 10, 2009.

**Kenneth W. Cole** In October 2008, Old GM entered into an employment agreement with Kenneth W. Cole which provided him a base salary of \$715,000 (reduced by 10% to \$643,500 during 2009) and a guaranteed payment of \$785,000 for 2009. This agreement pre-dated the UST Credit Agreement and was reviewed with the UST as part of our 2009 compensation planning. The employment agreement was subsequently terminated on September 4, 2009.

In addition, Old GM's Compensation Committee agreed in February 2001 to permit Mr. Cole to become eligible for an ERP benefit after a minimum of five years of eligible service. On February 5, 2001, Old GM's Compensation Committee approved the recognition of 8 years and 4 months of additional years of service credits for purposes of calculating frozen benefits under the ERP for Mr. Cole,

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

and on February 6, 2006 also approved an additional 4 years of service credits. The combined total award of 12 years and 4 months of additional service for purposes of calculating frozen benefits under the ERP recognizes service from a previous employer and Mr. Cole's ongoing contribution to the Company. We assumed all obligations for these arrangements on July 10, 2009.

**Frederick A. Henderson** On February 18, 2010, Mr. Henderson and General Motors Holdings LLC, a subsidiary of the Company, entered into an agreement to engage his services as a consultant on a month-to-month basis pursuant to the following material terms: The agreement will expire on December 31, 2010 unless terminated earlier by either party; Mr. Henderson will provide an estimated 20 hours of consulting services per month, consisting of advice on international operations, and participation in one meeting per month with the President, International Operations or his designated representative; Mr. Henderson will receive a fee of \$59,090 payable monthly and reimbursement of reasonable expenses. During the period of the consulting agreement Mr. Henderson is free to provide consulting services to other clients, except that he may not engage in or perform any services for any business which designs, manufactures, develops, promotes, or sells any automobiles or trucks, in competition with or for competitors of the Company or any of its affiliates.

### **Non-Employee Director Compensation**

Compensation for our non-employee directors is set by our Board at the recommendation of the Governance Committee. Pursuant to the Board's Corporate Governance Guidelines, the Governance Committee is responsible for conducting an annual assessment of non-employee director compensation. The Governance Committee compares our Board's compensation to compensation paid to directors at peer companies having similar size, scope and complexity.

Only non-employee directors receive specific payment for serving on the Board. Because Mr. Henderson was employed by us, he received no additional compensation during the period he served as a director. Non-employee directors are not eligible to participate in the S-SPP, or any of the retirement programs for our employees. Other than as described in this section, there are no separate benefit plans for directors.

Non-employee directors are reimbursed for reasonable travel expenses incurred in connection with their duties as directors. Under our Expense Policy, members of the Board may use charter aircraft for travel only in North America and only when a clear business rationale is stated. The Governance Committee periodically monitors the use of charter aircraft.

To familiarize directors with our product line, we provide the use of a company vehicle on a six-month rotational basis and directors are expected to submit product evaluations to us. In addition, we pay for the cost of personal accident insurance coverage and until January 1, 2010, we paid the cost of personal liability insurance coverage.

### **Old GM Board of Directors**

Members of the Old GM Board of Directors served until July 10, 2009, when the 363 Sale closed and our Board was constituted. The Old GM Board voluntarily agreed to reduce its total compensation for 2009, including annual Board retainer, retainers for Committee Chairs and Audit Committee membership, and fees for excess meetings and special services, to one dollar effective January 1, 2009. Prior to 2009, each non-employee director of Old GM received an annual Board retainer of \$200,000 on a pro rata basis effective March 1, 2008, which was voluntarily reduced from time to time. Under the General Motors Corporation Compensation Plan for Non-Employee Directors (Old GM Director Compensation Plan), Old GM non-employee directors were required to defer at least 70% of their annual Board retainer (i.e., \$140,000) into share units of its common stock and could elect to receive the remaining compensation in cash or to defer in cash-based alternatives or share units.

The Old GM Director Compensation Plan remains in place with respect to past deferrals of compensation to former directors of Old GM, including those who are now members of our Board. Old GM directors who deferred compensation into share units of common stock are not expected to receive any value for this deferred compensation under Old GM's bankruptcy proceedings. In addition, deferred cash-based account balances were reduced by ten percent for Old GM non-employee directors effective September 8, 2009, in line with the penalty incurred by Old GM executives on early withdrawal of their deferred cash account balances. Interest on fees

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

deferred in cash-based alternatives was credited monthly to the directors' accounts. Old GM did not credit interest at above-market rates. In general, Old GM did not pay deferred amounts until January following the director's retirement or separation from the Old GM Board. Old GM then paid those amounts, either in lump sum or in annual installments for up to ten years based on the director's deferral election. (Members of the Old GM Board who are now serving on our Board will not receive their deferred amounts until after they leave our Board.)

**2009 Old GM Non-Employee Director Compensation**

<u>Director (a)</u>	<u>Fees Earned or Paid in Cash</u> \$	<u>All Other Compensation (b)</u> \$	<u>Total</u> \$
Percy N. Barnevik	0	2,882	2,882
Erskine B. Bowles	1	10,250	10,251
John H. Bryan	1	32,586	32,587
Armando M. Codina	1	8,004	8,005
Erroll B. Davis, Jr.	1	7,880	7,881
George M.C. Fisher	1	25,616	25,617
E. Neville Isdell	1	4,316	4,317
Karen Katen	1	4,724	4,725
Kent Kresa	1	8,021	8,022
Philip A. Laskawy	1	7,727	7,728
Kathryn V. Marinello	1	7,650	7,651
Eckhard Pfeiffer	1	19,585	19,586

(a) Mr. Barnevik resigned from the Old GM Board effective February 3, 2009. The other directors resigned from the Old GM Board in early July 2009, either before or immediately after the closing of the 363 Sale.

(b) "All Other Compensation" is comprised of interest paid on deferred cash-based accounts; incremental costs for the use of company vehicles and reimbursement of associated taxes until August 1, 2009; and the costs associated with personal accident and liability insurances.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

**All Other Compensation**

Totals for amounts reported as “All Other Compensation” in the preceding “2009 Old GM Non-Employee Director Compensation” table are described below:

<u>Director</u>	<u>Aggregate Earnings on Deferred Compensation</u> ( <u>\$</u> )	<u>Company Vehicle (a)</u> ( <u>\$</u> )	<u>Tax Reimbursement (b)</u> ( <u>\$</u> )	<u>Other (c)</u> ( <u>\$</u> )	<u>Total</u> ( <u>\$</u> )
Percy N. Barnevik	0	1,905	532	445	2,882
Erskine B. Bowles (e)	0	6,984	2,771	495	10,250
John H. Bryan (d)(e)	23,112	5,714	3,690	70	32,586
Armando M. Codina (e)	0	4,444	3,065	495	8,004
Erroll B. Davis, Jr.	744	3,810	3,035	291	7,880
George M.C. Fisher (d)(e)	19,574	3,175	2,372	495	25,616
E. Neville Isdell	0	3,810	436	70	4,316
Karen Katen (e)	0	2,540	1,689	495	4,724
Kent Kresa	604	3,810	3,316	291	8,021
Philip A. Laskawy	0	3,810	3,626	291	7,727
Kathryn V. Marinello	0	3,810	3,549	291	7,650
Eckhard Pfeiffer (d)(e)	7,056	6,984	5,050	495	19,585

- (a) Includes incremental costs for company vehicles which are calculated based on the average monthly cost of providing vehicles to all directors, including lost sales opportunity and incentive costs, if any; insurance claims, if any; licensing and registration fees; and use taxes.
- (b) Directors were charged with imputed income based on the lease value of the vehicle driven and reimbursed for associated taxes until August 1, 2009.
- (c) Reflects cost of premiums for providing personal accident and personal umbrella liability insurance. If a director elected to receive coverage, the taxes related to the imputed income are the responsibility of the director.
- (d) We administered the Old GM Director Compensation Plan after July 9, 2009. Amounts shown under “Aggregate Earnings on Deferred Compensation” for Mr. Bryan, Mr. Fisher and Mr. Pfeiffer include interest credited to their deferred cash-based accounts in 2009 including the period subsequent to July 9, 2009.
- (e) Following their resignation from the Old GM Board, Mr. Bowles, Mr. Bryan, Mr. Codina, Mr. Fisher, Ms. Katen and Mr. Pfeiffer were requested to turn in their company vehicles as soon as practicable since they did not join our Board. We paid for the costs related to providing company vehicles during the transition period which followed the closing of the 363 Sale in addition to costs related to selling company vehicles to certain former directors. Directors were charged imputed income for use of these vehicles and were responsible for associated taxes beginning August 1, 2009

**General Motors Board of Directors**

Following the recommendation of the Governance Committee, our Board determined that effective July 10, 2009, each member of the Board who is not an employee would be paid, in cash, an annual retainer of \$200,000 for service on the Board and, if applicable, one or more of the following annual retainers:

- (i) \$10,000 for service as Chair of any Board committee; (ii) \$20,000 for service on the Audit Committee; and (iii) \$150,000 for service as the Chairman of the Board. In addition, until August 1, 2009, the members of the Board could be reimbursed for taxes related to income imputed to them for the use of company cars provided to non-employee directors.

At Mr. Bonderman’s request, his annual retainer of \$200,000 for service on the Board was reduced to one dollar.

On March 2, 2010, the Governance Committee approved an additional annual retainer of \$10,000 for service as Lead Director, consistent with the annual retainer paid to the Chair of any Board committee.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

The fees for a director who joins or leaves our Board or assumes additional responsibilities during the fiscal year are pro rated for his or her period of service. The fees listed in the table below reflect any pro-rata adjustments that occurred in 2009.

**2009 General Motors Non-Employee Director Compensation**

<u>Director</u>	<u>Fees Earned or Paid in Cash (a)</u>	<u>All Other Compensation (b)</u>	<u>Total</u>
	\$	\$	\$
Daniel F. Akerson (d)	91,667	1,444	93,111
David Bonderman (d)	1	1,095	1,096
Erroll B. Davis, Jr. (c)	108,333	3,337	111,670
Stephen J. Girsky (c)	100,000	76,792	176,792
E. Neville Isdell (c)	104,167	2,286	106,453
Robert D. Krebs (d)	83,333	1,095	84,428
Kent Kresa (c)	112,500	3,242	115,742
Philip A. Laskawy (c)	112,500	2,815	115,315
Kathryn V. Marinello (c)	100,000	2,958	102,958
Patricia A. Russo (d)	87,500	1,095	88,595
Carol M. Stephenson (d)	83,333	1,820	85,153

- (a) Includes annual retainer fees, Chair and Audit Committee fees. Fees for excess meetings and special services were eliminated effective July 10, 2009.
- (b) "All Other Compensation" includes among other items incremental costs for the use of company vehicles and reimbursement of associated taxes until August 1, 2009; and the costs associated with personal accident and liability insurances.
- (c) Following their resignations from the Old GM Board, Mr. Davis, Mr. Isdell, Mr. Kresa, Mr. Laskawy, and Ms. Marinello joined our Board on July 10, 2009. Mr. Girsky and Mr. Whitacre also joined our Board on the same day. (Mr. Whitacre's compensation as a director is reflected in the Summary Compensation Table.)
- (d) Mr. Akerson, Mr. Bonderman, Mr. Krebs, Ms. Russo and Ms. Stephenson joined the Board on July 24, 2009.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****All Other Compensation**

Totals for amounts reported as “All Other Compensation” in the preceding “2009 General Motors Non-Employee Director Compensation” table are described below:

<u>Director</u>	<u>Aggregate Earnings on Deferred Compensation</u> (\$)	<u>Company Vehicle (a)</u> (\$)	<u>Tax Reimbursement (b)</u> (\$)	<u>Other (c)</u> (\$)	<u>Total</u> (\$)
Daniel F. Akerson	0	1,394	0	50	1,444
David Bonderman	0	1,045	0	50	1,095
Erroll B. Davis, Jr.(e)	650	2,091	342	254	3,337
Stephen J. Girsky (d)	0	1,742	0	75,050	76,792
E. Neville Isdell	0	2,091	145	50	2,286
Robert D. Krebs.	0	1,045	0	50	1,095
Kent Kresa (e)	523	2,091	374	254	3,242
Philip A. Laskawy	0	2,091	470	254	2,815
Kathryn V. Marinello	0	2,091	613	254	2,958
Patricia A. Russo	0	1,045	0	50	1,095
Carol M. Stephenson	0	1,742	28	50	1,820

- (a) Includes incremental costs for company vehicles which are calculated based on the average monthly cost of providing vehicles to all directors, including lost sales opportunity and incentive costs, if any; insurance claims, if any; licensing and registration fees; and use taxes.
- (b) Directors are charged with imputed income based on the lease value of the vehicle driven and were reimbursed for associated taxes until August 1, 2009.
- (c) Reflects cost of premiums for providing personal accident and personal umbrella liability insurance. If a director elects to receive coverage, the taxes related to the imputed income are the responsibility of the director. Effective January 1, 2010, we no longer pay for the cost of providing personal umbrella liability insurance.
- (d) “Other” amount for Mr. Girsky reflects additional compensation received in the form of salary stock for his services as Senior Advisor to the Office of the Chairman in December 2009. See “Item 13. Certain Relationships and Related Transactions, and Director Independence” under “Certain Relationships.”
- (e) We assumed the Old GM Director Compensation Plan and it remains in place with respect to past deferrals of compensation to Old GM directors who are members of our Board.

**Compensation Committee Interlocks and Insider Participation**

No executive officer of GM served on any board of directors or compensation committee of any other company for which any of our directors served as an executive officer at any time during fiscal year 2009.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES****Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The following table gives information about each entity known to us to be the beneficial owner of more than 5% of our common stock as of March 15, 2010.

<u>Name and Address of Beneficial Owner</u>	<u>Number of Shares</u>	<u>Percent of Common Stock (3)</u>
The United States Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220	304,131,356	60.83%
Canada GEN Investment Corporation (Formerly 7176384 Canada Inc.) 1235 Bay Street, Suite 400 Toronto, Ontario, Canada M5R 3K4	58,368,644	11.67%
UAW Retiree Medical Benefits Trust P.O. Box 14309 Detroit, Michigan 48214	102,651,515(1)	19.93%
Motors Liquidation Company 300 Renaissance Center Detroit, Michigan 48265-3000	140,909,090(2)	23.85%
All Directors and Executive Officers of General Motors Company 300 Renaissance Center Detroit, Michigan 48265-3000	0	0%

- (1) Includes 15,151,515 shares of our common stock issuable upon the exercise of a warrant we issued to the New VEBA. In connection with the closing of the 363 Sale, we issued a warrant to the New VEBA to acquire 15,151,515 newly issued shares of our common stock, exercisable at any time prior to December 31, 2015, with an exercise price of \$126.92 per share. The number of shares of our common stock underlying the warrant and the per share exercise price are subject to adjustment as a result of certain events, including stock splits, reverse stock splits and stock dividends.
- (2) Includes 90,909,090 shares of our common stock issuable upon the exercise of warrants we issued to MLC. On July 10, 2009, in connection with the closing of the 363 Sale, we issued two warrants to MLC, one to acquire 45,454,545 newly issued shares of our common stock, exercisable at any time prior to the seventh anniversary of issuance, with an exercise price of \$30.00 per share and the other to acquire 45,454,545 newly issued shares of our common stock, exercisable at any time prior to the tenth anniversary of issuance, with an exercise price of \$55.00 per share. The number of shares of our common stock underlying each of the warrants and the per share exercise price thereof are subject to adjustment as a result of certain events, including stock splits, reverse stock splits and stock dividends.
- (3) These percentages reflect the maximum potential percentage ownership of our common stock for each beneficial owner. As such, the percentage ownership of the UST and Canada GEN Investment Corporation are calculated based on a total of 500,000,000 shares outstanding. The percentage ownership of the New VEBA is calculated based on a potential total of 515,151,515 shares outstanding (which, in addition to the 500,000,000 shares currently outstanding, includes the 15,151,515 shares of common stock that would be issued to the New VEBA if it exercised its warrant, as described in footnote (1) above). The percentage ownership of MLC is calculated based on a potential total of 590,909,090 shares outstanding (which, in addition to the 500,000,000 shares currently outstanding, includes the 90,909,090 shares of common stock that would be issued to MLC if it exercised its warrants, as described in footnote (2) above).

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Item 13. *Certain Relationships and Related Transactions, and Director Independence*

#### *Certain Relationships*

We have adopted written policies and procedures for reviewing and approving transactions we enter into with our related persons, including directors, executive officers, and holders of at least 5% of our outstanding common stock, and their immediate family members or affiliates. Our Legal Staff is primarily responsible for developing and implementing a process to obtain information from our directors and executive officers to identify possible related person transactions and to determine based on the facts and circumstances whether such a transaction involves a direct or indirect material interest of us or our related persons. We disclose transactions that are determined to be directly or indirectly material to us or a related person as required by SEC rules. In addition, the Governance Committee is responsible for annually reviewing the independence of each director and the appropriateness of any potential related person transactions and related issues.

Douglas L. Henderson, brother of former President and Chief Executive Officer Frederick A. Henderson, is employed by General Motors LLC. In addition, Juli A. Stephens, sister-in-law of Vice Chairman Thomas G. Stephens, and George T. Stephens, Mr. Stephens' brother, are employed by General Motors LLC. Mr. Douglas Henderson, Ms. Juli Stephens, and Mr. George Stephens each make less than \$155,000 per year, and receive salary and benefits comparable to those provided to other GM employees in similar positions.

David Bonderman is a founding partner of TPG, a private investment firm, whose affiliate invests in auto dealerships in Asia representing various vehicle manufacturers. These investments include dealerships in China that sell Chevrolet and Buick brand vehicles under a distribution agreement with Shanghai GM. Under the terms of Shanghai GM's joint venture agreement, we do not control Shanghai GM's distribution activities.

In 2009, while serving as President of S.J. Girsky & Co. (SJG), Stephen J. Girsky received advisory fees of \$400,000 and expense reimbursement of about \$50,000 from MLC for consulting services related to strategic alternatives for Saturn. The Saturn engagement began in early 2009 and was completed before Mr. Girsky was named to our Board. Under the agreement assumed as part of the 363 Sale, we were required to pay SJG a fee of \$1 million. From December 2009 to February 2010, Mr. Girsky served as Senior Advisor to the Office of the Chairman, for which he received salary stock grants valued at \$225,000 pursuant to our Salary Stock Plan and reimbursement of his living expenses in Detroit and travel expenses to and from Detroit.

Our Related Party Transactions Policy is available on our Web site at <http://investor.gm.com>, under "Corporate Governance."

#### *Director Independence*

Pursuant to our Bylaws and the Stockholders Agreement, at least two-thirds of our directors must be independent within the meaning of Rule 303A.02 of the NYSE Listed Company Manual, as determined by our Board of Directors.

The Governance Committee assesses the independence of each director and makes recommendations to the Board as to his or her independence both by using the quantitative criteria in the Board's Corporate Governance Guidelines and by determining whether he or she is free from any qualitative relationship that would interfere with the exercise of independent judgment.

Section 2.10 of our Bylaws incorporates, by reference, the independence criteria of the SEC and NYSE; and the Board's Corporate Governance Guidelines set forth our standards for director independence, which are based on all the SEC and NYSE requirements. The Board's Corporate Governance Guidelines provide that an independent director must satisfy all of the following criteria:

- During the past three years, we have not employed the director, and have not employed (except in a non-executive capacity) any of his or her immediate family members.
- During any twelve-month period within the last three years, the director has not received more than \$120,000 in direct compensation from us other than director fees or other forms of deferred compensation. No immediate family members of the director have received any compensation other than for employment in a non-executive capacity.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

- The director or an immediate family member is not a current partner of a firm that is our internal or external auditor; the director is not an employee of such a firm; the director does not have an immediate family member who is a current employee of such a firm and personally works on our audit; or the director or an immediate family member was not within the last three years a partner or employee of such a firm and personally worked on our audit within that time.
- During the past three years, neither the director nor any of his or her immediate family members has been part of an “interlocking directorate” in which one of our executive officers serves on the compensation committee (or its equivalent) of another company that employs the director.
- During the past three years, neither the director nor any of his or her immediate family members has been employed (except in a non-executive capacity) by one of our significant suppliers or customers or any affiliate of such supplier or customer. For the purposes of this standard, a supplier or customer is considered significant if its sales to, or purchases from, us represent the greater of \$1 million or 2% of our or the supplier’s or customer’s consolidated gross revenues.

In addition to satisfying all of the foregoing requirements, a director is not considered independent if he or she has, in the judgment of the Board, any other “material” relationship with the Company, other than serving as a director that would interfere with the exercise of his or her independent judgment.

Consistent with the standards described above, the Board has reviewed all relationships between the Company and the members of the Board, considering quantitative and qualitative criteria, and affirmatively has determined that, other than Mr. Whitacre and Mr. Girsky, all of the directors are independent according to the definition in the Board’s Corporate Governance Guidelines, which is based on the standards of the SEC and NYSE.

Our Bylaws and Corporate Governance Guidelines are available on our Web site at <http://investor.gm.com>, under “Corporate Governance.”

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### **Item 14. *Principal Accounting Fees and Services***

Our and Old GM’s Audit Committees retained Deloitte & Touche LLP to audit the consolidated financial statements and the effectiveness of internal controls, as of December 31, 2009 and for the periods January 1, 2009 through July 9, 2009 and July 10, 2009 through December 31, 2009. We and Old GM also retained Deloitte & Touche LLP and certain of its affiliates (collectively, “Deloitte”), as well as other accounting and consulting firms, to provide various other services in the periods January 1, 2009 through July 9, 2009 and July 10, 2009 through December 31, 2009.

The services performed by Deloitte in the periods January 1, 2009 through July 9, 2009 and July 10, 2009 through December 31, 2009 were pre-approved in accordance with the pre-approval policy and procedures adopted by Old GM’s Audit Committee at its October 7, 2003 meeting and adopted by our Audit Committee at its September 8, 2009 meeting. This policy requires that during its first meeting of the calendar year, the Audit Committee will be presented, for consideration, a description of the audit-related, tax, and other services expected to be performed by Deloitte. Any requests for such services in excess of \$1 million not contemplated and approved during the first meeting must thereafter be submitted to the Audit Committee (or the Chair of the Audit Committee in an urgent case) for specific pre-approval. Requests for services less than \$1 million individually must be pre-approved by the Audit Committee Chair and reported to the full Audit Committee at its next regularly scheduled meeting. The independent auditors selected for the following year present the proposed annual audit services and their related fees to the Audit Committee, generally in May, for approval on an audit-year basis.

Our and Old GM’s Audit Committees determined that all services provided by Deloitte in the periods January 1, 2009 through July 9, 2009 and July 10, 2009 through December 31, 2009 were compatible with maintaining the independence of the principal accountants.

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

The following table summarizes Deloitte fees billed or expected to be billed in connection with our and Old GM's 2009 combined audit and other services. For comparison purposes, actual billings for Old GM's 2008 audit and other services are also displayed (dollars in millions):

	Services Billed	
	2009	2008
Annual audit services	\$ 52	\$ 38
Audit-related services	10	11
Tax services	8	4
Subtotal	70	53
All other services	1	1
Total	<u>\$ 71</u>	<u>\$ 54</u>

**Audit Fees:** \$52 million for the audit of our and Old GM's annual consolidated financial statements, including reviews of the interim financial statements contained in our and Old GM's Quarterly Reports on Form 10-Q and preparation of statutory reports. In addition, included in this category are fees for services that generally only Deloitte reasonably can provide, for example, statutory audits, attestation services, consents, and assistance with and review of documents filed with the SEC.

**Audit-Related Fees:** \$10 million for assurance and related services that are traditionally performed by the independent auditor. More specifically, these services include employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with proposed acquisitions, internal control consultations, attestation services that are not required by statute or regulation, and consultation concerning financial accounting and reporting standards.

**Tax Fees:** \$8 million includes fees for tax compliance, tax planning, and tax advice. Tax compliance involves preparation of original and amended tax returns and claims for refund, and tax payment-planning services. Tax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions and employee benefit plans, and requests for rulings or technical advice from taxing authorities.

**All Other Fees:** \$1 million for services related to project management, process improvements, and assistance with information technology system projects for systems not associated with the financial statements.

\* \* \* \* \*

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

## PART IV

ITEM 15. *Exhibits and Financial Statement Schedule*

- (a) 1. All Financial Statements and Supplemental Information  
2. Financial Statement Schedule II — Valuation and Qualifying Accounts  
3. Exhibits

## (b) Exhibits

<u>Exhibit Number</u>	<u>Exhibit Name</u>	
3.1	Amended and Restated Certificate of Incorporation of General Motors Company, as amended, incorporated herein by reference to Exhibit 3.1 to the Current Report on Form 8-K of General Motors Company filed November 16, 2009	Incorporated by Reference
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10.3†	Amended and Restated Secured Note Agreement among General Motors Company, as Issuer, the Guarantors and UAW Retiree Medical Benefits Trust, as Noteholder, dated August 14, 2009 (refer also to Exhibit 10.1 which includes Schedule 3.25 referenced herein), incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K of General Motors Company filed November 16, 2009	Incorporated by Reference
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10.6	Amendment to Second Amended and Restated Loan Agreement by and among General Motors of Canada Limited, as Borrower, and the other loan parties and Export Development of Canada, as Lender, dated October 15, 2009, incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K of General Motors Company filed October 23, 2009	Incorporated by Reference

[Table of Contents](#)**GENERAL MOTORS COMPANY AND SUBSIDIARIES**

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10.19	General Motors Company Salary Stock Plan	Filed Herewith
10.20	Form of Restricted Stock Unit Grant made to top 25 highly compensated employees under General Motors Company 2009 Long-Term Incentive Plan, as Amended March 1, 2010	Filed Herewith

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10.22	Form of Restricted Stock Unit Grant made to certain executive officers incorporated by reference to Exhibit 10.a to the Quarterly Report on Form 10-Q of Motors Liquidation Company filed May 8, 2008	Incorporated by Reference
10.23	General Motors Company Vehicle Operations — Senior Management Vehicle Program (SMVP) Supplement, revised December 15, 2005, incorporated herein by reference to Exhibit 10(g) to the Annual Report on Form 10-K of Motors Liquidation Company filed March 28, 2006	Incorporated by Reference
10.24†	Amended and Restated United States Consumer Financing Services Agreement between GMAC LLC and General Motors Corporation dated May 22, 2009 incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K of General Motors Company filed August 7, 2009	Incorporated by Reference
10.25†	Amended and Restated Master Services Agreement between GMAC LLC and General Motors Corporation dated May 22, 2009 incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K of General Motors Company filed August 7, 2009	Incorporated by Reference
10.26	General Motors Executive Retirement Plan, as amended August 4, 2008, incorporated herein by reference to Exhibit 10(a) to the Quarterly Report on Form 10-Q of Motors Liquidation Company filed November 10, 2008	Incorporated by Reference
10.27	Agreement, dated as of October 22, 2001, between General Motors Corporation and General Motors Acceptance Corporation, incorporated herein by reference to Exhibit 10 to the Annual Report on Form 10-K of Motors Liquidation Company filed March 28, 2006	Incorporated by Reference
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10.29	Amended and Restated Warrant Agreement, dated as of October 16, 2009, between General Motors Company and U.S. Bank National Association, including Form of Warrant Certificate attached as Exhibit D thereto, relating to warrants with a \$30 original exercise price and a July 10, 2016 expiration date	Filed Herewith
10.30	Amended and Restated Warrant Agreement, dated as of October 16, 2009, between General Motors Company and U.S. Bank National Association, including Form of Warrant Certificate attached as Exhibit D thereto, relating to warrants with a \$55 original exercise price and a July 10, 2019 expiration date	Filed Herewith
10.31	Amended and Restated Warrant Agreement, dated as of October 16, 2009, between General Motors Company and U.S. Bank National Association, including Form of Warrant Certificate attached as Exhibit D thereto, relating to warrants with a \$126.92 original exercise price and a December 31, 2015 expiration date	Filed Herewith
12	Computation of Ratios of Earnings to Fixed Charges for the Periods July 10, 2009 through December 31, 2009 and January 1, 2009 through July 9, 2009 and for the Years Ended December 31, 2008, 2007, 2006 and 2005	Filed Herewith

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21	Subsidiaries of the Registrant as of December 31, 2009	Filed Herewith
24	Power of Attorney for Directors of General Motors Corporation	Filed Herewith
31.1	Section 302 Certification of the Chief Executive Officer	Filed Herewith
31.2	Section 302 Certification of the Chief Financial Officer	Filed Herewith
32.1	Certification of the Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	Filed Herewith
32.2	Certification of the Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	Filed Herewith
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† Certain confidential portions have been omitted pursuant to a request for confidential treatment, which has been separately filed with the Securities and Exchange Commission.

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<u>Signature</u>	<u>Title</u>
<u>/s/ KATHRYN V. MARINELLO</u> (Kathryn V. Marinello)	Director
<u>/s/ PATRICIA F. RUSSO</u> (Patricia F. Russo)	Director
<u>/s/ CAROL M. STEPHENSON</u> (Carol M. Stephenson)	Director

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS**

(Dollars in millions)

Description	Balance at Beginning of Period	Additions Charged to Costs and Expenses	Additions Charged to Other Accounts	Deductions	Effect of Application of Fresh- Start Reporting	Balance at End of Period
<b>Successor</b>						
<b>For the period July 10, 2009 through December 31, 2009</b>						
Allowances Deducted from Assets						
Accounts and notes receivable (for doubtful receivables)	\$ —	251	—	1	—	\$ 250
Other investments and miscellaneous assets (receivables and other)	\$ —	—	7	—	—	\$ 7
<b>Predecessor</b>						
<b>For the period January 1, 2009 through July 9, 2009</b>						
Allowances Deducted from Assets						
Accounts and notes receivable (for doubtful receivables)	\$ 422	1,482	76	6	(1,974)	\$ —
Other investments and miscellaneous assets (receivables and other)	\$ 43	—	3	—	(46)	\$ —
<b>For the Year Ended December 31, 2008</b>						
Allowances Deducted from Assets						
Accounts and notes receivable (for doubtful receivables)	\$ 338	157	—	73	—	\$ 422
Other investments and miscellaneous assets (receivables and other)	\$ 14	—	29	—	—	\$ 43
<b>For the Year Ended December 31, 2007</b>						
Allowances Deducted from Assets						
Accounts and notes receivable (for doubtful receivables)	\$ 397	—	11	70	—	\$ 338
Other investments and miscellaneous assets (receivables and other)	\$ 17	—	—	3	—	\$ 14

*General Motors Company*

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**AMENDED AND RESTATED BYLAWS**

*As of March 2, 2010*

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**GENERAL MOTORS COMPANY  
AMENDED AND RESTATED BYLAWS**

**ARTICLE I  
MEETINGS OF STOCKHOLDERS**

**1.1 Annual Meetings.**

The annual meeting of stockholders for the election of directors, ratification or rejection of the selection of auditors, and the transaction of such other business as may properly be brought before the meeting shall be held on the first Tuesday in June in each year, or on such other date and at such place and time as the chairman of the board or the board of directors shall designate. If any annual meeting shall not be held on the day designated or the directors shall not have been elected thereat or at any adjournment thereof, thereafter the board shall cause a special meeting of the stockholders to be held as soon as practicable for the election of directors. At such special meeting, the stockholders may elect directors and transact other business with the same force and effect as at an annual meeting of the stockholders duly called and held.

**1.2 Special Meetings.**

(a) Call of Special Meeting. Special meetings of stockholders may be called at any time by the chairman of the board of directors or by a majority of the members of the board of directors or as otherwise provided by Delaware law, the certificate of incorporation or these bylaws. Any such special meeting shall be held on the date and at the time and place and for the purposes that are designated by the chairman or board in calling the meeting. Subject to paragraph (b) of this section, the board shall call a special meeting upon the written request (the "Meeting Request") of the record holders of at least 15 percent of the voting power of the outstanding shares of all classes of stock entitled to vote at such a meeting, delivered to the secretary of the Corporation, and shall designate a date for such special meeting not more than 90 days after the date that the secretary received the Meeting Request (the "Request Delivery Date"). In fixing a date and time for any special meeting requested by stockholders, the board may consider such factors as it deems relevant, including without limitation, the nature of the matters to be considered, the facts and circumstances related to any request for a meeting, and any plan of the board to call an annual meeting or special meeting.

(b) Stockholder Request for Special Meeting.

(1) Any Meeting Request shall be signed by one or more stockholders, or their duly authorized agent, that request the special meeting and shall set forth: (A) a statement of the specific purpose of the meeting and the matters proposed to be acted on at the meeting and the reasons for conducting such business at the meeting; (B) the name and address of each signing stockholder and date of signature; (C) the number of shares of each class of voting stock owned of record and beneficially by each such stockholder; (D) a description of all arrangements or understandings between any signing stockholder and any other person regarding the meeting and the matters proposed to be acted on at the meeting; (E) all information relating to each signing stockholder that would be required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not the subject of the Meeting Request) or would otherwise be required, in each case pursuant to Section 14 of the Securities

Exchange Act of 1934, as amended (the “Exchange Act”), and the rules and regulations promulgated thereunder (or any successor provision of the Exchange Act or the rules or regulations promulgated thereunder), whether or not Section 14 of the Exchange Act is then applicable to the Corporation; and (F) the information that would be required by section 1.11 of these bylaws if the stockholder were intending to make a nomination or to bring any other matter before a stockholder meeting. A stockholder may revoke its request for a special meeting at any time by written revocation delivered to the secretary of the Corporation.

(2) The board shall have the authority to determine not to call a special meeting requested by stockholders if (A) the board has called or calls an annual or special meeting of stockholders to be held not more than 90 days after the Request Delivery Date and the purpose of such stockholder meeting includes (among any other matters properly brought before the meeting) the purpose specified in the Meeting Request; (B) within 12 months prior to the Request Delivery Date, an annual or special meeting was held that considered the purpose specified in the Meeting Request, except for the election of one or more directors; (C) the Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; or (D) such request was made in violation of Regulation 14A under the Exchange Act, to the extent applicable, or other applicable law. The board is authorized to determine in good faith the purpose of a stockholder meeting.

(c) Conduct of Special Meeting. Business transacted at a special meeting requested by stockholders shall be limited to the purpose stated in the Meeting Request; provided, however, that the board shall be able to submit additional matters to stockholders at any such special meeting.

(d) Pre-IPO Special Meetings. Notwithstanding the foregoing provisions of this section 1.2, prior to an Initial Public Offering (as defined below) of the Corporation, the board shall call a special meeting at the request of the record holders of at least 15 percent of the voting power of the outstanding shares of all classes of stock entitled to vote at such a meeting. Such request shall state the purpose or purposes of the proposed meeting. The time of any such special meeting shall be stated in the notice of such meeting, which notice shall specify the purpose or purposes thereof. Business transacted at any special meeting shall be confined to the purposes stated in the notice of meeting and matters germane thereto.

“Initial Public Offering” means the earlier to occur of (i) the initial public offering of the Common Stock, (whether such offering is primary or secondary) that is underwritten by a nationally recognized investment bank, pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 under the Securities Act of 1933, as amended, is applicable, or a registration statement on Form S-4, Form S-8 or a successor to one of those forms) or (ii) the later of (x) the date on which a Corporation registration statement filed under Section 12(b) or 12(g) of the Exchange Act shall have been declared effective by the Securities and Exchange Commission or otherwise became effective under the Exchange Act and (y) the date of distribution of the shares of Common Stock beneficially owned (within the meaning given in Rule 13d-3 of the Exchange Act) by Motors Liquidation Company (formerly known as General Motors Corporation), a Delaware corporation pursuant to its plan of reorganization.

### **1.3 Notice of Meetings.**

Written notice of each meeting of stockholders shall be given by the chairman of the board and/or the secretary in compliance with the provisions of Delaware law and these bylaws.

### **1.4 List of Stockholders Entitled to Vote.**

The secretary shall prepare or have prepared before every meeting of stockholders a complete list of the stockholders entitled to vote at the meeting in compliance with the provisions of Delaware law and the certificate of incorporation.

### **1.5 Quorum.**

(a) At each annual or special meeting of stockholders, except where otherwise provided by law or the certificate of incorporation or these bylaws, the holders of a majority of the voting power of the outstanding shares of stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. Where a separate vote by a class or classes or series of stock is required, the holders of a majority of the voting power of the shares of such class or classes or series of stock present in person or represented by proxy shall constitute a quorum for the purposes of such matter on which a separate vote is required.

(b) In the absence of a quorum pursuant to this section of the bylaws, a majority of the voting power of the outstanding shares of stock entitled to vote and present in person or by proxy, or in absence of any stockholders, any officer, may adjourn the meeting from time to time in the manner and to the extent provided in section 1.9 of these bylaws until a quorum shall attend.

(c) Shares of the Corporation's stock belonging to the Corporation or to another entity, a majority of whose ownership interests entitled to vote in the election of directors of such other entity is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote shares of its own stock that it is entitled to vote in a fiduciary capacity.

### **1.6 Conduct of Meeting.**

The chairman of the board or, if he so designates, the chief executive officer, the president, the vice chairman or a vice president of the Corporation shall preside at each meeting of the stockholders; provided, however, that if the chairman of the board does not preside and has not designated an officer of the Corporation to preside, the holders of a majority of the voting power of the outstanding shares of stock entitled to vote and present in person or by proxy at such meeting may designate any person to preside over the meeting. The secretary of the Corporation shall record the proceedings of meetings of the stockholders, but in the absence of the secretary, the person presiding over the meeting shall designate any person to record the proceedings. The person presiding over any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

### **1.7 Voting; Proxies.**

Each stockholder entitled to vote shall be entitled to vote in accordance with the number of shares and voting powers of the voting shares held of record by him. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him at such meeting by proxy, but such proxy, whether revocable or irrevocable, shall comply with the applicable requirements of Delaware law. Voting at meetings of stockholders, on matters other than the election of directors, need not be by written ballot unless the holders of a majority of the voting power of the outstanding shares of stock entitled to vote at the meeting present in person or by proxy at such meeting shall so determine. All elections and questions shall, unless otherwise provided by law, rule or regulation, including any stock exchange rule or regulation, applicable to the Corporation, the certificate of incorporation, or section 2.2 or any other provision of these bylaws, be decided by the vote of the holders of a majority of the voting power of the shares of stock entitled to vote thereon present in person or by proxy at the meeting. Votes cast "for" or "against" and "abstentions" with respect to a matter shall be counted as shares of stock of the Corporation entitled to vote on such matter, while "broker nonvotes" (or other shares of stock of the Corporation similarly not entitled to vote) shall not be counted as shares entitled to vote on such matter.

### **1.8 Fixing Date for Determination of Stockholders of Record.**

To determine the stockholders of record for any purpose, the board of directors may fix a record date; provided that the record date shall not precede the date upon which the board adopts the resolution fixing the record date; and provided further that the record date shall be: (a) in the case of determination of stockholders entitled to receive notice of or to vote at any meeting of stockholders or adjournment thereof, not more than 60 nor less than ten days before the date of such meeting; (b) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, in accordance with section 1.12 of these bylaws; and (c) in the case of any other action, not more than 60 days prior to such other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board may choose to fix a new record date for the adjourned meeting.

### **1.9 Adjournments.**

The person presiding over any meeting of stockholders, annual or special (other than a special meeting requested by stockholders in accordance with section 1.2(a) of these bylaws in the absence of a quorum), may adjourn the meeting from time to time to reconvene at the same or some other place. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. Notice need not be given of any such adjourned meeting if the time and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken, except that if the adjournment is for more than 30 days or if, after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

### **1.10 Judges.**

All votes by ballot at any meeting of stockholders shall be conducted by one or more judges appointed for the purpose, either by the board of directors or by the person presiding over the meeting. The judges shall decide upon the qualifications of voters, count the votes, and report the result in writing to the secretary of the meeting.

### **1.11 Notice of Stockholder Nomination and Stockholder Business.**

At a meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. Prior to the Initial Public Offering, nominations for the election of directors may be made only by the board of directors, which nominations shall be consistent with the Stockholders Agreement dated October 15, 2009 among the Corporation, the United States Department of the Treasury, 7176384 Canada Inc., and UAW Retiree Medical Benefits Trust and, for the limited purposes set forth therein, General Motors LLC (the "Stockholders Agreement"). Following the Initial Public Offering, nominations for the election of directors may be made by the board of directors in accordance with the Stockholders Agreement or by any stockholder entitled to vote for the election of directors who complies with the notice requirements set forth in this section. Other matters to be properly brought before the meeting (whether prior to or following the Initial Public Offering) must be: (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board, including, as applicable, matters covered by Rule 14a-8 under the Exchange Act; (b) otherwise properly brought before the meeting by or at the direction of the board; or (c) otherwise properly brought before the meeting by a stockholder pursuant to the notice requirements of this section.

Prior to the Initial Public Offering, a stockholder need not give notice of his intent to bring any matter before a meeting of stockholders. Following the Initial Public Offering, a stockholder who intends to make a nomination for the election of directors or to bring any other matter before a meeting of stockholders must give notice of his intent in writing or by electronic transmission. Such notice must be received by the secretary, in the case of an annual meeting not more than 180 days and not less than 120 days before the date of the meeting, or in the case of a special meeting, not more than 15 days after the day on which notice of the special meeting is first mailed to stockholders. Notwithstanding the preceding sentence, requests for inclusion of proposals in the Corporation's proxy statement made pursuant to Rule 14a-8 under the Exchange Act, if applicable, shall be deemed to have been delivered in a timely manner if delivered in accordance with such Rule.

As to matters sought to be included in any proxy statement of the Corporation, stockholders shall comply with Rule 14a-8 under the Exchange Act, if applicable, rather than this section 1.11.

As to matters not sought to be included in any proxy statement of the Corporation, a stockholder's notice (if required) shall state:

(a) the name and address of the stockholder of the Corporation who intends to make a nomination or bring up any other matter and the name and address of any Stockholder Associated Person covered by clauses (c), (d), or (e) below;

(b) a representation that the stockholder is a holder of the Corporation's voting stock and intends to appear in person or by proxy at the meeting to make the nomination or bring up the matter specified in the notice;

(c) as to the stockholder and any Stockholder Associated Person of the stockholder,

(i) the class, series, number and principal amount, as applicable, of all securities of the Corporation which are owned of record by such stockholder or by any such Stockholder Associated Person as of the date of the notice,

(ii) the class, series, number and principal amount, as applicable, of, and the nominee holder for, all securities of the Corporation owned beneficially but not of record by such stockholder or by any such Stockholder Associated Person as of the date of the notice, and

(iii) a description of all Derivative Interests that have been entered into as of the date of the notice by, or on behalf of, such stockholder or by any such Stockholder Associated Person, such description to include (1) the class, series, and actual or notional number, principal amount or dollar amount of all securities of the Corporation underlying or subject to such Derivative Interests, (2) the material economic terms of such Derivative Interests, and (3) the contractual counterparty for such Derivative Interests;

(d) if the stockholder intends to make a nomination for the election of directors,

(i) the name, age, business address and residence address of each nominee proposed by such stockholder (a "Proposed Nominee") and the name and address of any Proposed Nominee Associated Person covered by any of subclauses (ii) through (v) of this paragraph,

(ii) the class, series, number and principal amount, as applicable, of all securities of the Corporation that are beneficially owned or owned of record by such Proposed Nominee and by any such Proposed Nominee Associated Person,

(iii) a description of all Derivative Interests that have been entered into, as of the date of the notice, by or on behalf of such Proposed Nominee or any such Proposed Nominee Associated Person, such description to include (1) the class, series, and actual or notional number, principal amount or dollar amount of all securities of the Corporation underlying or subject to such Derivative Interests, (2) the material economic terms of such Derivative Interests, and (3) the contractual counterparty for such Derivative Interests,

(iv) a description of all arrangements or understandings between the stockholder or any Stockholder Associated Person, on the one hand, and any Proposed Nominee or any other person or persons (naming such person or persons), on the other hand, pursuant to which the nomination or nominations are to be made by the stockholder, and

(v) all other information relating to any Proposed Nominee, any Proposed Nominee Associated Person, the stockholder or any Stockholder Associated Person that would be required to be disclosed in filings with the SEC in connection with the solicitation of proxies by the stockholder pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (or any successor provision of the Exchange Act or the rules or regulations promulgated thereunder), whether or not Section 14 of the Exchange Act is then applicable to the Corporation;

(e) if the stockholder intends to make a proposal other than a nomination,

(i) a description of the matter,

(ii) the reasons for proposing such matter at the meeting,

(iii) a description of any material interest of the stockholder or any Stockholder Associated Person, individually or in the aggregate, in the matter, including any anticipated benefit to the stockholder or any Stockholder Associated Person therefrom,

(iv) a description of all arrangements or understandings between the stockholder or any Stockholder Associated Person, on the one hand, and any other person or persons (naming such person or persons), on the other hand, regarding the proposal, and

(v) all other information relating to the proposal, the stockholder or any Stockholder Associated Person that would be required to be disclosed in filings with the SEC in connection with the solicitation of proxies by the stockholder pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (or any successor provision of the Exchange Act or the rules or regulations promulgated thereunder), whether or not Section 14 of the Exchange Act is then applicable to the Corporation; and

(f) to the extent known by the stockholder, the name and address of any other securityholder of the Corporation who owns, beneficially or of record, any securities of the Corporation and who supports any nominee proposed by such stockholder or any other matter such stockholder intends to propose.

Notice of intent to make a nomination shall be accompanied by the written consent of each Proposed Nominee to serve as director of the Corporation if elected.

If, after the submission of a stockholder's notice, any material change occurs in the information set forth in the stockholder's notice to the Corporation required by this section 1.11, including, but not limited to, any material increase or decrease in the percentage of the class or series of securities of the Corporation held or beneficially owned (including actual or notional number, principal amount or dollar amount of any securities underlying or subject to Derivative Interests), the stockholder shall promptly provide further written notice to the Corporation of that change and a statement updating all changed information as of the date of the further written notice. An acquisition or disposition of beneficial ownership of any number or principal amount of any securities of the Corporation (including an increase or decrease in actual or notional number,

principal amount or dollar amount of any securities underlying or subject to Derivative Interests) in an aggregate amount equal to one percent or more of the class or series of securities outstanding shall be deemed “material” for purposes of this section 1.11; acquisitions or dispositions or increases or decreases of less than those amounts may be material, depending upon the facts and circumstances.

At the meeting of stockholders, the presiding officer may declare out of order and disregard any nomination or other matter not presented in accordance with this section.

Notwithstanding the foregoing provisions of this section 1.11, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to make its nomination or propose any other matter, such nomination shall be disregarded and such other proposed matter shall not be transacted, even if proxies in respect of such vote have been received by the Corporation. For purposes of this section 1.11, to be considered a “qualified representative” of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the commencement of the meeting of stockholders.

For purposes of this section 1.11:

(1) “Stockholder Associated Person” of any stockholder shall mean (i) any person acting in concert with such stockholder, (ii) any beneficial owner of securities of the Corporation owned of record or beneficially by such stockholder and (iii) any person directly or indirectly controlling, controlled by or under common control with such stockholder or a Stockholder Associated Person;

(2) “Proposed Nominee Associated Person” of any Proposed Nominee shall mean (i) any person acting in concert with such Proposed Nominee, (ii) any beneficial owner of securities of the Corporation owned of record or beneficially by such Proposed Nominee and (iii) any person directly or indirectly controlling, controlled by or under common control with such Proposed Nominee or a Proposed Nominee Associated Person; and

(3) “Derivative Interest” shall mean (i) any option, warrant, convertible security, appreciation right or similar right with an exercise, conversion or exchange privilege, or a settlement payment or mechanism, related to any security of the Corporation, or any similar instrument with a value derived in whole or in part from the value of any security of the Corporation, in any such case whether or not it is subject to settlement in any security of the Corporation or otherwise and (ii) any arrangement, agreement or understanding (including any short position or any borrowing or lending of any securities) which includes an opportunity for the stockholder, Stockholder Associated Person, Proposed Nominee, or Proposed Nominee Associated Person (as applicable), directly or indirectly, to profit or share in any profit derived from any increase or decrease in the value of any security of the Corporation, to mitigate any loss or manage any risk associated with any increase or decrease in the value of any security of the Corporation or to increase or decrease the number of securities of the Corporation which such

person is or will be entitled to vote or direct the vote, in any case whether or not it is subject to settlement in any security of the Corporation or otherwise; provided, however, that Derivative Interests shall not include: (a) rights of a pledgee under a bona fide pledge of any security of the Corporation; (b) rights applicable to all holders of a class or series of securities of the Corporation to receive securities of the Corporation pro rata, or obligations to dispose of securities of the Corporation, as a result of a merger, exchange offer or consolidation involving the Corporation; (c) rights or obligations to surrender any number or principal amount of securities of the Corporation, or have any number or principal amount of securities of the Corporation withheld, upon the receipt or exercise of a derivative security or the receipt or vesting of any securities, in order to satisfy the exercise price or the tax withholding consequences of receipt, exercise, or vesting; (d) interests in broad-based index options, broad-based index futures, and broad-based publicly traded market baskets of stocks approved for trading by the appropriate federal governmental authority; (e) interests or rights to participate in employee benefit plans of the Corporation held by current or former directors, employees, consultants or agents of the Corporation; or (f) options granted to an underwriter in a registered public offering for the purpose of satisfying over-allotments in such offering.

#### **1.12 Stockholder Action by Written Consent.**

(a) Request for Record Date. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting shall be as fixed by the board of directors or as otherwise established under this section. Any person seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice addressed to the secretary of the Corporation and delivered to the Corporation and signed by a stockholder of record, request that a record date be fixed for such purpose. The written notice must contain the information set forth in paragraph (b) of this section. Following receipt of the notice, the board shall have ten days to determine the validity of the request, and if appropriate, adopt a resolution fixing the record date for such purpose. The record date for such purpose shall be no more than ten days after the date upon which the resolution fixing the record date is adopted by the board and shall not precede the date such resolution is adopted. If the board fails within ten days after the Corporation receives such notice to fix a record date for such purpose, the record date shall be the day on which the first written consent is delivered to the Corporation in the manner described in paragraph (d) of this section; except that, if prior action by the board is required under the provisions of Delaware law, the record date shall be at the close of business on the day on which the board adopts the resolution taking such prior action.

(b) Notice Requirements. Any stockholder's notice required by paragraph (a) of this section must describe the action that the stockholder proposes to take by consent. Following the Initial Public Offering, for each such proposal, every notice by a stockholder must state (i) the information required by section 1.11 as though such stockholder was intending to make a nomination or to bring any such other matter before a meeting of stockholders, and as though such stockholder was not seeking to include any such nomination or other matter in the proxy statement of the Corporation and (ii) the text of the proposal (including the text of any resolutions to be effected by consent and the language of any proposed amendment to the bylaws of the Corporation).

In addition to the foregoing, the notice must state as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the notice is given a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends to (i) deliver a proxy statement and/or consent solicitation statement to stockholders of at least the percentage of the Corporation's outstanding capital stock required to effect the action by consent either to solicit consents or to solicit proxies to execute consents, and/or (ii) otherwise solicit proxies or consents from stockholders in support of the action to be taken by consent. The Corporation may require the stockholder of record and/or beneficial owner requesting a record date for proposed stockholder action by consent to furnish such other information as it may reasonably require to determine the validity of the request for a record date.

(c) Date of Consent. Every written consent purporting to take or authorize the taking of corporate action (each such written consent is referred to in this paragraph and in paragraph (d) as a "Consent") must bear the date of signature of each stockholder who signs the Consent, and no Consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated Consent delivered in the manner required by this section, Consents signed by a sufficient number of stockholders to take such action are so delivered to the Corporation.

(d) Delivery of Consent. Consent must be delivered to the Corporation by delivery to its registered office in the State of Delaware or its principal place of business. Delivery must be made by hand or by certified or registered mail, return receipt requested.

In the event of the delivery to the Corporation of Consents, the secretary of the Corporation, or such other officer of the Corporation as the board of directors may designate, shall provide for the safe-keeping of such Consents and any related revocations and shall promptly conduct such ministerial review of the sufficiency of all Consents and any related revocations and of the validity of the action to be taken by stockholder consent as the secretary of the Corporation, or such other officer of the Corporation as the board may designate, as the case may be, deems necessary or appropriate, including, without limitation, whether the stockholders of a number of shares having the requisite voting power to authorize or take the action specified in Consents have given consent; provided, however, that if the corporate action to which the Consents relate is the removal or replacement of one or more members of the board, the secretary of the Corporation, or such other officer of the Corporation as the board may designate, as the case may be, shall promptly designate two persons, who shall not be members of the board, to serve as inspectors ("Inspectors") with respect to such Consent and such Inspectors shall discharge the functions of the secretary of the Corporation, or such other officer of the Corporation as the board may designate, as the case may be, under this section. If after such investigation the secretary of the Corporation, such other officer of the Corporation as the board may designate or the Inspectors, as the case may be, shall determine that the action purported to have been taken is duly authorized by the Consents, that fact shall be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders and the Consents shall be filed in such records.

In conducting the investigation required by this section, the secretary of the Corporation, such other officer of the Corporation as the board may designate or the Inspectors, as the case may be, may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors as such person or persons may deem necessary or appropriate and shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

(e) Effectiveness of Consent. No action by written consent without a meeting shall be effective until such date as the secretary of the Corporation, such other officer of the Corporation as the board may designate, or the Inspectors, as applicable, certify to the Corporation that the consents delivered to the Corporation in accordance with paragraph (d) of this section, represent at least the minimum number of votes that would be necessary to take the corporate action in accordance with Delaware law and the certificate of incorporation, which, following an Initial Public Offering, will be all the outstanding shares entitled to vote thereon.

(f) Challenge to Validity of Consent. Nothing contained in this section 1.12 shall in any way be construed to suggest or imply that the board of directors of the Corporation or any stockholder shall not be entitled to contest the validity of any Consent or related revocations, whether before or after such certification by the secretary of the Corporation, such other officer of the Corporation as the board may designate or the Inspectors, as the case may be, or to take any other action (including, without limitation, the commencement, prosecution, or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

## **ARTICLE II BOARD OF DIRECTORS**

### **2.1 Responsibility and Number.**

The business and affairs of the Corporation shall be managed by, or under the direction of, a board of directors. Subject to the provisions of the certificate of incorporation and any certificates of designation for preferred stock, the board of directors shall consist of such number of directors as may be determined from time to time by resolution adopted by a vote of a majority of the entire board of directors. No board vacancy shall exist as long as the number of directors in office is equal to the number of directors designated by the board in a resolution in accordance with the certificate of incorporation and this bylaw.

### **2.2 Election; Resignation; Vacancies.**

(a) Term. At each annual meeting of stockholders, each nominee elected by the stockholders to serve as a director shall hold office for a term commencing on the date of the annual meeting, or such later date as shall be determined by the board of directors, and ending on the next annual meeting of stockholders. Each elected director shall hold office until his successor is elected and qualified or until such director's earlier death, resignation or removal.

(b) Majority Voting. Except as provided in paragraph (d) below, each nominee shall be elected a director by the vote of the majority of the votes cast by holders of shares entitled to vote with respect to that director's election at any meeting for the election of directors at which a quorum is present. For purposes of this section 2.2, a majority of votes cast means that the number of votes "for" a director must exceed 50 percent of the votes cast with respect to that director. Votes "against" will count as a vote cast with respect to that director, but "abstentions" will not count as a vote cast with respect to that director.

(c) Election of Directors. Nominations of candidates for election as directors at any stockholder meeting at which directors will be elected may be made (i) by the board, or (ii) by any stockholder entitled to vote at such meeting only in accordance with the procedures established by section 1.11.

(d) Contested Elections. If with respect to any stockholder meeting at which directors will be elected, the secretary receives proper notice under section 1.11 that a stockholder intends to make a nomination at such meeting such that the number of nominees would exceed the number of directors to be elected and such notice has not been withdrawn on or prior to the fourteenth day before the date that the Corporation begins mailing its notice of such meeting to the stockholders, the nominees who receive a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present shall be elected. This provision shall not apply, however, if the stockholder providing notice of an intended nomination under section 1.11 nominated one or more candidates for election at a stockholder meeting within the last 18 months, and no candidate nominated pursuant to such notice received 0.01 percent or more of the votes cast at such meeting.

(e) Resignation and Replacement of Unsuccessful Incumbents. Following an Initial Public Offering:

(i) In order for any incumbent director to become a nominee of the board for further service on the board, such person must submit an irrevocable resignation, contingent (i) on that person not receiving more than 50% of the votes cast, and (ii) acceptance of that resignation by the board in accordance with policies and procedures adopted by the board for such purposes.

(ii) A resignation that becomes effective if and when the director fails to receive a specified vote for re-election as a director shall provide that it is irrevocable.

(iii) The board of directors, acting on the recommendation of the directors and corporate governance committee, shall within 90 days of receiving the certified vote pertaining to such election, determine whether to accept the resignation of the unsuccessful incumbent. Absent a determination by the board of directors that a compelling reason exists for concluding that it is in the best interests of the Corporation for an unsuccessful incumbent to remain as a director, no such person shall be elected by the board to serve as a director, and the board shall accept that person's resignation.

(iv) If the board determines to accept the resignation of an unsuccessful incumbent, the directors and corporate governance committee shall promptly recommend a candidate to the board of directors to fill the office formerly held by the unsuccessful incumbent.

(v) The board of directors shall promptly consider and act upon the directors and corporate governance committee's recommendation. The committee, in making this recommendation and the board, in acting on such recommendation, may consider any factors or other information that they determine appropriate and relevant.

(vi) The directors and corporate governance committee and the board of directors shall take the actions required under this paragraph (e) without the participation of any unsuccessful incumbent except that:

a. If every member of the directors and corporate governance committee is an unsuccessful incumbent, the Independent Directors (as defined in section 2.10) who are not unsuccessful incumbents shall name a committee comprised of some or all of the Independent Directors to make recommendations under this subsection to the board; and

b. If the number of Independent Directors who are not unsuccessful incumbents is three or fewer, all directors may participate in the decisions under this paragraph (e).

(f) Acceptance of a Director's Resignation. If the board of directors accepts the resignation of a director who is an unsuccessful incumbent pursuant to this bylaw, or if a nominee for director who is not an incumbent director does not receive more than 50 percent of the votes cast, then subject to the certificate of incorporation and any certificate of designations for preferred stock, the board of directors at its discretion may decrease the size of the board of directors pursuant to the provisions of section 2.1.

(g) Resignation. Any director may resign at any time upon notice given in writing or by electronic transmission to the chairman of the board or to the secretary. A resignation is effective when the resignation is delivered unless the resignation specifies (i) a later effective date or (ii) an effective date determined upon the happening of an event or events.

(h) Removal. Prior to the Initial Public Offering, any director may be removed from office, with or without cause, by the affirmative vote of the holders of at least a majority of the voting power of the outstanding shares of all classes of stock entitled to vote at the election of directors, except as otherwise provided by the General Corporation Law of Delaware. Following the Initial Public Offering, any director may be removed from office, only with cause, by the affirmative vote of the holders of at least a majority of the voting power of the outstanding shares of all classes of stock entitled to vote at the election of directors. Prior to an Initial Public Offering, if any Required Director (as defined in section 2.5) is removed from office pursuant to this section 2.2(h), the stockholder who had the right to nominate such director shall have the right to nominate a director to replace such removed director, subject to, and in accordance with, the terms set forth in the Stockholders Agreement.

(i) **Filling a Vacancy.** Subject to section 2.2(e) and the last sentence of section 2.2(h), any vacancy occurring in the board for any reason may be filled by a majority of the members of the board then in office, even if such majority is less than a quorum. Each director so elected shall hold office for a term expiring at the time of the expiration of the term of the other directors. Each such director shall hold office until his successor is elected and qualified or until such director's earlier death, resignation or removal.

### **2.3 Regular Meetings.**

Unless otherwise determined by resolution of the board of directors, a meeting of the board for the election of officers and the transaction of such other business as may come before it shall be held as soon as practicable following the annual meeting of stockholders, and other regular meetings of the board shall be held either on the first Tuesday of each month designated by the chairman of the board, or if that is a legal holiday, then on the next Tuesday that is not a legal holiday, or such other days as may from time to time be designated by the chairman of the board.

### **2.4 Special Meetings.**

Special meetings of the board of directors may be called by the chairman of the board, or the chairman of the board may by written designation appoint the chief executive officer, the president, the vice chairman, or a vice president of the Corporation to call such meeting. Special meetings may also be called by the lead director, or if there is no lead director, the chairman of the directors and corporate governance committee or by written request of one-third of the directors then in office. The place, date, and time of a special meeting shall be fixed by the person or persons calling the special meeting. Notice of a special meeting of the board of directors shall be sent by the secretary of the Corporation to each director who does not waive written notice (either in writing or by attendance at such meeting) either by first class United States mail at least four days before such meeting, or by overnight mail, courier service, electronic transmission, or hand delivery at least 24 hours before the special meeting. Unless such notice indicates otherwise, any business may be transacted at a special meeting.

### **2.5 Quorum; Vote Required for Action.**

(a) Following an Initial Public Offering, at all meetings of the board of directors, one-third of the total number of directors then in office, shall be necessary to constitute a quorum for the transaction of business. Except in cases in which applicable law, the certificate of incorporation, or these bylaws provide otherwise, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board.

(b) Prior to an Initial Public Offering, at all meetings of the board of directors, one-third of the total number of directors then in office, including the Required Directors, shall be necessary to constitute a quorum for the transaction of business. If such quorum is not present within 60 minutes after the time appointed for such meeting, such meeting shall be adjourned and the chairman of the board shall reschedule the meeting to be held not fewer than two nor more than 10 Business Days thereafter. If such meeting is rescheduled and one-third of the total number of directors then in office, including the Required Directors, are not present at the rescheduled meeting, then those directors who are present or represented by proxy at the

rescheduled meeting shall constitute a valid quorum for all purposes hereunder; provided that written notice by overnight mail, courier service, electronic transmission, or hand delivery of any rescheduled meeting shall have been delivered to all directors at least one Business Day prior to the date of such rescheduled meeting; and provided further, that the directors present determine, in good faith, that any absent Required Director's absence was motivated by an intention to delay or impede the meeting. Except in cases in which applicable law, the certificate of incorporation, or these bylaws provide otherwise, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board.

The term "Required Director" shall mean, with respect to any stockholder who has a then-current right to designate for nomination, and has designated for nomination, one or more directors pursuant to the Stockholders Agreement, one director so designated for nomination by such stockholder.

#### **2.6 Election of Chairman; Conduct of Board Meetings.**

The board of directors shall annually elect one of its members to be chairman of the board and shall fill any vacancy in the position of chairman of the board with a director at such time and in such manner as the board shall determine. A director may be removed from the position of chairman of the board at any time by the affirmative vote of a majority of the board. The chairman of the board may but need not be an officer or employed in an executive or any other capacity by the Corporation. If the chairman of the board is not an Independent Director, the board of directors shall designate one of its Independent Directors to be lead director, with such responsibilities as the board may determine.

The chairman of the board shall preside at meetings of the board and lead the board in fulfilling its responsibilities as defined in section 2.1.

In the absence of the chairman of the board, the lead director or, if there is no lead director, the chairman of the directors and corporate governance committee or, in his absence, a member of the board selected by the members present, shall preside at meetings of the board. The secretary of the Corporation shall act as secretary of the meetings of the board but, in his absence, the presiding director may appoint a secretary for the meeting.

#### **2.7 Ratification.**

Any transaction questioned in any stockholders' derivative suit on the grounds of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting may be ratified before or after judgment, by the board of directors or by the stockholders in case less than a quorum of directors are qualified; and, if so ratified, shall have the same force and effect as if the questioned transaction had been originally duly authorized, and said ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

**2.8 Written Action by Directors.**

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or such committee, as the case may be, consent thereto in writing or by electronic transmission, and written evidence of such consent is filed with the minutes of proceedings of the board or committee.

**2.9 Telephonic Meetings Permitted.**

Members of the board of directors, or any committee of the board, may participate in a meeting of such board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this bylaw shall constitute presence in person at such meeting.

**2.10 Independent Directors.**

Two-thirds of the individuals nominated by the board of directors as candidates for election to the board by the stockholders at the next annual meeting of stockholders shall qualify to be Independent Directors (as defined in this section).

If the board elects directors between annual meetings of stockholders, two-thirds of all directors holding office immediately after such election shall be Independent Directors.

For purposes of this section 2.10, the term “Independent Director” shall mean a director who qualifies as independent within the meaning of Rule 303A.02 of the New York Stock Exchange’s Listed Company Manual (or any successor provision), whether or not any of the shares of Common Stock are then listed on the New York Stock Exchange.

**2.11 Access to Books and Records**

The records, books, and accounts of the Corporation maintained by or under the supervision of the chief financial officer, the secretary, or any other officer shall be open, during the usual hours for business of the Corporation, to the examination of any director for any purpose reasonably related to his role as a director.

**ARTICLE III  
COMMITTEES**

**3.1 Committees of the Board of Directors.**

The board of directors may, by resolution passed by a majority of the total number of directors then in office (and not by a committee thereof), designate one or more committees, consisting of one or more of the directors of the Corporation, to be committees of the board. To the extent provided in any resolution of the board, these bylaws, or any charter adopted by such committee and approved by the board, and to the extent permissible under Delaware law and the certificate of incorporation, any such committee shall have and may exercise all the powers and authority of the board in the management of the business and affairs of the Corporation.

The standing committees of the board shall include the audit committee, the directors and corporate governance committee, the executive compensation committee, the investment funds committee, and the public policy committee. The board (but not a committee thereof) may designate additional committees of the board and may prescribe for each committee such powers and authority as may properly be granted to such committees in the management of the business and affairs of the Corporation. The board of directors may establish by resolution, adopted by a majority of the whole board, an administrative committee with the authority and responsibility to act on behalf of the board with regard to matters submitted to the board that, pursuant to any statement of delegation of authority adopted by the board from time to time, do not constitute issues within the sole jurisdiction of the board or any committee thereof and are not otherwise significant.

### **3.2 Election; Vacancies.**

The members and the chairman of each committee described in sections 3.4 through 3.8 shall be elected annually by the board at its first meeting after each annual meeting of stockholders or at any other time the board shall determine. The members of other committees of the board may be designated at such time as the board may determine. Vacancies in any committee may be filled at such time and in such manner as the board shall determine.

### **3.3 Procedure; Quorum.**

Except to the extent otherwise provided in these bylaws or any resolution of the board of directors, each committee of the board may fix its own rules and procedures.

At all meetings of any committee of the board, one-third of the members thereof shall constitute a quorum for the transaction of business. The vote of a majority of the members present at a meeting of a committee of the board at which a quorum is present shall be the act of the committee unless the certificate of incorporation, these bylaws, or a resolution of the board requires the vote of a greater number.

### **3.4 Investment Funds Committee.**

The investment funds committee shall be responsible for assisting the board of directors with its general oversight responsibility for the investment funds of the Corporation and its subsidiaries. The committee shall serve, where it is designated by the governing documents, as a named fiduciary of the defined benefit employee benefit plans of the Corporation and any subsidiary of the Corporation that are covered by the Employee Retirement Income Security Act of 1974 (ERISA) where and to the extent that it is designated by the plan's governing documents. In addition, the committee shall report annually to the board regarding the performance of the named fiduciaries and administrators of such plans of their responsibilities under ERISA, and the investment activity of the defined benefit plans among such plans. The board and management of the Corporation and its subsidiaries shall retain all authority to determine the amount and timing of any future funding of such plans.

### **3.5 Audit Committee.**

The audit committee shall have and may exercise the powers, authority, and responsibilities that are normally appropriate for the functions of an audit committee. The committee shall also annually select the independent accountants for the following calendar year, and that selection shall be submitted to the board of directors for their concurrence and to the stockholders for their ratification or rejection at the annual meeting of stockholders.

### **3.6 Executive Compensation Committee.**

The executive compensation committee shall be responsible for matters related to executive compensation and all other equity-based incentive compensation plans of the Corporation. The committee shall determine the compensation of: (a) employees of the Corporation who are directors of the Corporation; and (b) upon the recommendation of the chief executive officer, all senior officers of the Corporation and any other employee of the Corporation who occupies such other position as may be designated by the committee from time to time. The committee shall review the compensation of any director, officer or other employee of any direct or indirect subsidiary of the Corporation as may be designated by the committee from time to time to determine if it has any objection to such compensation. The committee shall have and may exercise the powers and authority granted to it by any incentive compensation plan for employees of the Corporation.

In the case of any employee benefit or incentive compensation plan that affects employees of the Corporation or its subsidiaries if the compensation of such employees is determined or subject to review by the committee, such plan shall be submitted to the committee for its review before adoption by the Corporation or its subsidiary. Any such plan or amendment or modification shall be made effective with respect to employees of the Corporation only if and to the extent approved by the committee.

### **3.7 Public Policy Committee.**

The public policy committee shall, upon its own initiative or otherwise, inquire into all phases of the Corporation's business activities that relate to matters of public policy. The committee may make recommendations to the board of directors to assist it in formulating and adopting basic policies calculated to promote the best interests of the Corporation and the community.

### **3.8 Directors and Corporate Governance Committee.**

The directors and corporate governance committee shall be responsible for matters related to service on the board of directors of the Corporation, and associated issues of corporate governance. The committee from time to time shall conduct studies of the size and composition of the board. Prior to each annual meeting of stockholders, the committee shall recommend to the board (in accordance with the terms of the Stockholders Agreement) the individuals to constitute the nominees of the board, so that the board may solicit proxies for their election. The committee shall review the qualifications of individuals for consideration as director candidates and shall recommend to the board, for its consideration, the names of individuals for election by the board. In addition, the committee shall from time to time conduct studies and make recommendations to the board regarding compensation of directors.

**ARTICLE IV  
OFFICERS**

**4.1 Election of Officers.**

The board of directors shall elect such officers of the Corporation with the titles and duties that it designates, provided that the Corporation shall have at least two officers at any time. There may be a chief executive officer, a president, one or more vice chairmen of the Corporation, one or more vice presidents (which may include one or more executive vice presidents and/or group vice presidents), a chief financial officer, a secretary, a treasurer, a controller, a general counsel, a general auditor and a chief tax officer. The officers, other than the chief executive officer and the president, shall each have the powers, authority and responsibilities of those officers provided by the bylaws or as the board or the chief executive officer may determine. One person may hold any number of offices. Each officer shall hold his office until his successor is elected and qualified or until his earlier resignation or removal.

**4.2 Chief Executive Officer.**

The chief executive officer shall have the general executive responsibility for the conduct of the business and affairs of the Corporation. He shall exercise such other powers, authority and responsibilities as the board of directors may determine.

In the absence of or during the physical disability of the chief executive officer, the board may designate an officer who shall have and exercise the powers, authority, and responsibilities of the chief executive officer.

**4.3 President.**

The president shall, subject to the direction and control of the board of directors and the chief executive officer, participate in the supervision of the business and affairs of the Corporation. He shall perform all duties incident to the office of president and shall have and exercise such powers, authority and responsibilities as the board of directors may determine.

**4.4 Vice Chairman of the Corporation.**

The vice chairman shall, subject to the direction and control of the board of directors and the chief executive officer, participate in the supervision of the business and affairs of the Corporation. He shall have and exercise such powers, authority, and responsibilities as the board of directors may determine.

**4.5 Chief Financial Officer.**

The chief financial officer shall be the principal financial officer of the Corporation. He shall render such accounts and reports as may be required by the board of directors or any committee of the board. The financial records, books and accounts of the Corporation shall be maintained subject to his direct or indirect supervision.

**4.6 Treasurer.**

The treasurer shall have direct or indirect custody of all funds and securities of the Corporation and shall perform all duties incident to the position of treasurer.

**4.7 Secretary.**

The secretary shall keep the minutes of all meetings of stockholders and directors and shall give all required notices and have charge of such books and papers as the board of directors may require. He shall perform all duties incident to the office of secretary and shall submit such reports to the board or to any committee as the board or such committee may request. Any action or duty required to be performed by the secretary may be performed by an assistant secretary.

**4.8 Controller.**

The controller shall exercise general supervision of the accounting staff of the Corporation. He shall perform all duties incident to the position of controller and shall submit reports from time to time relating to the general financial condition of the Corporation.

**4.9 General Counsel.**

The general counsel shall be the chief legal officer of the Corporation and shall have general control of all matters of legal import concerning the Corporation. He shall perform all duties incident to the position of general counsel.

**4.10 General Auditor.**

The general auditor shall have such duties as are incident to the position of general auditor in the performance of an internal audit activity of the Corporation and shall have direct access to the audit committee.

**4.11 Chief Tax Officer.**

The chief tax officer shall have responsibility for all tax matters involving the Corporation, with authority to sign, and to delegate to others authority to sign, all returns, reports, agreements and documents involving the administration of the Corporation's tax affairs.

**4.12 Subordinate Officers.**

The board of directors may from time to time appoint one or more assistant officers to the officers of the Corporation and such other subordinate officers as the board of directors may deem advisable. Such subordinate officers shall have such powers, authority and responsibilities as the board or the chief executive officer may from time to time determine. The board may grant to any committee of the board or the chief executive officer the power and authority to appoint subordinate officers and to prescribe their respective terms of office, powers, authority, and responsibilities. Each subordinate officer shall hold his position at the pleasure of the board, the committee of the board appointing him, the chief executive officer and any other officer to whom such subordinate officer reports.

#### **4.13 Resignation; Removal; Suspension; Vacancies.**

Any officer may resign at any time by giving written notice to the chief executive officer or the secretary. Unless stated in the notice of resignation, the acceptance thereof shall not be necessary to make it effective. It shall take effect at the time specified therein or, in the absence of such specification, it shall take effect upon the receipt thereof.

Any officer elected by the board of directors may be suspended or removed at any time by the affirmative vote of a majority of the board. Any subordinate officer of the Corporation appointed by the board, a committee of the board, or the chief executive officer may be suspended or removed at any time by the board, the committee that appointed such subordinate officer, the chief executive officer or any other officer to whom such subordinate officer reports.

Subject to any contractual limitations, the chief executive officer may suspend the powers, authority, responsibilities and compensation of any employee, including any elected officer or appointed subordinate officer, for a period of time sufficient to permit the board or the appropriate committee of the board a reasonable opportunity to consider and act upon a resolution relating to the reinstatement, further suspension or removal of such person.

As appropriate, the board, a committee of the board and/or the chief executive officer may fill any vacancy created by the resignation, death, retirement, or removal of an officer in the same manner as provided for the election or appointment of such person.

### **ARTICLE V INDEMNIFICATION**

#### **5.1 Right to Indemnification of Directors and Officers.**

Subject to the other provisions of this article, the Corporation shall indemnify and advance expenses to every director and officer of the Corporation in the manner and to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, against any and all amounts (including judgments, fines, payments in settlement, attorneys' fees and other expenses) reasonably incurred by or on behalf of such person in connection with any threatened, pending, or completed investigation, action, suit or proceeding, whether civil, criminal, administrative or investigative ("a proceeding"), in which such director or officer was or is made or is threatened to be made a party or called as a witness or is otherwise involved by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or member of any other corporation, partnership, joint venture, trust, organization or other enterprise, whether the basis of such proceeding is an alleged action in an official capacity as a director, officer, employee, fiduciary or member or in any other capacity while serving as a director, officer, employee, fiduciary or member. The Corporation shall not be required to indemnify a person in connection with a proceeding initiated by such person if the proceeding was not authorized by the board of directors of the Corporation.

### **5.2 Advancement of Expenses of Directors and Officers.**

The Corporation shall pay the expenses of directors and officers incurred in defending any proceeding in advance of its final disposition (“advancement of expenses”); provided, however, that the payment of expenses incurred by a director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the director or officer to repay all amounts advanced if it should be ultimately determined that by final judicial decision from which there is no further right of appeal the director or officer is not entitled to be indemnified under this article or otherwise.

### **5.3 Claims by Officers or Directors.**

If a claim for indemnification or advancement of expenses by a director or officer under this article is not paid in full within 90 days after a written claim therefor has been received by the Corporation, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or advancement of expenses under applicable law.

### **5.4 Indemnification of Employees.**

(a) Subject to the other provisions of this article, the Corporation may indemnify and advance expenses to every employee or agent of the Corporation who is not a director or officer of the Corporation in the manner and to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, against any and all amounts (including judgments, fines, payments in settlement, attorneys’ fees and other expenses) reasonably incurred by or on behalf of such person in connection with any proceeding, in which such employee or agent was or is made or is threatened to be made a party or called as a witness or is otherwise involved by reason of the fact that such person is or was an employee or agent of the Corporation. Except as set forth in paragraph (b) below, the ultimate determination of entitlement to indemnification of employees or agents who are not officers and directors shall be made in such manner as is provided by applicable law. The Corporation shall not be required to indemnify a person in connection with a proceeding initiated by such person if the proceeding was not authorized by the board of the Corporation.

(b) Subject to the other provisions of this article, the Corporation shall indemnify and advance expenses to every employee or agent of the Corporation who is not a director or officer of the Corporation in the manner and to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, against any and all amounts (including judgments, fines, payments in settlement, attorneys’ fees and other expenses) reasonably incurred by or on behalf of such person in connection with any proceeding, in which such employee or agent was or is made or is threatened to be made a party or called as a witness or is otherwise involved by reason of the fact that such person is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or member of any other corporation, partnership, joint venture, trust, organization or other enterprise, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, fiduciary or member or in any other capacity while serving as a director, officer, employee, fiduciary or member. The Corporation shall not be required to indemnify a person in connection with a proceeding initiated by such person if the proceeding was not authorized by the board of the Corporation.

### **5.5 Advancement of Expenses of Employees.**

The advancement of expenses of an employee or agent who is not a director or officer shall be made by or in the manner provided by resolution of the board of directors or by a committee of the board; provided, however, that the advancement of expenses required under section 5.4(b) of these bylaws shall be paid by the Corporation in advance of its final disposition; provided, further that the payment of expenses incurred by an employee or agent pursuant to section 5.4(a) and (b) of these bylaws in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the employee or agent to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right of appeal the employee or agent is not entitled to be indemnified under this article or otherwise.

### **5.6 Claims by Employees.**

If a claim for indemnification or advancement of expenses by an employee or agent pursuant to section 5.4(b) of these bylaws is not paid in full within 90 days after a written claim therefor has been received by the Corporation, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or advancement of expenses under applicable law.

### **5.7 Non Exclusivity of Rights.**

The rights conferred on any person by this article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, any provision of the certificate of incorporation or of these bylaws or of any agreement, any vote of stockholders or disinterested directors or otherwise.

### **5.8 Other Indemnification.**

The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another corporation, partnership, joint venture, trust, organization, or other enterprise shall be reduced by any amount such person collects as indemnification from such other corporation, partnership, joint venture, trust, organization or other enterprise.

### **5.9 Insurance.**

The board of directors may, to the fullest extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to reimburse the Corporation for any obligation which it incurs under the provisions of this article as a result of the indemnification of past, present or future directors, officers, employees, agents and any persons who have served in the past, are now serving or in the future will serve at the request of

the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; and (b) to pay on behalf of or to indemnify such persons against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this article, whether or not the Corporation would have the power to indemnify such persons against such liability under this article or under applicable law.

**5.10 Nature of Rights; Amendment or Repeal.**

The rights conferred in this article V shall be contract rights that shall continue as to an indemnitee who has ceased to be a director, officer or employee and shall inure to the benefit of such person's heirs, executors, administrators, or other legal representatives. Any repeal or modification of the foregoing provisions of this article shall be prospective only and shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

**ARTICLE VI  
MISCELLANEOUS**

**6.1 Seal.**

The corporate seal shall have inscribed upon it the name of the Corporation, the year of its organization and the words "Corporate Seal," and "Delaware." The seal and any duplicate of the seal shall be in the charge of the secretary or an assistant secretary.

**6.2 Fiscal Year.**

The fiscal year of the Corporation shall begin on January 1 and end on December 31 of each year.

**6.3 Notice.**

Unless otherwise required by applicable law or elsewhere in these bylaws, any notice required to be given by these bylaws must be given in writing delivered in person, by first class United States mail, overnight mail or courier service, or by facsimile, electronic mail, or other electronic transmission followed by a paper copy of such notice delivered by overnight mail or courier service.

**6.4 Waiver of Notice.**

Whenever any notice is required to be given, a waiver thereof in writing, signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Such written notice of waiver need not specify the business to be transacted at or the purpose of any regular or special meeting of the stockholders, board of directors, or committee of the board. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

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**6.5 Voting of Stock Owned by the Corporation.**

The board of directors, the investment funds committee, or the chairman of the board may authorize any person and delegate to one or more officers or subordinate officers the authority to authorize any person to vote or to grant proxies to vote in behalf of the Corporation at any meeting of stockholders or in any solicitation of consent of any corporation or other entity in which the Corporation may hold stock or other voting securities.

**6.6 Form of Records.**

Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. Upon the request of any person entitled to inspect records, the Corporation shall so convert such records.

**6.7 Offices.**

The Corporation shall maintain a registered office inside the State of Delaware and may also have other offices outside or inside the State of Delaware. The books of the Corporation may be kept outside or inside the State of Delaware.

**6.8 Amendment of Bylaws.**

Unless otherwise provided in the certificate of incorporation or these bylaws, (with the consent of the Required Directors with respect to any amendment to section 2.5(b) of these bylaws (or any successor provision)), the board of directors shall have power to adopt, amend, or repeal the bylaws at any regular or special meeting of the board. The stockholders shall also have power to adopt, amend, or repeal the bylaws at any annual or special meeting, subject to compliance with the notice provisions provided in section 1.11 of these bylaws.

**6.9 Gender Pronouns.**

Whenever the masculine pronoun is used in these bylaws, it shall be deemed to refer to either the masculine or the feminine gender.

## UAW RETIREE SETTLEMENT AGREEMENT

This settlement agreement (together with the Exhibits hereto, the "Settlement Agreement"), dated July 10, 2009, is between General Motors Company ("New Co"), by and through its attorneys, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"), by and through its attorneys. The UAW also enters into this Settlement Agreement as the authorized representative, as defined in Section 1114(c)(1) of Title 11 of the United States Code (the "Bankruptcy Code"), of those persons receiving retiree benefits, as defined in Section 1114(a) of the Bankruptcy Code, pursuant to collectively bargained plans, programs and/or agreements between New Co and the UAW and who are members of the Class or the Covered Group, as those terms are defined herein. This Settlement Agreement shall cover and has application to:

- (i) the Class;
- (ii) the Covered Group;
- (iii) the Existing External VEBA;
- (iv) the trustee and committee that administer the Existing External VEBA;
- (v) the Existing Internal VEBA;
- (vi) the trustees that administer the Existing Internal VEBA;
- (vii) the UAW;
- (viii) the New Co Plan; and
- (ix) New Co.

General Motors Corporation ("GM") agreed to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between GM and the UAW (the "MOU"). GM, the UAW, and the Class entered into a settlement agreement in the class action of *UAW et al. v. General Motors Corp.*, No. 05-CV-73991, 2006 WL 891151 (E.D. Mich. Mar. 31, 2006, *aff'd*, *Int'l Union, UAW v. General Motors Corp.*, 497 F.3d 615 (6th Cir. 2007) ("Henry I"). Thereafter, GM, the UAW, and the Class entered into a settlement agreement in the class action of *Int'l Union, UAW, et al. v. General Motors Corp.*, Civil Action No. 07-14074 (E.D. Mich. filed Sept. 26, 2007) ("Henry II") that was approved by the Court on July 31, 2008 (the "Henry II Settlement").

Subsequent to entering into the MOU and the Henry II Settlement, GM filed a bankruptcy action, known as *In re General Motors Corporation*, No. 09-50026 (Bankr. S.D.N.Y. filed June 1, 2009), pursuant to which New Co purchased certain assets of GM (such purchase, the "Sale Transaction"). The UAW asserted that, under Document Nos. 13 and 91 of the GM-UAW National Agreement, New Co was bound by the terms of the MOU. According to the UAW, any sale of GM's assets required UAW approval and, in the event of a sale, New Co was bound by the terms of the MOU. New Co denied that Document Nos. 13 and 91 of the GM-UAW National Agreement and the MOU applied to New Co and took the position that it was free to make decisions with respect to retiree health care benefits on a unilateral basis. After due consideration of the factual and legal arguments regarding this issue, as well as the costs, risks, and delays associated with litigating the issue, New Co and the UAW have agreed to enter into this Settlement Agreement, which will be presented to the Bankruptcy Court for approval after notice is provided to affected parties.

This Settlement Agreement recognizes and approves on the basis set forth herein: (i) the adoption of the New Co Plan; (ii) the amendment of the New Co Plan to terminate coverage for and exclude from coverage the Class and the Covered Group; (iii) the transfer of the UAW Related Account of the Existing Internal VEBA to the New VEBA; (iv) the termination of participation by the Class and the Covered Group under the Existing Internal VEBA; (v) the termination of the Existing External VEBA in conjunction with the establishment of the New Plan, and the transfer to the New VEBA of all assets and liabilities of the Existing External VEBA; (vi) that all claims for Retiree Medical Benefits incurred after the Implementation Date by the Class and the Covered Group, including but not limited to COBRA continuation coverage where such election is or had been made on or after retirement and any coverage provided on a self-paid basis in retirement, shall be solely the responsibility and liability of the New Plan and the New VEBA; (vii) the Committee's designation under the New Plan and New VEBA as named fiduciary and administrator of the New Plan; (viii) that the New Plan shall replace the New Co Plan with respect to the provision of Retiree Medical Benefits to the Class and the Covered Group after the Implementation Date; (ix) that the New VEBA shall receive certain payments as described herein from the Existing Internal VEBA, the Existing External VEBA, and New Co; (x) that New Co's obligation to pay into the New VEBA is fixed and capped as described herein; and (xi) that the New VEBA shall serve as the exclusive funding mechanism for the New Plan.

## **1. Definitions**

2009 Benefits Changes. The term "2009 Benefits Changes" shall mean those plan design changes set forth in Exhibit F to this Settlement Agreement, which changes are effective on the later of July 1, 2009 and the Initial Effective Date.

Adjustment Event. The term "Adjustment Event" is defined in Section 13 of this Settlement Agreement.

Admissions. The term "Admissions" shall mean any statement, whether written or oral, any act or conduct, or any failure to act, that could be used (whether pursuant to Rules 801(d)(2) or 804(b)(3) of the Federal Rules of Evidence, a similar rule or standard under other applicable law, the doctrines of waiver or estoppel, other rule, law, doctrine or practice, or otherwise) as evidence in a proceeding of proof of agreement with another party's position or proof of adoption of, or acquiescence to, a position that is contrary to the interest of the party making such statement, taking such action, or failing to act.

Approval Order or Judgment. The terms "Approval Order" or "Judgment" shall mean an order obtained from the Bankruptcy Court approving and incorporating this Settlement Agreement in all respects as set forth in Section 28 of this Settlement Agreement.

Bankruptcy Court. The term "Bankruptcy Court" shall mean the United States Bankruptcy Court with respect to *In re General Motors Corporation*, No. 09-50026 (Bankr. S.D.N.Y. filed June 1, 2009).

Class or Class Members. The term "Class" or "Class Members" shall mean all persons who are:

(i) New Co-UAW Represented Employees who, as of October 15, 2007, were retired from GM with eligibility for Retiree Medical Benefits under the GM Plan, and their eligible spouses, surviving spouses and dependents;

(ii) surviving spouses and dependents of any New Co-UAW Represented Employees who attained seniority and died on or prior to October 15, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from GM and/or under the GM Plan;

(iii) UAW retirees of Delphi Corporation ("Delphi") who as of October 15, 2007 were retired and as of that date were entitled to or thereafter become entitled to Retiree Medical Benefits from GM and/or under the GM Plan under the terms of the UAW-Delphi-GM Implementation Agreement, dated September 26, 2008, and their eligible spouses, surviving spouses and dependents of all such retirees;

(iv) surviving spouses and dependents of any UAW-represented employee of Delphi who attained seniority and died on or prior to October 15, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from GM and/or under the GM Plan under the terms of the UAW-Delphi-GM Implementation Agreement, dated September 26, 2008;

(v) New Co-UAW Represented Employees or former UAW-represented employees who, as of October 15, 2007, were retired from any previously sold, closed, divested or spun-off GM business unit (other than Delphi) with eligibility to receive Retiree Medical Benefits from GM and/or under the GM Plan by virtue of any other agreement(s) between GM and the UAW, and their eligible spouses, surviving spouses, and dependents; and

(vi) surviving spouses and dependents of any New Co-UAW Represented Employee or any UAW-represented employee of a previously sold, closed, divested or spun-off GM business unit (other than Delphi), who attained seniority and died on or prior to October 15, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from GM and/or under the GM Plan.

Class Counsel. The term "Class Counsel" shall mean the law firm of Stember, Feinstein, Doyle & Payne, LLC, or its successor, as well as such other counsel as may be retained thereby or work on behalf thereof.

Class Representatives. The term "Class Representatives" shall mean Earl L. Henry, Bonnie J. Lauria, Raymond B. Bailey, Theodore J. Genco, Marvin C. Marlow, Charles R. Miller, Laverne M. Soriano, and John Huber.

Closing. The term "Closing" shall have the meaning given thereto in the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, by and among New Co, GM and the other parties thereto, as amended.

Closing Date. The term "Closing Date" shall have the meaning given thereto in the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, by and among New Co, GM and the other parties thereto, as amended.

Committee. The term "Committee" shall mean the governing body set forth in Section 4.A of this Settlement Agreement that acts on behalf of the EBA and serves as the named fiduciary and administrator of the New Plan, as those terms are defined in ERISA and that is so described in the Trust Agreement.

Common Stock. The term “Common Stock” shall mean the number of shares of Common Stock, par value \$0.01 per share, of New Co, required to be issued to the New VEBA pursuant to the Equity Subscription Agreement.

Court. The term “Court” shall mean the United States District Court for the Eastern District of Michigan.

Covered Group. The term “Covered Group” shall mean:

(i) all New Co Active Employees who had attained seniority as of September 14, 2007, and who retire after October 15, 2007 under the GM-UAW National Agreements, or any other agreement(s) between GM and the UAW or New Co and the UAW, and who upon retirement are eligible for Retiree Medical Benefits under the GM Plan, the New Co Plan or the New Plan, as applicable, and their eligible spouses, surviving spouses and dependents;

(ii) all UAW-represented active employees of Delphi or a former Delphi unit who retire from Delphi or such former Delphi unit on or after October 15, 2007, and upon retirement are entitled to or thereafter become entitled to Retiree Medical Benefits from New Co and/or under the GM Plan, the New Co Plan, or the New Plan under the terms of the UAW-Delphi-GM Implementation Agreement, dated September 26, 2008, and the eligible spouses, surviving spouses and dependents of all such retirees;

(iii) all surviving spouses and dependents of any UAW-represented employee of Delphi or a former Delphi unit who dies after October 15, 2007 but prior to retirement under circumstances where such employee’s surviving spouse and/or dependents are eligible or thereafter become eligible for Retiree Medical Benefits from New Co and/or under the GM Plan, the New Co Plan or the New Plan under the terms of the UAW-Delphi-GM Implementation Agreement, dated September 26, 2008;

(iv) all former New Co-UAW Represented Employees and all UAW-represented employees who, as of October 15, 2007, remain employed in a previously sold, closed, divested, or spun-off GM business unit, and upon retirement are eligible for Retiree Medical Benefits from GM or New Co, as applicable, and/or under the GM Plan, the New Co Plan or the New Plan by virtue of any other agreement(s) between GM and the UAW or New Co and the UAW, and their eligible spouses, surviving spouses and dependents; and

(v) all eligible surviving spouses and dependents of a New Co Active Employee, former New Co-UAW Represented Employee or UAW-represented employee identified in (i) or (iv) above who attained seniority on or prior to September 14, 2007 and die after October 15, 2007 but prior to retirement under circumstances where such employee’s surviving spouse and/or dependents are eligible for Retiree Medical Benefits from GM or New Co and/or under the GM Plan, the New Co Plan or the New Plan, as applicable.

Debt. The term “Debt” shall mean notes, bonds, debentures or other similar evidences of indebtedness for money borrowed.

Dispute Party. The term “Dispute Party” is defined in Section 26.B of this Settlement Agreement.

DOL. The term “DOL” shall mean the United States Department of Labor.

Employees Beneficiary Association or EBA. The term “Employees Beneficiary Association” or “EBA” shall mean the employee organization within the meaning of section 3(4) of ERISA that is organized for the purpose of establishing and maintaining the New Plan, with a membership consisting of the individuals who are members of the Class and the Covered Group, and on behalf of which the Committee acts.

Equity Subscription Agreement. The term “Equity Subscription Agreement” shall mean the Equity Subscription Agreement, dated June 1, 2009, by and between the New VEBA and Vehicle Acquisition Holdings, LLC n/k/a New Co.

ERISA. The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

Existing External VEBA. The term “Existing External VEBA” shall mean the defined contribution – Voluntary Employees’ Beneficiary Association trust established pursuant to the Henry I Settlement.

Existing Internal VEBA. The term “Existing Internal VEBA” shall mean the General Motors Welfare Benefit Trust that was maintained by GM and, as of the Closing Date, will be sponsored by New Co.

General Motors Asset Management Valuation Policies and Procedures. The term “General Motors Asset Management Valuation Policies and Procedures” shall mean GMAM’s valuation policies and procedures, copies of which have been provided to the UAW and Class Counsel, as the same may be amended from time to time by GMAM (who shall notify the UAW and the Committee about any such intended amendments in a timely manner).

GM. The term “GM” is defined in the third paragraph of this Settlement Agreement.

GMAM. The term “GMAM” shall mean Promark Global Advisors Inc., formerly known as General Motors Asset Management Corporation, and its subsidiaries, or, when specifically referring to the investment manager for the Existing Internal VEBA, Promark Investment Advisors, Inc., formerly known as General Motors Investment Management Corporation. GMAM is a wholly owned subsidiary of GM.

GM Plan. The term “GM Plan” shall mean the Retiree Medical Benefits as provided pursuant to the General Motors Health Care Program for Hourly Employees in effect under the Henry II Settlement for the Class and the Covered Group.

GM-UAW National Agreements. The term “GM-UAW National Agreements” shall mean the agreement(s) negotiated on a multi-facility basis and entered into between GM and the UAW covering GM employees represented by the UAW. The current GM-UAW National Agreement is dated October 15, 2007.

Henry I. The term “Henry I” is defined in the second paragraph of this Settlement Agreement.

Henry I Settlement. The term “Henry I Settlement” shall mean the settlement agreement, dated December 16, 2005, approved by the Court in Henry I.

Henry II. The term “Henry II” is defined in the second paragraph of this Settlement Agreement.

Henry II Settlement. The term “Henry II Settlement” is defined in the second paragraph of this Settlement Agreement.

Indenture. The term “Indenture” shall mean the loan agreement, credit agreement or other form of document to be entered into by New Co with respect to the New Co Note, substantially in the form set forth in Exhibit B to this Settlement Agreement.

Implementation Date. The term “Implementation Date” shall mean the later of December 31, 2009 or the Closing Date.

Indemnified Party. The term “Indemnified Party” is defined in Section 23 of this Settlement Agreement.

Indemnification Liabilities. The term “Indemnification Liabilities” is defined in Section 23 of this Settlement Agreement.

Indemnity Expenses. The term “Indemnity Expenses” is defined in Section 23 of this Settlement Agreement.

Independent Attestation. The term “Independent Attestation” shall mean an agreed-upon procedures engagement performed for New Co, the UAW and the Committee by a nationally recognized independent registered public accounting firm selected by New Co and conducted in accordance with the attestation standards of the Public Company Accounting Oversight Board, the subject matter of which would be whether specified assets of the Existing Internal VEBA have been valued in accordance with the General Motors Asset Management Valuation Policies and Procedures. The agreed-upon procedures shall be mutually agreed among the accounting firm, New Co and the Committee in connection with any such engagement.

Initial Accounting Period. The term “Initial Accounting Period” shall mean the period before the date that New Co determines that its obligations, if any, with respect to the New Plan made available to the Class and Covered Group are subject to settlement accounting as contemplated by paragraphs 90-95 of FASB Statement No. 106, as amended, or its functional equivalent.

Initial Effective Date. The term “Initial Effective Date” shall mean the date on which the Bankruptcy Court enters the Approval Order.

Interest. The term “Interest” shall mean an interest rate of 9 percent (9%) per annum (computed on the basis of a 360-day year consisting of twelve 30-day months and the number of days elapsed in any partial month), credited and compounded annually, unless otherwise specified in this Settlement Agreement.

Mitigation. The term “Mitigation” shall have the same meaning as in the Henry I Settlement.

MOU. The term “MOU” is defined in the third paragraph of this Settlement Agreement.

National Institute for Health Care Reform or Institute. The term “National Institute for Health Care Reform” or “Institute” is defined in Section 31 of this Settlement Agreement.

New Co. The term “New Co” is defined in the first paragraph of this Settlement Agreement.

New Co Active Employees. The term “New Co Active Employees” shall mean those hourly employees of New Co or, for periods prior to the Closing Date, GM who, as of September 14, 2007 or any date thereafter, are covered by the 2007 GM-UAW National Agreement or are covered by any subsequent GM-UAW National Agreement or New Co-UAW National Agreement. For purposes of this definition, “active employee” shall include hourly employees on vacation, layoff, protected status, medical or other leave of absence, and any other employees who have not broken seniority as of September 14, 2007.

New Co Equity. The term “New Co Equity” shall mean the Common Stock, the Preferred Stock and the Warrant.

New Co Note. The term “New Co Note” shall mean the \$2.5 billion Note due July 15, 2017 of New Co substantially in the form set forth in Exhibit I hereto.

New Co Plan. The term “New Co Plan” shall mean the GM Plan, as amended by the 2009 Benefits Changes.

New Co-UAW National Agreements. The term “New Co-UAW National Agreements” shall mean the agreement(s) negotiated on a multi-facility basis and entered into between New Co and the UAW covering New Co employees represented by the UAW.

New Co-UAW Represented Employees. The term “New Co-UAW Represented Employees” shall mean those individuals represented by the UAW in their employment with GM prior to the Closing Date, or New Co after the Closing Date.

New Plan. The term “New Plan” shall mean the new retiree welfare benefit plan that is established and maintained by the EBA for the purpose of providing Retiree Medical Benefits to the Class and the Covered Group, and that is funded in part by the New Co Separate Retiree Account of the New VEBA.

New VEBA. The term “New VEBA” shall mean the UAW Retiree Medical Benefits Trust that was established pursuant to the Henry II Settlement and is further described in Section 4 of this Settlement Agreement.

Non-UAW Related Account. The term “Non-UAW Related Account” is defined in Section 6.A of this Settlement Agreement.

Pension Plan. The term “Pension Plan” shall mean the General Motors Hourly-Rate Employees Pension Plan, as assumed by New Co.

Preferred Stock. The term “Preferred Stock” shall mean the number of shares of Series A Fixed Rate Cumulative Perpetual Preferred Stock, par value \$0.01 per share of New Co, having terms substantially as set forth in Exhibit J hereto, required to be issued to the New VEBA pursuant to the Equity Subscription Agreement.

Relevant New Co Equity Agreements. The term “Relevant New Co Equity Agreements” shall mean (i) the Stockholders Agreement, among New Co, the New VEBA, and the other New Co stockholder parties thereto, substantially in the form set forth in Exhibit K and (ii) the Equity Registration Rights Agreement, by and among New Co, the New VEBA and the other parties thereto, substantially in the form set forth in Exhibit D hereto.

Retiree Medical Benefits. The term “Retiree Medical Benefits” shall mean all post- retirement medical benefits, including but not limited to hospital surgical medical, prescription drug, vision, dental, hearing aid and the \$76.20 Special Benefit related to Medicare.

SAP. The term “SAP” is defined in Section 12.B of this Settlement Agreement.

Subsidiary. The term “Subsidiary” shall mean any corporation or other entity of which at least a majority of the outstanding stock or other beneficial interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other governing body of such corporation or other entity (irrespective of whether or not at the time stock or other beneficial interests of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time owned by New Co, or by one or more Subsidiaries, or by New Co and one or more Subsidiaries.

Transition Payments. The term “Transition Payments” is defined in Section 12.A of the Settlement Agreement.

Trust Agreement. The term “Trust Agreement” shall mean the UAW Retiree Medical Benefits Trust Agreement, as amended as set forth in Exhibit E to this Settlement Agreement.

UAW. The term “UAW” is defined in the first paragraph of this Settlement Agreement.

UAW Related Account. The term “UAW Related Account” is defined in Section 6.A of this Settlement Agreement.

UAW Releasees. The term “UAW Releasees” shall mean the UAW, the Class, the Class Representatives, Class Counsel and the Covered Group and anyone claiming on behalf of, through or under them by way of subrogation or otherwise.

Warrant. The term “Warrant” shall mean Warrants to acquire shares of Common Stock, par value \$0.01 per share, of New Co substantially in the form set forth in Exhibit L hereto, and required to be issued to the New VEBA pursuant to the Equity Subscription Agreement.

## **2. Purpose of New Plan and New VEBA**

The retiree benefits provided for in this Settlement Agreement have resulted from extensive negotiations and affect the rights of the Class and the Covered Group. New Co Active Employees are not members of the Class. Therefore, medical benefit coverage for New Co Active Employees prior to their retirement are not within the scope of this Settlement Agreement and shall continue to be provided in accordance with the terms of the applicable collective bargaining agreement and health care benefit plan. Similarly, Retiree Medical Benefits for New Co-UAW Represented Employees who become seniority employees after September 14, 2007 are outside the scope of this Settlement Agreement and such benefits, if any, shall be provided in accordance with the applicable provisions of the GM-UAW National Agreements.

Nothing in this Settlement Agreement modifies the rights or obligations of New Co or the UAW to negotiate over health care benefits for New Co Active Employees who are not members of the Covered Group and future retirees who are not members of the Covered Group upon the expiration of the GM-UAW National Agreements, which have been assumed by New Co, or at any earlier time if New Co and the UAW mutually agree. Any changes resulting from subsequent negotiations shall be applied only to employees who retire after any such agreement is reached and shall not otherwise affect the rights of Class Members or the Covered Group hereunder or New Co-UAW Represented Employees who become seniority employees after September 14, 2007 but who retire prior to the time any such agreement is reached.

With regard to participation in the New Co Plan, all references to retirees in this Settlement Agreement shall be deemed to include the Covered Group. For purposes of this Settlement Agreement, any reference to health care benefits to be provided hereunder to Class Members or the Covered Group shall be deemed to include such benefits provided to any of their respective spouses and dependents subject to all the terms and conditions of the applicable plan, including but not limited to eligibility requirements.

The New Plan and the New VEBA shall, after the Implementation Date, be the employee welfare benefit plan and trust that are exclusively responsible for all Retiree Medical Benefits for which New Co, the New Co Plan and any other New Co entity or benefit plan formerly would have been responsible with respect to the Class and the Covered Group. All assets paid or transferred by New Co to the New VEBA (including any investment returns thereon) shall be credited to the New Co Separate Retiree Account and must be used for the exclusive purposes of (A) providing Retiree Medical Benefits to the participants of the New Plan and their eligible beneficiaries and (B) defraying the reasonable expenses of administering the New Plan, as set forth in the Trust Agreement. All obligations of New Co, the New Co Plan and any other New Co entity or benefit plan for Retiree Medical Benefits for the Class and the Covered Group arising from any agreement(s) between New Co and the UAW shall be forever terminated as of the Implementation Date. New Co's sole obligations to the New Plan and the New VEBA are those set forth in this Settlement Agreement. Eligibility rules for the New Plan shall be the same as those currently included in the New Co Plan, and may not be expanded.

### **3. Factual Investigation and Legal Inquiry and Decision to Settle**

Throughout the 2009 negotiations over the terms of this Settlement Agreement, the parties engaged in extended discussions concerning the GM bankruptcy filing, the terms of the sale pursuant to Section 363 of the Bankruptcy Code, retiree medical costs, and the obligations attendant to New Co being determined a successor to GM with respect to retiree health care. The UAW was provided with extensive information as to New Co's projected financial condition and health care expenditures. On behalf of the UAW, a team of investment bankers, actuaries, and legal experts have reviewed New Co's information and provided the UAW with an assessment as to the state of New Co's financial condition and analyzed the benefits of entering into this Settlement Agreement. New Co representatives also met with UAW representatives and its team of experts to answer questions and provide further detail, as requested.

The UAW has completed due diligence with respect to the Settlement Agreement utilizing professional financial and legal advisors and has determined that it is fair, reasonable and in the best interest of the Class and the Covered Group. Class Counsel has had access to the information provided to the UAW and has reviewed this Settlement Agreement and believes that, in consideration of all the circumstances, it is fair, reasonable, and in the best interest of all members of the Class.

### **4. New Plan and New VEBA**

A. Committee. The New Plan and New VEBA, both subject to ERISA, shall be administered by the Committee. The Committee consists of 11 members, 5 of whom were appointed by the UAW and 6 of whom are independent members, who were appointed pursuant to the Court's July 31, 2008 order approving the Henry II Settlement. In the event that any member of the Committee resigns, dies, becomes incapacitated or otherwise ceases to be a member, a replacement member shall be appointed, as described in the Trust Agreement.

B. Establish and Maintain. The EBA, acting through the Committee, shall establish and maintain the New Plan for the purpose of providing Retiree Medical Benefits to the Class and the Covered Group as set forth in this Settlement Agreement. The Committee shall begin administering the New Plan so as to be able to provide Retiree Medical Benefits for the Class and the Covered Group with respect to claims incurred after the Implementation Date. The Committee established the New VEBA on October 16, 2008. The New Plan shall be ERISA-covered and the New VEBA shall meet the requirements of Section 501(c)(9) of the Internal Revenue Code. All payments to the New Plan and the New VEBA made or caused to be made by New Co under the Settlement Agreement are payments pursuant to section 302(c)(2) of the Labor Management Relations Act, 1947, as amended, 29 U.S.C. 186(c)(2).

C. Limitation on New Co Role. No member of the Committee shall be a current or former officer, director or employee of GM or New Co or any member of the GM or New Co controlled group; provided however, that a retiree who was represented by the UAW in his/her employment with GM or New Co or an employee of New Co who is on leave from New Co and who is represented by the UAW is not precluded by this provision from serving on the Committee. No member of the Committee shall be authorized to act for New Co or shall be an agent or representative of New Co for any purpose. Furthermore, New Co shall not be a fiduciary with respect to the New Plan or New VEBA, and will have no rights or responsibilities with respect to the New Plan or New VEBA other than as specifically set forth in this Settlement Agreement.

#### 5. **Provision and Scope of Retiree Medical Benefits**

A. On and Before the Implementation Date. With respect to claims incurred on and before the Implementation Date, without regard to whether such claims were incurred before, on or after the execution of this Settlement Agreement, Retiree Medical Benefits for the Class and the Covered Group will be provided either by GM or New Co, as applicable, in accordance with the New Co Plan. Mitigation payments from the Existing External VEBA (for those entitled thereto) shall continue to apply during this period. As soon as reasonably practicable following the later of (a) July 1, 2009 or (b) receipt of necessary court approvals, the dental benefits provided by the Existing External VEBA shall terminate with respect to claims incurred after such date. The payment by New Co and/or the New Co Plan of Retiree Medical Benefits for claims incurred on and before the Implementation Date will not reduce New Co's payment obligations to the New Plan and the New VEBA under this Settlement Agreement; but in no event shall New Co be responsible for payment of claims to the extent that such claims have been paid by GM or the GM Plan.

B. After the Implementation Date. With respect to claims incurred after the Implementation Date, the New Plan and the New VEBA shall have sole responsibility for and be the exclusive source of funds to provide Retiree Medical Benefits for the Class and the Covered Group, including but not limited to COBRA continuation coverage, where such election is made after retirement. Neither New Co, the New Co Plan, the Existing Internal VEBA, nor any other New Co person, entity, or benefit plan shall have any responsibility or liability for Retiree Medical Benefits for individuals in the Class or in the Covered Group for claims incurred after the Implementation Date. New Co's sole obligations to the New Plan and the New VEBA are those set forth in this Settlement Agreement.

C. Amendment of the New Plan. On and after January 1, 2010, the Committee shall have such authority to establish Benefits as described in the Trust Agreement, including raising or lowering benefits. However, in no event may the Committee amend the New Plan or New VEBA to provide benefits other than Retiree Medical Benefits until the expiration of the Initial Accounting Period. The ability of the New Plan and the New VEBA to pay for Retiree Medical Benefits will depend on numerous factors, many of which are outside of the control of UAW, the Committee, the New Plan and the New VEBA, including, without limitation, the investment returns, actuarial experience and other factors.

D. Termination of New Co Plan and Reimbursement of New Co. The Approval Order shall provide that all obligations of New Co and all provisions of the New Co Plan in any way related to Retiree Medical Benefits for the Class and/or the Covered Group, and all provisions of applicable collective bargaining agreements, contracts, letters and understandings in any way related to Retiree Medical Benefits for the Class and the Covered Group are terminated on the Implementation Date, or otherwise amended so as to be consistent with this Settlement Agreement and the fundamental understanding that all New Co obligations regarding Retiree Medical Benefits for the Class and the Covered Group are terminated, as set forth in this Settlement Agreement. Summary Plan Descriptions of the New Co Plan shall reflect the termination of the responsibilities of New Co and the New Co Plan for Retiree Medical Benefits for the Class and the Covered Group for claims incurred after the Implementation Date, as set forth herein.

The New Plan and New VEBA shall reimburse New Co or the New Co Plan, as applicable, for any Retiree Medical Benefits advanced or provided by New Co or the New Co Plan with regard to claims incurred by members of the Class and the Covered Group after the Implementation Date, including, but not limited to situations where a retirement is made retroactive and the medical claims were incurred after the Implementation Date or where New Co is notified of an intent by a member of the Class and the Covered Group to retire under circumstances where there is insufficient time to transfer responsibility for Retiree Medical Benefits to the New Plan and New Co or the New Co Plan provides interim coverage for Retiree Medical Benefits. To the extent such reimbursement may not be permitted by law, the UAW, acting on its own behalf and as the authorized representative of the Class and the Covered Group, and the Committee will fully cooperate with New Co to secure any legal or regulatory approvals that are necessary to permit such reimbursement.

## **6. Division of Existing Internal VEBA**

A. UAW Related Account. Pursuant to the Henry II Settlement GM divided the Existing Internal VEBA into two bookkeeping accounts. One account consisted of the percentage of the Existing Internal VEBA's assets as of January 1, 2008 that was equal to the estimated percentage of GM's hourly OPEB liability covered by the Existing Internal VEBA attributable to Non-UAW represented employees and retirees, their eligible spouses, surviving spouses and dependents ("Non-UAW Related Account"). The second account consisted of the remaining percentage of the assets in the Existing Internal VEBA as of January 1, 2008 ("UAW Related Account").

As of March 31, 2009, the amount in the UAW Related Account was valued at approximately \$9.4 billion.

B. Investment of Assets. GMAM shall oversee the investment of the assets in the Existing Internal VEBA with respect to the UAW Related Account until such time as the assets attributable to the UAW Related Account are transferred to the New VEBA pursuant to Section 12 of this Settlement Agreement. All such assets shall continue to be invested under the existing investment policy (as may be amended from time to time by New Co who shall notify the UAW and the Committee about intended amendments in a timely manner) applicable to the Existing Internal VEBA. Investment returns, net of Existing Internal VEBA trust expenses (this shall only include expenses to the extent permitted by ERISA), on all assets of the Existing Internal VEBA on and after January 1, 2008 shall be applied to these accounts proportionally in relation to the value of the assets in the UAW Related Account in relation to the total amount of assets in the Existing Internal VEBA. In other words, investment returns (i.e., the percentage return on the total Existing Internal VEBA), net of Existing Internal VEBA trust expenses (this shall only include expenses to the extent permitted by ERISA), shall be applied to the value of the UAW Related Account and separately to the value of the Non-UAW Account (as adjusted to reflect any withdrawals by GM or New Co). However, neither GM nor GMAM nor New Co guarantee or warrant the investment returns on the assets in the Existing Internal VEBA.

Until such time as the assets attributable to the UAW Related Account are transferred to the New VEBA, New Co agrees to cause GMAM to periodically inform and hold discussions with the UAW and the Committee about the investment results of and decisions regarding the assets in the Existing Internal VEBA. During such period, GMAM shall, with respect to the performance of its duties in managing the Existing Internal VEBA, participate in the following meetings and provide the following reports to the UAW and the Committee: (i) quarterly reports of Existing Internal VEBA asset class and benchmark performance for relevant time periods; and (ii) semi-annual or quarterly meetings with UAW and/or Committee representatives to report on Existing Internal VEBA returns and analysis of performance, and to review significant activities affecting investments. Any input from the UAW and/or the Committee shall not be a basis of GMAM's investment decisions within the meaning of the DOL regulations set forth at 29 C.F.R. § 2510-3.21(c).

C. Disposition of Assets. No amounts shall be withdrawn by New Co from the UAW Related Account, including its investment returns, until transfer to the New VEBA under Section 12. GMAM and the Committee shall enter into discussions in advance of such transfer with regard to the method of transferring and/or otherwise handling any illiquid or otherwise non-transferable investments in the Existing Internal VEBA so as to preserve as much as possible the economic value of such investments and minimize any losses due to the liquidation of assets. Such discussions shall commence in a timely fashion and be completed as soon as reasonably practicable. The determinations made by GMAM as a product of these discussions with the Committee regarding the way to transfer illiquid or otherwise non-transferable investments in the Existing Internal VEBA shall be final and binding on New Co, the UAW, the Committee, the Class and the Covered Group.

7. [Reserved]

**8. New Co Payments to New Plan and New VEBA**

New Co's financial obligation and payments to the New Plan and New VEBA are fixed and capped by the terms of this Settlement Agreement. The timing of all payments to the New VEBA shall be as set forth in Section 12 of this Settlement Agreement; it being agreed and acknowledged that the New Plan, funded by the New VEBA, shall provide Retiree Medical Benefits for the Class and the Covered Group after the Implementation Date, and that all obligations of New Co and/or the New Co Plan for Retiree Medical Benefits for the Class and the Covered Group shall terminate as of the Implementation Date, as set forth in this Settlement Agreement. All assets shall be transferred or paid by New Co free and clear of any liens, claims or other encumbrances. Pursuant to this Settlement Agreement, New Co shall have the following, and only the following, obligations to the New VEBA and the New Plan, and all payments and transfers in this Section 8 of this Settlement Agreement shall be credited to the New Co Separate Retiree Account of the New VEBA:

A. Special Attrition Plan. In accordance with Section 12.A of this Settlement Agreement, New Co shall pay to the New VEBA the contract cost for providing Retiree Medical Benefits for those New Co Active Employees who retire under the terms of the Special Attrition Plan agreed to by GM and the UAW and ratified on May 29, 2009 (the "SAP"), excluding those New Co Active Employees who accepted buyouts.

B. UAW Related Account. In accordance with Section 12.B of this Settlement Agreement, New Co shall cause the transfer to the New VEBA of the assets (or, with regard to any illiquid or otherwise non-transferable investments, equivalent alternatives resulting from discussions between GMAM and the Committee pursuant to Section 6.C of this Settlement Agreement) of the UAW Related Account in the Existing Internal VEBA, net of Existing Internal VEBA trust expenses (which shall include expenses only to the extent permitted by ERISA).

C. New Co Note. In accordance with Section 12.D of this Settlement Agreement, New Co shall execute and deliver to the financial institution that will serve as trustee under the Indenture, if applicable, or to the other counterparty to the Indenture (the "Indenture Trustee") a counterpart signature page to the Indenture (and issue the New Co Note to the New VEBA pursuant to the terms and conditions thereof). New Co shall pay any and all documentary, stamp or similar issue taxes that may be payable with respect to its execution and delivery of counterpart signature pages to the Indenture (or the issuance of the New Co Note to the New VEBA pursuant to the terms and conditions of the Indenture). New Co represents and warrants that its execution and delivery of counterpart signature pages to the Indenture (and the issuance of the New Co Note to the New VEBA pursuant to the terms and conditions of the Indenture) in accordance with this Settlement Agreement will not conflict with or constitute a breach or default under any law or contractual obligation by which New Co is bound or to which it or its property is subject; and New Co will not take any action prior to its execution and delivery of counterpart signature pages to the Indenture (or the issuance of the New Co Note to the New VEBA pursuant to the terms and conditions of the Indenture) that would render New Co unable to so execute and deliver such agreements (or issue the New Co Note to the New VEBA pursuant to the terms and conditions of the Indenture), or result in any such breach or default occurring as a result of such execution and delivery of such agreements (or such issuance of the New Co Note to the New VEBA).

D. New Co Equity. In accordance with Section 12.D of this Settlement Agreement, New Co shall execute and deliver to the New VEBA counterpart signature pages to the Relevant New Co Equity Agreements (except the Equity Subscription Agreement, which was previously executed by the parties thereto) and issue the New Co Equity to the New VEBA pursuant to the terms and conditions of the Equity Subscription Agreement. New Co shall pay any and all documentary, stamp or similar issue taxes that may be payable with respect to its execution and delivery of counterpart signature pages to the Relevant New Co Equity Agreements (or the issuance of the New Co Equity to the New VEBA pursuant to the terms and conditions of the Equity Subscription Agreement). New Co represents and warrants that its execution and delivery of counterpart signature pages to the Relevant New Co Equity Agreements (and the issuance of the New Co Equity to the New VEBA pursuant to the terms and conditions of the Equity Subscription Agreement) in accordance with this Settlement Agreement will not conflict with or constitute a breach or default under any law or contractual obligation by which New Co is bound or to which it or its property is subject; and New Co will not take any action prior to its execution and delivery of counterpart signature pages to the Relevant New Co Equity Agreements (or the issuance of the New Co Equity to the New VEBA pursuant to the terms and conditions of the Equity Subscription Agreement) that would render New Co unable to so execute and deliver such agreements (or issue the New Co Equity to the New VEBA pursuant to the terms and conditions of the Equity Subscription Agreement), or result in any such breach or default occurring as a result of such execution and delivery of such agreements (or such issuance of the New Co Equity to the New VEBA).

9. [Reserved]

10. [Reserved]

11. [Reserved]

**12. Deposits to the New VEBA**

A. Transition Payments; SAP Payments. Until the Implementation Date, within 30 days of any request by the Committee, New Co shall pay to the New VEBA such amounts ("Transition Payments") as the Committee shall request, provided that there shall be no more than five such requests prior to the Implementation Date and the aggregate of all such payments shall not exceed \$19,950,000. Such amounts shall represent an advance to the New VEBA to cover reasonable and necessary preparatory expenses incurred by the New Plan or New VEBA in anticipation of the transition of responsibility for Retiree Medical Benefits as of the Implementation Date as set forth in Section 5 of this Settlement Agreement. These advance payments shall not increase or add to the amounts New Co has agreed to pay under this Settlement Agreement.

New Co shall also pay to the New VEBA the contract cost for providing Retiree Medical Benefits for those New Co Active Employees who retire under the SAP (excluding those New Co Active Employees who accepted buyouts). The contract cost shall be determined by the parties after execution of this Settlement Agreement as follows:

(i) The parties' respective actuaries shall meet and confer as soon as practicable to determine the average cost per contract for four retiree categories: (1) Pre-Medicare Eligible single, (2) Pre-Medicare family, (3) Medicare single, and (4) Medicare family.

(ii) Based upon the categories set forth in (i) above, the parties will develop an average annual cost calculation for each category.

(iii) As soon as reasonably practicable after conclusion of the SAP, the parties will jointly assign the SAP participants to the appropriate category according to their respective circumstances and calculate an average annual cost per SAP participant.

On or before January 5, 2010, New Co shall pay to the New VEBA such aggregate contract cost, discounted by the Interest rate set forth in this Settlement Agreement, for the twenty-four month period following the later of January 1, 2010 and the date of retirement under the SAP. The foregoing payment shall be reduced, dollar-for-dollar, by any Transition Payments made pursuant to this Section 12.A, plus Interest.

B. Deposit of the UAW Related Account. Within 10 business days after the Implementation Date, New Co shall direct the trustee of the Existing Internal VEBA to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA, the amount of which shall be determined as provided in Section 6 of this Settlement Agreement. The Approval Order shall provide that, upon such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date. Accruals for trust expenses (this shall only include expenses to the extent permitted by ERISA) through the date of transfer shall be made and an amount equal to the UAW Related Account's share of such accruals shall be retained within the Existing Internal VEBA to pay such expenses. After payment of these trust expenses is completed, a reconciliation of the accruals and the actual expenses (this shall only include expenses to the extent permitted by ERISA) shall be performed. New Co agrees to cause the payment to the New VEBA by the Existing Internal VEBA of any overaccruals for the UAW Related Account's share of such expenses. Similarly, in the event of an underaccrual the New VEBA shall return to the Existing Internal VEBA the amount of the underaccrual of expenses for the UAW Related Account.

C. Deposit of the Existing External VEBA. The Approval Order shall direct the committee and the trustees of the Existing External VEBA to transfer all assets and liabilities into the New VEBA and terminate the Existing External VEBA within 15 days after the Implementation Date. This transfer of assets and liabilities shall include, but not be limited to, the transfer of all rights and obligations granted to or imposed on the Existing External VEBA under Section 14.C(e) of the Henry I Settlement.

D. Issuance of New Co Note. On the Closing Date, New Co shall execute and deliver to the Indenture Trustee a counterpart signature page to the Indenture and issue the New Co Note to the New VEBA under the Indenture. Such execution and delivery of the Indenture (and the issuance of the New Co Note to the New VEBA under the Indenture) shall only occur as permitted by law. New Co and/or the New Plan, as applicable, shall apply for any necessary legal or regulatory approvals, including but not limited to the prohibited transaction exemptions described in Section 22 of this Settlement Agreement. The UAW, the Class, and the Covered Group shall support and cooperate with any such requests for legal or regulatory approvals. If New Co and the New VEBA cannot timely obtain necessary legal or regulatory approvals, the parties shall meet and discuss appropriate alternatives to the issuance of the New Co Note to the New VEBA that provide equivalent economic value to the New VEBA. Notwithstanding the foregoing, the obligations of New Co to execute and deliver to the Indenture Trustee a counterpart signature page to the Indenture (and to issue the New Co Notes to the New VEBA under the Indenture) pursuant to this Settlement Agreement shall be subject to the execution and delivery by the Indenture Trustee of the Indenture.

E. Issuance of New Co Equity. On the Closing Date, New Co shall execute and deliver to the New VEBA counterpart signature pages to the Relevant New Co Equity Agreements (except the Equity Subscription Agreement, which was previously executed by the parties thereto) and issue the New Co Equity to the New VEBA pursuant to the terms and conditions of the Equity Subscription Agreement. Such execution and delivery of the Relevant New Co Equity Agreements (and the issuance of the New Co Equity to the New VEBA pursuant to the terms and conditions of the Equity Subscription Agreement) shall only occur as permitted by law. New Co and/or the New Plan, as applicable, shall apply for any necessary legal or regulatory approvals, including but not limited to the prohibited transaction exemptions described in Section 22 of this Settlement Agreement and any required federal or state bank regulatory approvals. The UAW, the Class, and the Covered Group shall support and cooperate with any such requests for legal or regulatory approvals. If New Co and the New VEBA cannot timely obtain necessary legal or regulatory approvals, as specified in the Equity Subscription Agreement, the parties shall meet and discuss appropriate alternatives to the issuance of the New Co Equity to the New VEBA that provide equivalent economic value to the New VEBA. Notwithstanding the foregoing, the obligations of New Co to execute and deliver to the New VEBA the Relevant New Co Equity Agreements (and to issue the New Co Equity to the New VEBA pursuant to the terms and conditions of the Equity Subscription Agreement) pursuant to this Settlement Agreement shall be subject to the execution and delivery by the New VEBA of the Relevant New Co Equity Agreements to the relevant counterparties of each such agreement. On the Closing Date, the New VEBA shall execute and deliver to New Co counterpart signature pages to the Relevant New Co Equity Agreements (except the Equity Subscription Agreement, which was previously executed by the parties thereto).

If a deposit or payment or any portion thereof is made by New Co to the New VEBA by mistake under any provision of this Settlement Agreement, the Committee shall, upon written direction of New Co, return such amounts as may be permitted by law to New Co (plus earnings thereon from the date of payment to but excluding the date of return) within 30 days of notification by New Co that such payment was made by mistake. If a dispute arises with regard to such payment, the dispute will be resolved pursuant to Section 26 of this Settlement Agreement.

### **13. Adjustment Events**

A. Adjustment Event. “Adjustment Event” shall mean the determination of the value of any assets in lieu of which New Co elects to transfer cash to the New VEBA pursuant to Sections 8.B and 12.B of this Settlement Agreement.

#### **B. Due Diligence and Adjustment Mechanism**

In connection with any Adjustment Event, New Co shall deliver, as soon as practicable, to the Committee (or the UAW prior to establishment of the Committee) information in reasonable detail about the determinations made with regard to such Adjustment Event and the work papers, underlying calculations and other documents and materials on which such determinations are based, including non-privileged materials from New Co’s advisors, if any (collectively, the “Determination Materials”).

The Committee shall have 30 days from receipt of the Determination Materials from New Co to submit to New Co a written request for an Independent Attestation of a determination(s) listed in Section 13.A of this Settlement Agreement. As a part of this review process, the Committee may ask for additional information regarding the calculations, and the data and information provided by New Co. New Co shall as promptly as practicable, respond to all reasonable requests from the Committee for such additional information. However, a request for additional information shall not extend the 30 day review period, unless an extension is reasonably necessary to allow the Committee to review such additional information, but in no event longer than 45 days from receipt of the Determination Materials.

All determinations made with regard to a determination(s) listed in Section 13.A of this Settlement Agreement shall be final and binding on New Co, the UAW, the Class, the Covered Group, the Committee and the New Plan and New VEBA, unless the Committee timely submits a request for an Independent Attestation. If the Committee timely submits such a request, New Co shall engage a nationally recognized independent registered public accounting firm to conduct an Independent Attestation regarding a determination(s) listed in Section 13.A of this Settlement Agreement. The Independent Attestation shall be final and binding on New Co, the UAW, the Class, the Covered Group, the Committee and the New Plan and New VEBA.

Nothing in the foregoing paragraphs shall prevent the division, deposit, withdrawal or transfer of any assets the valuation of which is not in dispute pending resolution of the disputed amounts.

C. Confidentiality. All information and data provided by New Co to the UAW, Class Counsel, and/or the Committee as a part of this due diligence and adjustment process shall be considered confidential. The UAW, Class Counsel, and the Committee shall use such information and data solely for the purpose set forth in this Section 13 of the Settlement Agreement. The UAW, Class Counsel, and the Committee shall not disclose such information or data to any other person without New Co's written consent, provided that the UAW, Class Counsel, and the Committee may disclose such information and data to their attorneys and professional advisors, subject to the agreement of such attorneys and advisors to the confidentiality restrictions set forth herein.

#### **14. Future Contributions**

The UAW, the Class and the Covered Group may not negotiate any increase of New Co's funding or payment obligations set out herein. The UAW, acting on its own behalf and as the authorized representative of the Class and the Covered Group, also agrees not to seek to obligate New Co to: (i) provide any additional payments to the New VEBA other than those specifically required by this Settlement Agreement; (ii) make any other payments for the purpose of providing Retiree Medical Benefits to the Class or the Covered Group; or (iii) provide or assume the cost of Retiree Medical Benefits for the Class or the Covered Group through any other means. Provided that, the UAW may propose that New Co Active Employees be permitted to make contributions to the New VEBA of amounts otherwise payable in profit sharing, COLA, wages and/or signing bonuses, if not prohibited by law.

## **15. Pension Benefits**

New Co and the UAW agree that this Settlement Agreement shall in no way obligate New Co to effect the amendment to the Pension Plan contemplated by Section 15 of the Henry II Settlement, but not implemented, to provide to retirees and eligible surviving spouses who are members of the Class or the Covered Group a flat monthly special lifetime benefit of \$66.70, as provided for in the Henry II Settlement.

New Co and the UAW further agree that this Settlement Agreement shall in no way obligate the New Plan and New VEBA to assess an additional non-escalating monthly contribution payable by retirees and eligible surviving spouses of the Class and the Covered Group for Retiree Medical Benefits of \$51.67 per month, as provided for in the Henry II Settlement.

The Approval Order shall provide that there will be no requirement to amend the Pension Plan as provided for in Section 15 of the Henry II Settlement.

## **16. Administrative Costs**

The New VEBA will be responsible for all costs to administer the New Plan and the New VEBA commencing on the Implementation Date and continuing thereafter. The New Plan and the New VEBA trust agreement shall be drafted consistent with this requirement.

## **17. Trust Agreement; Segregated Account; Indemnification**

Assets paid or transferred to the New VEBA by or at the direction of New Co, including all investment returns thereon, shall be used solely to provide Retiree Medical Benefits to the Class and the Covered Group as defined in this Settlement Agreement until expiration of the Initial Accounting Period. Thereafter, Benefits will be provided to the Class and the Covered Group as described in the Trust Agreement. The Trust Agreement shall provide: (i) for the New Co Separate Retiree Account to be credited with the assets deposited or transferred to the New VEBA by New Co, or at New Co's direction, under this Settlement Agreement; (ii) that the assets in the New Co Separate Retiree Account may be used only to provide Benefits (as defined in the Trust Agreement) for such Class and such Covered Group; and (iii) that under no circumstances will New Co or the New Co Separate Retiree Account be liable or responsible for the obligations of any other employer or for the provision of Retiree Medical Benefits or any other benefits for the employees or retirees of any other employer.

Further, the Trust Agreement shall provide that the Committee, on behalf of the New VEBA, shall take all such reasonable action as may be needed to rebut any presumption of control that would limit the New VEBA's ability to own the New Co Note and the New Co Equity or as may be required to comply with all applicable laws and regulations, including but not limited to federal and state banking laws and regulations.

To the extent permitted by law, the New VEBA shall indemnify and hold the Committee, the UAW, New Co, the New Co Plan, and the employees, officers and agents of each of them harmless from and against any liability that they may incur in connection with the New Plan and New VEBA, unless such liability arises from their gross negligence or intentional misconduct, or breach of this Settlement Agreement. The Committee shall not be required to give any bond or any other security for the faithful performance of its duties under the Trust Agreement, except as such may be required by law.

**18. Subsidies**

With regard to claims incurred after the Implementation Date, the New VEBA shall be entitled to receive any Medicare Part D subsidies and other health care related subsidies regarding benefits actually paid by the New VEBA which may result from future legislative changes, and New Co shall not be entitled to receive any such subsidies related to prescription drug benefits and other health care related benefits provided to the Class and the Covered Group by the New Plan and New VEBA.

**19. [Reserved]**

**20. Cooperation**

A. Cooperation by New Co. New Co will cooperate with the UAW and the Committee and at the Committee's request undertake such reasonable actions as will assist the Committee in the transition of responsibility for administration of the Retiree Medical Benefits by the Committee for the New Plan and the New VEBA. Such cooperation will include assisting the Committee in educational efforts and communications with respect to the Class and the Covered Group so that they understand the terms of the New Plan, the New VEBA and the transition, and understand the claims submission process and any other initial administrative changes undertaken by the Committee. Before and after the Implementation Date, at the Committee's request and as permitted by law, New Co will furnish to the Committee such information and shall provide such cooperation as may be reasonably necessary to permit the Committee to effectively administer the New Plan and the New VEBA, including, without limitation, the retrieval of data in a form and to the extent maintained by New Co regarding age, amounts of pension benefits, service, pension and medical benefit eligibility, marital status, mortality, claims history, births, deaths, dependent status and enrollment information of the Class and the Covered Group. At the request of the Committee, New Co will continue to perform the necessary eligibility work for a reasonable period of time, not to exceed 90 days after the Implementation Date in order to allow the Committee to establish and test the eligibility database, and for which New Co will be entitled to reimbursement for reasonable costs. New Co shall also assist the Committee in transitioning benefit provider contracts to the New VEBA. New Co shall also cooperate with the UAW and the Committee and undertake such reasonable actions as will enable the Committee to perform its administrative functions with respect to the New Plan and the New VEBA, including insuring an orderly transition from New Co administration of Retiree Medical Benefits to the New Plan and the New VEBA.

To the extent permitted by law, New Co will also allow retiree participants to voluntarily have required contributions withheld from pension benefits and to the extent reasonably practical, credited to the New Co Separate Retiree Account of the New VEBA on a monthly basis. A retiree participant may elect or withdraw consent for pension withholdings at any time by providing 45 days written notice to the Pension Plan administrator or such shorter period that may be required by law.

To the extent permitted by law and if applicable, New Co will also cooperate with the Committee to make provision for the New VEBA payments of the \$76.20 Special Benefit to be incorporated into monthly New Co pension checks for eligible retirees and surviving spouses. It will be the responsibility of the Committee and the New VEBA to advise New Co's pension administrator in a timely manner of eligibility changes with regard to the Special Benefit payment. The timing of the information provided to New Co's pension administrator will determine the timing for the incorporation into the monthly pension check. It will be the responsibility of the Committee and the New VEBA to establish a bank account for the funding of the Special Benefit payments, and New Co's pension administrator will be provided with the approval to draw on that account for the payment of the benefit. The Committee and the New VEBA will assure that the bank account is adequately funded for any and all such payments. If adequate funds do not exist for the payments, then New Co's pension administrator will not make such payments until the required funding is established in the account. It will be the responsibility of the Committee and the New VEBA to audit the eligibility for, and payment of, the Special Benefit. Additionally, the Committee and the New VEBA will be responsible for the payment of reasonable costs associated with New Co's administration of the payment of this Special Benefit and the pension withholdings, including development of administrative and recordkeeping processes, monthly payment processing, audit and reconciliation functions and the like.

New Co will be financially responsible for reasonable costs associated with the transition of coverage for the Class and the Covered Group to the New Plan and New VEBA. This shall include the cost of educational efforts and communications with respect to retirees, the New Plan's initial creation of administrative procedures, initial development of record sharing procedures, the testing of computer systems, the Committee's initial vendor selection and contracting, and other activities incurred on or before the Implementation Date, including but not limited to costs associated with drafting the trust agreement for the New VEBA, seeking from the Internal Revenue Service a determination of the tax-exempt status of the New VEBA, plan design and actuarial and other professional work necessary for initiation of the New Plan and New VEBA and the benefits to be provided thereunder. Payments made by New Co described in this Section shall not reduce its payment obligations under this Settlement Agreement, and if the New VEBA is a multi-employer welfare trust, the costs described in this Section, to the extent not allocable to a specific employer, shall be pro-rated among the participating companies based on the ratio of required funding for each company. Payment of these costs shall be provided for in the Approval Order.

B. Cooperation With New Co. The UAW and the Committee will cooperate and shall timely furnish New Co with such information related to the New Plan and New VEBA, in a form and to the extent maintained by the UAW and the Committee, as may be reasonably necessary to permit New Co to comply with requirements of the U.S. Securities and Exchange Commission, including, but not limited to, Generally Accepted Accounting Principles, including but not limited to SFAS 87, SFAS 106, SFAS 132R, SFAS 157, and SFAS 158 (as amended), for disclosure in New Co's financial statements and any filings with the U.S. Securities and Exchange Commission.

## **21. Accounting Treatment**

New Co has maintained that a necessary element in its decision to enter into this Settlement Agreement is securing accounting treatment that is reasonably satisfactory to New Co regarding the transactions contemplated by this Settlement Agreement. As soon as practicable, New Co will discuss the accounting for the New Plan and the New VEBA with New Co's independent auditors, and if either New Co or its independent auditors determine it necessary, may also discuss the accounting with the staff of the U.S. Securities and Exchange Commission. If, as a result of those discussions, New Co believes that the accounting for the transaction may not be a "settlement" as contemplated by paragraphs 90-95 of FASB Statement No. 106, as amended, the parties, at the request of New Co shall meet in an effort to restructure the transaction to achieve such accounting, which provides equivalent economic value to the New VEBA.

## **22. Cooperation on Regulatory and Related Approvals**

New Co, on behalf of itself, the New VEBA and all other parties in interest, shall timely apply for, and the UAW and the New VEBA shall fully cooperate in securing, any legal or regulatory approvals necessary to enable the parties to fulfill the obligations of this Settlement Agreement, including, without limitation, any prohibited transaction exemptions necessary for transactions between any party in interest and the New VEBA. If New Co and the New VEBA do not timely obtain any necessary exemptions and the DOL does not otherwise assure the New VEBA and New Co, to the reasonable satisfaction of each, that the necessary exemptions will be granted, the parties will meet and discuss an appropriate alternative which provides equivalent economic value to the New VEBA.

## **23. Indemnification**

Subject to approval by the Bankruptcy Court as part of the Judgment, New Co hereby agrees to indemnify and hold harmless the UAW and Class Counsel, and its officers, directors, employees and expert advisors (each, an "Indemnified Party"), to the extent permitted by law, from and against any and all losses, claims, damages, obligations, assessments, penalties, judgments, awards, and other liabilities related to any decision, recommendations or other actions taken prior to the date of this Settlement Agreement, including, without limitation, acting as the authorized representative of the Class and the Covered Group (collectively, "Indemnification Liabilities"), and shall fully reimburse any Indemnified Party for any and all reasonable and documented attorney fees and expenses (collectively, "Indemnity Expenses"), as and when incurred, of investigating, preparing or defending any claim, action, suit, proceeding or investigation, arising out of or in connection with any Indemnification Liabilities incurred as a result of an Indemnified Party's entering into, or participation in the negotiations for this Settlement Agreement and the transactions contemplated in connection herewith; provided, however, that such indemnity shall not apply to any portion of any such Liability or Expense that resulted from the gross negligence or willful misconduct by an Indemnified Party; provided, further, that such indemnity shall not apply to any Indemnification Liabilities to a New Co Active Employee for breach of the duty of fair representation.

Nothing in this Section 23 or any provision of this Settlement Agreement shall be construed to provide an indemnity for any member or any actions of the Committee; provided however, that an Indemnified Party who becomes a member of the Committee shall remain entitled to any indemnity to which the Indemnified Party would otherwise be entitled pursuant to this Section 23 for actions taken, or for a failure to take actions, in any capacity other than as a member of the Committee; and provided further, that nothing in this Section 23 or any other provision of this Settlement Agreement shall be construed to provide an indemnity for any Indemnification Liabilities or Indemnity Expenses relating to (i) management of the assets of the New VEBA or (ii) for any action, amendment or omission of the Committee with respect to the provision and administration of Retiree Medical Benefits.

If an Indemnified Party receives notice of any action, proceeding or claim as to which the Indemnified Party proposes to demand indemnification hereunder, it shall provide New Co prompt written notice thereof. Failure by an Indemnified Party to so notify New Co shall relieve New Co from the obligation to indemnify the Indemnified Party hereunder only to the extent that New Co suffers actual prejudice as a result of such failure, but New Co shall not be obligated to provide reimbursement for any Indemnity Expenses incurred for work performed prior to its receipt of written notice of the claim. If an Indemnified Party is entitled to indemnification hereunder, New Co will have the right to participate in such proceeding or elect to assume the defense of such action or proceeding at its own expense and through counsel chosen by New Co (such counsel being reasonably satisfactory to the Indemnified Party). The Indemnified Party will cooperate in good faith in such defense. Upon the assumption by New Co of the defense of any such action or proceeding, the Indemnified Party shall have the right to participate in, but not control the defense of, such action and retain its own counsel but the expenses and fees shall be at its expense unless (a) New Co has agreed to pay such Indemnity Expenses, (b) New Co shall have failed to employ counsel reasonably satisfactory to an Indemnified Party in a timely manner, or (c) the Indemnified Party shall have been advised by counsel that there are actual or potential conflicting interests between New Co and the Indemnified Party that require separate representation, and New Co has agreed that such actual or potential conflict exists (such agreement not to be unreasonably withheld); provided, however, that New Co shall not, in connection with any such action or proceeding arising out of the same general allegations, be liable for the reasonable fees and expenses of more than one separate law firm at any time for all Indemnified Parties not having actual or potential conflicts among them, except to the extent that local counsel, in addition to its regular counsel, is required in order to effectively defend against such action or proceeding. All such fees and expenses shall be invoiced to New Co, with such detail and supporting information as New Co may reasonably require, in such intervals as New Co shall require under its standard billing processes.

If the Indemnified Party receives notice from New Co that New Co has elected to assume the defense of the action or proceeding, New Co will not be liable for any attorney fees or other legal expenses subsequently incurred by the Indemnified Party in connection with the matter.

New Co shall not be liable for any settlement of any claim against an Indemnified Party made without New Co's written consent, which consent shall not be unreasonably withheld or delayed. New Co shall not, without the prior written consent of an Indemnified Party, which consent shall not be unreasonably withheld or delayed, settle or compromise any claim, or permit a default or consent to the entry of any judgment, that would create any financial obligation on the part of the Indemnified Party not otherwise within the scope of the indemnified liabilities.

The termination of this Settlement Agreement shall not affect the indemnity provided hereunder, which shall remain operative and in full force and effect. Notwithstanding anything in this Section 23 to the contrary, this Section 23 of the Settlement Agreement shall not be applicable with respect to any of the matters covered by Section 2.9 of the Equity Registration Rights Agreement.

## **24. Costs and Attorneys Fees**

A. Fees and Expenses. New Co agrees to reimburse the UAW and Class Counsel at or prior to the consummation of the transactions contemplated in Section 8 for reasonable attorney and professional fees and expenses based on hours worked and determined in accordance with the current market rates (not to include any upward adjustments such as any lodestar multipliers, risk enhancements, success fee, completion bonus or rate premiums) incurred in connection with the negotiation of the Equity Subscription Agreement, the Relevant New Co Equity Agreements, the Note, the Indenture, the Warrant and all related transaction agreements and the consummation of the closings thereunder, and all court proceedings, including without limitation, any litigation and discovery, related to obtaining the Approval Order and any other orders required to obtain final approval of the Sale Transaction and any related appeals and motion practice. The parties may request that the Bankruptcy Court include in its Approval Order reference to New Co's reimbursement of fees and expenses pursuant to this Section 24.A.

B. Fees After the Closing Date. Each party to this Settlement Agreement agrees not to seek any other future fees or expenses from any other party in connection with either Henry II or Henry I or the bankruptcy proceeding, except that any party to this Settlement Agreement may seek such fees and costs as may be allowed by law.

## **25. Releases and Certain Related Matters**

A. In consideration of New Co's entry into this Settlement Agreement, and the other obligations of New Co contained herein, the UAW, acting on its own behalf and as authorized representative of the Class and the Covered Group, hereby consents to the entry of the Judgment, which shall be binding upon all Class Members and the Covered Group.

B. As of the Closing Date, each UAW Releasee releases and forever discharges each other UAW Releasee and each other Indemnified Party and shall be forever released and discharged with respect to any and all rights, claims or causes of action that such UAW Releasee had, has or hereafter may have, whether known or unknown, suspected or unsuspected, concealed or hidden, arising out of or based upon or otherwise related to (a) any of the claims arising, or which could have been raised, in connection with either Henry I, Henry II, or the GM bankruptcy proceedings, concerning the provision of Retiree Medical Benefits and the terms of this Settlement Agreement, (b) any claims that this Settlement Agreement, any document referred to or contemplated herein is not in compliance with applicable laws and regulations, and (c) any action taken to carry out this Settlement Agreement in accordance with this Settlement Agreement and applicable law.

C. As of the Closing Date, the UAW Releasees release and forever discharge New Co, and its officers, directors, employees, agents, and subsidiaries, and the New Co Plan and its fiduciaries, with respect to any and all rights, claims or causes of action that any UAW Releasee had, has or hereafter may have, whether known or unknown, suspected or unsuspected, concealed or hidden, arising out of, based upon or otherwise related to (a) any of the claims arising, or which could have been raised, in connection with Henry I, Henry II, or the GM bankruptcy proceedings, concerning the provision of Retiree Medical Benefits and the terms of this Settlement Agreement, (b) any claims that this Settlement Agreement, any document referred to or contemplated herein is not in compliance with applicable laws and regulations, and (c) any action taken to carry out this Settlement Agreement in accordance with this Settlement Agreement and applicable law.

D. As of the Closing Date, the UAW Releasees release and forever discharge the Existing External VEBA and the fiduciaries, trustees, and committee that administer the Existing External VEBA, and the Existing Internal VEBA and the fiduciaries, trustees, and committee that administer the Existing Internal VEBA with respect to any and all rights, claims or causes of action that any UAW Releasee had, has or hereafter may have, whether known or unknown, suspected or unsuspected, concealed or hidden, arising out of, based upon or otherwise related to (a) any of the claims arising, or which could have been raised, in connection with Henry I, Henry II, or the GM bankruptcy proceedings, concerning the provision of Retiree Medical Benefits and the terms of this Settlement Agreement, (b) any claims that this Settlement Agreement, any document referred to or contemplated herein is not in compliance with applicable laws and regulations, and (c) any action taken by such fiduciaries, trustee and/or committees to carry out this Settlement Agreement and to transfer assets of the Existing External VEBA and Existing Internal VEBA to the New VEBA in accordance with this Settlement Agreement and applicable law.

E. As of the Closing Date, New Co releases and forever discharges the Class Representatives and Class Counsel from any and all claims, demands, liabilities, causes of action or other obligations of whatever nature, including attorney fees, whether known or unknown, that arise from their participation or involvement with respect to the assertion of the claims and negotiations leading to this Settlement Agreement. This release does not extend to obligations arising from the terms of the Settlement Agreement itself.

F. Neither the entry into this Settlement Agreement nor the consent to the Judgment is, may be construed as, or may be used as, an Admission by or against New Co or any UAW Releasee of any fault, wrongdoing or liability whatsoever.

## **26. Dispute Resolution**

A. Coverage. Any controversy or dispute arising out of or relating to, or involving the enforcement, implementation, application or interpretation of this Settlement Agreement shall be enforceable only by New Co, the Committee and the UAW, and the Approval Order will provide that the Bankruptcy Court will retain jurisdiction to resolve any disputes, and, in the event that the bankruptcy proceeding has been closed or dismissed, the parties agree that any necessary litigation to resolve such disputes shall be brought before the Court. Notwithstanding the foregoing, any disputes relating solely to eligibility for participation or entitlement to benefits under the New Plan shall be resolved in accordance with the applicable procedures such Plan shall establish, and nothing in this Settlement Agreement precludes Class Members from pursuing appropriate judicial review regarding such disputes; provided however, that no claims related to Retiree Medical Benefits for claims incurred after the Implementation Date may be brought against New Co, any of its affiliates, or the New Co Plan.

B. Attempt at Resolution. Although the Bankruptcy Court retains exclusive jurisdiction to resolve disputes arising out of or relating to the enforcement, implementation, application or interpretation of this Settlement Agreement, the parties agree that prior to seeking recourse to the Bankruptcy Court, the parties shall attempt to resolve the dispute through the following process:

(i) The aggrieved party shall provide the party alleged to have violated this Settlement Agreement (“Dispute Party”) with written notice of such dispute, which shall include a description of the alleged violation and identification of the Section(s) of the Settlement Agreement allegedly violated. Such notice shall be provided so that it is received by the Dispute Party no later than 180 calendar days from the date of the alleged violation or the date on which the aggrieved party knew or should have known of the facts that give rise to the alleged violation, whichever is later, but in no event longer than 3 years from the date of the alleged violation.

(ii) If the Dispute Party fails to respond within 21 calendar days from its receipt of the notice, the aggrieved party may seek recourse to the Bankruptcy Court; provided however, that the aggrieved party waives all claims related to a particular dispute against the Dispute Party if the aggrieved party fails to bring the dispute before the Bankruptcy Court within 180 calendar days from the date of sending the notice.

All the time periods in Section 26 of this Settlement Agreement may be extended by agreement of the parties to the particular dispute.

C. Alternate Means of Resolution. Nothing in this Section shall preclude New Co, the UAW, or the Committee from agreeing on any other form of alternative dispute resolution or from agreeing to any extensions of the time periods specified in this Section.

D. Arbitration for Certain Disputes. Notwithstanding anything in Section 26.A or 26.B of this Settlement Agreement to the contrary, any dispute or controversy arising under the last paragraph of Section 5.D or the last paragraph of Section 12 of this Settlement Agreement shall be resolved in the following manner:

(i) While the parties agree that each of the disputes referenced in Section 26.D of this Settlement Agreement may be submitted to arbitration, they first shall endeavor to resolve the dispute through the following procedures:

(1) the aggrieved party shall provide the other party with written notice of such dispute;

(2) the written notice in Section 26.D(i)(1) of this Settlement Agreement shall include a description of the alleged violation and identify the Section(s) of the Settlement Agreement allegedly violated;

(3) the party receiving the notice shall respond in writing within 21 calendar days of receipt of notice; and

(4) within 21 calendar days of that response the parties shall meet in an effort to resolve the dispute.

All the time periods in this Section 26.D of this Settlement Agreement may be extended by agreement of the parties to the particular dispute.

(ii) Should the parties be unable to resolve the dispute within 30 calendar days from the date of the meeting set forth in Section 26.D(i)(4) of this Settlement Agreement, either party may send written demand to the other party that the issue be resolved by arbitration. The failure to demand arbitration within 60 calendar days from the date of the meeting set forth in Section 26.D(i)(4) of this Settlement Agreement shall waive any right to such arbitration over the issue, absent mutual written agreement to the contrary by the parties. If a party fails to make a timely demand for arbitration pursuant to this Section 26.D(ii), such party may not pursue the dispute in court, and the dispute will be resolved on the basis of the position taken by the opposing or answering party.

(iii) In the event that New Co, the UAW, or the Committee proceed to arbitration in accordance with this Section 26.D, that dispute shall be submitted to an arbitrator (the "Arbitrator") who will not have the authority to modify or to amend this Settlement Agreement, but only to apply this Settlement Agreement, as written, to particular factual situations based on a preponderance of the evidence. The Arbitrator shall not have the authority to award punitive or exemplary damages. Interest shall be paid on any delayed payments as a result of the arbitration process. The interest will be calculated daily at a rate equal to the OPEB Discount Rate for each day that amounts remain outstanding. Such arbitration shall take place in Detroit, Michigan unless otherwise agreed upon in writing by the parties. Any award shall be in writing and issued within 30 days from the close of the hearing, unless the parties otherwise agree. The award shall be final, conclusive and binding on New Co, the UAW, and the Committee. The award may be reduced to judgment in any appropriate court having jurisdiction in accordance with the provisions of applicable law.

(iv) In the event that a dispute arising under this Section is taken to arbitration, the Arbitrator shall be the arbitrator/umpire used by New Co and the UAW for disputes arising under the then applicable New Co-UAW National Agreement; provided that, if within 15 days of receipt of the written arbitration demand referred to in Section 26.D(ii), the parties agree in writing that the dispute requires an arbitrator with actuarial expertise, then the Arbitrator shall be a person with actuarial expertise upon whom the parties mutually agree in writing, but failing such mutual agreement with 30 days of receipt of the written arbitration demand referred to in Section 26.D(ii), the arbitrator/umpire used by New Co and the UAW for disputes arising under the then applicable New Co-UAW National Agreement shall select a person with actuarial expertise to serve as the Arbitrator.

(v) New Co, the UAW, and the Committee shall cooperate in setting a hearing date for the arbitration as soon as possible following selection of the Arbitrator.

## **27. Submission of the Settlement Agreement**

The parties shall submit this Settlement Agreement to the Bankruptcy Court and jointly work diligently to have this Settlement Agreement approved by the Bankruptcy Court as soon as possible. The parties shall give notice to all affected individuals, in a manner approved by the Bankruptcy Court. The parties shall seek from the Bankruptcy Court any order necessary to comply with the Federal Rules of Bankruptcy Procedure or any other applicable rule of procedure or statutory requirement that must be met to give this Settlement Agreement full force and effect.

## **28. Conditions**

This Settlement Agreement is conditioned upon the occurrence or resolution of the conditions described in subparagraphs A and B of this Section. The failure of the conditions described in subparagraphs A and/or B shall render this Settlement Agreement void.

A. Judgment/Approval Order. The Bankruptcy Court shall have entered a Judgment approving and accepting this Settlement Agreement in all respects and as to all parties, including New Co, the UAW, the Class and the Covered Group and the Closing shall have occurred in reliance on such Judgment. Such Approval Order shall be reasonably acceptable in form and substance to New Co and the UAW. This condition shall be deemed to have failed upon issuance of an order disapproving this Settlement Agreement, or upon the issuance of an order approving only a portion of this Settlement Agreement but disapproving other portions, unless New Co and the UAW, acting on its own behalf and as the authorized representative of the Class and the Covered Group, agree otherwise in writing.

B. Existing Internal VEBA Sponsorship. New Co, or one of its Subsidiaries, shall assume from GM sponsorship of the Existing Internal VEBA. In connection therewith, New Co shall (i) have all of the rights, title and interest as plan sponsor, plan administrator or employer under the Existing Internal VEBA, (ii) have any responsibility, obligation or liability of plan sponsor or plan administrator relating to, the Existing Internal VEBA and each contract, agreement or arrangement established thereunder or relating thereto, and (iii) operate the Existing Internal VEBA in accordance with, and to otherwise comply with the New Co's obligations under, this Settlement Agreement, effective as of the Closing Date and subject to approval by the Bankruptcy Court, including, without limitation, the obligation to direct the trustee of the Existing Internal VEBA to transfer the UAW Related Account in the Existing Internal VEBA to the New VEBA.

## **29. No Admission; No Prejudice**

A. Notwithstanding anything to the contrary, whether set forth in this Settlement Agreement, the MOU, the Judgment, or any notice, any documents filed with the Court in either Henry I, Henry II, or the GM bankruptcy proceedings, any documents, whether provided in the course of or in any manner whatsoever relating to the discussions between New Co and UAW with respect to health care benefits or relating to this Settlement Agreement, whether distributed, otherwise made available to or obtained by any person or organization, including without limit, New Co Active Employees, Class Members, or their spouses, surviving spouses or dependents, or to the UAW or New Co in the course of the negotiations that led to entry into this Settlement Agreement, or otherwise:

(i) New Co has denied, and continues to deny, that it is responsible for providing medical benefits to retirees. Neither this Settlement Agreement nor any document referred to or contemplated herein may be construed as, or may be viewed or used as, an Admission by or against the New Co of any fault, wrongdoing or liability whatsoever, or as an Admission by New Co of any claim or argument made by or on behalf of the UAW, New Co Active Employees, the Class or the Covered Group, that it is the successor in interest of GM. Without limiting in any manner whatsoever the generality of the foregoing, the performance of any settlement actions by New Co may not be construed, viewed or used as an Admission by or against New Co.

(ii) The UAW, acting on its own behalf and as the authorized representative of the Class Members, has claimed, and continues to claim, that the allegations, claims and contentions made against New Co have merit. Neither this Settlement Agreement nor any document referred to or contemplated herein nor any settlement actions may be construed as, or may be viewed or used as, an Admission by or against any of the UAW, the Class Representatives or the Class Members of any fault, wrongdoing or liability whatsoever or of the validity of any claim or argument made by or on behalf of New Co that New Co has a unilateral right to modify or terminate retiree health care benefits, has no obligation to assume the MOU, or that New Co is not a successor of interest to GM. Without limiting in any manner whatsoever the generality of the foregoing, the performance of any settlement actions by any of the UAW, the Class Representatives or the Class Members, including without limitation, the acceptance of any retiree health care benefits under any of the New Co health care plans set forth in this Settlement Agreement, may not be construed, viewed or used as an Admission by or against any of the UAW, the Class Representatives or the Class that New Co has a unilateral right to modify or terminate retiree health care benefits, has no obligation to assume the MOU, or that New Co is not a successor to GM.

(iii) Entering into this Settlement Agreement and performance of any of the settlement actions shall not be construed as, or deemed to be evidence of, an Admission by any of the parties hereto, and shall not be offered or received in evidence in any action or proceeding against any party hereto in any court, administrative agency or other tribunal or forum for any purpose whatsoever other than to enforce the provisions of this Settlement Agreement or to obtain or seek approval of this Settlement Agreement.

For the purposes of this Section 29, New Co refers to New Co and the UAW refers to the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, as organizations, as well as any and all of their respective directors, officers, employees, and agents.

This Settlement Agreement and anything occurring in connection with reaching this Settlement Agreement are without prejudice to New Co, the UAW and the Class. The parties may use this Settlement Agreement to assist in securing the Judgment approving the settlement. It is intended that New Co, the UAW, the Committee, the Class Representatives, the Class, the Covered Group and Class Counsel shall not use this Settlement Agreement, or anything occurring in connection with reaching this Agreement, as evidence against New Co, the UAW, the Class or the Covered Group in any circumstance except where the parties are operating under or enforcing this Settlement Agreement or the Judgment approving this Settlement Agreement.

### **30. Duration and Termination of Settlement Agreement**

This Settlement Agreement will remain in effect unless and until terminated in accordance with this Section and as provided for in Section 28 of this Settlement Agreement. Termination of this Settlement Agreement may occur as follows:

(i) If the Judgment is denied in whole or in material part, either New Co or the UAW, acting on its own behalf and as the authorized representative of the Class and the Covered Group, may terminate this Settlement Agreement by 30 days' written notice to the other party and the rights and obligations of all parties shall revert to the status quo ante as if this Settlement Agreement had never been entered.

(ii) If an Approval Order satisfactory to the parties, as described in Section 28.A of this Settlement Agreement or any other order authorizing the Sale Transaction, is entered by the Bankruptcy Court, but overturned on appeal or otherwise such that there is or may be a material negative impact on the rights, obligations or benefits provided hereunder to the UAW, the Class, the Covered Group or New Co, either New Co or the UAW, acting on its own behalf and as the authorized representative of the Class and the Covered Group, may terminate this Settlement Agreement upon 30 days' written notice to the other parties and the rights and obligations of all parties shall revert to the status quo ante as if this Settlement Agreement had never been entered.

(iii) If any court, agency or other tribunal of competent jurisdiction issues a determination that any part of this Settlement Agreement is prohibited or unenforceable in any material respect, either New Co or the UAW, acting on its own behalf and as the authorized representative of the Class and the Covered Group, may terminate this Settlement Agreement by 30 days' written notice to the other party and the rights and obligations of all parties shall revert to the status quo ante as if this Settlement Agreement had never been entered.

Notwithstanding the foregoing, Sections 22, 23, 26 and 29 shall survive the termination of this Settlement Agreement.

### **31. National Institute for Health Care Reform**

In recognition of the interest of New Co, the UAW, the Class and the Covered Group in improving the quality, affordability, and accountability of health care in the United States, the parties agree that as a part of this settlement New Co and the UAW shall establish a National Institute for Health Care Reform ("Institute"). The Institute shall be established and receive its first annual funding payment as soon as practicable after the Initial Effective Date on the basis set forth in the term sheet attached hereto as Exhibit G to this Settlement Agreement. The annual funding payment will be payable in four equal quarterly installments. The funding and operation of the Institute shall be separate, independent and distinct from the New Plan and the New VEBA. Any payments by New Co to the Institute shall be governed exclusively by the term sheet and are not in any way related to New Co's payment obligations as described in Sections 8 and 12 of this Settlement Agreement.

### 32. Other Provisions

A. References in this Settlement Agreement to “Sections,” “Paragraphs” and “Exhibits” refer to the Sections, Paragraphs, and Exhibits of this Settlement Agreement unless otherwise specified.

B. The Bankruptcy Court (or in the event the bankruptcy proceeding has been closed or dismissed, the Court) will, subject to Section 26 of this Settlement Agreement, resolve any disputes relating to or arising out of or in connection with the enforcement, interpretation or implementation of this Settlement Agreement. Each of the parties hereto expressly and irrevocably submits to the jurisdiction of the Bankruptcy Court or the Court, as applicable, and expressly waives any argument it may have with respect to venue or forum non conveniens.

C. This Settlement Agreement constitutes the entire agreement between the parties regarding the matters set forth herein, and no representations, warranties or inducements have been made to any party concerning this Settlement Agreement, other than representations, warranties and covenants contained and memorialized in this Settlement Agreement. This Settlement Agreement supersedes any prior understandings, agreements or representations by or between the parties, written or oral, regarding the matters set forth in this Settlement Agreement.

D. The captions used in this Settlement Agreement are for convenience of reference only and do not constitute a part of this Settlement Agreement and will not be deemed to limit, characterize or in any way affect any provision of this Settlement Agreement, and all provisions of this Settlement Agreement will be enforced and construed as if no captions had been used in this Settlement Agreement.

E. This Settlement Agreement may be executed in two or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the parties to this Settlement Agreement shall exchange among themselves original signed counterparts.

F. No party to this Settlement Agreement may assign any of its rights hereunder without the prior written consent of the other parties, and any purported assignment in violation of this sentence shall be void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. For purposes of clarification and without limitation as to other beneficiaries, GM is intended to be a third party beneficiary of this Settlement Agreement.

G. Each of New Co, the UAW, the Committee, the Class and the Covered Group shall do any and all acts and things, and shall execute and deliver any and all documents, as may be necessary or appropriate to effect the purposes of this Settlement Agreement.

H. This Settlement Agreement shall be construed in accordance with applicable federal laws of the United States of America.

I. Any provision of this Settlement Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent any provision of this Settlement Agreement is invalid or unenforceable as provided for in Section 32.J of this Settlement Agreement, it shall be replaced by a valid and enforceable provision agreed to by New Co and the UAW, acting on its own behalf and as the authorized representative of the Class and the Covered Group (which agreement shall not be unreasonably withheld) that preserves the same economic effect for the parties under this Settlement Agreement; provided however, that to the extent that such prohibited or unenforceable provision cannot be replaced as contemplated and the consequences of such prohibited or unenforceable provision causes this Settlement Agreement to fail of its essential purpose then this Settlement Agreement may be voided at the sole discretion of the party seeking the benefit of the prohibited or unenforceable provision. Class Counsel is expressly authorized to take all appropriate action to implement this provision.

J. In the event that any payment referenced in this Settlement Agreement is due to be made on a weekend or a holiday, the payment shall be made on the first business day following such weekend or holiday.

K. In the event that any legal or regulatory approvals are required to effectuate the provisions of this Settlement Agreement, New Co, the UAW, the Class, and the Committee will fully cooperate in securing any such legal or regulatory approvals.

L. Any notice, request, information or other document to be given under this Settlement Agreement to any of the parties by any other party shall be in writing and delivered personally, or sent by Federal Express or other carrier which guarantees next-day delivery, transmitted by facsimile, transmitted by email if in an Adobe Acrobat PDF file, or sent by registered or certified mail, postage prepaid, at the following addresses. All such notices and communication shall be effective when delivered by hand, or, in the case of registered or certified mail, Federal Express or other carrier, upon receipt, or, in the case of facsimile or email transmission, when transmitted (provided, however, that any notice or communication transmitted by facsimile or email shall be immediately confirmed by a telephone call to the recipient.):

If to New Co, addressed to:

Diana Tremblay  
GMNA Vice President of Labor Relations  
General Motors Company  
2000 Centerpoint Parkway  
Pontiac, MI 48341  
Tel: (248) 753-2243

in each case with copies to:

Francis S. Jaworski  
Office of the General Counsel  
General Motors Company  
Mail Code 482-C25-B21  
300 Renaissance Center  
P.O. Box 300  
Detroit, MI 48265-3000  
Tel: (313) 665-4914

Cadawalder, Wickersham & Taft LLP  
One World Financial Center  
New York, NY 10281  
Attention: R. Ronald Hopkinson/Lisa J. Pauquette/John J. Rapisardi  
Tel: (212) 504-6000

If to UAW, addressed to:

Daniel W. Sherrick  
General Counsel  
International Union, United Automobile, Aerospace and  
Agricultural Implement Workers of America  
8000 East Jefferson Avenue  
Detroit, MI 48214  
Tel: (313) 926-5216

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: A. Richard Susko/Richard S. Lincer/David I. Gottlieb  
Tel: (212) 225-2000

Each party may substitute a designated recipient upon written notice to the other parties.

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IN WITNESS THEREOF, the parties hereto have caused this Settlement Agreement to be executed by themselves or their duly authorized attorneys.

**AGREED:**

By:  \_\_\_\_\_

GENERAL MOTORS COMPANY

By: \_\_\_\_\_

Daniel W. Sherrick (P37171)  
8000 East Jefferson Avenue  
Detroit, MI 48214  
Tel: (313) 926-5216

COUNSEL FOR INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA

**ACKNOWLEDGED AND CONFIRMED:**

By: \_\_\_\_\_

William T. Payne  
Stember Feinstein Doyle & Payne, LLC  
Pittsburgh North Office  
1007 Mt. Royal Boulevard  
Pittsburgh, PA 15222  
Tel: (412) 492-8797  
wpayne@stargate.net

CLASS COUNSEL

IN WITNESS THEREOF, the parties hereto have caused this Settlement Agreement to be executed by themselves or their duly authorized attorneys.

**AGREED:**

By: \_\_\_\_\_

GENERAL MOTORS COMPANY

By: /s/ Daniel W. Sherrick

Daniel W. Sherrick (P37171)  
8000 East Jefferson Avenue  
Detroit, MI 48214  
Tel: (313) 926-5216

COUNSEL FOR INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA

**ACKNOWLEDGED AND CONFIRMED:**

By: \_\_\_\_\_

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1007 Mt. Royal Boulevard  
Pittsburgh, PA 15222  
Tel: (412) 492-8797  
wpayne@stargate.net  
CLASS COUNSEL

**EXHIBITS**

IN WITNESS THEREOF, the parties hereto have caused this Settlement Agreement to be executed by themselves or their duly authorized attorneys.

**AGREED:**

By: \_\_\_\_\_

GENERAL MOTORS COMPANY

By: \_\_\_\_\_

Daniel W. Sherrick (P37171)  
8000 East Jefferson Avenue  
Detroit, MI 48214  
Tel: (313) 926-5216

COUNSEL FOR INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA

**ACKNOWLEDGED AND CONFIRMED:**

By: /s/ William T. Payne \_\_\_\_\_

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1007 Mt. Royal Boulevard  
Pittsburgh, PA 15222  
Tel: (412) 492-8797  
wpayne@stargate.net

CLASS COUNSEL

**EXHIBITS**

Exhibit A: Trust Agreement

Exhibit B: [Reserved]

Exhibit C: [Reserved]

Exhibit D: Form of Equity Registration Rights Agreement

Exhibit E: Form of Trust Agreement Amendment

Exhibit F: 2009 Benefits Changes

Exhibit G: National Institute for Health Care Reform Term Sheet

Exhibit H: [Reserved]

Exhibit I: Form of New Co Note\*

Exhibit J: Form of Preferred Stock Certificate of Designation

Exhibit K: Form of Stockholders Agreement\*\*

Exhibit L: Form of Warrant

\* Final form to be agreed between New Co and the VEBA in conformity with the VEBA Note Term Sheet attached as Exhibit Y to the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, by and among New Co, GM and the other parties thereto (as amended, the "MSPA"). The VEBA Note Term Sheet is attached hereto as Exhibit I pending agreement on the final form.

\*\* Final form to be agreed among New Co, the New VEBA, and the other stockholders to be parties thereto, in conformity with the Governance Term Sheet previously furnished to the UAW, with such changes thereto as may be required by the United States Treasury and agreed to by the UAW.

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EXHIBIT A  
TRUST AGREEMENT

\*\*\*\*\*

The form of trust agreement attached hereto includes references to Ford Motor Company, Inc. and Chrysler, LLC and to separate class action cases brought against each of those companies by the UAW and a class of each company's retirees. The form of trust agreement in the attached Exhibit E is designed to accommodate the possibility that settlement agreements are entered into in those cases pursuant to which those companies would also deposit agreed-upon amounts into the trust described in the attached Exhibit E. But there is currently no settlement agreement in either of those cases, and there is no guarantee that there will be such a settlement agreement, or that any potential settlement of those cases would include an agreement to pay any amount into the trust described in the attached Exhibit E.

In the event that there is no settlement agreement in either or both of those cases, or that any settlement of either or both of those cases does not include a form of trust agreement identical in all respects to the attached Exhibit E, the references to such company and the corresponding case and settlement agreement shall be removed from the form of trust agreement, and the trust agreement shall be conformed to relate solely to the remaining settlement agreements or to this Settlement Agreement as the case may be.

\*\*\*\*\*



WHEREAS, each EBA, acting through the Committee, will establish and maintain a separate employee welfare benefit plan (collectively the “Plans”) on behalf of the members of the respective Eligible Groups;

WHEREAS, the Committee, on behalf of the EBAs, has entered into this Trust Agreement to implement the Trust, to be known as the “UAW Retiree Medical Benefits Trust,” which shall include the GM Separate Retiree Account, the Ford Separate Retiree Account and the Chrysler Separate Retiree Account (collectively the “Separate Retiree Accounts”), to accept the deposits, contributions, transfers and remittances of, or attributable to, each Company in the respective Separate Retiree Account;

WHEREAS, the purpose of each Separate Retiree Account is to serve as a separate, dedicated account to be used for the sole purpose of funding Benefits provided under the related Plan to the Eligible Group under that Plan and defraying the reasonable expenses of such Plan, as set forth in the GM Retiree Settlement, Ford Retiree Settlement and the Chrysler Retiree Settlement respectively;

WHEREAS, the purpose of this Trust is to allow for the pooled investment of assets credited to each of the Separate Retiree Accounts and to provide the economy of scale to the Committee in providing services for each of the Plans, but not to allow for the assets attributable to any one Separate Retiree Account to offset liabilities or defray the expenses attributable to any other Separate Retiree Account;

WHEREAS, the Committee is willing to serve as the named fiduciary of each Plan and the Trustee desires to serve in such capacity with respect to the Trust;

WHEREAS, the Committee is willing to exercise the authority granted to it herein;

WHEREAS, the Trustee is willing to receive, hold, and invest the assets of the Trust in accordance with the terms of this Trust Agreement;

WHEREAS, the Trust is intended to comply with the requirements of sections 419A(f)(5)(A) and 501(c)(9) of the Internal Revenue Code of 1986, as amended (the “Code”), the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and deposits to the Trust are described in section 302(c)(2) of the Labor Management Relations Act, 1947, as amended (“LMRA”);

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the Committee and the Trustee agree as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.1 Authorized Investments. Subject to any investment guidelines established by the Committee and communicated to the Trustee pursuant to Section 10.4, "Authorized Investments" shall not be limited to investments that are defined as legal investments for trust funds under the laws of any jurisdiction. Authorized Investments shall include, but shall not be limited to (i) cash held in interest bearing accounts or cash equivalents that are credited with earnings; (ii) bonds, debentures, notes, or other evidences of indebtedness; (iii) stocks (regardless of class) or other evidences of ownership in any corporation, partnership, mutual investment fund (including funds for which the Trustee or an affiliate thereof serves as investment manager), investment company, association, joint venture or business trust; (iv) derivative securities, including without limitation future contracts and option contracts; (v) investment contracts issued by legal reserve insurance companies; (vi) collective investment funds; and (vii) any other investment or transaction permitted by applicable law.

Section 1.2 Beneficiary. A person designated as a beneficiary of a Participant by the Participant, who is in an Eligible Group and who is or may become entitled to Benefits under one of the Plans through his or her relationship with an Eligible Retiree or with a deceased retiree or employee of a Company.

Section 1.3 Benefits. During the Initial Accounting Period with respect to each Plan, Benefits under each such Plan shall have the same meaning as "Retiree Medical Benefits" (as that term is defined under each Company Settlement), that is, post retirement medical benefits, including but not limited to hospital surgical medical, prescription drug, vision, dental, hearing aid and the \$76.20 Special Benefit related to Medicare. After the Initial Accounting Period ends with respect to a Plan, Benefits, pursuant to an amendment to such Plan, may include any benefit permissible under section 501(c)(9) of the Code and section 3(1) of ERISA.

Section 1.4 Chair. The Member selected pursuant to Section 9.5 to perform the functions described in Article IX.

Section 1.5 Chrysler. Chrysler LLC, a Delaware corporation with its principal offices in Auburn Hills, Michigan, and its successors and assigns.

Section 1.6 Chrysler Eligible Group. The Class or Class Members and the Covered Group as set forth in the Chrysler Settlement and repeated verbatim in Exhibit A.

Section 1.7 Chrysler Health Care Program. The employee welfare benefit plan maintained by Chrysler as in effect as of October 12, 2007, which provided retiree medical benefits to Chrysler employees who retired from UAW-represented bargaining units.

Section 1.8 Chrysler Retiree EBA. The UAW Chrysler Retirees Employees' Beneficiary Association, an employee organization within the meaning of Section 3(4) of ERISA.

Section 1.9 Chrysler Retiree Plan. The UAW Chrysler Retirees Medical Benefits Plan, as established and maintained by the Chrysler Retiree EBA, as may be amended from time to time by the Committee, as specified herein, to make available Benefits to Participants and Beneficiaries included in the Chrysler Eligible Group.

Section 1.10 Chrysler Retiree Settlement. Settlement of the claims in *UAW v. Chrysler, LLC*, Civ. Act. No. :07-cv-14310 (E.D. Mich. complaint filed 2007).

Section 1.11 Chrysler Separate Retiree Account. The separate account in the Trust, including any Employer Security Sub-Account attributable to any Chrysler Employer Security, maintained to account for (a) the assets attributable to the deposits, contributions, remittances, subsidies, investment income, and any other income held in the Trust Fund exclusively to fund the Chrysler Retiree Plan; and (b) the Benefits provided pursuant to the Chrysler Retiree Plan, other liabilities, administrative expenses attributable to such Benefits, and the Chrysler Separate Retiree Account's share of investment expenses incurred.

Section 1.12 Code. The Internal Revenue Code of 1986, as amended, and any successor statute thereto.

Section 1.13 Committee. The group of Independent Members and UAW Members formed pursuant to the Settlements to implement the Trust, to administer each Plan, and to serve as a "named fiduciary" of each Plan within the meaning of section 402(a)(2) of ERISA, including the exercise of authority or control over Plan assets.

Section 1.14 Company. The term Company shall mean Chrysler, Ford, or GM, as the case may be (collectively the "Companies").

Section 1.15 Company Health Care Plan. The Chrysler Health Care Program for Hourly Employees, the Ford Retiree Health Program, and the General Motors Health Care Program for Hourly Employees, as the case may be (collectively "Company Health Care Plans").

Section 1.16 EBA. The Chrysler Retiree EBA, the Ford Retiree EBA, or the GM Retiree EBA, as the case may be (collectively "EBAs").

Section 1.17 Eligible Group. All individuals who satisfy the requirements to be included in either the Chrysler Eligible Group, the Ford Eligible Group, or the GM Eligible Group, as the case may be (collectively "Eligible Groups").

Section 1.18 Eligible Retiree. A former employee retired from a Company who satisfies the requirements to be included in an Eligible Group.

Section 1.19 Employer Security. Any obligation, note, warrant, bond, debenture, stock or other security within the meaning of section 407(d)(1) of ERISA that is acquired or held by the Trust (or arising from any such security through conversion) pursuant a deposit or transfer under one of the Settlements the acquisition or holding of which (i) is not prohibited by sections 406(a)(1)(E) or 406(a)(2) of ERISA, or (ii) is the subject of a prohibited transaction exemption provided under section 408 of ERISA.

Section 1.20 Employer Security Sub-Account. The sub-account maintained by the Trustee within each Separate Retiree Account to hold separately any Employer Security and any proceeds from the disposition of any Employer Security, at the direction of the Committee or the Independent Fiduciary pursuant to Article XI.

Section 1.21 ERISA. The Employee Retirement Income Security Act of 1974, as amended through any date relevant under this Trust Agreement, and any successor statute thereto.

Section 1.22 Ford. Ford Motor Company, a Delaware corporation with its principal office in Dearborn, Michigan, and its successors and assigns.

Section 1.23 Ford Eligible Group. The Class or Class Members and the Covered Group as set forth in the Ford Settlement and repeated verbatim in Exhibit B.

Section 1.24 Ford Retiree Health Program. The portion of the Hospital-Surgical-Medical- Drug-Dental-Vision Program maintained by Ford as in effect on and after the effective date of the 2007 UAW-Ford National Collective Bargaining Agreement, which provided retiree medical benefits to Ford hourly employees who retire from UAW-represented bargaining units.

Section 1.25 Ford Retiree EBA. The UAW Ford Retirees Employees' Beneficiary Association, an employee organization within the meaning of Section 3(4) of ERISA.

Section 1.26 Ford Retiree Plan. The UAW Ford Retirees Medical Benefits Plan, as established and maintained by the Ford Retiree EBA, as may be amended from time to time by the Committee, as specified herein, to make available Benefits to Participants and Beneficiaries included in the Ford Eligible Group.

Section 1.27 Ford Retiree Settlement. Settlement of the claims in *UAW v. Ford Motor Co.*, Civ. Act. No. \_\_\_\_\_ (E.D. Mich. complaint filed \_\_\_\_\_, 2007).

Section 1.28 Ford Separate Retiree Account. The separate account in the Trust, including any Employer Security Sub-Account attributable to any Ford Employer Security, maintained to account for (a) the assets attributable to the deposits, contributions, remittances, subsidies, investment income, and any other income held in the Trust Fund exclusively to fund the Ford Retiree Plan; and (b) the Benefits provided pursuant to the Ford Retiree Plan, other liabilities, administrative expenses attributable to such Benefits, and the Ford Separate Retiree Account's share of investment expenses incurred.

Section 1.29 GM. The General Motors Corporation, a Delaware corporation with its principal offices in Detroit, Michigan, and its successors and assigns.

Section 1.30 GM Eligible Group. The Class or Class Members and the Covered Group as set forth in the GM Settlement and repeated verbatim in Exhibit C.

Section 1.31 General Motors Health Care Program for Hourly Employees. The collectively bargained General Motors Health Care Program for Hourly Employees as set forth in Exhibit C-1 of the 2007 and prior GM-UAW National Agreements, as applicable to those GM-UAW Represented Employees who had attained seniority prior to September 14, 2007.

Section 1.32 GM Retiree EBA. The UAW GM Retirees Employees' Beneficiary Association, an employee organization within the meaning of Section 3(4) of ERISA.

Section 1.33 GM Retiree Plan. The UAW GM Retirees Medical Benefits Plan, as adopted by the GM Retiree EBA, as may be amended from time to time by the Committee, as specified herein, to make available Benefits to Participants and Beneficiaries included in the GM Eligible Group.

Section 1.34 GM Retiree Settlement. Settlement of the claims in *UAW v. General Motors Corp.*, Civ. Act. No. 2:07-cv-14074 (E.D. Mich. complaint filed September 9, 2007).

Section 1.35 GM Separate Retiree Account. The separate account in the Trust, including any Employer Security Sub-Account attributable to any GM Employer Security, maintained to account for (a) the assets attributable to the deposits, contributions, remittances, subsidies, investment income and any other income and other income held in the Trust Fund exclusively to fund the GM Retiree Plan; and (b) the Benefits provided pursuant to the GM Retiree Plan, other liabilities, administrative expenses attributable to such Benefits, and the GM Separate Retiree Account's share of investment expenses incurred.

Section 1.36 Implementation Date. The later of (i) January 1, 2010 or (ii) the "Final Effective Date," as defined in the GM Retiree Settlement or the Chrysler Retiree Settlement, as applicable, or with respect to the Ford Retiree Settlement, the later of the "Effective Date" or the "Appeal Completion Date" (as defined in the Ford-UAW Memorandum of Understanding Post-Retirement Medical Care dated November 3, 2007) or as otherwise provided in the Ford Settlement Agreement.

Section 1.37 Independent Fiduciary. The entity that may be appointed from time to time by the Committee to serve pursuant to Article XI.

Section 1.38 Independent Member. An individual person who serves as a member of the Committee and is not appointed by UAW, who satisfies the requirements of section 9.1, and whose experience in such fields, without limitation, as health care, employee benefits, asset management, human resources, labor relations, economics, law, accounting or actuarial science indicates a capacity to fulfill the powers and duties of Article X in the manner described in Section 10.11, and wherever practicable, helps to provide a range of relevant experiences to the Committee.

Section 1.39 Initial Accounting Period. With respect to each Plan, the period before the later of the date that (a) the respective Company determines that its obligations, if any, with respect to the Plan made available to the Participants and Beneficiaries included in that Company's Eligible Group are subject to settlement accounting as contemplated by paragraphs 90-95 of FASB Statement No. 106, as amended, or its functional equivalent; or (b) the Company is no longer obligated to make any further payments or deposits to the Trust, including, but not limited to, any Shortfall Amounts.

Section 1.40 Investment Manager. An investment manager within the meaning of section 3(38) of ERISA appointed by the Committee in accordance with the provisions of Section 10.5.

Section 1.41 Liaison. An individual appointed to perform the functions described in Section 9.11.

Section 1.42 LMRA. The Labor Management Relations Act, 1947, as amended, and any successor statute thereto.

Section 1.43 Member. A member of the Committee or his or her successor.

Section 1.44 Participant. An Eligible Retiree who has fulfilled all requirements for participation as determined pursuant to Sections 2.1 and 2.2, who pays any contribution that is required as a condition of coverage, and who receives coverage pursuant to the terms of a Plan.

Section 1.45 Plan. The Chrysler Retiree Plan, the Ford Retiree Plan, or the GM Retiree Plan, as the case may be (collectively the “Plans”).

Section 1.46 Separate Retiree Account. The Chrysler Separate Retiree Account, the Ford Separate Retiree Account or the GM Separate Retiree Account, as the case may be (collectively the “Separate Retiree Accounts”).

Section 1.47 Settlements. The GM Retiree Settlement, the Chrysler Retiree Settlement and the Ford Retiree Settlement (as referred to in the preamble to this Trust Agreement).

Section 1.48 Trust Agreement. This agreement and all of its exhibits, as now in effect and as it may be amended hereafter from time to time by the Committee, acting on behalf of the EBAs.

Section 1.49 Trust or Trust Fund. The UAW Retiree Medical Benefits Trust established by this Trust Agreement, incorporating each EBA, and comprising all property or interests in property held by the Trustee from time to time under this Trust Agreement

Section 1.50 Trustee. The entity referred to in the Preamble to this Trust Agreement named to perform the duties set forth in this Trust Agreement, or any successor thereto appointed by the Committee in accordance with Section 8.3. Any corporation continuing as the result of any merger or consolidation to which the Trustee is a party, or any corporation to which substantially all the business and assets of the Trustee may be transferred, will be deemed automatically to be continuing as the Trustee.

Section 1.51 UAW. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, CLC, and any successor thereof.

Section 1.52 UAW Member. An individual person who serves as a member of the Committee and is appointed by UAW, pursuant to the terms of the Settlements and Article IX of this Trust Agreement.

Any capitalized term used in this Trust Agreement, if not defined in this Trust Agreement, shall have the meaning it has in the GM Retiree Settlement when relating to GM and/or the GM Eligible Group, the GM EBA, the GM Retiree Plan and the GM Separate Retiree Account. Any capitalized term used in this Trust Agreement, if not defined in this Trust Agreement, shall have the meaning it has in the Chrysler Retiree Settlement when relating to Chrysler and/or the Chrysler Eligible Group, the Chrysler EBA, the Chrysler Retiree Plan and the Chrysler Separate Retiree Account. Any capitalized term used in this Trust Agreement, if not defined in this Trust Agreement, shall have the meaning it has in the Ford Retiree Settlement when relating to Ford and/or the Ford Eligible Group, the Ford EBA, the Ford Retiree Plan and the Ford Separate Retiree Account. If any capitalized term used in this Trust Agreement, if not defined in this Trust Agreement, is also used in more than one of the Settlements, such term shall have the meaning it has in the Settlement applicable to the relevant Plan, Eligible Group, or Separate Retiree Account.

**ARTICLE II  
PARTICIPATION**

Section 2.1 Eligibility for Participation. Any Eligible Retiree or Beneficiary may receive Benefits funded, in whole or in part, by the Trust pursuant solely to the Plan adopted by the Committee in its discretion exercising the powers provided to it under Article X from time to time, on behalf of the EBA to which such Eligible Retiree or Beneficiary belongs. In exercising its authority under Article X, the Committee may design each Plan to provide for separate bases of participation in the Plan for classes of Participants and Beneficiaries as set forth from time to time in the Plan so long as such design is reasonably related to the purposes for which the Trust was established and, provided further, that any such design only permits participation in the Plan by the Eligible Retirees or Beneficiaries who belong to the EBA on behalf of which the Committee adopted such Plan. Participation in the Plan is contingent on the Eligible Retiree or Beneficiary satisfying any conditions set forth therein from time to time. Under no circumstances may individuals other than Eligible Retirees or Beneficiaries be allowed to benefit from the Trust or participate in a Plan.

Section 2.2 Determination by Committee. Any determination regarding the status of any individual as a Participant or Beneficiary under each Plan shall be solely and exclusively the responsibility of the Committee.

**ARTICLE III  
ESTABLISHMENT OF TRUST**

Section 3.1 Purpose. The Trust is established for the purpose of providing Benefits to the Participants and Beneficiaries in accordance with each Plan and as are permissible under section 501(c)(9) of the Code as set forth herein; and upon termination of the Trust, to provide such Benefits to such persons as are permissible under section 501(c)(9) of the Code as set forth herein. The EBAs are incorporated within the Trust, each of which is intended to constitute a separate “employee organization” under section 3(4) of ERISA. The Trust, together with each Plan, is intended to constitute a “voluntary employees’ beneficiary association” under section 501(c)(9) of the Code. Each Plan is intended to constitute an “employee welfare benefit plan” within the meaning of section 3(1) of ERISA. The Trust is established to allow for the pooled investment of assets credited to each Separate Retiree Account and to provide the economy of scale to the Committee in purchasing services for each of the Plans. Under no circumstances may the assets credited to one Separate Retiree Account offset the liabilities or defray the expenses attributable to another Separate Retiree Account. Further, each Separate Retiree Account shall be maintained for so long as there remains assets credited thereto.

Section 3.2 Receipt of Funds. The Trust Fund shall accept all sums of money and other property deposited, contributed, remitted, or transferred to the Trust with respect to a Plan and credited to the Separate Retiree Account attributable to such Plan as described in Article IV, provided that any Employer Security issued to the Trust by any Company shall be accepted only upon the direction of the Independent Fiduciary. The Trustee shall hold, manage and administer the Trust Fund without distinction between principal and income. The Trustee shall be accountable for the money or other property it receives, but shall not be responsible for the collection of any deposits, contributions, remittances, or transfers due to the Trust.

Section 3.3 No Diversion. Except as otherwise provided herein, at no time shall any part of the corpus or income of the Trust Fund be used for or diverted to purposes other than funding Benefits for the exclusive benefit of the Participants and Beneficiaries, including payment of reasonable costs of establishment, amendment and administration of the Trust and each Plan, and at no time shall any part of the net earnings of the Trust Fund improperly inure to the benefit of any private individual as provided in section 501(c)(9) of the Code and section 1.501(c)(9)-4 of the Treasury Regulations promulgated thereunder.

Section 3.4 Fiduciary Duties.

(a) Except as otherwise provided either herein or by applicable law, the responsibilities of each fiduciary acting in such capacity shall be limited to the performance of those duties specifically assigned to it hereunder. No fiduciary shall have any responsibility for the performance of any duty not specifically so assigned, except to the extent such responsibility is imposed by applicable law. The Committee shall be the named fiduciary (as defined in section 402(a)(2) and as described in section 402(c)(3) of ERISA) hereunder with authority to control and manage the operation of the Trust, to the extent set forth herein, and with respect to each Plan independently, except that if an Independent Fiduciary is appointed by the Committee, the Independent Fiduciary, and not the Committee, shall be the named fiduciary with respect to all discretionary actions regarding the valuation, acceptance, management, disposition and voting of Employer Securities. Each fiduciary’s responsibilities and duties with respect to each Plan shall be limited to the interests of that Plan’s Participants and Beneficiaries.

(b) No Company is a fiduciary with respect to the Plans or the Trust. In addition, (i) neither the Trustee, the Committee nor any person or entity related to the Plans or the Trust has any authority to bind any Company, either directly or indirectly, through any interpretations, findings of fact or conclusions regarding the Plans, the Trust and this Trust Agreement, (ii) no Company exercises any discretionary authority or discretionary control with respect to the management of any Plan or the Trust or exercises any authority or control with respect to the management or disposition of assets governed by this Trust Agreement, (iii) no Company renders investment advice for a fee or other compensation, direct or indirect, with respect to any assets governed by any Plan or by this Trust Agreement, and none has the authority or responsibility to do so, and (iv) no Company has discretionary authority or discretionary responsibility in the administration of any Plan or of the Trust.

Section 3.5 No Guarantee. Nothing contained in the Trust or the Plans shall constitute a guarantee that the assets of the Trust Fund will be sufficient to pay Benefits to any person or make any other payment. The obligation of a Plan to pay Benefits provided under such Plan is expressly conditioned on the availability of assets attributed to the Separate Retiree Account associated with that Plan to pay Benefits. This Trust Agreement creates no obligation for any Company to deposit or remit any amount to the Trust Fund. Except for payments of Benefits under a Plan, no Participant or Beneficiary shall receive any distribution of cash or other thing of current or exchangeable value, either from the Committee or the Trustee, on account of or as a result of the Trust Fund created hereunder.

Section 3.6 No Interest. Except as provided in Section 12.2 with respect to Participants and Beneficiaries, none of the following persons or entities shall have any right, title or interest, whether legal or equitable, in the assets of the Trust Fund at any time, including following the termination of the Trust: the Companies, the UAW, the Committee, any Eligible Retiree, any Participant, or any Beneficiary. At no time shall any account or separate fund be considered a savings account or investment or asset of any Eligible Retiree, Participant, Beneficiary, or class of Participants and Beneficiaries.

Section 3.7 Relationship to Settlements. Notwithstanding anything in this Trust Agreement or the Plans to the contrary, neither the Committee, the Trustee, or any person acting under the authority of the Committee, the Trustee, the EBAs or the Trust shall construe, interpret or apply this Trust Agreement or the Plans in a manner that would impair any right, would frustrate any purpose, or would be inconsistent with any provision in each applicable Settlement. No construction, interpretation or application of the Trust or the Plans by the Committee, the Trustee, or any person acting under the authority of the Committee, the Trustee, the EBAs or the Trust shall bind any Company with regard to any dispute or conflict involving the Company. In the event of a conflict between the Trust Agreement or a Plan and the corresponding Settlement, such Settlement shall control.

**ARTICLE IV**  
**DEPOSITS TO THE TRUST FUND**

Section 4.1 Deposits from the Companies. The Trust Fund shall accept from the Companies deposits to the Trust Fund, as specified in each Company's Settlement. All deposits from a Company shall be credited to that Company's respective Separate Retiree Account.

Section 4.2 Remittances of Active Employee Contributions. The Trust Fund shall accept remittances of active employee contributions, if any. All such remittances shall be credited to the respective Separate Retiree Account attributable to the Participants and Beneficiaries on whose behalf the employee contributions are made.

Section 4.3 Medicare Subsidies. The Trust Fund shall accept Medicare Part D subsidies and any other governmental payments relating to the benefits provided to Participants and Beneficiaries pursuant to the Plans and Trust. All Medicare subsidies and other governmental payments shall be credited to each Separate Retiree Account attributable to the Participants and Beneficiaries on whose behalf the subsidies or payments are made.

Section 4.4 Participant Contributions. The Trust Fund shall accept contributions from Participants as permitted or required by the Committee. Such Participant contributions may be remitted to the Trust Fund from each Company's pension plan pursuant to voluntary, authorized deductions from monthly pension payments from each Company's pension plan. All Participant contributions shall be credited to the Separate Retiree Account attributable to the Participant making the contribution.

Section 4.5 Deposits and Remittances from Subsequent Employers of Future Eligible Retirees. In the event of a sale, disposition, joint venture, merger or other corporate transaction that results in the displacement of a Company's Active Employee who is a member of the Covered Group (as those terms are defined in the Company's Settlement), the Trust may, but need not, accept deposits and remittances from a subsequent employer of such displaced employee, provided that such deposits and remittances are pursuant to a collective bargaining agreement between such subsequent employer and UAW. All deposits and remittances from a subsequent employer shall be credited to the appropriate Separate Retiree Account relating to the displaced employee.

Section 4.6 Other Legal Sources. The Trust may accept money or property from sources other than those described in Sections 4.1, 4.2, 4.4 and 4.5, provided that acceptance from any such other source is permitted by law and that such money or property is credited to the appropriate Separate Retiree Account(s) to which such money or property relates.

**ARTICLE V**  
**PAYMENTS FROM THE TRUST FUND**

Section 5.1 Payments from the Trust Fund.

- (a) Subject to the direction of the Independent Fiduciary with respect to any Employer Security, and except as provided in paragraph (b) below, the Trustee shall make payments from the Trust Fund to pay Benefits under the Plans as directed by the Committee or its designee. Any payment of Benefits under the Plans must be charged to the Separate Retiree Account attributable to the Participant or Beneficiary receiving the benefits.
- (b) To the extent permitted by law, the Trustee shall be fully protected in making payments out of the Trust Fund, and shall have no responsibility to see to the application of such payments or to ascertain whether such payments comply with the terms of any Plan, and shall not be liable for any payment made by it in good faith and in the exercise of reasonable care without actual notice or knowledge of the impropriety of such payments hereunder. The Trustee may withhold all or any part of any payment as the Trustee in the exercise of its reasonable discretion may deem necessary to protect the Trustee and the Trust against any liability or claim on account of any income tax or other tax; and with all or any part of such payment so withheld, may discharge any such tax liability. Any part of any such payment so withheld by the Trustee that may be determined by the Trustee to be in excess of any such tax liability will upon such determination by the Trustee be paid to the person or entity from whom or which it was withheld.

Section 5.2 Method of Payments. The Trustee may make any payment required to be made by it hereunder, unless directed otherwise by the Committee, by direct electronic deposit of the amount thereof to the financial institution where the person or entity to whom or to which such payment is to be made maintains an account, or by mailing a check in the amount thereof by first class mail in a sealed envelope addressed to such person or entity to whom or to which such payment is to be made, according to the direction of the Committee. If any dispute arises as to the identity or rights of persons who may be entitled to benefits hereunder, the Trustee may withhold payment until such dispute is resolved by a court of competent jurisdiction or, at the discretion of the Committee, is settled by written stipulation of the parties concerned.

Section 5.3 Excessive Payments. If the Trustee or the Committee determines that any payment under the Trust or any Plan is excessive or improper, the recipient shall make repayment thereof immediately following receipt of written notice from the Trustee or the Trustee's agent. If the recipient fails to make repayment to the Trustee or Trustee's agent of such excessive or improper payment by the date requested by the Trustee or the Trustee's agent, the Trustee may deduct the amount of such excessive or improper payment from any other amounts thereafter payable to such person or may pursue repayment in accordance with the provisions of Section 6.1(p). Until repaid to the Trustee or Trustee's agent, the amount of said excessive or improper payment shall not be included in the Trust Fund.

**ARTICLE VI**  
**TRUSTEE POWERS AND DUTIES**

Section 6.1 Powers of the Trustee. The Trustee shall have the following powers in addition to the powers customarily vested in trustees by law, provided however, that the Trustee's powers with respect to the investment of assets held in the Trust Fund shall be subject to (i) the funding policy established by the Committee and communicated to the Trustee under Section 10.3, (ii) any investment guidelines established by the Committee and communicated to the Trustee under Section 10.4, (iii) the instructions of an Independent Fiduciary appointed pursuant to Section 11.3, solely with respect to any Employer Security, and (iv) the instructions of the Committee or any Investment Manager appointed pursuant to Section 10.5:

- (a) With any cash at any time held by it, to purchase or subscribe for any Authorized Investment, and to retain such Authorized Investment in the Trust Fund, except that, with respect to any Employer Security, such action shall be taken only at the direction of an Independent Fiduciary;
- (b) To sell for cash or, with the consent of the Committee, on credit, to convert, to redeem, to exchange for another Authorized Investment, or otherwise to dispose of, any property at any time held by it, except that, with respect to any Employer Security, such action shall be taken only at the direction of an Independent Fiduciary;
- (c) To retain uninvested all or any part of the Trust Fund, provided that any uninvested assets shall be deposited in an interest-bearing account in any banking or savings institution, including an account established in the name of the Trustee if the Trustee is a depository institution;
- (d) To exercise any option appurtenant to any investment in which the Trust Fund is invested for conversion thereof into another Authorized Investment, or to exercise any rights to subscribe for additional Authorized Investments, and to make all necessary payments therefor, except that, with respect to any Employer Security, such action shall be taken only at the direction of an Independent Fiduciary;
- (e) To join in, consent to, dissent from or oppose the reorganization, recapitalization, consolidation, sale, merger, foreclosure, or readjustment of the finances of any corporations, entities or properties in which the Trust Fund may be invested, or the sale, mortgage, pledge, or lease of any such property or the property of any such corporation or entity on such terms and conditions as the Trustee may deem wise; to do any act (including the exercise of options, making of agreements or subscriptions, and payment of expenses, assessments, or subscriptions) which may be deemed necessary or advisable in connection therewith; and to accept any Authorized Investment which may be issued in or as a result of any such proceeding, and thereafter to hold the same, except that, with respect to any Employer Security, such action shall be taken only at the direction of an Independent Fiduciary;
- (f) To vote, in person or by general or limited proxy, at any election of any corporation in which the Trust Fund is invested, and similarly to exercise, personally or by a general or limited power of attorney, any right appurtenant to any investment held in the Trust Fund, except that, with respect to any Employer Security, such action shall be taken only at the direction of an Independent Fiduciary;

- (g) To purchase any Authorized Investment at a premium or a discount;
- (h) Upon instruction from the Committee, to employ for the benefit of the Trust Fund suitable agents, actuaries, accountants, investment counselors, legal counsel and consultants, and to pay their reasonable expenses and compensation;
- (i) To purchase, to sell, to exercise, to allow to expire without exercise, and to honor the exercise of, options or contracts to purchase or sell stock, commodities, or other assets subject to such options or contracts, except that, with respect to any Employer Security, such action shall be taken only at the direction of an Independent Fiduciary;
- (j) With the consent of the Committee, to borrow, raise or lend moneys, for the purposes of the Trust in such amounts and upon such terms and conditions as the Committee, in its absolute discretion, may deem advisable, and for any such moneys so borrowed, to issue its promissory note as Trustee and to secure the repayment thereof by pledging or mortgaging all or any part of the Trust Fund, provided that no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing;
- (k) To cause any Authorized Investment in the Trust Fund to be registered in, or transferred into, its name as Trustee or the name of its nominee or nominees, or to retain such investments unregistered in a form permitting transfer by delivery, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund, and the Trustee shall be fully responsible for any misappropriation in respect to any investment held by its nominee or held in unregistered form and shall cause the indicia of ownership to be maintained within the jurisdiction of the district courts of the United States, except as may otherwise be permitted under regulations promulgated by the Secretary of Labor;
- (l) To do all acts which it may deem necessary or proper and to exercise any and all powers of the Trustee under this Trust Agreement upon such terms and conditions as it may deem to be in the best interests of the Trust;
- (m) To apply for, purchase, hold, transfer, pay premiums on, surrender, and exercise all incidents of ownership of any insurance contract, any guaranteed income, guaranteed investment, and similar contracts;
- (n) To invest in any collective investment fund, including a short-term collective investment fund maintained by the Trustee or an affiliate of the Trustee;
- (o) To collect income and distributions payable to the Fund;
- (p) Upon instruction from the Committee or, with respect to any Employer Security, only at the direction of the Independent Fiduciary, to begin, maintain or defend any litigation necessary in connection with the administration of the Plans or the Trust, except that the Trustee shall not be obligated or required to do so unless it has been indemnified to its satisfaction against all expenses and liabilities sustained by it by reason thereof;

- (q) To pay any income tax or other tax or estimated tax, charge or assessment attributable to any property or benefit out of such property or benefit in its sole discretion, or any tax on unrelated business income of the Trust, if any, out of the Trust Fund;
- (r) To retain any funds or property subject to any dispute without liability for payment of interest, or decline to make payment or delivery thereof until final and unappealed adjudication is made by a court of competent jurisdiction;
- (s) Upon instruction from the Committee, to grant consents, take actions and otherwise implement the rights of the Trustee;
- (t) With the consent of the Committee, to act in any jurisdiction where permitted by law to do so or to designate one or more persons, or a bank or trust company, to be ancillary trustee in any jurisdiction in which ancillary administration may be necessary; to negotiate and determine the compensation to be paid to any such ancillary trustee; and to pay such compensation out of principal or income or both; and such ancillary trustee shall be granted with respect to any and all property subject to administration by it all of the powers, authorities and discretion granted in this Trust Agreement to the Trustee; provided, however, that such action as may require the investment of additional funds or the assumption of additional obligations shall not be undertaken without the written consent of the Trustee; and
- (u) To cooperate with any of the Companies and/or the UAW in obtaining any judicial or regulatory approvals or relief in accordance with each Company's respective Settlement.

Section 6.2 Title to Trust Fund. All rights, title and interest in and to the Trust Fund shall at all times be vested exclusively in the Trustee.

Section 6.3 Standard of Care. The Trustee shall discharge its duties in the interests of each Plan's Participants and Beneficiaries and for the exclusive purpose of providing benefits to Participants and Beneficiaries of each Plan and defraying reasonable expenses of administering the Trust and each Plan, and shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in conduct of an enterprise of like character and with like aims, consistent with the provisions of ERISA and the Code. Subject to the provisions of ERISA, the Trustee will be under no liability or obligation to anyone with respect to any failure of the Committee to perform any of its obligations under the Plans or Trust Agreement or for any error or omission of the Committee.

Section 6.4 Determination of Rights. The Trustee shall have no power, authority, or duty hereunder in respect to the determination of the eligibility of any person for coverage under the Plans, or the entitlement of any person to Benefits or payments from the Plans.

Section 6.5 Continuance of Plans. The Committee, the Trustee, the Independent Fiduciary, the Companies, and UAW do not assume any contractual obligation as to the continuance of the Plans, and no such party shall be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Plans. The Trustee's obligation to make any payment shall be limited to amounts held in the Trust Fund at the time of the payment, as may be further limited by the requirements of Section 3.5.

Section 6.6 Payment of Expenses. The Trustee shall apply the assets of the Trust Fund to pay all reasonable costs, charges, and expenses (including, but not limited to, all brokerage fees and transfer tax expenses and other expenses incurred in connection with the sale or purchase of investments, all real and personal property taxes, income taxes and other taxes of any kind at any time levied or assessed under any present or future law upon, or with respect to, the Trust Fund or any property included in the Trust Fund and all legal, actuarial, accounting and financial advisory expenses, including fees and expenses of the Independent Fiduciary, reasonably incurred (and where applicable previously approved) by the Trustee or the Committee in connection with establishment, amendment, administration and operation of the Trust or Plans. The expenses shall be allocated to the Separate Retiree Account to which the expenses relate (or, if the expenses cannot reasonably be allocated to one Separate Retiree Account, they shall be allocated among the Separate Retiree Accounts on a reasonable basis as determined by the Committee in a manner that avoids subsidization of any Separate Retiree Account by another Separate Retiree Account). The Committee shall by written certificate provided to the Trustee request payment for any expenses related to the administration of the Trust. Upon receipt of the written certificate, the Trustee may make the payment requested by the Committee.

Section 6.7 Reimbursement. The Trustee will apply the assets of the Trust to reimburse a Company or the respective Company Health Care Plan, as applicable, for any Benefits advanced or provided by the Company or the respective Company Health Care Plan with regard to claims incurred by a Participant on or after the Implementation Date, including, but not limited to situations where a retirement is made retroactive and the medical claims were incurred on or after such Implementation Date or where a Company is notified of an intent by a Participant to retire under circumstances where there is insufficient time to transfer responsibility for Benefits to the applicable Plan and the Company or the respective Company Health Care Plan provides interim coverage for Benefits. The Trustee and the Committee will fully cooperate with the Company in securing any legal or regulatory approvals that are necessary to permit such reimbursement. In addition, the Trustee will apply the assets of the Trust to reimburse a Company for any deposits it made by mistake to the Trust, as provided for in that Company's Settlement. Further, with regard to the transfer of assets from an existing VEBA trust to a Separate Retiree Account, and assumption of any liabilities by a Plan, the Trustee shall apply the assets of the related Separate Retiree Account to satisfy all such liabilities. In causing the Trust Fund to pay expenses pursuant to this Section 6.7, the Committee shall be acting in its fiduciary capacity with respect to a Plan and the Trust, on behalf of the respective EBA.

Section 6.8 Trustee Compensation. The Trustee will apply the assets of the Trust Fund to pay its own fees in the amounts and on the dates set forth in Exhibit D. All compensation paid from the Trust Fund to the Trustee or its affiliates shall be disclosed to the Committee.

Section 6.9 Consultation. The Trustee may engage or consult with counsel or other advisors and may take or may refrain from taking any action in accordance with or reliance upon the opinion of counsel or such advisors.

Section 6.10 Reliance on Written Instruments. The Trustee shall be fully protected in acting upon any instrument, certificate or paper reasonably believed by it to be genuine and to be signed or presented by a duly authorized person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

Section 6.11 Bonding. The Trustee shall be bonded to the extent and in the amount required by Section 412 of ERISA. To the extent permitted by applicable law, the costs of such bonding shall be expenses paid by the Trustee out of the assets of the Trust Fund under Section 6.6.

**ARTICLE VII  
TRUSTEE ACCOUNTS**

Section 7.1 Separate Retiree Accounts. At all times, the Trustee shall maintain each of the Separate Retiree Accounts as a separate account under the Trust for the assets deposited by each Company, or transferred at each Company's direction, to the Separate Retiree Account in accordance with the terms of each Company's Settlement. Each Separate Retiree Account may be used only to provide Benefits for the Participants and Beneficiaries in the Plan funded by such Separate Retiree Account. Under no circumstances may a Separate Retiree Account be liable or responsible for the obligations of the Trust to any Participant or Beneficiary other than a Participant or Beneficiary in the Plan that is attributable to the same Eligible Group as that Separate Retiree Account. The Trustee shall separately account for the assets and liabilities of each Separate Retiree Account; including, without limitation: (a) deposits, contributions, remittances, subsidies, investment and other income from whatever source to each Separate Retiree Account; and (b) Benefits to Participants and Beneficiaries from each respective Separate Retiree Account, and the investment, administrative, and other expenses attributable to the maintenance of each such Separate Retiree Account. In no event shall the assets of one Separate Retiree Account be used to offset the liabilities or defray the expenses attributable to another Separate Retiree Account. Notwithstanding the proscriptions in this Section 7.1, unless the Committee expressly decides to establish segregated investment vehicles for specific Separate Retiree Accounts, the assets of the Separate Retiree Accounts, other than Employer Security Sub-Accounts, shall be invested on a pooled basis within the Trust Fund; provided that the interest of each Separate Retiree Account in such pooled Trust Fund is separately accounted for at all times.

Section 7.2 Records. The Trustee shall maintain accurate and detailed records and accounts of all investments, receipts, disbursements, and other transactions with respect to each Separate Retiree Account and the Trust as a whole, and all accounts, books and records relating thereto shall be open at all reasonable times to inspection and audit by the Committee or such person or persons as the Committee may designate.

Section 7.3 Annual Audit. The Committee shall appoint an auditor to conduct an annual audit of the Trust Fund, a statement of the results of which shall be provided to the Trustee and also made available for inspection by interested persons at the principal office of the Trust.

Section 7.4 Claims Limited to Amounts in Applicable Account. In any legal action against the Trust Fund, the rights of any Participant or Beneficiary against the Trust Fund shall be limited to the amount of assets in the Separate Retiree Account attributable to such Participant or Beneficiary, and the rights of any other person or entity shall be limited to the amount of assets in the Separate Retiree Account attributable to the Plan to which the claim relates.

Section 7.5 Furnishing Written Accounts. The Trustee shall furnish the Committee a written account setting forth a description of all securities and other property purchased and sold, and all receipts, disbursements, and other transactions effected by it during each calendar quarter, and showing the securities and other properties held, and their fair market values at the end of each calendar quarter. Such written account shall be furnished to the Committee within thirty (30) days after the close of each calendar quarter.

Section 7.6 Accounting and Taxable Year, Cash Basis. The accounting and taxable year of the Trust shall be the calendar year. All accounts of the Trustee shall be kept on a cash basis.

Section 7.7 Judicial Proceedings. If the Trustee and the Committee cannot agree with respect to any act or transaction reported in any statement, the Trustee shall have the right to have its accounts settled by judicial proceedings in which only the Trustee and the Committee shall be necessary parties. Subject to the provisions of ERISA, the Trustee shall not be required to file, and no Participant or Beneficiary shall have any right to compel, an accounting, judicial or otherwise, by the Trustee.

**ARTICLE VIII  
PROCEDURES FOR THE TRUSTEE**

Section 8.1 Removal. The Trustee may be removed by the Committee at any time upon thirty (30) days' advance written notice. Such removal shall be effective on the date specified in such written notice, provided that notice has been given to the Trustee of the appointment of a successor Trustee in the manner set forth in Section 8.3.

Section 8.2 Resignation. The Trustee may resign by filing with the Committee a written resignation that shall take effect sixty (60) days after the date of such filing, unless prior thereto a successor Trustee has been appointed by the Committee. In no event may the Trustee's resignation take effect before a successor Trustee has been appointed. If the Committee fails to appoint a successor Trustee, the resigning Trustee may seek the appointment of a successor Trustee in the manner set forth in Section 8.3.

Section 8.3 Successor Trustee. The Committee may appoint a successor Trustee by delivering to the successor Trustee an instrument in writing, executed by an authorized representative of the Committee, appointing such successor Trustee, and by delivering to the removed or resigning Trustee an acceptance in writing, executed by the successor Trustee so appointed. Such appointment shall take effect upon the date specified in Section 8.1 or 8.2, as applicable. If no appointment of a successor Trustee is made by the Committee within a reasonable time after such resignation, removal or other event, any court of competent jurisdiction may, upon application by the removed or resigning Trustee, appoint a successor Trustee after such notice to the Committee and the removed or resigning Trustee, as such court may deem suitable and proper.

Section 8.4 Amendment to Trust Document for Successor Trustee. The Committee may appoint a successor Trustee by securing from the successor Trustee an amendment to this Trust Agreement, executed by both the successor Trustee and an authorized representative of the Committee, which replaces the current Trustee with the successor Trustee, appointing such successor Trustee, and by delivering to the removed or resigning Trustee an executed copy of the amendment. Such appointment shall take effect upon the date specified in the amendment.

Section 8.5 Effect of Removal or Resignation of Trustee. Upon the removal or resignation of the Trustee in accordance with Section 8.1 or 8.2, the Trustee shall remain responsible for any and all actions taken by the Trustee prior to such removal or resignation, but except as required by ERISA shall not be responsible for any and all actions taken by the successor Trustee.

Section 8.6 Merger or Consolidation of the Trustee. Any corporation continuing as the result of any merger or resulting from any consolidation, to which merger or consolidation the Trustee is a party, or any corporation to which substantially all the business and assets of the Trustee may be transferred, will be deemed to be continuing as the Trustee.

**ARTICLE IX  
PROCEDURES FOR COMMITTEE**

Section 9.1 Composition of Committee. The Committee shall consist of eleven individual persons, consisting of six (6) Independent Members and five (5) UAW Members. No Member of the Committee shall be a current or former officer, director or employee of any of the Companies; provided, however, a retiree who was represented by the UAW in his or her employment with a Company, or an employee of a Company who is on leave from the Company and is represented by the UAW, may be a UAW Member. No Member shall be authorized to act for a Company or be an agent or representative of a Company for any purpose. Furthermore, no Company shall be a fiduciary with respect to any of the Plans or the Trust, and the Companies will have no rights or responsibilities with respect to the Plans or the Trust other than as specifically set forth in the Company Settlements. This limitation on Company participation on the Committee and the limitation set forth in Section 3.5 of this Trust Agreement are not subject to change, amendment or alteration. No Independent Member, or any family member, employer, or partner of an Independent Member, shall have any financial or institutional relationship with a Company or UAW if such relationship could reasonably be expected to impair such person's exercise of independent judgment.

Section 9.2 Term of Office. Each Member shall continue to serve as such until his or her death, incapacity to serve hereunder, resignation, removal, or the expiration of his or her term. Independent Member terms shall be for three (3)-year periods, except the initial terms of four (4) of the six (6) original Independent Members, two (2) of whom shall have an initial term of two (2) years, and two of whom shall have an initial term of one (1) year, as described in Exhibit E. An Independent Member may serve more than one term.

Section 9.3 Resignation. A Member may resign, and shall be fully discharged from further duty or responsibility under this Trust Agreement to the extent permitted by law, by giving at least thirty (30) days' advance written notice to the Committee (or such shorter notice as the Committee may accept as sufficient) stating a date when such resignation shall take effect. Such resignation shall take effect on the date specified in the notice or, if a successor Member has been appointed effective as of an earlier date, on such earlier date.

Section 9.4 Removal; Appointment of Successor Committee Members.

(a) An Independent Member may be removed or replaced, and a successor designated, at any time by an affirmative vote of nine (9) of the other Members of the Committee in the event that such other Members lose confidence in the capacity or willingness of the Independent Member being replaced or removed to fulfill his or her duties and responsibilities as a Member as set forth in this Trust Agreement. In the event of a vacancy of an Independent Member position, whether by expiration of term, resignation, removal, incapacity, or death of an Independent Member, a successor Independent Member shall be elected by the affirmative vote of nine (9) Members, and when possible, such successor Independent Member shall be elected prior to the expiration of the term, resignation, removal, incapacity, or death of the Independent Member being replaced.

(b) The UAW Members shall serve at the discretion of the UAW International President, and may be removed or replaced, and a successor designated, at any time by written notice from the UAW International President to the Committee.

(c) Each successor Member shall signify his or her acceptance of the appointment and his or her responsibilities under this Agreement in writing.

(d) If no appointment of a successor Independent Member is made within a reasonable time after his or her expiration of term, resignation, removal or other event, an arbitrator selected pursuant to the procedures established in Subsection 9.9(e) may be engaged upon application of any Member to appoint a successor Independent Member to the Committee. If the failure to appoint an Independent Member is the result of factors unrelated to a dispute among Members, any Member may apply to a court of competent jurisdiction to ask the court to appoint a successor Independent Member to the Committee as such court may deem suitable and proper.

Section 9.5 Chair. The Committee shall select a chair from among its Members (the "Chair"). The term of the Chair will continue until he or she ceases to be a Member, resigns as Chair or is replaced as Chair with another Member by majority vote among the remaining Members.

Section 9.6 Meetings.

(a) The Committee shall hold meetings as frequently as is necessary to ensure the efficient administration of the Trust and Plan and shall hold a minimum of four (4) meetings during each calendar year. The Chair, or any six (6) Members, may call a special meeting of the Committee by giving at least five (5) days' advance written notice of the time and place thereof to all other Members.

(b) The Chair, or another such individual or individuals so designated by the Chair, shall (i) preside over Committee meetings; (ii) prepare the Committee meeting agenda; (iii) oversee Trust operations between Committee meetings and report to the Committee on such operations; and (iv) perform such other functions as the Committee determines.

(c) One Member, or another individual so designated, shall maintain minutes of all Committee meetings, but such minutes need not be verbatim. Copies of such minutes shall be provided to all Members and to such other parties as the Committee may designate.

Section 9.7 Place of Meeting; Telephonic Meetings. Meetings of the Committee shall be held in the Detroit, Michigan metropolitan area as designated in the notice of meeting. Meetings of the Committee may be held through any communications equipment or other technology if all persons participating can hear each other, and such participation in a meeting shall be considered presence at the meeting for all purposes, including Section 9.8.

Section 9.8 Quorum. A majority of the Members of the Committee then in office shall constitute a quorum for the purpose of transacting any business; provided that at least one Independent Member and one UAW Member are present.

Section 9.9 Vote of the Members.

(a) Each Member of the Committee present at the meeting shall have one vote. Except as otherwise specified in this Trust Agreement, all actions of the Committee shall be by majority vote of the entire Committee, provided that at least one Independent Member and one Union Member must be a Member in the majority for any Committee action to take effect. Notwithstanding anything in this Subsection 9.9(a) to the contrary, any action by the Committee taken after the 2011 calendar year that would not be permitted under Subsection 10.2(d) before the expiration of the 2011 calendar year shall require an affirmative vote of nine (9) Members to take effect.

(b) The vote of any absent Independent Member of the Committee may be cast in accordance with a written proxy delivered to any other Independent Member of the Committee present at the meeting, and the vote of any absent UAW Member of the Committee may be cast in accordance with a written proxy delivered to any other UAW Member of the Committee present at the meeting.

(c) In the event that a vacancy exists in the number of Independent Members, or that an Independent Member is absent (and has not delivered a proxy), a majority of the Independent Members present shall be entitled to cast the vote otherwise exercisable by the Independent Member not present. In the event that a vacancy exists in the number of UAW Members, or that a UAW Member is absent (and has not delivered a proxy), a majority of the UAW Members present shall be entitled to cast the vote otherwise exercisable by the UAW Member not present.

(d) In addition to decisions made at meetings, action may be taken without a meeting pursuant to a written (including e-mail) or telephone poll by the Chair (or his designee); provided that any action taken in a telephone poll must be confirmed in writing (including e-mail) by each Member who voted for the action taken either before or as soon as practicable following the vote (but no later than thirty (30) days after the vote).

(e) In the event that an action does not take effect – including, without limitation, an action under Subsection 9.9(a) that requires nine (9) affirmative votes to take effect – notwithstanding all Independent Members voting in favor, or alternatively all UAW Members voting in favor, any Committee Member may refer the issue to arbitration pursuant to the procedures established from time to time by the Committee. In addition, any Committee Member may refer the failure to appoint a successor Independent Member pursuant to Subsection 9.4(d) to an arbitrator, in which case the arbitrator may select the successor Independent Member. The determination of the arbitrator shall be final and binding on all parties to the Trust. The costs and expenses of such arbitration (including attorneys' fees for separate counsel for Members on each side of the issue) shall be paid from the Trust unless paid by any other source, or unless otherwise ordered by the arbitrator. The arbitrator's decision must be consistent with the terms of the Trust and, if the dispute concerns an amendment to the Trust, the arbitrator may not issue a decision contrary to the terms of Section 12.1 hereof.

**Section 9.10 Fees and Expenses.** To the extent permitted by ERISA, Members of the Committee will be entitled to reasonable compensation for the performance of their duties hereunder. Members of the Committee may be reimbursed by the Trust for reasonable expenses properly and actually incurred in the performance of their duties. The fees and expenses of the Committee shall be deemed to be fees and expenses of the Trust and shall be reimbursed from the Trust Fund consistent with the restrictions set forth in this Section 9.10.

(a) Independent Members shall receive an annual retainer of \$30,000, payable in equal quarterly installments in arrears, and a meeting fee of \$2,000 for each meeting of the Committee in which such Independent Member participates, provided, however, that the combination of retainer and meeting fees shall not exceed \$46,000 per calendar year. In the event that an Independent Member's tenure on the Committee ends on a day other than the last day of the quarter for which a quarterly installment of his or her annual retainer is due, he or she shall be paid for the pro rata portion of such quarter that coincides with his or her tenure on the Committee. For purposes of the meeting fee, participation by telephone or other simultaneous communication device shall qualify an Independent Member for a participation fee only if the meeting is scheduled and anticipated to last at least one (1) hour. Participation in telephonic conferences to address ad hoc issues do not qualify an Independent Member for a participation fee.

(b) UAW Members who are eligible to receive compensation for participation on the Committee shall receive the amounts described in Subsection 9.10(a) above for Independent Members. Any Member who is an employee of the UAW or a local union affiliated therewith shall not be eligible to receive compensation for service as a Member. Notwithstanding the prohibition on compensation otherwise described in this Subsection 9.10(b), UAW Members shall be entitled to receive reimbursements for reasonable expenses properly and actually incurred in the performance of a UAW Member's duties pursuant to this Trust Agreement.

(c) The Chair shall receive a fee of \$5,000 per year, payable in quarterly installments in arrears, for service as the Chair, in addition to the compensation received as a Member pursuant to Subsection 9.10(a) or Subsection 9.10(b), whichever is applicable.

(d) Other than UAW Members who are prohibited from receiving compensation pursuant to Subsection 9.10(b), nothing herein shall prohibit or limit any Member from receiving fees from the Trust Fund for services rendered at the request of the Committee (e.g., reasonable fees for attendance at retiree meetings to explain the operation of the programs contemplated by the Settlements and/or this Trust Agreement).

(e) The fees and limits described in Subsection 9.10(a) and (b) above shall be increased each calendar year after 2008 by each calendar year's percentage increase, if any, to the consumer price index for urban wages (CPI-W).

**Section 9.11 Liaison.**

(a) The Liaison's primary roles, as further detailed in this section, shall be:

- (1) to work, as the Liaison deems appropriate, alongside any and all Trust personnel, outside advisors, consultants, professionals, and service providers retained by the Trust, on all matters pertaining to the operation of the Trust,

- (2) to stay informed about all facets of the Trust's activities, and
  - (3) to maintain open lines of communications in regard to all activities of the Trust – including, without limitation, its funding status and the administration of the Benefits provided under the Plans – among and between (i) the Trust and the Committee, (ii) the Eligible Retirees and Beneficiaries, and (iii) retiree representatives and the UAW.
- (b) The Liaison shall not be a Member and shall not be entitled to a vote on any matter coming before the Committee.
  - (c) The Liaison shall maintain open lines of communications regarding the activities of the Trust among and between (i) the Trust and the Committee, (ii) the Eligible Retirees and Beneficiaries, and (iii) the retiree representatives and the UAW in regard to all activities of the Trust. Specifically, the Liaison shall maintain communications with, among others, elected leaders of retiree chapter organizations, Class Representatives (and, until the Implementation Date, Class Counsel), UAW officials (in addition to UAW Members), Trust personnel, and the Independent Members and UAW Members.
  - (d) The Liaison may attend all meetings of the Committee and any Sub-Committee established pursuant to Section 10.8.
  - (e) The Liaison shall be permitted to consult with and work alongside any and all Trust personnel on any facet of the operations of the Trust, including but not limited to activities related to investment of Trust assets, administration of the Benefits provided under the Plans, retention of outside advisors, consultants, professionals and service providers, and the hiring of personnel needed for operation of the Trust.
  - (f) The Liaison shall have access to any and all information developed or utilized by Trust personnel in connection with the operation of the Trust, including but not limited to information provided by any outside advisors, consultants, professionals or service providers retained by the Trust. In the event that the Liaison is provided information that is subject to a privilege that the Trust or Committee may assert, the Liaison shall not take any action that would cause such privilege to be violated.
  - (g) The Liaison shall be permitted to work alongside Trust personnel in the development of recommendations that may be made to the Committee by Trust personnel regarding any matter to come before the Committee.

- (h) The Liaison shall be permitted to work alongside Trust personnel in connection with the work of any outside advisors, consultants, professionals or service providers retained by the Trust.
- (i) The UAW, acting through the International President, shall have the right to appoint the Liaison.
- (j) Until the first Implementation Date of any of the Company's Settlements, the Liaison may be an active employee on the UAW staff. On and after such implementation date, the Liaison shall not be an active member of the UAW Staff (but such person shall not be prohibited from performing work for the UAW on a consulting or other part-time basis, on matters unrelated to the operation of the Trust; provided that such work does not interfere with the Liaison's ability to perform his or her duties as the Liaison).
- (k) The Trust shall provide compensation for the Liaison as provided as follows:
  - (1) If the Liaison is an active member of the UAW staff, the Trust shall not provide any compensation of any kind to the UAW Liaison. In such circumstance, the Trust shall provide reimbursement to the Liaison for reasonable expenses properly and actually incurred in the performance of the Liaison's duties pursuant to this Trust Agreement.
  - (2) If the Liaison is not an active member of the UAW staff, and the UAW designates the Liaison to perform the duties of such office on a full-time basis, the Trust shall (a) pay the Liaison an annual salary of \$140,000 adjusted annually on the same basis as the adjustments for Committee Members as described in Section 9.10(e), (b) pay meeting fees in the same manner as paid for Committee Members pursuant to Section 9.10(a), (c) provide the Liaison a package of employee benefits (insurance, pension, vacation, and other fringe benefits) no less favorable than that provided to Trust personnel at the senior management level, if any, and (d) reimburse the Liaison for reasonable expenses properly and actually incurred in the performance of the Liaison's duties pursuant to this Trust Agreement.
  - (3) If the Liaison is not an active member of the UAW staff and the UAW designates the Liaison to perform the duties of such office on less than a full-time basis, (a) the compensation provided in sub-section 9.11(k)(2)(a) above shall be reduced proportionately, (b) the Trust shall provide additional reasonable compensation for the performance of specific duties in the same manner as permitted for Committee Members pursuant to Section 9.10(d), and (c) all other provisions of Section 9.11(k)(2) shall continue to apply without adjustment.

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- (1) The Liaison shall be fully bound to adhere to the Code of Ethics attached as Exhibit I and any failure to adhere to the Code of Ethics shall be grounds for immediate disqualification.

**ARTICLE X**  
**POWERS AND DUTIES OF THE COMMITTEE**

Section 10.1 General. The Committee, acting on behalf of the EBAs, shall be responsible for the implementation, amendment and overall operation of the Trust Fund and the establishment, amendment, maintenance, and administration of the Plans. Subject to the provisions of this Trust Agreement and applicable laws, the Committee shall have sole, absolute and discretionary authority to adopt such rules and regulations and take all actions that it deems desirable for the administration of the Trust Fund, and to interpret the terms of the Plans and Trust. Subject to Section 3.7, the decisions of the Committee will be final and binding on all Participants and Beneficiaries and all other affected parties to the maximum extent allowed by law.

Section 10.2 Benefits.

(a) Adoption of the Plans. The Committee, on behalf of the EBAs, shall adopt the Plans to provide Benefits to Participants and Beneficiaries and may amend the Plans from time to time. The terms of the Plans as initially adopted are set forth in subsection (d) of this section. Thereafter, the Committee on behalf of the EBAs may amend the Plans from time to time to provide Benefits as it may determine in its sole and absolute discretion; provided, however, that the Committee shall have no authority to provide any benefits other than Retiree Medical Benefits until the end of the Initial Accounting Period. Furthermore, the eligibility rules of each respective Plan shall be the same as those provided by the respective Company Health Care Plan and may not be expanded by the Committee. The Plans may provide for different benefit structures for different groups of Participants or Beneficiaries, including, without limitation, different groups of Participants or Beneficiaries included in the same Eligible Group, and may provide for different contributions for such groups; provided, however, that such differences within or among Eligible Groups are reasonably related to a rational purpose and consistent with the relevant provisions of this Trust Agreement. The rights of the Committee described in this Section 10.2 shall be exercised in a manner consistent with the Settlements. Although the Committee shall be under no obligation to design the Plans to assure that the assets of the Trust Fund are sufficient to provide Benefits to all potential Participants and Beneficiaries of the Plans in all subsequent years, the Committee's long-term objective in designing the Plans, absent countervailing circumstances, shall be to provide meaningful health benefits to all Participants and Beneficiaries included in each Eligible Group.

(b) Benefits Design. The Plans shall provide Benefits designed by the Committee in its sole discretion, acting on behalf of the EBAs as a fiduciary to the Plans, subject to Sections 1.3, 10.2(a) and 10.2(d). The Benefit design shall include rules to determine which of the Participants and Beneficiaries of the Trust will receive Benefits under the Plans, in what form and in what amount. The Plans may include co-pays, Participant and Beneficiary contributions, and any other features that the Committee from time to time determines appropriate or desirable in its sole discretion. In designing the Plans and the Benefits to be provided thereunder, the Committee may take into account circumstances that it determines to be relevant, including, without limitation, the degree to which Participants and Beneficiaries have alternative resources or coverage sources, pension levels under the Company's pension plans have changed, and the resources of the Trust Fund based upon expected deposits, remittances, and other sources of funding. In exercising its authority over benefit design, the Committee shall be guided by the principle that the Plans should provide substantial health benefits for the duration of the lives of all Participants and Beneficiaries.

(c) Method of Providing Benefits. Benefits under a Plan may be fully insured, partially insured or self-insured, as determined from time to time by the Committee in its sole discretion and in accordance with the funding policy established pursuant to Section 10.3. In all events, the expected cost of Benefits to be provided under each Plan during any calendar year shall not exceed the amount of assets expected to be available under the Separate Retiree Account related to such Plan to cover such costs during such calendar year.

(d) Initial Benefits. Notwithstanding any other provision in this Section 10.2, until the expiration of the 2011 calendar year, the Chrysler Retiree Plan shall provide the Benefits specified in Exhibit F(1), the Ford Retiree Plan shall provide the Benefits specified in Exhibit F(2), and the GM Retiree Plan shall provide the Benefits specified in Exhibit F(3). The Benefits specified in Exhibits F(1), F(2) and F(3) shall be the Benefits provided for under the terms of each Company's respective Settlement. During the period that the Plans are providing the initial benefits described in this Section 10.2(d), the Committee may exercise administrative discretion (as permitted under the Trust Agreement) in delivering such benefits, including, without limitation, making any changes that could have been adopted by joint action of a Company and the UAW pursuant to Section 5.A.2(h) of the Settlement Agreement between GM and UAW dated December 16, 2005, Section \_\_\_\_\_ of the Settlement Agreement between Ford and UAW dated \_\_\_\_\_, and similar provisions of the Chrysler Health Care Program.

(e) Medicare Part B Benefits. The initial Benefits provided pursuant to Subsection 10.2(d) under each Plan shall include a subsidy of the Medicare Part B premiums attributable to such Participants in an amount no lower in dollar value than \$76.20 per month.

(f) Design Principles. In exercising its authority under this Section 10.2, the Committee shall adhere to the design principles described in Exhibit G. A Plan only may provide Benefits as defined in Section 1.3.

Section 10.3 Funding Policy. Subject to the direction of the Independent Fiduciary with respect to the Employer Securities, the Committee will establish a funding policy for each Plan and communicate that funding policy to the Trustee.

Section 10.4 Investment Guidelines. Except with respect to the authority of the Independent Fiduciary with respect to the Employer Securities, the Committee shall cause investment guidelines for managing (including the power to acquire and dispose of) all or any part of the Trust Fund and communicate that policy to the Trustee to be established. In so doing, the Committee shall adhere to the investment practice standards set forth in Exhibit H.

Section 10.5 Appointment of Investment Managers. The Committee may appoint one or more Investment Managers to manage, or to select one or more Investment Managers to manage, all or part of the Trust Fund and enter into an agreement with the Investment Manager(s). If an Investment Manager is appointed, it shall have the appurtenant investment authority of the Trustee specified in Section 6.1, as limited by investment guidelines adopted by the Committee, with respect to the portion of the Trust Fund over which it has investment discretion, and the Trustee's duties with respect to that portion of the Trust Fund shall be limited to following the instructions of the Investment Manager.

Section 10.6 Government Reports and Returns. The Committee shall file all reports and returns, including but not limited to, any IRS Form 5500 series and IRS Form 990 series that are required to be made with respect to the Trust and a Plan.

Section 10.7 Compromise or Settle Claims. The Committee may compromise, settle and release claims or demands in favor of or against the Trust or the Committee on such terms and conditions as the Committee may deem advisable, and payment shall be made from the Separate Retiree Account to which the claim or demand relates (or, if the claim or demand relates to more than one Separate Retiree Account, on a basis commensurate with the portion of the claim relating to each Separate Retiree Account).

Section 10.8 Appointment of Third Parties; Delegation of Authority. The Committee may appoint a third party to perform any functions assigned to it by the Committee to the extent permitted under applicable law. The Committee may by adoption of a written resolution delegate to any two or more Members the authority to act on behalf of the full Committee to the extent set forth in the resolution. In the event of such a delegation, the resulting subcommittee shall have at least one Independent Member and one UAW Member, and subcommittee action shall require the affirmative vote of at least one Independent Member and one UAW Member. Any action taken on behalf of the Committee pursuant to the delegation shall be reported to the Committee at its next regularly scheduled meeting.

Section 10.9 Consultation. The Committee may engage or consult with counsel or other advisors and, in accordance with the provisions of Section 6.6, may direct the Trustee to pay reasonable compensation therefor from the Trust Fund and may take or may refrain from taking any action in accordance with or reliance upon the opinion of counsel or such expert advisors.

Section 10.10 Reliance on Written Instruments. Each Member of the Committee shall be fully protected in acting upon any instrument, certificate or paper reasonably believed by him or her to be genuine and to be signed or presented by a duly authorized person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

Section 10.11 Standard of Care. The Committee and each Member shall discharge their duties in the interests of Participants and Beneficiaries of each Plan and for the exclusive purpose of providing Benefits to such Participants and Beneficiaries and defraying reasonable expenses of administering the Trust and each Plan and shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, consistent with the provisions of ERISA and the Code. In exercising their discretion with respect to providing Benefits to Participants and Beneficiaries of each Plan, the Committee and each Member shall consider exclusively the interests of the Participants and Beneficiaries in such Plan. In exercising their discretion with respect to defraying reasonable expenses of administering the Trust or Plans, the Committee and each Member shall consider exclusively the interests of the Participants and Beneficiaries in the Plans.

Section 10.12 Bonding. The Members of the Committee shall be bonded in the amount required by section 412 of ERISA and may be covered by liability insurance in accordance with section 410(b) of ERISA. To the extent permitted by applicable law, the costs of such bonding and insurance shall be expenses paid by the Trustee under Section 6.6.

Section 10.13 Discretionary Authority. Except as the Committee's powers are limited by specific provisions of this Trust Agreement, including without limitation, the provisions of Article IX, the Committee (or its designee) shall have the exclusive right, power, and authority, in its sole and absolute discretion, to administer, apply and interpret this Trust Agreement, each Plan and any other Plan documents, to make its own motions, resolutions, administrative rules and regulations, contracts, or instruments and to decide all matters arising in connection with the operation or administration of the Trust or Plans. Benefits under the Plans will be paid only if the Committee or its designee decides in its discretion that the applicant is entitled to them. Without limiting the generality of the foregoing, the Committee, on behalf of each EBA and the Trust, shall have the sole and absolute discretionary authority to:

- (a) take all actions and make all decisions with respect to the eligibility for, and the amount of, Benefits payable under a Plan;
- (b) formulate, interpret and apply rules, regulations and policies necessary to administer a Plan in accordance with its terms;
- (c) decide questions, including legal or factual questions, relating to the calculation and payment of Benefits under a Plan;
- (d) determine the standard of proof and the sufficiency of evidence as to any factual question arising under a Plan;
- (e) resolve and/or clarify any ambiguities, inconsistencies and omissions arising under this Trust Agreement, each Plan, or other Plan documents;
- (f) process, and approve or deny Benefit claims and rule on any Benefit exclusions;
- (g) settle or compromise disputed claims as provided in Section 10.7 on such terms as the Committee determines to be in the best interest of the Participants and Beneficiaries;
- (h) enforce any contribution, remittance or payment obligation set forth in Article IV; and

(i) do all acts which it may deem necessary or proper and to exercise any and all powers of the Committee under this Trust Agreement upon such terms and conditions as it may deem to be in the best interests of the Trust or Plans.

Subject to Section 3.7 of this Trust Agreement, all determinations made by the Committee or its designee with respect to any matter arising under the Trust, each Plan, and any other Plan documents shall be final and binding on all affected parties, including without limitation Participants, Beneficiaries, and any other persons who have claims against the Trust Fund and a Plan through any of them. In the event that the terms of a Plan are inconsistent with the terms of this Trust Agreement, the Trust Agreement controls.

Section 10.14 No Individual Liability on Contracts. The Members of the Committee shall not be liable personally, either individually or jointly, for any debts, obligations, or undertakings contracted by them, or for the breach of any contracts. Such claims and obligations shall be paid out of the Trust; provided, however, that the Members shall not be exempt from personal liability for willful misconduct, breach of fiduciary duty, or fraud, and the Trust shall not indemnify the Members for such liabilities.

Section 10.15 The Companies and UAW Not Liable for Conduct of Committee. In their capacity as Members, the Members of the Committee, individually and jointly, are not officers, agents, employees, or representatives of the Companies or UAW. In their capacity as Members, each Member is a principal acting independently of the UAW. To the extent permitted by applicable law, the UAW (and their employees, officers, and directors) shall not be liable for any act, omission, contract, obligation, or undertaking of the Committee or its officers, agents, or representatives. Under no circumstances will any Company or their employees, officers, directors or agents be responsible for or have any liability for any act, omission, contract, obligation or undertaking of the Committee or its officers, agents or representatives.

Section 10.16 Reimbursement for Defense of Claims. To the extent permitted by applicable law and not otherwise covered by liability insurance purchased by the Trust (without regard to any non-recourse rider purchased by the insured), the Committee, Members, employees of the Committee, persons acting on the Committee's behalf pursuant to an express written delegation, and the Liaison (each separately, the "Indemnified Party") shall be reimbursed by the Trust Fund for reasonable expenses, including without limitation attorneys' fees, incurred personally in defense of any claim that seeks a recovery of any loss to a Plan or Trust Fund or for any damages suffered by any party to or beneficiary of this Trust Agreement (a) for which the Indemnified Party is adjudged not liable, or (b) which is dismissed or compromised in a final settlement, where the Committee – or, where required by applicable law, an independent fiduciary – determines that the settling Indemnified Party was not primarily responsible (in such cases, all or only a portion of the settling Indemnified Party's reasonable expenses may be reimbursed, as directed by the Committee or an independent fiduciary), provided that the Committee shall have the right to approve of the retention of any counsel whose fees would be reimbursed by the Trust Fund, but such approval shall not be withheld unreasonably.

Section 10.17 Indemnifications. To the extent permitted by law, the Trust shall indemnify and hold the Committee, the UAW, the Companies, the Chrysler Health Care Program, the Ford Retiree Health Program, the General Motors Health Care Program for Hourly Employees, the employees, officers and agents of each of them harmless from and against any liability that they may incur in connection with the Plans and Trust, unless such liability arises from gross negligence, intentional misconduct or breach of their respective Company Settlement. All costs associated with the indemnity provided under this Section 10.17 shall be borne solely by the Separate Retiree Account to which such costs relate.

Section 10.18 Subrogation and Reimbursement. Subject to the limitations of Section 10.2(d), the Committee shall maintain, as part of each Plan, a comprehensive subrogation and reimbursement policy, updated from time to time as appropriate.

Section 10.19 Code of Ethics. The Committee shall maintain a code of ethics to govern the conduct of Members and staff, if any, when acting on behalf of the Trust or a Plan or otherwise in their official capacity. The initial code of ethics is attached at Exhibit I. It may be amended by the Committee in light of experience and evolving standards, consistent with principles of good governance and fiduciary principles.

Section 10.20 Presumption of Control. The Committee shall take all such reasonable action as may be needed to rebut any presumption of control that would limit the Trust's ability to own GM's common stock, Ford's Common Stock, the 6.75% Series U Convertible Senior Debentures Issued by GM Due December 31, 2012, or the 5.75% Senior Convertible Notes due 2013 issued by Ford or as may be required to comply with all applicable laws and regulations, including, but not limited to, federal and state banking laws and regulations.

**ARTICLE XI  
INDEPENDENT FIDUCIARY**

Section 11.1 General. Upon the appointment of an Independent Fiduciary by the Committee pursuant to Section 11.3, this Article XI shall be given effect.

Section 11.2 Independent Fiduciary With Respect to Employer Security. Any provision of this Trust Agreement to the contrary notwithstanding, the Trustee shall have no discretionary authority or powers with respect to any Employer Security and all such discretionary authority shall rest with the Independent Fiduciary. The Trustee shall hold any Employer Security in the respective Employer Security Sub-Account and shall be subject to direction by the Independent Fiduciary with respect to the acceptance, management, disposition, and voting of the Employer Security. The Independent Fiduciary shall be a named fiduciary (as defined in section 402(a)(2) of ERISA) and investment manager (within the meaning of section 3(38) of ERISA) with respect to all discretionary actions regarding the valuation, acceptance, management, disposition, and voting of any Employer Security. The Trustee shall be entitled to rely upon the identification by the Committee of the Independent Fiduciary until notified in writing by the Committee that an Employer Security Sub-Account's assets are no longer subject to the Independent Fiduciary's management. During any period of time in which the Independent Fiduciary manages the Employer Security Sub-Accounts, the Trustee shall act strictly in accordance with any directions of the Independent Fiduciary with respect to the Employer Security Sub-Accounts. The Trustee shall continue to receive all assets purchased against payment therefor and to deliver all assets sold against receipt of the proceeds therefrom. The Independent Fiduciary may from time to time issue orders on behalf of the Trustee for the purchase or sale of securities directly to an underwriter or broker or dealer and for such purpose the Trustee shall, upon request, execute and deliver to such Independent Fiduciary one or more trading authorizations. The Trustee shall have no responsibility or liability to anyone relating to the asset management decisions of the Independent Fiduciary except to the extent that the Trustee has failed to act strictly in accordance with any directions of the Independent Fiduciary with respect to the Employer Security Sub-Accounts. The Trustee shall be under no duty to make or review any recommendation with respect to any such decision. The Trustee shall not be liable or responsible for any loss resulting to the Trust Fund by reason of any investment made or sold pursuant to the direction of the Independent Fiduciary nor by reason of the failure to take any action with respect to any investment which was acquired pursuant to any such direction in the absence of further direction of the Independent Fiduciary.

Section 11.3 Appointment of Independent Fiduciary. The Committee, in its sole discretion, shall appoint an Independent Fiduciary to manage the Employer Security Sub-Accounts, or for any other purpose as required by law, by delivering a written instrument to the Independent Fiduciary, which the Independent Fiduciary shall acknowledge in writing. The Independent Fiduciary shall be a bank, trust company or registered investment adviser under the Investment Advisers Act of 1940, as amended.

Section 11.4 Removal. The Independent Fiduciary may be removed by the Committee at any time upon thirty (30) days' advance written notice. Such removal shall be effective on the date specified in such written notice, provided that notice has been given to the Independent Fiduciary of the appointment of a successor Independent Fiduciary in the manner set forth in Section 11.6 below, provided that no such successor Independent Fiduciary shall be appointed in the event that the Trust then holds no Employer Security.

Section 11.5 Resignation. The Independent Fiduciary may resign by delivering to the Committee a written resignation that shall take effect sixty (60) days after the date of such filing or such earlier date that a successor Independent Fiduciary has been appointed by the Committee.

Section 11.6 Successor Independent Fiduciary. As expeditiously as is practicable under the circumstances, the Committee shall appoint a successor Independent Fiduciary by delivering to the successor Independent Fiduciary an instrument in writing, executed by an authorized representative of the Committee, appointing such successor Independent Fiduciary, and by delivering to the removed or resigning Independent Fiduciary an acceptance in writing, executed by the successor Independent Fiduciary so appointed. Such appointment shall take effect upon the date specified in Section 11.4 or 11.5 above, as applicable. In the event that the Trust Fund acquires or holds an Employer Security with respect to which an Independent Fiduciary is required, and no appointment of a successor Independent Fiduciary is made by the Committee by the date specified in Section 11.4 or Section 11.5, whichever the case may be, any court of competent jurisdiction may, upon application by the retiring Independent Fiduciary, appoint a successor Independent Fiduciary after such notice to the Committee and the retiring Independent Fiduciary, as such court may deem suitable and proper. The Committee, and a resigning and successor Independent Fiduciary shall avoid whenever possible any period during which no Independent Fiduciary has accepted an appointment to manage an Employer Security being held in a Employer Security Sub-Account.

Section 11.7 Independent Fiduciary Compensation and Expenses. The Trustee will apply the assets of the Trust Fund in accordance with Section 7.1, to pay the fees and expenses of the Independent Fiduciary in the amounts and on the dates set forth in the agreement between the Independent Fiduciary and the Committee.

Section 11.8 Confidential Information. In exercising its duties pursuant to Section 11.2, an Independent Fiduciary may receive confidential information from a Company under an agreement to not reveal such information to the Committee or any Member, subject to any obligation to disclose such information that may be imposed by ERISA, in which case the Company will be notified, in advance.

**ARTICLE XII  
AMENDMENT, TERMINATION AND MERGER**

Section 12.1 Amendment. The Trust Agreement may be amended at any time in writing by the Committee; provided that (i) under no circumstances shall any of the Plans or the Trust Agreement be amended or modified to provide benefits or payment for benefits other than Retiree Medical Benefits for the Participants and Beneficiaries until expiration of the Initial Accounting Period; (ii) no amendment shall alter or conflict with a Company's Settlement; and (iii) no amendment shall amend or modify Articles I, IV and XII, Sections 2.1, 3.1, 3.4(b), 3.5, 3.7, 5.1(a), 6.1(u), 6.5, 6.7, 7.1, 7.4, 9.1, 9.2, 9.3, 9.4, 9.7, 9.8, 9.9, 9.10, 10.1, 10.2(a), (b), (d), (e) and the last sentence of (f), 10.7, 10.13 (last flush paragraph), 10.15, 10.16, 10.17, 10.20, Exhibits F(1), F(2) and F(3), or the definitions of Eligible Groups in Exhibits A through C; and provided further that no amendment shall adversely affect the exempt status of the Trust or Plans under section 501(c)(9) of the Code. No amendment to the Trust Agreement shall increase the responsibilities of the Trustee hereunder unless the Trustee has first consented to such amendment.

Section 12.2 Termination.

- (a) Before the expiration of the Initial Accounting Period with respect to each Plan, the Trust shall not be terminated. Thereafter, the Trust and this Trust Agreement may be terminated by the Committee in writing, with a copy of such written instrument to be provided to the Trustee, whenever the Committee, on behalf of the EBAs, and in its sole discretion determines that the Trust is no longer effective in serving its purposes or that the interests of the Participants and Beneficiaries could be better served through an alternative arrangement taking into account the requirements of Section 7.1. Upon termination of this Trust Agreement, the assets of the Trust Fund shall be paid out at the direction of the Committee in the following order of priority: (i) the payment of reasonable and necessary administrative expenses (including taxes); (ii) the payment of Benefits to Participants and Beneficiaries entitled to payments for claims arising prior to such termination; and (iii) at the discretion of the Committee, in accordance with section 501(c)(9) of the Code and ERISA, for the benefit of Participants and Beneficiaries in such fashion as the Committee determines. The Companies, UAW or the Committee shall not have any beneficial interest in the Trust Fund. The Trust Fund shall remain in existence until all assets have been distributed.
- (b) Following termination, the Trustee and the Committee shall continue to have all of the powers provided in this Trust Agreement as are necessary or desirable for the orderly liquidation and distribution of the Trust Fund in accordance with the provisions hereof.

Section 12.3 Transfer of Assets. After the Initial Accounting Period has expired with respect to a Plan, and to the extent permitted by applicable law and subject to the restrictions of Section 7.1, some or all of the assets of the Trust Fund attributable to a Separate Retiree Account with respect to which the Initial Accounting Period has expired, may at the discretion of the Committee acting in a fiduciary capacity be transferred directly to another trust for the purpose of providing Benefits to some or all of the Participants and Beneficiaries in the Plan with respect to which the Initial Accounting Period has expired on such terms and conditions as the Committee may determine.

Section 12.4 Merger of Trusts or Transfer of Assets. In addition to the powers of the Committee pursuant to Sections 12.2 and 12.3 to transfer Trust assets to another trust, subject to the restrictions of Section 7.1, the Committee acting in a fiduciary capacity may merge or accept transfers of assets from other trusts – including, without limitation, trusts maintained by Chrysler, Ford, and GM – into the Trust, provided that the assets attributable to the each Plan are separately accounted for in the respective Separate Retiree Account.

**ARTICLE XIII  
MISCELLANEOUS**

Section 13.1 Rights in Trust Fund. No Eligible Retiree, Participant, Beneficiary, or other person shall have any right, title or interest in the Trust Fund or any legal or equitable right relating to the Trust or a Plan against the Trustee, the Committee, the Independent Fiduciary, UAW, or the Companies, except as may be otherwise expressly provided in the Plan or in this Trust Agreement.

Section 13.2 Non-Alienation. Except to the extent required by applicable law, the rights or interest of any Participant or Beneficiary to any Benefits or future payments hereunder or under the provisions of a Plan shall not be subject to attachment or garnishment or other legal process by any creditor of any such Participant or Beneficiary, nor shall any such Participant or Beneficiary have any right to alienate, anticipate, commute, pledge, encumber or assign any of the Benefits or payments which he may expect to receive, contingent or otherwise, under a Plan or this Trust Agreement, provided that assignments of benefit payments to a health care provider under a Plan may be permitted pursuant to rules adopted by the Committee in its sole discretion.

Section 13.3 Controlling Laws. The Trust shall be construed and the terms hereof applied according to the laws of the state of Michigan to the extent not superseded by federal law.

Section 13.4 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be considered as an original.

Section 13.5 Headings. The headings and subheadings of this Trust Agreement are for convenience of reference only and shall have no substantive effect on the provisions of this Trust Agreement.

Section 13.6 Usage. The plural use of a term defined in Article I in the singular shall mean all of the entities defined by such term.

Section 13.7 Notices. All notices, requests, demands and other communications under this Trust Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of receipt if served personally or by confirmed facsimile or other similar communication; (ii) on the first business day after sending if sent for guaranteed next day delivery by Federal Express or other next-day courier service; or (iii) on the fourth business day after mailing if mailed to the party or parties to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to the Trustee:

**[insert name and address]**

If to the Committee:

**[insert name and address]**

IN WITNESS WHEREOF, and as evidence of the establishment of the Trust created hereunder, the parties hereto have caused this instrument to be executed as of the date above first written.

COMMITTEE OF THE UAW RETIREE MEDICAL BENEFITS TRUST

INDEPENDENT MEMBERS

\_\_\_\_\_  
[insert name]

Dated: \_\_\_\_\_

UAW MEMBERS

\_\_\_\_\_  
[insert name]

Dated: \_\_\_\_\_

TRUSTEE

**[insert name of institution]**

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Dated: \_\_\_\_\_

**Exhibit A**

**Chrysler Eligible Group**

[To be copied from Settlement Agreement when it is final. This will include both the “Class” and the “Covered Group.”]

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**Exhibit B**

**Ford Eligible Group**

[To be copied from Settlement Agreement when it is final. This will include both the “Class” and the “Covered Group.”]

## Exhibit C

### GM Eligible Group

The term "GM Eligible Group" as used in this Trust Agreement shall mean the Class or Class Members and the Covered Group as set forth in the GM Settlement and reiterated verbatim in this Exhibit C:

Class or Class Members. The term "Class" or "Class Members" shall mean all persons who are:

(i) GM-UAW Represented Employees who, as of October 15, 2007, were retired from GM with eligibility for Retiree Medical Benefits under the GM Plan, and their eligible spouses, surviving spouses and dependents;

(ii) surviving spouses and dependents of any GM-UAW Represented Employees who attained seniority and died on or prior to October 15, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from GM and/or under the GM Plan;

(iii) UAW retirees of Delphi Corporation ("Delphi") who as of October 15, 2007 were retired and as of that date were entitled to or thereafter become entitled to Retiree Medical Benefits from GM and/or the GM Plan under the terms of the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007, Attachment B to the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007 (without regard to whether any of the conditions described in Section K.2 of such Memorandum of Understanding or Section 2 of such Attachment B occur), or the Benefit Guarantee agreement between GM and the UAW dated September 30, 1999, and their eligible spouses, surviving spouses and dependents of all such retirees;

(iv) surviving spouses and dependents of any UAW-represented employee of Delphi who attained seniority and died on or prior to October 15, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from GM and/or the GM Plan under the terms of the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007, Attachment B to the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007 (without regard to whether any of the conditions described in Section K.2 of such Memorandum of Understanding or Section 2 of such Attachment B occur), or the Benefit Guarantee agreement between GM and the UAW dated September 30, 1999;

(v) GM-UAW Represented Employees or former UAW-represented employees who, as of October 15, 2007, were retired from any previously sold, closed, divested or spun-off GM business unit (other than Delphi) with eligibility to receive Retiree Medical Benefits from GM and/or the GM Plan by virtue of any other agreement(s) between GM and the UAW, and their eligible spouses, surviving spouses, and dependents; and

(vi) surviving spouses and dependents of any GM-UAW Represented Employee or any UAW-represented employee of a previously sold, closed, divested or spun-off GM business unit (other than Delphi), who attained seniority and died on or prior to October 15, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from GM and/or the GM Plan.

Covered Group. The term "Covered Group" shall mean:

(i) all GM Active Employees who have attained seniority as of September 14, 2007, and who retire after October 15, 2007 under the GM-UAW National Agreements, or any other agreement(s) between GM and the UAW, and who upon retirement are eligible for Retiree Medical Benefits under the GM Plan or the New Plan, as applicable, and their eligible spouses, surviving spouses and dependents;

(ii) all UAW-represented active employees of Delphi or a former Delphi unit who retire from Delphi or such former Delphi unit on or after October 15, 2007, and upon retirement are entitled to or thereafter become entitled to Retiree Medical Benefits from GM and/or the GM Plan or the New Plan under the terms of the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007, Attachment B to the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007 (without regard to whether any of the conditions described in Section K.2 of such Memorandum of Understanding or Section 2 of such Attachment B occur), or the Benefit Guarantee agreement between GM and the UAW dated September 30, 1999, and the eligible spouses, surviving spouses and dependents of all such retirees;

(iii) all surviving spouses and dependents of any UAW-represented employee of Delphi or a former Delphi unit who dies after October 15, 2007 but prior to retirement under circumstances where such employee's surviving spouse and/or dependents are eligible or thereafter become eligible for Retiree Medical Benefits from GM and/or the GM Plan or the New Plan under the terms of the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007, Attachment B to the UAW-Delphi-GM Memorandum of Understanding Delphi Restructuring dated June 22, 2007 (without regard to whether any of the conditions described in Section K.2 of such Memorandum of Understanding or Section 2 of such Attachment B occur), or the Benefit Guarantee agreement between GM and the UAW dated September 30, 1999;

(iv) all former GM-UAW Represented Employees and all UAW-represented employees who, as of October 15, 2007, remain employed in a previously sold, closed, divested, or spun-off GM business unit (other than Delphi), and upon retirement are eligible for Retiree Medical Benefits from GM and/or the GM Plan or the New Plan by virtue of any other agreement(s) between GM and the UAW, and their eligible spouses, surviving spouses and dependents; and

(v) all eligible surviving spouses and dependents of a GM Active Employee, former GM-UAW Represented Employee or UAW-represented employee identified in (i) or (iv) above who attained seniority on or prior to September 14, 2007 and die after October 15, 2007 but prior to retirement under circumstances where such employee's surviving spouse and/or dependents are eligible for Retiree Medical Benefits from GM and/or the GM Plan or the New Plan.

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**Exhibit D**

[Trustee's fees]

## Exhibit E

<i>Name</i>	<i>Date of Term Expiration</i>
Robert Naftaly***	January 1, 2012
Olena Berg-Lacey	January 1, 2012
David Baker Lewis	January 1, 2011
Teresa Ghilarducci	January 1, 2011
Marian Udow-Phillips	January 1, 2010
Ed Welch	January 1, 2010

Committee Chair: \*\*\*

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### Biographical Material

**Robert Naftaly, C.P.A.**, is the retired President and CEO of PPOM, an independent operating subsidiary of Blue Cross/Blue Shield of Michigan (BCBSM), and Executive Vice President, Chief Operating Officer for the Blues. Previously, he was Senior Vice President, Chief Financial Officers and Treasurer for BCBSM. Mr. Naftaly also served as the Director of the Department of Management and Budget of the State of Michigan from 1983 to 1987. He has also served on several other Boards, including the Detroit Investment Fund, Walsh College, Meadowbrook Insurance Group, Blue Cross/Blue Shield of Maryland, and the Board of Governors of Wayne State University.

**Olena Berg-Lacey** served from 1993 to 1998 as Assistant Secretary of Labor, Employee Benefits Security Administration. In that capacity, she directed the Department of Labor's activities regarding enforcement of ERISA, including fiduciary standards governing 700,000 private pension plans with over \$3.5 trillion in assets. From 1991 to 1993, she served in the State Treasurer's Office for the state of California, where she had primary responsibility for management and investment of more than \$20 billion of assets on behalf of the State. In that capacity, she also represented the California Treasurer on the board of the State's pension funds (CalPERS and CalSTRS) which together invest over \$100 billion of retirement money on behalf of California's public employee retirement programs. A graduate of the University of California and the Harvard Business School, Ms. Berg-Lacey has also held a variety of positions in the private sector involving asset management and institutional investments.

**David Baker Lewis** is a prominent attorney, with broad experience in municipal finance and municipal bond law. He is the Chairman of the Board of Directors of Lewis & Munday. He has served on the Boards of Directors of several major corporate entities, including Conrail, Comerica Bank, TRW, Henry Ford Health Systems, Harper-Grace Hospitals, the Detroit Medical Center and H & R Block. He has also been Associate Professor of Law at the Detroit College of Law, and served as the Chair of the National Association of Securities Professionals.

**Teresa Ghilarducci** is currently Professor of Economics and Schwartz Chair in Economic Policy Analysis at the New School in New York City. She previously served for 25 years as professor of Economics at Notre Dame University. She also served a fellowship in economics at the Harvard Law School. Her academic work focuses on the economics of retirement security. She served as a member of the Advisory Board to the Pension Benefit Guaranty Corporation (a Presidential appointment) from 1995 to 2002, and was appointed by the governor of Indiana to the Board of Trustees for the Indiana Public Employees' Retirement Fund for a term from 1997 to 2002. Congressional committees have called upon her to testify as an expert witness more than 12 times on a variety of subjects related to retirement security and other economic issues.

**Marianne Udow-Phillips** is currently the Director of the Center for Healthcare Quality and Transformation, a healthcare policy analysis group affiliated with the University of Michigan health care system and Blue Cross/Blue Shield. She previously served for 3 years as the Director of the Michigan Department of Human Services, the state agency responsible for delivering a wide variety of support services to Michigan residents. Prior to her appointment to the Department of Human Services, she served in a variety of executive positions, including Senior Vice President for Health Care Products and Provider Services and Senior Vice President for Corporate Strategy and Health Care Administration, at Blue Cross Blue Shield of Michigan. She has also served as the Senior Vice President and Vice President of Plans and Operations for Mercy Alternative and Care Choices.

**Ed Welch** is an attorney and currently serves as director of the Workers' Compensation Center in the School of Labor and Industrial Relations at Michigan State University. From 1991 to 1999 he was the editor of the newsletter On Workers Compensation. He was the Director of the Michigan Bureau of Workers' Disability Compensation from 1985 through 1990. Mr. Welch was elected a charter member for workers' compensation of the National Academy of Social Insurance and served as the Vice-President of the International Association of Industrial Accident Boards and Commissions as well as a member of the Board of Directors of the Institute for Work and Health, a research organization in Toronto, Ontario.

**Exhibit F(1)**

[Initial Benefits for Participants in the Chrysler Retiree Plan]

[Initial Benefits for Participants in the Ford Retiree Plan]

**Exhibit F(3)**

**Initial Benefits for Participants and Beneficiaries in the GM Retiree Plan**

Beginning on the GM Implementation Date and continuing through 2011, the initial Benefits provided by the GM Retiree Plan shall include only the following:

- All Benefits for which GM, the General Motors Health Care Program for Hourly Employees, and any other GM entity or benefit plan would have been responsible before the GM Implementation Date – including, without limitation, the catastrophic plan and COBRA continuation coverage – at the levels described in the settlement agreement approved in Int’l Union, UAW v. General Motors Corp., 497 F.3d 615 (6<sup>th</sup> Cir. 2007) (“Henry I”):
- The mitigation payments funded before the GM Implementation Date by the General Motors Defined Contributions Health Benefit Trust shall offset the Participant contributions, deductibles, co-payments and co-insurance payments at the same levels as in Henry I.
- The dental benefits funded before the GM Implementation Date by the General Motors Defined Contribution Health Benefit Trust shall be provided at the same levels as provided before the GM Implementation Date.
- An additional Participant contribution of \$51.67 per month shall be required from those Participants who receive after the GM Implementation Date a flat monthly special lifetime benefit from the General Motors Hourly-Rate Employees Pension Plan of \$66.70 per month.

As provided in Section 10.2(d), the Committee may exercise administrative discretion (as permitted under the Trust Agreement) in delivering the initial Benefits provided under this Exhibit F(3), including, without limitation, making any changes that could have been adopted by joint action of GM and the UAW pursuant to Section 5.A.2(h) of the settlement agreement approved in Henry I.

## Exhibit G

### **Design Principles**

The Committee recognizes the complexity and fragmented nature of our nation's ever-changing health care system. To the extent practical, the Committee will seek to implement each Plan in a manner consistent with the guidelines set out below, subject to both the financial requirements of such Plan and its Purpose.

1. Health care includes individual patient treatment, the alleviation of pain and suffering and the development of practices and procedures to improve the health status of Participants.
2. The Committee shall promote quality health care delivered to Participants in a manner consistent with respect and dignity, and the recognition of the confidentiality of private patient information.
3. The Committee's goal is to provide health care that is effective, safe, efficient and timely, delivered in a culturally competent manner with a recognition of the physical and cognitive challenges present among aged Participants.
4. The Committee will pursue integrated health care approaches to better assess the health risks of Participants and achieve better health outcomes.
5. The Committee will operate each Plan and assess its performance in accordance with evolving best practices measured by both internal and external benchmarks.
6. The Committee shall provide health care coverage to Participants on a basis that is reasonably accessible to Participants, affordable and sustainable.
7. The Committee will develop avenues of communication to keep Participants informed with regard to access to care, the quality of care and operations of the Plan in which they participate.
8. In selecting health care plans and providers, the Committee shall favorably consider health care entities that are non-profit and act in a manner respectful of workers' rights.
9. In selecting health care plans and providers, the Committee will seek to provide both health care and health plan administration within the United States.
10. The Committee will make efforts to assure that Participants are treated with respect and dignity, with due consideration given to their physical and cognitive challenges.

Exhibit H

STATEMENT OF INVESTMENT PRACTICES

The following Statement of Investment Practices (“SIP”) shall be adopted as “Best Practices” for the VEBA’s Committee, Investment Managers and Independent Fiduciaries. It is the intent that these Best Practices evolve over time, taking into account developments in the law, changes in available investments and other changes as the Committee, from time to time, may determine relevant. To the extent that there are inconsistencies between this document and the Trust Agreement, the Trust Agreement shall control. All defined terms in this SIP shall have the same meaning as defined in the Trust Agreement for the VEBA unless otherwise defined herein. It is also intended that these Best Practices, as amended from time to time, be incorporated in an Investment Policy Statement developed by the Committee.

The Committee is the Named Fiduciary with management and control of the assets of the VEBA with the power as set forth in the Trust Agreement to: (1) appoint Investment Managers with respect to non-Employer Securities; (2) appoint Investment Managers who themselves have the power to appoint Investment Managers; and (3) appoint Independent Fiduciaries with respect to Employer Securities. The Committee shall retain such responsibility unless and until it delegates that duty pursuant to the terms of the Trust Agreement and such persons accept such responsibilities by a document in writing.

Where the Trust Agreement permits someone else to be appointed as an Investment Manager or Independent Fiduciary (the “Investment Fiduciaries”), as the case may be, and that person accepts such responsibilities by a document in writing, that person shall be an Investment Fiduciary, and the Committee shall act as the Appointing Fiduciary with responsibility for monitoring the performance of the Investment Fiduciary, except to the extent that the Investment Fiduciary is appointed by the Court pursuant to Section 11.6 of the Trust Agreement. The Committee may also appoint Investment Managers with the authority to appoint other Investment Managers, in which case any Investment Manager so appointed shall act as the Appointing Fiduciary, provided that the Committee shall retain responsibility to monitor any Investment Manager acting as an Appointing Fiduciary.

Subject to the requirements of the Trust Agreement with respect to the Employer Securities, the Committee may appoint one or more Investment Fiduciaries to manage all or part of the Trust Fund and enter into an agreement with any Investment Fiduciary so appointed. If an Investment Fiduciary is appointed, it shall have the appurtenant investment authority of the Trustee specified in Section 6.1 of the Trust Agreement, as limited by investment guidelines adopted by the Committee and communicated to such Investment Fiduciary with respect to the portion of the Trust Fund over which it has investment discretion. The Trustee’s duties with respect to that portion of the Trust Fund subject to such Investment Fiduciary’s discretion and control shall be limited to following the instructions of the Investment Fiduciary to the extent consistent with Employee Retirement Income Security Act of 1974 (“ERISA”). The Investment Fiduciary so appointed is a fiduciary and must acknowledge so in writing as required by Section 3(38) of ERISA. Each Investment Fiduciary shall be monitored by the relevant Appointing Fiduciary.

Each Appointing Fiduciary should conduct periodic reviews of the appointed Investment Fiduciary not less than annually (and more frequently as appropriate under the circumstances) with a view to determining whether such Investment Fiduciary should continue to be retained by the VEBA.

**S-1.1: The Committee shall develop and update from time to time an Investment Policy Statement that reflects these Investment Practices.**

The Investment Policy Statement should be a written statement developed by the Committee and updated from time to time that describes:

- a. a prudent process for the Committee to select and retain Investment Fiduciaries,
- b. the duties and responsibilities of the fiduciaries involved in asset management,
- c. asset allocation, diversification and rebalancing guidelines,
- d. appropriate investment guidelines, benchmarks and investment objectives against which the performance of the Investment Fiduciary is to be evaluated,
- e. the due diligence criteria for selection of Investment Fiduciaries,
- f. a general definition of the selection and monitoring criteria for Investment Fiduciaries, investments and service vendors,
- g. the actions that can or will be taken as a result of the monitoring,
- h. procedures for controlling and accounting for investment expenses.
- i. requirements that investments be managed in accordance with applicable laws, trust documents, and written investment guidelines.
- j. requirements that each fiduciary of the VEBA act in accordance with ERISA.
- k. requirements that each fiduciary of the VEBA act in accordance with the "prudent man" rule as defined in Section 404(a)(1)(B) of ERISA.
- l. requirements that each fiduciary of the VEBA shall discharge his, her or its duties with respect to the VEBA solely in the interest of the participants and beneficiaries of each Plan for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering each Plan as required by Section 404(a)(1)(A) of ERISA.
- m. requirements that the VEBA be established and maintained pursuant to a written instrument as required by Section 402(a) of ERISA.
- n. requirements that the Committee and the Investment Fiduciaries act in accordance with any applicable Plan Document, guidelines and other documents governing each Plan as required by Section 404(a)(1)(D) of ERISA.
- o. requirements that copies of relevant documents governing the acts of the Investment Fiduciaries be provided to the Investment Fiduciaries.
- p. procedures under the VEBA for allocation of responsibilities for its operation and administration consistent with the Trust Agreement and Sections 402, 403 and 405 of ERISA.
- q. procedures requiring that any allocation or delegation permitted by the Trust Agreement or by Sections 402, 403 and 405 of ERISA be defined, documented and acknowledged at the time of such delegation of allocation.
- r. requirements that any entity assuming a position which involves the exercise of fiduciary duties with respect to the management of VEBA plan assets under ERISA should sign a written acknowledgement that it acknowledges the acceptance of such duties and has read these Best Practices, as amended from time to time, and agrees to act in accordance with them.

**S.-1.2 Fiduciaries and parties in interest should not be involved in self-dealing as prohibited in Section 406 of ERISA.**

- a. No fiduciary shall cause a Plan to engage in a transaction, if such fiduciary knows or should know that such transaction constitutes a direct or indirect transaction between the plan and a party in interest to the extent that such transaction constitutes a non-exempt transaction prohibited by Section 406(a) of ERISA
- b. No fiduciary with respect to a Plan shall: (1) deal with the assets of the plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan, to the extent that such transaction constitutes a non-exempt transaction prohibited by Section 406(b) of ERISA.
- c. The Committee should adopt policies and procedures with respect to conflicts of interests and the management of potential conflicts of interests. Such policies should be disseminated to members of the Committee, Investment Fiduciaries, the Trustee and affected employees of the VEBA. Each Investment Fiduciary and each affected employee should certify annually that he, she or it has received the applicable policies and procedures and confirm that he, she or it has complied with such policies in the previous year. These policies initially should be based on the UAW conflict of interest policy.
- d. No fiduciary should be retained for a reason other than competence, cost, experience and other matters relevant to the fiduciary's ability to perform the functions assigned to such fiduciary in a cost effective manner.

**S.-1.3 The Committee and each Investment Fiduciary should take prudent steps to protect and safeguard the assets from theft and embezzlement.**

- a. The Committee should establish for procedures for the VEBA to maintain, or cause others to maintain, one or more fidelity bonds covering the plan fiduciaries and other persons who handle funds or other property of the plan as required by Section 412 of ERISA and Section 10.12 of the Trust Agreement.
- b. The Committee should take prudent steps to seek payment of any contributions that are past due and have not been paid in accordance with Section 10.13 of the Trust Agreement.

**S.-1.4 Except to the extent permitted by Department of Labor Regulations, no fiduciary may maintain the indicia of ownership of any assets of the VEBA outside the jurisdiction of the district courts of the United States as required by Section 404(b) of ERISA.**

- a. The Committee should establish procedures, which may consist of a covenant from its Investment Fiduciaries, to ensure that the indicia of ownership of the assets of the VEBA are not maintained outside the jurisdiction of the district courts of the United States, except as permitted by the Department of Labor Regulations.

**S.-2.1 The Committee should establish an investment strategy consistent with requirements of the Trust Agreement and the purposes of the VEBA.**

- a. The Committee should determine the expected modeled return on VEBA assets and identify an appropriate level of investment risk, taking into account expected returns over time and short-term liquidity needs. In determining the expected return the Committee should consider:
  - 1. Diversification requirements to reduce the VEBA's exposure to losses.
  - 2. Selection of asset classes consistent with the expected risk and return.
  - 3. The projected return of the portfolio relative to the funding objectives of the VEBA.
  - 4. Such other factors as the Committee may deem appropriate.
- b. The Committee should develop an investment strategy based upon such expected return and expected level of risk. In no circumstances shall the Committee be responsible for guaranteeing any expected return.
- c. The Committee should review the VEBA's investment strategy at minimum once a year and make any changes as appropriate.

**S.-2.2 The Committee should establish investment guidelines to be communicated to Investment Fiduciaries consistent with the investment strategy developed.**

- a. The investment guidelines should be sufficiently detailed to permit each Investment Fiduciary to implement and manage the specific investment strategy for which it was appointed. In the discretion of the Committee, these investment guidelines provided to the Investment Fiduciary should:
  - 1. Define the duties and responsibilities of the Investment Fiduciary
  - 2. Define any applicable diversification and rebalancing guidelines.
  - 3. Include any relevant selection criteria for asset classes and investments.
  - 4. Set forth the appropriate benchmarks, indices, peer groups, and the investment objectives against which the performance of the Investment Fiduciary is to be evaluated.
  - 5. Define such due diligence criteria for selecting investments that the Committee in the exercise of prudence determines the Investment Fiduciary should incorporate as part of its investment process.
  - 6. Define the relevant monitoring criteria for the Investment Fiduciary.
  - 7. Define the relevant procedures for controlling and accounting for investment expenses.
- b. The Committee should review the investment guidelines at a minimum once each year to ensure that investment objectives are analyzed and modified as prudent.

**S.-3.1 The Committee should select Investment Fiduciaries, delegate investment duties to such Investment Fiduciaries, and allocate assets to each Investment Fiduciary to manage consistent with the investment strategy and the investment guidelines applicable to it.**

- a. The Committee should follow a due diligence process in selecting Investment Fiduciaries that selects among providers based on an objective assessment of their qualification, the quality of the work performed, the reasonableness of the fees, and any such other factors as the Committee deems appropriate and relevant. The Committee should maintain a written record of the process used to select such Investment Fiduciaries.

- b. The Committee should establish procedures to reasonably assure that each Investment Fiduciary or other staff appointed by them has the necessary experience and qualifications needed to oversee the assets allocated to their portfolio.
  1. The Committee should maintain a list of Investment Fiduciaries, including, as part thereof, the Investment Fiduciaries' credentials and experience in carrying out the duties assigned to them.
  2. The Committee should require periodic reporting from the Investment Fiduciaries as to the work performed.
  3. To the extent the Committee hires staff with investment management-related responsibilities, the Committee should develop written job descriptions for such staff, including, as part thereof, the expected credentials and experience of all staff assigned or exercising such authority.
  4. All fees for investment management should be "reasonable compensation" as defined in Section 408(b)(2) of ERISA.
    - i. The Appointing Fiduciary should take reasonable steps to assure that all compensation, direct or indirect, is reasonable under Section 408(b)(2) of ERISA.
    - ii. If the compensation of the Investment Fiduciary will be performance based, the Appointing Fiduciary should review such proposed compensation arrangement in light of the risks associated with the manner of compensation and the potential amount to be paid.
    - iii. The Committee should review any proposed finder's fees or other forms of compensation for asset placement in connection with selection of Investment Fiduciaries to determine whether such compensation is reasonable.
    - iv. The Committee should periodically review such fees to determine if fees remain reasonable in light of the services performed.
  5. The Committee should establish a prudent process for periodically assessing the effectiveness of the VEBA's fiduciary structure including the Committee and other fiduciaries in meeting their responsibilities.

**S.-3.2 Each Investment Fiduciary should give appropriate consideration to the facts and circumstances relevant to the particular investment or investment course of action in accordance with the "prudent man" rule of ERISA.**

- a. Each Investment Fiduciary shall prudently investigate the merits of any potential investment to be made for the VEBA.
- b. Appropriate consideration with respect to an investment includes a determination that the particular investment or investment course of action is reasonably designed to comply with the investment guidelines provided to the Investment Fiduciary, taking into consideration the risk of loss and the opportunity for gain associated with the investment or investment course of action.
- c. Each Investment Fiduciary should have the requisite expertise, knowledge and information necessary to prudently implement the investment strategy and guidelines.
- d. If the Investment Fiduciary lacks sufficient knowledge or sophistication to manage a portion of the VEBA's assets under its authority consistent with the investment strategy or guidelines, the Investment Fiduciary should delegate the investment duties to a knowledgeable professional.

**S.-3.3 Each Appointing Fiduciary shall periodically review the performance of the appointed Investment Fiduciary.**

- a. The Appointing Fiduciary should review the performance of the Investment Fiduciary appointed, at least annually and more frequently as circumstances may warrant, with regards to:
  1. Compliance with these investment practice standards, any investment guidelines and with the purposes and needs of the VEBA.
  2. Comparison of the investment's performance to appropriate benchmarks, indices, peer groups, and the investment objectives against which the performance of the Investment Fiduciary is evaluated.
  3. Compliance with the conflict of interest policy, as long as doing so is reasonable under the circumstances. (The Appointing Fiduciary may rely on a certification of the Investment Fiduciary that it has complied with such conflict of interest policies.)
  4. The quality and timeliness of the Investment Fiduciary's response to requests for information.
  5. The level of service provided as compared to the costs and fees.
  6. The quality and timeliness of the Investment Fiduciary's reports to the Appointing Fiduciary and, where applicable, the Committee, Trustee or plan participants and beneficiaries.
  7. Any education and information provided to the Appointing Fiduciary, the Committee or the plan participants by the Investment Fiduciary.
  8. Qualitative and/or organizational changes of Investment Fiduciaries, such as:
    - i. Staff turnover in determining whether the quality of the service or the investment results provided in the past may be maintained in the future.
    - ii. Changes in the organizational structure of the Investment Fiduciary, including mergers and/or acquisitions that could affect the quality of the service or the investment results in the future.
- b. The nature and results of the monitoring should be recorded in writing, including documentation of any actions recommended, reviewed or taken.
- c. Control procedures should be in place to periodically review policies for best execution and proxy voting.
  1. The Appointing Fiduciary should review the Investment Fiduciary to determine whether the Investment Fiduciary has reasonable procedures in place to secure best execution of the plan's brokerage transactions. The Appointing Fiduciary may consider the cost of commissions for the transaction, the quality and reliability of the execution and any other factors as the Appointing Fiduciary deems relevant.
  2. The Appointing Fiduciary should establish a procedure to review any commissions paid on such transactions at the direction of the Investment Fiduciary to determine if they are reasonable in light of the value of the brokerage and research services or are otherwise permissible under Section 28(e) of the Securities Exchange Act of 1934.
  3. The Appointing Fiduciary should monitor the procedures employed by an Investment Manager in voting proxies and actions taken in connection with the voting of proxies to ensure that the interests of plan participants and beneficiaries are protected by such actions (or inaction), and are not subordinated to other considerations. An Independent Fiduciary should retain all discretionary authority over voting proxies for the Employer Securities in accordance with Section 11.2 of the Trust Agreement.

Code of Ethics

In order for the Trust to continue the protection from the otherwise debilitating financial consequences that would accompany illness that has been afforded many thousands of UAW retirees of the automobile industry over the decades through the collective bargaining agreements between the UAW and Chrysler, Ford and GM – which protection has been essential to maintaining the dignity and financial security of such UAW retirees – the Committee must administer the Trust, and Trust personnel must act, in complete good faith and honesty, and with a single-minded dedication to protecting the interests of the Participants and Beneficiaries. To this end, this Code of Ethics shall govern the conduct of all those persons charged with implementation and administration of the Trust.

The following principles shall apply to members of the Committee as well as to any and all employees, professional staff and others employed in any staff capacity by the Trust. All such persons are referred to herein as “representatives and employees of the Trust.” The Committee shall also inform all vendors, suppliers, outside consultants, health care providers and any other parties performing services for or on behalf of the Trust of this Code of Ethics and inform them that the Committee expects all such persons or entities to respect the provisions of this Code of Ethics. (For purposes of this Code of Ethics, references to family or families means spouses, children, grandparents, grandchildren, uncles, aunts, nieces, nephews by blood or marriage).

1. The assets of the Fund are held in trust for the benefit of the Participants and Beneficiaries. The Participants and Beneficiaries are entitled to assurance that Trust assets are not dissipated, are invested wisely, and are spent only for proper purposes.
2. The Participants and Beneficiaries are also entitled to assurance that representatives and employees of the Trust will be motivated solely by consideration of the best interests of the Participants and Beneficiaries, and will never allow their actions in administration of the Trust to be motivated in any respect by their own self-interest or any other factor that could result in decisions being taken that could work to the detriment of the Participants and Beneficiaries.
3. Service as a representative or employee of the Trust is service *in the interest of the Participants and Beneficiaries*. Pursuing any other goal will injure the reputation of the individual involved as well as the Trust itself. Even more importantly, pursuing any goal other than the best interests of the Participants and Beneficiaries will undermine the Trust’s ability to provide benefits to Participants and Beneficiaries.
4. It is vital that all representatives and employees of the Trust conduct their day-to-day activities in accordance with these principles and in a manner consistent with the special responsibility they have to the Participants and Beneficiaries. Employees and representatives of the Trust must demonstrate – by their conduct as well as their words – that they are dedicated solely to helping the Participants and Beneficiaries and are not motivated by any other goal or in any sense seeking to enrich themselves, their families, or business associates, or gain any advantage for themselves, their families, or business associates from their relationship to the Trust.

5. The Trust shall conduct its proprietary functions, including all contracts for purchase or sale or for rendering services in accordance with the best practices of well-run institutions, including the securing of competitive bids for major contracts.
6. The Trust shall not permit any of its funds to be invested in a manner designed to result in profit or advantage for any representative or employee of the Trust, his or her family, or business associates.
7. There shall be no contracts of purchase or sale or for rendering services which will result in profit or advantage for any representative of the Trust, his or her family or business associates. Nor shall any representative or employee of the Trust accept profit or special advantage for himself or herself, his or her family or business associates from a business – including, without limitation, a vendor or service provider – with which the Trust has a business relationship of any kind.
8. The Trust shall not make loans to its representatives or employees, or members of their families, for any purpose, including financing the private business of such persons.
9. No representative or employee of the Trust shall have any compromising personal ties, direct or indirect, with outside agencies such as insurance carriers, brokers, or consultants – including with any representative, employee or agent of any such agencies, carriers, broker or consultants – doing business with the Trust.
10. The Trust shall fully comply with all applicable legal and accounting requirements, including with respect to maintaining its books and records in accordance with accepted accounting practices and conducting periodic audits as required by law. The financial records of the Trust shall be made available to retired participants and others as required by law.
11. Any person who represents the Trust has a duty to serve the best interests of the Participants and Beneficiaries. Therefore, every representative and employee of the Trust must avoid any outside transaction which even gives the appearance of a conflict of interest. The special fiduciary nature of these positions requires the highest loyalty to the duties of the office.
12. No representative or employee of the Trust shall have any personal financial interest which conflicts with her/his duties on behalf of the Trust.

13. No representative or employee of the Trust shall have any substantial financial interest (even in the publicly-traded, widely-held stock of a corporation), in any business with which the Trust has any business relationship.
14. No representative or employee of the Trust shall accept “kickbacks,” under- the-table payments, gifts or entertainment of any value or any personal payment of any kind from a business or professional enterprise with which the Trust does business, nor arrange to have any such financial payments or perquisites inure to the benefit of their family or business associates.
15. All staffing decisions and decisions regarding use of outside vendors shall be made based solely on consideration of the best interests of the Participants and Beneficiaries. No staff shall be hired, nor any consultants or other vendors used in connection with the conduct of the Trust’s affairs, as a result of personal or family ties to existing representatives or employees of the Trust, the UAW, or any of the contributing employers.
16. The Participants and Beneficiaries are entitled to be reasonably informed as to how the Trust’s assets are used and cared for. Toward this end, the Committee shall – at least annually – provide reasonable notice (by mailed notice to Participants and Beneficiaries or other suitable means) in a form understandable by Participants and Beneficiaries of the status of the Trust and the applicable Separate Retiree Account, including:
  - a. The funding status of the applicable Separate Retiree Account.
  - b. The amount spent on Benefits from the applicable Separate Retiree Account in the prior year.
  - c. The amount spent on administrative costs (including items such as rent, utilities, consulting fees, outside services, salaries, and the like) from the applicable Separate Retiree Account in the prior year.
  - d. The number of Participants and Beneficiaries drawing benefits from the applicable Separate Retiree Account in the prior year.
  - e. The Committee’s current projections regarding solvency of the applicable Separate Retiree Account, and any anticipated Benefit adjustments that may be required over the following five year period.
  - f. Applicable Company contributions and remittances made during the prior year.
  - g. The outcome of the Cash Flow Projection required by the Company Settlements with respect to the applicable Separate Retiree Account.
  - h. The investment returns for the preceding year, as well as such longer periods as the Committee may determine.

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EXHIBIT B

[RESERVED]

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EXHIBIT C

[Reserved]

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EXHIBIT D

FORM OF EQUITY REGISTRATION  
RIGHTS AGREEMENT

**EXHIBIT O**

**FORM OF EQUITY REGISTRATION RIGHTS AGREEMENT**

This EQUITY REGISTRATION RIGHTS AGREEMENT (this "Agreement") is entered into as of [            ], 2009 by and among [            ], a Delaware corporation (the "Corporation"), THE UNITED STATES DEPARTMENT OF THE TREASURY (the "UST"), 7176384 CANADA INC., a corporation organized under the laws of Canada ("Canada"), the UAW RETIREE MEDICAL BENEFITS TRUST, a voluntary employees' beneficiary association (the "VEBA"), and [            ], a Delaware corporation (the "Debtor").<sup>1</sup>

WHEREAS, each Holder owns, as of the date hereof, that number of shares of common stock, par value \$0.01 per share, of the Corporation (the "Common Stock") set forth opposite such Holder's name on Annex I hereto;

WHEREAS, the VEBA and the Debtor each own, as of the date hereof, one or more warrants initially exercisable for that number of shares of Common Stock set forth opposite such Holder's name on Annex I hereto (collectively, the "Warrants");

WHEREAS, as of the date hereof, the Government Holders and the VEBA each own that number of shares of Series A Fixed Rate Cumulative Perpetual Preferred Stock, par value \$0.01 per share (the "Preferred Stock"), set forth opposite such Holder's name on Annex I hereto;

WHEREAS, concurrently with the execution of this Agreement, the Corporation, the UST, Canada and the VEBA have executed that certain Stockholders Agreement, dated as of the date hereof;

WHEREAS, the Corporation has agreed to provide the UST, Canada, the VEBA and the Debtor with registration rights with respect to such shares of Common Stock, Warrants and Preferred Stock held by such Holders and their permitted assigns, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

**ARTICLE 1  
DEFINITIONS**

*Section 1.1 Certain Defined Terms.* As used in this Agreement, the following terms have the following meanings set forth below or in the sections set forth below:

"Adverse Disclosure" means public disclosure of material non-public information that, in the Corporation's good faith judgment, after consultation with independent outside counsel to the Corporation, (a) would be required to be made in any registration statement or report filed with the SEC by the Corporation so that such registration statement or report would not be materially misleading; (b) would not be required to be made at such time but for the filing of such registration statement; and (c) the Corporation has a *bona fide* business purpose for not disclosing publicly.

<sup>1</sup> In the event that any of the other Sellers under the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, by and among the Corporation, the Debtor and the other seller parties thereto, receive equity securities of the Corporation in connection with the closing of the transactions contemplated thereby, such Sellers shall be added as parties hereto and included as Holders hereunder.

“Adverse Effect” shall have the meaning set forth in **Section 2.1.6**.

“Advice” shall have the meaning set forth in **Section 2.7**.

“Affiliate” means, with respect to any Person, any other Person who Controls, is Controlled by or is under common Control with, such Person.

“Agreement” shall have the meaning set forth in the Preamble.

“Canada” shall have the meaning set forth in the Preamble.

“Co-Managers” shall have the meaning set forth in **Section 2.1.4(a)**.

“Common Stock” shall have the meaning set forth in the Recitals.

“Control” means the direct or indirect power to direct or cause the direction of management or policies of a Person, whether through the ownership of voting securities, general partnership interests or management member interests, by contract or trust agreement, pursuant to a voting trust or otherwise. “Controlling” and “Controlled” have the correlative meanings.

“Corporation” shall have the meaning set forth in the Preamble.

“Corporation Shelf Registration” shall have the meaning set forth in **Section 2.2.1**.

“Debtor” shall have the meaning set forth in the Preamble.

“Demand Registration” shall have the meaning set forth in **Section 2.1.1(a)**.

“Demand Request” shall have the meaning set forth in **Section 2.1.1(a)**.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“Excluded Registration” means a registration under the Securities Act of (a) securities pursuant to one or more Demand Registrations pursuant to **Article 2** hereof, (b) securities registered on Form S-4 or S-8 or any similar successor forms, (c) securities convertible into or exercisable or exchangeable for Common Stock and (d) securities registered on Form S-3 or any successor form covering solely securities issued under a dividend reinvestment program.

“FINRA” shall have the meaning set forth in **Section 2.5(a)(xvii)**.

“Government Holder” means the UST or Canada.

“**Governmental Authority**” means any United States or non-United States federal, provincial, state or local government or other political subdivision thereof, any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

“**Holder**” means each of (a) the UST, Canada, the VEBA and the Debtor and (b) any direct or indirect transferee of any such Holder who shall become a party to this Agreement in accordance with **Section 2.10**.

“**Indemnitee**” shall have the meaning set forth in **Section 2.9.1**.

“**Indemnitor**” shall have the meaning set forth in Section 2.9.3(a) but shall, for the avoidance of doubt, exclude the Government Holders and the VEBA for purposes of providing indemnification hereunder.

“**Initial Sale Time**” shall have the meaning set forth in **Section 2.9.1**.

“**Inspectors**” shall have the meaning set forth in **Section 2.5(a)(xiii)**.

“**IPO**” means the Corporation’s first public offering of Common Stock (whether such offering is primary or secondary) that is underwritten by a nationally recognized investment bank, pursuant to a registration statement filed under the Securities Act and declared effective by the SEC (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 under the Securities Act is applicable, or a registration statement on Form S-4, Form S-8 or a successor to one of those forms).

“**Issuer Free Writing Prospectus**” shall have the meaning set forth in **Section 2.6**.

“**Lead Underwriters**” shall have the meaning set forth in **Section 2.1.4(a)**.

“**Losses**” shall have the meaning set forth in **Section 2.9.1**.

“**Market Value**” shall mean with respect to any particular class or type of Registrable Securities (a) at any time securities of the same class or type as the applicable Registrable Securities are listed on a national securities exchange, the closing price of such class or type of securities on the trading day immediately preceding the date of the Demand Request or Transfer Notice, (b) at any time that the Warrants are not listed on a national securities exchange but the Common Stock is listed on a national securities exchange, for each Warrant, the closing price of one share of Common Stock multiplied by the number of shares of Common Stock for which such Warrant is then exercisable (assuming cashless exercise), or (c) other than in the case of clause (a) or clause (b), the estimated market value determined in good faith by the Corporation based upon the advice of a nationally recognized independent investment banking firm retained by the Corporation (at the sole expense of the Corporation) for this purpose (which investment banking firm shall be reasonably acceptable to the UST or if the UST is not the Requesting Holder, the Holders of a majority of the Registrable Securities covered by the Demand Request or Transfer Notice).

“Master Sale and Purchase Agreement” means the Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 and as amended from time to time, by and among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation, Chevrolet- Saturn of Harlem, Inc. and NGMCO, Inc.

“Material Adverse Change” means (a) any general suspension of trading in, or limitation on prices for, securities on any national securities exchange or over-the-counter market in the United States of America; (b) the declaration of a banking moratorium or any suspension of payments in respect of banks in the United States of America; (c) a material outbreak or escalation of armed hostilities or other international or national calamity (including an act of terrorism) involving the United States of America or the declaration by the United States of a national emergency or war or a change in national or international financial, political or economic conditions; or (d) any material adverse change in the business, assets or condition (financial or otherwise) of the Corporation and its subsidiaries, taken as a whole.

“Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity.

“Piggyback Offering” shall have the meaning set forth in **Section 2.2.1**.

“Preferred Stock” shall have the meaning set forth in the Recitals.

“Records” shall have the meaning set forth in **Section 2.5(a)(xiii)**.

“register,” “registered” and “registration” refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness (or automatic effectiveness) of such registration statement.

“Registrable Securities” means (a) Warrants and the shares of Common Stock and/or Preferred Stock owned from time to time by the UST, Canada, the VEBA and the Debtor as of the date hereof and set forth on Annex I hereto, (b) the shares of Common Stock issued or issuable to any Holder upon exercise of a Warrant, (c) any additional securities of the Corporation issued to the Debtor pursuant to Section 3.2 of the Master Sale and Purchase Agreement and (d) any equity security issued in exchange for or with respect to any shares of Common Stock referred to in clauses (a), (b) or (c) above by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or similar transaction, or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities on the earliest of the date on which such securities: (i) have been registered under the Securities Act and disposed of in accordance with a registration statement; (ii) have been sold pursuant to Rule 144 under the Securities Act (or any successor provision); (iii) are held by a Holder that may sell all such Registrable Securities held by it in a single day pursuant to, and in accordance with, Rule 144 under the Securities Act (or any successor provision); (iv) cease to be outstanding (whether as a result of exercise, redemption, repurchase, conversion or otherwise); or (v) are held by any Person who is not a Holder. For purposes hereof, “a majority of the Registrable Securities” and “on the basis of the number of Registrable Securities” shall be determined assuming the exercise of the Warrants in full.

“**Representatives**” means, with respect to any Person, any of such Person’s officers, directors, employees, agents, attorneys, accountants, actuaries, consultants or financial advisors or any other Person acting on behalf of such Person.

“**Requesting Holders**” shall have the meaning set forth in **Section 2.1.1(a)**.

“**SEC**” means the United States Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“**Shelf Registration**” shall have the meaning set forth in **Section 2.1.2(a)**.

“**Suspension Notice**” shall have the meaning set forth in **Section 2.7**.

“**Take-Down**” shall have the meaning set forth in **Section 2.1.2(b)**.

“**Transfer Notice**” shall have the meaning set forth in **Section 2.1.2(b)**.

“**UST**” shall have the meaning set forth in the Preamble.

“**VEBA**” shall have the meaning set forth in the Preamble.

“**VEBA Designee**” shall mean the person(s) authorized by the Committee (as defined in the UAW Retiree Medical Benefits Trust Agreement dated [ ] between [ ] and [ ]) to execute this Agreement and/or carry out the transactions contemplated hereby.

“**Warrants**” shall have the meaning set forth in the Recitals.

*Section 1.2 Terms Generally.* The definitions in **Section 1.1** shall apply equally to both 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,” unless the context expressly provides otherwise. All references herein to Articles, Sections, paragraphs, subparagraphs or clauses shall be deemed references to Articles, Sections, paragraphs, subparagraphs or clauses of this Agreement, unless the context requires otherwise. Unless otherwise specified, the words “this Agreement,” “herein,” “hereof,” “hereto” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.” Unless expressly stated otherwise, any law defined or referred to herein means such law as from time to time amended, modified or supplemented, including by succession of comparable successor laws and references to all attachments thereto and instruments incorporated therein.

**ARTICLE 2**  
**REGISTRATION RIGHTS**

*Section 2.1 Demand Registration.*

*Section 2.1.1 Request for Registration.*

(a) Subject to **Section 2.1.3**, any Holder or Holders of Registrable Securities shall have the right to require the Corporation to file a registration statement under the Securities Act for a public offering of all or part of its or their Registrable Securities (a “Demand Registration”), by delivering to the Corporation written notice stating that such right is being exercised, naming, if applicable and to the extent known by such Holder or Holders, any other Holders whose Registrable Securities are to be included in such registration (collectively, the “Requesting Holders”), specifying the number and type of each such Holder’s Registrable Securities to be included in such registration, specifying whether the Registrable Securities to be included by the Requesting Holder are all of the Registrable Securities then held by such Requesting Holder and, subject to **Section 2.1.4** hereof, describing the intended method of distribution thereof (a “Demand Request”). Subject to **Section 2.1.3**, after receipt of any Demand Request, the Corporation shall comply with the applicable notice requirements set forth in **Section 2.1.5**.

(b) Subject to **Section 2.1.3** and **Section 2.1.7**, the Corporation shall file the registration statement in respect of a Demand Registration as promptly as practicable and, in any event, (i) with respect to the filing of a Form S-3, within forty-five (45) days and (ii) with respect to the filing of any other type of registration statement, within ninety (90) days after receiving a Demand Request, and shall use reasonable best efforts to cause the same to be declared effective by the SEC as promptly as practicable after such filing.

*Section 2.1.2 Shelf Registration; Take-Downs.*

(a) Subject to **Section 2.1.3**, with respect to any Demand Registration, at any time that the Corporation is eligible to use Form S-3 or an automatic shelf registration statement (as defined in Rule 405 under the Securities Act) on Form S-3 (or any successor forms) with respect to the Registrable Securities, the Requesting Holders may request that the Corporation (i) file a registration statement pursuant to Rule 415 under the Securities Act (or any successor rule) to effect such Demand Registration, or (ii) at any time that a registration statement pursuant to Rule 415 covering Registrable Securities is effective, register additional Registrable Securities of the Requesting Holders pursuant to such shelf registration statement to effect such Demand Registration (in either case, a “Shelf Registration”). For the avoidance of doubt, a Shelf Registration shall be deemed a “Demand Registration” for all purposes under this Agreement except as otherwise provided in **Section 2.1.3**.

(b) Subject to **Section 2.1.3**, any Holder or Holders with Registrable Securities registered pursuant to a Shelf Registration that intends to effect an underwritten offering with respect to such Registrable Securities shall deliver a notice to the Corporation at least fifteen (15) days prior to the commencement of such underwritten offering, stating (i) that such Holder or Holders intend to effect an underwritten offering of all or part of the Registrable Securities included by such Holder or Holders in the Shelf Registration, (ii) if applicable and to the extent known by such Holder, any other Holders whose Registrable Securities are to be included in the underwritten offering, (iii) the number and type of each such Holder’s Registrable Securities to be included in such underwritten offering, (iv) whether the Registrable Securities to be included by such Holder are all of the Registrable Securities then held by such Holder, and (v) the proposed timetable for such underwritten offering. Any Holder with Registrable Securities registered pursuant to a Shelf Registration that intends to effect any other sale or transfer of such Registrable Securities (each a “Take-Down”) shall deliver a notice to the Corporation at least five (5) days prior to effecting such non-underwritten sale or transfer, stating (i) that such Holder intends to effect a non-underwritten sale or transfer of all or part of the Registrable Securities included by such Holder in the Shelf Registration, (ii) the number and type of the Registrable Securities to be included in such sale or transfer and (iii) the proposed manner and timetable for such sale or transfer. A notice provided by any Requesting Holder pursuant to the first two sentences of this **Section 2.1.2(b)** is referred to herein as a “Transfer Notice.” Subject to **Section 2.1.3**, after receipt of any Transfer Notice, the Corporation shall comply with the applicable notice requirements set forth in **Section 2.1.5**. For the avoidance of doubt, a Take- Down shall not be deemed to be a Demand Registration and shall not be subject to **Section 2.1.3**.

(c) Subject to **Section 2.1.3**, the Corporation shall use its reasonable best efforts to keep any Shelf Registration requested pursuant to **Section 2.1.2(a)** continuously effective under the Securities Act in order to permit the prospectus forming a part thereof to be usable by the Holders until the earlier of (i) the date as of which all Registrable Securities have been sold pursuant to the Shelf Registration or another registration statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(3) of the Securities Act and Rule 174 thereunder) and (ii) the date as of which all of such Requesting Holders are permitted to sell their Registrable Securities without registration pursuant to Rule 144 under the Securities Act without volume limitation or other restrictions on transfer thereunder.

(d) The Corporation shall, from time to time, supplement and amend the Shelf Registration if required by the Securities Act, including the rules, regulations or instructions applicable to the registration form used by the Corporation for such Shelf Registration.

*Section 2.1.3 Limitations.*

(a) Notwithstanding anything to the contrary herein, a Holder shall not be permitted to request a Demand Registration prior to one hundred eighty (180) days after the date of this Agreement, unless prior thereto the Corporation has a class of equity securities registered under Section 12(b) of the Exchange Act.

(b) A Holder (other than the UST) shall not be permitted to request a Demand Registration prior to the time the Corporation has registered a class of equity securities under Section 12(b) of the Exchange Act.

(c) A Holder shall not be permitted to request a Demand Registration, or submit a Transfer Notice with respect to an underwritten offering pursuant to a Shelf Registration, within one hundred eighty (180) days after either (i) the effective date of a previous Demand Registration (other than a Shelf Registration) or (ii) the completion of any underwritten offering pursuant to a Shelf Registration.

(d) A Holder shall not be permitted to submit a Demand Request, or a Transfer Notice for an underwritten offering, or effect any such Demand Registration or underwritten offering unless such Demand Request or Transfer Notice for an underwritten offering is for (i) a number of Registrable Securities having a Market Value equal to or exceeding \$100 million in the aggregate, or (ii) all of the Registrable Securities then held by the Requesting Holder.

(e) The Corporation shall not be required to effect, (i) until (but excluding) the third anniversary of the date hereof, more than two (2) Demand Registrations (which shall include for this purpose any underwritten offering pursuant to a Shelf Registration but shall exclude a Shelf Registration) in the aggregate during any consecutive twelve (12) month period, and (ii) from and including the third anniversary of the date hereof, more than one (1) Demand Registration (which shall include for this purpose any underwritten offering pursuant to a Shelf Registration but shall exclude a Shelf Registration) in the aggregate during any consecutive twelve (12) month period. Notwithstanding the foregoing, (i) the VEBA shall have the right, from and including the third anniversary of the date hereof, to request one additional Demand Registration (which shall include for this purpose any underwritten offering pursuant to a Shelf Registration but shall exclude a Shelf Registration) during any consecutive twelve (12) month period, and (ii) for the avoidance of doubt, the limitations set forth in this **Section 2.1.3** shall not apply to any non-underwritten Take-Down by any Holder under a Shelf Registration.

*Section 2.1.4 Demand Registrations for Underwritten Offerings.*

(a) At the request of the UST or Canada, or if the UST or Canada is not participating in the proposed offering, the Holders of a majority of the Registrable Securities submitting a Demand Request or Transfer Notice for an underwritten offering of Registrable Securities, the Corporation shall direct the applicable underwriter to conduct such offering in the form of a “firm commitment.” With respect to any such underwritten offering, (i) the UST, or if the UST is not participating in the proposed offering, the Holders of a majority of the Registrable Securities to be registered or included in such underwritten offering shall select the investment banking firm or firms to lead the underwritten offering (the “Lead Underwriters”); provided that such Lead Underwriters shall be reasonably acceptable to the Corporation, and (ii) the Corporation shall select the other investment banking firms, if any, to co-manage such underwritten offering (the “Co-Managers”), provided that such Co-Managers shall be reasonably acceptable to the UST or Canada, or if the UST or Canada is not participating in the proposed offering, the Holders of a majority of the Registrable Securities to be registered or included in such underwritten offering.

(b) If a Demand Registration is for an underwritten offering or a transfer pursuant to a Shelf Registration involves an underwritten offering, no Holder may participate in any such underwritten offering unless such Holder (i) agrees to sell such Holder’s Registrable Securities on the basis provided in any underwriting arrangements approved by the Corporation; provided that such arrangements are subject to the consent of the UST, or if the UST is not participating in the proposed offering, the Holders of a majority of the Registrable Securities to be registered or included in such underwritten offering, and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; provided, however, that no such Holder shall be required to make any representations or warranties in connection with any such underwritten offering other than representations and warranties as to (A) such Holder’s ownership of its Registrable Securities to be transferred free and clear of all liens, claims, and encumbrances, (B) such Holder’s power and authority to effect such transfer, and (C) such matters pertaining to compliance with securities laws as may be reasonably requested; provided, further, however, that (i) any obligation (if agreed to) of each such Holder to indemnify the Lead Underwriters and any Co-Managers pursuant to any such underwriting arrangements shall (1) only be with respect to information it provides to the Corporation in writing for use in such underwritten offering, (2) be several, not joint and several, and (3) be limited to the net amount received by such Holder from the sale of its Registrable Securities pursuant to such offering and (ii) neither the Government Holders nor the VEBA shall be required to indemnify any Indemnitee pursuant to this Agreement.

*Section 2.1.5 Rights of Nonrequesting Holders and the Corporation.* Subject to **Section 2.1.3**, after receipt of any Demand Request or any Transfer Notice relating to an underwritten offering pursuant to a Shelf Registration, the Corporation shall promptly (but in any event within five (5) days) give written notice of (i) such proposed Demand Registration to all other Holders or (ii) such Transfer Notice to such other Holders whose securities are covered by such Shelf Registration, who shall have the right, exercisable by written notice to the Corporation within five (5) days of their receipt of the Corporation's notice, to elect to include in such Demand Registration or underwritten offering such portion of their Registrable Securities as they may request. All Holders requesting to have their Registrable Securities included in a Demand Registration or underwritten offering shall be deemed to be "Requesting Holders" for purposes of this **Section 2.1**. For the avoidance of doubt, subject to **Section 2.1.6**, the Corporation may register in any Demand Registration any equity securities of the Corporation.

*Section 2.1.6 Priority on Demand Registrations.* With respect to any underwritten offering based on a Demand Registration (including an underwritten offering pursuant to a Shelf Registration), if the Lead Underwriters (after consultation with the Co- Managers) advise that the inclusion of the securities proposed to be included in such registration would adversely affect the price, timing or distribution of the offering or otherwise adversely affect its success (an "**Adverse Effect**"), the Corporation shall include in such underwritten offering (a) first, the Registrable Securities, pro rata among the Requesting Holders on the basis of the number of Registrable Securities owned by each such Requesting Holder, and (b) second, any other securities requested to be included in such underwritten offering (including securities to be sold for the account of the Corporation); provided, however, that if more than 25% of the Registrable Securities of any Holder subject to a Demand Request or Transfer Notice for an underwritten offering are excluded pursuant to the terms of this **Section 2.1.6** from the applicable Demand Registration or underwritten offering pursuant to a Shelf Registration, the offering shall not be deemed to constitute a Demand Registration for the purposes of **Section 2.1.3**.

*Section 2.1.7 Deferral of Filing; Suspension of Use.* The Corporation may defer the filing (but not the preparation) or the effectiveness, or suspend the use, of any registration statement required by or filed pursuant to **Section 2.1**, at any time if (a) the Corporation determines, in its sole discretion, that such action or use (or proposed action or use) would require the Corporation to make an Adverse Disclosure, or (b) prior to receiving the Demand Request or Transfer Notice, as applicable, the board of directors of the Corporation had determined to effect a registered underwritten public offering of Company equity securities or Company securities convertible into or exchangeable for Company equity securities for the Corporation's account and the Corporation had taken substantial steps (such as selecting a managing underwriter for such offering) and is proceeding with reasonable diligence to effect such offering; provided, however, that the Corporation shall not exercise its rights to deferral or suspension pursuant to this **Section 2.1.7**, and shall not so effect any such deferral or suspension, for more than a total of one hundred eighty (180) days (which need not be consecutive) in any consecutive twelve (12) month period. In making any such determination to defer the filing or effectiveness, or suspend the use, of a registration statement required by **Section 2.1**, the Corporation shall not be required to consult with or obtain the consent of any Holder or any investment manager therefor, and any such determination shall be in the sole discretion of the Corporation, and neither the Holders nor any investment manager for any Holder shall be responsible or have any liability therefor. The Corporation shall promptly notify the Holders of any deferral or suspension pursuant to this **Section 2.1.7** and the Corporation agrees that it will terminate any such deferral or suspension as promptly as reasonably practicable and will promptly notify each Holder in writing of the termination of any such deferral or suspension.

*Section 2.1.8 Withdrawal from Demand Registration.* Any Holder may withdraw its Registrable Securities from a Demand Registration or underwritten offering at any time (prior to a sale thereunder) by providing the Corporation with written notice. Upon receipt of such written notice, the Corporation shall continue all efforts to secure registration or effect the underwritten offering of the remaining Registrable Securities not requested to be withdrawn, unless the remaining Registrable Securities would not meet the requirements of **Section 2.1.3(b)** or **Section 2.1.3(d)**, in which case, the Corporation may in its sole discretion cease all efforts to proceed with registration or the underwritten offering. If the Corporation ceases all efforts to secure registration or effect the underwritten offering pursuant to this **Section 2.1.8**, then such registration or underwritten offering shall nonetheless be deemed an effective or completed Demand Registration or completed underwritten offering pursuant to a Shelf Registration for all purposes hereunder unless (i) the withdrawal is made following the occurrence of a Material Adverse Change not known to the Requesting Holders at the time of the Demand Request or Transfer Notice or (ii) the Requesting Holders pay or reimburse the Corporation for all out-of-pocket fees and expenses reasonably incurred in connection with such Demand Registration or underwritten offering; provided that if, after a Demand Registration has become effective or an underwritten offering of Registrable Securities has been commenced, it is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court, it shall be deemed not to have been effected and shall not count as a Demand Registration or underwritten offering for the purposes of **Section 2.1.3**.

*Section 2.2 Piggyback Offerings.*

*Section 2.2.1 Right to Piggyback.* Each time the Corporation proposes to offer any of its equity securities in a registered underwritten offering (other than pursuant to an Excluded Registration) under the Securities Act (whether for the account of the Corporation or the account of any equity holder of the Corporation other than a Holder) (a “Piggyback Offering”), the Corporation shall give prompt written notice to each Holder of Registrable Securities (which notice shall be given not less than twenty (20) days prior to (i) the offering in the case of an underwritten offering pursuant to Rule 415 under the Securities Act (or any successor rule) (a “Corporation Shelf Registration”) or (ii) the anticipated filing date of the Corporation’s registration statement in a registration other than a Corporation Shelf Registration), which notice shall offer each such Holder the opportunity to include any or all of its Registrable Securities in such underwritten offering, subject to the limitations contained in **Section 2.2.2** hereof. Each Holder who desires to have its Registrable Securities included in such underwritten offering shall so advise the Corporation in writing (stating the number and type of Registrable Securities desired to be registered or included) within fifteen (15) days after the date of such notice from the Corporation. Any Holder shall have the right to withdraw such Holder’s request for inclusion of such Holder’s Registrable Securities in any underwritten offering pursuant to this **Section 2.2.1** by giving written notice to the Corporation of such withdrawal. Subject to **Section 2.2.2** below, the Corporation shall include in such underwritten offering all such Registrable Securities so requested to be included therein. Notwithstanding the foregoing, the Corporation may at any time withdraw or cease proceeding with any such offering if it shall at the same time withdraw or cease proceeding with the offering of all other equity securities originally proposed to be included in such offering.

*Section 2.2.2 Priority on Piggyback Offerings.*

(a) If a Piggyback Offering was initiated by the Corporation, and if the managing underwriter advises that the inclusion of the securities proposed to be included in such Piggyback Offering would cause an Adverse Effect, the Corporation shall include in such Piggyback Offering (i) first, the securities the Corporation proposes to sell, (ii) second, the Registrable Securities requested to be included in such Piggyback Offering, pro rata among the Holders of such Registrable Securities on the basis of the number of Registrable Securities owned by each such Holder, and (iii) third, any other securities requested to be included in such Piggyback Offering. If as a result of the provisions of this **Section 2.2.2(a)**, any Holder shall not be entitled to include all Registrable Securities in such Piggyback Offering that such Holder has requested to be so included, such Holder may withdraw its request to include its Registrable Securities in such Piggyback Offering.

(b) If a Piggyback Offering was initiated by a security holder of the Corporation (other than a Holder), and if the managing underwriter advises that the inclusion of the securities proposed to be included in such Piggyback Offering would cause an Adverse Effect, the Corporation shall include in such Piggyback Offering (i) first, the securities requested to be included therein by the security holders requesting such Piggyback Offering and the Registrable Securities requested to be included in such Piggyback Offering, pro rata among the holders of such securities on the basis of the number of securities owned by each such holder, and (ii) second, any other securities requested to be included in such Piggyback Offering (including securities to be sold for the account of the Corporation). If as a result of the provisions of this **Section 2.2.2(b)** any Holder shall not be entitled to include all Registrable Securities in such Piggyback Offering that such Holder has requested to be so included, such Holder may withdraw such Holder's request to include Registrable Securities in such Piggyback Offering.

(c) No Holder may participate in a Piggyback Offering unless such Holder (i) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Corporation and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents, each in customary form and reasonably satisfactory to the Holders, reasonably required under the terms of such underwriting arrangements; provided, however, that no such Holder shall be required to make any representations or warranties in connection with any such registration other than representations and warranties as to (A) such Holder's ownership of its Registrable Securities to be sold or transferred free and clear of all liens, claims, and encumbrances, (B) such Holder's power and authority to effect such transfer, and (C) such matters pertaining to compliance with securities laws as may be reasonably requested; provided, further, however, that (i) any obligation, if agreed to, of each such Holder to indemnify the underwriters pursuant to any such underwriting arrangements shall (1) only be with respect to information it provides to the Corporation in writing for use in such underwritten offering, (2) be several, not joint and several, and (3) be limited to the net amount received by such Holder from the sale of its Registrable Securities pursuant to such registration and (ii) neither the Government Holders nor the VEBA shall be required to indemnify any Indemnitee pursuant to this Agreement.

*Section 2.2.3 Selection of Underwriters.* The Corporation shall select the investment banking firm or firms to manage the Piggyback Offering.

*Section 2.2.4* No registration of Registrable Securities effected pursuant to this **Section 2.2** shall be deemed to have been effected pursuant to **Section 2.1.1** or **Section 2.1.2** or shall relieve the Corporation of its obligations under **Section 2.1.1** or **Section 2.1.2**.

*Section 2.3 SEC Form S-3.* Notwithstanding anything to the contrary herein, the Corporation shall use its reasonable best efforts to cause Demand Registrations to be registered on Form S-3 or an automatic shelf registration statement (as defined in Rule 405 under the Securities Act) on Form S-3 (or any successor forms) once the Corporation becomes eligible to use such form, and if the Corporation is not then eligible under the Securities Act to use such form, Demand Registrations shall be registered on the form for which the Corporation then qualifies. After becoming eligible to use Form S-3 or an automatic shelf registration statement (as defined in Rule 405 under the Securities Act) on Form S-3, the Corporation shall use its reasonable best efforts to remain so eligible.

*Section 2.4 Holdback Agreements.*

(a) The Corporation shall not effect any public sale or distribution of its equity securities or any securities convertible into or exchangeable or exercisable for its equity securities, except in each case as part of the offering pursuant to a Demand Registration, during the sixty (60) day period (or such lesser period as the Lead Underwriters or managing underwriters may permit) beginning on the effective date of any registration statement in connection with an underwritten Demand Registration (other than a Shelf Registration), except for (i) sales or distributions pursuant to registrations on Form S-4 or Form S-8 or any successor form, (ii) the issuance of shares of Common Stock upon the conversion, exercise or exchange, by the holder thereof, of options, warrants or other securities convertible into or exercisable or exchangeable for Common Stock pursuant to the terms of such options, warrants or other securities, (iii) sales or distributions pursuant to the terms of any other agreement to issue shares of Common Stock (or any securities convertible into or exchangeable or exercisable for Common Stock) in effect on the date of the Demand Request, including any such agreement in connection with any previously disclosed acquisition, merger, consolidation or other business combination and (iv) the issuance of shares of Common Stock in connection with transfers to dividend reinvestment plans or to employee benefit plans in order to enable any such employee benefit plan to fulfill its funding obligations in the ordinary course.

(b) If any Holders of Registrable Securities provide a Transfer Notice relating to an underwritten offering of Registrable Securities registered pursuant to a Shelf Registration, the Corporation shall not effect any public sale or distribution of its equity securities or any securities convertible into or exchangeable or exercisable for its equity securities, except in each case as part of such underwritten offering, during the sixty (60) day period (or such lesser period as the Lead Underwriters or managing underwriters may permit) beginning on the pricing date for such underwritten offering, except for (i) sales or distributions pursuant to registrations on Form S-4 or Form S-8 or any successor form, (ii) the issuance of shares of Common Stock upon the conversion, exercise or exchange, by the holder thereof, of options, warrants or other securities convertible into or exercisable or exchangeable for Common Stock pursuant to the terms of such options, warrants or other securities, (iii) sales or distributions pursuant to the terms of any other agreement to issue shares of Common Stock (or any securities convertible into or exchangeable or exercisable for Common Stock) in effect on the date of the Transfer Notice, including any such agreement in connection with any previously disclosed acquisition, merger, consolidation or other business combination and (iv) the issuance of shares of Common Stock in connection with transfers to dividend reinvestment plans or to employee benefit plans in order to enable any such employee benefit plan to fulfill its funding obligations in the ordinary course.

(c) Each Holder agrees, in the event of an underwritten offering of equity securities by the Corporation (whether for the account of the Corporation or otherwise), not to offer, sell, contract to sell or otherwise dispose of any Preferred Stock, Warrants, Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock, including any sale pursuant to Rule 144 under the Securities Act (except as part of such underwritten offering), during the sixty (60) day period (or such lesser period in each case as the Lead Underwriters or managing underwriters may permit) beginning on the effective date of the registration statement for such underwritten offering (or, in the case of an offering pursuant to an effective shelf registration statement pursuant to Rule 415, the pricing date for such underwritten offering); provided, however, that (i) any applicable period shall terminate on such earlier date as the Corporation gives notice to the Holders that the Corporation declines to proceed with any such offering and (ii) the sum of all holdback periods applicable to the Holders shall not exceed one hundred twenty (120) days (which need not be consecutive) in any given twelve (12) month period.

#### *Section 2.5 Registration Procedures.*

(a) If and whenever the Corporation is required to effect the registration of any Registrable Securities pursuant to this Agreement, subject to the terms and conditions of this Agreement, the Corporation shall use its reasonable best efforts to effect the registration and the sale, as applicable, of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Corporation shall as expeditiously as possible:

(i) prepare and file with the SEC, pursuant to **Section 2.1** with respect to any Demand Registration, a registration statement on any appropriate form under the Securities Act with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective as promptly as practicable; provided that as far in advance as practicable before filing such registration statement or any amendment thereto, the Corporation shall furnish to the selling Holders copies of reasonably complete drafts of all such documents prepared to be filed (including exhibits), and any such selling Holder shall have the opportunity to object to any information contained therein and the Corporation shall make corrections reasonably requested by such selling Holder with respect to such information prior to filing any such registration statement or amendment; provided, further, that the Corporation shall not file any such registration statement, and any amendment thereto, to which a Holder shall reasonably object in writing on a timely basis, unless in the Corporation's judgment such filing is necessary to comply with applicable law;

(ii) except in the case of a Shelf Registration, prepare and file with the SEC such amendments, post-effective amendments, and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than one hundred eighty (180) days (or such lesser period as is necessary for the underwriters in an underwritten offering to sell unsold allotments) and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the selling Holders thereof set forth in such registration statement;

(iii) in the case of a Shelf Registration, comply with the provisions of **Section 2.1.2(c)** and **Section 2.1.2(d)**;

(iv) furnish to each selling Holder of Registrable Securities and the underwriters of the securities being registered, without charge, such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus), any documents incorporated by reference therein and such other documents as such selling Holders or underwriters may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such selling Holders or the sale of such securities by such underwriters (it being understood that, subject to **Section 2.1.7**, **Section 2.4(c)**, **Section 2.6** and **Section 2.7** and the requirements of the Securities Act and applicable state securities laws, the Corporation consents to the use of the prospectus and any amendment or supplement thereto by each selling Holder and the underwriters in connection with the offering and sale of the Registrable Securities covered by the registration statement of which such prospectus, amendment or supplement is a part);

(v) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or “blue sky” laws of such jurisdictions as the Lead Underwriters or managing underwriters reasonably request (or, in the event the registration statement does not relate to an underwritten offering, as the selling Holders of a majority of such Registrable Securities being offered may reasonably request); use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the period in which such registration statement is required to be kept effective; and do any and all other acts and things which may be reasonably necessary or advisable to enable each selling Holder to consummate the disposition of the Registrable Securities owned by such selling Holder in such jurisdictions; provided, however, that the Corporation shall not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (B) consent to general service of process in any such jurisdiction or (C) take any action that would subject it to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject;

(vi) promptly notify each selling Holder and each underwriter and (if requested by any such Person) confirm such notice in writing (A) when a prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to a registration statement or any post-effective amendment, when the same has become effective, (B) of the issuance by any state securities or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or “blue sky” laws or the initiation, or threatened initiation, of any proceedings for that purpose, or (C) of the happening of any event which makes any statement made in a registration statement or related prospectus untrue or which requires the making of any changes in such registration statement, prospectus or documents so that they shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and, as promptly as practicable thereafter, prepare and file with the SEC and furnish a supplement or amendment to such prospectus so that, as thereafter deliverable to the purchasers of such Registrable Securities, such prospectus shall not contain any untrue statement of a material fact or omit a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(vii) permit any selling Holder that might reasonably be deemed to be an underwriter or a Controlling Person of the Corporation to participate in the preparation of such registration or comparable statement and to require the insertion therein of material, furnished to the Corporation in writing, which in the reasonable judgment of such Holder and its counsel should be included;

(viii) make available members of the management of the Corporation or the applicable Corporation subsidiaries for reasonable assistance in the selling efforts relating to any offering of Registrable Securities covered by a registration statement filed pursuant to this Agreement, to the extent customary for such offering (including, without limitation, to the extent customary, senior management attendance at due diligence meetings with prospective investors or underwriters and their counsel and road shows); provided, however, that management need only be made available for one such offering for each of the UST, Canada and the VEBA in any twelve (12) month period;

(ix) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, including the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder, and make generally available to the Corporation’s security holders an earnings statement satisfying the provisions of Section 11(a) of the Securities Act no later than thirty (30) days after the end of the twelve (12) month period beginning with the first day of the Corporation’s first fiscal quarter commencing after the effective date of a registration statement, which earnings statement shall cover said twelve (12) month period, and which requirement shall be deemed to be satisfied if the Corporation timely files complete and accurate information on Forms 10-K, 10-Q and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

(x) if requested by the Lead Underwriters, managing underwriters or any selling Holder, promptly incorporate in a prospectus supplement or post-effective amendment such information as the Lead Underwriters, managing underwriters or any selling Holder reasonably requests to be included therein, including, with respect to the Registrable Securities being sold by the selling Holders, the purchase price being paid therefor by the underwriters and with respect to any other terms of the underwritten offering of the Registrable Securities to be sold in such offering, and promptly make all required filings of such prospectus supplement or post-effective amendment;

(xi) as promptly as practicable after filing with the SEC of any document which is incorporated by reference into a registration statement (in the form in which it was incorporated), deliver a copy of each such document to each selling Holder;

(xii) cooperate with the selling Holders and Lead Underwriters or the managing underwriters to facilitate the timely preparation and delivery of certificates (which shall not bear any restrictive legends unless required under applicable law) representing securities sold under any registration statement, and enable such securities to be in such denominations and registered in such names as the Lead Underwriters, managing underwriters or such selling Holders may request at least two (2) business days prior to any sale of the Registrable Securities and keep available and make available to the Corporation's transfer agent prior to the effectiveness of such registration statement a supply of such certificates;

(xiii) promptly make available for inspection by any selling Holder, any underwriter participating in any disposition pursuant to any registration statement, and any attorney, accountant or other agent or Representative retained by any such selling Holder or underwriter (collectively, the "Inspectors"), all financial and other records and pertinent corporate documents (collectively, the "Records") and properties of the Corporation, as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Corporation's officers, directors and employees to supply all information reasonably requested by any such Inspector in connection with such registration statement; provided, however, that, unless the disclosure of such Records is necessary to avoid or correct a misstatement or omission in the registration statement or the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, the Corporation shall not be required to provide any information under this subparagraph (xiii) if (A) the Corporation believes, after consultation with counsel for the Corporation, that to do so would cause the Corporation to forfeit an attorney-client privilege that was applicable to such information or (B) if either (1) the Corporation has requested and been granted from the SEC confidential treatment of such information contained in any filing with the SEC or documents provided supplementally or otherwise or (2) the Corporation reasonably determines in good faith that such Records are confidential and so notifies the Inspectors in writing, unless prior to furnishing any such information with respect to clause (B) such selling Holder of Registrable Securities requesting such information agrees to enter into a confidentiality agreement in a form acceptable to the Corporation; and provided, further, that each selling Holder of Registrable Securities agrees that it shall, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, give notice to the Corporation and allow the Corporation, at its expense, to undertake appropriate action and to prevent disclosure of the Records deemed confidential;

(xiv) furnish to each selling Holder and underwriter a signed counterpart of (A) an opinion or opinions of counsel to the Corporation (which may be in-house counsel) provided that such counsel is reasonably acceptable to such Holders and the underwriter, and (B) a comfort letter or comfort letters from the Corporation's independent public accountants, each in customary form and covering such matters of the type customarily covered by opinions or comfort letters, as the case may be, as the selling Holders, Lead Underwriters or managing underwriters reasonably requests;

(xv) cause the Registrable Securities included in any registration to be (A) in the case of an IPO, listed on a securities exchange or exchanges or an inter-dealer quotation system, as determined by the Corporation, or (B) in the case of a registration other than an IPO, (1) listed on each securities exchange, if any, on which similar securities issued by the Corporation are then listed or (2) quoted on an inter-dealer quotation system if similar securities issued by the Corporation are quoted thereon, as applicable;

(xvi) provide a transfer agent and registrar for all Registrable Securities registered hereunder and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(xvii) cooperate with each selling Holder and each underwriter participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the Financial Industry Regulatory Authority ("FINRA");

(xviii) during the period when the prospectus is required to be delivered under the Securities Act, promptly file all documents required to be filed with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act;

(xix) notify each selling Holder of Registrable Securities promptly of any request by the SEC for the amending or supplementing of such registration statement or prospectus or for additional information;

(xx) subject to **Section 2.1.4(b)** and **Section 2.2.2(c)**, enter into such agreements (including underwriting agreements) as are customary in connection with an underwritten registration; and

(xxi) advise each selling Holder of such Registrable Securities, promptly after it receives notice or obtains knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of such registration statement or the initiation or threatening of any proceeding for such purpose and promptly use its reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal at the earliest possible moment if such stop order should be issued.

(b) The selling Holders shall reasonably cooperate with the Corporation in the preparation and filing of any registration statement under the Securities Act pursuant to this Agreement and provide the Corporation with all information reasonably necessary to complete such preparation as the Corporation may, from time to time, reasonably request in writing, and the Corporation may exclude from such registration the Registrable Securities of any selling Holder (or not proceed with such registration) if such selling Holder unreasonably fails to furnish such information within a reasonable time after receiving such request. Promptly following any sale or other transfer of any Registrable Securities, each Holder shall notify the Corporation in writing thereof, which notice shall specify the amount and type of securities involved, the date of the sale or transfer and whether the sale or transfer was effected under a registration statement or otherwise.

(c) Each of the parties shall treat all notices of proposed transfers and registrations, and all information relating to any blackout periods under **Section 2.1.7** received from another party with the strictest confidence (and in accordance with the terms of any applicable confidentiality agreement among the Corporation and the Holder) and shall not disseminate such information.

*Section 2.6 Issuer Free Writing Prospectuses.* The Corporation represents and agrees that, unless it obtains the prior consent of the Holders of a majority of the Registrable Securities participating in a registration or offering or the approval of the counsel for such Holders, and each of the Holders represents and agrees that, unless it obtains the prior consent of the Corporation, it shall not make any offer relating to the Registrable Securities that would constitute an “issuer free writing prospectus,” as defined in Rule 433 under the Securities Act (an “Issuer Free Writing Prospectus”), or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405 under the Securities Act, required to be filed with the SEC. The Corporation represents that any Issuer Free Writing Prospectus shall not include any information that conflicts with the information contained in a registration statement or prospectus and that any Issuer Free Writing Prospectus, when taken together with the information in the registration statement and the prospectus, shall not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

*Section 2.7 Suspension of Dispositions.* Each Holder agrees that upon receipt of any notice (a “Suspension Notice”) from the Corporation of the happening of any event of the kind described in **Section 2.5(a)(vi)(B)** or **(C)** or **Section 2.5(a)(xxi)** such Holder shall forthwith discontinue disposition of Registrable Securities until such Holder’s receipt of the copies of the supplemented or amended prospectus, or until it is advised in writing (the “Advice”) by the Corporation that the use of the prospectus may be resumed, and has received copies of any additional or supplemental filings which are incorporated by reference in the prospectus, and, if so directed by the Corporation, such Holder shall deliver to the Corporation all copies, other than permanent file copies then in such Holder’s possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Corporation shall give any such notice, the time period regarding the effectiveness of registration statements set forth in **Section 2.5(a)(ii)** hereof, if applicable, shall be extended by the number of days during the period from and including the date of the giving of the Suspension Notice to and including the date when each seller of Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus or the Advice. The Corporation shall use its reasonable best efforts and take such actions as are reasonably necessary to render the Advice as promptly as practicable.

*Section 2.8 Registration Expenses.* The Corporation shall pay all reasonable fees and expenses incident to the performance of or compliance with its obligations under this **Article 2**, including (a) all registration and filing fees, including fees and expenses (i) with respect to filings required to be made with all applicable securities exchanges and/or FINRA and (ii) of compliance with securities or “blue sky” laws including any fees and disbursements of counsel for the underwriter(s) in connection with “blue sky” qualifications of the Registrable Securities pursuant to **Section 2.5(a)(v)**, (b) printing expenses, including expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing prospectuses if the printing of prospectuses is requested by the Lead Underwriters or managing underwriter(s), if any, or by the Holder, (c) messenger, telephone and delivery expenses of the Corporation, (d) fees and disbursements of counsel for the Corporation, (e) expenses of the Corporation incurred in connection with any “road show” or other marketing efforts, (f) fees and disbursements of all independent certified public accountants (including, without limitation, the expenses of any special audit and “cold comfort” letters required by or incident to this Agreement) and any other Persons, including special experts, retained by the Corporation, and (g) fees up to \$250,000 plus reasonable disbursements of one legal counsel for the Requesting Holders in connection with each registration or offering of their Registrable Securities or sale (including, for the avoidance of doubt, a Take-Down) of their Registrable Securities under a Shelf Registration but only if such registration, offering or sale either is effected or, pursuant to **Section 2.7**, is postponed. For the avoidance of doubt, the Corporation shall not be required to pay any, and each Holder shall pay its own, underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities pursuant to any registration statement, or any other expenses of any Holder. In addition, the Corporation shall bear all of its internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange or inter-dealer quotation system on which similar securities issued by the Corporation are then listed and the fees and expenses of any Person, including special experts, retained by the Corporation.

*Section 2.9 Indemnification.*

*Section 2.9. 1 Indemnification by the Corporation.* The Corporation agrees to indemnify and hold harmless, to the fullest extent permitted by law, each Holder, the trustees of any Holder, the investment manager or managers acting on behalf of any Holder with respect to the Registrable Securities, Persons, if any, who Control any of them, and each of their respective Representatives (each, an “Indemnitee”), from and against any and all losses, penalties, judgments, suits, costs, claims, damages, liabilities and expenses, joint or several (including reasonable costs of investigation and legal expenses) (“Losses”) arising out of or caused by any untrue statement or alleged untrue statement of a material fact contained in any registration statement described herein or any related prospectus or Issuer Free Writing Prospectus relating to the Registrable Securities (as amended or supplemented if the Corporation shall have furnished any amendments or supplements thereto), or arising out of or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein in the case of the prospectus, in light of the circumstances in which they were made, not misleading, except insofar as such Losses arise out of or are caused by any such untrue statement or omission included or omitted in conformity with information furnished to the Corporation in writing by such Indemnitee or any Person acting on behalf of such Indemnitee expressly for use therein, provided, however, that the foregoing indemnity agreement with respect to any preliminary prospectuses or Issuer Free Writing Prospectuses shall not inure to the benefit of such Indemnitee if the Person asserting any Losses against such Indemnitee purchased Registrable Securities and (a) prior to the time of sale of the Registrable Securities to such Person (the “Initial Sale Time”) the Corporation shall have notified the respective Holder that the preliminary prospectus or Issuer Free Writing Prospectus (as it existed prior to the Initial Sale Time) contains an untrue statement of material fact or omits to state therein a material fact required to be stated therein in order to make the statements therein not misleading, (b) such untrue statement or omission of a material fact was corrected in a preliminary prospectus or, where permitted by law, Issuer Free Writing Prospectus and such corrected preliminary prospectus or Issuer Free Writing Prospectus was provided to such Holder a reasonable amount of time in advance of the Initial Sale Time such that the corrected preliminary prospectus or Issuer Free Writing Prospectus could have been provided to such Person prior to the Initial Sale Time, (c) such corrected preliminary prospectus or Issuer Free Writing Prospectus (excluding any document then incorporated or deemed incorporated therein by reference) was not conveyed to such Person at or prior to the Initial Sale Time and (d) such Losses would not have occurred had the corrected preliminary prospectus or Issuer Free Writing Prospectus (excluding any document then incorporated or deemed incorporated therein by reference) been conveyed to such Person as provided for in clause (c) above. This indemnity shall be in addition to any liability the Corporation may otherwise have under this Agreement or otherwise. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of any Holder or any indemnified party and shall survive the transfer of Registrable Securities by any Holder.

*Section 2.9.2 Indemnification by the Holders.* Each Holder (other than the Government Holders, the VEBA and the Debtor) agrees, to the fullest extent permitted under applicable law severally and not jointly, to indemnify and hold harmless each of the Corporation, its directors, officers, employees and agents, and each Person, if any, who Controls the Corporation, to the same extent as the foregoing indemnity from the Corporation, but only with respect to Losses arising out of or caused by an untrue statement or omission included or omitted in conformity with information furnished in writing by or on behalf of the respective Holder expressly for use in any registration statement described herein or any related prospectus relating to the Registrable Securities (as amended or supplemented if the Corporation shall have furnished any amendments or supplements thereto). No claim against the assets of any Holder shall be created by this **Section 2.9.2**, except as and to the extent permitted by applicable law. Notwithstanding the foregoing, no Holder shall be liable to the Corporation or any such Person for any amount in excess of the net amount received by the Holder from the sale of Registrable Securities in the offering giving rise to such liability.

*Section 2.9.3 Indemnification Procedures.*

(a) In case any claim is asserted or any proceeding (including any governmental investigation) shall be instituted where indemnity may be sought by an Indemnitee pursuant to any of the preceding paragraphs of this **Section 2.9**, such Indemnitee shall promptly notify in writing the Person against whom such indemnity may be sought (the “**Indemnitor**”); provided, however, that the omission so to notify the Indemnitor shall not relieve the Indemnitor of any liability which it may have to such Indemnitee except to the extent that the Indemnitor was prejudiced by such failure to notify. The Indemnitor, upon request of the Indemnitee, shall retain counsel reasonably satisfactory to the Indemnitee to represent (subject to the following sentences of this **Section 2.9.3(a)**) the Indemnitee and any others the Indemnitor may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any Indemnitee shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnitee unless (a) the Indemnitor and the Indemnitee shall have mutually agreed to the retention of such counsel, (b) the Indemnitor fails to take reasonable steps necessary to defend diligently any claim within ten calendar days after receiving written notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or (c) the named parties to any such proceeding (including any impleaded parties) include both the Indemnitor and the Indemnitee and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests or legal defenses between them and, in all such cases, the Indemnitor shall only be responsible for the reasonable fees and expenses of such counsel. It is understood that the Indemnitor shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate law firm (in addition to any local counsel) for all such Indemnitees not having actual or potential differing interests or legal defenses among them, and that all such fees and expenses shall be reimbursed as they are incurred. The Indemnitor shall not be liable for any settlement of any proceeding affected without its written consent.

(b) If the indemnification provided for in this **Section 2.9** is unavailable to an Indemnitee in respect of any Losses referred to herein, then the Indemnitor, in lieu of indemnifying such Indemnitee hereunder, shall contribute to the amount paid or payable by such Indemnitee as a result of such Losses in such proportion as is appropriate to reflect the relative fault of the Indemnitor and the Indemnitee and Persons acting on behalf of or Controlling the Indemnitor or the Indemnitee in connection with the statements or omissions or violations which resulted in such Losses, as well as any other relevant equitable considerations. If the indemnification described in **Section 2.9.1** or **Section 2.9.2** is unavailable to an Indemnitee, the relative fault of the Corporation, any Holder and Persons acting on behalf of or Controlling the Corporation or any such Holder shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Corporation, a Holder or by Persons acting on behalf of the Corporation or any Holder and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Indemnitor shall not be required to contribute pursuant to this **Section 2.9.3(b)** if there has been a settlement of any proceeding affected without its written consent. No claim against the assets of any Holder shall be created by this **Section 2.9.3(b)**, except as and to the extent permitted by applicable law. Notwithstanding the foregoing, no Holder shall be required to make a contribution in excess of the net amount received by such Holder from the sale of Registrable Securities in the offering giving rise to such liability. For the avoidance of doubt, none of the Government Holders, the VEBA or the Debtor shall be required to make any contribution to any Indemnitee under this Section 2.9.3(b).

*Section 2.9.4 Survival.* The indemnification contained in this **Section 2.9** shall remain operative and in full force and effect regardless of any termination of this Agreement.

*Section 2.10 Transfer of Registration Rights.* The rights and obligations of a Holder under this Agreement may be assigned to any transferee or assignee that directly acquires Registrable Securities from such Holder (including, without limitation, in connection with any such assignment by either Government Holder or the VEBA to an affiliate Controlled by such Government Holder or the VEBA, as applicable (provided that Canada may also effect such assignment to an affiliate Controlled by Canada Development Investment Corporation, a Crown corporation and the sole shareholder of Canada or to an affiliate Controlled by [the Department of Finance of Canada]), and in connection with any such assignment by the Debtor to any successor in interest, including any liquidating trust established under a plan of reorganization or liquidation that has been confirmed by any bankruptcy court of competent jurisdiction), but only if (a) the respective Holder agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Corporation concurrent with such transfer or assignment and (b) concurrent with such transfer or assignment, such transferee or assignee furnishes the Corporation with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being transferred or assigned, and the transferee or assignee agrees in writing with the Corporation to be bound by all the provisions and obligations contained herein as a Holder hereunder. Notwithstanding the foregoing, (x) any transferee or assignee who becomes bound by the provisions of this Agreement pursuant to the first sentence of this Section 2.10 shall have all rights and obligations as a “Holder” hereunder but, unless such transferee or assignee is either (1) an Affiliate of the UST, Canada, the VEBA or the Debtor or (2) a successor in interest of the Debtor, including any liquidating trust established under a plan of reorganization or liquidation that has been confirmed by any bankruptcy court of competent jurisdiction, such transferee or assignee shall not have any of the rights hereunder that are specific to the UST, Canada, the VEBA or the Debtor, as applicable, and (y) the rights of the Debtor under this Agreement shall not be assigned by the Debtor in connection with the distribution of any Registrable Securities from the Debtor as part of any plan of reorganization or liquidation that has been confirmed by any bankruptcy court of competent jurisdiction other than any distribution of any Registrable Securities that may be deemed to have been made from the Debtor to any successor in interest, including any liquidating trust established under a plan of reorganization or liquidation that has been confirmed by any bankruptcy court of competent jurisdiction.

*Section 2.11 Rule 144.* After such time as the Corporation has registered a class of equity securities under Section 12(b) or Section 12(g) of the Exchange Act, or otherwise is required to report under Section 15(d) of the Exchange Act, the Corporation shall file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder and shall take such further action as the Holders may reasonably request, all to the extent required from time to time to enable the Holders to sell Common Stock without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 under the Securities Act, as such rule may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the SEC. The Corporation shall promptly upon the request of any Holder furnish to such Holder evidence of the number of shares of Common Stock then outstanding, as of the most recent date practicable. Any sale or transfer by a Holder of Registrable Securities that could have been effected either as a sale of securities pursuant to, and in accordance with, Rule 144 under the Securities Act (or any successor provision) or a sale covered by a Shelf Registration shall be deemed for all purposes under this Agreement to be a sale or transfer by such Holder pursuant to, and in accordance with, Rule 144 under the Securities Act.

*Section 2.12 Preservation of Rights.*

(a) The Corporation will not (x) grant any registration rights to third parties which are inconsistent with the rights granted hereunder or (y) enter into any agreement, take any action, or permit any change to occur, with respect to its securities that violates the rights expressly granted to the Holders in this Agreement.

(b) If the Corporation grants any registration rights to a third party that are more favorable to such party than the rights granted to any of the UST, Canada, the VEBA and the Debtor hereunder, the UST, Canada, the VEBA and the Debtor shall be entitled to have their registration rights improved to the level of the registration rights of such third party, and all of the parties hereto shall execute an amendment to this Agreement reflecting such more favorable rights.

*Section 2.13 Registration of Common Stock under Exchange Act; Listing.* Notwithstanding anything to the contrary herein, the Corporation shall use its reasonable best efforts to (i) file with the SEC a registration statement to register its Common Stock under Section 12 of the Exchange Act and cause such registration statement to be declared effective no later than July 31, 2010 and (ii) cause its Common Stock to be approved for listing on the New York Stock Exchange or any other national securities exchange in connection with a distribution, if any, of Registrable Securities by the Debtor pursuant to a plan of reorganization or liquidation that has been confirmed by any bankruptcy court of competent jurisdiction.

**ARTICLE 3  
TERMINATION**

*Section 3.1 Termination.* Other than **Sections 2.8** and **2.9** and **Article 4**, this Agreement and the obligations of the Corporation hereunder shall terminate upon the time when there are no Registrable Securities remaining. With respect to each Holder, other than **Sections 2.8** and **2.9** and **Article 4**, this Agreement and the rights and obligations of such Holder hereunder shall terminate when such Holder no longer holds any Registrable Securities and, with respect to the Debtor, has no further right to receive additional securities of the Corporation pursuant to Section 3.2 of the Master Sale and Purchase Agreement. Notwithstanding the foregoing, all liabilities or obligations under **Sections 2.8** and **2.9** and **Article 4** shall remain in effect in accordance with the terms of such provisions.

**ARTICLE 4  
MISCELLANEOUS**

*Section 4.1 Notices.* Any notice, request, instruction, consent, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) upon delivery when personally delivered; (b) on the delivery date after having been sent by a nationally or internationally recognized overnight courier service (charges prepaid); (c) at the time received when sent by registered or certified mail, return receipt requested, postage prepaid; or (d) at the time when confirmation of successful transmission is received (or the first business day following such receipt if the date of such receipt is not a business day) if sent by facsimile, in each case, to the recipient at the address or facsimile number, as applicable, indicated below:

If to the Corporation:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]

with a copy to:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: John J. Rapisardi
R. Ronald Hopkinson
Telephone: 212-504-6000
Facsimile: 212-504-6666

If to the UST:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]

with a copy to:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: John J. Rapisardi
R. Ronald Hopkinson
Telephone: 212-504-6000
Facsimile: 212-504-6666

If to Canada:

7176384 Canada Inc.
1235 Bay Street, Suite 400
Toronto, ON M54 3K4
Attention: Mr. Michael Carter
Facsimile: 416-934-5009

with a copy to:  
Patrice S. Walch-Watson, Esq.  
Torys LLP  
79 Wellington Street West  
Suite 3000  
Toronto, ON M5K 1N2  
Facsimile: 416-865-7380

If to the VEBA:

UAW Retiree Medical Benefits Trust  
P.O. Box 14309  
Detroit, Michigan 48214

with a copy to:  
Daniel W. Sherrick  
General Counsel  
International Union, United Automobile, Aerospace and  
Agricultural Implement Workers of America  
8000 East Jefferson Avenue  
Detroit, Michigan 48214  
Facsimile: 313-822-4844

and

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Telephone: 212-225-2000  
Facsimile: 212-225-3999  
Attention: Richard S. Lincer & David I. Gottlieb

If to the Debtor:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]

with a copy to:  
Jenner & Block LLP  
330 North Wabash Avenue  
Chicago, Illinois 60611-7603  
Attention: Brian R. Boch  
Catherine Abbott  
Telephone: 312-222-9350  
Facsimile: 312-527-0484

and

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Harvey R. Miller  
Stephen Karotkin  
Raymond Gietz  
Telephone: 212-310-8000  
Facsimile: 212-310-8007

provided, however, if any party shall have designated a different addressee and/or contact information by notice in accordance with this **Section 4.1**, then to the last addressee as so designated.

*Section 4.2 Authority.* Each of the parties hereto represents to the other that (a) it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate or organizational action and no such further action is required, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

*Section 4.3 No Third Party Beneficiaries.* This Agreement shall be for the sole and exclusive benefit of (a) the Corporation and its successors and permitted assigns, (b) each Holder (including any trustee thereof) and any other investment manager or managers acting on behalf of such Holder with respect to the Common Stock, Preferred Stock, or the Warrants and their respective successors and permitted assigns and (c) each of the Persons entitled to indemnification under **Section 2.9** hereof. Nothing in this Agreement shall be construed to give any other Person any legal or equitable right, remedy or claim under this Agreement.

*Section 4.4 No Personal Liability by Trustees.* It is expressly understood and agreed by the parties hereto that this Agreement is being executed and delivered by the UST managers and the VEBA Designee not individually or personally but solely in their respective capacities as managers and trustees in the exercise of the powers and authority conferred and vested in them as such trustees and under no circumstances shall any trustee or former trustee have any personal liability in the trustee's individual capacity in connection with this Agreement or any transaction contemplated hereby.

*Section 4.5 Cooperation.* Each party hereto shall take such further action, and execute such additional documents, as may be reasonably requested by any other party hereto in order to carry out the purposes of this Agreement.

*Section 4.6 Governing Law; Forum Selection.* This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York irrespective of the choice of laws principles of the State of New York other than Section 5-1401 of the General Obligations Law of the State of New York. Any action or proceeding against the parties relating in any way to this Agreement may be brought and enforced exclusively in the courts of the State of New York located in the Borough of Manhattan or (to the extent subject matter jurisdiction exists therefor) the U.S. District Court for the Southern District of New York, and the parties irrevocably submit to the jurisdiction of both courts in respect of any such action or proceeding.

*Section 4.7 WAIVER OF JURY TRIAL.* EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

*Section 4.8 Successors and Assigns.* Except as otherwise expressly provided herein, including pursuant to **Section 2.10**, neither this Agreement nor any of the rights, interests or obligations provided by this Agreement may be assigned by any party (whether by operation of law or otherwise) without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence and except as otherwise expressly provided herein, this Agreement shall be binding upon and benefit the Corporation, each Holder, and their respective successors and permitted assigns; provided, that, for the avoidance of doubt, any Person who receives securities of the Corporation as a distribution from the Debtor as part of any plan of reorganization or liquidation that has been confirmed by any bankruptcy court of competent jurisdiction (other than any such Person that is a successor in interest to the Debtor, including any liquidating trust established under a plan of reorganization or liquidation that has been confirmed by any bankruptcy court of competent jurisdiction) shall not be bound by or have any rights pursuant to this Agreement.

*Section 4.9 Entire Agreement.* This Agreement (together with the Annex) contains the final, exclusive and entire agreement and understanding of the parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and thereof. This Agreement shall not be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any party with respect to the transactions contemplated hereby or thereby other than those expressly set forth herein or therein, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

*Section 4.10 Severability.* Whenever possible, each term and provision of this Agreement will be interpreted in such manner as to be effective and valid under law. If any term or provision of this Agreement, or the application thereof to any Person or any circumstance, is held to be illegal, invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be legal, valid and enforceable, the intent and purpose of such illegal, invalid or unenforceable provision and (b) the remainder of this Agreement or such term or provision and the application of such term or provision to other Persons or circumstances shall remain in full force and effect and shall not be affected by such illegality, invalidity or unenforceability, nor shall such invalidity or unenforceability affect the legality, validity or enforceability of such term or provision, or the application thereof, in any jurisdiction.

*Section 4.11 Enforcement of this Agreement.* The parties agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall, without the posting of a bond, be entitled, subject to a determination by a court of competent jurisdiction, to an injunction or injunctions to prevent any such failure of performance under, or breaches of, this Agreement, and to enforce specifically the terms and provisions hereof and thereof, this being in addition to all other remedies available at law or in equity, and each party agrees that it will not oppose the granting of such relief on the basis that the requesting party has an adequate remedy at law.

*Section 4.12 Amendment.* This Agreement may not be amended, modified or supplemented except upon the execution and delivery of a written agreement executed by a duly authorized representative or officer of each of the parties.

*Section 4.13 Headings.* The descriptive headings of the Articles, Sections and paragraphs of, and the Annex to, this Agreement are included for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit, modify or affect any of the provisions hereof.

*Section 4.14 Counterparts; Facsimiles.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement. All signatures of the parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the party whose signature it reproduces and be binding upon such party.

*Section 4.15 Time Periods.* Unless otherwise specified in this Agreement, an action required under this Agreement to be taken within a certain number of days shall be taken within that number of calendar days (and not business days); provided, however, that if the last day for taking such action falls on a day that is not a business day, the period during which such action may be taken shall be automatically extended to the next business day.

*Section 4.16 No Binding Effect on U.S. Government.* Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement shall be binding on or create any obligation on the part of the United States Department of the Treasury or any other department or any agency or branch of the United States Government, or any political subdivision thereof.

*Section 4.17 Canada.* Notwithstanding anything in this Agreement to the contrary, Canada shall be bound by this Agreement only in its capacity as a Holder and nothing in this Agreement shall be binding on or create any obligation on the part of Canada in any other capacity or any branch of the Government of Canada or subdivision thereof.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto, being duly authorized, have executed and delivered this Equity Registration Rights Agreement on the date first above written

***[CORPORATION]***

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE UNITED STATES DEPARTMENT  
OF THE TREASURY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**7176384 CANADA INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UAW RETIREE MEDICAL BENEFITS  
TRUST**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***[DEBTOR]***

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Annex I**

<u>Holder</u>	<u>Number of Shares of Common Stock</u>
UST	
Canada	
VEBA	
Debtor	
Total:	

<u>Holder</u>	<u>Number of Shares of Common Stock for Which Warrants Are Initially Exercisable</u>
VEBA	
Debtor	
Total:	

<u>Holder</u>	<u>Number of Shares of Series A Preferred Stock</u>
UST	
Canada	
VEBA	
Total:	

Annex I to Equity Registration Rights Agreement

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EXHIBIT E  
FORM OF TRUST AGREEMENT  
AMENDMENT

**AMENDMENT TO THE  
UAW RETIREE MEDICAL BENEFITS TRUST**

WHEREAS, General Motors Corporation (“GM”), agreed to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between GM and the UAW (the “MOU”).

WHEREAS, GM, the UAW, along with class representatives of the plaintiff class members in the case of *UAW et al. v. General Motors Corp.*, No. 05-CV-73991, 2006 WL 891151 (E.D. Mich. Mar. 31, 2006, aff’d, *Int’l Union, UAW v. General Motors Corp.*, 497 F.3d 615 (6th Cir. 2007) entered into a settlement agreement, and thereafter, GM, the UAW, and the class representatives entered into a settlement agreement in the class action of *Int’l Union, UAW, et. al. v. General Motors Corp.*, Civil Action No. 07-14074 (E.D. Mich. filed Sept. 9, 2007) (“Henry II”) that was approved by the Court on July 31, 2008 (the “GM Retiree Settlement”), which provides for GM to make certain deposits and remittances to the UAW Retiree Medical Benefits Trust (the “Trust”) for the provision of retiree medical benefits.

WHEREAS, subsequent to entering into the MOU and the GM Retiree Settlement, GM filed a bankruptcy action known as *In re General Motors Corporation*, No. 09-50026 (Bankr. S.D.N.Y. filed June 1, 2009) (the “Bankruptcy Proceeding”) pursuant to which [GM Newco] purchased certain assets of GM.

WHEREAS, the UAW asserted, and [GM Newco] denied, that [GM Newco] was bound by the terms of the MOU as a successor to GM and was therefore responsible for providing the retiree medical benefits contemplated in the MOU and the GM Retiree Settlement.

WHEREAS, [GM Newco] and the UAW entered into a settlement agreement (the “[GM Newco] UAW Retiree Settlement Agreement”) that was approved by the court in the Bankruptcy Proceeding pursuant to which [GM Newco] agreed to provide retiree medical benefits to those that were entitled to retiree medical benefits from GM pursuant to the MOUs and the GM Retiree Settlement in exchange for UAW waiving its claim that [GM Newco] was a successor to GM and responsible for GM’s liabilities under the MOUs and the GM Retiree Settlement.

WHEREAS, as part of the [GM Newco] UAW Retiree Settlement Agreement, [GM Newco] agreed to provide benefits under a plan adopted by [GM Newco] and subsequently amended pursuant to the terms of the [GM Newco] UAW Retiree Settlement Agreement.

WHEREAS, the [GM Newco] UAW Retiree Settlement Agreement provides for the Trust to be amended with respect to [GM Newco] to, among other things, allow the Committee to amend the [GM Newco] Retiree Plan on or after January 1, 2010 to modify benefit levels thereunder as well as to eliminate any reference in the Trust to the special pass-through benefit.

NOW THEREFORE, the Committee amends the Trust, effective ***[insert date]*** as follows (additions bold-underline) (deletions bold-strikethrough):

1. Inserted after paragraph 16 in the preamble the following:

**WHEREAS, the Trust is amended to provide for the settlement agreement entered into between [GM Newco] and the UAW that addresses the provision of retiree medical benefits and is dated [insert date here].**

2. The term “GM Eligible Group” is amended throughout to read “[GM Newco] Eligible Group.”
3. The term “GM Retiree EBA” is amended to read “[GM Newco] Retiree EBA.”
4. The term “GM Retiree Plan” is amended to read “[GM Newco] Retiree Plan.”
5. The term “UAW GM Retirees Medical Benefits Plan” is amended to read “[GM Newco] UAW Retirees Medical Benefits Plan.”
6. The term “GM Separate Retiree Account” is amended to read “[GM Newco] Separate Retiree Account.”
7. The term “GM Employer Security” is amended to read “[GM Newco] Employer Security.”
8. Section 1.19 is amended to read as follows:

~~Employer Security. Any obligation, note, warrant, bond, debenture, stock or other security within the meaning of section 407(d)(1) of ERISA that is acquired or held by the Trust (or arising from any such security through conversion) pursuant to a deposit or transfer under one of the Settlements the acquisition or holding of which (i) is not prohibited by sections 406(a)(1)(E) or 106(a)(2) of ERISA, or (b) is the subject of a prohibited transaction exemption provided under section 408 of ERISA.~~

9. Section 1.32 is amended to read as follows:

~~GM[GM Newco] Retiree EBA. The UAW GM[GM Newco] Retirees Employees’ Beneficiary Association, an employee organization within the meaning of Section 3(4) of ERISA.~~

10. Section 1.34 is amended to read as follows:

~~GM[GM Newco] UAW Retiree Settlement Agreement. The settlement of the claims in agreement entered into between [GM Newco] and the UAW that addresses the provision of retiree medical benefits and is dated [insert date here]. *UAW v. General Motors Corp., Civ. Act. No. 2:07-cv-14074 (E.D. Mich. complaint filed September 9, 2007).*~~

11. Section 1.14 is amended to read as follows:

The term Company shall mean Newco, Ford, or ~~GM~~**[GM Newco]**, as the case may be (collectively the “Companies”).

12. Section 1.36 is amended to read as follows:

Implementation Date. The later of (i) January 1, 2010 or (ii) the “Final Effective Date,” as defined in ~~the GM Retiree Settlement~~ or the Newco UAW Retiree Settlement Agreement, **or the “Closing Date” as defined in the [GM Newco] UAW Retiree Settlement Agreement**, as applicable, or with respect to the Ford Retiree Settlement, the later of the “Effective Date” or the “Appeal Completion Date” (as defined in the Ford-UAW Memorandum of Understanding Post-Retirement Medical Care dated November 3, 2007) or as otherwise provided in the Ford Settlement Agreement.

13. Section 1.47 is amended to read as follows:

Settlements. The ~~GM~~**[GM Newco] UAW Retiree Settlement Agreement**, the Newco UAW Retiree Settlement Agreement and the Ford Retiree Settlement (as referred to in the preamble to this Trust Agreement).

14. Insert a new Section 1.54 after Section 1.53 to read as follows:

**[GM Newco]. [ \_\_\_\_\_ ], its successors and assigns.**

15. Section 3.2 is amended to read as follows:

Receipt of Funds. The Trust Fund shall accept all sums of money and other property deposited, contributed, remitted, or transferred to the Trust with respect to a Plan and credited to the Separate Retiree Account attributable to such Plan as described in Article IV, provided that any Employer Security issued to the Trust by any Company, other than ~~(i) any Newco Employer Security contributed pursuant to the Newco UAW Retiree Settlement Agreement as approved by a bankruptcy court under Section 25(A) thereof~~ **or (ii) any [GM Newco] Employer Security contributed pursuant to the [GM Newco] UAW Retiree Settlement Agreement as approved by a bankruptcy court under Section 28(A) thereof**, shall be accepted only upon the direction of the Independent Fiduciary. The Trustee shall hold, manage and administer the Trust Fund without distinction between principal and income. The Trustee shall be accountable for the money or other property it receives, but shall not be responsible for the collection of any deposits, contributions, remittances, or transfers due to the Trust.

16. Section 10.2(d) is amended to read as follows:

Notwithstanding any other provision in this Section 10.2, until the expiration of the 2011 calendar year, the Ford Retiree Plan shall provide the Benefits specified in Exhibit F(2), ~~and the GM Retiree Plan shall provide the Benefits specified in Exhibit F(3)~~. The Benefits specified in Exhibits ~~F(1), F(2) and F(3)~~ shall be the Benefits provided for under the terms of the Ford Retiree each Company’s respective Settlement. During the period that the ~~Ford Retiree Plans~~ **are is** Providing the initial benefits described in this Section 10.2(d), the Committee may exercise administrative discretion (as permitted under the Trust Agreement) in delivering such benefits, including, without limitation, making any changes that could have been adopted by joint action of a Company and the UAW pursuant to ~~Section 5.A.2(h) of the Settlement Agreement between GM and UAW dated December 16, 2005 and~~ Section \_\_\_\_\_ of the Settlement Agreement between Ford and UAW dated \_\_\_\_\_.

17. Section 10.20 is amended to read as follows:

Presumption of Control. The Committee shall take all such reasonable action as may be needed to rebut any presumption of control that would limit the Trust's ability to own ~~GM's~~ GM Newco Employer Securities under the terms of the [GM Newco] UAW Retiree Settlement Agreement ~~common stock~~, Ford's Common Stock, ~~the 6.75% Series U Convertible Senior Debentures Issued by GM Due December 31, 2012~~, or the 5.75% Senior Convertible Notes due 2013 issued by Ford or as may be required to comply with all applicable laws and regulations, including, but not limited to, federal and state banking laws and regulations.

18. Section 12.4 is amended to read as follows:

In addition to the powers of the Committee pursuant to Sections 12.2 and 12.3 to transfer Trust assets to another trust, subject to the restrictions of Section 7.1, the Committee acting in a fiduciary capacity may merge or accept transfers of assets from other trusts – including, without limitation, trusts maintained by Newco, Ford, and ~~GM~~ GM Newco – into the Trust, provided that the assets attributable to the each Plan are separately accounted for in the respective Separate Retiree Account.

19. Exhibit F(3) is deleted.

20. The last paragraph of Article I is amended to read as follows:

Any capitalized term used in this Trust Agreement, if not defined in this Trust Agreement, shall have the meaning it has in the ~~GM~~ GM Newco UAW Retiree Settlement Agreement when relating to GM and/or the GM ~~Newco~~ Eligible Group, the GM EBA, the ~~GM~~ GM Newco Retiree Plan and the ~~GM~~ GM Newco Separate Retiree Account. Any capitalized term used in this Trust Agreement, if not defined in this Trust Agreement, shall have the meaning it has in the Newco UAW Retiree Settlement Agreement when relating to Newco and/or the Newco Eligible Group, the Newco EBA, the Newco Retiree Plan and the Newco Separate Retiree Account. Any capitalized term used in this Trust Agreement, if not defined in this Trust Agreement, shall have the meaning it has in the Ford Retiree Settlement when relating to Ford and/or the Ford Eligible Group, the Ford EBA, the Ford Retiree Plan and the Ford Separate Retiree Account. If any capitalized term used in this Trust Agreement, if not defined in this Trust Agreement, is also used in more than one of the Settlements, such term shall have the meaning it has in the Settlement applicable to the relevant Plan, Eligible Group, or Separate Retiree Account.

21. Any defined term under the Trust Agreement that has been replaced or modified pursuant to this Amendment shall be replaced or modified throughout the Trust Agreement.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, and as evidence of the establishment of the Trust created hereunder, the parties hereto have caused this instrument to be executed as of the date above first written.

**COMMITTEE OF THE UAW RETIREE MEDICAL BENEFITS TRUST**

**INDEPENDENT MEMBERS**

\_\_\_\_\_  
[insert name]

Dated: \_\_\_\_\_

**UAW MEMBERS**

\_\_\_\_\_  
[insert name]

Dated: \_\_\_\_\_

**TRUSTEE [insert name of institution]**

By: \_\_\_\_\_  
[insert name]

Dated: \_\_\_\_\_

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EXHIBIT F

2009 BENEFITS CHANGES

## 2009 Benefits Changes

Beginning with claims incurred on the later of (a) July 1, 2009 or (b) receipt of necessary court approvals, the benefit plan provided by GM for UAW- represented retirees, surviving spouses and their eligible dependents as amended by the Settlement Agreement approved by the Court July 31, 2008, will be changed as follows:

Prescription Drug Co-Pays (applicable to all retirees, surviving spouses and their eligible dependents). <sup>a</sup>	Retail (34 day supply) <ul style="list-style-type: none"><li>•\$10 Generic</li><li>•\$25 Brand (formulary and non-formulary)</li><li>•\$25 Specialty</li></ul> Mail Order (90 day supply) <ul style="list-style-type: none"><li>•\$20 Generic</li><li>•\$50 Brand (formulary and non-formulary)</li><li>•\$50 Specialty</li></ul>
Catastrophic Plan for retirees and surviving spouses (and their eligible dependents) who elect into the Plan or fail to pay required monthly contributions.	Plan no longer offered. Impacted retirees, surviving spouses and eligible dependents will be defaulted into the Traditional Care Network (TCN) unless “no coverage” is specifically requested.
Coverage for Erectile Dysfunction (ED) medications (e.g. Viagra, Cialis, Levitra). <sup>a</sup>	No longer offered, except in prior authorized cases of Pulmonary Arterial Hypertension.
Coverage for the Proton Pump Inhibitor drug class (e.g. omeprazole, Prilosec, Zegerid, Nexium, Aciphex, Prevacid, Protonix). <sup>a</sup>	No longer offered, except in prior authorized cases of Barrett’s Esophagitis and Zoellinger-Ellison Syndrome.
Vision Program	No longer offered.
Dental Program	No longer offered.
Emergency Room Co-Pay <sup>a</sup>	\$100 (waived if admitted).
Medicare Part B Special Benefit (\$76.20 per month for Medicare-eligible retirees) enrolled in Medicare	No longer offered by health plan. This benefit is no longer offered by the Health Care Plan. This modification is not applicable to approximately 21,500 retirees and surviving spouses who are currently receiving the benefit and who retired or began receiving surviving spouse benefits before October 1979, and whose benefit is provided through the pension trust. There will be no change in these payments from the pension trust for the retirees described in the preceding sentence.

<p>“Protected Retirees” who meet the provisions of the Affordability Test (less than \$8,000 annual pension and monthly basic benefit rate of less than \$33.33).<sup>a</sup></p>	<p>Monthly contribution requirement of \$11 (flat rate regardless of family status).</p>
<p>Monthly Contribution Requirements (General Retirees) <sup>a</sup></p>	<p>In all other respects, the same administrative provisions and plan design requirements applicable to all other General retirees shall apply.</p>
<p>Deductible, Co-Pay and out-of-pocket (OOP) Requirements (General Retirees)</p>	<p>No change (currently \$11/single and \$23/family).</p> <p>No changes</p> <ul style="list-style-type: none"> <li>•Deductible: \$164 single/\$328 family</li> <li>•Co-insurance: 10% in network 30% out of network</li> <li>•OOP Max: \$273 single in network \$546 family in network</li> </ul>
<p>Implementation</p>	<p>The parties will work together to effect a mutually-agreed transition and implementation as soon as practicable. GM and the UAW will mutually agree upon communications.</p>
<p>Dependents Eligibility – Retirees</p>	<p>Effective upon receipt of necessary court approvals, no new Principally Supported Children or Sponsored Dependents will be enrolled pursuant to the provisions the Plan.</p> <p>Effective the later of (a) October 1, 2009 or (b) receipt of necessary court approvals, coverage will cease for any child enrolled as a Principally Supported Child pursuant to the provisions of the Plan.</p> <p>Effective the later of (a) October 1, 2009 or (b) receipt of necessary court approvals, coverage will cease for any dependent of an enrollee who is enrolled as a Sponsored Dependent.</p>

a. Modifications also to be comprehended in the HMO plan designs.

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EXHIBIT G

NATIONAL INSTITUTE FOR  
HEALTH CARE REFORM  
TERM SHEET

# National Institute for Health Care Reform

## Term Sheet

1. The Institute will be established as an industrywide labor management committee to conduct research and to analyze the current financing and medical delivery systems in the United States, develop targeted and broad-based reform proposals to improve the quality, affordability and accountability of the system, and educate the public, policymakers and others about how these reforms could address the deficiencies in the current system, e.g., skyrocketing costs, massive number of people left uninsured, profit driven decision-making on delivery of care, etc.
2. The Institute is intended to be a premier research and educational health care reform “think tank” dedicated to understanding, evaluating and developing thoughtful and innovative reform measures that would improve the financing and medical delivery systems in the U.S. and expand access to high quality, affordable and accountable health coverage for all Americans.
3. The Institute will be authorized to:
  - a. Engage economists, analysts, academics and others who are experts on the U.S. and other health care systems as well as the public policies, physician, hospital and other provider systems that would need to be changed to improve health care quality, affordability and accountability in the U.S.
  - b. Conduct studies and analyses of the current system and alternative structures, including ways to provide more effective sources of coverage for early retirees, reduce prescription drug costs, ensure drug safety and better inform patients of appropriate drug choices.
  - c. Operate as a clearinghouse for select best practices that should be employed throughout the medical delivery system to ensure that error-free, high quality health care is available throughout the U.S.
  - d. Develop innovative policy solutions to improve the current health care system.
  - e. Host forums for discussion and debate of public policies that would improve the health care system and facilitate the interaction of ideas among experts.
  - f. Formulate wide-ranging communications materials that discuss and describe reform measures.
4. The Institute shall be established as a non-profit, tax-exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code (the “Code”). Neither GM nor the UAW will do anything to jeopardize the 501(c)(3) status of the Institute or disqualify the Institute from obtaining this status.
5. GM agrees to provide funding to the Institute of \$3 million annually for five (5) years, provided that Ford Motor Company and Chrysler Corporation participate in the Institute and provide proportional funding.
6. GM and the UAW will be free, at a future date, to establish other organizations to support the mission of the Institute, including but not limited to an organization qualified under section 501(c)(4) of the Code, provided that the governance of any such additional organization(s) shall be structured in accordance with Paragraphs 7 and 9 below.

7. The Institute shall be governed by a Board of Directors consisting of an equal number of labor and management representatives and a President. The Bylaws shall provide that, in any matter considered by the Board of Directors, the labor and management representatives shall have equal voting strength. The UAW shall appoint the labor representatives and GM shall appoint its management representative(s). GM, the UAW and any other contributing Institute members having a representative(s) on the Board shall have the right to change any of their appointed members at any time and for any reason. The President shall be entitled to participate in all meetings of the Board of Directors.
8. The Board shall operate according to a set of bylaws that are agreed to by the labor and management representatives of the Board consistent with the provisions of this term sheet.
9. The Board shall at all times strive to operate by consensus. In the event consensus can not be achieved, all decisions made by the Board shall be governed by a super-majority, except as otherwise provided in this paragraph 9 of this Term Sheet. A super-majority shall be defined as a minimum of all but one vote of the labor and management members of the Board, with no single company having the right to block a decision by the Board. The approval of additional Institute members, sponsors, affiliates or Board seats, any change to the voting or consensus requirements, and/or any change to the purpose or intent of the Institute will require the unanimous approval of the labor and management members of the Board.
10. The Institute shall work to minimize its administrative expenses and waste. GM and the UAW shall have the right to audit and review Institute finances and spending.
11. Lobbying will be permitted to the extent allowed for 501(c)(3) organizations. The names, brands, or logos of the UAW, GM and any other members of the Institute may not be used in Institute publications, press releases, statements, websites, or other communications or materials and the Institute or its employees or affiliates may not state, suggest or imply that any of the parties support any proposals, conclusions, or recommendations without the prior consent of the party whose support is being stated, suggested or implied. The UAW, GM and any other members of the Institute may use or reprint Institute material, but may not suggest support from any of the other parties or use their names, brands, or logos without their prior consent.
12. GM reserves the right to reduce or withdraw its funding upon 30 days notice if: a) Ford and/or Chrysler do not participate in the Institute and provide proportional financial support; b) the Institute loses its status as, or is failed to be recognized as, a section 501(c)(3) tax- exempt organization; c) inappropriate financial activity is discovered; (d) the institute, its employees or its members or affiliates engage in lobbying activities beyond those described in paragraph 11 of this Term Sheet; or e) any of the restrictions about the use of GM's name, brand, or logos is violated.
13. GM and the UAW will work together to assure the rapid and effective start-up of the Institute.

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EXHIBIT H

[Reserved]

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EXHIBIT I

FORM OF [NEWCO] NOTE

Final form to be agreed between [New Co] and the VEBA in conformity with the VEBA Note Term Sheet attached as Exhibit Y to the MSPA. The VEBA Note Term Sheet is attached here pending agreement on the final form.

**EXHIBIT Z**

**VEBA NOTE TERM SHEET**

*[NGMCO, Inc.]*

**Term Sheet for Note due 2017**

Following is a summary of the proposed principal terms for the Note to be issued to the Voluntary Employees' Beneficiary Association ("New VEBA") in connection with the transactions related to the restructuring of the obligations of General Motors Corporation to the New VEBA.

Issuer: *[NGMCO, Inc.]* (the "Company").

Securities Offered: US\$2.5 billion Note (the "Note").

Maturity Date: July 15, 2017.

Interest/Payment: Implied annual rate of 9% from July 15, 2009, payable in fixed payments in the following amounts in cash on July 15 of each of the following years:

<u>Year</u>	<u>Amount</u>
2013	\$ 1,384 million
2015	\$ 1,384 million
20 17	\$ 1,384 million

Guarantees: Any present and future U.S. subsidiaries of the Company that are borrowers or guarantors with respect to the UST Note will fully and unconditionally guarantee the performance of all obligations of the Company under the Indenture and the Note, which guarantees will be secured to the same extent, if any, as are the obligations of such borrower under, or guarantors of, the UST Note, and subordinated only to any Permanent Financing (as defined below). Each guarantor of the Notes is herein referred to as a "Guarantor" and its guarantee is referred to herein as a "Guarantee."

Ranking: The obligations of the Company under the Notes and of the Guarantors under the Guarantees will:

- rank equally in right of payment with (1) any debt issued to the United States Department of Treasury ("UST") in the restructuring (the "UST Note") and (2) any debt issued to Canada in the restructuring (the "Canada Note");
- be secured on a pari passu basis by the collateral securing the UST Note;
- rank senior in right of payment to all unsecured indebtedness and other obligations of the Company that are by their terms subordinated to the Note;

- rank junior in right of payment to any permanent financing including UST delayed draw term loan, revolver or any other third party permanent financing entered into with the consent of UST (“Permanent Financing”); and
- be effectively subordinated in right of payment to all future first lien secured indebtedness and other obligations of the Company, to the extent of the value of the assets securing such obligations, and be structurally subordinated to all obligations of each of the Company’s subsidiaries that are not Guarantors.

Intercreditor Agreement	New VEBA, the UST and Canada shall enter into an intercreditor agreement in form and substance satisfactory to the UST, which shall provide that the UST Note, the Canadian Note and the Note shall rank equally and be pari passu and that the UST shall have the sole and exclusive right to exercise all remedies and to grant waivers with respect to the Note and the UST Note.
Transferability:	The Note will be transferable at any time in whole or in part to (1) the Company or its subsidiaries, or (2) an unlimited number of institutional accredited investors or qualified institutional buyers in transactions that (a) do not require registration under the Securities Act and (b) do not trigger registration under the Exchange Act; provided that if at any time the UST Note is registered under the Securities Act or exchanged for a note that is entitled to demand, shelf or piggyback registration rights, then the Note will be entitled to demand, shelf, and piggyback registration rights no less favorable than those of the UST Note.
Optional Redemption:	The Company may redeem the Note in whole or in part at any time at 100% of its principal amount, together with accrued and unpaid interest, if any, to the redemption date.
Covenants	The Note will have the same covenants as the UST Note, including, to the extent made by the Company under the UST Note, covenants in respect of Change of Control, Limitation of Incurrence of Indebtedness, Restricted Payments, Limitations on Liens, Limitation on Sale of Assets, Restrictions on Sale/Leaseback and Limitation on Merger/Consolidation.
Default Interest:	2% penalty interest upon any default under the terms of the Note.
Events of Default:	Events of Default will be the same as those in the UST Note, including, without limitation: <ol style="list-style-type: none"><li>1. Default in payment on the Note when due, subject to any grace period in the UST Note.</li><li>2. Default in the observance or performance of covenants, subject to any grace period in the UST Note.</li><li>3. Bankruptcy or insolvency events, subject to any grace period in the UST Note.</li><li>4. Invalidity of Guarantees to the extent provided in the UST Note, subject to any grace period in the UST Note.</li></ol>

Modifications:

Unless (1) UST has transferred more than 75% of the UST Note and (2) the portion of the UST Note held by UST has an outstanding principal amount that is less than the implied then current principal amount of the VEBA Note (assuming an implied 9% interest rate), any modifications agreed to by UST with respect to the terms of the UST Note will automatically modify, and be binding on, the Note, other than any such modification that makes any change that extends the maturity date, extends the date of any fixed payment, reduces the implied interest rate, reduces the amount of principal, changes the currency of payment, modifies any prepayment right or by its express terms limits or restricts any right to bring suit for payment.

Governing Law:

New York.

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EXHIBIT J

FORM OF PREFERRED STOCK  
CERTIFICATE OF DESIGNATIONS

EXHIBIT Y

Form Of Certificate of Designations

Of

Series A Fixed Rate Cumulative Perpetual Preferred Stock

Of

[NGMCO, INC.]

*[NGMCO, Inc.]*, a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies that the following resolution was adopted by the board of directors of the Corporation (the “Board of Directors”) or an authorized committee of the Board of Directors in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware on [            ], 2009:

RESOLVED, that pursuant to the provisions of the certificate of incorporation and the bylaws of the Corporation and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions, of the shares of such series be and hereby are as follows:

Part 1. *Designation and Number of Shares.* There is hereby created out of the authorized and unissued shares of Preferred Stock of the Corporation a series of preferred stock designated as the “Series A Fixed Rate Cumulative Perpetual Preferred Stock” (the “Series A Preferred Stock”). The authorized number of shares of the Series A Preferred Stock shall be 360,000,000. Such number of shares may be decreased by resolution of the Board of Directors, subject to the terms and conditions hereof; provided that no decrease shall reduce the number of shares of the Series A Preferred Stock to a number less than the number of shares then outstanding.

Part 2. *Standard Provisions.* The Standard Provisions contained in Annex A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Certificate of Designations to the same extent as if such provisions had been set forth in full herein.

Part 3. *Definitions.* The following terms are used in this Certificate of Designations (including the Standard Provisions in Annex A hereto) as defined below:

- (a) “Common Stock” means the common stock, par value \$0.01 per share, of the Corporation.
- (b) “Dividend Payment Date” means March 15, June 15, September 15 and December 15 of each year.

(c) "Junior Stock" means any preferred stock other than this Series A Preferred Stock, the Common Stock and any other class or series of stock of the Corporation.

(d) "Liquidation Amount" means \$25 per share of the Series A Preferred Stock.

Part. 4. *Certain Voting Matters.* For purposes of determining the voting rights of the holders of the Series A Preferred Stock under Section 7 of the Standard Provisions forming part of this Certificate of Designations, each holder will be entitled to one vote for each \$25 of Liquidation Amount to which such holder's shares are entitled.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be signed by [ ], its [ ], this [ ] day of [ ], 2009.

**[INGMCO, INC.]**

By: \_\_\_\_\_

Name: [ ]

Title: [ ]

## STANDARD PROVISIONS

Section 1. *General Matters; Ranking.* Each share of the Series A Preferred Stock shall be identical in all respects to every other share of the Series A Preferred Stock. The Series A Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Series A Preferred Stock shall rank senior to the Junior Stock in respect of the right to receive dividends and the right to receive payments or distributions out of the assets of the Corporation upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

Section 2. *Standard Definitions.* As used herein with respect to the Series A Preferred Stock:

- (a) "Agent Members" has the meaning set forth in Section 13(d).
- (b) "Applicable Dividend Rate" means 9% per annum.
- (c) "Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.
- (d) "Bylaws" means the bylaws of the Corporation, as they may be amended from time to time.
- (e) "Certificate of Designations" means the Certificate of Designations or comparable instrument relating to the Series A Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.
- (f) "Charter" means the Corporation's Amended and Restated Certificate of Incorporation, as such may be amended or restated from time to time.
- (g) "Dividend Period" has the meaning set forth in Section 3(a).
- (h) "Dividend Record Date" has the meaning set forth in Section 3(a).
- (i) "DTC" has the meaning set forth in Section 9.
- (j) "First Optional Redemption Date" has the meaning set forth in Section 5(a).
- (k) "Global Share" means a share of Series A Preferred Stock in the form of a permanent global stock certificate, in definitive, fully registered form.
- (l) "Global Share Legend" has the meaning set forth in Section 13(d).

- (m) “Original Issue Date” means the date on which shares of the Series A Preferred Stock are first issued.
- (n) “Person” means any individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.
- (o) “Preferred Director” has the meaning set forth in Section 7(b).
- (p) “Preferred Share Register” has the meaning set forth in Section 15(a).
- (q) “Preferred Stock” means any and all series of preferred stock of the Corporation, including the Series A Preferred Stock.
- (r) “Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.
- (s) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.
- (t) “Series A Preferred Share Certificate” has the meaning set forth in Section 13.
- (u) “Share Dilution Amount” has the meaning set forth in Section 3(b).
- (v) “Standard Provisions” mean these Standard Provisions that form a part of the Certificate of Designations relating to the Series A Preferred Stock.
- (w) “Redemption Price” has the meaning set forth in Section 5(a).
- (x) “Transfer Agent” has the meaning set forth in Section 17.

Section 3. *Dividends.*

(a) **Rate.** Holders of the Series A Preferred Stock shall be entitled to receive, on each share of the Series A Preferred Stock, if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate on (i) the Liquidation Amount per share of the Series A Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Series A Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (i.e., no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date), and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends shall be payable nor shall interest accrue on the amount payable as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “Dividend Period”; provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the Dividend Payment Date immediately following the Original Issue Date.

Dividends that are payable on Series A Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on the Series A Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months and actual days elapsed over a 30-day month.

Dividends that are payable on Series A Preferred Stock on any Dividend Payment Date will be payable to holders of record of the Series A Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of the Series A Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on the Series A Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

(b) **Priority of Dividends.** So long as any share of the Series A Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock, and no Common Stock or Junior Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, as provided in Section 3(a) above, any dividends on such amount), on all outstanding shares of the Series A Preferred Stock have been or are contemporaneously declared and paid in full in cash (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of the Series A Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) a dividend payable on any Junior Stock in shares of any other Junior Stock, or to the acquisition of shares of any Junior Stock in exchange for, or through application of the proceeds of the sale of, shares of any other Junior Stock; (ii) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount pursuant to a publicly announced repurchase plan); provided that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount; (iii) any dividends or distributions of rights or Junior Stock in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan; (iv) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; and (v) the exchange or conversion of Junior Stock for or into other Junior Stock (with the same or lesser aggregate liquidation amount). "Share Dilution Amount" means the increase in the number of diluted shares outstanding (determined in accordance with generally accepted accounting principles in the United States, and as measured from the Original Issue Date) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date in full on shares of the Series A Preferred

Stock, all dividends declared on the Series A Preferred Stock and payable on such Dividend Payment Date shall be declared pro rata so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of the Series A Preferred Stock (including, as provided in Section 3(a) above, any dividends on such amount) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, all accrued but unpaid dividends) bear to each other.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of the Series A Preferred Stock shall not be entitled to participate in any such dividends.

*Section 4. Liquidation, Dissolution or Winding Up.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, then, before any distribution or payment shall be made to the holders of Junior Stock, the holders of the Series A Preferred Stock shall be entitled to be paid in full the respective amounts of the liquidation preferences thereof, which in the case of the Series A Preferred Stock shall be the Liquidation Amount, plus an amount equal to all accrued and unpaid dividends, if any (including, as provided in Section 3(a) above, any dividends on such amount), whether or not declared, prior to such distribution or payment date. If such payment shall have been made in full to the holders of the Series A Preferred Stock, the remaining assets and funds of the Corporation shall be distributed among the holders of Junior Stock, according to their respective rights and preferences and in each case according to their respective shares. If, upon any liquidation, dissolution or winding up of the affairs of the Corporation, the amounts so payable are not paid in full to the holders of all outstanding shares of the Series A Preferred Stock, the holders of the Series A Preferred Stock shall share ratably in any distribution of assets in proportion to the full amounts to which they would otherwise be respectively entitled. Neither the consolidation or merger of the Corporation, nor the sale, lease or conveyance of all or a part of its assets, shall be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of the foregoing provisions of this Section 4.

Section 5. *Redemption.*

(a) **Optional Redemption.** The Series A Preferred Stock may not be redeemed by the Corporation prior to December 31, 2014 (the “First Optional Redemption Date”). On or after that date, the Corporation, at its option, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of the Series A Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price per share equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, as provided in Section 3(a) above, any dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption (the “Redemption Price”).

The Redemption Price for any shares of the Series A Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the Redemption Price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) **No Mandatory Redemption; No Sinking Fund.** The Series A Preferred Stock will not be subject to any mandatory redemption, mandatory repurchase, sinking fund or other similar provisions. Holders of the Series A Preferred Stock will have no right to require redemption or repurchase of any shares of the Series A Preferred Stock.

(c) **Notice of Redemption.** Notice of every redemption of shares of the Series A Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this subsection (c) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of the Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of the Series A Preferred Stock. Notwithstanding the foregoing, if shares of the Series A Preferred Stock are issued in book-entry form through The Depository Trust Corporation or any other similar facility, notice of redemption may be given to the holders of the Series A Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of the Series A Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the Redemption Price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price, but failure duly to give such notice to any holder of shares of the Series A Preferred Stock designated for redemption or any defect in such notice shall not affect the validity of the proceedings for the redemption of any other shares of the Series A Preferred Stock.

(d) **Partial Redemption.** In case of any redemption of part of the shares of the Series A Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either pro rata or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of the Series A Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) **Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the pro rata benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors or a duly authorized committee thereof, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate (if the shares of Series A Preferred Stock are not in book-entry form) for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of such amounts.

(f) **Status of Redeemed Shares.** Shares of the Series A Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (provided that any such cancelled shares of the Series A Preferred Stock may be reissued only as shares of any series of the Preferred Stock other than the Series A Preferred Stock).

Section 6. *Conversion.* Holders of the Series A Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

Section 7. *Voting Rights.*

(a) **General.** The holders of the Series A Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

**(b) Series A Preferred Stock Directors.** Whenever, at any time or times, dividends payable on the shares of the Series A Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Corporation shall automatically be increased to accommodate the number of the Preferred Directors specified below and the holders of the Series A Preferred Stock shall have the right, voting as a class, to elect two directors (hereinafter the “Preferred Directors” and each a “Preferred Director”) to fill such newly created directorships at the Corporation’s next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, as provided in Section 3(a) above, any dividends on such amount), on all outstanding shares of the Series A Preferred Stock have been declared and paid in full, at which time such right shall terminate with respect to the Series A Preferred Stock, except as herein or by law expressly provided, subject to vesting in the event of each and every subsequent payment failure of the character above mentioned; provided that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Corporation to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Corporation may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any termination of the right of the holders of shares of the Series A Preferred Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of the Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders of a majority of the shares of the Series A Preferred Stock at the time outstanding voting separately as a class, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

**(c) Class Voting Rights as to Particular Matters.** So long as any shares of the Series A Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 <sup>2</sup>/<sub>3</sub>% of the shares of the Series A Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior or Pari Passu Stock. Any amendment or alteration of the Certificate of Designations for the Series A Preferred Stock or the Charter (including any amendment to the Charter effectuated by a certificate of designations) to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to or pari passu with the Series A Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of the Series A Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Series A Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Series A Preferred Stock; provided, however, that notwithstanding anything to the contrary herein, the vote of 100% of the shares of the Series A Preferred Stock at the time outstanding shall be necessary to (A) reduce the Liquidation Amount, (B) reduce the Applicable Dividend Rate, (C) provide for the payment of dividends on the Series A Preferred Stock to be made in other than U.S. dollars, (D) change any Dividend Payment Date or the First Optional Redemption Date or (E) make dividends on the Series A Preferred Stock non-cumulative; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Series A Preferred Stock, or of a merger or consolidation of the Corporation with or into another corporation or other entity, unless in each case (x) the shares of the Series A Preferred Stock remain outstanding and are not amended in any respect or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series A Preferred Stock immediately prior to such consummation, taken as a whole;

provided, however, that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of the Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of the Preferred Stock, ranking junior to the Series A Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Series A Preferred Stock.

(d) **Changes after Provision for Redemption.** No vote or consent of the holders of the Series A Preferred Stock shall be required pursuant to Section 7(c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of the Series A Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

(e) **Procedures for Voting and Consents.** The rules and procedures for calling and conducting any meeting of the holders of the Series A Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules that the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which the Series A Preferred Stock is listed or traded at the time.

Section 8. *Record Holders.* To the fullest extent permitted by applicable law, the Corporation and any transfer agent for the Series A Preferred Stock may deem and treat the record holder of any share of the Series A Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor any such transfer agent shall be affected by any notice to the contrary.

Section 9. *Notices.* All notices or communications in respect of the Series A Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of the Series A Preferred Stock are issued in book-entry form through The Depository Trust Corporation (“DTC”) or any similar facility, such notices may be given to the holders of the Series A Preferred Stock in any manner permitted by such facility.

Section 10. *No Preemptive Rights.* No holder of the Series A Preferred Stock shall be entitled as a matter of right to subscribe for or purchase, or have any preemptive right or any other right to remediate dilution with respect to, any part of any new or additional issue of stock of any class whatsoever, or of securities convertible into any stock of any class whatsoever, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

Section 11. *Replacement Certificates.* The Corporation shall replace any mutilated certificate at the holder’s expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder’s expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

Section 12. *Other Rights.* The shares of the Series A Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

Section 13. *Form.*

(a) The Series A Preferred Stock shall be initially issued in substantially the form set forth in Exhibit A (“Series A Preferred Share Certificate”) and shall have such insertions as are appropriate or required or permitted by this Certificate of Designations and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Corporation may deem appropriate and as are not inconsistent with the provisions of this Certificate of Designations, such as may be required to comply with this Certificate of Designations, any law or any rule of any securities exchange on which the Series A Preferred Stock may be listed, and such as may be necessary to conform to customary usage.

(b) If the Series A Preferred Stock is sold pursuant to an effective registration statement filed with the Securities and Exchange Commission, or if the Corporation so elects at any time, any Series A Preferred Share Certificates may be presented to the Transfer Agent by holders in exchange for one or more Global Shares up to the aggregate number of shares of Series A Preferred Stock then outstanding, to be registered in the name of DTC, or its nominee, and delivered by the Transfer Agent to DTC, or its custodian, for crediting to the accounts of its participants pursuant to the procedures of DTC. Upon such presentation, the Corporation shall execute a Global Share representing such aggregate number of shares of Series A Preferred Stock and deliver the same to the Transfer Agent for authentication and delivery.

(c) Any Global Share shall bear the legend substantially in the form set forth in Exhibit C hereto (the "Global Share Legend").

(d) So long as a Global Share is registered in the name of DTC or its nominee, members of, or participants in, DTC ("Agent Members") shall have no rights under this Certificate of Designation with respect to the Global Share held on their behalf by DTC or the Transfer Agent as its custodian, and DTC may be treated by the Corporation, the Transfer Agent and any agent of the Corporation or the Transfer Agent as the absolute owner of such Global Share for all purposes. Accordingly, any such owner's beneficial interest in such Global Share will be shown only on, and the transfer of such interest shall be effected only through, records maintained by DTC or its nominee or its Agent Members, and neither the Corporation nor the Transfer Agent shall have any responsibility with respect to such records maintained by DTC or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Corporation, the Transfer Agent or any agent of the Corporation or the Transfer Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder.

(e) Any holder of a Global Share registered in the name of DTC or its nominee shall, by acceptance of such Global Share, agree that transfers of beneficial interests in such Global Share may be effected only through a book-entry system maintained by the holder of such Global Share (or its agent), and that ownership of a beneficial interest in the Series A Preferred Stock represented thereby shall be required to be reflected in book-entry form.

(f) Transfers of a Global Share registered in the name of DTC or its nominee shall be limited to transfers in whole, and not in part, to the Corporation, DTC, their successors, and their respective nominees. Interests of beneficial owners in a Global Share registered in the name of DTC or its nominee shall be transferred in accordance with the rules and procedures of DTC.

(g) A Global Share registered in the name of DTC or its nominee shall be exchanged for certificated shares of Series A Preferred Stock only if DTC (A) has notified the Corporation that it is unwilling or unable to continue as or ceases to be a clearing agency registered under Section 17A of the Exchange Act, and (B) a successor to DTC registered as a clearing agency under Section 17A of the Exchange Act is not able to be appointed by the Corporation within 90 days or DTC is at any time unwilling or unable to continue as a depository and a successor to DTC is not able to be appointed by the Corporation within 90 days. In any such event, a Global Share registered in the name of DTC or its nominee shall be surrendered to the Transfer Agent for cancellation, and the Corporation shall execute, and the Transfer Agent shall countersign and deliver, to each beneficial owner identified by DTC, in exchange for such beneficial owner's beneficial interest in such Global Share, certificated shares of the Series A Preferred Stock representing, in the aggregate, the number of shares theretofore represented by such Global Share with respect to such beneficial owner's respective beneficial interest. Any certificated share of Series A Preferred Stock delivered in exchange for an interest in a Global Share pursuant to this Section shall not bear the Global Share Legend. Interests in the Global Shares may not be exchanged for certificated shares of Series A Preferred Stock other than as provided in this Section 13(g).

(h) The holder of a Global Share registered in the name of DTC or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Certificate of Designations.

Section 14. *Transfer Restrictions and Legends.* (a) Each Series A Preferred Share Certificate issued hereunder shall bear the legend set forth in Exhibit A hereto.

(i) Shares of Series A Preferred Stock may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by a holder except pursuant to (A) a registration statement that has become effective under the Securities Act or (B) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any shares of Series A Preferred Stock as to which such restrictions on transfer shall have expired in accordance with their terms such that they can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the Series A Preferred Share Certificate representing such shares for exchange in accordance with the procedures of the Transfer Agent (as defined in Section 17 below) (together with any legal opinions, certifications or other evidence as may reasonably be required by the Corporation or the Transfer Agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new Series A Preferred Share Certificate for a like number of shares, which shall not bear such legend.

(b) Any shares of Series A Preferred Stock that are purchased or owned by the Corporation or any "affiliate" thereof (as defined under Rule 144 under the Securities Act) may not be resold by the Corporation or such affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such shares no longer being "restricted securities" (as defined in Rule 144 under the Securities Act).

Section 15. *Transfer, Exchange and Substitution.* (a) Series A Preferred Share Certificates shall be issued in registered form only. The Corporation shall cause to be kept at the office of the Transfer Agent, and the Transfer Agent shall maintain, a register (the "Preferred Share Register") in which, subject to such reasonable regulations as the Corporation may prescribe, the Corporation shall provide for the registration of shares and transfers, exchanges or substitutions of Series A Preferred Share Certificates as herein provided. All Series A Preferred Share Certificates issued upon any registration of transfer or exchange of or substitution for shares shall be valid obligations of the Corporation, evidencing the same obligations, and entitled to the same benefits under this Certificate of Designations, as Series A Preferred Share Certificates surrendered for such registration of transfer, exchange or substitution.

(b) A holder may transfer a Series A Preferred Share Certificate only upon surrender of such Series A Preferred Share Certificate for registration of transfer. Series A Preferred Share Certificates may be presented for registration of transfer and exchange at the offices of the Transfer Agent with a written instruction of transfer in form satisfactory to the Transfer Agent, duly executed by such holder or by such holder's attorney, duly authorized in writing. Such holder will also provide a written certificate (substantially in the form of Exhibit B hereto) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Series A Preferred Share Certificates. The Transfer Agent shall be entitled to conclusively rely upon any such certification in connection with the transfer of a Series A Preferred Share Certificate hereunder and shall have no responsibility to monitor or verify whether any such transfer complies with the requirements hereunder or otherwise complies with the Securities Act. No such transfer shall be effected until, and the transferee shall succeed to the rights of a holder only upon, final acceptance and registration of the transfer in the Preferred Share Register by the Transfer Agent. Prior to the registration of any transfer of a Series A Preferred Share Certificate by a holder as provided herein, the Corporation, the Transfer Agent, and any agent of the Corporation or the Transfer Agent may treat the person in whose name Series A Preferred Share Certificates are registered as the owner thereof for all purposes and as the person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding.

(c) Every Series A Preferred Share Certificate presented or surrendered for registration of transfer or for exchange or substitution shall (if so required by the Corporation or the Transfer Agent) be duly endorsed, or be accompanied by a duly executed instrument of transfer in form satisfactory to the Corporation and the Transfer Agent, by the holder thereof or such holder's attorney duly authorized in writing.

(d) When Series A Preferred Share Certificates are presented to the Transfer Agent with a request to register the transfer of, or to exchange or substitute, such Series A Preferred Share Certificates, the Transfer Agent shall register the transfer or make the exchange or substitution as requested if its requirements for such transactions and any applicable requirements hereunder are satisfied. To permit registrations of transfers, exchanges and substitutions, the Corporation shall execute Series A Preferred Share Certificates at the Transfer Agent's request and the Transfer Agent shall countersign and deliver such Series A Preferred Share Certificates. No service charge shall be made for any registration of transfer or exchange of or substitution for Series A Preferred Share Certificates, but the Corporation may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of Series A Preferred Share Certificates.

(e) If less than all shares represented by a Series A Preferred Share Certificate are transferred, exchanged or substituted in accordance with this Certificate of Designations, the Series A Preferred Share Certificate shall be surrendered to the Transfer Agent and a new Series A Preferred Share Certificate for a number of shares equal to the shares represented by such Series A Preferred Share Certificate that were not transferred, exchanged or substituted, registered in such name or names as may be directed in writing by the surrendering holder, shall be executed by the Corporation and delivered to the Transfer Agent and the Transfer Agent shall countersign such new Series A Preferred Share Certificate and shall deliver such new Series A Preferred Share Certificate to the person or persons entitled to receive the same.

Section 16. *Surrender of Series A Preferred Share Certificates.* Any Series A Preferred Share Certificate surrendered for registration of transfer, exchange, or substitution of shares represented thereby shall, if surrendered to the Corporation, be delivered to the Transfer Agent, and all Series A Preferred Share Certificates surrendered or so delivered to the Transfer Agent shall be promptly cancelled by the Transfer Agent and shall not be reissued by the Corporation and no Series A Preferred Share Certificate shall be issued hereunder in lieu thereof. The Transfer Agent shall deliver to the Corporation from time to time or otherwise dispose of such cancelled shares as the Corporation may direct.

Section 17. *Transfer Agent And Registrar.* The duly appointed Transfer Agent and Registrar for the Series A Preferred Stock shall be [ ] (the "Transfer Agent"). The Corporation may, in its sole discretion, remove the Transfer Agent in accordance with the agreement between the Corporation and the Transfer Agent; provided that the Corporation shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal; provided further that such successor transfer agent shall be the Transfer Agent for purposes of this Certificate of Designations.

**EXHIBIT A**

**FORM OF SERIES A FIXED RATE CUMULATIVE  
PERPETUAL PREFERRED STOCK  
(\$25 LIQUIDATION PREFERENCE)**

NUMBER	SHARES
[            ]	[            ]
	CUSIP [            ]

***[NGMCO, INC.]***  
**INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE**  
**THIS CERTIFICATE IS TRANSFERABLE**

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

[THIS INSTRUMENT IS ISSUED PURSUANT TO AND SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A STOCKHOLDERS AGREEMENT, DATED [—], 2009, AMONG THE ISSUER OF THESE SECURITIES AND THE INVESTORS REFERRED TO THEREIN, AND AN EQUITY REGISTRATION RIGHTS AGREEMENT, DATED [—], 2009, AMONG THE ISSUER AND THE HOLDERS REFERRED TO THEREIN, COPIES OF WHICH ARE ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.]

This is to certify that \_\_\_\_\_, is the owner of [ ] fully paid and non-assessable shares of Series A Fixed Rate Cumulative Perpetual Preferred Stock, \$0.01 par value, liquidation preference \$25.00 per share (the "Stock"), of **[NGMCO, Inc.]** (the "Corporation"), transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

This certificate is not valid or obligatory for any purpose unless countersigned and registered by the Transfer Agent and Registrar.

Witness the facsimile signatures of its duly authorized officers.

Dated: [ ],2009

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

Countersigned and Registered  
\_\_\_\_\_,  
as Transfer Agent and Registrar

By: \_\_\_\_\_  
Authorized Signature

[NGMCO, INC.]

[NGMCO, Inc.] (the "Corporation") will furnish, without charge to each stockholder who so requests, a copy of the certificate of designations establishing the powers, preferences and relative, participating, optional or other special rights of each class of stock of the Corporation or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights applicable to each class of stock of the Corporation or series thereof. Such information may be obtained by a request in writing to the Secretary of the Corporation at its principal place of business.

This certificate and the share or shares represented hereby are issued and shall be held subject to all of the provisions of the Corporation's Amended and Restated Certificate of Incorporation and the Certificate of Designations of the Series A Fixed Rate Cumulative Perpetual Preferred Stock (Liquidation Preference \$25.00 per share) (copies of which are on file with the Transfer Agent), to all of which the holder, by acceptance hereof, assents.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT- \_\_\_\_\_ Custodian \_\_\_\_\_  
(Minor) (Cust)  
under Uniform Gifts to Minors Act  
\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

\_\_\_\_\_

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

\_\_\_\_\_  
\_\_\_\_\_  
PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE

\_\_\_\_\_  
\_\_\_\_\_ shares  
of the capital stock represented by the within certificate, and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature

NOTICE: The signature to this assignment must correspond with the name as written upon the face of this certificate in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED

\_\_\_\_\_  
NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations, and credit unions with membership in an approved signature guarantee medallion program), pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

**EXHIBIT B**

**FORM OF CERTIFICATE OF COMPLIANCE WITH TRANSFER RESTRICTIONS**

In connection with the sale, assignment and transfer of shares of \_\_\_\_\_ Series A Fixed Rate Cumulative Perpetual Preferred Stock by \_\_\_\_\_  
unto \_\_\_\_\_ (Please insert social security or other Taxpayer Identification Number of assignee) prior to the  
expiration of the holding period applicable to sales thereof under Rule 144 under the Securities Act of 1933, as amended (the “**Securities Act**”) (or any successor  
provision), the undersigned confirms that such shares are being transferred:

To *[NGMCO, Inc.]* (the “**Issuer**”) or any subsidiaries thereof; or

Pursuant to a registration statement that has become effective under the Securities Act; or

Pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with the third box above, the Issuer and the Transfer Agent reserve the right to require the delivery of such legal opinion, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws.

*Unless one of the boxes is checked, the Transfer Agent will refuse to register any of the shares of Series A Fixed Rate Cumulative Perpetual Preferred Stock evidenced by this certificate in the name of any person other than the registered holder thereof.*

Date: [        ]

[Insert name of transferee]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT C**

**GLOBAL SHARE LEGEND**

UNLESS THIS GLOBAL SHARE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO *[NGMCO, INC.]* (THE "ISSUER") OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL SHARE SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE ISSUER, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

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EXHIBIT K

FORM OF STOCKHOLDERS AGREEMENT

Final form to be agreed among [New Co], the New VEBA, and the other stockholders to be parties thereto, in conformity with the Governance Term Sheet previously furnished to the UAW, with such changes thereto as may be required by the United States Treasury and agreed to by the UAW.

STOCKHOLDERS AGREEMENT

by and among

*[New GM Name],*

*[            ]*  
("UST Vehicle"),

7176384 Canada Inc.,

and

UAW Retiree Medical Benefits Trust

Dated *[            ]*, 2009

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## STOCKHOLDERS AGREEMENT

This STOCKHOLDERS AGREEMENT (this "Agreement") is entered into as of [            ], 2009 by and among [*New GM Name*], a Delaware corporation (the "Corporation"), [            ], a limited liability company whose membership interests are held by the United States Department of the Treasury (together with its Permitted Transferees, the "UST Vehicle"), 7176384 Canada Inc., a corporation organized under the laws of Canada (together with its Permitted Transferees, "Canada"), and the UAW Retiree Medical Benefits Trust, a voluntary employees' beneficiary association (together with its Permitted Transferees, the "VEBA").

WHEREAS, each of the Government Holders and the VEBA owns, as of the date hereof, that number of shares of common stock, par value \$0.01 per share, of the Corporation (the "Common Stock") and that number of shares of Series [        ] preferred stock, par value \$0.01 per share, of the Corporation, set forth opposite such Holder's name on Annex I hereto;

WHEREAS, the VEBA will also be issued, as of the date hereof, a warrant to acquire [            ] shares of Common Stock (the "Warrant"); and

WHEREAS, the parties hereto wish to enter into this Agreement to govern the rights and obligations of the parties with respect to certain matters relating to the Corporation and the Holders' ownership and voting of the Common Stock.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained in this Agreement and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

### **ARTICLE I DEFINITIONS**

*Section 1.1 Certain Defined Terms.* As used in this Agreement, the following terms have the following meanings set forth below or in the Sections set forth below:

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly Controls or is Controlled by or is under common Control with such Person. For the avoidance of doubt, for purposes of this Agreement, the UAW and its Affiliates shall be deemed to be Affiliates of the VEBA. For the avoidance of doubt, for purposes of this Agreement, the UST and each other department or instrumentality of the United States government shall not be deemed to be Affiliates of the UST Vehicle and each other department or instrumentality of the Canadian government shall not be deemed to be Affiliates of Canada.

"Agreement" shall have the meaning set forth in the Preamble.

"Beneficial Ownership" or "Beneficially Owned" have the meanings given to such terms in Rule 13d-3 of the Exchange Act.

"Board" means the board of directors of the Corporation.

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

“Canada” shall have the meaning set forth in the Preamble.

“Canada Nominee” shall have the meaning set forth in **Section 2.4**.

“Canada Owned Shares” means the shares of Common Stock Beneficially Owned by Canada as of the relevant time.

“Change of Control” means (A) any acquisition or purchase of capital stock of the Corporation, or of all or substantially all of the assets of the Corporation or (B) any merger, consolidation, business combination, recapitalization, reorganization or other extraordinary business transaction involving or otherwise relating to the Corporation, in each case, which would require the vote of the stockholders of the Corporation pursuant to the DGCL or the Certificate of Incorporation of the Corporation.

“Chief Executive Officer” means the duly appointed Chief Executive Officer of the Corporation.

“Common Stock” shall have the meaning set forth in the Recitals.

“Compelled Sale” shall have the meaning set forth in **Section 5.2**.

“Compelled Sale Notice” shall have the meaning set forth in **Section 5.2**.

“Consent” means any consent, approval, authorization, waiver, grant, franchise, concession, agreement, license, exemption or other permit or order of, registration, declaration or filing with, or report or notice to, any Person.

“Control” means the direct or indirect power to direct or cause the direction of management or policies of a Person, whether through the ownership of voting securities, general partnership interests or management member interests, by contract or trust agreement, pursuant to a voting trust or otherwise.

“Controlling” and “Controlled” have the correlative meanings.

“Corporation” shall have the meaning set forth in the Preamble.

“Co-Sale Holders” shall have the meaning set forth in **Section 5.1**.

“Co-Sale Notice” shall have the meaning set forth in **Section 5.1**.

“DGCL” means the Delaware General Corporation Law, as amended from time to time.

“Drag-Along Buyer” shall have the meaning set forth in **Section 5.2**.

“Electing Holder” shall have the meaning set forth in **Section 5.2**.

“Equity Registration Rights Agreement” means the Equity Registration Rights Agreement, dated as of the date hereof, by and among the Corporation, the VEBA, the UST Vehicle, Canada and General Motors Corporation.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“Executive Officer” means any officer who (i) is subject to Section 16(a) of the Exchange Act or (ii) would be subject to Section 16(a) of the Exchange Act if the Common Stock was registered under Section 12 of the Exchange Act.

“Fiscal Year” means the fiscal year of the Corporation. Each Fiscal Year shall commence on the day immediately following the last day of the immediately preceding Fiscal Year.

“GAAP” means accounting principles generally accepted in the United States of America as in effect from time to time, consistently applied and maintained throughout the applicable periods both as to classification of items and amounts.

“Government Holder” means the UST Vehicle or Canada.

“Governmental Approval” means any Consent of, with or to any Governmental Authority, and includes any applicable waiting periods associated with any Governmental Approvals.

“Governmental Authority” means any United States or non-United States federal, provincial, state or local government or other political subdivision thereof, any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

“Governmental Order” means any Order, stipulation, agreement, determination or award entered or issued by or with any Governmental Authority and binding on a Person.

“Group” has the meaning given to such term in Section 13(d)(3) of the Exchange Act.

“Holder” or “Holdings” means, individually or collectively as the context may require, the UST Vehicle, Canada, and the VEBA.

“Independent” shall have the meaning set forth in **Section 2.2(b)**.

“Initial Shares” means, with respect to any Holder, that number of shares of Common Stock, set forth opposite such Holder’s name on **Annex I** hereto.

“IPO” means the earlier to occur of (i) the initial public offering of the Common Stock, (whether such offering is primary or secondary) that is underwritten by a nationally recognized investment bank, pursuant to a registration statement filed under the Securities Act and declared effective by the SEC (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 under the Securities Act is applicable, or a registration statement on Form S-4, Form S-8 or a successor to one of those forms) or (ii) the date on which a Corporation registration statement filed under Section 12(b) or 12(g) of the Exchange Act shall have been declared effective by the SEC following the distribution of the shares of Common Stock Beneficially Owned by General Motors Corporation pursuant to General Motors Corporation’s plan of reorganization.

“IPO Date” means the effective date of the registration statement relating to the IPO.

“Joint Slate Procedure” shall mean the following process by which the Government Holders select nominees for directors: In the event that the UST Vehicle intends to propose a slate of candidates for election (whether at an annual meeting of the Corporation’s stockholders, a special meeting the Corporation’s stockholders called for the purpose of electing directors of the Corporation or at any adjourned or postponed meeting), the UST Vehicle shall provide Canada with written notice of its intent to propose a competing slate of candidates not less than 140 days prior to the meeting, in the case of an annual meeting, and not more than 5 days after notice of the meeting was first mailed to the Government Holders, in the case of a special meeting; provided that in either case the UST Vehicle shall use commercially reasonable efforts to give Canada as much advance notice of its intent to propose a competing slate of candidates as reasonably possible. Within 10 days, in the case of an annual meeting, and 5 days, in the case of a special meeting, of receiving the UST Vehicle’s written notice, Canada shall indicate in writing to the UST Vehicle whether or not Canada intends to participate in the slate. If Canada provides written notice of its intent to participate, such notice must include a list of Canada’s nominees. The number of nominees that Canada may select shall be determined based on Canada’s proportional ownership interest in shares of Common Stock Beneficially Owned by the Government Holders in the aggregate at the time of such nominee selection. If Canada provides timely written notice of its intent to participate (including a list of its nominees), each Government Holder agrees to vote “for” the joint slate of candidates nominated by the Government Holders. If Canada does not provide timely written notice of its intent to participate (including a list of its nominees) or notifies the UST Vehicle that it does not wish to participate, the UST Vehicle may propose a slate of candidates for election composed entirely of its own nominees, but Canada is under no obligation to vote “for” the candidates nominated by the UST Vehicle. Neither Government Holder shall propose a slate of candidates for election other than in compliance with this Joint Slate Procedure.

“Law” means any and all applicable United States or non-United States federal, provincial, state or local laws, rules, regulations, directives, decrees, treaties, statutes, provisions of any constitution and principles (including principles of common law) of any Governmental Authority, as well as any applicable Governmental Order.

“Material Adverse Event” shall mean (i) trading in securities generally on the New York Stock Exchange shall have been suspended or materially limited or any setting of minimum prices for trading on such exchange shall have been instituted, (ii) a general moratorium on commercial banking activities in the State of New York shall have been declared by either U.S. federal or New York State authorities or there shall have occurred a material disruption in securities settlement or clearance services in the United States, (iii) there shall have occurred any material outbreak or escalation of hostilities or other national or international calamity or crisis the effect of which on the financial markets of the United States or Canada is such as to make it impracticable or inadvisable to sell the Common Stock or (iv) **[other potential events to be discussed]**.

“Nominee” shall have the meaning set forth in **Section 4.4**.

“Non-Electing Holders” shall have the meaning set forth in **Section 5.2**.

“Order” means any writ, judgment, decree, injunction or similar order of any Governmental Authority, whether temporary, preliminary or permanent.

“Owned Shares” means the UST Vehicle Owned Shares, the Canada Owned Shares, and the VEBA Owned Shares, as applicable.

“Permitted Transferees” shall mean for each Holder, any Affiliate (solely for the purposes of this definition, without taking into account the last sentence of the definition of Affiliate) of such Holder.

“Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity.

“Preemptive Rights Period” shall have the meaning set forth in **Section 5.3**.

“Preemptive Rights Shares” shall have the meaning set forth in **Section 5.3**.

“Proxy” or “Proxies” has the meaning given to such term in Rule 14a-1 of the Exchange Act.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“Selling Holder” shall have the meaning set forth in **Section 5.1**.

“Sold Shares” shall have the meaning set forth in **Section 5.1**.

“Transfer” means, directly or indirectly, to sell, transfer, distribute, assign, pledge, hedge, encumber, hypothecate or similarly dispose of, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, distribution, assignment, pledge, hedge, encumbrance, hypothecation or similar disposition with or without consideration, voluntarily or by operation of Law.

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

“UST” means the United States Department of the Treasury.

“UST Vehicle” shall have the meaning set forth in the Preamble.

“UST Vehicle Owned Shares” means the shares of Common Stock Beneficially Owned by the UST Vehicle as of the relevant time.

“VEBA” shall have the meaning set forth in the Preamble.

“VEBA Nominee” shall have the meaning set forth in **Section 2.3**.

“VEBA Owned Shares” shall have the meaning set forth in **Section 4.3**.

“Voting Securities” means securities of the Corporation, including the Common Stock, with the power to vote with respect to the election of directors of the Corporation generally and all securities convertible into or exchangeable for securities of the Corporation with the power to vote with respect to the election of directors of the Corporation generally.

“Warrant” shall have the meaning set forth in the Recitals.

*Section 1.2 Terms Generally.* The definitions in **Section 1.1** shall apply equally to both 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,” unless the context expressly provides otherwise. All references herein to Articles, Sections, paragraphs, subparagraphs or clauses shall be deemed references to Articles, Sections, paragraphs, subparagraphs or clauses of this Agreement, unless the context requires otherwise. Unless otherwise specified, the words “this Agreement,” “herein,” “hereof,” “hereto” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.” Unless expressly stated otherwise, any Law defined or referred to herein means such Law as from time to time amended, modified or supplemented, including by succession of comparable successor Laws and references to all attachments thereto and instruments incorporated therein.

## **ARTICLE II BOARD OF DIRECTORS**

*Section 2.1 Size of Initial Board.* The Board shall initially consist of thirteen (13) directors. The number of directors may be changed only by vote of the Board in accordance with the bylaws of the Corporation.

*Section 2.2 Composition of Board.* (a) The initial members of the Board shall be appointed as follows:

- (i) the Board agrees to nominate and the Holders agree to appoint ten (10) directors designated by UST Vehicle, no more than five of whom shall have been directors of General Motors Corporation immediately prior to the date of this Agreement;

(ii) the Board agrees to nominate and the Holders agree to appoint one director designated by Canada (which director shall be Independent (as defined below));

(iii) the Board agrees to nominate and the Holders agree to appoint one director designated by the VEBA (which director shall be Independent (as defined below) or, if not Independent, approved by UST Vehicle, which approval shall not be unreasonably withheld); and

(iv) the Board agrees to nominate and the Holders agree to appoint the Chief Executive Officer as a director of the Corporation.

(b) The Holders agree that at all times prior to termination of this Agreement, at least two-thirds of the directors of the Corporation shall be required to be determined by the Board to be independent of the Corporation within the meaning of Rule 303A.02 of New York Stock Exchange Listed Company Manual (or any successor provision) ("Independent"), whether or not any of the shares of Common Stock are then listed on the New York Stock Exchange.

(c) The nominees to stand for election at any time at which the Corporation's stockholders shall have the right to, or shall, vote for or consent in writing to the election of directors of the Corporation (whether at an annual meeting of the Corporation's stockholders, a special meeting of the Corporation's stockholders called for the purpose of electing directors of the Corporation or at each adjourned or postponed meeting) shall be nominated by the Board in accordance with the bylaws of the Corporation and **Sections 2.3** and **2.4** hereof.

*Section 2.3 Agreement to Nominate VEBA Nominee.* So long as the VEBA holds at least 50% of its Initial Shares, at any time at which the Corporation's stockholders shall have the right to, or shall, vote for or consent in writing to the election of directors of the Corporation (whether at an annual meeting of the Corporation's stockholders, a special meeting of the Corporation's stockholders called for the purpose of electing directors of the Corporation or at any adjourned or postponed meeting), then, and in each such event, the VEBA shall have the right to designate one nominee, which nominee shall be subject to the prior written consent of the UAW and shall be Independent or, if not Independent, approved by UST Vehicle, which approval shall not be unreasonably withheld (the "VEBA Nominee"), to serve as a director.

(a) From and after the date hereof to and including the IPO Date, the Board agrees to nominate and the Holders agree to appoint such director.

(b) From and after the IPO Date to and including the date of termination of this Agreement with respect to such Holder in accordance with **Section 6.2**, if the Board shall approve such nominee (such approval not to be unreasonably withheld) the Board shall (i) nominate, and cause the nomination of, the VEBA Nominee, to be a member of the Board and (ii) include the VEBA Nominee in any proxy statement and related materials used by the Corporation in respect of the election to which such nomination pertains. In the event that the Board does not approve such nominee (or any subsequent nominee), the VEBA shall have the right to designate a replacement VEBA Nominee, who shall be subject to approval of the Board in accordance with this **Section 2.3**.

Notwithstanding the foregoing, the right of the VEBA to designate a VEBA Nominee at any election pursuant to this **Section 2.3** shall only apply in the event that if the VEBA were not to designate a VEBA Nominee at such election, no member of the Board after such election would have been a continuing VEBA Nominee still designated by the VEBA at such time. In the event that the Board nominates a former VEBA Nominee for re-election not pursuant to a designation by the VEBA with respect to such election, such former VEBA Nominee shall not be considered a VEBA Nominee for the purpose of determining the VEBA's right to designate a nominee at such election.

*Section 2.4 Agreement to Nominate Canada Nominee.* So long as Canada holds at least 50% of its Initial Shares, at any time at which the Corporation's stockholders shall have the right to, or shall, vote for or consent in writing to the election of directors of the Corporation (whether at an annual meeting of the Corporation's stockholders, a special meeting of the Corporation's stockholders called for the purpose of electing directors of the Corporation or at each adjourned or postponed meeting), then, and in each such event, from and after the date hereof to and including the IPO Date, Canada shall have the right to designate one nominee, which nominee shall be Independent (the "Canada Nominee"), to serve as a director and the Board agrees to nominate and the Holders agree to appoint such director; provided, however, that the right of Canada to designate a Canada Nominee at any election pursuant to this **Section 2.4** shall only apply in the event that if Canada were not to designate a Canada Nominee at such election, no member of the Board after such election would have been a Canada Nominee. In the event that the Board nominates a former Canada Nominee for re-election not pursuant to a designation by Canada with respect to such election, such former Canada Nominee shall not be considered a Canada Nominee for the purpose of determining Canada's right to designate a nominee at such election.

### **ARTICLE III CERTAIN COVENANTS AND RESTRICTIONS**

*Section 3.1 Initial Public Offering.* The Government Holders shall use their reasonable best efforts to exercise their demand registration rights under the Equity Registration Rights Agreement and cause an IPO to occur within one year of the date of this Agreement.

*Section 3.2 Government Holders Sale of Shares.* UST Vehicle and Canada shall use commercially reasonable efforts, in consultation with one another and their respective underwriters, to conduct the sell down of their respective Initial Shares in an orderly and efficient manner in accordance with the following timeline:

- (a) Each Government Holder shall sell at least [ ]% of its Initial Shares during each year following the IPO.
- (b) Each Government Holder shall have sold at least [ ]% of its Initial Shares prior to the third anniversary of the IPO.

(c) Each Government Holder shall have sold at least [ ]% of its Initial Shares prior to the sixth anniversary of the IPO.

(d) Each Government Holder shall have sold [ ]% of its Initial Shares prior to the [ ] anniversary of the IPO.

The timeline set forth in this **Section 3.2** shall be adjusted for any period that the Corporation is not in compliance with its obligations set forth in the Equity Registration Rights Agreement, such that the completion date for any obligations of each Government Holder not required to be completed prior to the date of such non-compliance shall be extended in an amount of time equal to the period of non-compliance. In addition, the completion date for any obligations of Canada [and the UST Vehicle] set forth in this **Section 3.2** shall be extended in an amount of time equal to (i) the duration of any Material Adverse Event, but only to the extent that such obligation was not required to be completed prior to the date of such Material Adverse Event [and (ii) any period during which a Government Holder is subject to a lockup required by an agreement or an underwriter, but only to the extent that such obligation(s) was not required to be completed prior to the date of such lockup].

*Section 3.3 Transfer Restrictions.* Subject to the restrictions set forth in this **Section 3.3** (which restrictions shall not apply with respect to sales made in an underwritten offering pursuant to a registration statement of the Corporation), the Holders shall have the right to Transfer all or any portion of their respective Owned Shares, subject to compliance with applicable law.

(a) Without the prior written consent of the Board, no Holder shall Transfer any shares of Common Stock or any options or warrants to acquire Common Stock, or any interest therein, to any one Person or Group if such Person or Group Beneficially Owns or would as a result of such Transfer Beneficially Own (to the knowledge of the Holder after reasonable inquiry) in excess of 10% of the Common Stock. Notwithstanding the foregoing, any Holder may Transfer any or all of its shares of Common Stock or any options or warrants to acquire Common Stock to any Permitted Transferee or pursuant to an exchange offer, a tender offer (or a request for invitation for tenders to the extent not prohibited pursuant to **Section 3.3(b)**), merger or consolidation.

(b) Without the prior written consent of the Board, no Holder shall Transfer any shares of Common Stock or any options or warrants to acquire Common Stock to any automotive vehicle manufacturer or any Affiliate thereof; provided, however, that VEBA and its Permitted Transferees (which shall not include Chrysler Group LLC or any affiliate thereof) shall not be regarded as affiliates of Chrysler for purposes of this provision.

(c) No Transfer of any shares of Common Stock or any options or warrants to acquire Common Stock in violation of this Agreement or in violation of any restrictive legend on the Common Stock certificates of any Holder shall be made or recorded on the books of the Corporation and any such Transfer shall be void and of no effect.

(d) Upon the Corporation's request, any Holder shall promptly notify the Corporation in writing of the number of shares of Common Stock then Beneficially Owned by such Holder.

*Section 3.4 Restrictions on Certain Corporate Actions.* From and after the date hereof to the IPO Date, the Corporation agrees that, so long as Canada Beneficially Owns at least 5% of the aggregate number of shares of Common Stock then issued and outstanding, without the prior written consent of Canada, the Corporation will not take any action to effectuate any of the following:

(a) a sale of all or substantially all of the assets of the Corporation (by merger or otherwise);

(b) any voluntary liquidation, dissolution or winding up of the Corporation; or

(c) an issuance of Common Stock at a price per share less than fair market value, as determined in good faith by the Board of Directors (other than pursuant to an employee benefits plan).

*Section 3.5 Certificate Legends.* Each Holder covenants and agrees that it will cooperate with the Corporation and take all action necessary to ensure that each certificate representing such Holder's shares of Common Stock and the Warrant shall conspicuously bear a legend in substantially the following form in addition to any other legend that may be required by the Corporation:

THE SALE, TRANSFER, DISTRIBUTION, ASSIGNMENT, HEDGE, PLEDGE, ENCUMBRANCE, HYPOTHECATION OR DISPOSAL OF SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE RESTRICTIONS, TERMS AND CONDITIONS OF THAT CERTAIN STOCKHOLDERS AGREEMENT, DATED AS OF [ ], 2009 BY AND AMONG [NEW GM NAME], [UST VEHICLE], 7176384 CANADA INC., AND THE UAW RETIREE MEDICAL BENEFITS TRUST, A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION.

#### ARTICLE IV VOTING AGREEMENT

*Section 4.1 Government Holder Participation to Establish Quorum.* From and after the date hereof to and including the date of termination of this Agreement with respect to such Government Holder in accordance with **Section 6.2**, at any meeting (whether annual or special and each adjourned or postponed meeting) of the Corporation's stockholders, however called, to the extent required to establish a quorum at such meeting, such Government Holder will appear at such meeting or otherwise cause all shares of Common Stock Beneficially Owned by such Government Holder as of the relevant time to be counted as present thereat for purposes of calculating a quorum.

*Section 4.2 Government Holder Agreement to Vote.* Each Government Holder hereby irrevocably and unconditionally agrees that:

(a) from and after the date hereof to and including the earlier to occur of (i) the IPO Date or (ii) the date of termination of this Agreement with respect to such Government Holder in accordance with **Section 6.2**, at any meeting (whether annual or special and each adjourned or postponed meeting) of the Corporation's stockholders, however called, or in connection with any proposed action by written consent of the Corporation's stockholders, such Government Holder may vote or cause to be voted (including by written consent, if applicable) its Owned Shares on each matter presented to the stockholders of the Corporation, including the election of directors, in such manner as such Government Holder determines (i.e., "for," "against," "withheld" or otherwise), provided that each Government Holder agrees to vote "for" any VEBA Nominee or Canada Nominee standing for election in accordance with **Section 2.3** and **Section 2.4**, respectively;

(b) from and after the IPO Date to and including the date of termination of this Agreement with respect to such Government Holder in accordance with **Section 6.2**, at any meeting (whether annual or special and each adjourned or postponed meeting) of the Corporation's stockholders, however called, such Government Holder shall not vote or cause its Owned Shares to vote, provided, however, that such Government Holder shall be permitted to vote or cause to be voted its Owned Shares:

(i) in a vote with respect to any removal of directors only "for," "against" or "withhold" with respect to such removal;

(ii) in a vote with respect to any election of directors of the Corporation (whether at an annual meeting of the Corporation's stockholders, a special meeting of the Corporation's stockholders called for the purpose of electing directors of the Corporation or at any adjourned or postponed meeting) only "for," "against" or "withhold" with respect to the election of any candidates or directors, as the case may be, that are (A) nominated by the Board, (B) nominated by third parties, or (C) nominated by either Government Holder pursuant to the Joint Slate Procedure, provided that each Government Holder agrees to vote "for" the nominees jointly nominated pursuant to the Joint Slate Procedure, and provided further, that each Government Holder agrees to vote "for" any VEBA Nominee standing for election in accordance with **Section 2.3**;

(iii) in a vote with respect to any Change of Control to be voted on by the Corporation's stockholders, "for" or "against" such Change of Control transaction;

(iv) in a vote with respect to any amendment or modification to the Certificate of Incorporation or bylaws of the Corporation which would or may effect any of the matters set forth in **Section 4.2(b)(i), (ii) or (iii)**, "for" or "against" such amendment or modification; and

(v) on each other matter presented to the stockholders of the Corporation, solely to the extent that the vote of the Government Holder is required for the stockholders to take action at a meeting at which a quorum is present, in the same proportionate manner (either "for," "against," "withheld" or otherwise) as the holders of Common Stock (other than the UST Vehicle, Canada, the VEBA and its Affiliates and the directors and Executive Officers of the Corporation) that were present and entitled to vote on such matter voted in connection with each such matter.

*Section 4.3 VEBA Agreement to Vote.* The VEBA hereby irrevocably and unconditionally agrees that from and after the date hereof and to and including the date of termination of this Agreement with respect to the VEBA in accordance with **Section 6.2**, at any meeting (whether annual or special and each adjourned or postponed meeting) of the Corporation's stockholders, however called, or in connection with any proposed action by written consent of the Corporation's stockholders, the VEBA will (i) appear at such meeting or otherwise cause all shares of Common Stock Beneficially Owned by the VEBA as of the relevant time ("VEBA Owned Shares") to be counted as present thereat for purposes of calculating a quorum and (ii) vote or cause to be voted (including by written consent, if applicable) such VEBA Owned Shares on each matter presented to the stockholders of the Corporation in the same proportionate manner (either "for," "against," "withheld" or otherwise) as (x) in the case of any proposed stockholder action at a meeting of the Corporation's stockholders, the holders of Common Stock (other than the VEBA and its Affiliates, and the directors and Executive Officers of the Corporation) that were present and entitled to vote on such matter voted in connection with each such matter and (y) in the case of any proposed stockholder action by written consent taken prior to an IPO, all the holders of Common Stock (other than the VEBA and its Affiliates, and the directors and Executive Officers of the Corporation) consented or did not consent in connection with each such matter; provided that, from and after the date hereof to and including the IPO Date, the VEBA agrees to vote "for" any Canada Nominee standing for election in accordance with **Section 2.4**.

*Section 4.4 Irrevocable Proxy.* This **Section 4.4** is effective from and after the IPO Date to and including the date of termination of this Agreement. Each of the UST Vehicle, Canada and the VEBA hereby revokes any and all previous Proxies or similar rights granted with respect to its Owned Shares. Subject to the last two sentences of this **Section 4.4**, upon the request of the Corporation and subject to applicable Law, each of the UST Vehicle, Canada and the VEBA shall, or shall use its reasonable best efforts to cause any Person serving as the nominee (each, a "Nominee") of such Holder with respect to its Owned Shares to, irrevocably appoint the Corporation or its designee as its proxy to vote (or cause to be voted) its Owned Shares in accordance with **Section 4.2(b)(v)** or **Section 4.3** hereof (as applicable). Such Proxy shall be irrevocable and coupled with an interest. In the event that any such Nominee for any reason fails to irrevocably appoint the Corporation or its designee as the UST Vehicle's, Canada's or the VEBA's Proxy in accordance with this **Section 4.4**, such Holder shall cause such Nominee to vote its Owned Shares in accordance with **Section 4.2(b)(v)** or **Section 4.3** hereof (as applicable). In the event that the UST Vehicle, Canada, the VEBA or any of their respective Nominees fails for any reason to vote its Owned Shares in accordance with the applicable requirements of **Section 4.2(b)(v)** or **Section 4.3** hereof (as applicable), then the Corporation or its designee shall have the right to vote such Holder's Owned Shares (and withdraw any previous vote) in accordance with **Section 4.2(b)(v)** or **Section 4.3** hereof (as applicable). Subject to applicable Law, the vote of the Corporation or its designee shall control in the event of any conflict between the vote by the Corporation or its designee of the UST Vehicle's, Canada's or the VEBA's Owned Shares and a vote by such Holder (or any Nominee on behalf of such Holder) of its Owned Shares. Notwithstanding the foregoing, the proxy granted by the UST Vehicle, Canada, the VEBA or any of their respective Nominees shall be automatically revoked upon termination of this Agreement with respect to such Holder in accordance with its terms.

*Section 4.5 Inconsistent Voting Agreements.* Each of the UST Vehicle, Canada and the VEBA hereby agrees that such Holder shall not enter into any agreement, contract or understanding with any Person (prior to the termination of this Agreement with respect to such Holder) directly or indirectly to vote, grant a Proxy or power of attorney or give instructions with respect to the voting of such Holder's Owned Shares in any manner which is inconsistent with this Agreement.

## ARTICLE V OTHER AGREEMENTS

*Section 5.1 Tag-Along Rights.* (a) If at any time prior to the IPO, the UST Vehicle (for purposes of this **Section 5.1**, the "Selling Holder") desires to sell any or all of its Owned Shares (other than a Transfer to a Permitted Transferee), each of VEBA and Canada (for purposes of this **Section 5.1**, the "Co-Sale Holders") who is not then in breach of this Agreement shall have the right to include a number of such Co-Sale Holder's Owned Shares in such contemplated sale, at the same price per share and upon the same terms and conditions to be paid and given to the Selling Holder, equal to the product (rounded up to the nearest whole number) obtained by multiplying (i) the maximum number of shares of Common Stock that can be included in the contemplated sale and (ii) a fraction (A) the numerator of which is equal to the number of shares of Common Stock held by such Co-Sale Holder and (B) the denominator of which is equal to the number of shares of Common Stock held, in the aggregate, by the Selling Holder and all Co-Sale Holders who elect to include their shares of Common Stock in such sale, in each case exclusive of any shares of Common Stock that are subject to a previously executed binding sale agreement.

(b) The Selling Holder shall give notice to each of the Co-Sale Holders of each proposed sale giving rise to the rights of the Co-Sale Holders set forth in **Section 5.1(a)** at least 10 Business Days prior to the proposed consummation of any such sale, setting forth the number of shares of Common Stock proposed to be so sold (the "Sold Shares"), the name and address of the proposed transferee or transferees, the proposed amount and form of consideration and the terms and conditions of payment offered by such proposed transferee or transferees, and a representation that the proposed transferee or transferees have been informed of the rights of co-sale provided for in this **Section 5.1** (the "Co-Sale Notice"). The rights of co-sale provided pursuant to this **Section 5.1** must be exercised by any Co-Sale Holder within five business days following receipt of the notice required by the preceding sentence, by delivery of a written notice to the Selling Holder indicating such Co-Sale Holder's desire to exercise its rights and specifying the number of shares of Common Stock (up to the maximum number of shares of Common Stock as provided in **Section 5.1(a)**). If the proposed transferee or transferees fail to purchase shares of Common Stock from any Co-Sale Holder that has properly exercised its rights of co-sale under **Section 5.1(a)** on the terms specified above, then the Selling Holder shall not be permitted to make the proposed sale. If none of the Co-Sale Holders gives such notice prior to the expiration of the five business day period for giving such notice, then the Selling Holder may sell the Sold Shares to any Person on terms and conditions that are no more favorable to the Selling Holder than those set forth in the Co-Sale Notice at any time within a period ending on the later to occur of (x) 120 days following the expiration of such period for giving notice or (y) if a definitive agreement to sell the Sold Shares is entered into by the Selling Holder within such 120-day period, the date on which all applicable approvals and consents of Governmental Authorities with respect to such proposed sale have been obtained and any applicable waiting period under Law have expired or been terminated. If the Selling Holder has not consummated the proposed sale within the time period set forth in the immediately preceding sentence, then the Selling Holder shall not sell any such shares of Common Stock without again complying with this **Section 5.1**.

(c) If any of the Co-Sale Holders exercise their rights under **Section 5.1(a)**, the closing of the purchase of the shares of Common Stock with respect to which such rights have been exercised shall take place concurrently with the closing of the sale of the Selling Holder's interests.

(d) The provisions of this **Section 5.1** shall not apply to any proposed sale by any Holder effected pursuant to the demand registration or piggyback provisions of the Equity Registration Rights Agreement.

*Section 5.2 Drag-Along Rights.* (a) At any time prior to the IPO, if the UST Vehicle (for purposes of this **Section 5.2**, the "Electing Holder"), determines to sell, in a single transaction or a series of related transactions, to an independent third party or parties (the "Drag-Along Buyer"), any shares of Common Stock, the Electing Holder may require each of VEBA and Canada (the "Non-Electing Holders") to sell or cause to be sold up to a number of their Owned Shares as of such date in such transaction (by merger or otherwise), equal to the product (rounded up to the nearest whole number) obtained by multiplying (i) the maximum number of shares of Common Stock to be included in the contemplated sale and (ii) a fraction (A) the numerator of which is equal to the number of shares of Common Stock held by such Non-Electing Holder and (B) the denominator of which is equal to the number of shares of Common Stock held, in the aggregate, by the Electing Holder and all Non-Electing Holders, to the Drag-Along Buyer, for the same consideration per share of Common Stock and on the same terms and conditions as the Electing Holder, subject to the provisions of this **Section 5.2** (the "Compelled Sale") and to take such other actions with respect thereto as set forth in **Section 5.2(b)** below.

(b) The Corporation, if instructed in writing by the Electing Holder, shall send written notice (the "Compelled Sale Notice") of the exercise of the rights pursuant to this **Section 5.2** to each of the Non-Electing Holders setting forth the consideration per share of Common Stock to be paid pursuant to the Compelled Sale and the other terms and conditions of the transaction. Each Non-Electing Holder, upon receipt of the Compelled Sale Notice, will be obligated to (i) if applicable, vote its shares of Common Stock in favor of such Compelled Sale at any meeting of stockholders of the Corporation called to vote on or approve such Compelled Sale (or any written consent solicited for such purpose), (ii) sell the requisite number of its shares of Common Stock, and participate in the Compelled Sale and (iii) otherwise take all necessary action, including, without limitation, expressly waiving any dissenter's rights or rights of appraisal or similar rights, providing access to documents and records of the Corporation, entering into an agreement reflecting the terms of the Compelled Sale (although Non-Electing Holders shall not be required to provide representations, warranties and indemnities other than concerning each such Holder's valid ownership of its shares of Common Stock free of all liens, and each such Holder's authority, power and right to enter into and consummate the Compelled Sale without violating any other agreement), surrendering certificates or other instruments representing the shares of Common Stock, duly authorized for transfer or accompanied by a duly executed stock power, cooperating in obtaining any applicable Governmental Approval and otherwise to cause the Corporation to consummate such Compelled Sale. Any such Compelled Sale Notice may be rescinded by the Electing Holders at any time prior to the execution of any agreement with respect to a Compelled Sale by delivering written notice thereof to the Corporation and all of the Non-Electing Holders.

(c) The obligations of the Non-Electing Holders pursuant to this **Section 5.2** are subject to the satisfaction of the following conditions:

(i) in the event that the Non-Electing Holders are required to provide the representations, warranties or indemnities in connection with the Compelled Sale described in **Section 5.2(b)** above, then, each such Holder (A) will not be liable for more than the lesser of (x) its pro rata share of such indemnification payments (based upon the total consideration received by such Holder divided by the total consideration received by all sellers in such Compelled Sale) and (y) the total proceeds actually received by such Holder as consideration for its shares of Common Stock in such Compelled Sale, and (B) such liability shall be several and not joint with any other Person;

(ii) in the event that the Electing Holders are required to provide representations, warranties or indemnities in connection with the Compelled Sale (other than representations, warranties or indemnities concerning valid ownership of its shares of Common Stock free of all liens, and authority, power and right to enter into and consummate the Compelled Sale without violating any other agreement) and the Electing Holder is required to indemnify the party or parties transacting with the Corporation in the Compelled Sale, then, to the extent such indemnification is not attributable to gross negligence or bad faith with respect to representations, warranties or indemnities, each Non-Electing Holder shall contribute to the extent of the lesser of (x) its pro rata share of such indemnification payments (based upon the total consideration received by such Holder divided by the total consideration received by all sellers in such Compelled Sale) and (y) the total proceeds actually received by such Holder as consideration for its shares of Common Stock in such Compelled Sale. In any such event, such liability shall be several and not joint with any other Person. Each Non-Electing Holder shall have full access to any and all evidences or documents related to any such indemnification; and

(iii) if any Holder is given an option as to the form and amount of consideration to be received, each other Holder shall be given the same option.

(d) Each Holder shall be obligated to pay his, her or its pro rata share of the expenses incurred in connection with a consummated Compelled Sale (based upon the total consideration received by such Holder divided by the total consideration received by all sellers in such Compelled Sale) to the extent such costs are incurred for the benefit of all Holders and are not otherwise paid by the Corporation or the acquiring party (costs incurred by or on behalf of a Holder for his, her or its sole benefit will not be considered costs of the transaction hereunder).

(e) If any Holder fails to sell to the Drag-Along Buyer its Owned Shares to be sold pursuant to this **Section 5.2**, each Holder agrees that the Board shall cause such Owned Shares to be sold to the Drag-Along Buyer on the Corporation's books in consideration of the purchase price, and such Drag-Along Holder's pro rata portion of the purchase price may be held in escrow, without interest, until such time as he, she or it takes such actions as the Board may request in connection with the transaction.

*Section 5.3 Preemptive Rights.*

(a) At any time prior to the IPO (and not including the IPO itself), the Company shall not issue any shares of Common Stock unless, prior to such issuance, the Company offers such shares of Common Stock to each Holder at the same price per share and upon the same terms and conditions.

(b) Not less than 20 Business Days prior to the closing of such offering (the "Preemptive Rights Period"), the Company shall send a written notice to each Holder stating the number of shares of Common Stock to be offered (the "Preemptive Rights Shares"), the proposed closing date and the price and terms on which it proposes to offer such shares of Common Stock.

(c) Within 10 Business Days after the receipt of the notice pursuant to Section 5.3(b), each Holder may elect, by written notice to the Company to purchase shares of Common Stock of the Company, at the price and on the terms specified in such notice, up to an amount equal to the product obtained by multiplying (x) the total number of shares of Common Stock to be issued by (y) a fraction, (A) the numerator of which is the number of shares of Common Stock of such class held by such Holder and (B) the denominator of which is the number of total outstanding shares of Common Stock.

(d) The closing of any such purchase of shares of Common Stock by such Holder pursuant to this **Section 5.3(d)** shall occur concurrently with the closing of the proposed issuance, as applicable, subject to adjustment to obtain any necessary Governmental Approval.

(e) Upon the expiration of the Preemptive Rights Period, the Company shall be entitled to sell such Preemptive Rights Shares that the Holders have not elected to purchase for a period ending 120 days following the expiration of the Preemptive Rights Period on terms and conditions not materially more favorable to the purchasers thereof than those offered to the Holders. Any Preemptive Rights Shares to be sold by the Company following the expiration of such period must be reoffered to the Holders pursuant to the terms of this **Section 5.3** or if any such agreement to Transfer is terminated.

(f) The provisions of this **Section 5.3** shall not apply to the following issuances of shares of Common Stock:

(i) incentive shares of Common Stock issued to or for the benefit of employees, officers, directors and other service providers of or to the Company or any Company Subsidiary in accordance with the terms hereof or any applicable incentive plan of the Company;

(ii) securities issued upon conversion of convertible or exchangeable securities (including warrants) of the Company or any of its subsidiaries that are outstanding as of the date of this Agreement or were not issued in violation of this **Section 5.3**; and

(iii) a subdivision of shares of Common Stock (including any share distribution or split), any combination of shares of Common Stock (including any reverse share split), shares issued as a dividend or other distribution on the shares of Common Stock or any recapitalization, reorganization, reclassification or conversion of the Company or any of its subsidiaries.

*Section 5.4 Information Rights.* Prior to the IPO, the Company shall use its reasonable efforts to publish in a press release or other form of public dissemination or deliver to each Holder (i) capsule financial information for each fiscal quarter within 45 days after the end of such quarter and (ii) capsule financial information for each fiscal year within 90 days after the end of such fiscal year.

## ARTICLE VI MISCELLANEOUS

*Section 6.1 Notices.* Any notice, request, instruction, consent, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) upon delivery when personally delivered; (b) on the later of the scheduled delivery date or the first business day following such delivery date (if scheduled for delivery on a day that is not a business day) after having been sent by a nationally or internationally recognized overnight courier service (charges prepaid); (c) at the time received when sent by registered or certified mail, return receipt requested, postage prepaid; or (d) at the time when confirmation of successful transmission is received (or the first business day following such receipt if the date of such receipt is not a business day) if sent by facsimile, in each case, to the recipient at the address or facsimile number, as applicable, indicated below:

If to the Corporation:

[            ]

[            ]

[            ]

Attention: [            ]

Telephone: [            ]

Facsimile: [            ]

with a copy to:

[            ]

[            ]

[            ]

If to the UST Vehicle:

[            ]

[            ]

[            ]

Attention: [            ]

Telephone: [            ]

Facsimile: [            ]

with a copy to:

Cadwalader, Wickersham & Taft LLP

One World Financial Center

New York, New York 10281

Attention: John J. Rapisardi

R. Ronald Hopkinson

Fax: (212) 504-6666

If to Canada:

7176384 Canada Inc.

1235 Bay Street, Suite 400

Toronto, ON M5R 3K4

Attention: Mr. Michael Carter

Facsimile: 416-934-5009

with a copy to:

Torys LLP  
79 Wellington Street, West, Suite 3000  
Toronto, ON M5K 1N2  
Attention: Patrice S. Walch-Watson  
Facsimile: (416) 865-7380  
Email: PWalch-Watson@torys.com

If to the VEBA:

[            ]  
[            ]  
[            ]

Attention: [            ]  
Telephone: [            ]  
Facsimile: [            ]

with a copy to:

[            ]  
[            ]  
[            ]

provided, however, if any party shall have designated a different addressee and/or contact information by notice in accordance with this **Section 6.1**, then to the last addressee as so designated.

*Section 6.2 Termination.* All rights, restrictions and obligations hereunder shall terminate with respect to a Holder, and this Agreement shall have no further force and effect upon such Holder, when such Holder Beneficially Owns less than 2% of the aggregate number of shares of Common Stock then issued and outstanding; provided, that all rights and obligations under this **Article VI** shall continue in perpetuity.

*Section 6.3 Authority.* Each of the parties hereto represents to the other that (a) it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate or organizational action and no such further action is required, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

*Section 6.4 No Third Party Beneficiaries.* This Agreement shall be for the sole and exclusive benefit of (i) the Corporation and its successors and permitted assigns and (ii) each Holder (including any trustee thereof) and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to give any other Person any legal or equitable right, remedy or claim under this Agreement.

*Section 6.5 No Personal Liability by the VEBA Signatory.* It is expressly understood and agreed by the parties hereto that this Agreement is being executed and delivered by the signatory on behalf of the VEBA not individually or personally but solely in his capacity as [Chairman of the Committee of the VEBA] in the exercise of the powers and authority conferred and vested in him in such capacity and under no circumstances shall the signatory have any personal liability in an individual capacity in connection with this Agreement or any transaction contemplated hereby.

*Section 6.6 Cooperation.* Each party hereto shall take such further action, and execute such additional documents, as may be reasonably requested by any other party hereto in order to carry out the purposes of this Agreement.

*Section 6.7 Governing Law; Forum Selection.* This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York irrespective of the choice of laws principles of the State of New York other than Section 5-1401 of the General Obligations Law of the State of New York. Any action or proceeding against the parties relating in any way to this Agreement may be brought and enforced exclusively in the courts of the State of New York located in the Borough of Manhattan or (to the extent subject matter jurisdiction exists therefor) the U.S. District Court for the Southern District of New York, and the parties irrevocably submit to the jurisdiction of both courts in respect of any such action or proceeding.

*Section 6.8 WAIVER OF JURY TRIAL.* EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

*Section 6.9 Assignment; Successors and Assigns.* Neither this Agreement nor any of the rights, interests or obligations provided by this Agreement may be assigned by any party (whether by operation of law or otherwise), other than an assignment to a Permitted Transferee in connection with a Transfer made in accordance with this Agreement, without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence and except as otherwise expressly provided herein, this Agreement shall be binding upon and benefit the Corporation and each Holder. Except for a Permitted Transferee, no purchaser or recipient of shares of Common Stock from a Holder shall have any rights under this Agreement.

*Section 6.10 After Acquired Securities.* All of the provisions of this Agreement shall apply to all of the Voting Securities now Beneficially Owned or that may be issued or Transferred hereafter to any Holder hereto in consequence of any additional issuance, purchase, exchange or reclassification of any of the Voting Securities, corporate reorganization, or any other form or recapitalization, consolidation, merger, share split or share divide, or that are acquired by a Holder in any other manner.

*Section 6.11 Entire Agreement.* This Agreement (together with the Annex) contains the final, exclusive and entire agreement and understanding of the parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and thereof. This Agreement shall not be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any party with respect to the transactions contemplated hereby or thereby other than those expressly set forth herein or therein, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

*Section 6.12 Severability.* Whenever possible, each term and provision of this Agreement will be interpreted in such manner as to be effective and valid under law. If any term or provision of this Agreement, or the application thereof to any Person or any circumstance, is held to be illegal, invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be legal, valid and enforceable, the intent and purpose of such illegal, invalid or unenforceable provision and (b) the remainder of this Agreement or such term or provision and the application of such term or provision to other Persons or circumstances shall remain in full force and effect and shall not be affected by such illegality, invalidity or unenforceability, nor shall such invalidity or unenforceability affect the legality, validity or enforceability of such term or provision, or the application thereof, in any jurisdiction.

*Section 6.13 Enforcement of this Agreement.* The parties agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall, without the posting of a bond, be entitled, subject to a determination by a court of competent jurisdiction, to an injunction or injunctions to prevent any such failure of performance under, or breaches of, this Agreement, and to enforce specifically the terms and provisions hereof and thereof, this being in addition to all other remedies available at law or in equity, and each party agrees that it will not oppose the granting of such relief on the basis that the requesting party has an adequate remedy at law.

*Section 6.14 Amendment.* This Agreement may not be amended, modified or supplemented except upon the execution and delivery of a written agreement executed by a duly authorized representative or officer of each of the parties.

*Section 6.15 Headings.* The descriptive headings of the Articles, Sections and paragraphs of, and the Annex to, this Agreement are included for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit, modify or affect any of the provisions hereof.

*Section 6.16 Counterparts; Facsimiles.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement. All signatures of the parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the party whose signature it reproduces and be binding upon such party.

*Section 6.17 UST Vehicle.* Notwithstanding anything in this Agreement to the contrary, the UST Vehicle shall only be bound by this Agreement in its capacity as stockholder and nothing in this Agreement shall be binding on or create any obligation on the part of the US Treasury in any other capacity or any branch or agency of the United States Government or subdivision thereof.

*Section 6.18 Canada.* Notwithstanding anything in this Agreement to the contrary, Canada shall only be bound by this Agreement in its capacity as stockholder and nothing in this Agreement shall be binding on or create any obligation on the part of Canada in any other capacity or any branch or agency of the Canadian Government or subdivision thereof.

*Section 6.19 Time Periods.* Unless otherwise specified in this Agreement, an action required under this Agreement to be taken within a certain number of days shall be taken within that number of calendar days (and not business days); provided, however, that if the last day for taking such action falls on a day that is not a business day, the period during which such action may be taken shall be automatically extended to the next business day.

[Remainder of the page intentionally blank]

IN WITNESS WHEREOF, the parties hereto, being duly authorized, have executed and delivered this Stockholders Agreement on the date first above written.

**[NEW GM NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[JUST VEHICLE]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**7176384 CANADA INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UAW RETIREE MEDICAL BENEFITS TRUST, A  
VOLUNTARY EMPLOYEES' BENEFICIARY  
ASSOCIATION**

By: **[TRUSTEE]** \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Annex I**

<u>Holder</u>	<u>Number of Initial Shares of Common Stock</u>	<u>Series and Number of Initial Shares of Preferred Stock</u>
UST Vehicle		
Canada		
VEBA		
Total:		

  

<u>Holder</u>	<u>Number of Shares of Common Stock for which Warrant is Exercisable</u>
VEBA	

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EXHIBIT L  
FORM OF WARRANT

**EXHIBIT E**

**FORM OF VEBA WARRANT**

**WARRANT AGREEMENT**

dated as of [        ], 2009

between

[NGMCO, Inc.]

and

[—]

as Warrant Agent

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## WARRANT AGREEMENT

This Warrant Agreement (“Warrant Agreement”) dated as of [ ], 2009 is between [NGMCO, Inc.], a corporation organized under the laws of Delaware (the “Company”), and [—] (the “Warrant Agent”).

### WITNESSETH THAT:

WHEREAS, pursuant to the UAW Retiree Settlement Agreement dated as of [ ], 2009 between the Company, by and through its attorneys, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, by and through its attorneys (the “UAW Retiree Settlement Agreement”), the Company has agreed to issue to the Initial Warrantholder (as defined below) an aggregate initial Number of Warrants issued hereunder equal to 15,151,515, each of which is exercisable for one share of Common Stock (as defined below);

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company, and the Warrant Agent is willing to act, in connection with the issuance, exchange, transfer, substitution and exercise of Warrants;

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

### ARTICLE 1

#### DEFINITIONS

Section 1.01. *Certain Definitions.* As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

“\$” refers to such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“Adjustment Event” has the meaning set forth in Section 5.08.

“Agent Members” has the meaning set forth in Section 2.06(c).

“Authentication Order” means a Company Order for authentication and delivery of Warrants.

“Black Scholes Proportion” has the meaning given to it in the definition of “Change of Control Payment Amount.”

“Black Scholes Warrant Value” as of any date, shall mean the value of a Warrant to purchase one share of Common Stock (as determined in good faith by the Board of Directors based upon the advice of an independent investment bank of national standing selected by the Board of Directors and reasonably acceptable to the Warrant Agent) and shall be determined by customary investment banking practices using the Black Scholes model. For purposes of calculating such amount, (1) the term of the Warrants will be the period from the date of determination until the Expiration Date, (2) the price of each share of Common Stock will be the Current Market Price as of the date of determination, (3) the assumed volatility will be determined by such independent investment banking firm as of the date of determination, (4) the assumed risk-free rate will equal the yield on the seven year U.S. Treasury securities and (5) any other assumptions shall be made by the Board of Directors in good faith based upon the advice of such independent investment bank at the time of determination.

**“Board of Directors”** means the board of directors of the Company or any committee of such board of directors duly authorized to exercise the power of such board of directors with respect to the matters provided for in this Warrant Agreement as to which the board of directors is authorized or required to act.

**“Board Resolution”** means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Warrant Agent.

**“Business Day”** means any day other than a Saturday or Sunday or other than a day on which banking institutions in New York City, New York are authorized or obligated by law or executive order to close.

**“Capital Stock”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of the Company and all warrants or options to acquire such capital stock.

**“Carryover Warrants”** shall mean, for each Warrant, that portion of such Warrant equal to one minus the Black Scholes Proportion.

**“Cash”** means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

**“Certificated Warrant”** means a Warrant represented by a Warrant Certificate, in definitive, fully registered form.

**“Change of Control Date”** shall mean the date on which a Change of Control Event is consummated.

**“Change of Control Estimated Payment Amount”** shall mean, in respect of any Change of Control Event, an estimate of the Change of Control Payment Amount payable on the applicable Change of Control Payment Date, as determined in good faith by the Board of Directors, based upon the advice of an independent investment bank of national standing selected by the Board of Directors and reasonably acceptable to the Warrant Agent, as of a date no more than 20 Business Days and no less than 15 Business Days prior to the Change of Control Date, in a manner consistent with the terms of this Warrant Agreement and the Warrants, including the definitions of Black Scholes Warrant Value and Change of Control Payment Amount.

“**Change of Control Event**” shall mean (i) the acquisition by a Person (other than the Company or a subsidiary of the Company) in a tender offer or a series of related tender offers of 80% or more of the outstanding Common Stock (determined on a fully-diluted basis), (ii) the consolidation or merger of the Company with or into another Person (other than a subsidiary of the Company), or (iii) a sale of all or substantially all of the Company’s assets, in each of clauses (i) through (iii) in which all or any portion of the consideration paid or exchanged for Common Stock, or into which Common Stock is converted, consists of Other Property.

“**Change of Control Payment Amount**” shall mean an amount in Cash equal to the product of (1) the Black Scholes Warrant Value of a Warrant on a Change of Control Date immediately prior to the consummation of such Change of Control Event multiplied by (2) a fraction, (x) the numerator of which is the fair market value of the Other Property received in exchange for a share of Common Stock in a Change of Control Event as of the Change of Control Date (as determined by an independent investment bank of national standing selected by the Company and determined by customary investment banking practices) and (y) the denominator of which is the sum of (a) the Closing Sale Price of the Registered and Listed Shares received in exchange for a share of Common Stock in a Change of Control Event as of the Change of Control Date (if any), and (b) the fair market value (determined as above) of the Other Property as of the Change of Control Date received in exchange for a share of Common Stock in a Change of Control Event (such fraction referred to herein as the “**Black Scholes Proportion**”).

For purposes of determining the Change of Control Payment Amount, if holders of Common Stock are entitled to receive differing forms or types of consideration in any transaction or series of transactions contemplated by the definition of “Change of Control Event,” each holder shall be deemed to have received the same proportion of Other Property and Registered and Listed Shares that all holders of Common Stock in the aggregate elected or were required to receive in such transaction or transactions.

“**Change of Control Payment Date**” has the meaning set forth in Section 5.09(e).

“**Close of Business**” means 5:00 p.m. New York City time.

“**Closing Date**” has the meaning given thereto in the Master Sale and Purchase Agreement dated as of June 1, 2009 by and among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation, Chevrolet-Saturn of Harlem, Inc. and the Company, as may be amended, modified or supplemented in accordance with its terms.

“**Closing Sale Price**” means, as of any date, the last reported per share sales price of a share of Common Stock or any other security on such date (or, if no last reported sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices on such date) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted; *provided, however*, that in the absence of such quotations, the Board of Directors will make a good faith determination of the Closing Sale Price.

If during a period applicable for calculating Closing Sale Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 5 hereof, Closing Sale Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

“**Common Stock**” means the common stock, par value \$0.01 per share, of the Company authorized at the date of this Warrant Agreement or as such stock may be constituted from time to time. Subject to the provisions of Section 5.09 and Section 5.10, shares issuable upon exercise of Warrants shall include only shares of the class designated as Common Stock of the Company as of the date of this Warrant Agreement or shares of any class or classes resulting from any reclassification or reclassifications or change or changes thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, and if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications or changes bears to the total number of shares of all such classes resulting from such reclassifications or changes.

“**Company Order**” means a written order signed in the name of the Company by any two officers, at least one of whom must be its Chief Executive Officer, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, or its Controller, and delivered to the Warrant Agent.

“**Current Market Price**” means, (i) in connection with a dividend, issuance or distribution, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the earlier of the date in question and the Trading Day immediately preceding the Ex-Date for such dividend, issuance or distribution and (ii) in connection with a determination of Black Scholes Warrant Value, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the date of determination, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, on Bloomberg page “[ ]. [N] <Equity> AQR.”, or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution selected by the Board of Directors and reasonably acceptable to the Warrant Agent. If the Common Stock is not traded on the New York Stock Exchange or any U.S. national or regional securities exchange or quotation system, the Current Market Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such price shall be reasonably determined in good faith by the Company’s Board of Directors.

“**Cut-Off Time**” has the meaning set forth in Section 5.09(e).

“**Depository**” means The Depository Trust Company, its nominees, and their respective successors.

“**Determination Date**” has the meaning set forth in Section 5.08.

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

“**Ex-Date**” means, in connection with any dividend, issuance or distribution, the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such dividend, issuance or distribution.

“**Exercise Date**” has the meaning set forth in Section 3.02(b).

“**Exercise Notice**” means, for any Warrant, the exercise notice set forth on the reverse of the Warrant Certificate, substantially in the form set forth in Exhibit D hereto.

“**Exercise Price**” means initially \$126.92 per Warrant, subject to adjustment pursuant to Article 5.

“**Expiration Date**” means, for any Warrant, December 31, 2015, regardless of whether such date is a Trading Day.

“**Full Physical Settlement**” means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Full Physical Share Amount in exchange for payment by the Warrantholder of the Exercise Price.

“**Full Physical Share Amount**” has the meaning set forth in Section 3.03(b).

“**Global Warrant**” means a Warrant in the form of a permanent global Warrant Certificate, in definitive, fully registered form.

“**Global Warrant Legend**” means the legend set forth in Section 2.06(b).

“**Initial Warrantholder**” means UAW Retiree Medical Benefits Trust, a voluntary employees’ beneficiary association or any “affiliate” thereof (as defined under Rule 144 under the Securities Act).

“**Net Share Amount**” has the meaning set forth in Section 3.03(c).

“**Net Share Settlement**” means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Net Share Amount without any payment therefor.

“**Net Share Settlement Price**” means, as of any date, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days prior to the date of determination of the Net Share Settlement Price for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, on Bloomberg page “[ J.[N] <Equity> AQR.”, or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution reasonably acceptable to the Warrant Agent. If the Common Stock is not traded on the New York Stock Exchange or any U.S. national or regional Securities exchange or quotation system, the Net Share Settlement Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such prices shall be reasonably determined in good faith by the Company’s Board of Directors.

If during a period applicable for calculating Net Share Settlement Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 5 hereof, the Net Share Settlement Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

“**New Warrant Exercise Price**” shall be equal to the product of (i) the Exercise Price then in effect and (ii) one minus the Black Scholes Proportion.

“**New Warrants**” has the meaning set forth in Section 5.09(e).

“**Number of Warrants**” means, for a Warrant Certificate, the “Number of “Warrants” specified on the face of such Warrant Certificate (or, in the case of a Global Warrant, on Schedule A to such Warrant Certificate), subject to adjustment pursuant to Article 5.

“**Officer’s Certificate**” means a certificate signed by any two officers of the Company, at least one of whom must be its Chief Executive Officer, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, or its Controller.

“**Other Property**” means any cash, property or other securities other than Registered and Listed Shares.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Parent Exercise Price**” means, with respect to each Parent Warrant Agreement, the ‘Exercise Price’ as such term is defined in such Parent Warrant Agreement.

“**Parent Warrant Agreement**” means each warrant agreement dated as of [ ], 2009 between [NGMCO, Inc.] and [ ] as Warrant Agent pursuant to which General Motors Corporation was the ‘Initial Warrantholder’ as defined therein.

“**Parent Warrants**” means the warrants issued pursuant to the Parent Warrant Agreements.

“**Person**” means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any Cash, securities or other property or in which Common Stock (or other applicable security) is exchanged for or converted into any combination of Cash, securities or other property, the date fixed for determination of holders of Common Stock entitled to receive such Cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

“**Redemption**” has the meaning set forth in Section 5.09(e).

“**Redemption Notice**” has the meaning set forth in Section 5.09(e).

“**Reference Property**” has the meaning set forth in Section 5.09(a).

“**Registered and Listed Shares**” shall mean shares of the common stock of the surviving entity in a consolidation, merger, or combination or the acquiring entity in a tender offer, except that if the surviving entity or acquiring entity has a parent corporation, it shall be the shares of the common stock of the parent corporation, provided, that, in each case, such shares (i) have been registered (or will be registered within 30 calendar days following the Change of Control Date) under Section 12 of the Exchange Act with the Securities and Exchange Commission, and (ii) are listed for trading on the New York Stock Exchange or any other national securities exchange (or will be so listed or admitted within 30 calendar days following the Change of Control Date).

“**Reorganization Event**” has the meaning set forth in Section 5.09(a).

“**SEC**” means the United States Securities and Exchange Commission.

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

“**Settlement Date**” means, in respect of a Warrant that is exercised hereunder, the third Trading Day immediately following the Exercise Date for such Warrant.

“**Shareholders Agreement**” means the Stockholders Agreement, dated as of [            ], by and among [            ], as may be amended, modified or supplemented in accordance with its terms.

“**Trading Day**” means (i) if the applicable security is listed on the New York Stock Exchange, a day on which trades may be made thereon or (ii) if the applicable security is listed or admitted for trading on the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or other national securities exchange or market, a day on which the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or such other national securities exchange or market is open for business or (iii) if the applicable security is not so listed, admitted for trading or quoted, any Business Day.

“**Trigger Event**” has the meaning set forth in Section 5.03.

“**UAW Retiree Settlement Agreement**” has the meaning set forth in the Recitals.

“**Unit of Reference Property**” has the meaning set forth in Section 5.09(a).

“**Unit Value**” has the meaning set forth in Section 5.09(c).

“**Vice President**” means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president” of the Company.

“**Voting Stock**” means Capital Stock having the right to vote for the election of directors under ordinary circumstances.

“**Warrant**” means a warrant of the Company exercisable for one share of Common Stock as provided herein, and issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth in this Warrant Agreement.

“**Warrant Agent**” means [—], in its capacity as warrant agent hereunder.

“**Warrant Certificate**” means any certificate representing Warrants satisfying the requirements set forth in Section 2.03.

“**Warrant Register**” has the meaning set forth in Section 2.05.

“**Warrantholder**” means each Person in whose name Warrants are registered in the Warrant Register.

## ARTICLE 2

### ISSUANCE, EXECUTION AND TRANSFER OF WARRANTS

Section 2.01. *Issuance of Warrants.* (a) The Company shall execute and deliver to the Warrant Agent, for authentication and delivery to the Initial Warrantholder on the Closing Date, a single Certificated Warrant in the name of the Initial Warrantholder, together with an Authentication Order with respect thereto, evidencing an initial aggregate Number of Warrants equal to 15,151,515 (such Number of Warrants subject to adjustment from time to time as described herein). The Warrant Agent shall, upon receipt of such Certificated Warrant and Authentication Order, authenticate and deliver such Certificated Warrant to the Initial Warrantholder in accordance with Section 2.02 and register the Initial Warrantholder as the Warrantholder of such Warrants in accordance with Section 2.05. All such Warrants shall be dated as of the Closing Date.

(b) Except as set forth in Section 2.05 and Section 6.02, the Warrants issued to the Initial Warrantholder on the Closing Date shall be the only Warrants issued or outstanding under this Warrant Agreement.

(c) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof.

Section 2.02. *Execution and Authentication of Warrants.* (a) Warrants shall be executed on behalf of the Company by any Executive Vice President, any Senior Vice President, and any Vice President of the Company and attested by its Secretary or any one of its Assistant Secretaries. The signature of any of these officers on Warrants may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Warrant that has been duly authenticated and delivered by the Warrant Agent.

(b) Warrants bearing the manual or facsimile signatures of individuals, each of whom was, at the time he or she signed such Warrant or his or her facsimile signature was affixed to such Warrant, as the case may be, a proper officer of the Company, shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Warrants or did not hold such offices at the date of such Warrants.

(c) No Warrant shall be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on such Warrant a certificate of authentication substantially in the form provided for herein executed by the Warrant Agent by manual or facsimile signature, and such certificate upon any Warrant shall be conclusive evidence, and the only evidence, that such Warrant has been duly authenticated and delivered hereunder.

Section 2.03. *Form of Warrant Certificates.* Each Warrant Certificate shall be in substantially the form set forth in Exhibit D hereto and shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

Section 2.04. *Transfer Restrictions and Legends.* This Section 2.04 shall not apply to Warrants and Common Stock which have been issued, distributed or sold pursuant to an effective registration statement.

(a) Each Warrant issued hereunder shall bear the legend set forth in Exhibit A hereto.

(i) Warrants may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by a Warrantholder except (A) in compliance with applicable transfer restrictions set forth in the Shareholders Agreement and (B)(I) pursuant to a registration statement that has become effective under the Securities Act or (II) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any Warrants as to which such restrictions on transfer shall have expired in accordance with their terms such that they can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the Warrant Certificates representing such Warrants for exchange pursuant to Section 2.05 in accordance with the procedures of the Warrant Agent (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the Warrant Agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new Warrant Certificate for a like Number of Warrants, which shall not bear such legend.

(b) All shares of Common Stock issued to a Warrantholder upon exercise of a Warrant shall bear the legend set forth in Exhibit B hereto.

(i) Shares of Common Stock issued to a Warrantholder upon exercise of a Warrant may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by such Warrantholder except (A) in compliance with applicable transfer restrictions set forth in the Shareholders Agreement and (B)(I) pursuant to a registration statement that has become effective under the Securities Act or (II) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any such shares of Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms such that the shares of Common Stock can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the transfer agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear such legend.

(c) Any Warrant that is purchased or owned by the Company or any “affiliate” thereof (as defined under Rule 144 under the Securities Act) may not be resold by the Company or such affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Warrants no longer being “restricted securities” (as defined in Rule 144 under the Securities Act).

Section 2.05. *Transfer, Exchange and Substitution.* (a) Warrants shall be issued in registered form only. The Company shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the “**Warrant Register**”) in which, subject to such reasonable regulations as the Company may prescribe, the Company shall provide for the registration of Warrants and transfers, exchanges or substitutions of Warrants as herein provided. All Warrants issued upon any registration of transfer or exchange of or substitution for Warrants shall be valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as Warrants surrendered for such registration of transfer, exchange or substitution.

(b) A Warrantholder may transfer a Warrant only upon surrender of such Warrant for registration of transfer. Warrants may be presented for registration of transfer and exchange at the offices of the Warrant Agent with a written instruction of transfer in form satisfactory to the Warrant Agent, duly executed by such Warrantholder or by such Warrantholder’s attorney, duly authorized in writing. Such Warrantholder will also provide a written certificate (substantially in the form of Exhibit E hereto) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Warrants. The Warrant Agent shall be entitled to conclusively rely upon any such certification in connection with the transfer of a Warrant hereunder and shall have no responsibility to monitor or verify whether any such transfer complies with the requirements hereunder or otherwise complies with the Securities Act. No such transfer shall be effected until, and the transferee shall succeed to the rights of a Warrantholder only upon, final acceptance and registration of the transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any transfer of a Warrant by a Warrantholder as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name Warrants are registered as the owner thereof for all purposes and as the Person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding.

(c) Every Warrant presented or surrendered for registration of transfer or for exchange or substitution shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a duly executed instrument of transfer in form satisfactory to the Company and the Warrant Agent, by the holder thereof or such Warrantholder's attorney duly authorized in writing.

(d) When Warrants are presented to the Warrant Agent with a request to register the transfer of, or to exchange or substitute, such Warrants, the Warrant Agent shall register the transfer or make the exchange or substitution as requested if its requirements for such transactions and any applicable requirements hereunder are satisfied. To permit registrations of transfers, exchanges and substitutions, the Company shall execute Warrant Certificates at the Warrant Agent's request and the Warrant Agent shall countersign and deliver such Warrant Certificates. No service charge shall be made for any registration of transfer or exchange of or substitution for Warrants, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of Warrants.

(e) A Certified Warrant may be exchanged at the option of the holder or holders thereof, when presented or surrendered in accordance with this Warrant Agreement, for another Warrant Certificate or other Warrant Certificates of like tenor and representing in the aggregate a like Number of Warrants. If less than all Warrants represented by a Certificated Warrant are transferred, exchanged or substituted in accordance with this Warrant Agreement, the Warrant Certificate shall be surrendered to the Warrant Agent and a new Warrant Certificate for a Number of Warrants equal to the Warrants represented by such Warrant Certificate that were not transferred, exchanged or substituted, registered in such name or names as may be directed in writing by the surrendering Warrantholder, shall be executed by the Company and delivered to the Warrant Agent and the Warrant Agent shall countersign such new Warrant Certificate and shall deliver such new Warrant Certificate to the Person or Persons entitled to receive the same.

Section 2.06. *Global Warrants.* (a) The Warrants shall initially be issued in the form of Certificated Warrants. However, if the Warrants are sold pursuant to an effective registration statement filed with the SEC, or if the Company so elects at any time, any Certificated Warrants may be presented to the Warrant Agent by Warrantholders in exchange for one or more Global Warrants up to the aggregate Number of Warrants then outstanding, to be registered in the name of the Depository, or its nominee, and delivered by the Warrant Agent to the Depository, or its custodian, for crediting to the accounts of its participants pursuant to the procedures of the Depository. Upon such presentation, the Company shall execute a Global Warrant representing such aggregate Number of Warrants and deliver the same to the Warrant Agent for authentication and delivery in accordance with Section 2.02.

(b) Any Global Warrant shall bear the legend substantially in the form set forth in Exhibit C hereto (the "**Global Warrant Legend**").

(c) So long as a Global Warrant is registered in the name of the Depositary or its nominee, members of, or participants in, the Depositary (“**Agent Members**”) shall have no rights under this Warrant Agreement with respect to the Global Warrant held on their behalf by the Depositary or the Warrant Agent as its custodian, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such owner’s beneficial interest in such Global Warrant will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility with respect to such records maintained by the Depositary or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Warrantholder.

(d) Any holder of a Global Warrant registered in the name of the Depositary or its nominee shall, by acceptance of such Global Warrant, agree that transfers of beneficial interests in such Global Warrant may be effected only through a book-entry system maintained by the holder of such Global Warrant (or its agent), and that ownership of a beneficial interest in Warrants represented thereby shall be required to be reflected in book-entry form.

(e) Transfers of a Global Warrant registered in the name of the Depositary or its nominee shall be limited to transfers in whole, and not in part, to the Company, the Depositary, their successors, and their respective nominees. Interests of beneficial owners in a Global Warrant registered in the name of the Depositary or its nominee shall be transferred in accordance with the rules and procedures of the Depositary.

(f) A Global Warrant registered in the name of the Depositary or its nominee shall be exchanged for Certificated Warrants only if the Depositary (A) has notified the Company that it is unwilling or unable to continue as or ceases to be a clearing agency registered under Section 17A of the Exchange Act and (B) a successor to the Depositary registered as a clearing agency under Section 17A of the Exchange Act is not able to be appointed by the Company within 90 days or the Depositary is at any time unwilling or unable to continue as Depositary and a successor to the Depositary is not able to be appointed by the Company within 90 days. In any such event, a Global Warrant registered in the name of the Depositary or its nominee shall be surrendered to the Warrant Agent for cancellation, and the Company shall execute, and the Warrant Agent shall countersign and deliver, to each beneficial owner identified by the Depositary, in exchange for such beneficial owner’s beneficial interest in such Global Warrant, Certificated Warrants representing, in the aggregate, the Number of Warrants theretofore represented by such Global Warrant with respect to such beneficial owner’s respective beneficial interest. Any Certificated Warrant delivered in exchange for an interest in a Global Warrant pursuant to this Section 2.06(f) shall not bear the Global Warrant Legend. Interests in the Global Warrant may not be exchanged for Certificated Warrants other than as provided in this Section 2.06(f).

(g) The holder of a Global Warrant registered in the name of the Depository or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Warrantholder is entitled to take under this Warrant Agreement or the Warrant.

Section 2.07. *Surrender of Warrant Certificates.* Any Warrant Certificate surrendered for registration of transfer, exchange, substitution or exercise of Warrants represented thereby shall, if surrendered to the Company, be delivered to the Warrant Agent, and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company and, except as provided in this Article 2 in case of an exchange, transfer or substitution, or Article 3 in case of the exercise of less than all Warrants represented thereby, or Section 6.02 in case of mutilation, no Warrant Certificate shall be issued hereunder in lieu thereof. The Warrant Agent shall deliver to the Company from time to time or otherwise dispose of such cancelled Warrant Certificates as the Company may direct.

### ARTICLE 3

#### EXERCISE AND SETTLEMENT OF WARRANTS

Section 3.01. *Exercise of Warrants.* At any time prior to 5:00 p.m., New York City time, on the Expiration Date, a Warrantholder shall be entitled to exercise, in accordance with this Article 3, the full Number of Warrants represented by any Warrant Certificate then registered in such Warrantholder's name (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants). Any Warrants not exercised prior to such time shall expire unexercised.

Section 3.02. *Procedure for Exercise.* (a) To exercise a Warrant (i) in the case of a Certificated Warrant, the Warrantholder must surrender the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes as set forth in Section 7.01(b), or (ii) in the case of a Global Warrant, the Warrantholder must comply with the procedures established by the Depository for the exercise of Warrants.

(b) The date on which a Warrantholder complies with the requirements for exercise set forth in this Section 3.02 in respect of a Warrant is the "**Exercise Date**" for such Warrant. However, if such date is not a Trading Day or the Warrantholder satisfies such requirements after the Close of Business on a Trading Day, then the Exercise Date shall be the immediately succeeding Trading Day, unless that Trading Day falls after the Expiration Date, in which case the Exercise Date shall be the immediately preceding Trading Day.

Section 3.03. *Settlement of Warrants.* (a) Full Physical Settlement shall apply to each Warrant unless the Warrantholder elects for Net Share Settlement to apply upon exercise of such Warrant. Such election shall be made (i) in the case of a Certificated Warrant, in the Exercise Notice for such Warrant, or (ii) in the case of a Global Warrant, in accordance with the procedures established by the Depositary for the exercise of Warrants.

(b) If Full Physical Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, prior to 11:00 a.m., New York City time, on the Settlement Date for such Warrant, the Warrantholder shall pay the Exercise Price (determined as of such Exercise Date) by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Warrantholder in accordance with Section 7.15, and on the Settlement Date, following receipt by the Warrant Agent of such Exercise Price, the Company shall cause to be delivered to the Warrantholder one share of Common Stock (the “**Full Physical Share Amount**”), together with Cash in respect of any fractional Warrant as provided in Section 3.05. All funds received by the Warrant Agent upon exercise of such Warrant shall be deposited by the Warrant Agent for the account of the Company at *[specify bank]*, unless the Company has previously instructed otherwise in writing.

(c) If Net Share Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, on the Settlement Date for such Warrant, the Company shall cause to be delivered to the Warrantholder a number of shares of Common Stock (which in no event will be less than zero) (the “**Net Share Amount**”) equal to (i) the Net Share Settlement Price as of the relevant Exercise Date, *minus* the Exercise Price (determined as of such Exercise Date), *divided by* (ii) such Net Share Settlement Price, together with Cash in respect of any fractional shares or fractional Warrants as provided in Section 3.05.

Section 3.04. *Delivery of Common Stock.* (a) In connection with the delivery of shares of Common Stock to an exercising Warrantholder pursuant to Section 3.03(b) or Section 3.03(c), as the case may be, the Warrant Agent shall:

(i) (A) if such shares of Common Stock are in book-entry form at the Depositary, deliver Common Stock by electronic transfer (with the assistance of the Company and the transfer agent of Common Stock, if necessary) to such Warrantholder’s account, or any other account as such Warrantholder may designate, at the Depositary or at an Agent Member, or (B) if such shares of Common Stock are not in book-entry form at the Depositary, requisition from the transfer agent of the Common Stock and deliver to or upon the order of such Warrantholder a certificate or certificates, in each case with legends thereon as appropriate (as determined by the Company) and for the number of full shares of Common Stock to which such Warrantholder is entitled, registered in such name or names as may be directed by such Warrantholder;

(ii) deliver Cash to such Warrantholder in respect of any fractional shares or fractional Warrants, as provided in Section 3.05; and

(iii) if the Number of Warrants represented by a Warrant Certificate shall not have been exercised in full, deliver a new Warrant Certificate, countersigned by the Warrant Agent, for the balance of the number of Warrants represented by the surrendered Warrant Certificate.

(b) Each Person in whose name any shares of Common Stock are issued shall for all purposes be deemed to have become the holder of record of such shares as of the Exercise Date or, in the case of a Warrant subject to Full Physical Settlement only, the date of payment by the Warrantholder of the Exercise Price in accordance with Section 3.03(b), if later. However, if any such date is a date when the stock transfer books of the Company are closed, such Person shall be deemed to have become the holder of such shares at the Close of Business on the next succeeding date on which the stock transfer books are open.

(c) Promptly after the Warrant Agent shall have taken the action required above (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to any Warrants exercised (including, without limitation, with respect to any Exercise Price paid to the Warrant Agent). The Company shall reimburse the Warrant Agent for any amounts paid by the Warrant Agent in respect of a fractional share or fractional Warrant upon such exercise in accordance with Section 3.05 hereof.

Section 3.05. *No Fractional Shares to Be Issued.* (a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a share of Common Stock upon exercise of any Warrants.

(b) If any fraction of a Warrant shall be exercised hereunder, the Company shall pay the relevant Warrantholder Cash in lieu of the corresponding fraction of a share of Common Stock valued at the Net Share Settlement Price as of the Exercise Date. However, if more than one Warrant shall be exercised hereunder at one time by the same Warrantholder, the number of full shares which shall be issuable upon exercise thereof shall be computed on the basis of all Warrants (including any fractional Warrants) so exercised. If any fraction of a share of Common Stock would, except for the provisions of this Section 3.05, be issuable on the exercise of any Warrant or Warrants (including any fractional Warrants), the Company shall pay the Warrantholder Cash in lieu of such fractional shares valued at the Net Share Settlement Price as of the Exercise Date.

(c) Each Warrantholder, by its acceptance of a Warrant Certificate, expressly waives its right to receive any fraction of a share of Common Stock or a stock certificate representing a fraction of a share of Common Stock.

Section 3.06. *Acquisition of Warrants by Company.* The Company shall have the right, except as limited by law, to purchase or otherwise to acquire Warrants at such times, in such manner and for such consideration as it may deem appropriate and shall have agreed with the holder of such Warrants.

Section 3.07. *Direction of Warrant Agent.* (a) The Company shall be responsible for performing all calculations required in connection with the exercise and settlement of the Warrants and the payment or delivery, as the case may be, of Cash and/or Common Stock as described in this Article 3. In connection therewith, the Company shall provide prompt written notice to the Warrant Agent of the amount of Cash and the number of shares of Common Stock payable or deliverable, as the case may be, upon exercise and settlement of the Warrants, including, without limitation, the Net Share Amount and the Full Physical Share Amount.

(b) Any Cash to be paid, or Common Stock to be delivered, to the Warrantholders hereunder shall be delivered to the Warrant Agent no later than the Business Day immediately preceding the date such consideration is required to be delivered to the Warrantholders.

(c) The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations or items to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or Units of Reference Property that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or Units of Reference Property, or to comply with any of the covenants of the Company contained in this Article 3.

#### ARTICLE 4

[RESERVED]

#### ARTICLE 5

#### ADJUSTMENTS

Section 5.01. *Adjustments to Exercise Price.* The Exercise Price for the Warrants shall be subject to adjustment (without duplication) upon the occurrence of any of the following events:

(a) The issuance of Common Stock as a dividend or distribution to all holders of Common Stock, or a subdivision or combination of Common Stock, in which event the Exercise Price shall be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0}{OS_1}$$

where:

$EP_0$  = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be;

- EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be; and
- OS<sub>1</sub> = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, subdivision or combination.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be. If any dividend or distribution or subdivision or combination of the type described in this Section 5.01(a) is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to the Exercise Price that would then be in effect if such dividend or distribution or subdivision or combination had not been declared or announced, as the case may be.

(b) The issuance to all holders of Common Stock of rights or warrants entitling them for a period expiring 60 days or less from the date of issuance of such rights or warrants to purchase shares of Common Stock (or securities convertible into Common Stock) at less than (or having a conversion price per share less than) the Current Market Price of Common Stock, in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0 + Y}{OS_0 + X}$$

where:

- EP<sub>0</sub> = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such issuance;
- EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such issuance;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such issuance;
- X = the total number of shares of Common Stock issuable pursuant to such rights, warrants or convertible securities; and

Y = the aggregate price payable to exercise such rights, warrants or convertible securities *divided by* the Current Market Price.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such issuance. In the event that the issuance of such rights, warrants or convertible securities is announced but such rights, warrants or convertible securities are not so issued, the Exercise Price shall again be adjusted to be the Exercise Price that would then be in effect if the Record Date for such issuance had not occurred. To the extent that such rights or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights, warrants or convertible securities, upon the expiration, termination or maturity of such rights, warrants or convertible securities, the Exercise Price shall be readjusted to the Exercise Price that would then be in effect had the adjustments made upon the issuance of such rights, warrants or convertible securities been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate price payable for such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, as well as any consideration received in connection with the conversion of any convertible securities issued upon exercise of such rights or warrants, and the value of such consideration, if other than Cash, shall be determined in good faith by the Board of Directors.

(c) The dividend or distribution to all holders of Common Stock of (i) shares of the Company's Capital Stock (other than Common Stock), (ii) evidences of the Company's indebtedness, (iii) rights or warrants to purchase the Company's securities or the Company's assets or (iv) property or Cash (excluding any ordinary cash dividends declared by the Board of Directors and excluding any dividend, distribution or issuance covered by clauses (a) or (b) above), in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{SP_0 - FMV}{SP_0}$$

where:

EP<sub>0</sub> = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

SP<sub>0</sub> = the Current Market Price; and

FMV = the fair market value (as determined in good faith by the Board of Directors), on the Record Date for such dividend or distribution, of the shares of Capital Stock, evidences of indebtedness or property, rights or warrants so distributed or the amount of Cash (other than in the case of ordinary cash dividends declared by the Board of Directors) expressed as an amount per share of outstanding Common Stock.

In the event of a reduction of the Parent Exercise Price under either of the Parent Warrant Agreements (other than pursuant to Article 5 of a Parent Warrant Agreement), such reduction shall be treated, for purposes of this Warrant Agreement, as a distribution of property where the FMV of such property for purposes of this adjustment shall be equal to the absolute value of the difference between (i) the Black Scholes Warrant Value of such outstanding Parent Warrants with a Parent Exercise Price equal to the Parent Exercise Price as adjusted to such date pursuant to Article 5 of the applicable Parent Warrant Agreement and (ii) the Black Scholes Warrant Value of such outstanding Parent Warrants immediately following such reduction in Parent Exercise Price, expressed as an amount per share of outstanding Common Stock.

Such decrease shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

However, if the transaction that gives rise to an adjustment pursuant to this clause (c) is one pursuant to which the payment of a dividend or other distribution on Common Stock consists of shares of capital stock of, or similar equity interests in, a subsidiary of the Company or other business unit of the Company (i.e., a spin-off) that are, or, when issued, will be, traded or quoted on the New York Stock Exchange or any other national or regional securities exchange or market, then the Exercise Price will instead be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{MP_0}{MP_0 + FMV_0}$$

where:

$EP_0$  = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

$EP_1$  = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

$FMV_0$  = the average of the Closing Sale Prices of the Capital Stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution; and

$MP_0$  = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution.

Such decrease shall become effective immediately after the Ex-Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

(d) For the purposes of Section 5.01(a), (b) and (c), any dividend or distribution to which Section 5.01(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be a dividend or distribution of the indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Exercise Price adjustment required by Section 5.01(c) with respect to such dividend or distribution shall be made in respect of such dividend or distribution (without regard to the parenthetical in Section 5.01(c) that begins with the word “excluding”)) immediately followed by a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Exercise Price adjustment required by Section 5.01 with respect to such dividend or distribution shall then be made), except, for purposes of such adjustment, any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Close of Business on the Record Date.”

Section 5.02. *Adjustments to Number of Warrants.* Concurrently with any adjustment to the Exercise Price under Section 5.01, the Number of Warrants for each Warrant Certificate will be adjusted such that the Number of Warrants for each such Warrant Certificate in effect immediately following the effectiveness of such adjustment will be equal to the Number of Warrants for each such Warrant Certificate in effect immediately prior to such adjustment, *multiplied by a fraction*, (i) the numerator of which is the Exercise Price in effect immediately prior to such adjustment and (ii) the denominator of which is the Exercise Price in effect immediately following such adjustment.

Section 5.03. *Certain Distributions of Rights and Warrants; Shareholder Rights Plan.* (a) Rights or warrants distributed by the Company to all holders of Common Stock (including under any Shareholder Rights Plan in existence on the date hereof or hereafter put into effect) entitling the holders thereof to subscribe for or purchase shares of the Company’s Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a “**Trigger Event**”):

- (i) are deemed to be transferred with such shares of Common Stock;
- (ii) are not exercisable; and

(iii) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of Article 5 (and no adjustment to the Exercise Price or the Number of Warrants under this Article 5 will be made) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Price and the Number of Warrants for each Warrant Certificate shall be made under this Article 5 (subject in all respects to Section 5.03(d)).

(b) If any such right or warrant is subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (subject in all respects to Section 5.03(d)).

(c) In addition, except as set forth in Section 5.03(d), in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in Section 5.03(b)) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Price and the Number of Warrants for each Warrant Certificate under Article 5 was made (including any adjustment contemplated in Section 5.03(d)):

(i) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase; and

(ii) in the case of such rights or warrants that shall have expired or been terminated without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted as if such rights and warrants had not been issued.

(d) If a Company shareholders rights plan under which any rights are issued provides that each share of Common Stock issued upon exercise of Warrants at any time prior to the distribution of separate certificates representing such rights shall be entitled to receive such rights, prior to the separation of such rights from the Common Stock, the Exercise Price and the Number of Warrants for each Warrant Certificate shall not be adjusted pursuant to Section 5.01. If, however, prior to any exercise of a Warrant, such rights have separated from the Common Stock, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be adjusted at the time of separation as if the Company dividended or distributed to all holders of Common Stock, the Company's Capital Stock, evidences of the Company's indebtedness, certain rights or warrants to purchase the Company's securities or other of the Company's assets as described in Section 5.01(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 5.04. *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warranholder.

Section 5.05. *Other Adjustments if Net Share Settlement Applies.* To the extent Net Share Settlement applies to the exercise of any Warrant, the Board of Directors shall make appropriate adjustments to the amount of Cash or number of shares of Common Stock, as the case may be, due upon exercise of the Warrant, as may be necessary or appropriate to effectuate the intent of this Article 5 and to avoid unjust or inequitable results as determined in its good faith judgment, to account for any adjustment to the Exercise Price and the Number of Warrants for the relevant Warrant Certificate that becomes effective, or any event requiring an adjustment to the Exercise Price and the Number of Warrants for the relevant Warrant Certificate where the Record Date or effective date (in the case of a subdivision or combination of the Common Stock) of the event occurs, during the period beginning on, and including, the Exercise Date and ending on, and including, the related Settlement Date.

Section 5.06. *Discretionary Adjustments.* The Company may from time to time, to the extent permitted by law and subject to applicable rules of the New York Stock Exchange, decrease the Exercise Price and/or increase the Number of Warrants for each Warrant Certificate by any amount for any period of at least 20 days. In that case, the Company shall give the Warranholders at least 15 days' prior notice of such increase or decrease, and such notice shall state the decreased Exercise Price and/or increased Number of Warrants for each Warrant Certificate and the period during which the decrease and/or increase will be in effect. The Company may make such decreases in the Exercise Price and/or increases in the Number of Warrants for each Warrant Certificate, in addition to those set forth in this Article 5, as the Company's Board of Directors deems advisable, including to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

Section 5.07. *Restrictions on Adjustments.* (a) Except in accordance with Section 5.01, the Exercise Price and the Number of Warrants for any Warrant Certificate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

(b) Neither the Exercise Price nor the Number of Warrants for any Warrant Certificate will be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) for a change in the par value of the Common Stock.

(c) In no event will the Company adjust the Exercise Price or make a corresponding adjustment to the Number of Warrants for any Warrant Certificate to the extent that the adjustment would reduce the Exercise Price below the par value per share of Common Stock.

(d) No adjustment shall be made to the Exercise Price or the Number of Warrants for any Warrant Certificate for any of the transactions described in Section 5.01 if the Company makes provisions for Warrantholders to participate in any such transaction without exercising their Warrants on the same basis as holders of Common Stock and with notice that the Board of Directors determines in good faith to be fair and appropriate.

(e) No adjustment shall be made to the Exercise Price, nor will any corresponding adjustment be made to the Number of Warrants for any Warrant Certificate, unless the adjustment would result in a change of at least 1% of the Exercise Price; *provided* that any adjustments that are less than 1% of the Exercise Price shall be carried forward and such carried forward adjustments, regardless of whether the aggregate adjustment is less than 1% of the Exercise Price, shall be made (i) annually, on each anniversary of the Closing Date, (ii) immediately prior to the time of any exercise, and (iii) five Business Days prior to the Expiration Date, unless, in each case, such adjustment has already been made.

(f) If the Company takes a record of the holders of Common Stock for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Exercise Price or the Number of Warrants for any Warrant Certificate then in effect shall be required by reason of the taking of such record.

Section 5.08. *Deferral of Adjustments*. In any case in which Section 5.01 provides that an adjustment shall become effective immediately after (a) a Record Date for an event or (b) the effective date (in the case of a subdivision or combination of the Common Stock) (each a "**Determination Date**"), the Company may elect to defer, until the later of the date the adjustment to the Exercise Price and Number of Warrants for each Warrant Certificate can be definitively determined and the occurrence of the applicable Adjustment Event (as hereinafter defined), (i) issuing to the Warrantholder of any Warrant exercised after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities or assets issuable upon such exercise by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warrantholder any amount in Cash in lieu of any fractional share of Common Stock or fractional Warrant pursuant to Section 3.05. For the purposes of this Section 5.08, the term "**Adjustment Event**" shall mean in any case referred to in clause (a) or clause (b) hereof, the occurrence of such event.

Section 5.09. *Recapitalizations, Reclassifications and Other Changes.* (a) If any of the following events occur:

- (i) any recapitalization;
- (ii) any reclassification or change of the outstanding shares of Common Stock (other than changes resulting from a subdivision or combination to which Section 5.01(a) applies);
- (iii) any consolidation, merger or combination involving the Company;
- (iv) any sale or conveyance to a third party of all or substantially all of the Company's assets; or
- (v) any statutory share exchange,

(each such event a “**Reorganization Event**”), in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (the “**Reference Property**”), then, subject to Section 5.09(e), following the effective time of the transaction, the right to receive shares of Common Stock upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per share of Common Stock, a “**Unit of Reference Property**”). In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in a Reorganization Event, other than with respect to a Change of Control Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock in such Reorganization Event.

(b) At any time from, and including, the effective time of a Reorganization Event:

- (i) if Full Physical Settlement applies upon exercise of a Warrant, the Full Physical Share Amount per Warrant shall be equal to a single Unit of Reference Property;

(ii) if Net Share Settlement applies upon exercise of a Warrant, the Net Share Amount per Warrant shall be a number of Units of Reference Property calculated as set forth in Section 3.03(c), except that the Net Share Settlement Price used to determine such Net Share Amount on any Trading Day shall be the Unit Value for such Trading Day;

(iii) the Company shall pay Cash in lieu of delivering any fraction of a Unit of Reference Property or any fractional Warrant in accordance with Section 3.05 based on the Unit Value as of the Exercise Date; and

(iv) the Closing Sale Price and the Current Market Price shall be calculated with respect to a Unit of Reference Property.

(c) The value of a Unit of Reference Property (the “**Unit Value**”) shall be determined as follows:

(i) any shares of common stock of the successor or purchasing corporation or any other corporation that are traded on a national or regional stock exchange included in such Unit of Reference Property shall be valued as if such shares were “Common Stock” using procedures set forth in the definition of “Closing Sale Price” in Section 1.01;

(ii) any other property (other than Cash) included in such Unit of Reference Property shall be valued in good faith by the Board of Directors (in a manner not materially inconsistent with the manner the Board of Directors valued such property for purposes of the Reorganization Event, if applicable) or by a New York Stock Exchange member firm selected by the Board of Directors; and

(iii) any Cash included in such Unit of Reference Property shall be valued at the amount thereof.

(d) On or prior to the effective time of any Reorganization Event, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 5.09. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Warrantholders as the Board of Directors shall reasonably consider necessary by reason of the foregoing. Any such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 5. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 5.09, the Company shall promptly file with the Warrant Agent an Officers’ Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of amendment to be mailed to each Warrantholder, at its address appearing on the Warrant Register, within 20 Business Days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such amendment.

(e) Change of Control Event:

(i) No less than 15 Business Days prior to the scheduled closing of a Change of Control Event, the Company shall:

(A) calculate the Change of Control Estimated Payment Amount;

(B) deliver to the Warrant Agent a notice of redemption (a "Redemption Notice"), which shall be binding on the Company and on all Warrantholders, stating that all Warrants (other than Carryover Warrants, if any) that have not been exercised prior to the Cut-Off Time shall be redeemed on the Change of Control Payment Date at a price equal to the Change of Control Payment Amount (the "Redemption");

(C) cause a notice of the Redemption to be sent at least once to the Dow Jones News Service or similar business news service in the United States; and

(D) cause the Warrant Agent to send by first-class mail, postage prepaid to each Warrantholder, at the address appearing in the warrant register, a notice stating:

1) that the Redemption is being made pursuant to this Section 5.09(e) and that all Warrants (other than Carryover Warrants, if any) that have not been exercised prior to the Cut-Off Time will be redeemed on the Change of Control Payment Date for payment of the Change of Control Payment Amount;

2) a reasonably detailed explanation of the Change of Control Estimated Payment Amount, including (x) a statement of the amount of the Change of Control Estimated Payment Amount, together with a reasonably detailed explanation of the calculation of such amount, and (y) the formula for calculating the Black Scholes Warrant Value and the Change of Control Payment Amount;

3) the date of the Redemption (which shall be a Business Day no later than five (5) Business Days following the Change of Control Date (the "Change of Control Payment Date"));

4) the Net Share Amount for each Warrant as of a date not more than five (5) Business Days prior to the date of the Redemption Notice (assuming Net Share Settlement is applicable with respect to the exercise of such Warrant);

- 5) that no outstanding Warrant may be exercised after the Close of Business on the day prior to the Change of Control Date (the “Cut-Off Time”);
- 6) if applicable, that New Warrants will be issued to the Warrantholders on the Change of Control Payment Date in accordance with the terms of this Warrant Agreement and the Warrants (as the same may have been amended in connection with such Change of Control Event pursuant to Section 5.09);
- 7) any other reasonable procedures that a Warrantholder must follow (to the extent consistent with the terms and conditions set forth herein) in connection with such Redemption; and
- 8) the name and address of the Warrant Agent.

(ii) Within two (2) Business Days prior to the Change of Control Payment Date, the Company or the surviving Person (if other than the Company) shall (A) deliver to the Warrant Agent the calculation of the Change of Control Payment Amount and (B) deposit with the Warrant Agent money sufficient to pay the Change of Control Payment Amount for all outstanding Warrants (other than the Carryover Warrants, if any).

(iii) On the Change of Control Payment Date, (A) the Company or the surviving Person (if other than the Company) shall redeem all outstanding Warrants (other than Carryover Warrants, if any) pursuant to the Redemption, (B) the Warrant Agent shall mail to each holder of Warrants so redeemed payment in Cash in an amount equal to the aggregate Change of Control Payment Amount in respect of such redeemed Warrants, and (C) the Company or the surviving Person (if other than the Company) shall execute and issue to the Warrantholders, and the Warrant Agent shall authenticate, new Warrants (the “New Warrants”) representing the Carryover Warrants (if any); provided that each such New Warrant shall be issued in denominations of one Warrant and integral multiples thereof and the terms thereof shall, subject to Section 5.09(e)(v), be substantially consistent with the terms of this Warrant Agreement and the Warrants (and all references herein to Warrants shall thereafter be deemed to be references to such New Warrants).

(iv) No Warrant (which for the avoidance of doubt does not include New Warrants) may be exercised after the Cut-Off Time.

(v) Following the Change of Control Payment Date, any holder of New Warrants shall have the right to exercise such New Warrant and to receive, upon such exercise, the Reference Property in accordance with Section 5.09(a), subject to Section 5.09(b) and Section 5.09(c) and the remaining terms of this Warrant Agreement and the Warrants (as the same may have been amended in connection with such Change of Control Event pursuant to Section 5.09); provided, that, for purposes of this Section 5.09(e)(v), (A) each Unit of Reference Property shall initially only consist of the Registered and Listed Shares included in such Unit of Reference Property and (B) the initial exercise price for each New Warrant shall be equal to the New Warrant Exercise Price.

(vi) The provisions of this Section 5.09(e) are subject, in all cases, to any applicable requirements under the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder. Where there is any inconsistency between the requirements of the Securities Act or the Exchange Act or the rules and regulations promulgated thereunder and the requirements of this Section 5.09(e), the requirements of the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder, shall supersede.

(f) The Company hereby agrees not to become a party to any Reorganization Event or Change of Control Event unless its terms are consistent in all material respects with this Section 5.09.

(g) The above provisions of this Section 5.09 shall similarly apply to successive Reorganization Events and Change of Control Events.

(h) If this Section 5.09 applies to any event or occurrence, no other provision of this Article 5 with respect to anti-dilution adjustments (which for the avoidance of doubt, does not include the covenant set forth in Section 5.10) shall apply to such event or occurrence.

Section 5.10. *Consolidation, Merger and Sale of Assets.* (a) The Company may, without the consent of the Warrantholders, consolidate with, merge into or sell, lease or otherwise transfer in one transaction or a series of related transactions the consolidated assets of the Company and its subsidiaries substantially as an entirety to any corporation, limited liability company, partnership or trust organized under the laws of the United States or any of its political subdivisions so long as:

- (i) the successor assumes all the Company's obligations under this Warrant Agreement and the Warrants; and
- (ii) the Company provides written notice of such assumption to the Warrant Agent.

(b) In case of any such consolidation, merger, sale, lease or other transfer and upon any such assumption by the successor corporation, limited liability company, partnership or trust, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company. Such successor entity thereupon may cause to be signed, and may issue any or all of the Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been signed by the Company; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor entity thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

Section 5.11. *Common Stock Outstanding*. For the purposes of this Article 5, the number of shares of Common Stock at any time outstanding shall not include shares held, directly or indirectly, by the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 5.12. *Covenant to Reserve Shares for Issuance on Exercise*. (a) The Board of Directors has authorized and will reserve for issuance such number of shares of Common Stock as the Board of Directors believes will be issuable upon the exercise of all outstanding Warrants for shares of Common Stock (assuming, for purposes of this covenant, that Full Physical Settlement applies to all Warrants exercised hereunder). The Company covenants that all shares of Common Stock that shall be so issuable shall be duly and validly issued, fully paid and non-assessable.

(b) The Company agrees to authorize and direct its current and future transfer agents for the Common Stock to reserve for issuance the number of shares of Common Stock specified in this Section 5.12. The Company shall instruct the transfer agent to deliver to the Warrant Agent, upon written request from the Warrant Agent substantially in the form of Exhibit F (or as separately agreed between the Warrant Agent and the transfer agent), stock certificates (or beneficial interests therein) required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Warrant Agreement. The Company shall pay to the Warrant Agent, as agent for the Warrantholders, any Cash that may be payable as provided in this Article 5. Promptly after the date of expiration of Warrants, the Warrant Agent shall certify to the Company the aggregate Number of Warrants then outstanding, and thereafter no shares shall be required to be reserved in respect of such Warrants.

(c) The Company shall use its reasonable best efforts to apply and cause to have listed on a national securities exchange the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants as soon as reasonably practicable following the date on which the Common Stock is registered under Section 12(b) of the Exchange Act and listed on a national securities exchange (other than shares of Common Stock bearing the restrictive legend set forth on Exhibit B hereto).

Section 5.13. *Calculations Final*. The Company shall be responsible for making all calculations called for under this Warrant Agreement. These calculations include, but are not limited to, the Exercise Date, the Current Market Price, the Closing Sale Price, the Net Share Settlement Price, the Exercise Price, the Number of Warrants for each Warrant Certificate and the number of shares of Common Stock or Units of Reference Property, if any, to be issued upon exercise of any Warrants. The Company shall make the foregoing calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Warrantholders. The Company shall provide a schedule of the Company's calculations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification.

Section 5.14. *Notice of Adjustments.* Whenever the Exercise Price or the Number of Warrants for each Warrant Certificate is adjusted, the Company shall promptly mail to Warrantheolders a notice of the adjustment. The Company shall file with the Warrant Agent such notice and an Officer's Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct, and the Warrant Agent shall not be deemed to have any knowledge of any adjustments unless and until it has received such certificate. The Warrant Agent shall not be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Warrantheolder desiring inspection thereof.

Section 5.15. *Warrant Agent Not Responsible for Adjustments or Validity.* The Warrant Agent shall at no time be under any duty or responsibility to any Warrantheolder to determine whether any facts exist that may require an adjustment of the Exercise Price and the Number of Warrants for each Warrant Certificate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment pursuant to this Article 5, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 5, or to comply with any of the covenants of the Company contained in this Article 5.

Section 5.16. *Statements on Warrants.* The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Article 5, and Warrant Certificates issued after such adjustment may state the same information (other than the adjusted Exercise Price and the adjusted Number of Warrants for such Warrant Certificates) as are stated in the Warrant Certificates initially issued pursuant to this Warrant Agreement. However, the Company may at any time in its sole discretion (which shall be conclusive) make any change in the form of Warrant Certificate that it may deem appropriate and that does not materially adversely affect the interest of the Warrantheolders; and any Warrant Certificates thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

## ARTICLE 6

### OTHER PROVISIONS RELATING TO RIGHTS OF WARRANTHOLDERS

Section 6.01. *No Rights as Stockholders.* Warrantholders shall not be entitled, by virtue of holding Warrants, to vote, to consent, to receive dividends, to receive notice as stockholders with respect to any meeting of stockholders for the election of the Company's directors or any other matter, or to exercise any rights whatsoever as the Company's stockholders unless, until and only to the extent such holders become holders of record of shares of Common Stock issued upon settlement of the Warrants.

Section 6.02. *Mutilated or Missing Warrant Certificates.* If any Warrant at any time is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Warrant may be replaced at the cost of the applicant (including legal fees of the Company) at the office of the Warrant Agent. The applicant for a new Warrant shall, in the case of any mutilated or defaced Warrant, surrender such Warrant to the Warrant Agent and, in the case of any lost, destroyed or stolen Warrant, furnish evidence satisfactory to the Company of such loss, destruction or theft, and, in each case, furnish evidence satisfactory to the Company of the ownership and authenticity of the Warrant together with such indemnity as the Company may require. Any such new Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant Certificate shall be at any time enforceable by anyone. An applicant for such a substitute Warrant Certificate shall also comply with such other reasonable regulations and pay such other reasonable charges as the Company or the Warrant Agent may prescribe. All Warrant Certificates shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 6.03. *Modification, Waiver and Meetings.* (a) This Warrant Agreement may be modified or amended by the Company and the Warrant Agent, without the consent of the holder of any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement; provided that such modification or amendment does not adversely affect the interests of the Warrantholders in any respect.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants may also be made by the Company and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived, with the written consent of the Warrantholders of Warrants representing a majority of the aggregate Number of Warrants at the time outstanding.

(c) However, no such modification, amendment or waiver may, without the written consent or the affirmative vote of each Warrantholder affected:

- (i) change the Expiration Date;
- (ii) increase the Exercise Price or decrease the Number of Warrants (except as explicitly set forth in Article 5);

- (iii) impair the right to institute suit for the enforcement of any payment or delivery with respect to the exercise and settlement of any Warrant;
- (iv) impair or adversely affect the exercise rights of Warrantholders, including any change to the calculation or payment of the Full Physical Share Amount or the Net Share Amount, as applicable;
- (v) deprive any Warrantholder of any economic rights, privileges or benefits that arise under or are provided pursuant to this Warrant Agreement and/or the Warrants;
- (vi) reduce the percentage of Warrants outstanding necessary to modify or amend this Warrant Agreement or to waive any past default; or
- (vii) reduce the percentage in Warrants outstanding required for any other waiver under this Warrant Agreement.

## ARTICLE 7

### CONCERNING THE WARRANT AGENT AND OTHER MATTERS

Section 7.01. *Payment of Certain Taxes.* (a) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the initial issuance of the Warrants hereunder.

(b) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the issuance of Common Stock upon the exercise of Warrants hereunder and the issuance of stock certificates in respect thereof in the respective names of, or in such names as may be directed by, the exercising Warrantholders; *provided, however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such stock certificate, any Warrant Certificates or other securities in a name other than that of the registered holder of the Warrant Certificate surrendered upon exercise of the Warrant, and the Company shall not be required to issue or deliver such certificates or other securities unless and until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 7.02. *Change of Warrant Agent.* (a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving 60 days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 60 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by any holder of Warrants (who shall, with such notice, submit his Warrant Certificate for inspection by the Company), then the holder of any Warrants may apply to any court of competent jurisdiction for the appointment of a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon 30 days' written notice to the Warrant Agent; *provided, however*, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the laws of the United States of America or any state thereof or the District of Columbia, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by Federal or state authority and having a combined capital and surplus of not less than \$50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; *provided* that such reports are published at least annually pursuant to law or to the requirements of a Federal or state supervising or examining authority. After appointment, any successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent, the Warrantholders and each transfer agent for the shares of its Common Stock. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, shall be the successor Warrant Agent under this Warrant Agreement without any further act. In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Warrant Certificates so countersigned, and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

Section 7.03. *Compensation; Further Assurances.* The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent hereunder and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon demand for all reasonable expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel) except any such expense, disbursement or advance as may arise from its or any of their negligence or bad faith, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement.

Section 7.04. *Reliance on Counsel.* The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 7.05. *Proof of Actions Taken.* Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Warrant Agent; and such Officer's Certificate shall, in the absence of bad faith on the part of the Warrant Agent, be full warrant to the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement in reliance upon such certificate; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 7.06. *Correctness of Statements.* The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or in the Warrant Certificates (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 7.07. *Validity of Agreement.* The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of any Warrant Certificates (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any shares of Common Stock will, when issued, be validly issued and fully paid and nonassessable.

Section 7.08. *Use of Agents.* The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents and the Warrant Agent shall not be responsible for the misconduct or negligence of any agent or attorney, provided due care had been exercised in the appointment and continued employment thereof.

Section 7.09. *Liability of Warrant Agent.* The Warrant Agent shall incur no liability or responsibility to the Company or to any holder of Warrants for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's negligence or willful misconduct or bad faith.

Section 7.10. *Legal Proceedings.* The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or one or more Warrantholders shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity.

Section 7.11. *Other Transactions in Securities of the Company.* The Warrant Agent in its individual or any other capacity may become the owner of Warrants or other securities of the Company, or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Warrant Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

Section 7.12. *Actions as Agent.* The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. No provision of the Warrant Agreement shall require the Warrant Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own negligence or willful misconduct or bad faith.

Section 7.13. *Appointment and Acceptance of Agency.* The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth.

Section 7.14. *Successors and Assigns.* All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 7.15. *Notices.* Any notice or demand authorized by this Warrant Agreement to be given or made by the Warrant Agent or by any Warrantholder to or on the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

**[NGMCO, Inc.]**

[ ]

[ ]

Attention: Treasurer

Telephone: [ ]

Facsimile: [ ]

With a copy to:

[ ]

[ ]

[ ]

Attention: [ ]

Any notice or demand authorized by this Warrant Agreement to be given or made by any Warrantholder or by the Company to or on the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

[ ]

[ ]

Attention: Treasurer

Telephone: [ ]

Facsimile: [ ]

Any notice of demand authorized by this Warrant Agreement to be given or made to any Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid to the last address of such Warrantholder as it shall appear on the Warrant Register.

Section 7.16. *Applicable Law.* The validity, interpretation and performance of this Warrant Agreement and of the Warrant Certificates shall be governed by the law of the State of New York without giving effect to the principles of conflicts of laws thereof.

Section 7.17. *Benefit of this Warrant Agreement.* Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person or corporation other than the parties hereto and the Warrantholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Warrantholders.

Section 7.18. *Registered Warrantholders.* Prior to due presentment for registration of transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 7.19. *Inspection of this Warrant Agreement.* A copy of this Warrant Agreement shall be available at all reasonable times for inspection by any registered Warrantholder at the principal office of the Warrant Agent (or successor warrant agent). The Warrant Agent may require any such holder to submit his Warrant Certificate for inspection by it before allowing such holder to inspect a copy of this Warrant Agreement.

Section 7.20. *Headings.* The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 7.21. *Counterparts.* This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

**[NGMCO, Inc.]**

By: \_\_\_\_\_

Name:

Title:

[—], as Warrant Agent

By: \_\_\_\_\_

Name:

Title:

SIGNATURE PAGE TO VEBA WARRANT

**FORM OF RESTRICTIVE LEGEND FOR WARRANTS**

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

[THIS INSTRUMENT IS ISSUED PURSUANT TO AND SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SHAREHOLDERS AGREEMENT, DATED [—], 2009, BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.]

**FORM OF RESTRICTIVE LEGEND FOR COMMON STOCK**

[THESE SHARES OF COMMON STOCK HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

[THESE SHARES OF COMMON STOCK ARE ISSUED PURSUANT TO AND SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SHAREHOLDERS AGREEMENT, DATED [—], 2009, BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THESE COMMON SHARES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.]

**FORM OF GLOBAL WARRANT LEGEND**

UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO [NGMCO, Inc.] (THE “ISSUER”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

## FORM OF WARRANT CERTIFICATE

[FACE]

No. \_\_\_\_

CUSIP No. \_\_\_\_\_

[UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO [NGMCO, Inc.] (THE “ISSUER”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

[THIS INSTRUMENT IS ISSUED PURSUANT TO AND SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SHAREHOLDERS AGREEMENT, DATED [—], 2009, BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.]

[NGMCO, Inc.]

[Designation of Warrants]

NUMBER OF WARRANTS: Initially, [ ] Warrants, subject to adjustment as described in the Warrant Agreement dated as of [ ], 2009 between [NGMCO, Inc.] and [—], as Warrant Agent (the “**Warrant Agreement**”), each of which is exercisable for one share of Common Stock.

EXERCISE PRICE: Initially, \$[ ] per Warrant, subject to adjustment as described in the Warrant Agreement.

FORM OF PAYMENT OF EXERCISE PRICE: Cash, if Full Physical Settlement is applicable, or Net Share Settlement.

FORM OF SETTLEMENT: Upon exercise of any Warrants represented hereby, the Warrantholder shall be entitled to receive, at the Warrantholder’s election, either (a) upon payment to the Warrant Agent of the Exercise Price (determined as of the relevant Exercise Date), one share of Common Stock per Warrant exercised, together with Cash in lieu of any fractional Warrants, or (b) without any payment therefor, a number of shares of Common Stock equal to the Net Share Amount, together with Cash in lieu of any fractional shares or fractional Warrants, in each case, as described in the Warrant Agreement.

DATES OF EXERCISE: At any time, and from time to time, prior to 5:00 p.m., New York City time, on the Expiration Date, the Warrantholder shall be entitled to exercise all Warrants then represented hereby and outstanding (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants).

PROCEDURE FOR EXERCISE: Warrants may be exercised by (a) in the case of a Certificated Warrant, surrendering the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes, or (b) in the case of a Global Warrant, complying with the procedures established by the Depository for the exercise of Warrants.

EXPIRATION DATE: December 31, 2015.

This Warrant Certificate certifies that [ ], or its registered assigns, is the Warrantholder of the Number of Warrants (the “**Warrants**”) specified above[, as modified in Schedule A hereto,] (such number subject to adjustment from time to time as described in the Warrant Agreement).

In connection with the exercise of any Warrants, (a) the Company shall determine the Full Physical Share Amount or Net Share Amount, as applicable, for each Warrant, and (b) the Company shall, or shall cause the Warrant Agent to, deliver to the exercising Warrantholder, on the applicable Settlement Date, for each Warrant exercised, a number of Shares of Common Stock equal to the relevant Full Physical Share Amount or Net Share Amount, as applicable, together with Cash in lieu of any fractional shares or fractional Warrants as described in the Warrant Agreement.

Prior to the relevant Exercise Date as described more fully in the Warrant Agreement, Warrants will not entitle the Warrantholder to any of the rights of the holders of shares of Common Stock.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, [NGMCO, Inc.] has caused this instrument to be duly executed.

Dated: \_\_\_\_\_

[NGMCO, Inc.]

By: \_\_\_\_\_  
Name:  
Title:

Attest

By: \_\_\_\_\_  
Secretary

Countersigned as of the date above written:

[—], as Warrant Agent

By: \_\_\_\_\_  
Authorized Officer

[NGMCO, Inc.]

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to a Warrant Agreement, dated as of [ ], 2009 (the “**Warrant Agreement**”), between the Company and [—] (the “**Warrant Agent**”), and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions each Warrantholder consents by acceptance of this Warrant Certificate or a beneficial interest therein. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement. A copy of the Warrant Agreement is on file at the Warrant Agent’s Office.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of New York without regard to the conflicts of laws principles thereof.

Exercise Notice

[Warrant Agent]

[ ]  
[ ]

Attention: [—]

The undersigned (the “Registered Warrantholder”) hereby irrevocably exercises Warrants (the “Exercised Warrants”) and delivers to you herewith a Warrant Certificate or Warrant Certificates, registered in the Registered Warrantholder’s name, representing a Number of Warrants at least equal to the number of Exercised Warrants.

The Registered Warrantholder hereby either:

elects for Full Physical Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement and confirms that it will, prior to 11:00 a.m., New York City time, on the Settlement Date, pay an amount equal to the Exercise Price (determined as of the relevant Exercise Date), multiplied by the number of Exercised Warrants, by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Registered Warrantholder as required under Section 3.03(b) of the Warrant Agreement; or

elects for Net Share Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement.

The Registered Warrantholder hereby directs the Warrant Agent to:

(a) deliver the Full Physical Share Amount or Net Share Amount, as applicable, for each of the Exercised Warrants as follows:

\_\_\_\_\_ ; and

(b) if the number of Exercised Warrants is less than the Number of Warrants represented by the enclosed Warrant Certificates, to deliver a Warrant Certificate representing the unexercised Warrants to:

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Registered Warrantholder)

By: \_\_\_\_\_

Authorized Signature

Address:

Telephone:

**[To Be Attached if Warrant is a Global Warrant]**

**SCHEDULE A**

**SCHEDULE OF INCREASES OR DECREASES IN WARRANTS**

The initial Number of Warrants represented by this Global Warrant is \_\_\_\_\_. In accordance with the Warrant Agreement dated as of [\_\_\_\_\_] , 2009 among the Company and [—], as Warrant Agent, the following increases or decreases in the Number of Warrants represented by this certificate have been made:

<u>Date</u>	<u>Amount of increase in Number of Warrants evidenced by this Global Warrant</u>	<u>Amount of decrease in Number of Warrants evidenced by this Global Warrant</u>	<u>Number of Warrants evidenced by this Global Warrant following such decrease or increase</u>	<u>Signature of authorized signatory</u>
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FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

\_\_\_\_\_  
Name, Address and Zip Code of Assignee

and irrevocably appoints

\_\_\_\_\_  
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

*[Signature page follows]*

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Transferee

By: \_\_\_\_\_

Name:

Title:

(Sign exactly as your name appears on the other side of this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

FORM OF CERTIFICATE OF COMPLIANCE WITH TRANSFER RESTRICTIONS

In connection with the sale, assignment and transfer of Warrants by unto (Please insert social security or other Taxpayer Identification Number of assignee) prior to the expiration of the holding period applicable to sales thereof under Rule 144 under the Securities Act of 1933, as amended (the "Securities Act") (or any successor provision), the undersigned confirms that such Warrants are being transferred:

To [NGMCO, Inc.] (the "Issuer") or any subsidiaries thereof; or

Pursuant to a registration statement that has become effective under the Securities Act; or

Pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with the third box above, the Issuer and the Warrant Agent reserve the right to require the delivery of such legal opinion, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws.

Unless one of the boxes is checked, the Warrant Agent will refuse to register any of the Warrants evidenced by this certificate in the name of any person other than the registered holder thereof

Date: [ ]

[Insert name of transferee]

By: \_\_\_\_\_
Name:
Title:

FORM OF COMMON STOCK REQUISITION ORDER

[Date]

Via Facsimile [ ]

[NGMCO, Inc.]

[ ]

[ ]

Attention: Treasurer

Re: DWAC Issuance  
Control No. \_\_\_\_\_

Ladies and Gentlemen:

You are hereby authorized to issue and deliver the shares of Common Stock as indicated below via DWAC. The shares are being issued to cover the exercise of Warrants under the Warrant Agreement, dated as of [ ], 2009, between [NGMCO, Inc.] and [—], as Warrant Agent (the “Warrant Agreement”). Defined terms used but not defined herein have the meaning assigned to them in the Warrant Agreement.

Number of Shares: \_\_\_\_\_  
\_\_\_\_\_ Original Issue or  
\_\_\_\_\_ Transfer from Treasury Account

Broker Name: \_\_\_\_\_

Broker’s DTC Number: \_\_\_\_\_

Contact and Phone: \_\_\_\_\_

The Broker will initiate the DWAC transaction on (date).

Sincerely,

[—],  
as Warrant Agent

By: \_\_\_\_\_

Name:

Title:

cc: [Insert name] via facsimile [insert fax number]  
Broker

Name:

COMPENSATION STATEMENT

Commencing:

Salary: per month

I agree the salary cited will be my total salary during each monthly period in which General Motors LLC continues it in effect for all hours worked, including overtime. This Statement reaffirms that my employment is from month-to-month on a calendar month basis and I acknowledge General Motors LLC retains the right in its discretion to increase or decrease my monthly compensation. The parties agree Michigan law applies to this Compensation Statement even if I am employed outside the state.

I acknowledge that I am aware, or may become, privy to trade secrets or other confidential and/or proprietary information concerning GM Company and General Motors LLC; its subsidiaries and/or affiliates, the disclosure of which will cause irreparable harm to the Company. I agree that I will not discuss or disclose to any person or entity any trade secret or confidential and/or proprietary information and, upon termination of my employment with General Motors LLC, I shall return all documents or other materials containing such information to General Motors LLC.

For a period of two years following my voluntary termination of employment with General Motors LLC or any of its subsidiaries, I will not, without the prior written consent of the GM Chief Executive Officer, directly or indirectly, knowingly induce any of the employees of General Motors LLC to leave the employ of General Motors LLC for participation, directly or indirectly, with any existing or future business venture associated with me.

I agree that my job responsibilities with General Motors LLC and a significant portion of my compensation are consideration for the confidentiality and non-solicitation agreements noted above. I acknowledge that my breach of the confidentiality or non-solicitation provisions of this agreement will cause irreparable harm to General Motors Company and General Motors LLC because of the weakened ability of General Motors Company and General Motors LLC to fairly compete and the inherent difficulty in quantifying the damage caused to General Motors Company and General Motors LLC from such breach. Such irreparable harm can and should be remedied by an injunction against me without any bond being required because any other potential remedy will not be as prompt, certain and full as is necessary to prevent such harm.

By signing this compensation statement, I also acknowledge my responsibility to adhere to and believe I am in compliance with General Motors Company and General Motors LLC guidelines with respect to employee conduct as contained in – the Our Values and Guidelines for Employee Conduct” award of incentive stock (RSU) made to me after November 1, 2009 is subject to recoupment by the Company in any situation where the Board of Directors of GM Company or a committee thereof determines that fraud, negligence, or intentional misconduct on my part was a significant contributing factor to the Company having to restate all or a portion of its financial statement(s). The determination regarding employee conduct and repayment under this provision shall be within the sole discretion of the Executive Compensation Committee of the Board of Directors and shall be final and binding on both parties to this Compensation Statement.

I acknowledge that, there are no other oral or written understandings or agreements in effect regarding my salary, nature or duration of employment, or the other matters set forth in this Compensation Statement.

No modification or amendment of this Compensation Statement will be effective unless it is in writing and signed by both parties.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
General Motors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**Kathleen S. Barclay**  
Vice President,  
Global Human Resources

General Motors Corporation  
Mail Code: 482-C32-D82  
300 Renaissance Center  
P.O. Box 300  
Detroit, MI 48265-3000  
Tel 313.667.3492

September 4, 2009

Kenneth W. Cole  
8819 Chalon Drive  
Bethesda, MD 20817-3040

Dear Ken:

This letter summarizes the status of your compensation agreements between you and GM.

**Base Salary** – Your current base salary of \$715,000, which is currently reduced by 10% to \$643,500, will be unchanged at this time. It will be restored consistent with the restoration of salaries for other members of the Senior Leadership Group.

**Compensation** – Consistent with our discussions, you will no longer be guaranteed \$1.5 million annually for 2010 and future years. On May 28, 2009, you were paid \$785,000 reflecting the guarantee for 2009. For at least 2009 and 2010, your total compensation structure and payments will be subject to the approval of the Special Master at the U.S. Treasury.

**SERP Service Credits** – You were granted at the time you were hired five-year vesting for the Executive Retirement Plan (versus the plan language which requires 10-year vesting). You also received two Special SERP Service grants. The first grant gave you 8 years and 4 months of Special SERP credits and the second gave you an additional 4 years. Both grants became fully earned when you attained age 62, on March 14<sup>th</sup>, for a total of 12 years and 4 months of Special SERP Service Credits. Combined with the 5 years and 5 months of actual “frozen” service, a total of 17 years and 9 months is used in your frozen SERP benefit. The estimated Frozen SERP benefit would provide you the following 5-year annual annuity benefit, including the 10% reduction and basing the 5-year annuity on a 4.41% discount rate:

	<u>Annual Benefit</u> (5-year annuity)
October 1, 2009 Retirement	\$ 562,489.16
September 1, 2011 Retirement	\$ 535,111.06
April 1, 2012 Retirement	\$ 526,903.16

**Continued Employment** – With respect to the 2008 special payment and the 2009 annual payment, if you separate from General Motors on a voluntary basis prior to December 31, 2009 you must repay a prorated share of both of the pre-tax payments made. If you separate from General Motors on October 1, 2009, you would be required to repay 3-months of the \$750,000 2008 payment or \$187,500 and 3-months of the \$785,000 2009 payment or \$196,250. If you are separated by General Motors without cause you will retain both of the special payments.

**Non-Solicitation** – For a period of two years following your voluntary termination of employment with GM or any of its subsidiaries, you will not, without the prior written consent of the Chief Executive Officer, directly or indirectly, knowingly induce any of the employees of GM to leave the employ of GM for participation, directly or indirectly, with any existing or future business venture with which you are associated.

Confidentiality – You agree to keep the provisions of this summary confidential except when required to do so by a court of law or regulatory requirement. Breach of the confidentiality agreement will be considered conduct inimical to the best interests of GM and will void the provisions of this agreement.

Employment at Will – You will continue to be an employee-at-will. No provision of this agreement entitles you to continue in the employ of GM.

Please indicate your agreement with these matters by signing below and returning this letter to me.

Sincerely,

/s/ Kathleen S. Barclay

I agree to the matters discussed above.

/s/ Kenneth W. Cole

Accepted by:

Kenneth W. Cole

Vice President

Global Public Policy and

Government Relations

10/1/09

Date



Gregory E. Lau  
Executive Director  
Global Compensation and  
Corporate Governance

General Motors Company  
300 Renaissance Center  
Mail Code 482-C32-C66  
Detroit, MI 48265-3000

February 18, 2010

Mr. Frederick A. Henderson  
630 Vaughan Road  
Bloomfield Hills, MI 48304

Dear Fritz:

General Motors Holdings LLC herewith offers to engage your services as a consultant on a month-to-month basis, not to exceed an eleven-month period, beginning February 1, 2010 and ending no later than December 31, 2010. In your capacity as a consultant, your consulting services will be coordinated through the President, General Motors International Operations (GMIO). We believe that you are uniquely positioned to provide these consulting services and, in general, your duties will consist of providing strategic input and analysis regarding GMIO and GM's alliances, including strategic counsel on business matters and background and insight on the major alliances and the key players.

As we have discussed, it is estimated that this consulting arrangement will require approximately 20 hours consulting per month and one meeting per month with the President, GMIO, or his designated representative. It is understood that you will make your services available each month as noted, although it is recognized that the services and the time required therefore may vary with different monthly periods depending on nature of the project to which your services are required. Except as noted, it is understood that as a consultant you will determine your work schedule and the manner in which to provide the required services.

For your services, you will receive a monthly fee of \$59,090 payable monthly. In addition, you will be reimbursed, upon submission of monthly expense reports, for your reasonable expenses, including travel (transportation and hotel), necessarily incurred in connection with the services requested and furnished, conditioned upon the expenses being in compliance with GM policy as required by GM's loan agreements. Any expenses that are expected to be significant should be discussed in advance with the President, GMIO. If this consulting agreement is terminated by GM prior to December 31, 2010, you will receive your consulting fee and expense reimbursement for the month of termination, this agreement will otherwise terminate, and GM will have no additional economic obligation under this agreement.

It is understood that you intend to provide consulting services to other companies. You are free to provide such service to other companies except that during the period of this consulting agreement you agree that you will not, without the written consent of the Chief Executive Officer of General Motors, engage in or perform any services for any business anywhere in the world which designs, manufactures, develops, promotes, or sells any automobiles or trucks, in competition with or for competitors of General Motors LLC, General Motors Holdings LLC, its parent, General Motors Company, or any of their subsidiaries, affiliates, or any joint ventures to which General Motors Company or any of its subsidiaries or affiliates is a party.

You represent and agree that in the performance of services under this agreement, your actions will not and shall not in any manner be contrary or detrimental to the best interests of General Motors LLC, General Motors Holdings LLC, its parent, General Motors Company, or any of their subsidiaries, affiliates, or any joint ventures to which General Motors Company or any of its subsidiaries or affiliates is a party.

General Motors Holdings LLC shall reasonably make such determination but it shall be the sole judge of such actions. It is understood and agreed, and you hereby represent, that in performing services under this agreement, or in connection therewith, neither you nor any person acting on your behalf, has given or offered to give, or will give or offer, any sum of money, or other material consideration to any person, directly or indirectly as an inducement to influence the granting of any order to General Motors LLC, General Motors Holdings LLC, its parent, General Motors Company, or any of their subsidiaries, affiliates, or any joint ventures to which General Motors Company or any of its subsidiaries or affiliates is a party for parts, supplies, equipment, or services whether or not such an act constitutes a violation of law.

Any inventions or improvements that you may conceive, make, invent, or suggest in connection with work as a consultant or knowledge affected by such work shall be promptly disclosed to General Motors LLC by you and shall become the absolute property of General Motors LLC or an entity of its choosing.

You shall at any time during the life of this agreement or thereafter, at the request of General Motors LLC or General Motors Holdings LLC, execute any patent papers covering such inventions or improvements, as well as any papers that General Motors LLC, General Motors Holdings LLC, its parent, General Motors Company, or any of their subsidiaries, affiliates, or any joint ventures to which General Motors Company or any of its subsidiaries or affiliates is a party may consider necessary or helpful in the prosecution of applications for patent thereon, or in connection with litigation or controversy relating thereto, provided, however, that all expense incident to the filing of such applications and the prosecution thereof and the conduct of litigation shall be borne by General Motors LLC, General Motors Holdings LLC, its parent, General Motors Company, or one of its subsidiaries, affiliates, or any joint ventures.

All information and data of whatsoever kind or nature furnished or made available to you by General Motors LLC, General Motors Holdings LLC, its parent, General Motors Company, including its subsidiaries, affiliates, and joint ventures to which General Motors Company or any of its subsidiaries or affiliates is a party, or their representatives, in your capacity as a consultant, shall be treated as confidential and shall not be disclosed to anyone, in any manner whatsoever, either in whole or in part, except upon written authorization by General Motors LLC.

Inasmuch as you will function as an independent contractor, it is agreed that you will not have the status of an employee of General Motors LLC, General Motors Holdings LLC, its parent, General Motors Company, or any of their subsidiaries, affiliates, or any joint ventures to which General Motors Company or any of its subsidiaries or affiliates is a party. It is further understood that other than with respect to travel or other charges as specified above, you will provide all instrumentalities necessary for you to fulfill your consulting obligation under this agreement and that, other than as specified herein, you will not be subject to oversight or control by General Motors LLC, General Motors Holdings LLC, or General Motors Company regarding the means, methods or manner by which you prepare or provide such consulting services, provided that General Motors Holdings LLC retains the right to determine whether your final work product is satisfactory. Because you will function as an independent contractor, General Motors Holdings LLC will report your fees each year to the IRS on a Form 1099; however, no deductions from your fees will be made, either for income tax or FICA tax purposes, or other statutory deductions, unless required by regulation or order.

Since you are not an employee of General Motors LLC, General Motors Holdings LLC, its parent, General Motors Company, or any of their subsidiaries it is understood that you will not be eligible to participate in any of their employee benefit plans or programs because of the services provided as a consultant, and you shall not earn any credited service under any pension or incentive compensation plan. Nothing in this agreement otherwise limits your eligibility for benefits, e.g., vested pension benefits, related exclusively to your prior service as an employee of General Motors.

Mr. Frederick A. Henderson  
February 18, 2010  
Page 3

This agreement shall be governed by and construed in accordance with the laws of the State of Michigan. This agreement may be terminated by either party at any time upon 20 days written notice delivered to the other party at the address set forth below the signature of the party to whom such notice is addressed.

If the foregoing is acceptable to you, will you kindly endorse your acceptance on the original and two (2) copies thereof, retain one copy and return the original and one copy to my attention.

Sincerely,

/s/ Gregory E. Lau  
\_\_\_\_\_  
Gregory E. Lau  
Executive Director  
Global Compensation &  
Corporate Governance  
300 Renaissance Center  
Mail Code 482-C32-C66  
Detroit, MI 48265-3000

Accepted this 19th day of February, 2010

/s/ Frederick A. Henderson  
\_\_\_\_\_  
Frederick A. Henderson  
630 Vaughan Road  
Bloomfield Hills, MI 48304

**GENERAL MOTORS COMPANY 2009 LONG-TERM INCENTIVE PLAN**

*As Amended March 1, 2010*

*SECTION 1. Purpose.* The purpose of the General Motors Company 2009 Long-Term Incentive Plan is to motivate and reward participating employees in a manner that is consistent with the Company's obligations under the American Recovery and Reinvestment Act of 2009 and under the terms of its agreement with the United States Department of the Treasury. Capitalized terms used in the Plan shall have the definitions set forth in Section 10 of the Plan.

*SECTION 2. Administration.* The Plan shall be administered by the Committee. The Committee shall have full discretionary power and authority, subject to such orders or resolutions not inconsistent with the provisions of the Plan as may from time to time be adopted by the Board, to (i) select the Employees of the Company and its Subsidiaries to whom Awards may be granted hereunder; (ii) determine the number of Shares to be covered by each Award granted hereunder; (iii) determine whether, to what extent and under what circumstances Awards may be settled in cash, Shares or other property, or canceled, and (iv) interpret and administer the Plan and any Award Agreement, and establish such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan.

*SECTION 3. Shares Subject to the Plan.*

(a) Subject to the provisions of Section 3(c) below, the aggregate number of Shares with respect to which Awards may be granted under this Plan shall not exceed 10,000,000 Shares. Awards granted under the Plan that are settled in cash will not count against the approved share reserve. Shares subject to awards granted under the General Motors Company Salary Stock Plan shall reduce the number of Shares with respect to which Awards may be granted under this Plan.

(b) Any Shares delivered in settlement of Awards hereunder may consist, in whole or in part, of authorized and unissued Shares, treasury Shares or Shares purchased in the open market or otherwise.

(c) In the event of any merger, reorganization, consolidation, re-capitalization, stock split or reverse stock split, stock dividend, extraordinary cash dividend, or other change in corporate structure affecting the Company's Shares, the Committee shall make such adjustments in the aggregate number of Shares which may be delivered under this Plan and the number of Shares subject to Awards granted under this Plan (provided the number of Shares subject to any Award shall always be a whole number), as may be determined to be appropriate by the Committee in order to prevent unintended enhancement or diminution of the benefits or potential benefits intended to be conferred on Participants pursuant to Awards granted hereunder.

(d) For avoidance of doubt, Shares which are tendered or withheld to pay tax withholding obligations arising from the grant, vesting or settlement of an Award and Shares previously granted under this Plan which are forfeited following termination of employment will not again become available for grant under the terms of this Plan.

*SECTION 4. Eligibility.* Any Employee shall be eligible to be selected as a Participant.

*SECTION 5. Conditions Precedent.* As a condition precedent to the vesting and settlement of any portion of an Award, the Committee may require a Participant to enter into such agreements as the Committee considers appropriate and in the best interests of the Company.

*SECTION 6. Restricted Stock Units.*

(a) *Grant and Performance Conditions.* The Committee will award Restricted Stock Unit Awards to Participants, from time to time. Units are valued by reference to a designated number of Shares. An RSU Award shall be subject to the terms and conditions set forth in this Section 6 and the terms set forth in the applicable Award Agreement.

(b) *Nonforfeiture.* No RSU Award shall become nonforfeitable prior to a date specified by the Committee in the Award Agreement, which shall be not less than twenty-four months after the date of grant thereof, except as set forth in Section 6(d). A Participant must remain continuously employed by the Company or a Subsidiary through the nonforfeiture date specified in the Award Agreement except as set forth herein or in the Award Agreement. Awards may be forfeited in whole or in part based on the achievement of Performance Conditions, as specified in the Award Agreement.

(c) *Payment and Delivery.* No RSU Award shall be paid or settled prior to the first applicable Settlement Date, except as provided in Sections 6(d)(i).

(d) *Termination of Employment.* Except as set forth in this subsection, upon the termination of a Participant's employment, any RSUs held by such Participant that have not become nonforfeitable in accordance with Section 6(b) at the time of such termination shall be forfeited.

(i) In the event that the Participant's employment terminates as a result of his or her death, a pro rata portion of RSUs held by such Participant shall be retained and become nonforfeitable. The retained portion shall be determined by multiplying the RSUs comprising the Award by a fraction, the numerator of which is the number of full and partial calendar months elapsed from the Proration Date to the date of death and the denominator of which is the number of months from the Grant Date to the date on which such RSUs would have become nonforfeitable in accordance with Section 6(b). In no event will such fraction exceed 1.0. The retained RSUs will be settled in the form provided in Section 6(e) and the Settlement Date for such Awards will occur as soon as practicable after the date of death, without regard to the proviso in Section 10(q).

(ii) In the event of the Participant's Disability, all RSUs held by such Participant will be retained and will be subject to the payment and delivery provisions set forth in Section 6(c). The retained RSUs will be settled in the form provided in Section 6(e).

(iii) In the case of any non-TARP Award, in the event that the Participant retires from the Company at age 55 or older with ten or more years of service (or equivalent retirement eligibility in countries outside the United States), subject to other terms and conditions of the Plan, a pro rata portion of RSUs held by such Participant shall be retained and become nonforfeitable. The retained portion shall be determined by multiplying the RSUs comprising the Award by a fraction, the numerator of which is the number of full and partial calendar months elapsed from the Proration Date to the date of retirement and the denominator of which is the number of months from the Grant Date to the date on which such RSUs would have become nonforfeitable in accordance with Section 6(b). In no event will such fraction exceed 1.0. The retained RSUs will be settled on the Settlement Date in the form provided in Section 6(e).

(iv) Notwithstanding the above provisions, any Participant who retires or separates from the Company or a Subsidiary under the terms of an approved separation agreement or program will not be entitled to retain any portion of an Award.

(e) *Form of Settlement.* Each RSU shall be settled on any applicable Settlement Date by delivery of one Share. If a Settlement Date for any RSU occurs prior to the date which is six months following the consummation of an underwritten public offering of Shares, the RSU shall be settled by the delivery of the Fair Market Value of a Share, in cash. Such delivery shall take place promptly after the applicable Settlement Date; provided, however, that such delivery shall be made in all events not later than December 31 of the calendar year in which such Settlement Date occurs.

(f) *No Rights of a Shareholder.* No holder of any Award shall have any rights to dividends or any other rights of a stockholder with respect to Shares subject to the Award prior to becoming the record owner of such Shares.

(g) *Leave of Absence.* Notwithstanding Section 6(d), a qualifying leave of absence shall not constitute a termination of employment. A Participant's absence or leave shall be deemed to be a qualifying leave of absence if approved by the Committee in its sole discretion, or if on account of military or governmental service.

#### *SECTION 7. Amendments, Termination and Recoupment.*

(a) The Board may amend, alter, suspend, discontinue or terminate the Plan or any portion thereof at any time; provided, however; that no such amendment, alteration, suspension, discontinuation or termination shall be made without (i) stockholder approval if such approval is necessary to comply with the rules of the New York Stock Exchange or such other national securities exchange as may be from time to time the principal trading market for Shares, and (ii) except as provided in Section 7(f), the consent of the affected Participant, if such action would materially impair the rights of such Participant under any outstanding Award.

(b) The Committee may delegate to another committee, as it may appoint, the authority to take any action consistent with the terms of the Plan, either before or after an Award has been granted, which such other committee deems necessary or advisable to comply with any

government laws or regulatory requirements of a foreign country, including, but not limited to, modifying or amending the terms and conditions governing any Awards, or establishing any local country plans as sub-plans to this Plan. In addition, under all circumstances, the Committee may make non-substantive administrative changes to the Plan so as to conform with or take advantage of governmental requirements, statutes or regulations.

(c) The Committee may amend the terms of any Award and any Award Agreement theretofore granted, prospectively or retroactively, but no such amendment shall materially impair the rights of any Participant without his or her consent except as provided in Section 7(f).

(d) Notwithstanding any provision of this Plan to the contrary, any Award, and any amount of cash or Shares delivered in settlement thereof to a Participant under this Plan is subject to being called for repayment to the Company in accordance with the Company's Recoupment Policy, as in effect from time to time, and as may be directed by the Special Master.

(e) If any provision of the Plan or any Award Agreement is invalid or unenforceable in any jurisdiction, (i) such provision shall be modified or eliminated, but only to the extent necessary to eliminate such invalidity or unenforceability and (ii) such invalidity, unenforceability, modification or elimination shall not affect the validity or enforceability of such provision in any other jurisdiction and shall not affect the validity or enforceability of any other provision of the Plan or any Award.

(f) Any Award hereunder that is required to comply with the requirements for "long-term restricted stock" set forth in Treasury Regulations Section 31 CFR 30.1 (Q-1) at the time of grant thereof or at any time during the duration of the Award is intended to comply with such regulations and shall be interpreted accordingly and amended as necessary to comply with any interpretations or guidance of the Special Master or his successor. In the event that an Award hereunder becomes a TARP Award, or is otherwise affected by any decision of the Special Master or his successor, the Company shall inform the affected Participant.

#### *SECTION 8. General Provisions.*

(a) An Award may not be sold, exercised, pledged, assigned, hypothecated, transferred, or disposed of in any manner.

(b) Neither the Award nor any benefits arising out of this Plan shall constitute part of a Participant's employment or service contract with the Company or any Subsidiary. The Awards under this Plan are not intended to be treated as compensation for any purpose under any other Company plan.

(c) No Employee shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Participants under the Plan.

(d) Nothing in the Plan or any Award granted under the Plan shall be deemed to constitute an employment or service contract or confer or be deemed to confer on any Employee or Participant any right to continue in the employ or service of, or to continue any other relationship with, the Company or any Subsidiary or limit in any way the right of the Company or any Subsidiary to terminate an Employee's employment or a Participant's service at any time, with or without cause.

(e) All Shares delivered under the Plan pursuant to any Award shall be subject to such stock-transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Shares are then listed, and any applicable federal or state securities law, and the Committee may cause a legend or legends to be put on any certificates or other indicia of ownership of such Shares to make appropriate reference to such restrictions.

(f) No Award granted hereunder shall be construed as an offer to sell securities of the Company, and no such offer shall be outstanding, unless and until the Committee in its sole discretion has determined that any such offer, if made, would comply with all applicable requirements of the U.S. federal securities laws and any other laws to which such offer, if made, would be subject.

(g) The Company and its Subsidiaries shall be authorized to withhold from any Award granted or payment due under the Plan the amount of withholding taxes due in respect of an Award or payment hereunder and to take such other action as may be necessary in the opinion of the Company or its Subsidiaries to satisfy all obligations for the payment of such taxes. The Committee shall be authorized to establish procedures for election by Participants to satisfy such obligation for the payment of such taxes by delivery of or transfer of Shares to the Company (to the extent the Participant has owned the surrendered Shares for more than six months if such a limitation is necessary to avoid a charge to the Company for financial reporting purposes), or by directing the Company to retain Shares (up to the minimum required tax withholding rate, to the extent such limitation is necessary to avoid a charge to the Company for financial reporting purposes) otherwise deliverable in connection with the Award.

(h) Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases.

(i) The provisions of the Plan shall be construed, regulated and administered according to the laws of the State of Delaware without giving effect to principles of conflicts of law, except to the extent superseded by any controlling Federal statute.

(j) Awards may be granted to Participants who are foreign nationals or employed outside the United States, or both, on such terms and conditions different from those applicable to Awards to Employees employed in the United States as may, in the judgment of the Committee, be necessary or desirable in order to recognize differences in local law or tax policy; provided, however, that amendments deemed necessary under this Section 8(j) may not be made without stockholder approval or Participant approval, if such approval is required by Section 7. The Committee also may impose conditions on the exercise or vesting of Awards in order to minimize the Company's obligation with respect to tax equalization for Employees on assignments outside their home country.

(k) If the Company shall have any unpaid claim against the Participant arising out of or in connection with such Participant's employment with the Company, such claim may be offset against Awards under this Plan. Such claim may include, but is not limited to, unpaid taxes or corporate business credit card charges.

(l) Notwithstanding any provision of this Plan, no Plan elections, modifications or distributions will be allowed or implemented if they would cause the Participant to be subject to tax (including interest and penalties) under Section 409A of the Code. The settlement of Awards hereunder may be delayed up to six months following a Participant's termination of employment if the Participant is a "specified employee" for purposes of Section 409A and such delay is necessary to avoid the imposition of tax (including interest and penalties) under Section 409A.

*SECTION 9. Term of Plan.* The Plan shall terminate on the day after the date when all Awards hereunder have been settled in accordance with the terms of the Plan.

*SECTION 10. Definitions.* As used in the Plan, the following terms shall have the meanings set forth below:

(a) "Award" shall mean an award hereunder of Restricted Stock Units.

(b) "Award Agreement" shall mean the written instrument evidencing the terms of an Award hereunder.

(c) "Board" shall mean the Board of Directors of the Company.

(d) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto, and any reference to any section of the Code shall also include any successor provision thereto.

(e) "Committee" shall mean the Executive Compensation Committee of the Board, its named successor, or such other persons or committee to whom the Board has delegated any authority, as may be appropriate.

(f) "Company" shall mean General Motors Company, a Delaware Company, or its successor.

(g) "Disability" shall mean the Participant is unable to engage in any gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

(h) "Employee" shall mean any individual who is employed by the Company or any Subsidiary.

(i) "Fair Market Value" shall mean the value of a Share, determined as follows: prior to the establishment of when-issued trading of the Shares on a national securities exchange, as determined by the Committee in its discretion; and after the establishment of when-issued trading of the Shares on a national securities exchange, the average of the high and low trading

(or when-issued trading) prices for the Shares as reported on such national securities exchange for the applicable date or, if no such prices are reported for that date, the average of the high and low trading (or when-issued trading) prices on the immediately preceding date for which such prices were reported.

(j) "GM's TARP Obligations" or "TARP Obligations" shall mean (i) the amounts outstanding under the Second Amended and Restated Secured Credit Agreement among the General Motors Holdings LLC, the U.S. Treasury, and the guarantors named therein dated as of August 12, 2009 as it may be subsequently amended or restated and the Second Amended and Restated Loan Agreement dated as of July 10, 2009 by and among General Motors of Canada Limited, as Borrower, and the other Loan Parties and Export Development Canada, as Lender, as amended, as it may be subsequently amended or restated, which together comprise the loans totaling \$8.4 billion or, (ii) for any TARP Award, as otherwise determined to be in compliance with the requirements of Treasury Regulations Section 31 CFR 30.1 (Q-1). Further, the Special Master and the U.S. government may determine that the repayment of "GM's TARP Obligations" requires additional actions on GM's part. We are required to interpret this section 10(j)(ii) in a manner acceptable to the U.S. government under TARP. If and when an interpretation is made that requires additional actions, the Company will notify affected Participants of the effect of this interpretation on their Award.

(k) "Grant Date" shall mean the grant date specified in the Award Agreement.

(l) "Participant" shall mean an Employee who is selected by the Committee to receive an Award under the Plan.

(m) "Plan" shall mean this General Motors Company 2009 Long-Term Incentive Plan.

(n) "Performance Conditions" shall mean measures of the operational performance of the Company or other performance criteria selected by the Committee, the degree of achievement of which will determine the portion of the RSU Award that is earned by the Participant as specified in the Award Agreement.

(o) "Proration Date" shall be a date established by the Committee at the time of grant of an Award and specified in the Award Agreement. If no such date is established, the Proration Date shall be the Grant Date.

(p) "Restricted Stock Unit" or "RSU" shall mean any unit granted pursuant to and described in Section 6.

(q) "Settlement Date" shall mean the date on which the Award becomes nonforfeitable in accordance with the provisions of the Plan and the Award Agreement; *provided*, however, that, except as may be expressly set forth in an Award Agreement or in Section 6(d), if on such date the Company has not repaid in full its TARP obligations, the Settlement Date(s) shall occur in accordance with the following schedule: twenty-five percent (25%) of the RSUs comprising an Award shall be settled on the date on which at least 25% of the Company's TARP Obligations have been repaid, fifty percent (50%) of the RSUs comprising an Award shall be settled on the date on which at least 50% of the Company's TARP Obligations have been repaid, seventy-five

percent (75%) of the RSUs comprising an Award shall be settled on the date on which at least 75% of the Company's TARP Obligations have been repaid, and one hundred percent (100%) of the RSUs comprising an Award shall be settled on the date on which 100% of the Company's TARP Obligations have been repaid. The foregoing percentages of RSUs to be repaid shall not be interpolated. For the avoidance of doubt, no Settlement Date for an Award or portion thereof shall occur before the date on which the Award becomes nonforfeitable in accordance with the provisions of the Plan and the applicable Award Agreement.

(r) "Shares" shall mean shares of the common stock of the Company, \$0.01 par value.

(s) "Special Master" shall mean the Office of the Special Master for TARP Executive Compensation, established by the United States Secretary of the Treasury under the American Recovery and Reinvestment Act of 2009.

(t) "Subsidiary" shall mean (i) a Company of which capital stock having ordinary voting power to elect a majority of the board of directors of such Company is owned, directly or indirectly, by the Company or (ii) any unincorporated entity in respect of which the Company can exercise, directly or indirectly, comparable control.

(u) "TARP Award" shall mean an Award hereunder that is at any time required to comply with the requirements for "long-term restricted stock" set forth in Treasury Regulations Section 31 CFR 30.1 (Q-1) and as interpreted and applied by the Special Master.

(v) "Unit" shall mean a Restricted Stock Unit or RSU.

**GENERAL MOTORS COMPANY  
SALARY STOCK PLAN**

Section 1. *Purpose.* The purpose of the General Motors Company Salary Stock Plan is to compensate participating Employees and Eligible Directors in a manner that is consistent with the Company's obligations under the ARRA and under the terms of the Treasury Agreement. Capitalized terms used in the Plan shall have the definitions set forth in Section 9 of the Plan.

Section 2. *Administration.* The Plan shall be administered by the Committee. The Committee shall have full discretionary power and authority, subject to such orders or resolutions not inconsistent with the provisions of the Plan as may from time to time be adopted by the Board, to (i) select the Employees and Eligible Directors to whom Awards may be granted hereunder; (ii) determine the amount of base salary to be delivered in the form of an Award hereunder; (iii) determine whether, to what extent and under what circumstances Awards may be settled in cash, Shares or other property, and (iv) interpret and administer the Plan, and establish such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan.

Section 3. *Shares Subject to the Plan.*

(a) Subject to the provisions of Section 3(c) below, the aggregate number of Shares with respect to which Awards may be granted under this Plan shall not exceed 10,000,000 Shares<sup>1</sup>. Awards granted under the Plan that are settled in cash will not count against the approved Share reserve.

(b) Any Shares delivered in settlement of Awards hereunder may consist, in whole or in part, of authorized and unissued Shares, treasury Shares or Shares purchased in the open market or otherwise.

(c) In the event of any merger, reorganization, consolidation, re-capitalization, stock split or reverse stock split, stock dividend, extraordinary cash dividend, or other change in corporate structure affecting the Company's Shares, the Committee shall make such adjustments in the aggregate number of Shares which may be delivered under this Plan and the number of Shares subject to Awards granted under this Plan (provided the number of Shares subject to any Award shall always be a whole number), as may be determined to be appropriate by the Committee in order to prevent unintended enhancement or diminution of the benefits or potential benefits intended to be conferred on Participants pursuant to Awards granted hereunder.

(d) For avoidance of doubt, Shares which are tendered or withheld to pay tax withholding obligations arising from the grant, or settlement of an Award will not again become available for grant under the terms of this Plan.

<sup>1</sup> This number is expected to be 2% of common stock outstanding. The share authorization for the equity incentive plan will be "linked" such that the 2% basket will supply both plans.

Section 4. *Eligibility.* Any Employee or Eligible Director shall be eligible to be selected as a Participant.

Section 5. *Restricted Stock Units.*

(a) *Salary Stock.* The Committee has the power to grant Restricted Stock Unit Awards to Participants on each Issue Date. Units are valued by reference to a designated number of Shares. An RSU Award shall be subject to the terms and conditions set forth in this Section 5.

(b) *Vesting.* All RSUs granted hereunder shall be vested and nonforfeitable upon grant thereof.

(c) *Form of Settlement.* Each RSU shall be settled by delivery of one Share. If a settlement date for any RSU, as provided in Section 5(d), occurs prior to the date which is six months following the consummation of an initial public offering of Shares, the RSU shall be settled by the delivery of the Fair Market Value of a Share as of the applicable anniversary date of grant, in cash.

(d) *Settlement.* (i) Except as set forth in Section 5(d)(iii), one third of the RSUs granted on any Issue Date will be settled on each of the second, third and fourth anniversaries of the Issue Date thereof, *provided that*, if permitted under Section 409A of the Code, each installment will be redeemable one year prior to such applicable anniversary if on such prior anniversary the Company has certified the amount of repayments of its TARP obligations made to the U.S. Treasury.

(ii) If a Participant's employment terminates as a result of his or her death or Disability prior to the settlement date(s) applicable to his or her RSUs, all RSUs then held by such Participant will be settled as soon as is practicable after the date of termination of employment.<sup>2</sup> The form of settlement shall be as provided in Section 5(c).

(iii) RSUs granted on any Issue Date occurring in 2009 shall be deemed to have been issued, *nunc pro tunc*, in equal amounts on March 31, 2009, June 30, 2009, September 30, 2009 and December 31, 2009 and shall be settled on the second, third and fourth anniversaries of such deemed issue dates, or in each case one year earlier as provided in Section 6(d)(i).

(e) *No Rights of a Shareholder.* No holder of any Award shall have any rights to dividends or any other rights of a stockholder with respect to Shares subject to the Award prior to becoming the record owner of such Shares.

<sup>2</sup> Note: the term sheet states that payment will be accelerated on any 409A payment event, which would include termination of employment for any reason (not just death, disability). Is this intended? Note that if that is not the intention, the six month delay provision is unnecessary.

Section 6. *Amendments, Termination and Recoupment.*

(a) The Board may amend, alter, suspend, discontinue or terminate the Plan or any portion thereof at any time; provided, however; that no such amendment, alteration, suspension, discontinuation or termination shall be made without (i) stockholder approval if such approval is necessary to comply with the rules of the New York Stock Exchange or such other exchange as may constitute from time to time the principal trading market for the Company's Shares, and (ii) the consent of the affected Participant, if such action would materially impair the rights of such Participant under any outstanding Award.

(b) The Committee may delegate to another committee, as it may appoint, the authority to take any action consistent with the terms of the Plan, either before or after an Award has been granted, which such other committee deems necessary or advisable to comply with any government laws or regulatory requirements of a foreign country, including, but not limited to, modifying or amending the terms and conditions governing any Awards, or establishing any local country plans as sub-plans to this Plan. In addition, under all circumstances, the Committee may make non-substantive administrative changes to the Plan so as to conform with or take advantage of governmental requirements, statutes or regulations.

(c) The Committee may amend the terms of any Award theretofore granted, prospectively or retroactively, but no such amendment shall materially impair the rights of any Participant without his or her consent.

(d) Notwithstanding any provision of this Plan to the contrary, any RSUs granted hereunder, and any amount of cash or Shares delivered in settlement thereof to a Participant under this Plan is subject to being called for forfeiture or repayment to the Company as may be determined by the Committee, (i) if the Participant holding such Award or receiving such cash or Shares engages or has engaged or indicates an intention to engage in an act (or omission to act) that causes or has the potential to cause tangible or intangible damage or injury to the Company in a non-trivial manner or to a non-trivial degree, and (ii) as may be directed by the Special Master.

(e) If any provision of the Plan or any Award is invalid or unenforceable in any jurisdiction, (i) such provision shall be modified or eliminated, but only to the extent necessary to eliminate such invalidity or unenforceability and (ii) such invalidity, unenforceability, modification or elimination shall not affect the validity or enforceability of such provision in any other jurisdiction and shall not affect the validity or enforceability of any other provision of the Plan or any Award.

Section 7. *General Provisions.*

(a) An Award may not be sold, exercised, pledged, assigned, hypothecated, transferred, or disposed of in any manner. For the avoidance of doubt, upon settlement of any Award, the cash or Shares delivered will not be subject to this restriction.

(b) Neither the Award nor any benefits arising out of this Plan shall constitute part of a Participant's employment or service contract with the Company or any Subsidiary and,

accordingly, except as provided in Section 6(a) and (c) above, this Plan and the benefits hereunder may be terminated at any time in the sole discretion of the Company without giving rise to liability on the part of the Company or any Subsidiary for severance payments.

(c) No Employee shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Participants under the Plan.

(d) Nothing in the Plan or any Award granted under the Plan shall be deemed to constitute an employment or service contract or confer or be deemed to confer on any Employee or Participant any right to continue in the employ or service of, or to continue any other relationship with, the Company or any Subsidiary or limit in any way the right of the Company or any Subsidiary to terminate an Employee's employment or a Participant's service at any time, with or without cause.

(e) All Shares delivered under the Plan pursuant to any Award shall be subject to such stock-transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Shares may be then listed, and any applicable federal or state securities law, and the Committee may cause a legend or legends to be put on any certificates or other indicia of ownership of such Shares to make appropriate reference to such restrictions.

(f) No Award granted hereunder shall be construed as an offer to sell securities of the Company, and no such offer shall be outstanding, unless and until the Committee in its sole discretion has determined that any such offer, if made, would comply with all applicable requirements of the U.S. federal securities laws and any other laws to which such offer, if made, would be subject.

(g) The Company and its Subsidiaries shall be authorized to withhold from any Award granted or payment due under the Plan the amount of withholding taxes due in respect of an Award or payment hereunder and to take such other action as may be necessary in the opinion of the Company or its Subsidiaries to satisfy all obligations for the payment of such taxes. The Committee shall be authorized to establish procedures for election by Participants to satisfy such obligation for the payment of such taxes by delivery of or transfer of Shares to the Company (to the extent the Participant has owned the surrendered Shares for more than six months if such a limitation is necessary to avoid a charge to the Company for financial reporting purposes), or by directing the Company to retain Shares (up to the minimum required tax withholding rate to the extent such limitation is necessary to avoid a charge to the Company for financial reporting purposes) otherwise deliverable in connection with the Award.

(h) Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases.

(i) The provisions of the Plan shall be construed, regulated and administered according to the laws of the State of Delaware without giving effect to principles of conflicts of law, except to the extent superseded by any controlling Federal statute.

(j) Awards may be granted to Participants who are foreign nationals or employed outside the United States, or both, on such terms and conditions different from those applicable to Awards to Employees employed in the United States as may, in the judgment of the Committee, be necessary or desirable in order to recognize differences in local law or tax policy; provided, however, that amendments deemed necessary under this Section 7(j) may not be made without stockholder approval or Participant approval, if such approval is required by Section 6. The Committee also may impose conditions on the exercise or vesting of Awards in order to minimize the Company's obligation with respect to tax equalization for Employees on assignments outside their home country.

(k) If the Company shall have any unpaid claim against the Participant arising out of or in connection with such Participant's employment with the Company, such claim may be offset against Awards under this Plan. Such claim may include, but is not limited to, unpaid taxes or corporate business credit card charges.

(l) Notwithstanding any provision of this Plan, no Plan elections, modifications or distributions will be allowed or implemented if they would cause the Participant to be subject to tax (including interest and penalties) under Section 409A of the Code. The settlement of Awards hereunder may be delayed up to six months following a Participant's termination of employment if the Participant is a "specified employee" for purposes of such Section 409A, and such delay is necessary to avoid the imposition of tax (including interest and penalties) under Section 409A.

Section 8. *Term of Plan.* The Plan shall terminate on the day after the date when all Awards hereunder are settled in accordance with the terms of the Plan, unless sooner terminated by the Board pursuant to Section 6.

Section 9. *Definitions.* As used in the Plan, the following terms shall have the meanings set forth below:

(a) "ARRA" shall mean the American Recovery and Reinvestment Act of 2009.

(b) "Award" shall mean an award hereunder of Restricted Stock Units.

(c) "Board" shall mean the Board of Directors of the Company.

(d) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto, and any reference to any section of the Code shall also include any successor provision thereto.

(e) "Committee" shall mean the Executive Compensation Committee of the Board, its named successor, or such other persons or committee to whom the Board has delegated any authority, as may be appropriate.

(f) "Company" shall mean General Motors Company, a Delaware Company, or its successor.

(g) "Disability" shall mean the Participant is unable to engage in any gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months

(h) "Eligible Director" shall mean a director of the Company who is providing services above and beyond his or her responsibilities as a director, at the request of the Board.

(i) "Employee" shall mean any individual who is employed by the Company or any Subsidiary who is classified by the Company as an executive or who is in the group of employees whose compensation structure or compensation is subject to approval by the Special Master.

(j) "Fair Market Value" shall mean the value of a Share, determined as follows: prior to the establishment of when-issued trading of the Shares on a national securities exchange, as determined by the Committee in its discretion; and after the establishment of when-issued trading of the Shares on a national securities exchange, the average of the high and low trading (or when-issued trading) prices for the Shares as reported on such national securities exchange for the applicable date or, if no such prices are reported for that date, the average of the high and low trading (or when-issued trading) prices on the immediately preceding date for which such prices were reported.

(k) "Issue Date" shall mean (i) for 2009, any date after November 1, 2009 on which salary or compensation to be paid in RSUs hereunder is paid to the Participant in accordance with the Company's payroll practices from time to time and (ii) for 2010 and subsequent years, the last business day of each calendar quarter, beginning with March 31, 2010.

(l) "Participant" shall mean an Employee or Eligible Director who is selected by the Committee to receive an Award under the Plan.

(m) "Plan" shall mean this General Motors Company Salary Stock Plan.

(n) "Restricted Stock Unit" or "RSU" shall mean any unit granted pursuant to and described in Section 5.

(o) "Shares" shall mean shares of the common stock of the Company, \$0.01 par value.

(p) "Special Master" shall mean the Office of the Special Master for TARP Executive Compensation, established by the Secretary of the U.S. Treasury under the ARRA.

(q) "Subsidiary" shall mean (A) a Company of which capital stock having ordinary voting power to elect a majority of the board of directors of such company is owned, directly or indirectly, by the Company or (B) any unincorporated entity in respect of which the Company can exercise, directly or indirectly, comparable control.

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(r) "Unit" shall mean a Restricted Stock Unit or RSU.

(s) "U.S. Treasury" shall mean the United States Department of the Treasury.

(t) "Treasury Agreement" shall mean the Secured Credit Agreement among the Company, the U.S. Treasury, and the guarantors named therein dated July 10, 2009 as it may be subsequently restated or amended.

April 1, 2010

**General Motors Company Long-Term Incentive Grant Award Agreement**

**Private and GM Confidential**

[Name]

[Location]

Dear [FirstI] [LastName],

This letter describes the details under which you are being granted an Award of Restricted Stock Units under the General Motors Company (**GM**) 2009 Long-Term Incentive Plan, as amended March 1, 2010 (the **Plan**).

A copy of the Plan can be found on Execunet in MySocrates. Capitalized terms used in this Award Agreement have the meaning given in the Plan unless noted otherwise. In the event of any conflict between this Award Agreement and the Plan, the terms of this Award Agreement shall prevail.

The full terms of your Award are set out in this Award Agreement and the Plan.

**Details of the Award**

<u>Feature</u>	<u>Description</u>
<b>Issuer</b>	General Motors Company, a Delaware corporation
<b>Number of RSUs Granted to You</b>	[RSU Shares] Restricted Stock Units ( <b>RSUs</b> ) under the General Motors Company 2009 Long-Term Incentive Plan as amended March 1, 2010.
<b>Grant Date</b>	March 15, 2010
<b>Proration Date</b>	Not applicable
<b>Payment</b>	No amount is payable by you for the issuance of the RSUs or in connection with the settlement of any RSU.
<b>Nonforfeitability</b>	RSUs shall become nonforfeitable on the third anniversary of the Grant Date shown above, provided that you remain continuously employed through that date. See also "Termination of Employment", below.
<b>Performance Condition</b>	Your Award of RSUs is subject to the achievement of the VP4 Plan B target for Operating Cash Flow before Special Items for the last six months of 2009 of (\$6.0) billion. As long as this target is achieved or exceeded, 100% of the target

grant units will be earned. To the extent 100% of the OCF target is not achieved, target grant units will be adjusted downward and the percent of target grant units earned will be equal to the percent of OCF achieved.

For example, if 87% of the OCF target is achieved, a grant of 10,000 units will become 8,700 units, and will be settled per the Settlement Conditions described in the Plan and this Award Agreement.

**Settlement**

RSU awards shall be settled when they become nonforfeitable, in accordance with the proportion of GM's TARP Obligations (see below) that have been repaid at that time or thereafter, summarized as follows:

<b>% of Obligations Repaid</b>	<b>% of Grant Settled</b>
0%-24%	0%
25%-49%	25%
50%-74%	50%
75%-99%	75%
100%	100%

**Form of Payment**

RSUs will be settled (that is, paid) as set out in the Plan. In summary, each RSU will be settled by issuing you one share of GM common stock (Share). However, if a relevant Settlement Date occurs prior to the date which is six months following a public offering of Shares, the RSU will be settled by payment to you of the Fair Market Value of a Share, in cash.

**Termination of Employment**

In general, any RSUs that have not become nonforfeitable at the time of your termination of service will be forfeited upon termination. If you become disabled as defined under "Disability" in the Plan, however, you will not forfeit any awards, and if you die you will retain a prorated portion of the Award. The settlement times in those circumstances may vary as well. Please consult Section 6(d) of the Plan.

**Important Information about TARP**

This Award is subject to the requirements of the American Recovery and Reinvestment Act of 2009, and regulations issued by the U.S. Department of the Treasury thereunder. These requirements are known as "TARP" and are interpreted by the Office of the Special Master for TARP Executive Compensation. The Company has the right to change this Award, or interpret its provisions, so as to make it comply with TARP and rulings by the Special Master thereunder. In general, TARP applies specific requirements to Awards granted to or held by the 100 most highly compensated employees of the Company and its Subsidiaries, and more stringent requirements apply to Awards granted to or held by the 25 most highly compensated employees. The determinations of these groups are made annually.

**Certain Defined Terms**

Certain terms used in this Award Agreement are defined in the Plan document. Some of these definitions are summarized below.

“GM’s TARP Obligations” has the meaning as defined in Section 10(j)(ii) of the Plan. The Company is required to interpret this term in a manner acceptable to the U.S. government under TARP. If and when an interpretation is reached that requires any additional actions, you will be informed of the effect of such interpretation on your Award.

“Fair Market Value” will be determined by the Board of Directors of GM, based on valuations performed by outside parties until and unless there is an adequate trading market for the Shares.

#### **Additional Terms**

The following additional terms apply to the Award to you, your participation in the Plan and the grant of RSUs (and any cash or Shares) to you. By accepting the Grant you irrevocably agree and acknowledge in favor of GM (on its own behalf and as agent for its Subsidiaries) that:

1. to enable GM to issue you RSUs (and any Shares), and administer the Plan and any Award, you consent to the exchange and disclosure of your personal information, including transmission of that information from your country of employment, residence or citizenship, to other countries;
2. the Plan is established voluntarily by GM, it is discretionary in nature and it may be modified, suspended or terminated by GM at any time, as provided in the Plan;
3. the Award and your participation in the Plan is not offered in lieu of, or in substitution for, any payment of remuneration, severance payments, leave entitlements, or any other compensation payable to you;
4. participation in the Plan is voluntary and occasional and does not create any contractual or other right to future participation in the Plan, Awards or benefits in lieu of participation in the Plan, even if Awards are offered repeatedly;
5. Awards under, and your participation in, the Plan do not form part of your remuneration for the purposes of determining payments in lieu of notice of termination of your employment of office, severance payments, leave entitlements, or any other compensation payable to you. No Award, payment, or other right or benefit, under the Plan will be taken into account in determining any benefits under any pension, retirement, savings, profit-sharing, group insurance, welfare or benefit plan of GM or any of its Subsidiaries;
6. GM and its Subsidiaries, their respective affiliates, officers and employees make no representation concerning the financial benefit or taxation consequences of any Award or participation in the Plan. You are strongly advised to seek your own professional legal and taxation advice concerning the impact of the Plan and your Award;
7. the future value of the underlying Shares is unknown and cannot be predicted with certainty and the Shares may increase or decrease in value;
8. you will have no entitlement to compensation or damages as a result of any loss or diminution in value of Shares, RSUs or any other rights acquired pursuant to the Plan, including, without limitation, as a result of the termination of your employment by GM or any of its Subsidiaries for any reason whatsoever and whether or not in breach of contract;

9. this Award replaces in its entirety the award dated December 4, 2009 that was previously communicated to you, which Award is hereby rescinded. By accepting this Award, you acknowledge that you will have no further right or entitlement under or in respect of the rescinded Award.
10. you have read this Award Agreement and the Plan carefully and understand their terms.

**Acceptance Offer**

**To accept this offer you will need to follow the link below and indicate your acceptance of all the terms outlined in this Agreement and the Plan not later than April 12, 2010.** If you do not accept the grant by that time, this offer will lapse and be incapable of acceptance (unless otherwise agreed to by GM).

[Click here to acknowledge grant](#)

If you have any questions concerning this offer or the Plan you should refer to Execunet or Global Compensation (Chris Tipton +1-313-665-3012).

Yours sincerely,



Gregory E. Lau

April 1, 2010

**General Motors Company Long-Term Incentive Grant Award Agreement**

**Private and GM Confidential**

«Name»

«Location»

Dear «FirstI» «LName»,

This letter describes the details under which you are being granted an Award of Restricted Stock Units under the General Motors Company (**GM**) 2009 Long-Term Incentive Plan, as amended March 1, 2010 (the **Plan**).

A copy of the Plan can be found on Execunet in MySocrates. Capitalized terms used in this Award Agreement have the meaning given in the Plan unless noted otherwise. In the event of any conflict between this Award Agreement and the Plan, the terms of this Award Agreement shall prevail.

The full terms of your Award are set out in this Award Agreement and the Plan.

**Details of the Award**

<u>Feature</u>	<u>Description</u>
<b>Issuer</b>	General Motors Company, a Delaware corporation
<b>Number of RSUs Granted to You</b>	«RSUShares» Restricted Stock Units ( <b>RSUs</b> ) under the General Motors Company 2009 Long-Term Incentive Plan as amended March 1, 2010.
<b>Grant Date</b>	March 15, 2010
<b>Proration Date</b>	Not applicable
<b>Payment</b>	No amount is payable by you for the issuance of the RSUs or in connection with the settlement of any RSU.
<b>Nonforfeitability</b>	RSUs shall become nonforfeitable on the third anniversary of the Grant Date shown above, provided that you remain continuously employed through that date. See also "Termination of Employment", below.
<b>Performance Condition</b>	Your Award of RSUs is subject to the achievement of the VP4 Plan B target for Operating Cash Flow before Special Items for the last six months of 2009 of (\$6.0) billion. As long as this target is achieved or exceeded, 100% of the target grant units will be earned. To the extent 100% of the OCF target is not achieved, target grant units will be adjusted downward and the percent of target grant units earned will be equal to the percent of OCF achieved.

For example, if 87% of the OCF target is achieved, a grant of 10,000 units will become 8,700 units, and will be settled per the Settlement Conditions described in the Plan and this Award Agreement.

**Settlement**

RSU awards shall be settled when they become nonforfeitable, in accordance with the proportion of GM's TARP Obligations (see below) that have been repaid at that time or thereafter, summarized as follows:

<u>% of Obligations Repaid</u>	<u>% of Grant Settled</u>
0%-24%	0%
25%-49%	25%
50%-74%	50%
75%-99%	75%
100%	100%

**Form of Payment**

**Despite the terms of the Plan**, if you remain working in the current location at the time of settlement, RSUs issued to you **will only** be settled by payment to you of the Fair Market Value of a Share, in cash. No RSUs which are issued to you will be settled by the issue of any Shares, unless your work location changes to a jurisdiction that permits settlement in shares. Section 6(e) of the Plan is modified accordingly.

**Termination of Employment**

In general, any RSUs that have not become nonforfeitable at the time of your termination of service will be forfeited upon termination. If you become disabled as defined under "Disability" in the Plan, however, you will not forfeit any awards, and if you die you will retain a prorated portion of the Award. The settlement times in those circumstances may vary as well. Please consult Section 6(d) of the Plan.

**Important Information about TARP**

This Award is subject to the requirements of the American Recovery and Reinvestment Act of 2009, and regulations issued by the U.S. Department of the Treasury thereunder. These requirements are known as "TARP" and are interpreted by the Office of the Special Master for TARP Executive Compensation. The Company has the right to change this Award, or interpret its provisions, so as to make it comply with TARP and rulings by the Special Master thereunder. In general, TARP applies specific requirements to Awards granted to or held by the 100 most highly compensated employees of the Company and its Subsidiaries, and more stringent requirements apply to Awards granted to or held by the 25 most highly compensated employees. The determinations of these groups are made annually.

**Certain Defined Terms**

Certain terms used in this Award Agreement are defined in the Plan document. Some of these definitions are summarized below.

"GM's TARP Obligations" has the meaning as defined in Section 10(j)(ii) of the Plan. The Company is required to interpret this term in a manner acceptable to the U.S. government under TARP. If and when an interpretation is reached that requires any additional actions, you will be informed of the effect of such interpretation on your Award.

“Fair Market Value” will be determined by the Board of Directors of GM, based on valuations performed by outside parties until and unless there is an adequate trading market for the Shares.

### **Additional Terms**

The following additional terms apply to the Award to you, your participation in the Plan and the grant of RSUs (and any cash or Shares) to you. By accepting the Grant you irrevocably agree and acknowledge in favor of GM (on its own behalf and as agent for its Subsidiaries) that:

1. to enable GM to issue you RSUs, and administer the Plan and any Award, you consent to the exchange and disclosure of your personal information, including transmission of that information from your country of employment, residence or citizenship, to other countries;
2. the Plan is established voluntarily by GM, it is discretionary in nature and it may be modified, suspended or terminated by GM at any time, as provided in the Plan;
3. the Award and your participation in the Plan is not offered in lieu of, or in substitution for, any payment of remuneration, severance payments, leave entitlements, or any other compensation payable to you;
4. participation in the Plan is voluntary and occasional and does not create any contractual or other right to future participation in the Plan, Awards or benefits in lieu of participation in the Plan, even if Awards are offered repeatedly;
5. Awards under, and your participation in, the Plan do not form part of your remuneration for the purposes of determining payments in lieu of notice of termination of your employment of office, severance payments, leave entitlements, or any other compensation payable to you. No Award, payment, or other right or benefit, under the Plan will be taken into account in determining any benefits under any pension, retirement, savings, profit-sharing, group insurance, welfare or benefit plan of GM or any of its Subsidiaries;
6. GM and its Subsidiaries, their respective affiliates, officers and employees make no representation concerning the financial benefit or taxation consequences of any Award or participation in the Plan. You are strongly advised to seek your own professional legal and taxation advice concerning the impact of the Plan and your Award;
7. the future value of the underlying Shares is unknown and cannot be predicted with certainty and the Shares may increase or decrease in value;
8. you will have no entitlement to compensation or damages as a result of any loss or diminution in value of Shares, RSUs or any other rights acquired pursuant to the Plan, including, without limitation, as a result of the termination of your employment by GM or any of its Subsidiaries for any reason whatsoever and whether or not in breach of contract;
9. this Award replaces in its entirety the award dated December 4, 2009 that was previously communicated to you, which Award is hereby rescinded. By accepting this Award, you acknowledge that you will have no further right or entitlement under or in respect of the rescinded Award.

10. you have read this Award Agreement and the Plan carefully and understand their terms.

**Acceptance Offer**

**To accept this offer you will need to follow the link below and indicate your acceptance of all the terms outlined in this Agreement and the Plan not later than April 12, 2010.** If you do not accept the grant by that time, this offer will lapse and be incapable of acceptance (unless otherwise agreed to by GM).

[Click here to acknowledge grant](#)

If you have any questions concerning this offer or the Plan you should refer to Execunet or Global Compensation (Chris Tipton +1-313-665-3012).

Yours sincerely,



Gregory E. Lau

**AMENDED AND RESTATED WARRANT AGREEMENT**

**dated as of October 16, 2009**

**between**

**GENERAL MOTORS COMPANY**

**and**

**U.S. BANK NATIONAL ASSOCIATION  
as Warrant Agent**

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**AMENDED AND RESTATED WARRANT AGREEMENT**

This Amended and Restated Warrant Agreement (“**Warrant Agreement**”) dated as of October 16, 2009 is between General Motors Company, a Delaware corporation (the “**Company**”), and U.S. Bank National Association (the “**Warrant Agent**”).

**WITNESSETH THAT:**

WHEREAS, General Motors LLC, a Delaware limited liability company, the Company and the Warrant Agent are parties to that certain Amended and Restated Warrant Agreement dated as of October 15, 2009 (the “**Original Warrant Agreement**”), pursuant to which the Company issued 45,454,545 Warrants to Motors Liquidation Company (the “**Initial Warrantholder**”);

WHEREAS, in connection with the Company’s name change from General Motors Holding Company to General Motors Company, the Company and the Warrant Agent desire to amend and restate the Original Warrant Agreement in its entirety; and

WHEREAS, the Company desires that the Warrant Agent continue to act on behalf of the Company, and the Warrant Agent is willing to act, in connection with the issuance, exchange, transfer, substitution and exercise of Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.01. *Certain Definitions.* As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

“**\$**” refers to such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“**Adjustment Event**” has the meaning set forth in Section 5.08.

“**Agent Members**” has the meaning set forth in Section 2.06(c).

“**Authentication Order**” means a Company Order for authentication and delivery of Warrants.

“**Black Scholes Proportion**” has the meaning given to it in the definition of “Change of Control Payment Amount.”

“**Black Scholes Warrant Value**” as of any date, shall mean the value of a Warrant to purchase one share of Common Stock (as determined in good faith by the Board of Directors based upon the advice of an independent investment bank of national standing selected by the Board of Directors and reasonably acceptable to the Warrant Agent) and

shall be determined by customary investment banking practices using the Black Scholes model. For purposes of calculating such amount, (1) the term of the Warrants will be the period from the date of determination until the Expiration Date, (2) the price of each share of Common Stock will be the Current Market Price as of the date of determination, (3) the assumed volatility will be determined by such independent investment banking firm as of the date of determination, (4) the assumed risk-free rate will equal the yield on the U.S. Treasury security with a maturity closest to July 10, 2016, as the yield on that security exists as of the date of determination and (5) any other assumptions shall be made by the Board of Directors in good faith based upon the advice of such independent investment bank at the time of determination.

**“Board of Directors”** means the board of directors of the Company or any committee of such board of directors duly authorized to exercise the power of such board of directors with respect to the matters provided for in this Warrant Agreement as to which the board of directors is authorized or required to act.

**“Board Resolution”** means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Warrant Agent.

**“Business Day”** means any day other than a Saturday or Sunday or other than a day on which banking institutions in New York City, New York are authorized or obligated by law or executive order to close.

**“Capital Stock”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of the Company and all warrants or options to acquire such capital stock.

**“Carryover Warrants”** shall mean, for each Warrant, that portion of such Warrant equal to one minus the Black Scholes Proportion.

**“Cash”** means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

**“Certificated Warrant”** means a Warrant represented by a Warrant Certificate, in definitive, fully registered form.

**“Change of Control Date”** shall mean the date on which a Change of Control Event is consummated.

**“Change of Control Estimated Payment Amount”** shall mean, in respect of any Change of Control Event, an estimate of the Change of Control Payment Amount payable on the applicable Change of Control Payment Date, as determined in good faith by the Board of Directors, based upon the advice of an independent investment bank of national standing selected by the Board of Directors and reasonably acceptable to the Warrant Agent, as of a date no more than 20 Business Days and no less than 15 Business Days prior to the Change of Control Date, in a manner consistent with the terms of this Warrant Agreement and the Warrants, including the definitions of Black Scholes Warrant Value and Change of Control Payment Amount.

“**Change of Control Event**” shall mean (i) the acquisition by a Person (other than the Company or a wholly-owned subsidiary of the Company) in a tender offer or a series of related tender offers of 80% or more of the outstanding Common Stock (determined on a fully-diluted basis), (ii) the consolidation or merger of the Company with or into another Person (other than a wholly-owned subsidiary of the Company), or (iii) a sale of all or substantially all of the Company’s assets to another Person (other than a wholly-owned subsidiary of the Company), in each of clauses (i) through (iii) in which all or any portion of the consideration paid or exchanged for Common Stock, or into which Common Stock is converted, consists of Other Property.

“**Change of Control Payment Amount**” shall mean an amount in Cash equal to the product of (1) the Black Scholes Warrant Value of a Warrant on a Change of Control Date immediately prior to the consummation of such Change of Control Event multiplied by (2) a fraction, (x) the numerator of which is the fair market value of the Other Property received in exchange for a share of Common Stock in a Change of Control Event as of the Change of Control Date (as determined by an independent investment bank of national standing selected by the Company and determined by customary investment banking practices) and (y) the denominator of which is the sum of (a) the Closing Sale Price of the Registered and Listed Shares received in exchange for a share of Common Stock in a Change of Control Event as of the Change of Control Date (if any), and (b) the fair market value (determined as above) of the Other Property as of the Change of Control Date received in exchange for a share of Common Stock in a Change of Control Event (such fraction referred to herein as the “**Black Scholes Proportion**”).

For purposes of determining the Change of Control Payment Amount, if holders of Common Stock are entitled to receive differing forms or types of consideration in any transaction or series of transactions contemplated by the definition of “Change of Control Event,” each holder shall be deemed to have received the same proportion of Other Property and Registered and Listed Shares that all holders of Common Stock in the aggregate elected or were required to receive in such transaction or transactions.

“**Change of Control Payment Date**” has the meaning set forth in Section 5.09(e).

“**Close of Business**” means 5:00 p.m. New York City time.

“**Closing Date**” means July 10, 2009.

“**Closing Sale Price**” means, as of any date, the last reported per share sales price of a share of Common Stock or any other security on such date (or, if no last reported sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices on such date) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted; *provided, however*, that in the absence of such quotations, the Board of Directors will make a good faith determination of the Closing Sale Price.

If during a period applicable for calculating Closing Sale Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 5 hereof, Closing Sale Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

“**Common Stock**” means the common stock, par value \$0.01 per share, of the Company authorized at the date of this Warrant Agreement or as such stock may be constituted from time to time. Subject to the provisions of Section 5.09 and Section 5.10, shares issuable upon exercise of Warrants shall include only shares of the class designated as Common Stock of the Company as of the date of this Warrant Agreement or shares of any class or classes resulting from any reclassification or reclassifications or change or changes thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, and if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications or changes bears to the total number of shares of all such classes resulting from such reclassifications or changes.

“**Company Order**” means a written order signed in the name of the Company by any two officers, at least one of whom must be its Chief Executive Officer, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, or its Controller, and delivered to the Warrant Agent.

“**Current Market Price**” means, (i) in connection with a dividend, issuance or distribution, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the earlier of the date in question and the Trading Day immediately preceding the Ex-Date for such dividend, issuance or distribution and (ii) in connection with a determination of Black Scholes Warrant Value, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the date of determination, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution selected by

the Board of Directors and reasonably acceptable to the Warrant Agent. If the Common Stock is not traded on the New York Stock Exchange or any U.S. national or regional securities exchange or quotation system, the Current Market Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such price shall be reasonably determined in good faith by the Company's Board of Directors.

“**Cut-Off Time**” has the meaning set forth in Section 5.09(e).

“**Depository**” means The Depository Trust Company, its nominees, and their respective successors.

“**Determination Date**” has the meaning set forth in Section 5.08.

“**Distribution Date**” has the meaning set forth in Section 2.04.

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

“**Ex-Date**” means, in connection with any dividend, issuance or distribution, the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such dividend, issuance or distribution.

“**Exercise Date**” has the meaning set forth in Section 3.02(b).

“**Exercise Notice**” means, for any Warrant, the exercise notice set forth on the reverse of the Warrant Certificate, substantially in the form set forth in Exhibit D hereto.

“**Exercise Price**” means initially \$30.00 per Warrant, subject to adjustment pursuant to Article 5.

“**Expiration Date**” means, for any Warrant, July 10, 2016.

“**Full Physical Settlement**” means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Full Physical Share Amount in exchange for payment by the Warrantholder of the Exercise Price.

“**Full Physical Share Amount**” has the meaning set forth in Section 3.03(b).

“**Global Warrant**” means a Warrant in the form of a permanent global Warrant Certificate, in definitive, fully registered form.

“**Global Warrant Legend**” means the legend set forth in Section 2.06(b).

“**Initial Warrantholder**” has the meaning set forth in the Recitals.

**“Master Sale and Purchase Agreement”** means the Amended and Restated Master Sale and Purchase Agreement dated as of June 26, 2009 by and among the Initial Warrantholder, Saturn LLC, Saturn Distribution Corporation, Chevrolet-Saturn of Harlem, Inc. and General Motors LLC, a Delaware limited liability company and successor-in-interest to General Motors Company, as amended.

**“Net Share Amount”** has the meaning set forth in Section 3.03(c).

**“Net Share Settlement”** means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Net Share Amount without any payment therefor.

**“Net Share Settlement Price”** means, as of any date, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days prior to the date of determination of the Net Share Settlement Price for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution reasonably acceptable to the Warrant Agent. If the Common Stock is not traded on the New York Stock Exchange or any U.S. national or regional Securities exchange or quotation system, the Net Share Settlement Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such prices shall be reasonably determined in good faith by the Company’s Board of Directors.

If during a period applicable for calculating Net Share Settlement Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 5 hereof, the Net Share Settlement Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

**“New Warrant Exercise Price”** shall be equal to the product of (i) the Exercise Price then in effect and (ii) one minus the Black Scholes Proportion.

**“New Warrants”** has the meaning set forth in Section 5.09(e).

“**Number of Warrants**” means, for a Warrant Certificate, the “Number of Warrants” specified on the face of such Warrant Certificate (or, in the case of a Global Warrant, on Schedule A to such Warrant Certificate), subject to adjustment pursuant to Article 5.

“**Officer’s Certificate**” means a certificate signed by any two officers of the Company, at least one of whom must be its Chief Executive Officer, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, or its Controller.

“**Original Warrant Agreement**” has the meaning set forth in the Recitals.

“**Other Property**” means any cash, property or other securities other than Registered and Listed Shares.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Person**” means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any Cash, securities or other property or in which Common Stock (or other applicable security) is exchanged for or converted into any combination of Cash, securities or other property, the date fixed for determination of holders of Common Stock entitled to receive such Cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

“**Redemption**” has the meaning set forth in Section 5.09(e).

“**Redemption Notice**” has the meaning set forth in Section 5.09(e).

“**Reference Property**” has the meaning set forth in Section 5.09(a).

“**Registered and Listed Shares**” shall mean shares of the common stock of the surviving entity in a consolidation, merger, or combination or the acquiring entity in a tender offer, except that if the surviving entity or acquiring entity has a parent corporation, it shall be the shares of the common stock of the parent corporation, provided, that, in each case, such shares (i) have been registered (or will be registered within 30 calendar days following the Change of Control Date) under Section 12 of the Exchange Act with the Securities and Exchange Commission, and (ii) are listed for trading on the New York Stock Exchange or any other national securities exchange (or will be so listed or admitted within 30 calendar days following the Change of Control Date).

“**Reorganization Event**” has the meaning set forth in Section 5.09(a).

“**SEC**” means the United States Securities and Exchange Commission.

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

“**Settlement Date**” means, in respect of a Warrant that is exercised hereunder, the third Trading Day immediately following the Exercise Date for such Warrant.

“**Trading Day**” means (i) if the applicable security is listed on the New York Stock Exchange, a day on which trades may be made thereon or (ii) if the applicable security is listed or admitted for trading on the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or other national securities exchange or market, a day on which the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or such other national securities exchange or market is open for business or (iii) if the applicable security is not so listed, admitted for trading or quoted, any Business Day.

“**Trigger Event**” has the meaning set forth in Section 5.03.

“**Unit of Reference Property**” has the meaning set forth in Section 5.09(a).

“**Unit Value**” has the meaning set forth in Section 5.09(c).

“**VEBA Exercise Price**” means the ‘Exercise Price’ as such term is defined in the VEBA Warrant Agreement.

“**VEBA Warrant Agreement**” means the amended and restated warrant agreement, dated as of the date hereof, between the Company and U.S. Bank National Association as Warrant Agent, pursuant to which UAW Retiree Medical Benefits Trust was the ‘Initial Warrantholder’ as defined therein.

“**VEBA Warrants**” means the warrants issued pursuant to the VEBA Warrant Agreement.

“**Vice President**” means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president” of the Company.

“**Voting Stock**” means Capital Stock having the right to vote for the election of directors under ordinary circumstances.

“**Warrant**” means a warrant of the Company exercisable for one share of Common Stock as provided herein, and issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth in this Warrant Agreement.

“**Warrant Agent**” means U.S. Bank National Association, in its capacity as warrant agent hereunder.

“**Warrant Certificate**” means any certificate representing Warrants satisfying the requirements set forth in Section 2.03.

“**Warrant Register**” has the meaning set forth in Section 2.05.

“**Warrantholder**” means each Person in whose name Warrants are registered in the Warrant Register.

ARTICLE 2

ISSUANCE, EXECUTION AND TRANSFER OF WARRANTS

Section 2.01. *Issuance of Warrants.* (a) The Company shall execute and deliver to the Warrant Agent, for authentication and delivery to the Initial Warrantholder on the date hereof, a single Certificated Warrant in the name of the Initial Warrantholder, together with an Authentication Order with respect thereto, evidencing an initial aggregate Number of Warrants equal to 45,454,545 (such Number of Warrants subject to adjustment from time to time as described herein). The Warrant Agent shall, upon receipt of such Certificated Warrant and Authentication Order, authenticate and deliver such Certificated Warrant to the Initial Warrantholder in accordance with Section 2.02 and register the Initial Warrantholder as the Warrantholder of such Warrants in accordance with Section 2.05. All such Warrants shall be dated as of October 16, 2009.

(b) Except as set forth in Section 2.05 and Section 6.02, the Warrants issued to the Initial Warrantholder on the date hereof shall be the only Warrants issued or outstanding under this Warrant Agreement.

(c) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof.

Section 2.02. *Execution and Authentication of Warrants.* (a) Warrants shall be executed on behalf of the Company by any Executive Vice President, any Senior Vice President or any Vice President of the Company and attested by its Secretary or any one of its Assistant Secretaries. The signature of any of these officers on Warrants may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Warrant that has been duly authenticated and delivered by the Warrant Agent.

(b) Warrants bearing the manual or facsimile signatures of individuals, each of whom was, at the time he or she signed such Warrant or his or her facsimile signature was affixed to such Warrant, as the case may be, a proper officer of the Company, shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Warrants or did not hold such offices at the date of such Warrants.

(c) No Warrant shall be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on such Warrant a certificate of authentication substantially in the form provided for herein executed by the Warrant Agent by manual or facsimile signature, and such certificate upon any Warrant shall be conclusive evidence, and the only evidence, that such Warrant has been duly authenticated and delivered hereunder.

Section 2.03. *Form of Warrant Certificates.* Each Warrant Certificate shall be in substantially the form set forth in Exhibit D hereto and shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

Section 2.04. *Transfer Restrictions and Legends.* This Section 2.04 shall not apply to Warrants and/or Common Stock which have been issued, distributed or sold pursuant to an effective registration statement or are otherwise exempt from registration under the Securities Act pursuant to Section 1145 of the Bankruptcy Code (the date as of which this Section 2.04 does not apply to such Warrants and/or Common Stock, the “**Distribution Date**”).

(a) Each Warrant issued hereunder shall bear the legend set forth in Exhibit A hereto.

(i) Warrants may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by a Warrantholder except (A) pursuant to a registration statement that has become effective under the Securities Act or (B) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any Warrants as to which such restrictions on transfer shall have expired in accordance with their terms such that they can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the Warrant Certificates representing such Warrants for exchange pursuant to Section 2.05 in accordance with the procedures of the Warrant Agent (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the Warrant Agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new Warrant Certificate for a like Number of Warrants, which shall not bear such legend.

(b) All shares of Common Stock issued to a Warrantholder upon exercise of a Warrant shall bear the legend set forth in Exhibit B hereto.

(i) Shares of Common Stock issued to a Warrantholder upon exercise of a Warrant may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by such Warrantholder except (A) pursuant to a registration statement that has become effective under the Securities Act or (B) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any such shares of Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms such that the shares of Common Stock can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the transfer agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear such legend.

(c) Any Warrant that is purchased or owned by the Company or any “affiliate” thereof (as defined under Rule 144 under the Securities Act) may not be resold by the Company or such affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Warrants no longer being “restricted securities” (as defined in Rule 144 under the Securities Act).

Section 2.05. *Transfer, Exchange and Substitution.* (a) Warrants shall be issued in registered form only. The Company shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the “**Warrant Register**”) in which, subject to such reasonable regulations as the Company may prescribe, the Company shall provide for the registration of Warrants and transfers, exchanges or substitutions of Warrants as herein provided. All Warrants issued upon any registration of transfer or exchange of or substitution for Warrants shall be valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as Warrants surrendered for such registration of transfer, exchange or substitution.

(b) A Warrantholder may transfer a Warrant only upon surrender of such Warrant for registration of transfer. Warrants may be presented for registration of transfer and exchange at the offices of the Warrant Agent with a written instruction of transfer in form satisfactory to the Warrant Agent, duly executed by such Warrantholder or by such Warrantholder’s attorney, duly authorized in writing. Such Warrantholder will also provide a written certificate (substantially in the form of Exhibit E hereto) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Warrants. The Warrant Agent shall be entitled to conclusively rely upon any such certification in connection with the transfer of a Warrant hereunder and shall have no responsibility to monitor or verify whether any such transfer complies with the requirements hereunder or otherwise complies with the Securities Act. No such transfer shall be effected until, and the transferee shall succeed to the rights of a Warrantholder only upon, final acceptance and registration of the transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any transfer of a Warrant by a Warrantholder as

provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name Warrants are registered as the owner thereof for all purposes and as the Person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding.

(c) Every Warrant presented or surrendered for registration of transfer or for exchange or substitution shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a duly executed instrument of transfer in form satisfactory to the Company and the Warrant Agent, by the holder thereof or such Warrantholder's attorney duly authorized in writing.

(d) When Warrants are presented to the Warrant Agent with a request to register the transfer of, or to exchange or substitute, such Warrants, the Warrant Agent shall register the transfer or make the exchange or substitution as requested if its requirements for such transactions and any applicable requirements hereunder are satisfied. To permit registrations of transfers, exchanges and substitutions, the Company shall execute Warrant Certificates at the Warrant Agent's request and the Warrant Agent shall countersign and deliver such Warrant Certificates. No service charge shall be made for any registration of transfer or exchange of or substitution for Warrants, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of Warrants.

(e) A Certified Warrant may be exchanged at the option of the holder or holders thereof, when presented or surrendered in accordance with this Warrant Agreement, for another Warrant Certificate or other Warrant Certificates of like tenor and representing in the aggregate a like Number of Warrants. If less than all Warrants represented by a Certificated Warrant are transferred, exchanged or substituted in accordance with this Warrant Agreement, the Warrant Certificate shall be surrendered to the Warrant Agent and a new Warrant Certificate for a Number of Warrants equal to the Warrants represented by such Warrant Certificate that were not transferred, exchanged or substituted, registered in such name or names as may be directed in writing by the surrendering Warrantholder, shall be executed by the Company and delivered to the Warrant Agent and the Warrant Agent shall countersign such new Warrant Certificate and shall deliver such new Warrant Certificate to the Person or Persons entitled to receive the same.

Section 2.06. *Global Warrants.* (a) The Warrants shall initially be issued in the form of Certificated Warrants. However, if the Warrants are sold pursuant to an effective registration statement filed with the SEC, or if the Company so elects at any time, any Certificated Warrants may be presented to the Warrant Agent by Warrantholders in exchange for one or more Global Warrants up to the aggregate Number of Warrants then outstanding, to be registered in the name of the Depository, or its nominee, and delivered by the Warrant Agent to the Depository, or its custodian, for crediting to the accounts of its participants pursuant to the procedures of the Depository. Upon such presentation, the Company shall execute a Global Warrant representing such aggregate Number of Warrants and deliver the same to the Warrant Agent for authentication and delivery in accordance with Section 2.02.

(b) Any Global Warrant shall bear the legend substantially in the form set forth in Exhibit C hereto (the “**Global Warrant Legend**”).

(c) So long as a Global Warrant is registered in the name of the Depository or its nominee, members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Warrant Agreement with respect to the Global Warrant held on their behalf by the Depository or the Warrant Agent as its custodian, and the Depository may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such owner’s beneficial interest in such Global Warrant will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or its Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility with respect to such records maintained by the Depository or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Warrantholder.

(d) Any holder of a Global Warrant registered in the name of the Depository or its nominee shall, by acceptance of such Global Warrant, agree that transfers of beneficial interests in such Global Warrant may be effected only through a book-entry system maintained by the holder of such Global Warrant (or its agent), and that ownership of a beneficial interest in Warrants represented thereby shall be required to be reflected in book-entry form.

(e) Transfers of a Global Warrant registered in the name of the Depository or its nominee shall be limited to transfers in whole, and not in part, to the Company, the Depository, their successors, and their respective nominees. Interests of beneficial owners in a Global Warrant registered in the name of the Depository or its nominee shall be transferred in accordance with the rules and procedures of the Depository.

(f) A Global Warrant registered in the name of the Depository or its nominee shall be exchanged for Certificated Warrants only if the Depository (A) has notified the Company that it is unwilling or unable to continue as or ceases to be a clearing agency registered under Section 17A of the Exchange Act and (B) a successor to the Depository registered as a clearing agency under Section 17A of the Exchange Act is not able to be appointed by the Company within 90 days or the Depository is at any time unwilling or unable to continue as Depository and a successor to the Depository is not able to be appointed by the Company within 90 days. In any such event, a Global Warrant registered in the name of the Depository or its nominee shall be surrendered to the Warrant Agent for cancellation, and the Company shall execute, and the Warrant Agent shall countersign and deliver, to each beneficial owner identified by the Depository, in exchange for such beneficial owner’s beneficial interest in such Global Warrant, Certificated Warrants representing, in the aggregate, the Number of Warrants theretofore represented by such Global Warrant with respect to such beneficial owner’s respective beneficial interest. Any

Certificated Warrant delivered in exchange for an interest in a Global Warrant pursuant to this Section 2.06(f) shall not bear the Global Warrant Legend. Interests in the Global Warrant may not be exchanged for Certificated Warrants other than as provided in this Section 2.06(f).

(g) The holder of a Global Warrant registered in the name of the Depository or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Warrantholder is entitled to take under this Warrant Agreement or the Warrant.

Section 2.07. *Surrender of Warrant Certificates.* Any Warrant Certificate surrendered for registration of transfer, exchange, substitution or exercise of Warrants represented thereby shall, if surrendered to the Company, be delivered to the Warrant Agent, and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company and, except as provided in this Article 2 in case of an exchange, transfer or substitution, or Article 3 in case of the exercise of less than all Warrants represented thereby, or Section 6.02 in case of mutilation, no Warrant Certificate shall be issued hereunder in lieu thereof. The Warrant Agent shall deliver to the Company from time to time or otherwise dispose of such cancelled Warrant Certificates as the Company may direct.

### ARTICLE 3

#### EXERCISE AND SETTLEMENT OF WARRANTS

Section 3.01. *Exercise of Warrants.* At any time prior to 5:00 p.m., New York City time, on the Expiration Date, a Warrantholder shall be entitled to exercise, in accordance with this Article 3, the full Number of Warrants represented by any Warrant Certificate then registered in such Warrantholder's name (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants). Any Warrants not exercised prior to such time shall expire unexercised.

Section 3.02. *Procedure for Exercise.* (a) To exercise a Warrant (i) in the case of a Certificated Warrant, the Warrantholder must surrender the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes as set forth in Section 7.01(b), or (ii) in the case of a Global Warrant, the Warrantholder must comply with the procedures established by the Depository for the exercise of Warrants.

(b) The date on which a Warrantholder complies with the requirements for exercise set forth in this Section 3.02 in respect of a Warrant is the "**Exercise Date**" for such Warrant. However, if such date is not a Trading Day or the Warrantholder satisfies such requirements after the Close of Business on a Trading Day, then the Exercise Date shall be the immediately succeeding Trading Day, unless that Trading Day falls after the Expiration Date, in which case the Exercise Date shall be the immediately preceding Trading Day.

Section 3.03. *Settlement of Warrants.* (a) Full Physical Settlement shall apply to each Warrant unless the Warrantholder elects for Net Share Settlement to apply upon exercise of such Warrant. Such election shall be made (i) in the case of a Certificated Warrant, in the Exercise Notice for such Warrant, or (ii) in the case of a Global Warrant, in accordance with the procedures established by the Depository for the exercise of Warrants.

(b) If Full Physical Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, prior to 11:00 a.m., New York City time, on the Settlement Date for such Warrant, the Warrantholder shall pay the Exercise Price (determined as of such Exercise Date) by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Warrantholder in accordance with Section 7.15, and on the Settlement Date, following receipt by the Warrant Agent of such Exercise Price, the Company shall cause to be delivered to the Warrantholder one share of Common Stock (the “**Full Physical Share Amount**”), together with Cash in respect of any fractional Warrant as provided in Section 3.05. All funds received by the Warrant Agent upon exercise of such Warrant shall be deposited by the Warrant Agent for the account of the Company at a bank previously instructed by the Company in writing.

(c) If Net Share Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, on the Settlement Date for such Warrant, the Company shall cause to be delivered to the Warrantholder a number of shares of Common Stock (which in no event will be less than zero) (the “**Net Share Amount**”) equal to (i) the Net Share Settlement Price as of the relevant Exercise Date, *minus* the Exercise Price (determined as of such Exercise Date), *divided by* (ii) such Net Share Settlement Price, together with Cash in respect of any fractional shares or fractional Warrants as provided in Section 3.05.

Section 3.04. *Delivery of Common Stock.* (a) In connection with the delivery of shares of Common Stock to an exercising Warrantholder pursuant to Section 3.03(b) or Section 3.03(c), as the case may be, the Warrant Agent shall:

(i) inform the Company of the number of shares of Common Stock underlying the Warrants which were exercised; and (A) if such shares of Common Stock are in book-entry form at the Depository, the Company shall (or shall cause the transfer agent to) deliver such shares of Common Stock by electronic transfer to such Warrantholder’s account, or any other account as such Warrantholder may designate, at the Depository or at an Agent Member, or (B) if such shares of Common Stock are not in book-entry form at the Depository, the Company shall (or shall cause the transfer agent to) deliver to or upon the order of such Warrantholder a certificate or certificates, in each case with legends thereon as appropriate (as determined by the Company) and for the number of full shares of Common Stock to which such Warrantholder is entitled, registered in such name or names as may be directed by such Warrantholder;

(ii) deliver Cash to such Warrantholder in respect of any fractional shares or fractional Warrants, as provided in Section 3.05; and

(iii) if the Number of Warrants represented by a Warrant Certificate shall not have been exercised in full, deliver a new Warrant Certificate, countersigned by the Warrant Agent, for the balance of the number of Warrants represented by the surrendered Warrant Certificate.

(b) Each Person in whose name any shares of Common Stock are issued shall for all purposes be deemed to have become the holder of record of such shares as of the Exercise Date or, in the case of a Warrant subject to Full Physical Settlement only, the date of payment by the Warrantholder of the Exercise Price in accordance with Section 3.03(b), if later. However, if any such date is a date when the stock transfer books of the Company are closed, such Person shall be deemed to have become the holder of such shares at the Close of Business on the next succeeding date on which the stock transfer books are open.

(c) Promptly after the Warrant Agent shall have taken the action required above (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to any Warrants exercised (including, without limitation, with respect to any Exercise Price paid to the Warrant Agent). The Company shall reimburse the Warrant Agent for any amounts paid by the Warrant Agent in respect of a fractional share or fractional Warrant upon such exercise in accordance with Section 3.05 hereof.

Section 3.05. *No Fractional Shares to Be Issued.* (a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a share of Common Stock upon exercise of any Warrants.

(b) If any fraction of a Warrant shall be exercised hereunder, the Company shall pay the relevant Warrantholder Cash in lieu of the corresponding fraction of a share of Common Stock valued at the Net Share Settlement Price as of the Exercise Date. However, if more than one Warrant shall be exercised hereunder at one time by the same Warrantholder, the number of full shares which shall be issuable upon exercise thereof shall be computed on the basis of all Warrants (including any fractional Warrants) so exercised. If any fraction of a share of Common Stock would, except for the provisions of this Section 3.05, be issuable on the exercise of any Warrant or Warrants (including any fractional Warrants), the Company shall pay the Warrantholder Cash in lieu of such fractional shares valued at the Net Share Settlement Price as of the Exercise Date.

(c) Each Warrantholder, by its acceptance of a Warrant Certificate, expressly waives its right to receive any fraction of a share of Common Stock or a stock certificate representing a fraction of a share of Common Stock.

Section 3.06. *Acquisition of Warrants by Company.* The Company shall have the right, except as limited by law, to purchase or otherwise to acquire Warrants at such times, in such manner and for such consideration as it may deem appropriate and shall have agreed with the holder of such Warrants.

Section 3.07. *Direction of Warrant Agent.* (a) The Company shall be responsible for performing all calculations required in connection with the exercise and settlement of the Warrants and the payment or delivery, as the case may be, of Cash and/or Common Stock as described in this Article 3. In connection therewith, the Company shall provide prompt written notice to the Warrant Agent of the amount of Cash and the number of shares of Common Stock payable or deliverable, as the case may be, upon exercise and settlement of the Warrants, including, without limitation, the Net Share Amount and the Full Physical Share Amount.

(b) Any Cash to be paid to the Warrantholders hereunder shall be delivered to the Warrant Agent no later than the Business Day immediately preceding the date such consideration is required to be delivered to the Warrantholders. Any Common Stock to be delivered to the Warrantholders hereunder shall be delivered by the Company (or the transfer agent) by the date such consideration is required to be delivered to the Warrantholders.

(c) The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations or items to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or Units of Reference Property that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or Units of Reference Property, or to comply with any of the covenants of the Company contained in this Article 3.

#### ARTICLE 4

[RESERVED]

#### ARTICLE 5

#### ADJUSTMENTS

Section 5.01. *Adjustments to Exercise Price.* The Exercise Price for the Warrants shall be subject to adjustment (without duplication) upon the occurrence of any of the following events:

(a) The issuance of Common Stock as a dividend or distribution to all holders of Common Stock, or a subdivision or combination of Common Stock, in which event the Exercise Price shall be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0}{OS_1}$$

where:

- $EP_0$  = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be;
- $EP_1$  = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be;
- $OS_0$  = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be; and
- $OS_1$  = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, subdivision or combination.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be. If any dividend or distribution or subdivision or combination of the type described in this Section 5.01(a) is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to the Exercise Price that would then be in effect if such dividend or distribution or subdivision or combination had not been declared or announced, as the case may be.

(b) The issuance to all holders of Common Stock of rights or warrants entitling them for a period expiring 60 days or less from the date of issuance of such rights or warrants to purchase shares of Common Stock (or securities convertible into Common Stock) at less than (or having a conversion price per share less than) the Current Market Price of Common Stock, in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0 + Y}{OS_0 + X}$$

where:

- $EP_0$  = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such issuance;
- $EP_1$  = the Exercise Price in effect immediately after the Close of Business on the Record Date for such issuance;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such issuance;

X = the total number of shares of Common Stock issuable pursuant to such rights, warrants or convertible securities; and

Y = the aggregate price payable to exercise such rights, warrants or convertible securities *divided by* the Current Market Price.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such issuance. In the event that the issuance of such rights, warrants or convertible securities is announced but such rights, warrants or convertible securities are not so issued, the Exercise Price shall again be adjusted to be the Exercise Price that would then be in effect if the Record Date for such issuance had not occurred. To the extent that such rights or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights, warrants or convertible securities, upon the expiration, termination or maturity of such rights, warrants or convertible securities, the Exercise Price shall be readjusted to the Exercise Price that would then be in effect had the adjustments made upon the issuance of such rights, warrants or convertible securities been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate price payable for such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, as well as any consideration received in connection with the conversion of any convertible securities issued upon exercise of such rights or warrants, and the value of such consideration, if other than Cash, shall be determined in good faith by the Board of Directors.

(c) The dividend or distribution to all holders of Common Stock of (i) shares of the Company's Capital Stock (other than Common Stock), (ii) evidences of the Company's indebtedness, (iii) rights or warrants to purchase the Company's securities or the Company's assets or (iv) property or Cash (excluding any ordinary cash dividends declared by the Board of Directors and excluding any dividend, distribution or issuance covered by clauses (a) or (b) above), in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{SP_0 - FMV}{SP_0}$$

where:

EP<sub>0</sub> = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

SP<sub>0</sub> = the Current Market Price; and

FMV = the fair market value (as determined in good faith by the Board of Directors), on the Record Date for such dividend or distribution, of the shares of Capital Stock, evidences of indebtedness or property, rights or warrants so distributed or the amount of Cash (other than in the case of ordinary cash dividends declared by the Board of Directors) expressed as an amount per share of outstanding Common Stock.

In the event of a reduction of the VEBA Exercise Price under the VEBA Warrant Agreement (other than pursuant to Article 5 of the VEBA Warrant Agreement) below 125% of the Exercise Price as adjusted to such date pursuant to this Article 5, such reduction shall be treated as a distribution of property where the FMV of such property for purposes of this adjustment shall be equal to the absolute value of the difference between (i) the Black Scholes Warrant Value of the outstanding VEBA Warrants with a VEBA Exercise Price equal to 125% of the Exercise Price as adjusted to such date pursuant to this Article 5 and (ii) the Black Scholes Warrant Value of the outstanding VEBA Warrants immediately following such reduction in VEBA Exercise Price, expressed as an amount per share of outstanding Common Stock.

Such decrease shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

However, if the transaction that gives rise to an adjustment pursuant to this clause (c) is one pursuant to which the payment of a dividend or other distribution on Common Stock consists of shares of capital stock of, or similar equity interests in, a subsidiary of the Company or other business unit of the Company (i.e., a spin-off) that are, or, when issued, will be, traded or quoted on the New York Stock Exchange or any other national or regional securities exchange or market, then the Exercise Price will instead be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{MP_0}{MP_0 + FMV_0}$$

where:

EP<sub>0</sub> = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

FMV<sub>0</sub> = the average of the Closing Sale Prices of the Capital Stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution; and

MP<sub>0</sub> = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution.

Such decrease shall become effective immediately after the Ex-Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

(d) For the purposes of Section 5.01(a), (b) and (c), any dividend or distribution to which Section 5.01(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be a dividend or distribution of the indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Exercise Price adjustment required by Section 5.01(c) with respect to such dividend or distribution shall be made in respect of such dividend or distribution (without regard to the parenthetical in Section 5.01(c) that begins with the word “excluding”)) immediately followed by a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Exercise Price adjustment required by Section 5.01 with respect to such dividend or distribution shall then be made), except, for purposes of such adjustment, any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Close of Business on the Record Date.”

Section 5.02. *Adjustments to Number of Warrants.* Concurrently with any adjustment to the Exercise Price under Section 5.01, the Number of Warrants for each Warrant Certificate will be adjusted such that the Number of Warrants for each such Warrant Certificate in effect immediately following the effectiveness of such adjustment will be equal to the Number of Warrants for each such Warrant Certificate in effect immediately prior to such adjustment, *multiplied by* a fraction, (i) the numerator of which is the Exercise Price in effect immediately prior to such adjustment and (ii) the denominator of which is the Exercise Price in effect immediately following such adjustment.

Section 5.03. *Certain Distributions of Rights and Warrants; Shareholder Rights Plan.* (a) Rights or warrants distributed by the Company to all holders of Common Stock (including under any Shareholder Rights Plan in existence on the date hereof or hereafter put into effect) entitling the holders thereof to subscribe for or purchase shares of the Company’s Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a “**Trigger Event**”):

(i) are deemed to be transferred with such shares of Common Stock;

(ii) are not exercisable; and

(iii) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of Article 5 (and no adjustment to the Exercise Price or the Number of Warrants under this Article 5 will be made) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Price and the Number of Warrants for each Warrant Certificate shall be made under this Article 5 (subject in all respects to Section 5.03(d)).

(b) If any such right or warrant is subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (subject in all respects to Section 5.03(d)).

(c) In addition, except as set forth in Section 5.03(d), in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in Section 5.03(b)) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Price and the Number of Warrants for each Warrant Certificate under Article 5 was made (including any adjustment contemplated in Section 5.03(d)):

(i) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase; and

(ii) in the case of such rights or warrants that shall have expired or been terminated without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted as if such rights and warrants had not been issued.

(d) If a Company shareholders rights plan under which any rights are issued provides that each share of Common Stock issued upon exercise of Warrants at any time prior to the distribution of separate certificates representing such rights shall be entitled to receive such rights, prior to the separation of such rights from the Common Stock, the Exercise Price and the Number of Warrants for each Warrant Certificate shall not be adjusted pursuant to Section 5.01. If, however, prior to any exercise of a Warrant, such rights have separated from the Common Stock, the Exercise Price and the Number of

Warrants for each Warrant Certificate shall be adjusted at the time of separation as if the Company dividended or distributed to all holders of Common Stock, the Company's Capital Stock, evidences of the Company's indebtedness, certain rights or warrants to purchase the Company's securities or other of the Company's assets as described in Section 5.01(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 5.04. *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder.

Section 5.05. *Other Adjustments if Net Share Settlement Applies.* To the extent Net Share Settlement applies to the exercise of any Warrant, the Board of Directors shall make appropriate adjustments to the amount of Cash or number of shares of Common Stock, as the case may be, due upon exercise of the Warrant, as may be necessary or appropriate to effectuate the intent of this Article 5 and to avoid unjust or inequitable results as determined in its good faith judgment, to account for any adjustment to the Exercise Price and the Number of Warrants for the relevant Warrant Certificate that becomes effective, or any event requiring an adjustment to the Exercise Price and the Number of Warrants for the relevant Warrant Certificate where the Record Date or effective date (in the case of a subdivision or combination of the Common Stock) of the event occurs, during the period beginning on, and including, the Exercise Date and ending on, and including, the related Settlement Date.

Section 5.06. *Discretionary Adjustments.* The Company may from time to time, to the extent permitted by law and subject to applicable rules of the New York Stock Exchange, decrease the Exercise Price and/or increase the Number of Warrants for each Warrant Certificate by any amount for any period of at least 20 days. In that case, the Company shall give the Warrantholders at least 15 days' prior notice of such increase or decrease, and such notice shall state the decreased Exercise Price and/or increased Number of Warrants for each Warrant Certificate and the period during which the decrease and/or increase will be in effect. The Company may make such decreases in the Exercise Price and/or increases in the Number of Warrants for each Warrant Certificate, in addition to those set forth in this Article 5, as the Company's Board of Directors deems advisable, including to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

Section 5.07. *Restrictions on Adjustments.* (a) Except in accordance with Section 5.01, the Exercise Price and the Number of Warrants for any Warrant Certificate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

(b) Neither the Exercise Price nor the Number of Warrants for any Warrant Certificate will be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) for a change in the par value of the Common Stock.

(c) In no event will the Company adjust the Exercise Price or make a corresponding adjustment to the Number of Warrants for any Warrant Certificate to the extent that the adjustment would reduce the Exercise Price below the par value per share of Common Stock.

(d) No adjustment shall be made to the Exercise Price or the Number of Warrants for any Warrant Certificate for any of the transactions described in Section 5.01 if the Company makes provisions for Warrantholders to participate in any such transaction without exercising their Warrants on the same basis as holders of Common Stock and with notice that the Board of Directors determines in good faith to be fair and appropriate.

(e) No adjustment shall be made to the Exercise Price, nor will any corresponding adjustment be made to the Number of Warrants for any Warrant Certificate, unless the adjustment would result in a change of at least 1% of the Exercise Price; *provided* that any adjustments that are less than 1% of the Exercise Price shall be carried forward and such carried forward adjustments, regardless of whether the aggregate adjustment is less than 1% of the Exercise Price, shall be made (i) annually, on each anniversary of the Closing Date, (ii) immediately prior to the time of any exercise, and (iii) five Business Days prior to the Expiration Date, unless, in each case, such adjustment has already been made.

(f) If the Company takes a record of the holders of Common Stock for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Exercise Price or the Number of Warrants for any Warrant Certificate then in effect shall be required by reason of the taking of such record.

Section 5.08. *Deferral of Adjustments.* In any case in which Section 5.01 provides that an adjustment shall become effective immediately after (a) a Record Date for an event or (b) the effective date (in the case of a subdivision or combination of the Common Stock) (each a "**Determination Date**"), the Company may elect to defer, until the later of the date the adjustment to the Exercise Price and Number of Warrants for each

Warrant Certificate can be definitively determined and the occurrence of the applicable Adjustment Event (as hereinafter defined), (i) issuing to the Warranholder of any Warrant exercised after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities or assets issuable upon such exercise by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warranholder any amount in Cash in lieu of any fractional share of Common Stock or fractional Warrant pursuant to Section 3.05. For the purposes of this Section 5.08, the term “**Adjustment Event**” shall mean in any case referred to in clause (a) or clause (b) hereof, the occurrence of such event.

Section 5.09. *Recapitalizations, Reclassifications and Other Changes.* (a) If any of the following events occur:

- (i) any recapitalization;
- (ii) any reclassification or change of the outstanding shares of Common Stock (other than changes resulting from a subdivision or combination to which Section 5.01(a) applies);
- (iii) any consolidation, merger or combination involving the Company;
- (iv) any sale or conveyance to a third party of all or substantially all of the Company’s assets; or
- (v) any statutory share exchange,

(each such event a “**Reorganization Event**”), in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (the “**Reference Property**”), then, subject to Section 5.09(e), following the effective time of the transaction, the right to receive shares of Common Stock upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per share of Common Stock, a “**Unit of Reference Property**”). In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in a Reorganization Event, other than with respect to a Change of Control Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock in such Reorganization Event.

(b) At any time from, and including, the effective time of a Reorganization Event:

(i) if Full Physical Settlement applies upon exercise of a Warrant, the Full Physical Share Amount per Warrant shall be equal to a single Unit of Reference Property;

(ii) if Net Share Settlement applies upon exercise of a Warrant, the Net Share Amount per Warrant shall be a number of Units of Reference Property calculated as set forth in Section 3.03(c), except that the Net Share Settlement Price used to determine such Net Share Amount on any Trading Day shall be the Unit Value for such Trading Day;

(iii) the Company shall pay Cash in lieu of delivering any fraction of a Unit of Reference Property or any fractional Warrant in accordance with Section 3.05 based on the Unit Value as of the Exercise Date; and

(iv) the Closing Sale Price and the Current Market Price shall be calculated with respect to a Unit of Reference Property.

(c) The value of a Unit of Reference Property (the “**Unit Value**”) shall be determined as follows:

(i) any shares of common stock of the successor or purchasing corporation or any other corporation that are traded on a national or regional stock exchange included in such Unit of Reference Property shall be valued as if such shares were “Common Stock” using procedures set forth in the definition of “Closing Sale Price” in Section 1.01;

(ii) any other property (other than Cash) included in such Unit of Reference Property shall be valued in good faith by the Board of Directors (in a manner not materially inconsistent with the manner the Board of Directors valued such property for purposes of the Reorganization Event, if applicable) or by a New York Stock Exchange member firm selected by the Board of Directors; and

(iii) any Cash included in such Unit of Reference Property shall be valued at the amount thereof.

(d) On or prior to the effective time of any Reorganization Event, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 5.09. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Warrantholders as the Board of Directors shall reasonably consider necessary by reason of the foregoing. Any

such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 5. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 5.09, the Company shall promptly file with the Warrant Agent an Officers' Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of amendment to be mailed to each Warrantholder, at its address appearing on the Warrant Register, within 20 Business Days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such amendment.

(e) Change of Control Event:

(i) No less than 15 Business Days prior to the scheduled closing of a Change of Control Event, the Company shall:

(A) calculate the Change of Control Estimated Payment Amount;

(B) deliver to the Warrant Agent a notice of redemption (a "**Redemption Notice**"), which shall be binding on the Company and on all Warrantholders, stating that all Warrants (other than Carryover Warrants, if any) that have not been exercised prior to the Cut-Off Time shall be redeemed on the Change of Control Payment Date at a price equal to the Change of Control Payment Amount (the "**Redemption**");

(C) cause a notice of the Redemption to be sent at least once to the Dow Jones News Service or similar business news service in the United States; and

(D) cause the Warrant Agent to send by first-class mail, postage prepaid to each Warrantholder, at the address appearing in the warrant register, a notice stating:

1) that the Redemption is being made pursuant to this Section 5.09(e) and that all Warrants (other than Carryover Warrants, if any) that have not been exercised prior to the Cut-Off Time will be redeemed on the Change of Control Payment Date for payment of the Change of Control Payment Amount;

2) a reasonably detailed explanation of the Change of Control Estimated Payment Amount, including (x) a statement of the amount of the Change of Control Estimated Payment Amount, together with a reasonably detailed explanation of the calculation of such amount, and (y) the formula for calculating the Black Scholes Warrant Value and the Change of Control Payment Amount;

3) the date of the Redemption (which shall be a Business Day no later than five (5) Business Days following the Change of Control Date (the “**Change of Control Payment Date**”));

4) the Net Share Amount for each Warrant as of a date not more than five (5) Business Days prior to the date of the Redemption Notice (assuming Net Share Settlement is applicable with respect to the exercise of such Warrant);

5) that no outstanding Warrant may be exercised after the Close of Business on the day prior to the Change of Control Date (the “**Cut-Off Time**”);

6) if applicable, that New Warrants will be issued to the Warrantholders on the Change of Control Payment Date in accordance with the terms of this Warrant Agreement and the Warrants (as the same may have been amended in connection with such Change of Control Event pursuant to Section 5.09);

7) any other reasonable procedures that a Warrantholder must follow (to the extent consistent with the terms and conditions set forth herein) in connection with such Redemption; and

8) the name and address of the Warrant Agent.

(ii) Within two (2) Business Days prior to the Change of Control Payment Date, the Company or the surviving Person (if other than the Company) shall (A) deliver to the Warrant Agent the calculation of the Change of Control Payment Amount and (B) deposit with the Warrant Agent money sufficient to pay the Change of Control Payment Amount for all outstanding Warrants (other than the Carryover Warrants, if any).

(iii) On the Change of Control Payment Date, (A) the Company or the surviving Person (if other than the Company) shall redeem all outstanding Warrants (other than Carryover Warrants, if any) pursuant to the Redemption, (B) the Warrant Agent shall mail to each holder of Warrants so redeemed payment in Cash in an amount equal to the aggregate Change of Control Payment Amount in respect of such redeemed Warrants, and (C) the Company or the surviving Person (if other than the Company) shall execute and issue to the Warrantholders, and the Warrant Agent shall authenticate, new Warrants (the “**New Warrants**”) representing the Carryover Warrants (if any); provided that each such New Warrant shall be issued in denominations of one Warrant and integral multiples thereof and the terms thereof shall, subject to Section 5.09(e)(v), be substantially consistent with the terms of this Warrant Agreement and the Warrants (and all references herein to Warrants shall thereafter be deemed to be references to such New Warrants).

(iv) No Warrant (which for the avoidance of doubt does not include New Warrants) may be exercised after the Cut-Off Time.

(v) Following the Change of Control Payment Date, any holder of New Warrants shall have the right to exercise such New Warrant and to receive, upon such exercise, the Reference Property in accordance with Section 5.09(a), subject to Section 5.09(b) and Section 5.09(c) and the remaining terms of this Warrant Agreement and the Warrants (as the same may have been amended in connection with such Change of Control Event pursuant to Section 5.09); provided, that, for purposes of this Section 5.09(e)(v), (A) each Unit of Reference Property shall initially only consist of the Registered and Listed Shares included in such Unit of Reference Property and (B) the initial exercise price for each New Warrant shall be equal to the New Warrant Exercise Price.

(vi) The provisions of this Section 5.09(e) are subject, in all cases, to any applicable requirements under the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder. Where there is any inconsistency between the requirements of the Securities Act or the Exchange Act or the rules and regulations promulgated thereunder and the requirements of this Section 5.09(e), the requirements of the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder, shall supersede.

(f) The Company hereby agrees not to become a party to any Reorganization Event or Change of Control Event unless its terms are consistent in all material respects with this Section 5.09.

(g) The above provisions of this Section 5.09 shall similarly apply to successive Reorganization Events and Change of Control Events.

(h) If this Section 5.09 applies to any event or occurrence, no other provision of this Article 5 with respect to anti-dilution adjustments (which for the avoidance of doubt, does not include the covenant set forth in Section 5.10) shall apply to such event or occurrence.

Section 5.10. *Consolidation, Merger and Sale of Assets.* (a) The Company may, without the consent of the Warrantholders, consolidate with, merge into or sell, lease or otherwise transfer in one transaction or a series of related transactions the consolidated assets of the Company and its subsidiaries substantially as an entirety to any corporation, limited liability company, partnership or trust organized under the laws of the United States or any of its political subdivisions so long as:

(i) the successor assumes all the Company's obligations under this Warrant Agreement and the Warrants; and

(ii) the Company provides written notice of such assumption to the Warrant Agent.

(b) In case of any such consolidation, merger, sale, lease or other transfer and upon any such assumption by the successor corporation, limited liability company, partnership or trust, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company. Such

successor entity thereupon may cause to be signed, and may issue any or all of the Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been signed by the Company; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor entity thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

Section 5.11. *Common Stock Outstanding.* For the purposes of this Article 5, the number of shares of Common Stock at any time outstanding shall not include shares held, directly or indirectly, by the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 5.12. *Covenant to Reserve Shares for Issuance on Exercise.* (a) The Board of Directors has authorized and will reserve for issuance such number of shares of Common Stock as the Board of Directors believes will be issuable upon the exercise of all outstanding Warrants for shares of Common Stock (assuming, for purposes of this covenant, that Full Physical Settlement applies to all Warrants exercised hereunder). The Company covenants that all shares of Common Stock that shall be so issuable shall be duly and validly issued, fully paid and non-assessable.

(b) The Company agrees to authorize and direct its current and future transfer agents for the Common Stock to reserve for issuance the number of shares of Common Stock specified in this Section 5.12. The Company shall instruct the transfer agent to deliver to the Warrant Agent, upon written request from the Warrant Agent substantially in the form of Exhibit F (or as separately agreed between the Warrant Agent and the transfer agent), stock certificates (or beneficial interests therein) required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Warrant Agreement. The Company shall pay to the Warrant Agent, as agent for the Warrantholders, any Cash that may be payable as provided in this Article 5. Promptly after the date of expiration of Warrants, the Warrant Agent shall certify to the Company the aggregate Number of Warrants then outstanding, and thereafter no shares shall be required to be reserved in respect of such Warrants.

(c) If, prior to the Distribution Date, the Common Stock has been registered under Section 12(b) of the Exchange Act and listed on a national securities exchange, the Company shall use its reasonable best efforts to apply and cause to have listed on such exchange as of the Distribution Date the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants. If, as of the Distribution Date, the Common Stock has not yet been registered under Section 12(b) of the Exchange Act and listed on a national securities exchange, the Company shall use its reasonable best efforts to apply and cause to have listed on a national securities exchange the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants as soon as reasonably practicable following the date on which the Common Stock is registered under Section

12(b) of the Exchange Act and listed on a national securities exchange. Upon any such listing of the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants, for so long as the Common Stock is registered under Section 12(b) of the Exchange Act and listed on a national securities exchange, the Company shall use its reasonable efforts to cause the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants, to be listed on such exchange.

Section 5.13. *Calculations Final.* The Company shall be responsible for making all calculations called for under this Warrant Agreement. These calculations include, but are not limited to, the Exercise Date, the Current Market Price, the Closing Sale Price, the Net Share Settlement Price, the Exercise Price, the Number of Warrants for each Warrant Certificate and the number of shares of Common Stock or Units of Reference Property, if any, to be issued upon exercise of any Warrants. The Company shall make the foregoing calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Warrantheolders. The Company shall provide a schedule of the Company's calculations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification.

Section 5.14. *Notice of Adjustments.* Whenever the Exercise Price or the Number of Warrants for each Warrant Certificate is adjusted, the Company shall promptly mail to Warrantheolders a notice of the adjustment. The Company shall file with the Warrant Agent such notice and an Officer's Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct, and the Warrant Agent shall not be deemed to have any knowledge of any adjustments unless and until it has received such certificate. The Warrant Agent shall not be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Warrantheolder desiring inspection thereof.

Section 5.15. *Warrant Agent Not Responsible for Adjustments or Validity.* The Warrant Agent shall at no time be under any duty or responsibility to any Warrantheolder to determine whether any facts exist that may require an adjustment of the Exercise Price and the Number of Warrants for each Warrant Certificate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment pursuant to this Article 5, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 5, or to comply with any of the covenants of the Company contained in this Article 5.

Section 5.16. *Statements on Warrants.* The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Article 5, and Warrant Certificates issued after such adjustment may state the same information (other than the adjusted Exercise Price and the adjusted Number of Warrants for such Warrant Certificates) as are stated in the Warrant Certificates initially issued pursuant to this Warrant Agreement. However, the Company may at any time in its sole discretion (which shall be conclusive) make any change in the form of Warrant Certificate that it may deem appropriate and that does not materially adversely affect the interest of the Warrantholders; and any Warrant Certificates thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

## ARTICLE 6

### OTHER PROVISIONS RELATING TO RIGHTS OF WARRANTHOLDERS

Section 6.01. *No Rights as Stockholders.* Warrantholders shall not be entitled, by virtue of holding Warrants, to vote, to consent, to receive dividends, to receive notice as stockholders with respect to any meeting of stockholders for the election of the Company's directors or any other matter, or to exercise any rights whatsoever as the Company's stockholders unless, until and only to the extent such holders become holders of record of shares of Common Stock issued upon settlement of the Warrants.

Section 6.02. *Mutilated or Missing Warrant Certificates.* If any Warrant at any time is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Warrant may be replaced at the cost of the applicant (including legal fees of the Company) at the office of the Warrant Agent. The applicant for a new Warrant shall, in the case of any mutilated or defaced Warrant, surrender such Warrant to the Warrant Agent and, in the case of any lost, destroyed or stolen Warrant, furnish evidence satisfactory to the Company of such loss, destruction or theft, and, in each case, furnish evidence satisfactory to the Company of the ownership and authenticity of the Warrant together with such indemnity as the Company may require. Any such new Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant Certificate shall be at any time enforceable by anyone. An applicant for such a substitute Warrant Certificate shall also comply with such other reasonable regulations and pay such other reasonable charges as the Company or the Warrant Agent may prescribe. All Warrant Certificates shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 6.03. *Modification, Waiver and Meetings.* (a) This Warrant Agreement may be modified or amended by the Company and the Warrant Agent, without the consent of the holder of any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement; *provided* that such modification or amendment does not adversely affect the interests of the Warrantheolders in any respect.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants may also be made by the Company and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived, with the written consent of the Warrantheolders of Warrants representing a majority of the aggregate Number of Warrants at the time outstanding.

(c) However, no such modification, amendment or waiver may, without the written consent or the affirmative vote of each Warrantheolder affected:

- (i) change the Expiration Date;
- (ii) increase the Exercise Price or decrease the Number of Warrants (except as explicitly set forth in Article 5);
- (iii) impair the right to institute suit for the enforcement of any payment or delivery with respect to the exercise and settlement of any Warrant;
- (iv) impair or adversely affect the exercise rights of Warrantheolders, including any change to the calculation or payment of the Full Physical Share Amount or the Net Share Amount, as applicable;
- (v) deprive any Warrantheolder of any economic rights, privileges or benefits that arise under or are provided pursuant to this Warrant Agreement and/or the Warrants;
- (vi) reduce the percentage of Warrants outstanding necessary to modify or amend this Warrant Agreement or to waive any past default; or
- (vii) reduce the percentage in Warrants outstanding required for any other waiver under this Warrant Agreement.

## ARTICLE 7

### CONCERNING THE WARRANT AGENT AND OTHER MATTERS

Section 7.01. *Payment of Certain Taxes.* (a) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the initial issuance of the Warrants hereunder.

(b) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the issuance of Common Stock upon the exercise

of Warrants hereunder and the issuance of stock certificates in respect thereof in the respective names of, or in such names as may be directed by, the exercising Warrantheolders; *provided, however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such stock certificate, any Warrant Certificates or other securities in a name other than that of the registered holder of the Warrant Certificate surrendered upon exercise of the Warrant, and the Company shall not be required to issue or deliver such certificates or other securities unless and until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 7.02. *Change of Warrant Agent.* (a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving 60 days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 60 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by any holder of Warrants (who shall, with such notice, submit his Warrant Certificate for inspection by the Company), then the holder of any Warrants may apply to any court of competent jurisdiction for the appointment of a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon 30 days' written notice to the Warrant Agent; *provided, however*, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the laws of the United States of America or any state thereof or the District of Columbia, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by Federal or state authority and having a combined capital and surplus of not less than \$50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; *provided* that such reports are published at least annually pursuant to law or to the requirements of a Federal or state supervising or examining authority. After appointment, any successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully

and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent, the Warrantholders and each transfer agent for the shares of its Common Stock. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, shall be the successor Warrant Agent under this Warrant Agreement without any further act. In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Warrant Certificates so countersigned, and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

Section 7.03. *Compensation; Further Assurances.* The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent hereunder and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon demand for all reasonable expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel) except any such expense, disbursement or advance as may arise from its or any of their negligence or bad faith, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement.

Section 7.04. *Reliance on Counsel.* The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 7.05. *Proof of Actions Taken.* Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Warrant Agent; and such Officer's Certificate shall, in the absence of bad faith on the part of the Warrant Agent, be full warrant to the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement in reliance upon such certificate; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 7.06. *Correctness of Statements.* The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or in the Warrant Certificates (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 7.07. *Validity of Agreement.* The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of any Warrant Certificates (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any shares of Common Stock will, when issued, be validly issued and fully paid and nonassessable.

Section 7.08. *Use of Agents.* The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents and the Warrant Agent shall not be responsible for the misconduct or negligence of any agent or attorney, provided due care had been exercised in the appointment and continued employment thereof.

Section 7.09. *Liability of Warrant Agent.* The Warrant Agent shall incur no liability or responsibility to the Company or to any holder of Warrants for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including

judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's negligence or willful misconduct or bad faith.

Section 7.10. *Legal Proceedings.* The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or one or more Warrantholders shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity.

Section 7.11. *Other Transactions in Securities of the Company.* The Warrant Agent in its individual or any other capacity may become the owner of Warrants or other securities of the Company, or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Warrant Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

Section 7.12. *Actions as Agent.* The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. No provision of the Warrant Agreement shall require the Warrant Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own negligence or willful misconduct or bad faith.

Section 7.13. *Appointment and Acceptance of Agency.* The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth.

Section 7.14. *Successors and Assigns.* All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 7.15. *Notices.* Any notice or demand authorized by this Warrant Agreement to be given or made by the Warrant Agent or by any Warrantholder to or on the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

General Motors Company  
300 Renaissance Center  
Detroit, MI 48265-3000  
Telephone: (313) 667-4605

with a copy to:

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: John J. Rapisardi  
R. Ronald Hopkinson  
Telephone: (212) 504-6000  
Fax: (212) 504-6666

Any notice or demand authorized by this Warrant Agreement to be given or made by any Warrantholder or by the Company to or on the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

U.S. Bank Corporate Trust Services  
One Federal Street, 10th Floor  
Attention: Karen R. Beard, Vice President  
Re: General Motors Company Warrant Agreement  
Boston, MA 02110  
Fax: (617) 603-6667

Any notice of demand authorized by this Warrant Agreement to be given or made to any Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid to the last address of such Warrantholder as it shall appear on the Warrant Register.

Section 7.16. *Applicable Law.* The validity, interpretation and performance of this Warrant Agreement and of the Warrant Certificates shall be governed by the law of the State of New York without giving effect to the principles of conflicts of laws thereof.

Section 7.17. *Benefit of this Warrant Agreement.* Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person or corporation other than the parties hereto and the Warranholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Warranholders.

Section 7.18. *Registered Warrantholders.* Prior to due presentment for registration of transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 7.19. *Inspection of this Warrant Agreement.* A copy of this Warrant Agreement shall be available at all reasonable times for inspection by any registered Warrantholder at the principal office of the Warrant Agent (or successor warrant agent). The Warrant Agent may require any such holder to submit his Warrant Certificate for inspection by it before allowing such holder to inspect a copy of this Warrant Agreement.

Section 7.20. *Headings.* The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 7.21. *Counterparts.* This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

General Motors Company

By: /s/ Niharika Ramdev

Name: Niharika Ramdev

Title: Assistant Treasurer

U.S. Bank National Association, as  
Warrant Agent

By: /s/ Karen R. Beard

Name: Karen R. Beard

Title: Vice President

SIGNATURE PAGE TO AMENDED AND  
RESTATED PARENT WARRANT A

**FORM OF RESTRICTIVE LEGEND FOR WARRANTS**

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

**FORM OF RESTRICTIVE LEGEND FOR COMMON STOCK**

[THESE SHARES OF COMMON STOCK HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

**FORM OF GLOBAL WARRANT LEGEND**

UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), TO GENERAL MOTORS COMPANY, A DELAWARE CORPORATION (THE “**ISSUER**”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

## FORM OF WARRANT CERTIFICATE

[FACE]

No. \_\_\_\_\_

CUSIP No. \_\_\_\_\_

[UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO GENERAL MOTORS COMPANY, A DELAWARE CORPORATION (THE “ISSUER”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.]

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

GENERAL MOTORS COMPANY

[Designation of Warrants]

NUMBER OF WARRANTS: Initially, 45,454,545 Warrants, subject to adjustment as described in the Amended and Restated Warrant Agreement dated as of October 16, 2009 between General Motors Company, a Delaware corporation, and U.S. Bank National Association, as Warrant Agent (the “**Warrant Agreement**”), each of which is exercisable for one share of Common Stock.

EXERCISE PRICE: Initially, \$30.00 per Warrant, subject to adjustment as described in the Warrant Agreement.

FORM OF PAYMENT OF EXERCISE PRICE: Cash, if Full Physical Settlement is applicable, or Net Share Settlement.

FORM OF SETTLEMENT: Upon exercise of any Warrants represented hereby, the Warrantholder shall be entitled to receive, at the Warrantholder’s election, either (a) upon payment to the Warrant Agent of the Exercise Price (determined as of the relevant Exercise Date), one share of Common Stock per Warrant exercised, together with Cash in lieu of any fractional Warrants, or (b) without any payment therefor, a number of shares of Common Stock equal to the Net Share Amount, together with Cash in lieu of any fractional shares or fractional Warrants, in each case, as described in the Warrant Agreement.

DATES OF EXERCISE: At any time, and from time to time, prior to 5:00 p.m., New York City time, on the Expiration Date, the Warrantholder shall be entitled to exercise all Warrants then represented hereby and outstanding (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants).

PROCEDURE FOR EXERCISE: Warrants may be exercised by (a) in the case of a Certificated Warrant, surrendering the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes, or (b) in the case of a Global Warrant, complying with the procedures established by the Depository for the exercise of Warrants.

EXPIRATION DATE: July 10, 2016.

This Warrant Certificate certifies that Motors Liquidation Company, or its registered assigns, is the Warrantholder of the Number of Warrants (the “**Warrants**”) specified above[, as modified in Schedule A hereto,] (such number subject to adjustment from time to time as described in the Warrant Agreement).

In connection with the exercise of any Warrants, (a) the Company shall determine the Full Physical Share Amount or Net Share Amount, as applicable, for each Warrant, and (b) the Company shall, or shall cause the Warrant Agent to, deliver to the exercising Warrantholder, on the applicable Settlement Date, for each Warrant exercised, a number of Shares of Common Stock equal to the relevant Full Physical Share Amount or Net Share Amount, as applicable, together with Cash in lieu of any fractional shares or fractional Warrants as described in the Warrant Agreement.

Prior to the relevant Exercise Date as described more fully in the Warrant Agreement, Warrants will not entitle the Warrantholder to any of the rights of the holders of shares of Common Stock.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, General Motors Company has caused this instrument to be duly executed.

Dated: \_\_\_\_\_

GENERAL MOTORS COMPANY

By: \_\_\_\_\_  
Name:  
Title:

Attest

By: \_\_\_\_\_  
Secretary

**Certificate of Authentication**

These are the Warrants referred to in the above-mentioned Warrant Agreement.

Countersigned as of the date above written:

U.S. Bank National Association, as  
Warrant Agent

By: \_\_\_\_\_  
Authorized Officer

**GENERAL MOTORS COMPANY**

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to an Amended and Restated Warrant Agreement, dated as of October 16, 2009 (the "**Warrant Agreement**"), between the Company and U.S. Bank National Association (the "**Warrant Agent**"), and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions each Warrantholder consents by acceptance of this Warrant Certificate or a beneficial interest therein. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement. A copy of the Warrant Agreement is on file at the Warrant Agent's Office.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of New York without regard to the conflicts of laws principles thereof.

Exercise Notice

U.S. Bank National Association  
60 Livingston Avenue  
Attention: Transfer Department  
Re: General Motors Company Warrant Agreement  
Mail Station EP-MN-WS2N  
St. Paul, MN 66107

The undersigned (the “Registered Warrantholder”) hereby irrevocably exercises \_\_\_\_\_ Warrants (the “Exercised Warrants”) and delivers to you herewith a Warrant Certificate or Warrant Certificates, registered in the Registered Warrantholder’s name, representing a Number of Warrants at least equal to the number of Exercised Warrants.

The Registered Warrantholder hereby either:

- elects for Full Physical Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement and confirms that it will, prior to 11:00 a.m., New York City time, on the Settlement Date, pay an amount equal to the Exercise Price (determined as of the relevant Exercise Date), multiplied by the number of Exercised Warrants, by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Registered Warrantholder as required under Section 3.03(b) of the Warrant Agreement; or
- elects for Net Share Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement.

The Registered Warrantholder hereby directs the Warrant Agent to:

(a) deliver the Full Physical Share Amount or Net Share Amount, as applicable, for each of the Exercised Warrants as follows:

\_\_\_\_\_ ; and

(b) if the number of Exercised Warrants is less than the Number of Warrants represented by the enclosed Warrant Certificates, to deliver a Warrant Certificate representing the unexercised Warrants to:

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Registered Warrantholder)

By: \_\_\_\_\_

Authorized Signature

Address:

Telephone:

**[To Be Attached if Warrant is a Global Warrant]**

**SCHEDULE A**

**SCHEDULE OF INCREASES OR DECREASES IN WARRANTS**

The initial Number of Warrants represented by this Global Warrant is 45,454,545. In accordance with the Amended and Restated Warrant Agreement dated as of October 16, 2009 between the Company and U.S. Bank National Association, as Warrant Agent, the following increases or decreases in the Number of Warrants represented by this certificate have been made:

<u>Date</u>	<u>Amount of increase in Number of Warrants evidenced by this Global Warrant</u>	<u>Amount of decrease in Number of Warrants evidenced by this Global Warrant</u>	<u>Number of Warrants evidenced by this Global Warrant following such decrease or increase</u>	<u>Signature of authorized signatory</u>
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[To Be Attached if Warrant is a Global Warrant or Certificated Warrant]

**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

\_\_\_\_\_  
Name, Address and Zip Code of Assignee

and irrevocably appoints \_\_\_\_\_  
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

*[Signature page follows]*

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Transferee

By: \_\_\_\_\_

Name:

Title:

(Sign exactly as your name appears on the other side of this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

**FORM OF CERTIFICATE OF COMPLIANCE WITH TRANSFER  
RESTRICTIONS**

In connection with the sale, assignment and transfer of \_\_\_\_\_ Warrants by \_\_\_\_\_ unto \_\_\_\_\_ (Please insert social security or other Taxpayer Identification Number of assignee) prior to the expiration of the holding period applicable to sales thereof under Rule 144 under the Securities Act of 1933, as amended (the "**Securities Act**") (or any successor provision), the undersigned confirms that such Warrants are being transferred:

To General Motors Company (the "**Issuer**") or any subsidiaries thereof; or

Pursuant to a registration statement that has become effective under the Securities Act; or

Pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with the third box above, the Issuer and the Warrant Agent reserve the right to require the delivery of such legal opinion, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws.

*Unless one of the boxes is checked, the Warrant Agent will refuse to register any of the Warrants evidenced by this certificate in the name of any person other than the registered holder thereof.*

Date: [\_\_\_\_\_]

[Insert name of transferee]

By: \_\_\_\_\_  
Name:  
Title:

FORM OF COMMON STOCK REQUISITION ORDER

[Date]

Via Facsimile [\_\_\_\_\_]

General Motors Company  
300 Renaissance Center  
Detroit, MI 48265-3000

Re: DWAC Issuance  
Control No. \_\_\_\_\_

Ladies and Gentlemen:

You are hereby authorized to issue and deliver the shares of Common Stock as indicated below via DWAC. The shares are being issued to cover the exercise of Warrants under the Amended and Restated Warrant Agreement dated as of October 16, 2009 between the Company and U.S. Bank National Association, as Warrant Agent (the "**Warrant Agreement**"). Defined terms used but not defined herein have the meaning assigned to them in the Warrant Agreement.

Number of Shares: \_\_\_\_\_  
\_\_\_\_\_ Original Issue or  
\_\_\_\_\_ Transfer from Treasury Account

Broker Name: \_\_\_\_\_

Broker's DTC Number: \_\_\_\_\_

Contact and Phone: \_\_\_\_\_

The Broker will initiate the DWAC transaction on (date).

Sincerely,

U.S. Bank National Association,  
as Warrant Agent

By: \_\_\_\_\_  
Name:  
Title:

cc: [Insert name] via facsimile [insert fax number]  
Broker

**AMENDED AND RESTATED WARRANT AGREEMENT**

**dated as of October 16, 2009**

**between**

**GENERAL MOTORS COMPANY**

**and**

**U.S. BANK NATIONAL ASSOCIATION  
as Warrant Agent**

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**AMENDED AND RESTATED WARRANT AGREEMENT**

This Amended and Restated Warrant Agreement (“**Warrant Agreement**”) dated as of October 16, 2009 is between General Motors Company, a Delaware corporation (the “**Company**”), and U.S. Bank National Association (the “**Warrant Agent**”).

**WITNESSETH THAT:**

WHEREAS, General Motors LLC, a Delaware limited liability company, the Company and the Warrant Agent are parties to that certain Amended and Restated Warrant Agreement dated as of October 15, 2009 (the “**Original Warrant Agreement**”), pursuant to which the Company issued 45,454,545 Warrants to Motors Liquidation Company (the “**Initial Warrantholder**”);

WHEREAS, in connection with the Company’s name change from General Motors Holding Company to General Motors Company, the Company and the Warrant Agent desire to amend and restate the Original Warrant Agreement in its entirety; and

WHEREAS, the Company desires that the Warrant Agent continue to act on behalf of the Company, and the Warrant Agent is willing to act, in connection with the issuance, exchange, transfer, substitution and exercise of Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.01. *Certain Definitions.* As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

“**\$**” refers to such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“**Adjustment Event**” has the meaning set forth in Section 5.08.

“**Agent Members**” has the meaning set forth in Section 2.06(c).

“**Authentication Order**” means a Company Order for authentication and delivery of Warrants.

“**Black Scholes Proportion**” has the meaning given to it in the definition of “Change of Control Payment Amount.”

“**Black Scholes Warrant Value**” as of any date, shall mean the value of a Warrant to purchase one share of Common Stock (as determined in good faith by the Board of Directors based upon the advice of an independent investment bank of national standing selected by the Board of Directors and reasonably acceptable to the Warrant Agent) and

shall be determined by customary investment banking practices using the Black Scholes model. For purposes of calculating such amount, (1) the term of the Warrants will be the period from the date of determination until the Expiration Date, (2) the price of each share of Common Stock will be the Current Market Price as of the date of determination, (3) the assumed volatility will be determined by such independent investment banking firm as of the date of determination, (4) the assumed risk-free rate will equal the yield on the U.S. Treasury security with a maturity closest to July 10, 2019, as the yield on that security exists as of the date of determination and (5) any other assumptions shall be made by the Board of Directors in good faith based upon the advice of such independent investment bank at the time of determination.

**“Board of Directors”** means the board of directors of the Company or any committee of such board of directors duly authorized to exercise the power of such board of directors with respect to the matters provided for in this Warrant Agreement as to which the board of directors is authorized or required to act.

**“Board Resolution”** means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Warrant Agent.

**“Business Day”** means any day other than a Saturday or Sunday or other than a day on which banking institutions in New York City, New York are authorized or obligated by law or executive order to close.

**“Capital Stock”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of the Company and all warrants or options to acquire such capital stock.

**“Carryover Warrants”** shall mean, for each Warrant, that portion of such Warrant equal to one minus the Black Scholes Proportion.

**“Cash”** means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

**“Certificated Warrant”** means a Warrant represented by a Warrant Certificate, in definitive, fully registered form.

**“Change of Control Date”** shall mean the date on which a Change of Control Event is consummated.

**“Change of Control Estimated Payment Amount”** shall mean, in respect of any Change of Control Event, an estimate of the Change of Control Payment Amount payable on the applicable Change of Control Payment Date, as determined in good faith by the Board of Directors, based upon the advice of an independent investment bank of national standing selected by the Board of Directors and reasonably acceptable to the Warrant Agent, as of a date no more than 20 Business Days and no less than 15 Business Days prior to the Change of Control Date, in a manner consistent with the terms of this Warrant Agreement and the Warrants, including the definitions of Black Scholes Warrant Value and Change of Control Payment Amount.

“**Change of Control Event**” shall mean (i) the acquisition by a Person (other than the Company or a wholly-owned subsidiary of the Company) in a tender offer or a series of related tender offers of 80% or more of the outstanding Common Stock (determined on a fully-diluted basis), (ii) the consolidation or merger of the Company with or into another Person (other than a wholly-owned subsidiary of the Company), or (iii) a sale of all or substantially all of the Company’s assets to another Person (other than a wholly-owned subsidiary of the Company), in each of clauses (i) through (iii) in which all or any portion of the consideration paid or exchanged for Common Stock, or into which Common Stock is converted, consists of Other Property.

“**Change of Control Payment Amount**” shall mean an amount in Cash equal to the product of (1) the Black Scholes Warrant Value of a Warrant on a Change of Control Date immediately prior to the consummation of such Change of Control Event multiplied by (2) a fraction, (x) the numerator of which is the fair market value of the Other Property received in exchange for a share of Common Stock in a Change of Control Event as of the Change of Control Date (as determined by an independent investment bank of national standing selected by the Company and determined by customary investment banking practices) and (y) the denominator of which is the sum of (a) the Closing Sale Price of the Registered and Listed Shares received in exchange for a share of Common Stock in a Change of Control Event as of the Change of Control Date (if any), and (b) the fair market value (determined as above) of the Other Property as of the Change of Control Date received in exchange for a share of Common Stock in a Change of Control Event (such fraction referred to herein as the “**Black Scholes Proportion**”).

For purposes of determining the Change of Control Payment Amount, if holders of Common Stock are entitled to receive differing forms or types of consideration in any transaction or series of transactions contemplated by the definition of “Change of Control Event,” each holder shall be deemed to have received the same proportion of Other Property and Registered and Listed Shares that all holders of Common Stock in the aggregate elected or were required to receive in such transaction or transactions.

“**Change of Control Payment Date**” has the meaning set forth in Section 5.09(e).

“**Close of Business**” means 5:00 p.m. New York City time.

“**Closing Date**” means July 10, 2009.

“**Closing Sale Price**” means, as of any date, the last reported per share sales price of a share of Common Stock or any other security on such date (or, if no last reported sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices on such date) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted; *provided, however*, that in the absence of such quotations, the Board of Directors will make a good faith determination of the Closing Sale Price.

If during a period applicable for calculating Closing Sale Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 5 hereof, Closing Sale Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

“**Common Stock**” means the common stock, par value \$0.01 per share, of the Company authorized at the date of this Warrant Agreement or as such stock may be constituted from time to time. Subject to the provisions of Section 5.09 and Section 5.10, shares issuable upon exercise of Warrants shall include only shares of the class designated as Common Stock of the Company as of the date of this Warrant Agreement or shares of any class or classes resulting from any reclassification or reclassifications or change or changes thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, and if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications or changes bears to the total number of shares of all such classes resulting from such reclassifications or changes.

“**Company Order**” means a written order signed in the name of the Company by any two officers, at least one of whom must be its Chief Executive Officer, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, or its Controller, and delivered to the Warrant Agent.

“**Current Market Price**” means, (i) in connection with a dividend, issuance or distribution, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the earlier of the date in question and the Trading Day immediately preceding the Ex-Date for such dividend, issuance or distribution and (ii) in connection with a determination of Black Scholes Warrant Value, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the date of determination, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution selected by

the Board of Directors and reasonably acceptable to the Warrant Agent. If the Common Stock is not traded on the New York Stock Exchange or any U.S. national or regional securities exchange or quotation system, the Current Market Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such price shall be reasonably determined in good faith by the Company's Board of Directors.

**"Cut-Off Time"** has the meaning set forth in Section 5.09(e).

**"Depository"** means The Depository Trust Company, its nominees, and their respective successors.

**"Determination Date"** has the meaning set forth in Section 5.08.

**"Distribution Date"** has the meaning set forth in Section 2.04.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

**"Ex-Date"** means, in connection with any dividend, issuance or distribution, the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such dividend, issuance or distribution.

**"Exercise Date"** has the meaning set forth in Section 3.02(b).

**"Exercise Notice"** means, for any Warrant, the exercise notice set forth on the reverse of the Warrant Certificate, substantially in the form set forth in Exhibit D hereto.

**"Exercise Price"** means initially \$55.00 per Warrant, subject to adjustment pursuant to Article 5.

**"Expiration Date"** means, for any Warrant, July 10, 2019.

**"Full Physical Settlement"** means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Full Physical Share Amount in exchange for payment by the Warrantholder of the Exercise Price.

**"Full Physical Share Amount"** has the meaning set forth in Section 3.03(b).

**"Global Warrant"** means a Warrant in the form of a permanent global Warrant Certificate, in definitive, fully registered form.

**"Global Warrant Legend"** means the legend set forth in Section 2.06(b).

**"Initial Warrantholder"** has the meaning set forth in the Recitals.

“**Master Sale and Purchase Agreement**” means the Amended and Restated Master Sale and Purchase Agreement dated as of June 26, 2009 by and among the Initial Warrantholder, Saturn LLC, Saturn Distribution Corporation, Chevrolet-Saturn of Harlem, Inc. and General Motors LLC, a Delaware limited liability company and successor-in-interest to General Motors Company, as amended.

“**Net Share Amount**” has the meaning set forth in Section 3.03(c).

“**Net Share Settlement**” means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Net Share Amount without any payment therefor.

“**Net Share Settlement Price**” means, as of any date, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days prior to the date of determination of the Net Share Settlement Price for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution reasonably acceptable to the Warrant Agent. If the Common Stock is not traded on the New York Stock Exchange or any U.S. national or regional Securities exchange or quotation system, the Net Share Settlement Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such prices shall be reasonably determined in good faith by the Company’s Board of Directors.

If during a period applicable for calculating Net Share Settlement Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 5 hereof, the Net Share Settlement Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

“**New Warrant Exercise Price**” shall be equal to the product of (i) the Exercise Price then in effect and (ii) one minus the Black Scholes Proportion.

“**New Warrants**” has the meaning set forth in Section 5.09(e).

“**Number of Warrants**” means, for a Warrant Certificate, the “Number of Warrants” specified on the face of such Warrant Certificate (or, in the case of a Global Warrant, on Schedule A to such Warrant Certificate), subject to adjustment pursuant to Article 5.

“**Officer’s Certificate**” means a certificate signed by any two officers of the Company, at least one of whom must be its Chief Executive Officer, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, or its Controller.

“**Original Warrant Agreement**” has the meaning set forth in the Recitals.

“**Other Property**” means any cash, property or other securities other than Registered and Listed Shares.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Person**” means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any Cash, securities or other property or in which Common Stock (or other applicable security) is exchanged for or converted into any combination of Cash, securities or other property, the date fixed for determination of holders of Common Stock entitled to receive such Cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

“**Redemption**” has the meaning set forth in Section 5.09(e).

“**Redemption Notice**” has the meaning set forth in Section 5.09(e).

“**Reference Property**” has the meaning set forth in Section 5.09(a).

“**Registered and Listed Shares**” shall mean shares of the common stock of the surviving entity in a consolidation, merger, or combination or the acquiring entity in a tender offer, except that if the surviving entity or acquiring entity has a parent corporation, it shall be the shares of the common stock of the parent corporation, provided, that, in each case, such shares (i) have been registered (or will be registered within 30 calendar days following the Change of Control Date) under Section 12 of the Exchange Act with the Securities and Exchange Commission, and (ii) are listed for trading on the New York Stock Exchange or any other national securities exchange (or will be so listed or admitted within 30 calendar days following the Change of Control Date).

“**Reorganization Event**” has the meaning set forth in Section 5.09(a).

“**SEC**” means the United States Securities and Exchange Commission.

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

“**Settlement Date**” means, in respect of a Warrant that is exercised hereunder, the third Trading Day immediately following the Exercise Date for such Warrant.

“**Trading Day**” means (i) if the applicable security is listed on the New York Stock Exchange, a day on which trades may be made thereon or (ii) if the applicable security is listed or admitted for trading on the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or other national securities exchange or market, a day on which the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or such other national securities exchange or market is open for business or (iii) if the applicable security is not so listed, admitted for trading or quoted, any Business Day.

“**Trigger Event**” has the meaning set forth in Section 5.03.

“**Unit of Reference Property**” has the meaning set forth in Section 5.09(a).

“**Unit Value**” has the meaning set forth in Section 5.09(c).

“**VEBA Exercise Price**” means the ‘Exercise Price’ as such term is defined in the VEBA Warrant Agreement.

“**VEBA Warrant Agreement**” means the amended and restated warrant agreement, dated as of the date hereof, between the Company and U.S. Bank National Association as Warrant Agent, pursuant to which UAW Retiree Medical Benefits Trust was the ‘Initial Warrantholder’ as defined therein.

“**VEBA Warrants**” means the warrants issued pursuant to the VEBA Warrant Agreement.

“**Vice President**” means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president” of the Company.

“**Voting Stock**” means Capital Stock having the right to vote for the election of directors under ordinary circumstances.

“**Warrant**” means a warrant of the Company exercisable for one share of Common Stock as provided herein, and issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth in this Warrant Agreement.

“**Warrant Agent**” means U.S. Bank National Association, in its capacity as warrant agent hereunder.

“**Warrant Certificate**” means any certificate representing Warrants satisfying the requirements set forth in Section 2.03.

“**Warrant Register**” has the meaning set forth in Section 2.05.

“**Warrantholder**” means each Person in whose name Warrants are registered in the Warrant Register.

## ARTICLE 2

### ISSUANCE, EXECUTION AND TRANSFER OF WARRANTS

Section 2.01. *Issuance of Warrants.* (a) The Company shall execute and deliver to the Warrant Agent, for authentication and delivery to the Initial Warrantholder on the date hereof, a single Certificated Warrant in the name of the Initial Warrantholder, together with an Authentication Order with respect thereto, evidencing an initial aggregate Number of Warrants equal to 45,454,545 (such Number of Warrants subject to adjustment from time to time as described herein). The Warrant Agent shall, upon receipt of such Certificated Warrant and Authentication Order, authenticate and deliver such Certificated Warrant to the Initial Warrantholder in accordance with Section 2.02 and register the Initial Warrantholder as the Warrantholder of such Warrants in accordance with Section 2.05. All such Warrants shall be dated as of October 16, 2009.

(b) Except as set forth in Section 2.05 and Section 6.02, the Warrants issued to the Initial Warrantholder on the date hereof shall be the only Warrants issued or outstanding under this Warrant Agreement.

(c) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof.

Section 2.02. *Execution and Authentication of Warrants.* (a) Warrants shall be executed on behalf of the Company by any Executive Vice President, any Senior Vice President or any Vice President of the Company and attested by its Secretary or any one of its Assistant Secretaries. The signature of any of these officers on Warrants may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Warrant that has been duly authenticated and delivered by the Warrant Agent.

(b) Warrants bearing the manual or facsimile signatures of individuals, each of whom was, at the time he or she signed such Warrant or his or her facsimile signature was affixed to such Warrant, as the case may be, a proper officer of the Company, shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Warrants or did not hold such offices at the date of such Warrants.

(c) No Warrant shall be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on such Warrant a certificate of authentication substantially in the form provided for herein executed by the Warrant Agent by manual or facsimile signature, and such certificate upon any Warrant shall be conclusive evidence, and the only evidence, that such Warrant has been duly authenticated and delivered hereunder.

Section 2.03. *Form of Warrant Certificates.* Each Warrant Certificate shall be in substantially the form set forth in Exhibit D hereto and shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

Section 2.04. *Transfer Restrictions and Legends.* This Section 2.04 shall not apply to Warrants and/or Common Stock which have been issued, distributed or sold pursuant to an effective registration statement or are otherwise exempt from registration under the Securities Act pursuant to Section 1145 of the Bankruptcy Code (the date as of which this Section 2.04 does not apply to such Warrants and/or Common Stock, the “**Distribution Date**”).

(a) Each Warrant issued hereunder shall bear the legend set forth in Exhibit A hereto.

(i) Warrants may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by a Warrantholder except (A) pursuant to a registration statement that has become effective under the Securities Act or (B) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any Warrants as to which such restrictions on transfer shall have expired in accordance with their terms such that they can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the Warrant Certificates representing such Warrants for exchange pursuant to Section 2.05 in accordance with the procedures of the Warrant Agent (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the Warrant Agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new Warrant Certificate for a like Number of Warrants, which shall not bear such legend.

(b) All shares of Common Stock issued to a Warrantholder upon exercise of a Warrant shall bear the legend set forth in Exhibit B hereto.

(i) Shares of Common Stock issued to a Warrantholder upon exercise of a Warrant may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by such Warrantholder except (A) pursuant to a registration statement that has become effective under the Securities Act or (B) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any such shares of Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms such that the shares of Common Stock can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the transfer agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear such legend.

(c) Any Warrant that is purchased or owned by the Company or any “affiliate” thereof (as defined under Rule 144 under the Securities Act) may not be resold by the Company or such affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Warrants no longer being “restricted securities” (as defined in Rule 144 under the Securities Act).

Section 2.05. *Transfer, Exchange and Substitution.* (a) Warrants shall be issued in registered form only. The Company shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the “**Warrant Register**”) in which, subject to such reasonable regulations as the Company may prescribe, the Company shall provide for the registration of Warrants and transfers, exchanges or substitutions of Warrants as herein provided. All Warrants issued upon any registration of transfer or exchange of or substitution for Warrants shall be valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as Warrants surrendered for such registration of transfer, exchange or substitution.

(b) A Warrantholder may transfer a Warrant only upon surrender of such Warrant for registration of transfer. Warrants may be presented for registration of transfer and exchange at the offices of the Warrant Agent with a written instruction of transfer in form satisfactory to the Warrant Agent, duly executed by such Warrantholder or by such Warrantholder’s attorney, duly authorized in writing. Such Warrantholder will also provide a written certificate (substantially in the form of Exhibit E hereto) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Warrants. The Warrant Agent shall be entitled to conclusively rely upon any such certification in connection with the transfer of a Warrant hereunder and shall have no responsibility to monitor or verify whether any such transfer complies with the requirements hereunder or otherwise complies with the Securities Act. No such transfer shall be effected until, and the transferee shall succeed to the rights of a Warrantholder only upon, final acceptance and registration of the transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any transfer of a Warrant by a Warrantholder as

provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name Warrants are registered as the owner thereof for all purposes and as the Person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding.

(c) Every Warrant presented or surrendered for registration of transfer or for exchange or substitution shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a duly executed instrument of transfer in form satisfactory to the Company and the Warrant Agent, by the holder thereof or such Warrantholder's attorney duly authorized in writing.

(d) When Warrants are presented to the Warrant Agent with a request to register the transfer of, or to exchange or substitute, such Warrants, the Warrant Agent shall register the transfer or make the exchange or substitution as requested if its requirements for such transactions and any applicable requirements hereunder are satisfied. To permit registrations of transfers, exchanges and substitutions, the Company shall execute Warrant Certificates at the Warrant Agent's request and the Warrant Agent shall countersign and deliver such Warrant Certificates. No service charge shall be made for any registration of transfer or exchange of or substitution for Warrants, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of Warrants.

(e) A Certified Warrant may be exchanged at the option of the holder or holders thereof, when presented or surrendered in accordance with this Warrant Agreement, for another Warrant Certificate or other Warrant Certificates of like tenor and representing in the aggregate a like Number of Warrants. If less than all Warrants represented by a Certificated Warrant are transferred, exchanged or substituted in accordance with this Warrant Agreement, the Warrant Certificate shall be surrendered to the Warrant Agent and a new Warrant Certificate for a Number of Warrants equal to the Warrants represented by such Warrant Certificate that were not transferred, exchanged or substituted, registered in such name or names as may be directed in writing by the surrendering Warrantholder, shall be executed by the Company and delivered to the Warrant Agent and the Warrant Agent shall countersign such new Warrant Certificate and shall deliver such new Warrant Certificate to the Person or Persons entitled to receive the same.

Section 2.06. *Global Warrants.* (a) The Warrants shall initially be issued in the form of Certificated Warrants. However, if the Warrants are sold pursuant to an effective registration statement filed with the SEC, or if the Company so elects at any time, any Certificated Warrants may be presented to the Warrant Agent by Warrantholders in exchange for one or more Global Warrants up to the aggregate Number of Warrants then outstanding, to be registered in the name of the Depository, or its nominee, and delivered by the Warrant Agent to the Depository, or its custodian, for crediting to the accounts of its participants pursuant to the procedures of the Depository. Upon such presentation, the Company shall execute a Global Warrant representing such aggregate Number of Warrants and deliver the same to the Warrant Agent for authentication and delivery in accordance with Section 2.02.

(b) Any Global Warrant shall bear the legend substantially in the form set forth in Exhibit C hereto (the “**Global Warrant Legend**”).

(c) So long as a Global Warrant is registered in the name of the Depositary or its nominee, members of, or participants in, the Depositary (“**Agent Members**”) shall have no rights under this Warrant Agreement with respect to the Global Warrant held on their behalf by the Depositary or the Warrant Agent as its custodian, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such owner’s beneficial interest in such Global Warrant will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility with respect to such records maintained by the Depositary or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Warrantholder.

(d) Any holder of a Global Warrant registered in the name of the Depositary or its nominee shall, by acceptance of such Global Warrant, agree that transfers of beneficial interests in such Global Warrant may be effected only through a book-entry system maintained by the holder of such Global Warrant (or its agent), and that ownership of a beneficial interest in Warrants represented thereby shall be required to be reflected in book-entry form.

(e) Transfers of a Global Warrant registered in the name of the Depositary or its nominee shall be limited to transfers in whole, and not in part, to the Company, the Depositary, their successors, and their respective nominees. Interests of beneficial owners in a Global Warrant registered in the name of the Depositary or its nominee shall be transferred in accordance with the rules and procedures of the Depositary.

(f) A Global Warrant registered in the name of the Depositary or its nominee shall be exchanged for Certificated Warrants only if the Depositary (A) has notified the Company that it is unwilling or unable to continue as or ceases to be a clearing agency registered under Section 17A of the Exchange Act and (B) a successor to the Depositary registered as a clearing agency under Section 17A of the Exchange Act is not able to be appointed by the Company within 90 days or the Depositary is at any time unwilling or unable to continue as Depositary and a successor to the Depositary is not able to be appointed by the Company within 90 days. In any such event, a Global Warrant registered in the name of the Depositary or its nominee shall be surrendered to the Warrant Agent for cancellation, and the Company shall execute, and the Warrant Agent shall countersign and deliver, to each beneficial owner identified by the Depositary, in exchange for such beneficial owner’s beneficial interest in such Global Warrant, Certificated Warrants representing, in the aggregate, the Number of Warrants theretofore represented by such Global Warrant with respect to such beneficial owner’s respective beneficial interest. Any

Certificated Warrant delivered in exchange for an interest in a Global Warrant pursuant to this Section 2.06(f) shall not bear the Global Warrant Legend. Interests in the Global Warrant may not be exchanged for Certificated Warrants other than as provided in this Section 2.06(f).

(g) The holder of a Global Warrant registered in the name of the Depository or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Warrantholder is entitled to take under this Warrant Agreement or the Warrant.

Section 2.07. *Surrender of Warrant Certificates.* Any Warrant Certificate surrendered for registration of transfer, exchange, substitution or exercise of Warrants represented thereby shall, if surrendered to the Company, be delivered to the Warrant Agent, and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company and, except as provided in this Article 2 in case of an exchange, transfer or substitution, or Article 3 in case of the exercise of less than all Warrants represented thereby, or Section 6.02 in case of mutilation, no Warrant Certificate shall be issued hereunder in lieu thereof. The Warrant Agent shall deliver to the Company from time to time or otherwise dispose of such cancelled Warrant Certificates as the Company may direct.

### ARTICLE 3

#### EXERCISE AND SETTLEMENT OF WARRANTS

Section 3.01. *Exercise of Warrants.* At any time prior to 5:00 p.m., New York City time, on the Expiration Date, a Warrantholder shall be entitled to exercise, in accordance with this Article 3, the full Number of Warrants represented by any Warrant Certificate then registered in such Warrantholder's name (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants). Any Warrants not exercised prior to such time shall expire unexercised.

Section 3.02. *Procedure for Exercise.* (a) To exercise a Warrant (i) in the case of a Certificated Warrant, the Warrantholder must surrender the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes as set forth in Section 7.01(b), or (ii) in the case of a Global Warrant, the Warrantholder must comply with the procedures established by the Depository for the exercise of Warrants.

(b) The date on which a Warrantholder complies with the requirements for exercise set forth in this Section 3.02 in respect of a Warrant is the "**Exercise Date**" for such Warrant. However, if such date is not a Trading Day or the Warrantholder satisfies such requirements after the Close of Business on a Trading Day, then the Exercise Date shall be the immediately succeeding Trading Day, unless that Trading Day falls after the Expiration Date, in which case the Exercise Date shall be the immediately preceding Trading Day.

Section 3.03. *Settlement of Warrants.* (a) Full Physical Settlement shall apply to each Warrant unless the Warrantholder elects for Net Share Settlement to apply upon exercise of such Warrant. Such election shall be made (i) in the case of a Certificated Warrant, in the Exercise Notice for such Warrant, or (ii) in the case of a Global Warrant, in accordance with the procedures established by the Depository for the exercise of Warrants.

(b) If Full Physical Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, prior to 11:00 a.m., New York City time, on the Settlement Date for such Warrant, the Warrantholder shall pay the Exercise Price (determined as of such Exercise Date) by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Warrantholder in accordance with Section 7.15, and on the Settlement Date, following receipt by the Warrant Agent of such Exercise Price, the Company shall cause to be delivered to the Warrantholder one share of Common Stock (the “**Full Physical Share Amount**”), together with Cash in respect of any fractional Warrant as provided in Section 3.05. All funds received by the Warrant Agent upon exercise of such Warrant shall be deposited by the Warrant Agent for the account of the Company at a bank previously instructed by the Company in writing.

(c) If Net Share Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, on the Settlement Date for such Warrant, the Company shall cause to be delivered to the Warrantholder a number of shares of Common Stock (which in no event will be less than zero) (the “**Net Share Amount**”) equal to (i) the Net Share Settlement Price as of the relevant Exercise Date, *minus* the Exercise Price (determined as of such Exercise Date), *divided by* (ii) such Net Share Settlement Price, together with Cash in respect of any fractional shares or fractional Warrants as provided in Section 3.05.

Section 3.04. *Delivery of Common Stock.* (a) In connection with the delivery of shares of Common Stock to an exercising Warrantholder pursuant to Section 3.03(b) or Section 3.03(c), as the case may be, the Warrant Agent shall:

(i) inform the Company of the number of shares of Common Stock underlying the Warrants which were exercised; and (A) if such shares of Common Stock are in book-entry form at the Depository, the Company shall (or shall cause the transfer agent to) deliver such shares of Common Stock by electronic transfer to such Warrantholder’s account, or any other account as such Warrantholder may designate, at the Depository or at an Agent Member, or (B) if such shares of Common Stock are not in book-entry form at the Depository, the Company shall (or shall cause the transfer agent to) deliver to or upon the order of such Warrantholder a certificate or certificates, in each case with legends thereon as appropriate (as determined by the Company) and for the number of full shares of Common Stock to which such Warrantholder is entitled, registered in such name or names as may be directed by such Warrantholder;

(ii) deliver Cash to such Warrantholder in respect of any fractional shares or fractional Warrants, as provided in Section 3.05; and

(iii) if the Number of Warrants represented by a Warrant Certificate shall not have been exercised in full, deliver a new Warrant Certificate, countersigned by the Warrant Agent, for the balance of the number of Warrants represented by the surrendered Warrant Certificate.

(b) Each Person in whose name any shares of Common Stock are issued shall for all purposes be deemed to have become the holder of record of such shares as of the Exercise Date or, in the case of a Warrant subject to Full Physical Settlement only, the date of payment by the Warrantholder of the Exercise Price in accordance with Section 3.03(b), if later. However, if any such date is a date when the stock transfer books of the Company are closed, such Person shall be deemed to have become the holder of such shares at the Close of Business on the next succeeding date on which the stock transfer books are open.

(c) Promptly after the Warrant Agent shall have taken the action required above (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to any Warrants exercised (including, without limitation, with respect to any Exercise Price paid to the Warrant Agent). The Company shall reimburse the Warrant Agent for any amounts paid by the Warrant Agent in respect of a fractional share or fractional Warrant upon such exercise in accordance with Section 3.05 hereof.

Section 3.05. *No Fractional Shares to Be Issued.* (a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a share of Common Stock upon exercise of any Warrants.

(b) If any fraction of a Warrant shall be exercised hereunder, the Company shall pay the relevant Warrantholder Cash in lieu of the corresponding fraction of a share of Common Stock valued at the Net Share Settlement Price as of the Exercise Date. However, if more than one Warrant shall be exercised hereunder at one time by the same Warrantholder, the number of full shares which shall be issuable upon exercise thereof shall be computed on the basis of all Warrants (including any fractional Warrants) so exercised. If any fraction of a share of Common Stock would, except for the provisions of this Section 3.05, be issuable on the exercise of any Warrant or Warrants (including any fractional Warrants), the Company shall pay the Warrantholder Cash in lieu of such fractional shares valued at the Net Share Settlement Price as of the Exercise Date.

(c) Each Warrantholder, by its acceptance of a Warrant Certificate, expressly waives its right to receive any fraction of a share of Common Stock or a stock certificate representing a fraction of a share of Common Stock.

Section 3.06. *Acquisition of Warrants by Company.* The Company shall have the right, except as limited by law, to purchase or otherwise to acquire Warrants at such times, in such manner and for such consideration as it may deem appropriate and shall have agreed with the holder of such Warrants.

Section 3.07. *Direction of Warrant Agent.* (a) The Company shall be responsible for performing all calculations required in connection with the exercise and settlement of the Warrants and the payment or delivery, as the case may be, of Cash and/or Common Stock as described in this Article 3. In connection therewith, the Company shall provide prompt written notice to the Warrant Agent of the amount of Cash and the number of shares of Common Stock payable or deliverable, as the case may be, upon exercise and settlement of the Warrants, including, without limitation, the Net Share Amount and the Full Physical Share Amount.

(b) Any Cash to be paid to the Warrantholders hereunder shall be delivered to the Warrant Agent no later than the Business Day immediately preceding the date such consideration is required to be delivered to the Warrantholders. Any Common Stock to be delivered to the Warrantholders hereunder shall be delivered by the Company (or the transfer agent) by the date such consideration is required to be delivered to the Warrantholders.

(c) The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations or items to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or Units of Reference Property that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or Units of Reference Property, or to comply with any of the covenants of the Company contained in this Article 3.

#### ARTICLE 4

[RESERVED]

#### ARTICLE 5

#### ADJUSTMENTS

Section 5.01. *Adjustments to Exercise Price.* The Exercise Price for the Warrants shall be subject to adjustment (without duplication) upon the occurrence of any of the following events:

(a) The issuance of Common Stock as a dividend or distribution to all holders of Common Stock, or a subdivision or combination of Common Stock, in which event the Exercise Price shall be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0}{OS_1}$$

where:

- EP<sub>0</sub> = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be;
- EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be; and
- OS<sub>1</sub> = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, subdivision or combination.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be. If any dividend or distribution or subdivision or combination of the type described in this Section 5.01(a) is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to the Exercise Price that would then be in effect if such dividend or distribution or subdivision or combination had not been declared or announced, as the case may be.

(b) The issuance to all holders of Common Stock of rights or warrants entitling them for a period expiring 60 days or less from the date of issuance of such rights or warrants to purchase shares of Common Stock (or securities convertible into Common Stock) at less than (or having a conversion price per share less than) the Current Market Price of Common Stock, in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0 + Y}{OS_0 + X}$$

where:

- EP<sub>0</sub> = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such issuance;
- EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such issuance;

- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such issuance;
- X = the total number of shares of Common Stock issuable pursuant to such rights, warrants or convertible securities; and
- Y = the aggregate price payable to exercise such rights, warrants or convertible securities *divided by* the Current Market Price.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such issuance. In the event that the issuance of such rights, warrants or convertible securities is announced but such rights, warrants or convertible securities are not so issued, the Exercise Price shall again be adjusted to be the Exercise Price that would then be in effect if the Record Date for such issuance had not occurred. To the extent that such rights or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights, warrants or convertible securities, upon the expiration, termination or maturity of such rights, warrants or convertible securities, the Exercise Price shall be readjusted to the Exercise Price that would then be in effect had the adjustments made upon the issuance of such rights, warrants or convertible securities been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate price payable for such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, as well as any consideration received in connection with the conversion of any convertible securities issued upon exercise of such rights or warrants, and the value of such consideration, if other than Cash, shall be determined in good faith by the Board of Directors.

(c) The dividend or distribution to all holders of Common Stock of (i) shares of the Company's Capital Stock (other than Common Stock), (ii) evidences of the Company's indebtedness, (iii) rights or warrants to purchase the Company's securities or the Company's assets or (iv) property or Cash (excluding any ordinary cash dividends declared by the Board of Directors and excluding any dividend, distribution or issuance covered by clauses (a) or (b) above), in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{SP_0 - FMV}{SP_0}$$

where:

- EP<sub>0</sub> = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;
- EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

SP<sub>0</sub> = the Current Market Price; and

FMV = the fair market value (as determined in good faith by the Board of Directors), on the Record Date for such dividend or distribution, of the shares of Capital Stock, evidences of indebtedness or property, rights or warrants so distributed or the amount of Cash (other than in the case of ordinary cash dividends declared by the Board of Directors) expressed as an amount per share of outstanding Common Stock.

In the event of a reduction of the VEBA Exercise Price under the VEBA Warrant Agreement (other than pursuant to Article 5 of the VEBA Warrant Agreement) below 125% of the Exercise Price as adjusted to such date pursuant to this Article 5, such reduction shall be treated as a distribution of property where the FMV of such property for purposes of this adjustment shall be equal to the absolute value of the difference between (i) the Black Scholes Warrant Value of the outstanding VEBA Warrants with a VEBA Exercise Price equal to 125% of the Exercise Price as adjusted to such date pursuant to this Article 5 and (ii) the Black Scholes Warrant Value of the outstanding VEBA Warrants immediately following such reduction in VEBA Exercise Price, expressed as an amount per share of outstanding Common Stock.

Such decrease shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

However, if the transaction that gives rise to an adjustment pursuant to this clause (c) is one pursuant to which the payment of a dividend or other distribution on Common Stock consists of shares of capital stock of, or similar equity interests in, a subsidiary of the Company or other business unit of the Company (i.e., a spin-off) that are, or, when issued, will be, traded or quoted on the New York Stock Exchange or any other national or regional securities exchange or market, then the Exercise Price will instead be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{MP_0}{MP_0 + FMV_0}$$

where:

EP<sub>0</sub> = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

EP<sub>1</sub> = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

- FMV<sub>0</sub> = the average of the Closing Sale Prices of the Capital Stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution; and
- MP<sub>0</sub> = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution.

Such decrease shall become effective immediately after the Ex-Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

(d) For the purposes of Section 5.01(a), (b) and (c), any dividend or distribution to which Section 5.01(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be a dividend or distribution of the indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Exercise Price adjustment required by Section 5.01(c) with respect to such dividend or distribution shall be made in respect of such dividend or distribution (without regard to the parenthetical in Section 5.01(c) that begins with the word “excluding”)) immediately followed by a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Exercise Price adjustment required by Section 5.01 with respect to such dividend or distribution shall then be made), except, for purposes of such adjustment, any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Close of Business on the Record Date.”

Section 5.02. *Adjustments to Number of Warrants.* Concurrently with any adjustment to the Exercise Price under Section 5.01, the Number of Warrants for each Warrant Certificate will be adjusted such that the Number of Warrants for each such Warrant Certificate in effect immediately following the effectiveness of such adjustment will be equal to the Number of Warrants for each such Warrant Certificate in effect immediately prior to such adjustment, *multiplied by* a fraction, (i) the numerator of which is the Exercise Price in effect immediately prior to such adjustment and (ii) the denominator of which is the Exercise Price in effect immediately following such adjustment.

Section 5.03. *Certain Distributions of Rights and Warrants; Shareholder Rights Plan.* (a) Rights or warrants distributed by the Company to all holders of Common Stock (including under any Shareholder Rights Plan in existence on the date hereof or hereafter put into effect) entitling the holders thereof to subscribe for or purchase shares of the Company’s Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a “**Trigger Event**”):

- (i) are deemed to be transferred with such shares of Common Stock;

(ii) are not exercisable; and

(iii) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of Article 5 (and no adjustment to the Exercise Price or the Number of Warrants under this Article 5 will be made) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Price and the Number of Warrants for each Warrant Certificate shall be made under this Article 5 (subject in all respects to Section 5.03(d)).

(b) If any such right or warrant is subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (subject in all respects to Section 5.03(d)).

(c) In addition, except as set forth in Section 5.03(d), in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in Section 5.03(b)) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Price and the Number of Warrants for each Warrant Certificate under Article 5 was made (including any adjustment contemplated in Section 5.03(d)):

(i) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase; and

(ii) in the case of such rights or warrants that shall have expired or been terminated without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted as if such rights and warrants had not been issued.

(d) If a Company shareholders rights plan under which any rights are issued provides that each share of Common Stock issued upon exercise of Warrants at any time prior to the distribution of separate certificates representing such rights shall be entitled to receive such rights, prior to the separation of such rights from the Common Stock, the Exercise Price and the Number of Warrants for each Warrant Certificate shall not be adjusted pursuant to Section 5.01. If, however, prior to any exercise of a Warrant, such rights have separated from the Common Stock, the Exercise Price and the Number of

Warrants for each Warrant Certificate shall be adjusted at the time of separation as if the Company dividended or distributed to all holders of Common Stock, the Company's Capital Stock, evidences of the Company's indebtedness, certain rights or warrants to purchase the Company's securities or other of the Company's assets as described in Section 5.01(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 5.04. *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder.

Section 5.05. *Other Adjustments if Net Share Settlement Applies.* To the extent Net Share Settlement applies to the exercise of any Warrant, the Board of Directors shall make appropriate adjustments to the amount of Cash or number of shares of Common Stock, as the case may be, due upon exercise of the Warrant, as may be necessary or appropriate to effectuate the intent of this Article 5 and to avoid unjust or inequitable results as determined in its good faith judgment, to account for any adjustment to the Exercise Price and the Number of Warrants for the relevant Warrant Certificate that becomes effective, or any event requiring an adjustment to the Exercise Price and the Number of Warrants for the relevant Warrant Certificate where the Record Date or effective date (in the case of a subdivision or combination of the Common Stock) of the event occurs, during the period beginning on, and including, the Exercise Date and ending on, and including, the related Settlement Date.

Section 5.06. *Discretionary Adjustments.* The Company may from time to time, to the extent permitted by law and subject to applicable rules of the New York Stock Exchange, decrease the Exercise Price and/or increase the Number of Warrants for each Warrant Certificate by any amount for any period of at least 20 days. In that case, the Company shall give the Warrantholders at least 15 days' prior notice of such increase or decrease, and such notice shall state the decreased Exercise Price and/or increased Number of Warrants for each Warrant Certificate and the period during which the decrease and/or increase will be in effect. The Company may make such decreases in the Exercise Price and/or increases in the Number of Warrants for each Warrant Certificate, in addition to those set forth in this Article 5, as the Company's Board of Directors deems advisable, including to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

Section 5.07. *Restrictions on Adjustments.* (a) Except in accordance with Section 5.01, the Exercise Price and the Number of Warrants for any Warrant Certificate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

(b) Neither the Exercise Price nor the Number of Warrants for any Warrant Certificate will be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) for a change in the par value of the Common Stock.

(c) In no event will the Company adjust the Exercise Price or make a corresponding adjustment to the Number of Warrants for any Warrant Certificate to the extent that the adjustment would reduce the Exercise Price below the par value per share of Common Stock.

(d) No adjustment shall be made to the Exercise Price or the Number of Warrants for any Warrant Certificate for any of the transactions described in Section 5.01 if the Company makes provisions for Warrantholders to participate in any such transaction without exercising their Warrants on the same basis as holders of Common Stock and with notice that the Board of Directors determines in good faith to be fair and appropriate.

(e) No adjustment shall be made to the Exercise Price, nor will any corresponding adjustment be made to the Number of Warrants for any Warrant Certificate, unless the adjustment would result in a change of at least 1% of the Exercise Price; *provided* that any adjustments that are less than 1% of the Exercise Price shall be carried forward and such carried forward adjustments, regardless of whether the aggregate adjustment is less than 1% of the Exercise Price, shall be made (i) annually, on each anniversary of the Closing Date, (ii) immediately prior to the time of any exercise, and (iii) five Business Days prior to the Expiration Date, unless, in each case, such adjustment has already been made.

(f) If the Company takes a record of the holders of Common Stock for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Exercise Price or the Number of Warrants for any Warrant Certificate then in effect shall be required by reason of the taking of such record.

Section 5.08. *Deferral of Adjustments.* In any case in which Section 5.01 provides that an adjustment shall become effective immediately after (a) a Record Date for an event or (b) the effective date (in the case of a subdivision or combination of the Common Stock) (each a "**Determination Date**"), the Company may elect to defer, until the later of the date the adjustment to the Exercise Price and Number of Warrants for each

Warrant Certificate can be definitively determined and the occurrence of the applicable Adjustment Event (as hereinafter defined), (i) issuing to the Warranholder of any Warrant exercised after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities or assets issuable upon such exercise by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warranholder any amount in Cash in lieu of any fractional share of Common Stock or fractional Warrant pursuant to Section 3.05. For the purposes of this Section 5.08, the term “**Adjustment Event**” shall mean in any case referred to in clause (a) or clause (b) hereof, the occurrence of such event.

Section 5.09. *Recapitalizations, Reclassifications and Other Changes.* (a) If any of the following events occur:

- (i) any recapitalization;
- (ii) any reclassification or change of the outstanding shares of Common Stock (other than changes resulting from a subdivision or combination to which Section 5.01(a) applies);
- (iii) any consolidation, merger or combination involving the Company;
- (iv) any sale or conveyance to a third party of all or substantially all of the Company’s assets; or
- (v) any statutory share exchange,

(each such event a “**Reorganization Event**”), in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (the “**Reference Property**”), then, subject to Section 5.09(e), following the effective time of the transaction, the right to receive shares of Common Stock upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per share of Common Stock, a “**Unit of Reference Property**”). In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in a Reorganization Event, other than with respect to a Change of Control Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock in such Reorganization Event.

(b) At any time from, and including, the effective time of a Reorganization Event:

(i) if Full Physical Settlement applies upon exercise of a Warrant, the Full Physical Share Amount per Warrant shall be equal to a single Unit of Reference Property;

(ii) if Net Share Settlement applies upon exercise of a Warrant, the Net Share Amount per Warrant shall be a number of Units of Reference Property calculated as set forth in Section 3.03(c), except that the Net Share Settlement Price used to determine such Net Share Amount on any Trading Day shall be the Unit Value for such Trading Day;

(iii) the Company shall pay Cash in lieu of delivering any fraction of a Unit of Reference Property or any fractional Warrant in accordance with Section 3.05 based on the Unit Value as of the Exercise Date; and

(iv) the Closing Sale Price and the Current Market Price shall be calculated with respect to a Unit of Reference Property.

(c) The value of a Unit of Reference Property (the “Unit Value”) shall be determined as follows:

(i) any shares of common stock of the successor or purchasing corporation or any other corporation that are traded on a national or regional stock exchange included in such Unit of Reference Property shall be valued as if such shares were “Common Stock” using procedures set forth in the definition of “Closing Sale Price” in Section 1.01;

(ii) any other property (other than Cash) included in such Unit of Reference Property shall be valued in good faith by the Board of Directors (in a manner not materially inconsistent with the manner the Board of Directors valued such property for purposes of the Reorganization Event, if applicable) or by a New York Stock Exchange member firm selected by the Board of Directors; and

(iii) any Cash included in such Unit of Reference Property shall be valued at the amount thereof.

(d) On or prior to the effective time of any Reorganization Event, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 5.09. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Warrantholders as the Board of Directors shall reasonably consider necessary by reason of the foregoing. Any

such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 5. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 5.09, the Company shall promptly file with the Warrant Agent an Officers' Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of amendment to be mailed to each Warrantholder, at its address appearing on the Warrant Register, within 20 Business Days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such amendment.

(e) Change of Control Event:

(i) No less than 15 Business Days prior to the scheduled closing of a Change of Control Event, the Company shall:

(A) calculate the Change of Control Estimated Payment Amount;

(B) deliver to the Warrant Agent a notice of redemption (a "**Redemption Notice**"), which shall be binding on the Company and on all Warrantholders, stating that all Warrants (other than Carryover Warrants, if any) that have not been exercised prior to the Cut-Off Time shall be redeemed on the Change of Control Payment Date at a price equal to the Change of Control Payment Amount (the "**Redemption**");

(C) cause a notice of the Redemption to be sent at least once to the Dow Jones News Service or similar business news service in the United States; and

(D) cause the Warrant Agent to send by first-class mail, postage prepaid to each Warrantholder, at the address appearing in the warrant register, a notice stating:

1) that the Redemption is being made pursuant to this Section 5.09(e) and that all Warrants (other than Carryover Warrants, if any) that have not been exercised prior to the Cut-Off Time will be redeemed on the Change of Control Payment Date for payment of the Change of Control Payment Amount;

2) a reasonably detailed explanation of the Change of Control Estimated Payment Amount, including (x) a statement of the amount of the Change of Control Estimated Payment Amount, together with a reasonably detailed explanation of the calculation of such amount, and (y) the formula for calculating the Black Scholes Warrant Value and the Change of Control Payment Amount;

3) the date of the Redemption (which shall be a Business Day no later than five (5) Business Days following the Change of Control Date (the “**Change of Control Payment Date**”));

4) the Net Share Amount for each Warrant as of a date not more than five (5) Business Days prior to the date of the Redemption Notice (assuming Net Share Settlement is applicable with respect to the exercise of such Warrant);

5) that no outstanding Warrant may be exercised after the Close of Business on the day prior to the Change of Control Date (the “**Cut-Off Time**”);

6) if applicable, that New Warrants will be issued to the Warrantholders on the Change of Control Payment Date in accordance with the terms of this Warrant Agreement and the Warrants (as the same may have been amended in connection with such Change of Control Event pursuant to Section 5.09);

7) any other reasonable procedures that a Warrantholder must follow (to the extent consistent with the terms and conditions set forth herein) in connection with such Redemption; and

8) the name and address of the Warrant Agent.

(ii) Within two (2) Business Days prior to the Change of Control Payment Date, the Company or the surviving Person (if other than the Company) shall (A) deliver to the Warrant Agent the calculation of the Change of Control Payment Amount and (B) deposit with the Warrant Agent money sufficient to pay the Change of Control Payment Amount for all outstanding Warrants (other than the Carryover Warrants, if any).

(iii) On the Change of Control Payment Date, (A) the Company or the surviving Person (if other than the Company) shall redeem all outstanding Warrants (other than Carryover Warrants, if any) pursuant to the Redemption, (B) the Warrant Agent shall mail to each holder of Warrants so redeemed payment in Cash in an amount equal to the aggregate Change of Control Payment Amount in respect of such redeemed Warrants, and (C) the Company or the surviving Person (if other than the Company) shall execute and issue to the Warrantholders, and the Warrant Agent shall authenticate, new Warrants (the “**New Warrants**”) representing the Carryover Warrants (if any); provided that each such New Warrant shall be issued in denominations of one Warrant and integral multiples thereof and the terms thereof shall, subject to Section 5.09(e)(v), be substantially consistent with the terms of this Warrant Agreement and the Warrants (and all references herein to Warrants shall thereafter be deemed to be references to such New Warrants).

(iv) No Warrant (which for the avoidance of doubt does not include New Warrants) may be exercised after the Cut-Off Time.

(v) Following the Change of Control Payment Date, any holder of New Warrants shall have the right to exercise such New Warrant and to receive, upon such exercise, the Reference Property in accordance with Section 5.09(a), subject to Section 5.09(b) and Section 5.09(c) and the remaining terms of this Warrant Agreement and the Warrants (as the same may have been amended in connection with such Change of Control Event pursuant to Section 5.09); provided, that, for purposes of this Section 5.09(e)(v), (A) each Unit of Reference Property shall initially only consist of the Registered and Listed Shares included in such Unit of Reference Property and (B) the initial exercise price for each New Warrant shall be equal to the New Warrant Exercise Price.

(vi) The provisions of this Section 5.09(e) are subject, in all cases, to any applicable requirements under the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder. Where there is any inconsistency between the requirements of the Securities Act or the Exchange Act or the rules and regulations promulgated thereunder and the requirements of this Section 5.09(e), the requirements of the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder, shall supersede.

(f) The Company hereby agrees not to become a party to any Reorganization Event or Change of Control Event unless its terms are consistent in all material respects with this Section 5.09.

(g) The above provisions of this Section 5.09 shall similarly apply to successive Reorganization Events and Change of Control Events.

(h) If this Section 5.09 applies to any event or occurrence, no other provision of this Article 5 with respect to anti-dilution adjustments (which for the avoidance of doubt, does not include the covenant set forth in Section 5.10) shall apply to such event or occurrence.

Section 5.10. *Consolidation, Merger and Sale of Assets.* (a) The Company may, without the consent of the Warrant holders, consolidate with, merge into or sell, lease or otherwise transfer in one transaction or a series of related transactions the consolidated assets of the Company and its subsidiaries substantially as an entirety to any corporation, limited liability company, partnership or trust organized under the laws of the United States or any of its political subdivisions so long as:

(i) the successor assumes all the Company's obligations under this Warrant Agreement and the Warrants; and

(ii) the Company provides written notice of such assumption to the Warrant Agent.

(b) In case of any such consolidation, merger, sale, lease or other transfer and upon any such assumption by the successor corporation, limited liability company, partnership or trust, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company. Such

successor entity thereupon may cause to be signed, and may issue any or all of the Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been signed by the Company; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor entity thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

Section 5.11. *Common Stock Outstanding.* For the purposes of this Article 5, the number of shares of Common Stock at any time outstanding shall not include shares held, directly or indirectly, by the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 5.12. *Covenant to Reserve Shares for Issuance on Exercise.* (a) The Board of Directors has authorized and will reserve for issuance such number of shares of Common Stock as the Board of Directors believes will be issuable upon the exercise of all outstanding Warrants for shares of Common Stock (assuming, for purposes of this covenant, that Full Physical Settlement applies to all Warrants exercised hereunder). The Company covenants that all shares of Common Stock that shall be so issuable shall be duly and validly issued, fully paid and non-assessable.

(b) The Company agrees to authorize and direct its current and future transfer agents for the Common Stock to reserve for issuance the number of shares of Common Stock specified in this Section 5.12. The Company shall instruct the transfer agent to deliver to the Warrant Agent, upon written request from the Warrant Agent substantially in the form of Exhibit F (or as separately agreed between the Warrant Agent and the transfer agent), stock certificates (or beneficial interests therein) required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Warrant Agreement. The Company shall pay to the Warrant Agent, as agent for the Warrantholders, any Cash that may be payable as provided in this Article 5. Promptly after the date of expiration of Warrants, the Warrant Agent shall certify to the Company the aggregate Number of Warrants then outstanding, and thereafter no shares shall be required to be reserved in respect of such Warrants.

(c) If, prior to the Distribution Date, the Common Stock has been registered under Section 12(b) of the Exchange Act and listed on a national securities exchange, the Company shall use its reasonable best efforts to apply and cause to have listed on such exchange as of the Distribution Date the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants. If, as of the Distribution Date, the Common Stock has not yet been registered under Section 12(b) of the Exchange Act and listed on a national securities exchange, the Company shall use its reasonable best efforts to apply and cause to have listed on a national securities exchange the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants as soon as reasonably practicable following the date on which the Common Stock is registered under

Section 12(b) of the Exchange Act and listed on a national securities exchange. Upon any such listing of the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants, for so long as the Common Stock is registered under Section 12(b) of the Exchange Act and listed on a national securities exchange, the Company shall use its reasonable efforts to cause the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants, to be listed on such exchange.

Section 5.13. *Calculations Final.* The Company shall be responsible for making all calculations called for under this Warrant Agreement. These calculations include, but are not limited to, the Exercise Date, the Current Market Price, the Closing Sale Price, the Net Share Settlement Price, the Exercise Price, the Number of Warrants for each Warrant Certificate and the number of shares of Common Stock or Units of Reference Property, if any, to be issued upon exercise of any Warrants. The Company shall make the foregoing calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Warrantheolders. The Company shall provide a schedule of the Company's calculations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification.

Section 5.14. *Notice of Adjustments.* Whenever the Exercise Price or the Number of Warrants for each Warrant Certificate is adjusted, the Company shall promptly mail to Warrantheolders a notice of the adjustment. The Company shall file with the Warrant Agent such notice and an Officer's Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct, and the Warrant Agent shall not be deemed to have any knowledge of any adjustments unless and until it has received such certificate. The Warrant Agent shall not be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Warrantheolder desiring inspection thereof.

Section 5.15. *Warrant Agent Not Responsible for Adjustments or Validity.* The Warrant Agent shall at no time be under any duty or responsibility to any Warrantheolder to determine whether any facts exist that may require an adjustment of the Exercise Price and the Number of Warrants for each Warrant Certificate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment pursuant to this Article 5, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 5, or to comply with any of the covenants of the Company contained in this Article 5.

Section 5.16. *Statements on Warrants.* The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Article 5, and Warrant Certificates issued after such adjustment may state the same information (other than the adjusted Exercise Price and the adjusted Number of Warrants for such Warrant Certificates) as are stated in the Warrant Certificates initially issued pursuant to this Warrant Agreement. However, the Company may at any time in its sole discretion (which shall be conclusive) make any change in the form of Warrant Certificate that it may deem appropriate and that does not materially adversely affect the interest of the Warrantholders; and any Warrant Certificates thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

## ARTICLE 6

### OTHER PROVISIONS RELATING TO RIGHTS OF WARRANTHOLDERS

Section 6.01. *No Rights as Stockholders.* Warrantholders shall not be entitled, by virtue of holding Warrants, to vote, to consent, to receive dividends, to receive notice as stockholders with respect to any meeting of stockholders for the election of the Company's directors or any other matter, or to exercise any rights whatsoever as the Company's stockholders unless, until and only to the extent such holders become holders of record of shares of Common Stock issued upon settlement of the Warrants.

Section 6.02. *Mutilated or Missing Warrant Certificates.* If any Warrant at any time is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Warrant may be replaced at the cost of the applicant (including legal fees of the Company) at the office of the Warrant Agent. The applicant for a new Warrant shall, in the case of any mutilated or defaced Warrant, surrender such Warrant to the Warrant Agent and, in the case of any lost, destroyed or stolen Warrant, furnish evidence satisfactory to the Company of such loss, destruction or theft, and, in each case, furnish evidence satisfactory to the Company of the ownership and authenticity of the Warrant together with such indemnity as the Company may require. Any such new Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant Certificate shall be at any time enforceable by anyone. An applicant for such a substitute Warrant Certificate shall also comply with such other reasonable regulations and pay such other reasonable charges as the Company or the Warrant Agent may prescribe. All Warrant Certificates shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 6.03. *Modification, Waiver and Meetings.* (a) This Warrant Agreement may be modified or amended by the Company and the Warrant Agent, without the consent of the holder of any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement; *provided* that such modification or amendment does not adversely affect the interests of the Warrantheolders in any respect.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants may also be made by the Company and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived, with the written consent of the Warrantheolders of Warrants representing a majority of the aggregate Number of Warrants at the time outstanding.

(c) However, no such modification, amendment or waiver may, without the written consent or the affirmative vote of each Warrantheolder affected:

- (i) change the Expiration Date;
- (ii) increase the Exercise Price or decrease the Number of Warrants (except as explicitly set forth in Article 5);
- (iii) impair the right to institute suit for the enforcement of any payment or delivery with respect to the exercise and settlement of any Warrant;
- (iv) impair or adversely affect the exercise rights of Warrantheolders, including any change to the calculation or payment of the Full Physical Share Amount or the Net Share Amount, as applicable;
- (v) deprive any Warrantheolder of any economic rights, privileges or benefits that arise under or are provided pursuant to this Warrant Agreement and/or the Warrants;
- (vi) reduce the percentage of Warrants outstanding necessary to modify or amend this Warrant Agreement or to waive any past default; or
- (vii) reduce the percentage in Warrants outstanding required for any other waiver under this Warrant Agreement.

## ARTICLE 7

### CONCERNING THE WARRANT AGENT AND OTHER MATTERS

Section 7.01. *Payment of Certain Taxes.* (a) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the initial issuance of the Warrants hereunder.

(b) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the issuance of Common Stock upon the exercise

of Warrants hereunder and the issuance of stock certificates in respect thereof in the respective names of, or in such names as may be directed by, the exercising Warrantheolders; *provided, however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such stock certificate, any Warrant Certificates or other securities in a name other than that of the registered holder of the Warrant Certificate surrendered upon exercise of the Warrant, and the Company shall not be required to issue or deliver such certificates or other securities unless and until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 7.02. *Change of Warrant Agent.* (a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving 60 days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 60 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by any holder of Warrants (who shall, with such notice, submit his Warrant Certificate for inspection by the Company), then the holder of any Warrants may apply to any court of competent jurisdiction for the appointment of a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon 30 days' written notice to the Warrant Agent; *provided, however*, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the laws of the United States of America or any state thereof or the District of Columbia, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by Federal or state authority and having a combined capital and surplus of not less than \$50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; *provided* that such reports are published at least annually pursuant to law or to the requirements of a Federal or state supervising or examining authority. After appointment, any successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully

and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent, the Warrantholders and each transfer agent for the shares of its Common Stock. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, shall be the successor Warrant Agent under this Warrant Agreement without any further act. In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Warrant Certificates so countersigned, and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

Section 7.03. *Compensation; Further Assurances.* The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent hereunder and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon demand for all reasonable expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel) except any such expense, disbursement or advance as may arise from its or any of their negligence or bad faith, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement.

Section 7.04. *Reliance on Counsel.* The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 7.05. *Proof of Actions Taken.* Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Warrant Agent; and such Officer's Certificate shall, in the absence of bad faith on the part of the Warrant Agent, be full warrant to the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement in reliance upon such certificate; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 7.06. *Correctness of Statements.* The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or in the Warrant Certificates (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 7.07. *Validity of Agreement.* The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of any Warrant Certificates (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any shares of Common Stock will, when issued, be validly issued and fully paid and nonassessable.

Section 7.08. *Use of Agents.* The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents and the Warrant Agent shall not be responsible for the misconduct or negligence of any agent or attorney, provided due care had been exercised in the appointment and continued employment thereof.

Section 7.09. *Liability of Warrant Agent.* The Warrant Agent shall incur no liability or responsibility to the Company or to any holder of Warrants for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including

judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's negligence or willful misconduct or bad faith.

Section 7.10. *Legal Proceedings.* The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or one or more Warrantholders shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity.

Section 7.11. *Other Transactions in Securities of the Company.* The Warrant Agent in its individual or any other capacity may become the owner of Warrants or other securities of the Company, or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Warrant Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

Section 7.12. *Actions as Agent.* The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. No provision of the Warrant Agreement shall require the Warrant Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own negligence or willful misconduct or bad faith.

Section 7.13. *Appointment and Acceptance of Agency.* The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth.

Section 7.14. *Successors and Assigns.* All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 7.15. *Notices.* Any notice or demand authorized by this Warrant Agreement to be given or made by the Warrant Agent or by any Warrantholder to or on the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

General Motors Company  
300 Renaissance Center  
Detroit, MI 48265-3000  
Telephone: (313) 667-4605

with a copy to:

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: John J. Rapisardi  
R. Ronald Hopkinson  
Telephone: (212) 504-6000  
Fax: (212) 504-6666

Any notice or demand authorized by this Warrant Agreement to be given or made by any Warrantholder or by the Company to or on the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

U.S. Bank Corporate Trust Services  
One Federal Street, 10th Floor  
Attention: Karen R. Beard, Vice President  
Re: General Motors Company Warrant Agreement  
Boston, MA 02110  
Fax: (617) 603-6667

Any notice of demand authorized by this Warrant Agreement to be given or made to any Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid to the last address of such Warrantholder as it shall appear on the Warrant Register.

Section 7.16. *Applicable Law.* The validity, interpretation and performance of this Warrant Agreement and of the Warrant Certificates shall be governed by the law of the State of New York without giving effect to the principles of conflicts of laws thereof.

Section 7.17. *Benefit of this Warrant Agreement.* Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person or corporation other than the parties hereto and the Warranholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Warranholders.

Section 7.18. *Registered Warrantholders.* Prior to due presentment for registration of transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 7.19. *Inspection of this Warrant Agreement.* A copy of this Warrant Agreement shall be available at all reasonable times for inspection by any registered Warrantholder at the principal office of the Warrant Agent (or successor warrant agent). The Warrant Agent may require any such holder to submit his Warrant Certificate for inspection by it before allowing such holder to inspect a copy of this Warrant Agreement.

Section 7.20. *Headings.* The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 7.21. *Counterparts.* This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

General Motors Company

By: /s/ Niharika Ramdev

Name: Niharika Ramdev

Title: Assistant Treasurer

U.S. Bank National Association, as  
Warrant Agent

By: /s/ Karen R. Beard

Name: Karen R. Beard

Title: Vice President

SIGNATURE PAGE TO AMENDED AND  
RESTATED PARENT WARRANT B

**FORM OF RESTRICTIVE LEGEND FOR WARRANTS**

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

**FORM OF RESTRICTIVE LEGEND FOR COMMON STOCK**

[THESE SHARES OF COMMON STOCK HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

**FORM OF GLOBAL WARRANT LEGEND**

UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), TO GENERAL MOTORS COMPANY, A DELAWARE CORPORATION (THE “**ISSUER**”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

## FORM OF WARRANT CERTIFICATE

[FACE]

No. \_\_\_\_\_

CUSIP No. \_\_\_\_\_

[UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO GENERAL MOTORS COMPANY, A DELAWARE CORPORATION (THE “ISSUER”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.]

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

GENERAL MOTORS COMPANY

[Designation of Warrants]

NUMBER OF WARRANTS: Initially, 45,454,545 Warrants, subject to adjustment as described in the Amended and Restated Warrant Agreement dated as of October 16, 2009 between General Motors Company, a Delaware corporation, and U.S. Bank National Association, as Warrant Agent (the “**Warrant Agreement**”), each of which is exercisable for one share of Common Stock.

EXERCISE PRICE: Initially, \$55.00 per Warrant, subject to adjustment as described in the Warrant Agreement.

FORM OF PAYMENT OF EXERCISE PRICE: Cash, if Full Physical Settlement is applicable, or Net Share Settlement.

FORM OF SETTLEMENT: Upon exercise of any Warrants represented hereby, the Warrantholder shall be entitled to receive, at the Warrantholder’s election, either (a) upon payment to the Warrant Agent of the Exercise Price (determined as of the relevant Exercise Date), one share of Common Stock per Warrant exercised, together with Cash in lieu of any fractional Warrants, or (b) without any payment therefor, a number of shares of Common Stock equal to the Net Share Amount, together with Cash in lieu of any fractional shares or fractional Warrants, in each case, as described in the Warrant Agreement.

DATES OF EXERCISE: At any time, and from time to time, prior to 5:00 p.m., New York City time, on the Expiration Date, the Warrantholder shall be entitled to exercise all Warrants then represented hereby and outstanding (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants).

PROCEDURE FOR EXERCISE: Warrants may be exercised by (a) in the case of a Certificated Warrant, surrendering the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes, or (b) in the case of a Global Warrant, complying with the procedures established by the Depository for the exercise of Warrants.

EXPIRATION DATE: July 10, 2019.

This Warrant Certificate certifies that Motors Liquidation Company, or its registered assigns, is the Warrantholder of the Number of Warrants (the “**Warrants**”) specified above[, as modified in Schedule A hereto,] (such number subject to adjustment from time to time as described in the Warrant Agreement).

In connection with the exercise of any Warrants, (a) the Company shall determine the Full Physical Share Amount or Net Share Amount, as applicable, for each Warrant, and (b) the Company shall, or shall cause the Warrant Agent to, deliver to the exercising Warrantholder, on the applicable Settlement Date, for each Warrant exercised, a number of Shares of Common Stock equal to the relevant Full Physical Share Amount or Net Share Amount, as applicable, together with Cash in lieu of any fractional shares or fractional Warrants as described in the Warrant Agreement.

Prior to the relevant Exercise Date as described more fully in the Warrant Agreement, Warrants will not entitle the Warrantholder to any of the rights of the holders of shares of Common Stock.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, General Motors Company has caused this instrument to be duly executed.

Dated: \_\_\_\_\_

GENERAL MOTORS COMPANY

By: \_\_\_\_\_  
Name:  
Title:

Attest

By: \_\_\_\_\_  
Secretary

**Certificate of Authentication**

These are the Warrants referred to in the above-mentioned Warrant Agreement.

Countersigned as of the date above written:

U.S. Bank National Association, as  
Warrant Agent

By: \_\_\_\_\_  
Authorized Officer

**GENERAL MOTORS COMPANY**

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to an Amended and Restated Warrant Agreement, dated as of October 16, 2009 (the "**Warrant Agreement**"), between the Company and U.S. Bank National Association (the "**Warrant Agent**"), and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions each Warrantholder consents by acceptance of this Warrant Certificate or a beneficial interest therein. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement. A copy of the Warrant Agreement is on file at the Warrant Agent's Office.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of New York without regard to the conflicts of laws principles thereof.

Exercise Notice

U.S. Bank National Association  
60 Livingston Avenue  
Attention: Transfer Department  
Re: General Motors Company Warrant Agreement  
Mail Station EP-MN-WS2N  
St. Paul, MN 66107

The undersigned (the “Registered Warrantholder”) hereby irrevocably exercises \_\_\_\_\_ Warrants (the “Exercised Warrants”) and delivers to you herewith a Warrant Certificate or Warrant Certificates, registered in the Registered Warrantholder’s name, representing a Number of Warrants at least equal to the number of Exercised Warrants.

The Registered Warrantholder hereby either:

- elects for Full Physical Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement and confirms that it will, prior to 11:00 a.m., New York City time, on the Settlement Date, pay an amount equal to the Exercise Price (determined as of the relevant Exercise Date), multiplied by the number of Exercised Warrants, by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Registered Warrantholder as required under Section 3.03(b) of the Warrant Agreement; or
- elects for Net Share Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement.

The Registered Warrantholder hereby directs the Warrant Agent to:

(a) deliver the Full Physical Share Amount or Net Share Amount, as applicable, for each of the Exercised Warrants as follows:

\_\_\_\_\_ ; and

(b) if the number of Exercised Warrants is less than the Number of Warrants represented by the enclosed Warrant Certificates, to deliver a Warrant Certificate representing the unexercised Warrants to:

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Registered Warrantholder)

By: \_\_\_\_\_

Authorized Signature

Address:

Telephone:

**[To Be Attached if Warrant is a Global Warrant]**

**SCHEDULE A**

**SCHEDULE OF INCREASES OR DECREASES IN WARRANTS**

The initial Number of Warrants represented by this Global Warrant is 45,454,545. In accordance with the Amended and Restated Warrant Agreement dated as of October 16, 2009 between the Company and U.S. Bank National Association, as Warrant Agent, the following increases or decreases in the Number of Warrants represented by this certificate have been made:

<u>Date</u>	<u>Amount of increase in Number of Warrants evidenced by this Global Warrant</u>	<u>Amount of decrease in Number of Warrants evidenced by this Global Warrant</u>	<u>Number of Warrants evidenced by this Global Warrant following such decrease or increase</u>	<u>Signature of authorized signatory</u>
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FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

\_\_\_\_\_  
Name, Address and Zip Code of Assignee

and irrevocably appoints \_\_\_\_\_  
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

*[Signature page follows]*

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Transferee

By: \_\_\_\_\_

Name:

Title:

(Sign exactly as your name appears on the other side of this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

FORM OF CERTIFICATE OF COMPLIANCE WITH TRANSFER RESTRICTIONS

In connection with the sale, assignment and transfer of \_\_\_\_\_ Warrants by \_\_\_\_\_ unto \_\_\_\_\_ (Please insert social security or other Taxpayer Identification Number of assignee) prior to the expiration of the holding period applicable to sales thereof under Rule 144 under the Securities Act of 1933, as amended (the "Securities Act") (or any successor provision), the undersigned confirms that such Warrants are being transferred:

To General Motors Company (the "Issuer") or any subsidiaries thereof; or

Pursuant to a registration statement that has become effective under the Securities Act; or

Pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with the third box above, the Issuer and the Warrant Agent reserve the right to require the delivery of such legal opinion, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws.

Unless one of the boxes is checked, the Warrant Agent will refuse to register any of the Warrants evidenced by this certificate in the name of any person other than the registered holder thereof.

Date: [\_\_\_\_\_]

[Insert name of transferee]

By: \_\_\_\_\_  
Name:  
Title:

FORM OF COMMON STOCK REQUISITION ORDER

[Date]

Via Facsimile [\_\_\_\_\_]

General Motors Company  
300 Renaissance Center  
Detroit, MI 48265-3000

Re: DWAC Issuance  
Control No. \_\_\_\_\_

Ladies and Gentlemen:

You are hereby authorized to issue and deliver the shares of Common Stock as indicated below via DWAC. The shares are being issued to cover the exercise of Warrants under the Amended and Restated Warrant Agreement dated as of October 16, 2009 between the Company and U.S. Bank National Association, as Warrant Agent (the "**Warrant Agreement**"). Defined terms used but not defined herein have the meaning assigned to them in the Warrant Agreement.

Number of Shares: \_\_\_\_\_  
\_\_\_\_\_ Original Issue or  
\_\_\_\_\_ Transfer from Treasury Account

Broker Name: \_\_\_\_\_

Broker's DTC Number: \_\_\_\_\_

Contact and Phone: \_\_\_\_\_

The Broker will initiate the DWAC transaction on (date).

Sincerely,

U.S. Bank National Association,  
as Warrant Agent

By: \_\_\_\_\_  
Name:  
Title:

cc: [Insert name] via facsimile [insert fax number]  
Broker

**AMENDED AND RESTATED WARRANT AGREEMENT**

**dated as of October 16, 2009**

**between**

**GENERAL MOTORS COMPANY**

**and**

**U.S. BANK NATIONAL ASSOCIATION  
as Warrant Agent**

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**AMENDED AND RESTATED WARRANT AGREEMENT**

This Amended and Restated Warrant Agreement (“**Warrant Agreement**”) dated as of October 16, 2009 is between General Motors Company, a Delaware corporation (the “**Company**”), and U.S. Bank National Association (the “**Warrant Agent**”).

**WITNESSETH THAT:**

WHEREAS, General Motors LLC, a Delaware limited liability company, the Company and the Warrant Agent are parties to that certain Amended and Restated Warrant Agreement dated as of October 15, 2009 (the “**Original Warrant Agreement**”), pursuant to which the Company issued 15,151,515 Warrants, each of which is exercisable for one share of Common Stock (as defined below) to the Initial Warrantholder (as defined below);

WHEREAS, in connection with the Company’s name change from General Motors Holding Company to General Motors Company, the Company and the Warrant Agent desire to amend and restate the Original Warrant Agreement in its entirety; and

WHEREAS, the Company desires that the Warrant Agent continue to act on behalf of the Company, and the Warrant Agent is willing to act, in connection with the issuance, exchange, transfer, substitution and exercise of Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.01. *Certain Definitions.* As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

“**\$**” refers to such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“**Adjustment Event**” has the meaning set forth in Section 5.08.

“**Agent Members**” has the meaning set forth in Section 2.06(c).

“**Authentication Order**” means a Company Order for authentication and delivery of Warrants.

“**Black Scholes Proportion**” has the meaning given to it in the definition of “Change of Control Payment Amount.”

“**Black Scholes Warrant Value**” as of any date, shall mean the value of a Warrant to purchase one share of Common Stock (as determined in good faith by the Board of Directors based upon the advice of an independent investment bank of national standing selected by the Board of Directors and reasonably acceptable to the Warrant Agent) and

shall be determined by customary investment banking practices using the Black Scholes model. For purposes of calculating such amount, (1) the term of the Warrants will be the period from the date of determination until the Expiration Date, (2) the price of each share of Common Stock will be the Current Market Price as of the date of determination, (3) the assumed volatility will be determined by such independent investment banking firm as of the date of determination, (4) the assumed risk-free rate will equal the yield on the U.S. Treasury security with a maturity closest to December 31, 2015, as the yield on that security exists as of the date of determination and (5) any other assumptions shall be made by the Board of Directors in good faith based upon the advice of such independent investment bank at the time of determination.

**“Board of Directors”** means the board of directors of the Company or any committee of such board of directors duly authorized to exercise the power of such board of directors with respect to the matters provided for in this Warrant Agreement as to which the board of directors is authorized or required to act.

**“Board Resolution”** means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Warrant Agent.

**“Business Day”** means any day other than a Saturday or Sunday or other than a day on which banking institutions in New York City, New York are authorized or obligated by law or executive order to close.

**“Capital Stock”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of the Company and all warrants or options to acquire such capital stock.

**“Carryover Warrants”** shall mean, for each Warrant, that portion of such Warrant equal to one minus the Black Scholes Proportion.

**“Cash”** means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

**“Certificated Warrant”** means a Warrant represented by a Warrant Certificate, in definitive, fully registered form.

**“Change of Control Date”** shall mean the date on which a Change of Control Event is consummated.

**“Change of Control Estimated Payment Amount”** shall mean, in respect of any Change of Control Event, an estimate of the Change of Control Payment Amount payable on the applicable Change of Control Payment Date, as determined in good faith by the Board of Directors, based upon the advice of an independent investment bank of national standing selected by the Board of Directors and reasonably acceptable to the Warrant Agent, as of a date no more than 20 Business Days and no less than 15 Business Days prior to the Change of Control Date, in a manner consistent with the terms of this Warrant Agreement and the Warrants, including the definitions of Black Scholes Warrant Value and Change of Control Payment Amount.

“**Change of Control Event**” shall mean (i) the acquisition by a Person (other than the Company or a wholly-owned subsidiary of the Company) in a tender offer or a series of related tender offers of 80% or more of the outstanding Common Stock (determined on a fully-diluted basis), (ii) the consolidation or merger of the Company with or into another Person (other than a wholly-owned subsidiary of the Company), or (iii) a sale of all or substantially all of the Company’s assets to another Person (other than a wholly-owned subsidiary of the Company), in each of clauses (i) through (iii) in which all or any portion of the consideration paid or exchanged for Common Stock, or into which Common Stock is converted, consists of Other Property.

“**Change of Control Payment Amount**” shall mean an amount in Cash equal to the product of (1) the Black Scholes Warrant Value of a Warrant on a Change of Control Date immediately prior to the consummation of such Change of Control Event multiplied by (2) a fraction, (x) the numerator of which is the fair market value of the Other Property received in exchange for a share of Common Stock in a Change of Control Event as of the Change of Control Date (as determined by an independent investment bank of national standing selected by the Company and determined by customary investment banking practices) and (y) the denominator of which is the sum of (a) the Closing Sale Price of the Registered and Listed Shares received in exchange for a share of Common Stock in a Change of Control Event as of the Change of Control Date (if any), and (b) the fair market value (determined as above) of the Other Property as of the Change of Control Date received in exchange for a share of Common Stock in a Change of Control Event (such fraction referred to herein as the “**Black Scholes Proportion**”).

For purposes of determining the Change of Control Payment Amount, if holders of Common Stock are entitled to receive differing forms or types of consideration in any transaction or series of transactions contemplated by the definition of “Change of Control Event,” each holder shall be deemed to have received the same proportion of Other Property and Registered and Listed Shares that all holders of Common Stock in the aggregate elected or were required to receive in such transaction or transactions.

“**Change of Control Payment Date**” has the meaning set forth in Section 5.09(e).

“**Close of Business**” means 5:00 p.m. New York City time.

“**Closing Date**” means July 10, 2009.

“**Closing Sale Price**” means, as of any date, the last reported per share sales price of a share of Common Stock or any other security on such date (or, if no last reported sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices on such date) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted; *provided, however*, that in the absence of such quotations, the Board of Directors will make a good faith determination of the Closing Sale Price.

If during a period applicable for calculating Closing Sale Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 5 hereof, Closing Sale Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

“**Common Stock**” means the common stock, par value \$0.01 per share, of the Company authorized at the date of this Warrant Agreement or as such stock may be constituted from time to time. Subject to the provisions of Section 5.09 and Section 5.10, shares issuable upon exercise of Warrants shall include only shares of the class designated as Common Stock of the Company as of the date of this Warrant Agreement or shares of any class or classes resulting from any reclassification or reclassifications or change or changes thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, and if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications or changes bears to the total number of shares of all such classes resulting from such reclassifications or changes.

“**Company Order**” means a written order signed in the name of the Company by any two officers, at least one of whom must be its Chief Executive Officer, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, or its Controller, and delivered to the Warrant Agent.

“**Current Market Price**” means, (i) in connection with a dividend, issuance or distribution, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the earlier of the date in question and the Trading Day immediately preceding the Ex-Date for such dividend, issuance or distribution and (ii) in connection with a determination of Black Scholes Warrant Value, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days ending on, but excluding, the date of determination, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution selected by

the Board of Directors and reasonably acceptable to the Warrant Agent. If the Common Stock is not traded on the New York Stock Exchange or any U.S. national or regional securities exchange or quotation system, the Current Market Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such price shall be reasonably determined in good faith by the Company's Board of Directors.

“**Cut-Off Time**” has the meaning set forth in Section 5.09(e).

“**Depository**” means The Depository Trust Company, its nominees, and their respective successors.

“**Determination Date**” has the meaning set forth in Section 5.08.

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

“**Ex-Date**” means, in connection with any dividend, issuance or distribution, the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such dividend, issuance or distribution.

“**Exercise Date**” has the meaning set forth in Section 3.02(b).

“**Exercise Notice**” means, for any Warrant, the exercise notice set forth on the reverse of the Warrant Certificate, substantially in the form set forth in Exhibit D hereto.

“**Exercise Price**” means initially \$126.92 per Warrant, subject to adjustment pursuant to Article 5.

“**Expiration Date**” means, for any Warrant, December 31, 2015, regardless of whether such date is a Trading Day.

“**Full Physical Settlement**” means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Full Physical Share Amount in exchange for payment by the Warrantholder of the Exercise Price.

“**Full Physical Share Amount**” has the meaning set forth in Section 3.03(b).

“**Global Warrant**” means a Warrant in the form of a permanent global Warrant Certificate, in definitive, fully registered form.

“**Global Warrant Legend**” means the legend set forth in Section 2.06(b).

“**Initial Warrantholder**” means UAW Retiree Medical Benefits Trust, a voluntary employees' beneficiary association or any “affiliate” thereof (as defined under Rule 144 under the Securities Act).

“**Net Share Amount**” has the meaning set forth in Section 3.03(c).

“**Net Share Settlement**” means the settlement method pursuant to which an exercising Warrantholder shall be entitled to receive from the Company, for each Warrant exercised, a number of shares of Common Stock equal to the Net Share Amount without any payment therefor.

“**Net Share Settlement Price**” means, as of any date, the volume weighted average price per share of Common Stock for the twenty (20) Trading Days prior to the date of determination of the Net Share Settlement Price for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange, or if the Common Stock or such other security is not listed on the New York Stock Exchange, as reported by the principal U.S. national or regional securities exchange or quotation system on which the Common Stock or such other security is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the market value of one share of Common Stock during such twenty (20) Trading Day period determined using a volume weighted average price method by an independent nationally recognized investment bank or other qualified financial institution reasonably acceptable to the Warrant Agent. If the Common Stock is not traded on the New York Stock Exchange or any U.S. national or regional Securities exchange or quotation system, the Net Share Settlement Price shall be the price per share of Common Stock that the Company could obtain from a willing buyer for shares of Common Stock sold by the Company from authorized but unissued shares of Common Stock, as such prices shall be reasonably determined in good faith by the Company’s Board of Directors.

If during a period applicable for calculating Net Share Settlement Price, an issuance, distribution, subdivision, combination or other transaction or event occurs that requires an adjustment to the Exercise Price or Number of Warrants pursuant to Article 5 hereof, the Net Share Settlement Price shall be calculated for such period in a manner determined by the Company to appropriately reflect the impact of such issuance, distribution, subdivision or combination on the price of the Common Stock during such period.

“**New Warrant Exercise Price**” shall be equal to the product of (i) the Exercise Price then in effect and (ii) one minus the Black Scholes Proportion.

“**New Warrants**” has the meaning set forth in Section 5.09(e).

“**Number of Warrants**” means, for a Warrant Certificate, the “Number of Warrants” specified on the face of such Warrant Certificate (or, in the case of a Global Warrant, on Schedule A to such Warrant Certificate), subject to adjustment pursuant to Article 5.

“**Officer’s Certificate**” means a certificate signed by any two officers of the Company, at least one of whom must be its Chief Executive Officer, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, or its Controller.

“**Original Warrant Agreement**” has the meaning set forth in the Recitals.

“**Other Property**” means any cash, property or other securities other than Registered and Listed Shares.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Parent Exercise Price**” means, with respect to each Parent Warrant Agreement, the ‘Exercise Price’ as such term is defined in such Parent Warrant Agreement.

“**Parent Warrant Agreement**” means each amended and restated warrant agreement, dated as of the date hereof, between the Company and U.S. Bank National Association as Warrant Agent, pursuant to which Motors Liquidation Company (formerly known as General Motors Corporation) was the ‘Initial Warrantholder’ as defined therein.

“**Parent Warrants**” means the warrants issued pursuant to the Parent Warrant Agreements.

“**Person**” means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any Cash, securities or other property or in which Common Stock (or other applicable security) is exchanged for or converted into any combination of Cash, securities or other property, the date fixed for determination of holders of Common Stock entitled to receive such Cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

“**Redemption**” has the meaning set forth in Section 5.09(e).

“**Redemption Notice**” has the meaning set forth in Section 5.09(e).

“**Reference Property**” has the meaning set forth in Section 5.09(a).

“**Registered and Listed Shares**” shall mean shares of the common stock of the surviving entity in a consolidation, merger, or combination or the acquiring entity in a tender offer, except that if the surviving entity or acquiring entity has a parent corporation, it shall be the shares of the common stock of the parent corporation, provided, that, in each case, such shares (i) have been registered (or will be registered within 30 calendar days following the Change of Control Date) under Section 12 of the Exchange Act with the Securities and Exchange Commission, and (ii) are listed for trading on the New York Stock Exchange or any other national securities exchange (or will be so listed or admitted within 30 calendar days following the Change of Control Date).

“**Reorganization Event**” has the meaning set forth in Section 5.09(a).

“**SEC**” means the United States Securities and Exchange Commission.

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

“**Settlement Date**” means, in respect of a Warrant that is exercised hereunder, the third Trading Day immediately following the Exercise Date for such Warrant.

“**Shareholders Agreement**” means the Stockholders Agreement, dated as of October 15, 2009, by and among the Company, the United States Department of the Treasury, 7176384 Canada Inc., a corporation organized under the laws of Canada, the Initial Warrantholder and General Motors LLC, as amended, modified or supplemented in accordance with its terms.

“**Trading Day**” means (i) if the applicable security is listed on the New York Stock Exchange, a day on which trades may be made thereon or (ii) if the applicable security is listed or admitted for trading on the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or other national securities exchange or market, a day on which the American Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or such other national securities exchange or market is open for business or (iii) if the applicable security is not so listed, admitted for trading or quoted, any Business Day.

“**Trigger Event**” has the meaning set forth in Section 5.03.

“**UAW Retiree Settlement Agreement**” has the meaning set forth in the Recitals.

“**Unit of Reference Property**” has the meaning set forth in Section 5.09(a).

“**Unit Value**” has the meaning set forth in Section 5.09(c).

“**Vice President**” means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president” of the Company.

“**Voting Stock**” means Capital Stock having the right to vote for the election of directors under ordinary circumstances.

“**Warrant**” means a warrant of the Company exercisable for one share of Common Stock as provided herein, and issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth in this Warrant Agreement.

“**Warrant Agent**” means U.S. Bank National Association, in its capacity as warrant agent hereunder.

“**Warrant Certificate**” means any certificate representing Warrants satisfying the requirements set forth in Section 2.03.

“**Warrant Register**” has the meaning set forth in Section 2.05.

“**Warrantholder**” means each Person in whose name Warrants are registered in the Warrant Register.

## ARTICLE 2

### ISSUANCE, EXECUTION AND TRANSFER OF WARRANTS

Section 2.01. *Issuance of Warrants.* (a) The Company shall execute and deliver to the Warrant Agent, for authentication and delivery to the Initial Warrantholder on the date hereof, a single Certificated Warrant in the name of the Initial Warrantholder, together with an Authentication Order with respect thereto, evidencing an initial aggregate Number of Warrants equal to 15,151,515 (such Number of Warrants subject to adjustment from time to time as described herein). The Warrant Agent shall, upon receipt of such Certificated Warrant and Authentication Order, authenticate and deliver such Certificated Warrant to the Initial Warrantholder in accordance with Section 2.02 and register the Initial Warrantholder as the Warrantholder of such Warrants in accordance with Section 2.05. All such Warrants shall be dated as of October 16, 2009.

(b) Except as set forth in Section 2.05 and Section 6.02, the Warrants issued to the Initial Warrantholder on the date hereof shall be the only Warrants issued or outstanding under this Warrant Agreement.

(c) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof.

Section 2.02. *Execution and Authentication of Warrants.* (a) Warrants shall be executed on behalf of the Company by any Executive Vice President, any Senior Vice President or any Vice President of the Company and attested by its Secretary or any one of its Assistant Secretaries. The signature of any of these officers on Warrants may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Warrant that has been duly authenticated and delivered by the Warrant Agent.

(b) Warrants bearing the manual or facsimile signatures of individuals, each of whom was, at the time he or she signed such Warrant or his or her facsimile signature was affixed to such Warrant, as the case may be, a proper officer of the Company, shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Warrants or did not hold such offices at the date of such Warrants.

(c) No Warrant shall be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on such Warrant a certificate of authentication substantially in the form provided for herein executed by the Warrant Agent by manual or facsimile signature, and such certificate upon any Warrant shall be conclusive evidence, and the only evidence, that such Warrant has been duly authenticated and delivered hereunder.

Section 2.03. *Form of Warrant Certificates.* Each Warrant Certificate shall be in substantially the form set forth in Exhibit D hereto and shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

Section 2.04. *Transfer Restrictions and Legends.* This Section 2.04 shall not apply to Warrants and Common Stock which have been issued, distributed or sold pursuant to an effective registration statement.

(a) Each Warrant issued hereunder shall bear the legend set forth in Exhibit A hereto.

(i) Warrants may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by a Warrantholder except (A) in compliance with applicable transfer restrictions set forth in the Shareholders Agreement and (B)(I) pursuant to a registration statement that has become effective under the Securities Act or (II) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any Warrants as to which such restrictions on transfer shall have expired in accordance with their terms such that they can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the Warrant Certificates representing such Warrants for exchange pursuant to Section 2.05 in accordance with the procedures of the Warrant Agent (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the Warrant Agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new Warrant Certificate for a like Number of Warrants, which shall not bear such legend.

(b) All shares of Common Stock issued to a Warrantholder upon exercise of a Warrant shall bear the legend set forth in Exhibit B hereto.

(i) Shares of Common Stock issued to a Warrantholder upon exercise of a Warrant may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by such Warrantholder except (A) in compliance with applicable transfer restrictions set forth in the Shareholders Agreement and (B)(I) pursuant to a registration statement that has become effective under the Securities Act or (II) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

(ii) Any such shares of Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms such that the shares of Common Stock can be freely sold without limits under the Securities Act and any applicable state securities law may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock (together with any legal opinions, certifications or other evidence as may reasonably be required by the Company or the transfer agent in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws), be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear such legend.

(c) Any Warrant that is purchased or owned by the Company or any “affiliate” thereof (as defined under Rule 144 under the Securities Act) may not be resold by the Company or such affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Warrants no longer being “restricted securities” (as defined in Rule 144 under the Securities Act).

Section 2.05. *Transfer, Exchange and Substitution.* (a) Warrants shall be issued in registered form only. The Company shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the “**Warrant Register**”) in which, subject to such reasonable regulations as the Company may prescribe, the Company shall provide for the registration of Warrants and transfers, exchanges or substitutions of Warrants as herein provided. All Warrants issued upon any registration of transfer or exchange of or substitution for Warrants shall be valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as Warrants surrendered for such registration of transfer, exchange or substitution.

(b) A Warrantholder may transfer a Warrant only upon surrender of such Warrant for registration of transfer. Warrants may be presented for registration of transfer and exchange at the offices of the Warrant Agent with a written instruction of transfer in form satisfactory to the Warrant Agent, duly executed by such Warrantholder or by such Warrantholder’s attorney, duly authorized in writing. Such Warrantholder will also provide a written certificate (substantially in the form of Exhibit E hereto) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Warrants. The Warrant Agent shall be entitled to conclusively rely upon any such certification in connection with the transfer of a Warrant hereunder and shall have no responsibility to monitor or verify whether any such transfer complies with the requirements hereunder or otherwise complies with the Securities Act. No such transfer

shall be effected until, and the transferee shall succeed to the rights of a Warrantholder only upon, final acceptance and registration of the transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any transfer of a Warrant by a Warrantholder as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name Warrants are registered as the owner thereof for all purposes and as the Person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding.

(c) Every Warrant presented or surrendered for registration of transfer or for exchange or substitution shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a duly executed instrument of transfer in form satisfactory to the Company and the Warrant Agent, by the holder thereof or such Warrantholder's attorney duly authorized in writing.

(d) When Warrants are presented to the Warrant Agent with a request to register the transfer of, or to exchange or substitute, such Warrants, the Warrant Agent shall register the transfer or make the exchange or substitution as requested if its requirements for such transactions and any applicable requirements hereunder are satisfied. To permit registrations of transfers, exchanges and substitutions, the Company shall execute Warrant Certificates at the Warrant Agent's request and the Warrant Agent shall countersign and deliver such Warrant Certificates. No service charge shall be made for any registration of transfer or exchange of or substitution for Warrants, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer of Warrants.

(e) A Certified Warrant may be exchanged at the option of the holder or holders thereof, when presented or surrendered in accordance with this Warrant Agreement, for another Warrant Certificate or other Warrant Certificates of like tenor and representing in the aggregate a like Number of Warrants. If less than all Warrants represented by a Certificated Warrant are transferred, exchanged or substituted in accordance with this Warrant Agreement, the Warrant Certificate shall be surrendered to the Warrant Agent and a new Warrant Certificate for a Number of Warrants equal to the Warrants represented by such Warrant Certificate that were not transferred, exchanged or substituted, registered in such name or names as may be directed in writing by the surrendering Warrantholder, shall be executed by the Company and delivered to the Warrant Agent and the Warrant Agent shall countersign such new Warrant Certificate and shall deliver such new Warrant Certificate to the Person or Persons entitled to receive the same.

Section 2.06. *Global Warrants.* (a) The Warrants shall initially be issued in the form of Certificated Warrants. However, if the Warrants are sold pursuant to an effective registration statement filed with the SEC, or if the Company so elects at any time, any Certificated Warrants may be presented to the Warrant Agent by Warrantholders in exchange for one or more Global Warrants up to the aggregate Number of Warrants then outstanding, to be registered in the name of the Depository, or its nominee, and delivered by the Warrant Agent to the Depository, or its custodian, for crediting to the accounts of its participants pursuant to the procedures of the Depository. Upon such presentation, the Company shall execute a Global Warrant representing such aggregate Number of Warrants and deliver the same to the Warrant Agent for authentication and delivery in accordance with Section 2.02.

(b) Any Global Warrant shall bear the legend substantially in the form set forth in Exhibit C hereto (the “**Global Warrant Legend**”).

(c) So long as a Global Warrant is registered in the name of the Depository or its nominee, members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Warrant Agreement with respect to the Global Warrant held on their behalf by the Depository or the Warrant Agent as its custodian, and the Depository may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such owner’s beneficial interest in such Global Warrant will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or its Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility with respect to such records maintained by the Depository or its nominee or its Agent Members. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Warrantholder.

(d) Any holder of a Global Warrant registered in the name of the Depository or its nominee shall, by acceptance of such Global Warrant, agree that transfers of beneficial interests in such Global Warrant may be effected only through a book-entry system maintained by the holder of such Global Warrant (or its agent), and that ownership of a beneficial interest in Warrants represented thereby shall be required to be reflected in book-entry form.

(e) Transfers of a Global Warrant registered in the name of the Depository or its nominee shall be limited to transfers in whole, and not in part, to the Company, the Depository, their successors, and their respective nominees. Interests of beneficial owners in a Global Warrant registered in the name of the Depository or its nominee shall be transferred in accordance with the rules and procedures of the Depository.

(f) A Global Warrant registered in the name of the Depository or its nominee shall be exchanged for Certificated Warrants only if the Depository (A) has notified the Company that it is unwilling or unable to continue as or ceases to be a clearing agency registered under Section 17A of the Exchange Act and (B) a successor to the Depository registered as a clearing agency under Section 17A of the Exchange Act is not able to be appointed by the Company within 90 days or the Depository is at any time unwilling or unable to continue as Depository and a successor to the Depository is not able to be appointed by the Company within 90 days. In any such event, a Global Warrant registered in the name of the Depository or its nominee shall be surrendered to the Warrant Agent for cancellation, and the Company shall execute, and the Warrant Agent shall countersign and deliver, to each beneficial owner identified by the Depository, in exchange for such

beneficial owner's beneficial interest in such Global Warrant, Certificated Warrants representing, in the aggregate, the Number of Warrants theretofore represented by such Global Warrant with respect to such beneficial owner's respective beneficial interest. Any Certificated Warrant delivered in exchange for an interest in a Global Warrant pursuant to this Section 2.06(f) shall not bear the Global Warrant Legend. Interests in the Global Warrant may not be exchanged for Certificated Warrants other than as provided in this Section 2.06(f).

(g) The holder of a Global Warrant registered in the name of the Depository or its nominee may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Warrantholder is entitled to take under this Warrant Agreement or the Warrant.

Section 2.07. *Surrender of Warrant Certificates.* Any Warrant Certificate surrendered for registration of transfer, exchange, substitution or exercise of Warrants represented thereby shall, if surrendered to the Company, be delivered to the Warrant Agent, and all Warrant Certificates surrendered or so delivered to the Warrant Agent shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company and, except as provided in this Article 2 in case of an exchange, transfer or substitution, or Article 3 in case of the exercise of less than all Warrants represented thereby, or Section 6.02 in case of mutilation, no Warrant Certificate shall be issued hereunder in lieu thereof. The Warrant Agent shall deliver to the Company from time to time or otherwise dispose of such cancelled Warrant Certificates as the Company may direct.

### ARTICLE 3

#### EXERCISE AND SETTLEMENT OF WARRANTS

Section 3.01. *Exercise of Warrants.* At any time prior to 5:00 p.m., New York City time, on the Expiration Date, a Warrantholder shall be entitled to exercise, in accordance with this Article 3, the full Number of Warrants represented by any Warrant Certificate then registered in such Warrantholder's name (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants). Any Warrants not exercised prior to such time shall expire unexercised.

Section 3.02. *Procedure for Exercise.* (a) To exercise a Warrant (i) in the case of a Certificated Warrant, the Warrantholder must surrender the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes as set forth in Section 7.01(b), or (ii) in the case of a Global Warrant, the Warrantholder must comply with the procedures established by the Depository for the exercise of Warrants.

(b) The date on which a Warrantholder complies with the requirements for exercise set forth in this Section 3.02 in respect of a Warrant is the "**Exercise Date**" for such Warrant. However, if such date is not a Trading Day or the Warrantholder satisfies such requirements after the Close of Business on a Trading Day, then the Exercise Date shall be the immediately succeeding Trading Day, unless that Trading Day falls after the Expiration Date, in which case the Exercise Date shall be the immediately preceding Trading Day.

Section 3.03. *Settlement of Warrants.* (a) Full Physical Settlement shall apply to each Warrant unless the Warrantholder elects for Net Share Settlement to apply upon exercise of such Warrant. Such election shall be made (i) in the case of a Certificated Warrant, in the Exercise Notice for such Warrant, or (ii) in the case of a Global Warrant, in accordance with the procedures established by the Depository for the exercise of Warrants.

(b) If Full Physical Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, prior to 11:00 a.m., New York City time, on the Settlement Date for such Warrant, the Warrantholder shall pay the Exercise Price (determined as of such Exercise Date) by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Warrantholder in accordance with Section 7.15, and on the Settlement Date, following receipt by the Warrant Agent of such Exercise Price, the Company shall cause to be delivered to the Warrantholder one share of Common Stock (the “**Full Physical Share Amount**”), together with Cash in respect of any fractional Warrant as provided in Section 3.05. All funds received by the Warrant Agent upon exercise of such Warrant shall be deposited by the Warrant Agent for the account of the Company at a bank previously instructed by the Company in writing.

(c) If Net Share Settlement is applicable with respect to the exercise of a Warrant, then, for each Warrant exercised hereunder, on the Settlement Date for such Warrant, the Company shall cause to be delivered to the Warrantholder a number of shares of Common Stock (which in no event will be less than zero) (the “**Net Share Amount**”) equal to (i) the Net Share Settlement Price as of the relevant Exercise Date, *minus* the Exercise Price (determined as of such Exercise Date), *divided by* (ii) such Net Share Settlement Price, together with Cash in respect of any fractional shares or fractional Warrants as provided in Section 3.05.

Section 3.04. *Delivery of Common Stock.* (a) In connection with the delivery of shares of Common Stock to an exercising Warrantholder pursuant to Section 3.03(b) or Section 3.03(c), as the case may be, the Warrant Agent shall:

(i) inform the Company of the number of shares of Common Stock underlying the Warrants which were exercised; and (A) if such shares of Common Stock are in book-entry form at the Depository, the Company shall (or shall cause the transfer agent to) deliver such shares of Common Stock by electronic transfer to such Warrantholder’s account, or any other account as such Warrantholder may designate, at the Depository or at an Agent Member, or (B) if such shares of Common Stock are not in book-entry form at the Depository, the Company shall (or shall cause the transfer agent to) deliver to or upon the order of such Warrantholder a certificate or certificates, in each case with legends thereon as appropriate (as determined by the Company) and for the number of full shares of Common Stock to which such Warrantholder is entitled, registered in such name or names as may be directed by such Warrantholder;

(ii) deliver Cash to such Warrantholder in respect of any fractional shares or fractional Warrants, as provided in Section 3.05; and

(iii) if the Number of Warrants represented by a Warrant Certificate shall not have been exercised in full, deliver a new Warrant Certificate, countersigned by the Warrant Agent, for the balance of the number of Warrants represented by the surrendered Warrant Certificate.

(b) Each Person in whose name any shares of Common Stock are issued shall for all purposes be deemed to have become the holder of record of such shares as of the Exercise Date or, in the case of a Warrant subject to Full Physical Settlement only, the date of payment by the Warrantholder of the Exercise Price in accordance with Section 3.03(b), if later. However, if any such date is a date when the stock transfer books of the Company are closed, such Person shall be deemed to have become the holder of such shares at the Close of Business on the next succeeding date on which the stock transfer books are open.

(c) Promptly after the Warrant Agent shall have taken the action required above (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to any Warrants exercised (including, without limitation, with respect to any Exercise Price paid to the Warrant Agent). The Company shall reimburse the Warrant Agent for any amounts paid by the Warrant Agent in respect of a fractional share or fractional Warrant upon such exercise in accordance with Section 3.05 hereof.

Section 3.05. *No Fractional Shares to Be Issued.* (a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a share of Common Stock upon exercise of any Warrants.

(b) If any fraction of a Warrant shall be exercised hereunder, the Company shall pay the relevant Warrantholder Cash in lieu of the corresponding fraction of a share of Common Stock valued at the Net Share Settlement Price as of the Exercise Date. However, if more than one Warrant shall be exercised hereunder at one time by the same Warrantholder, the number of full shares which shall be issuable upon exercise thereof shall be computed on the basis of all Warrants (including any fractional Warrants) so exercised. If any fraction of a share of Common Stock would, except for the provisions of this Section 3.05, be issuable on the exercise of any Warrant or Warrants (including any fractional Warrants), the Company shall pay the Warrantholder Cash in lieu of such fractional shares valued at the Net Share Settlement Price as of the Exercise Date.

(c) Each Warrantholder, by its acceptance of a Warrant Certificate, expressly waives its right to receive any fraction of a share of Common Stock or a stock certificate representing a fraction of a share of Common Stock.

Section 3.06. *Acquisition of Warrants by Company.* The Company shall have the right, except as limited by law, to purchase or otherwise to acquire Warrants at such times, in such manner and for such consideration as it may deem appropriate and shall have agreed with the holder of such Warrants.

Section 3.07. *Direction of Warrant Agent.* (a) The Company shall be responsible for performing all calculations required in connection with the exercise and settlement of the Warrants and the payment or delivery, as the case may be, of Cash and/or Common Stock as described in this Article 3. In connection therewith, the Company shall provide prompt written notice to the Warrant Agent of the amount of Cash and the number of shares of Common Stock payable or deliverable, as the case may be, upon exercise and settlement of the Warrants, including, without limitation, the Net Share Amount and the Full Physical Share Amount.

(b) Any Cash to be paid to the Warrantholders hereunder shall be delivered to the Warrant Agent no later than the Business Day immediately preceding the date such consideration is required to be delivered to the Warrantholders. Any Common Stock to be delivered to the Warrantholders hereunder shall be delivered by the Company (or the transfer agent) by the date such consideration is required to be delivered to the Warrantholders.

(c) The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations or items to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or Units of Reference Property that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or Units of Reference Property, or to comply with any of the covenants of the Company contained in this Article 3.

#### ARTICLE 4

[RESERVED]

#### ARTICLE 5

#### ADJUSTMENTS

Section 5.01. *Adjustments to Exercise Price.* The Exercise Price for the Warrants shall be subject to adjustment (without duplication) upon the occurrence of any of the following events:

(a) The issuance of Common Stock as a dividend or distribution to all holders of Common Stock, or a subdivision or combination of Common Stock, in which event the Exercise Price shall be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0}{OS_1}$$

where:

- $EP_0$  = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be;
- $EP_1$  = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be;
- $OS_0$  = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date for such subdivision or combination, as the case may be; and
- $OS_1$  = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, subdivision or combination.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such subdivision or combination, as the case may be. If any dividend or distribution or subdivision or combination of the type described in this Section 5.01(a) is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to the Exercise Price that would then be in effect if such dividend or distribution or subdivision or combination had not been declared or announced, as the case may be.

(b) The issuance to all holders of Common Stock of rights or warrants entitling them for a period expiring 60 days or less from the date of issuance of such rights or warrants to purchase shares of Common Stock (or securities convertible into Common Stock) at less than (or having a conversion price per share less than) the Current Market Price of Common Stock, in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{OS_0 + Y}{OS_0 + X}$$

where:

- $EP_0$  = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such issuance;
- $EP_1$  = the Exercise Price in effect immediately after the Close of Business on the Record Date for such issuance;
- $OS_0$  = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such issuance;
- $X$  = the total number of shares of Common Stock issuable pursuant to such rights, warrants or convertible securities; and
- $Y$  = the aggregate price payable to exercise such rights, warrants or convertible securities *divided by* the Current Market Price.

Such adjustment shall become effective immediately after the Close of Business on the Record Date for such issuance. In the event that the issuance of such rights, warrants or convertible securities is announced but such rights, warrants or convertible securities are not so issued, the Exercise Price shall again be adjusted to be the Exercise Price that would then be in effect if the Record Date for such issuance had not occurred. To the extent that such rights or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights, warrants or convertible securities, upon the expiration, termination or maturity of such rights, warrants or convertible securities, the Exercise Price shall be readjusted to the Exercise Price that would then be in effect had the adjustments made upon the issuance of such rights, warrants or convertible securities been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate price payable for such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, as well as any consideration received in connection with the conversion of any convertible securities issued upon exercise of such rights or warrants, and the value of such consideration, if other than Cash, shall be determined in good faith by the Board of Directors.

(c) The dividend or distribution to all holders of Common Stock of (i) shares of the Company's Capital Stock (other than Common Stock), (ii) evidences of the Company's indebtedness, (iii) rights or warrants to purchase the Company's securities or the Company's assets or (iv) property or Cash (excluding any ordinary cash dividends declared by the Board of Directors and excluding any dividend, distribution or issuance covered by clauses (a) or (b) above), in which event the Exercise Price will be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{SP_0 - FMV}{SP_0}$$

where:

- $EP_0$  = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

$EP_1$  = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

$SP_0$  = the Current Market Price; and

$FMV$  = the fair market value (as determined in good faith by the Board of Directors), on the Record Date for such dividend or distribution, of the shares of Capital Stock, evidences of indebtedness or property, rights or warrants so distributed or the amount of Cash (other than in the case of ordinary cash dividends declared by the Board of Directors) expressed as an amount per share of outstanding Common Stock.

In the event of a reduction of the Parent Exercise Price under either of the Parent Warrant Agreements (other than pursuant to Article 5 of a Parent Warrant Agreement), such reduction shall be treated, for purposes of this Warrant Agreement, as a distribution of property where the FMV of such property for purposes of this adjustment shall be equal to the absolute value of the difference between (i) the Black Scholes Warrant Value of such outstanding Parent Warrants with a Parent Exercise Price equal to the Parent Exercise Price as adjusted to such date pursuant to Article 5 of the applicable Parent Warrant Agreement and (ii) the Black Scholes Warrant Value of such outstanding Parent Warrants immediately following such reduction in Parent Exercise Price, expressed as an amount per share of outstanding Common Stock.

Such decrease shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

However, if the transaction that gives rise to an adjustment pursuant to this clause (c) is one pursuant to which the payment of a dividend or other distribution on Common Stock consists of shares of capital stock of, or similar equity interests in, a subsidiary of the Company or other business unit of the Company (i.e., a spin-off) that are, or, when issued, will be, traded or quoted on the New York Stock Exchange or any other national or regional securities exchange or market, then the Exercise Price will instead be adjusted based on the following formula:

$$EP_1 = EP_0 \times \frac{MP_0}{MP_0 + FMV_0}$$

where:

$EP_0$  = the Exercise Price in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

$EP_1$  = the Exercise Price in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

FMV<sub>0</sub> = the average of the Closing Sale Prices of the Capital Stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution; and

MP<sub>0</sub> = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Days commencing on, and including, the third Trading Day after the Ex-Date for such dividend or distribution.

Such decrease shall become effective immediately after the Ex-Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Price shall again be adjusted to be the Exercise Price which would then be in effect if such distribution had not been declared or announced.

(d) For the purposes of Section 5.01(a), (b) and (c), any dividend or distribution to which Section 5.01(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be a dividend or distribution of the indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Exercise Price adjustment required by Section 5.01(c) with respect to such dividend or distribution shall be made in respect of such dividend or distribution (without regard to the parenthetical in Section 5.01(c) that begins with the word “excluding”)) immediately followed by a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Exercise Price adjustment required by Section 5.01 with respect to such dividend or distribution shall then be made), except, for purposes of such adjustment, any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Close of Business on the Record Date.”

Section 5.02. *Adjustments to Number of Warrants.* Concurrently with any adjustment to the Exercise Price under Section 5.01, the Number of Warrants for each Warrant Certificate will be adjusted such that the Number of Warrants for each such Warrant Certificate in effect immediately following the effectiveness of such adjustment will be equal to the Number of Warrants for each such Warrant Certificate in effect immediately prior to such adjustment, *multiplied by a fraction, (i) the numerator of which is the Exercise Price in effect immediately prior to such adjustment and (ii) the denominator of which is the Exercise Price in effect immediately following such adjustment.*

Section 5.03. *Certain Distributions of Rights and Warrants; Shareholder Rights Plan.* (a) Rights or warrants distributed by the Company to all holders of Common Stock (including under any Shareholder Rights Plan in existence on the date hereof or hereafter

put into effect) entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a "**Trigger Event**"):

- (i) are deemed to be transferred with such shares of Common Stock;
- (ii) are not exercisable; and
- (iii) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of Article 5 (and no adjustment to the Exercise Price or the Number of Warrants under this Article 5 will be made) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Price and the Number of Warrants for each Warrant Certificate shall be made under this Article 5 (subject in all respects to Section 5.03(d)).

(b) If any such right or warrant is subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (subject in all respects to Section 5.03(d)).

(c) In addition, except as set forth in Section 5.03(d), in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in Section 5.03(b)) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Price and the Number of Warrants for each Warrant Certificate under Article 5 was made (including any adjustment contemplated in Section 5.03(d)):

(i) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase; and

(ii) in the case of such rights or warrants that shall have expired or been terminated without exercise by the holders thereof, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be readjusted as if such rights and warrants had not been issued.

(d) If a Company shareholders rights plan under which any rights are issued provides that each share of Common Stock issued upon exercise of Warrants at any time prior to the distribution of separate certificates representing such rights shall be entitled to

receive such rights, prior to the separation of such rights from the Common Stock, the Exercise Price and the Number of Warrants for each Warrant Certificate shall not be adjusted pursuant to Section 5.01. If, however, prior to any exercise of a Warrant, such rights have separated from the Common Stock, the Exercise Price and the Number of Warrants for each Warrant Certificate shall be adjusted at the time of separation as if the Company dividended or distributed to all holders of Common Stock, the Company's Capital Stock, evidences of the Company's indebtedness, certain rights or warrants to purchase the Company's securities or other of the Company's assets as described in Section 5.01(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 5.04. *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantheader.

Section 5.05. *Other Adjustments if Net Share Settlement Applies.* To the extent Net Share Settlement applies to the exercise of any Warrant, the Board of Directors shall make appropriate adjustments to the amount of Cash or number of shares of Common Stock, as the case may be, due upon exercise of the Warrant, as may be necessary or appropriate to effectuate the intent of this Article 5 and to avoid unjust or inequitable results as determined in its good faith judgment, to account for any adjustment to the Exercise Price and the Number of Warrants for the relevant Warrant Certificate that becomes effective, or any event requiring an adjustment to the Exercise Price and the Number of Warrants for the relevant Warrant Certificate where the Record Date or effective date (in the case of a subdivision or combination of the Common Stock) of the event occurs, during the period beginning on, and including, the Exercise Date and ending on, and including, the related Settlement Date.

Section 5.06. *Discretionary Adjustments.* The Company may from time to time, to the extent permitted by law and subject to applicable rules of the New York Stock Exchange, decrease the Exercise Price and/or increase the Number of Warrants for each Warrant Certificate by any amount for any period of at least 20 days. In that case, the Company shall give the Warrantheaders at least 15 days' prior notice of such increase or decrease, and such notice shall state the decreased Exercise Price and/or increased Number of Warrants for each Warrant Certificate and the period during which the decrease and/or increase will be in effect. The Company may make such decreases in the Exercise Price and/or increases in the Number of Warrants for each Warrant Certificate, in addition to those set forth in this Article 5, as the Company's Board of Directors deems advisable, including to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

Section 5.07. *Restrictions on Adjustments.* (a) Except in accordance with Section 5.01, the Exercise Price and the Number of Warrants for any Warrant Certificate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

(b) Neither the Exercise Price nor the Number of Warrants for any Warrant Certificate will be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) for a change in the par value of the Common Stock.

(c) In no event will the Company adjust the Exercise Price or make a corresponding adjustment to the Number of Warrants for any Warrant Certificate to the extent that the adjustment would reduce the Exercise Price below the par value per share of Common Stock.

(d) No adjustment shall be made to the Exercise Price or the Number of Warrants for any Warrant Certificate for any of the transactions described in Section 5.01 if the Company makes provisions for Warrantholders to participate in any such transaction without exercising their Warrants on the same basis as holders of Common Stock and with notice that the Board of Directors determines in good faith to be fair and appropriate.

(e) No adjustment shall be made to the Exercise Price, nor will any corresponding adjustment be made to the Number of Warrants for any Warrant Certificate, unless the adjustment would result in a change of at least 1% of the Exercise Price; *provided* that any adjustments that are less than 1% of the Exercise Price shall be carried forward and such carried forward adjustments, regardless of whether the aggregate adjustment is less than 1% of the Exercise Price, shall be made (i) annually, on each anniversary of the Closing Date, (ii) immediately prior to the time of any exercise, and (iii) five Business Days prior to the Expiration Date, unless, in each case, such adjustment has already been made.

(f) If the Company takes a record of the holders of Common Stock for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Exercise Price or the Number of Warrants for any Warrant Certificate then in effect shall be required by reason of the taking of such record.

Section 5.08. *Deferral of Adjustments.* In any case in which Section 5.01 provides that an adjustment shall become effective immediately after (a) a Record Date for an event or (b) the effective date (in the case of a subdivision or combination of the Common Stock) (each a "**Determination Date**"), the Company may elect to defer, until the later of the date the adjustment to the Exercise Price and Number of Warrants for each

Warrant Certificate can be definitively determined and the occurrence of the applicable Adjustment Event (as hereinafter defined), (i) issuing to the Warranholder of any Warrant exercised after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities or assets issuable upon such exercise by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warranholder any amount in Cash in lieu of any fractional share of Common Stock or fractional Warrant pursuant to Section 3.05. For the purposes of this Section 5.08, the term “**Adjustment Event**” shall mean in any case referred to in clause (a) or clause (b) hereof, the occurrence of such event.

Section 5.09. *Recapitalizations, Reclassifications and Other Changes.* (a) If any of the following events occur:

- (i) any recapitalization;
- (ii) any reclassification or change of the outstanding shares of Common Stock (other than changes resulting from a subdivision or combination to which Section 5.01(a) applies);
- (iii) any consolidation, merger or combination involving the Company;
- (iv) any sale or conveyance to a third party of all or substantially all of the Company’s assets; or
- (v) any statutory share exchange,

(each such event a “**Reorganization Event**”), in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (the “**Reference Property**”), then, subject to Section 5.09(e), following the effective time of the transaction, the right to receive shares of Common Stock upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per share of Common Stock, a “**Unit of Reference Property**”). In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in a Reorganization Event, other than with respect to a Change of Control Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock in such Reorganization Event.

(b) At any time from, and including, the effective time of a Reorganization Event:

(i) if Full Physical Settlement applies upon exercise of a Warrant, the Full Physical Share Amount per Warrant shall be equal to a single Unit of Reference Property;

(ii) if Net Share Settlement applies upon exercise of a Warrant, the Net Share Amount per Warrant shall be a number of Units of Reference Property calculated as set forth in Section 3.03(c), except that the Net Share Settlement Price used to determine such Net Share Amount on any Trading Day shall be the Unit Value for such Trading Day;

(iii) the Company shall pay Cash in lieu of delivering any fraction of a Unit of Reference Property or any fractional Warrant in accordance with Section 3.05 based on the Unit Value as of the Exercise Date; and

(iv) the Closing Sale Price and the Current Market Price shall be calculated with respect to a Unit of Reference Property.

(c) The value of a Unit of Reference Property (the “Unit Value”) shall be determined as follows:

(i) any shares of common stock of the successor or purchasing corporation or any other corporation that are traded on a national or regional stock exchange included in such Unit of Reference Property shall be valued as if such shares were “Common Stock” using procedures set forth in the definition of “Closing Sale Price” in Section 1.01;

(ii) any other property (other than Cash) included in such Unit of Reference Property shall be valued in good faith by the Board of Directors (in a manner not materially inconsistent with the manner the Board of Directors valued such property for purposes of the Reorganization Event, if applicable) or by a New York Stock Exchange member firm selected by the Board of Directors; and

(iii) any Cash included in such Unit of Reference Property shall be valued at the amount thereof.

(d) On or prior to the effective time of any Reorganization Event, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 5.09. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Warrantholders as the Board of Directors shall reasonably consider necessary by reason of the foregoing. Any

such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 5. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 5.09, the Company shall promptly file with the Warrant Agent an Officers' Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of amendment to be mailed to each Warrantholder, at its address appearing on the Warrant Register, within 20 Business Days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such amendment.

(e) Change of Control Event:

(i) No less than 15 Business Days prior to the scheduled closing of a Change of Control Event, the Company shall:

(A) calculate the Change of Control Estimated Payment Amount;

(B) deliver to the Warrant Agent a notice of redemption (a "Redemption Notice"), which shall be binding on the Company and on all Warrantholders, stating that all Warrants (other than Carryover Warrants, if any) that have not been exercised prior to the Cut-Off Time shall be redeemed on the Change of Control Payment Date at a price equal to the Change of Control Payment Amount (the "Redemption");

(C) cause a notice of the Redemption to be sent at least once to the Dow Jones News Service or similar business news service in the United States; and

(D) cause the Warrant Agent to send by first-class mail, postage prepaid to each Warrantholder, at the address appearing in the warrant register, a notice stating:

1) that the Redemption is being made pursuant to this Section 5.09(e) and that all Warrants (other than Carryover Warrants, if any) that have not been exercised prior to the Cut-Off Time will be redeemed on the Change of Control Payment Date for payment of the Change of Control Payment Amount;

2) a reasonably detailed explanation of the Change of Control Estimated Payment Amount, including (x) a statement of the amount of the Change of Control Estimated Payment Amount, together with a reasonably detailed explanation of the calculation of such amount, and (y) the formula for calculating the Black Scholes Warrant Value and the Change of Control Payment Amount;

3) the date of the Redemption (which shall be a Business Day no later than five (5) Business Days following the Change of Control Date (the “Change of Control Payment Date”));

4) the Net Share Amount for each Warrant as of a date not more than five (5) Business Days prior to the date of the Redemption Notice (assuming Net Share Settlement is applicable with respect to the exercise of such Warrant);

5) that no outstanding Warrant may be exercised after the Close of Business on the day prior to the Change of Control Date (the “**Cut-Off Time**”);

6) if applicable, that New Warrants will be issued to the Warrantholders on the Change of Control Payment Date in accordance with the terms of this Warrant Agreement and the Warrants (as the same may have been amended in connection with such Change of Control Event pursuant to Section 5.09);

7) any other reasonable procedures that a Warrantholder must follow (to the extent consistent with the terms and conditions set forth herein) in connection with such Redemption; and

8) the name and address of the Warrant Agent.

(ii) Within two (2) Business Days prior to the Change of Control Payment Date, the Company or the surviving Person (if other than the Company) shall (A) deliver to the Warrant Agent the calculation of the Change of Control Payment Amount and (B) deposit with the Warrant Agent money sufficient to pay the Change of Control Payment Amount for all outstanding Warrants (other than the Carryover Warrants, if any).

(iii) On the Change of Control Payment Date, (A) the Company or the surviving Person (if other than the Company) shall redeem all outstanding Warrants (other than Carryover Warrants, if any) pursuant to the Redemption, (B) the Warrant Agent shall mail to each holder of Warrants so redeemed payment in Cash in an amount equal to the aggregate Change of Control Payment Amount in respect of such redeemed Warrants, and (C) the Company or the surviving Person (if other than the Company) shall execute and issue to the Warrantholders, and the Warrant Agent shall authenticate, new Warrants (the “New Warrants”) representing the Carryover Warrants (if any); provided that each such New Warrant shall be issued in denominations of one Warrant and integral multiples thereof and the terms thereof shall, subject to Section 5.09(e)(v), be substantially consistent with the terms of this Warrant Agreement and the Warrants (and all references herein to Warrants shall thereafter be deemed to be references to such New Warrants).

(iv) No Warrant (which for the avoidance of doubt does not include New Warrants) may be exercised after the Cut-Off Time.

(v) Following the Change of Control Payment Date, any holder of New Warrants shall have the right to exercise such New Warrant and to receive, upon such exercise, the Reference Property in accordance with Section 5.09(a), subject to Section 5.09(b) and Section 5.09(c) and the remaining terms of this Warrant Agreement and the Warrants (as the same may have been amended in connection with such Change of Control Event pursuant to Section 5.09); provided, that, for purposes of this Section 5.09(e)(v), (A) each Unit of Reference Property shall initially only consist of the Registered and Listed Shares included in such Unit of Reference Property and (B) the initial exercise price for each New Warrant shall be equal to the New Warrant Exercise Price.

(vi) The provisions of this Section 5.09(e) are subject, in all cases, to any applicable requirements under the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder. Where there is any inconsistency between the requirements of the Securities Act or the Exchange Act or the rules and regulations promulgated thereunder and the requirements of this Section 5.09(e), the requirements of the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder, shall supersede.

(f) The Company hereby agrees not to become a party to any Reorganization Event or Change of Control Event unless its terms are consistent in all material respects with this Section 5.09.

(g) The above provisions of this Section 5.09 shall similarly apply to successive Reorganization Events and Change of Control Events.

(h) If this Section 5.09 applies to any event or occurrence, no other provision of this Article 5 with respect to anti-dilution adjustments (which for the avoidance of doubt, does not include the covenant set forth in Section 5.10) shall apply to such event or occurrence.

Section 5.10. *Consolidation, Merger and Sale of Assets.* (a) The Company may, without the consent of the Warrant holders, consolidate with, merge into or sell, lease or otherwise transfer in one transaction or a series of related transactions the consolidated assets of the Company and its subsidiaries substantially as an entirety to any corporation, limited liability company, partnership or trust organized under the laws of the United States or any of its political subdivisions so long as:

(i) the successor assumes all the Company's obligations under this Warrant Agreement and the Warrants; and

(ii) the Company provides written notice of such assumption to the Warrant Agent.

(b) In case of any such consolidation, merger, sale, lease or other transfer and upon any such assumption by the successor corporation, limited liability company, partnership or trust, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company. Such

successor entity thereupon may cause to be signed, and may issue any or all of the Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been signed by the Company; and, upon the order of such successor entity, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor entity thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

Section 5.11. *Common Stock Outstanding.* For the purposes of this Article 5, the number of shares of Common Stock at any time outstanding shall not include shares held, directly or indirectly, by the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 5.12. *Covenant to Reserve Shares for Issuance on Exercise.* (a) The Board of Directors has authorized and will reserve for issuance such number of shares of Common Stock as the Board of Directors believes will be issuable upon the exercise of all outstanding Warrants for shares of Common Stock (assuming, for purposes of this covenant, that Full Physical Settlement applies to all Warrants exercised hereunder). The Company covenants that all shares of Common Stock that shall be so issuable shall be duly and validly issued, fully paid and non-assessable.

(b) The Company agrees to authorize and direct its current and future transfer agents for the Common Stock to reserve for issuance the number of shares of Common Stock specified in this Section 5.12. The Company shall instruct the transfer agent to deliver to the Warrant Agent, upon written request from the Warrant Agent substantially in the form of Exhibit F (or as separately agreed between the Warrant Agent and the transfer agent), stock certificates (or beneficial interests therein) required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Warrant Agreement. The Company shall pay to the Warrant Agent, as agent for the Warrantholders, any Cash that may be payable as provided in this Article 5. Promptly after the date of expiration of Warrants, the Warrant Agent shall certify to the Company the aggregate Number of Warrants then outstanding, and thereafter no shares shall be required to be reserved in respect of such Warrants.

(c) The Company shall use its reasonable best efforts to apply and cause to have listed on a national securities exchange the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants as soon as reasonably practicable following the date on which the Common Stock is registered under Section 12(b) of the Exchange Act and listed on a national securities exchange (other than shares of Common Stock bearing the restrictive legend set forth on Exhibit B hereto). Upon any such listing of the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants, for so long as the Common Stock is registered under Section 12(b) of the Exchange Act and listed on a national securities exchange, the Company shall use its reasonable efforts to cause the Warrants and, subject to notice of issuance (if any), the shares of Common Stock issued and/or issuable upon exercise of the Warrants, to be listed on such exchange.

Section 5.13. *Calculations Final.* The Company shall be responsible for making all calculations called for under this Warrant Agreement. These calculations include, but are not limited to, the Exercise Date, the Current Market Price, the Closing Sale Price, the Net Share Settlement Price, the Exercise Price, the Number of Warrants for each Warrant Certificate and the number of shares of Common Stock or Units of Reference Property, if any, to be issued upon exercise of any Warrants. The Company shall make the foregoing calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Warrantheholders. The Company shall provide a schedule of the Company's calculations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification.

Section 5.14. *Notice of Adjustments.* Whenever the Exercise Price or the Number of Warrants for each Warrant Certificate is adjusted, the Company shall promptly mail to Warrantheholders a notice of the adjustment. The Company shall file with the Warrant Agent such notice and an Officer's Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct, and the Warrant Agent shall not be deemed to have any knowledge of any adjustments unless and until it has received such certificate. The Warrant Agent shall not be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Warrantheholder desiring inspection thereof.

Section 5.15. *Warrant Agent Not Responsible for Adjustments or Validity.* The Warrant Agent shall at no time be under any duty or responsibility to any Warrantheholder to determine whether any facts exist that may require an adjustment of the Exercise Price and the Number of Warrants for each Warrant Certificate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment pursuant to this Article 5, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 5, or to comply with any of the covenants of the Company contained in this Article 5.

Section 5.16. *Statements on Warrants.* The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Article 5, and Warrant Certificates issued after such adjustment may state the same information (other than the

adjusted Exercise Price and the adjusted Number of Warrants for such Warrant Certificates) as are stated in the Warrant Certificates initially issued pursuant to this Warrant Agreement. However, the Company may at any time in its sole discretion (which shall be conclusive) make any change in the form of Warrant Certificate that it may deem appropriate and that does not materially adversely affect the interest of the Warranholders; and any Warrant Certificates thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

## ARTICLE 6

### OTHER PROVISIONS RELATING TO RIGHTS OF WARRANTHOLDERS

Section 6.01. *No Rights as Stockholders.* Warranholders shall not be entitled, by virtue of holding Warrants, to vote, to consent, to receive dividends, to receive notice as stockholders with respect to any meeting of stockholders for the election of the Company's directors or any other matter, or to exercise any rights whatsoever as the Company's stockholders unless, until and only to the extent such holders become holders of record of shares of Common Stock issued upon settlement of the Warrants.

Section 6.02. *Mutilated or Missing Warrant Certificates.* If any Warrant at any time is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Warrant may be replaced at the cost of the applicant (including legal fees of the Company) at the office of the Warrant Agent. The applicant for a new Warrant shall, in the case of any mutilated or defaced Warrant, surrender such Warrant to the Warrant Agent and, in the case of any lost, destroyed or stolen Warrant, furnish evidence satisfactory to the Company of such loss, destruction or theft, and, in each case, furnish evidence satisfactory to the Company of the ownership and authenticity of the Warrant together with such indemnity as the Company may require. Any such new Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant Certificate shall be at any time enforceable by anyone. An applicant for such a substitute Warrant Certificate shall also comply with such other reasonable regulations and pay such other reasonable charges as the Company or the Warrant Agent may prescribe. All Warrant Certificates shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 6.03. *Modification, Waiver and Meetings.* (a) This Warrant Agreement may be modified or amended by the Company and the Warrant Agent, without the consent of the holder of any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement; *provided* that such modification or amendment does not adversely affect the interests of the Warranholders in any respect.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants may also be made by the Company and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived, with the written consent of the Warrantholders of Warrants representing a majority of the aggregate Number of Warrants at the time outstanding.

(c) However, no such modification, amendment or waiver may, without the written consent or the affirmative vote of each Warrantholder affected:

- (i) change the Expiration Date;
- (ii) increase the Exercise Price or decrease the Number of Warrants (except as explicitly set forth in Article 5);
- (iii) impair the right to institute suit for the enforcement of any payment or delivery with respect to the exercise and settlement of any Warrant;
- (iv) impair or adversely affect the exercise rights of Warrantholders, including any change to the calculation or payment of the Full Physical Share Amount or the Net Share Amount, as applicable;
- (v) deprive any Warrantholder of any economic rights, privileges or benefits that arise under or are provided pursuant to this Warrant Agreement and/or the Warrants;
- (vi) reduce the percentage of Warrants outstanding necessary to modify or amend this Warrant Agreement or to waive any past default; or
- (vii) reduce the percentage in Warrants outstanding required for any other waiver under this Warrant Agreement.

## ARTICLE 7

### CONCERNING THE WARRANT AGENT AND OTHER MATTERS

Section 7.01. *Payment of Certain Taxes.* (a) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the initial issuance of the Warrants hereunder.

(b) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the issuance of Common Stock upon the exercise of Warrants hereunder and the issuance of stock certificates in respect thereof in the respective names of, or in such names as may be directed by, the exercising Warrantholders; *provided, however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such stock certificate, any Warrant Certificates or other securities in a name other than that of the registered holder of the Warrant Certificate surrendered upon exercise of the Warrant, and the Company shall not be required to issue or deliver such certificates or

other securities unless and until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 7.02. *Change of Warrant Agent.* (a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving 60 days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 60 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by any holder of Warrants (who shall, with such notice, submit his Warrant Certificate for inspection by the Company), then the holder of any Warrants may apply to any court of competent jurisdiction for the appointment of a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon 30 days' written notice to the Warrant Agent; *provided, however*, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the laws of the United States of America or any state thereof or the District of Columbia, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by Federal or state authority and having a combined capital and surplus of not less than \$50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; *provided* that such reports are published at least annually pursuant to law or to the requirements of a Federal or state supervising or examining authority. After appointment, any successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent, the Warrantholders and each transfer agent for the shares of its Common Stock. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, shall be the successor Warrant Agent under this Warrant Agreement without any further act. In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Warrant Certificates so countersigned, and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Warrant Agreement.

Section 7.03. *Compensation; Further Assurances.* The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent hereunder and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon demand for all reasonable expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel) except any such expense, disbursement or advance as may arise from its or any of their negligence or bad faith, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement.

Section 7.04. *Reliance on Counsel.* The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 7.05. *Proof of Actions Taken.* Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Warrant Agent; and such Officer's Certificate shall, in the absence of bad faith on the part of the Warrant Agent, be full warrant to the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement in reliance upon such certificate; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 7.06. *Correctness of Statements.* The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or in the Warrant Certificates (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 7.07. *Validity of Agreement.* The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of any Warrant Certificates (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any shares of Common Stock will, when issued, be validly issued and fully paid and nonassessable.

Section 7.08. *Use of Agents.* The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents and the Warrant Agent shall not be responsible for the misconduct or negligence of any agent or attorney, provided due care had been exercised in the appointment and continued employment thereof.

Section 7.09. *Liability of Warrant Agent.* The Warrant Agent shall incur no liability or responsibility to the Company or to any holder of Warrants for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's negligence or willful misconduct or bad faith.

Section 7.10. *Legal Proceedings.* The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or one or more Warrantholders shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity.

Section 7.11. *Other Transactions in Securities of the Company.* The Warrant Agent in its individual or any other capacity may become the owner of Warrants or other securities of the Company, or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Warrant Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

Section 7.12. *Actions as Agent.* The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. No provision of the Warrant Agreement shall require the Warrant Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own negligence or willful misconduct or bad faith.

Section 7.13. *Appointment and Acceptance of Agency.* The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth.

Section 7.14. *Successors and Assigns.* All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 7.15. *Notices.* Any notice or demand authorized by this Warrant Agreement to be given or made by the Warrant Agent or by any Warrantholder to or on the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

General Motors Company  
300 Renaissance Center  
Detroit, MI 48265-3000  
Telephone: (313) 667-4605

with a copy to:

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: John J. Rapisardi  
R. Ronald Hopkinson  
Telephone: (212) 504-6000  
Fax: (212) 504-6666

Any notice or demand authorized by this Warrant Agreement to be given or made by any Warrantholder or by the Company to or on the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

U.S. Bank Corporate Trust Services  
One Federal Street, 10th Floor  
Attention: Karen R. Beard, Vice President  
Re: General Motors Company Warrant Agreement  
Boston, MA 02110  
Fax: (617) 603-6667

Any notice of demand authorized by this Warrant Agreement to be given or made to any Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid to the last address of such Warrantholder as it shall appear on the Warrant Register.

Section 7.16. *Applicable Law.* The validity, interpretation and performance of this Warrant Agreement and of the Warrant Certificates shall be governed by the law of the State of New York without giving effect to the principles of conflicts of laws thereof.

Section 7.17. *Benefit of this Warrant Agreement.* Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person or corporation other than the parties hereto and the Warrantholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Warrantholders.

Section 7.18. *Registered Warrantholders.* Prior to due presentment for registration of transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and

neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 7.19. *Inspection of this Warrant Agreement.* A copy of this Warrant Agreement shall be available at all reasonable times for inspection by any registered Warrantholder at the principal office of the Warrant Agent (or successor warrant agent). The Warrant Agent may require any such holder to submit his Warrant Certificate for inspection by it before allowing such holder to inspect a copy of this Warrant Agreement.

Section 7.20. *Headings.* The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 7.21. *Counterparts.* This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

General Motors Company

By: /s/ Niharika Ramdev

Name: Niharika Ramdev

Title: Assistant Treasurer

U.S. Bank National Association, as  
Warrant Agent

By: /s/ Karen R. Beard

Name: Karen R. Beard

Title: Vice President

SIGNATURE PAGE TO AMENDED AND  
RESTATED VEBA WARRANT

**FORM OF RESTRICTIVE LEGEND FOR WARRANTS**

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

[THIS INSTRUMENT IS ISSUED PURSUANT TO AND SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A STOCKHOLDERS AGREEMENT, DATED OCTOBER 15, 2009, BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.]

**FORM OF RESTRICTIVE LEGEND FOR COMMON STOCK**

[THESE SHARES OF COMMON STOCK HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

[THESE SHARES OF COMMON STOCK ARE ISSUED PURSUANT TO AND SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A STOCKHOLDERS AGREEMENT, DATED OCTOBER 15, 2009, BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THESE COMMON SHARES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.]

**FORM OF GLOBAL WARRANT LEGEND**

UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), TO GENERAL MOTORS COMPANY, A DELAWARE CORPORATION (THE “**ISSUER**”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

## FORM OF WARRANT CERTIFICATE

[FACE]

No. \_\_\_\_\_

CUSIP No. \_\_\_\_\_

[UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO GENERAL MOTORS COMPANY, A DELAWARE CORPORATION (THE “ISSUER”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.]

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.]

[THIS INSTRUMENT IS ISSUED PURSUANT TO AND SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A STOCKHOLDERS AGREEMENT, DATED OCTOBER 15, 2009, BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.]

GENERAL MOTORS COMPANY

[Designation of Warrants]

NUMBER OF WARRANTS: Initially, 15,151,515 Warrants, subject to adjustment as described in the Amended and Restated Warrant Agreement dated as of October 16, 2009 between General Motors Company, a Delaware corporation, and U.S. Bank National Association, as Warrant Agent (the "**Warrant Agreement**"), each of which is exercisable for one share of Common Stock.

EXERCISE PRICE: Initially, \$126.92 per Warrant, subject to adjustment as described in the Warrant Agreement.

FORM OF PAYMENT OF EXERCISE PRICE: Cash, if Full Physical Settlement is applicable, or Net Share Settlement.

FORM OF SETTLEMENT: Upon exercise of any Warrants represented hereby, the Warrantholder shall be entitled to receive, at the Warrantholder's election, either (a) upon payment to the Warrant Agent of the Exercise Price (determined as of the relevant Exercise Date), one share of Common Stock per Warrant exercised, together with Cash in lieu of any fractional Warrants, or (b) without any payment therefor, a number of shares of Common Stock equal to the Net Share Amount, together with Cash in lieu of any fractional shares or fractional Warrants, in each case, as described in the Warrant Agreement.

DATES OF EXERCISE: At any time, and from time to time, prior to 5:00 p.m., New York City time, on the Expiration Date, the Warrantholder shall be entitled to exercise all Warrants then represented hereby and outstanding (which may include fractional Warrants) or any portion thereof (which shall not include any fractional Warrants).

PROCEDURE FOR EXERCISE: Warrants may be exercised by (a) in the case of a Certificated Warrant, surrendering the Warrant Certificate evidencing such Warrant at the principal office of the Warrant Agent (or successor warrant agent), with the Exercise Notice set forth on the reverse of the Warrant Certificate duly completed and executed, together with any applicable transfer taxes, or (b) in the case of a Global Warrant, complying with the procedures established by the Depository for the exercise of Warrants.

EXPIRATION DATE: December 31, 2015.

This Warrant Certificate certifies that the UAW Retiree Medical Benefits Trust, or its registered assigns, is the Warrantholder of the Number of Warrants (the "**Warrants**") specified above[, as modified in Schedule A hereto,] (such number subject to adjustment from time to time as described in the Warrant Agreement).

In connection with the exercise of any Warrants, (a) the Company shall determine the Full Physical Share Amount or Net Share Amount, as applicable, for each Warrant, and (b) the Company shall, or shall cause the Warrant Agent to, deliver to the exercising Warrantholder, on the applicable Settlement Date, for each Warrant exercised, a number of Shares of Common Stock equal to the relevant Full Physical Share Amount or Net Share Amount, as applicable, together with Cash in lieu of any fractional shares or fractional Warrants as described in the Warrant Agreement.

Prior to the relevant Exercise Date as described more fully in the Warrant Agreement, Warrants will not entitle the Warrantholder to any of the rights of the holders of shares of Common Stock.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, General Motors Company has caused this instrument to be duly executed.

Dated: \_\_\_\_\_

GENERAL MOTORS COMPANY

By: \_\_\_\_\_  
Name:  
Title:

Attest

By: \_\_\_\_\_  
Secretary

**Certificate of Authentication**

These are the Warrants referred to in the above-mentioned Warrant Agreement.

Countersigned as of the date above written:

U.S. Bank National Association, as  
Warrant Agent

By: \_\_\_\_\_  
Authorized Officer

**GENERAL MOTORS COMPANY**

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to an Amended and Restated Warrant Agreement, dated as of October 16, 2009 (the "**Warrant Agreement**"), between the Company and U.S. Bank National Association (the "**Warrant Agent**"), and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions each Warrantholder consents by acceptance of this Warrant Certificate or a beneficial interest therein. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement. A copy of the Warrant Agreement is on file at the Warrant Agent's Office.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of New York without regard to the conflicts of laws principles thereof.

Exercise Notice

U.S. Bank National Association  
60 Livingston Avenue  
Attention: Transfer Department  
Re: General Motors Company Warrant Agreement  
Mail Station EP-MN-WS2N  
St. Paul, MN 66107

The undersigned (the "Registered Warrantholder") hereby irrevocably exercises \_\_\_\_\_ Warrants (the "Exercised Warrants") and delivers to you herewith a Warrant Certificate or Warrant Certificates, registered in the Registered Warrantholder's name, representing a Number of Warrants at least equal to the number of Exercised Warrants.

The Registered Warrantholder hereby either:

- elects for Full Physical Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement and confirms that it will, prior to 11:00 a.m., New York City time, on the Settlement Date, pay an amount equal to the Exercise Price (determined as of the relevant Exercise Date), multiplied by the number of Exercised Warrants, by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent and notified to the Registered Warrantholder as required under Section 3.03(b) of the Warrant Agreement; or
- elects for Net Share Settlement to apply to the Exercised Warrants pursuant to Section 3.03 of the Warrant Agreement.

The Registered Warrantholder hereby directs the Warrant Agent to:

(a) deliver the Full Physical Share Amount or Net Share Amount, as applicable, for each of the Exercised Warrants as follows:

\_\_\_\_\_ ; and

(b) if the number of Exercised Warrants is less than the Number of Warrants represented by the enclosed Warrant Certificates, to deliver a Warrant Certificate representing the unexercised Warrants to:

\_\_\_\_\_

Dated: \_\_\_\_\_

(Registered Warrantholder)

By: \_\_\_\_\_

Authorized Signature

Address:

Telephone:

**[To Be Attached if Warrant is a Global Warrant]**

**SCHEDULE A**

**SCHEDULE OF INCREASES OR DECREASES IN WARRANTS**

The initial Number of Warrants represented by this Global Warrant is 15,151,515. In accordance with the Amended and Restated Warrant Agreement dated as of October 16, 2009 between the Company and U.S. Bank National Association, as Warrant Agent, the following increases or decreases in the Number of Warrants represented by this certificate have been made:

<u>Date</u>	<u>Amount of increase in Number of Warrants evidenced by this Global Warrant</u>	<u>Amount of decrease in Number of Warrants evidenced by this Global Warrant</u>	<u>Number of Warrants evidenced by this Global Warrant following such decrease or increase</u>	<u>Signature of authorized signatory</u>
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FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

\_\_\_\_\_  
Name, Address and Zip Code of Assignee

and irrevocably appoints \_\_\_\_\_  
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

*[Signature page follows]*

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Transferee

By: \_\_\_\_\_

Name:

Title:

(Sign exactly as your name appears on the other side of this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

**FORM OF CERTIFICATE OF COMPLIANCE WITH TRANSFER  
RESTRICTIONS**

In connection with the sale, assignment and transfer of \_\_\_\_\_ Warrants by \_\_\_\_\_ unto \_\_\_\_\_  
(Please insert social security or other Taxpayer Identification Number of assignee) prior to the expiration of the holding period applicable to sales thereof under Rule 144 under the Securities Act of 1933, as amended (the "**Securities Act**") (or any successor provision), the undersigned confirms that such Warrants are being transferred:

To General Motors Company (the "**Issuer**") or any subsidiaries thereof; or

Pursuant to a registration statement that has become effective under the Securities Act; or

Pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other available exemption from the registration requirements of the Securities Act.

Prior to the registration of any transfer in accordance with the third box above, the Issuer and the Warrant Agent reserve the right to require the delivery of such legal opinion, certifications or other evidence as may reasonably be required in order to determine that the proposed transfer is being made in compliance with the Securities Act and applicable state securities laws.

*Unless one of the boxes is checked, the Warrant Agent will refuse to register any of the Warrants evidenced by this certificate in the name of any person other than the registered holder thereof.*

Date: [\_\_\_\_\_]

[Insert name of transferee]

By: \_\_\_\_\_

Name:

Title:

FORM OF COMMON STOCK REQUISITION ORDER

[Date]

Via Facsimile [\_\_\_\_\_]

General Motors Company  
300 Renaissance Center  
Detroit, MI 48265-3000

Re: DWAC Issuance  
Control No. \_\_\_\_\_

Ladies and Gentlemen:

You are hereby authorized to issue and deliver the shares of Common Stock as indicated below via DWAC. The shares are being issued to cover the exercise of Warrants under the Amended and Restated Warrant Agreement, dated as of October 16, 2009, between the Company and U.S. Bank National Association, as Warrant Agent (the "**Warrant Agreement**"). Defined terms used but not defined herein have the meaning assigned to them in the Warrant Agreement.

Number of Shares: \_\_\_\_\_  
\_\_\_\_\_ Original Issue or  
\_\_\_\_\_ Transfer from Treasury Account

Broker Name: \_\_\_\_\_

Broker's DTC Number: \_\_\_\_\_

Contact and Phone: \_\_\_\_\_

The Broker will initiate the DWAC transaction on (date).

Sincerely,

U.S. Bank National Association,  
as Warrant Agent

By: \_\_\_\_\_  
Name:  
Title:

cc: [Insert name] via facsimile [insert fax number]  
Broker

**GENERAL MOTORS COMPANY AND SUBSIDIARIES**  
**COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES**

(Dollars in millions)

	Successor	Predecessor				
	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Years Ended December 31,			
			2008	2007	2006	2005
Income (loss) from continuing operations before income taxes and equity income	\$ (5,283)	\$ 107,776	\$(29,471)	\$(6,346)	\$(5,743)	\$(17,308)
Fixed charges included in income (loss) from continuing operations						
Interest and related charges on debt	707	5,444	2,659	3,399	17,029	15,685
Portion of rentals deemed to be interest	72	104	264	230	346	288
Interest capitalized in period	26	28	244	24	44	45
Total fixed charges included in income (loss) from continuing operations	805	5,576	3,167	3,653	17,419	16,018
Amortization of capitalized interest	—	46	77	48	51	47
Equity (income) loss of GMAC LLC	—	(1,380)	6,183	1,245	5	—
Dividends from nonconsolidated associates	422	112	440	693	366	703
Interest capitalized	(26)	(28)	(244)	(24)	(44)	(45)
Noncontrolling interest in pre-tax income of subsidiaries that have not incurred fixed charges	—	—	—	—	—	—
Earnings (losses) available for fixed charges	<u>\$ (4,082)</u>	<u>\$ 112,102</u>	<u>\$(19,848)</u>	<u>\$(731)</u>	<u>\$12,054</u>	<u>\$(585)</u>
Fixed charges included in income (loss) from continuing operations (see above)	<u>805</u>	<u>5,576</u>	<u>3,167</u>	<u>3,653</u>	<u>17,419</u>	<u>16,018</u>
Preferred dividends	131	—	—	—	—	—
Preferred dividends grossed up to a pre-income tax basis	162	—	—	—	—	—
Combined fixed charges and preferred dividends	<u>\$ 967</u>	<u>\$ 5,576</u>	<u>\$ 3,167</u>	<u>\$ 3,653</u>	<u>\$17,419</u>	<u>\$ 16,018</u>
Ratios of earnings to fixed charges		<u>20.10</u>		<u>0.69</u>		
Ratio of earnings to combined fixed charges and preferred dividends		<u>20.10</u>		<u>0.69</u>		

Earnings for the period July 10, 2009 through December 31, 2009 and the years ended December 31, 2008, 2007 and 2005 were inadequate to cover fixed charges. Additional earnings of \$5.0 billion, \$23.0 billion, \$4.4 billion and \$16.6 billion for the periods July 10, 2009 through December 31, 2009 and the years ended December 31, 2008, 2007 and 2005 would have been necessary to bring the respective ratios to 1.0.

In January 2009 Old GM adopted ASC 810-10, "Consolidation," that governs the accounting for and reporting of noncontrolling interests in partially-owned consolidated subsidiaries and the loss of control of subsidiaries. In addition Old GM adopted ASC 470-20, "Debt with Conversion and Other Options" which requires issuers of convertible debt securities within its scope to separate these securities into a debt component and an equity component, resulting in the debt component being recorded at fair value without consideration given to the conversion feature. Accordingly, the presentation and disclosure requirements have been applied retrospectively and prior period amounts for all periods presented have been adjusted to apply the new methods of accounting.

**GENERAL MOTORS COMPANY**  
**AND SUBSIDIARIES, JOINT VENTURES, AND AFFILIATES**  
**OF THE REGISTRANT**  
**AS OF DECEMBER 31, 2009**

<u>Name of Subsidiary</u>	<u>State or Sovereign Power of Incorporation</u>
<b>Subsidiaries included in the Registrant's consolidated financial statements</b>	
06 Ormskirk Limited	England and Wales
1908 Holdings Ltd.	Cayman Islands
2035208 Ontario Inc.	Canada
2140879 Ontario Inc.	Canada
3183795 Nova Scotia ULC	Canada
3535673 Canada Inc.	Canada
4259891 Canada Inc.	Canada
4501101 Canada Inc.	Canada
6153933 Canada Ltd.	Canada
Adam Opel GmbH	Germany
Advantage Chevrolet of Bolingbrook, Inc.	Delaware
Aftermarket (UK) Limited	England
Aftermarket Italia S.r.l. in liquidazione	Italy
AL Mansour Automotive SAE	Egypt
Andiamo Riverfront, LLC	Michigan
Annunciata Corporation	Delaware
Approach (UK) Limited	England and Wales
Argonaut Holdings, Inc.	Delaware
Athens Chevrolet, Inc.	Delaware
ATK Automotive Technology Kaiserslautern GmbH	Germany
Auto Lease Finance Corporation	Cayman Islands
Autohaus G.V.O. GmbH	Germany
Autohaus Saab GmbH	Germany
Automotive Steering Korea Limited	Korea, Republic of
Autovision (Scotland) Limited	Scotland
Aviation Spectrum Resources Holdings, Incorporated	Delaware
Baker (Crewe) Limited	England and Wales
Ballards of Watford Limited	England and Wales
Baylis (Gloucester) Limited	England and Wales
Belmont Grampian Limited	Scotland
Berse Road (No. 1) Limited	England
Berse Road (No. 2) Limited	England
Bicknell (Malvern) Limited	England and Wales
Bill Osborne Chevrolet Ltd.	Canada
Blackdown Motor Company Limited	England and Wales
BOCO (Proprietary) Limited	South Africa

**GENERAL MOTORS COMPANY**  
**AND SUBSIDIARIES, JOINT VENTURES, AND AFFILIATES**  
**OF THE REGISTRANT**  
**AS OF DECEMBER 31, 2009**

<u>Name of Subsidiary</u>	<u>State or Sovereign Power of Incorporation</u>
<b>Subsidiaries included in the Registrant's consolidated financial statements</b>	
Brandish Limited	England and Wales
Britain Chevrolet, Inc.	Delaware
Buick Pontiac GMC of Moosic, Inc.	Delaware
Cadillac Polanco, S.A. de C.V.	Mexico
CAMI Automotive, Inc.	Canada
Canadian Satellite Radio Holdings Inc.	Canada
Carrefour 440 Chevrolet Pontiac Buick GMC	Canada
Carus Grundstücks-Vermietungsgesellschaft mbH & Co. Objekt Kuno 65 KG	Germany
Carus Grundstücks-Vermietungsgesellschaft mbH & Co. Objekt Leo 40 KG	Germany
Carve-Out Ownership Cooperative LLC	Delaware
Caterpillar Logistics SCS	Italy
Caterpillar Logistics Supply Chain Services GmbH	Germany
Champion Chevrolet, Pontiac, Buick, Inc.	Delaware
Charles Hurst Motors Limited	Northern Ireland
Chevrolet Austria GmbH	Austria
Chevrolet Belgium NV	Belgium
Chevrolet Central and Eastern Europe	Hungary
Chevrolet Deutschland GmbH	Germany
Chevrolet Espana, S.A.	Spain
Chevrolet Euro Parts Center B.V.	Netherlands
Chevrolet Europe GmbH	Switzerland
Chevrolet Finland Oy	Finland
Chevrolet France	France
Chevrolet Italia S.p.A.	Italy
Chevrolet Nederland B.V.	Netherlands
Chevrolet of Novato, Inc.	Delaware
Chevrolet Poland Sp. z o.o.	Poland
Chevrolet Portugal, Lda.	Portugal
Chevrolet Sales (Thailand) Limited	Thailand
Chevrolet Sales India Private Ltd.	India
Chevrolet Sociedad Anonima de Ahorro para Fines Determinados	Argentina
Chevrolet Suisse S.A.	Switzerland
Chevrolet Sverige AB	Sweden
Chevrolet Türkiye Otomotive Limited Sirketi	Turkey
Chevrolet UK Limited Ltd.	England
CHEVYPLAN S.A. Sociedad Administradora de Planes de Autofinanciamiento Comercial	Colombia
Coach Insignia LLC	Michigan

**GENERAL MOTORS COMPANY**  
**AND SUBSIDIARIES, JOINT VENTURES, AND AFFILIATES**  
**OF THE REGISTRANT**  
**AS OF DECEMBER 31, 2009**

<u>Name of Subsidiary</u>	<u>State or Sovereign Power of Incorporation</u>
<b>Subsidiaries included in the Registrant's consolidated financial statements</b>	
Cole Buick Pontiac GMC	Delaware
Concept Vehicles Limited	England and Wales
Controladora AC Delco S.A. de C.V.	Mexico
Controladora General Motors, S.A. de C.V.	Mexico
Coskata, Inc.	Delaware
Crash Avoidance Metrics Partnerships	Michigan
Crown Motors (Dagenham) Limited	England and Wales
CSM Holdings Limited	England and Wales
Curt Warner Chevrolet, Inc.	Delaware
Daewoo Motor De Puerto Rico Inc.	Puerto Rico
Danny Beck Chevrolet, Inc.	Delaware
Dealership Liquidations, Inc.	Michigan
Delphi Automotive LLP	England and Wales
Delphi Energy and Engine Management Systems UK Overseas Corporation	Delaware
Delphi Polska Automotive Systems Sp. z o.o.	Poland
Delphi Saginaw Lingyun Drive Shaft (Wuhu) Co. Ltd.	China
Delphi Saginaw Lingyun Drive Shaft Co., Ltd.	China
Desert Sun Roswell, Inc.	Delaware
Detroit Investment Fund, L.P.	Delaware
Dinuba Auto Center, Inc.	Delaware
DIP Holdco LLP	United Kingdom
DMAX, Ltd.	Ohio
Dobies (Carlisle) Limited	England and Wales
Drive Motor Retail Limited	England and Wales
Eden (GM) Limited	England and Wales
Elasto S.A.	Ecuador
EMWE B.V.	Netherlands
Espace 328 SARL	France
F G Barnes (Maidstone) Limited	England and Wales
Fabrica Nacional de Autobuses Fanabus, S.A.	Venezuela
FIAT-GM Powertrain Polska Sp. z o.o.	Poland
Fiducie Carrefour 440	Canada
Fredericktown Chevrolet Co., Inc.	Delaware
Fugère Pontiac Buick Inc.	Canada
Funcap-Comercio e Administracao de Bens Moveis e Valores Ltda.	Brazil
Galleria Chevrolet-Cadillac, Inc.	Delaware
Gateway Chevrolet Motor Company	Delaware

**GENERAL MOTORS COMPANY**  
**AND SUBSIDIARIES, JOINT VENTURES, AND AFFILIATES**  
**OF THE REGISTRANT**  
**AS OF DECEMBER 31, 2009**

<u>Name of Subsidiary</u>	<u>State or Sovereign Power of Incorporation</u>
<b>Subsidiaries included in the Registrant's consolidated financial statements</b>	
GEMA Automotive, Inc.	Delaware
General International Insurance Services Limited	Bermuda
General International Limited	Bermuda
General Motors (China) Investment Company Limited	China
General Motors (Hong Kong) Company Limited	Hong Kong
General Motors (Thailand) Limited	Thailand
General Motors - Colmotores S.A.	Colombia
General Motors Africa and Middle East FZE	United Arab Emirates
General Motors Asia Pacific (Japan) Limited	Japan
General Motors Asia Pacific (Pte) Ltd.	Singapore
General Motors Asia Pacific Holdings, LLC	Delaware
General Motors Asia, Inc.	Delaware
General Motors Australia Ltd.	Australia
General Motors Austria GmbH	Austria
General Motors Auto LLC	Russia
General Motors Automobiles Philippines, Inc.	Philippines
General Motors Automotive Holdings, S.L.	Spain
General Motors Belgium N.V.	Belgium
General Motors Chile Industria Automotriz Limitada	Chile
General Motors China, Inc.	Delaware
General Motors CIS, LLC	Russia
General Motors Company	Delaware
General Motors Coordination Center BVBA	Belgium
General Motors Daewoo Auto and Technology CIS LLC	Russia
General Motors de Argentina S.r.l.	Argentina
General Motors de Mexico, S. de R.L. de C.V.	Mexico
General Motors del Ecuador S.A.	Ecuador
General Motors do Brasil Ltda.	Brazil
General Motors East Africa Limited	Kenya
General Motors Egypt, S.A.E.	Egypt
General Motors Espana, S.L.U.	Spain
General Motors Europe AG	Switzerland
General Motors Europe Holdings, S.L.	Spain
General Motors Finland Oy	Finland
General Motors Foundation, Inc.	Michigan
General Motors France	France
General Motors Global Service Operations, Inc.	Delaware

**GENERAL MOTORS COMPANY**  
**AND SUBSIDIARIES, JOINT VENTURES, AND AFFILIATES**  
**OF THE REGISTRANT**  
**AS OF DECEMBER 31, 2009**

<u>Name of Subsidiary</u>	<u>State or Sovereign Power of Incorporation</u>
<b>Subsidiaries included in the Registrant's consolidated financial statements</b>	
General Motors Hellas S.A.	Greece
General Motors Holdings LLC	Delaware
General Motors India Private Limited	India
General Motors International Holdings, Inc.	Delaware
General Motors Investments Pty. Ltd.	Australia
General Motors Ireland	Ireland
General Motors Israel Ltd.	Israel
General Motors Italia S.r.l.	Italy
General Motors Korea, Inc.	Delaware
General Motors Limited	England
General Motors LLC	Delaware
General Motors Manufacturing Poland Sp. z o.o.	Poland
General Motors MNS Center, LLC	Delaware
General Motors Nederland B.V.	Netherlands
General Motors New Zealand Pensions Limited	New Zealand
General Motors Nordiska AB	Sweden
General Motors Norge AS	Norway
General Motors Nova Scotia Investments Ltd.	Canada
General Motors of Canada Limited (active)	Canada
General Motors Overseas Commercial Vehicle Corporation	Delaware
General Motors Overseas Corporation (active)	Delaware
General Motors Overseas Distribution Corporation	Delaware
General Motors Peru S.A.	Peru
General Motors Poland Spolka, z o.o.	Poland
General Motors Portugal Lda.	Portugal
General Motors Powertrain (Thailand) Limited	Thailand
General Motors Powertrain - Europe S.r.l.	Italy
General Motors Powertrain - Germany GmbH	Germany
General Motors Powertrain - Hungary Ltd.	Hungary
General Motors Powertrain - Kaiserslautern Germany GmbH	Germany
General Motors Powertrain - Uzbekistan CJSC	Uzbekistan
General Motors Powertrain - Austria GmbH	Austria
General Motors Powertrain-Sweden AB	Sweden
General Motors Product Services, Inc.	Delaware
General Motors Research Corporation	Delaware
General Motors South Africa (Pty) Limited	South Africa
General Motors Southeast Asia Operations Limited	Thailand

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<b>Subsidiaries included in the Registrant's consolidated financial statements</b>	
General Motors Suisse S.A.	Switzerland
General Motors Taiwan Ltd.	Taiwan, Province of China
General Motors Technical Centre India Private Limited	India
General Motors Thailand Investments, LLC	Delaware
General Motors Türkiye Limited Sirketi	Turkey
General Motors U.S. Trading Corp.	Nevada
General Motors UK Limited	England
General Motors Uruguay, S.A.	Uruguay
General Motors Uzbekistan Closed Joint Stock Company	Uzbekistan
General Motors Venezolana, C.A.	Venezuela
General Motors Warehousing and Trading (Shanghai) Co. Ltd.	China
General Motors-Holden's Sales Pty. Limited	Australia
General Sales Company of West Chester, Inc.	Delaware
Giner Electrochemical Systems, L.L.C.	Delaware
Global Tooling Service Company Europe Limited	England and Wales
GM (UK) Pension Trustees Limited	England
GM (UK) Unclassified Pension Trustees Limited	England and Wales
GM - Isuzu Camiones Andinos de Colombia Ltda.	Colombia
GM - ISUZU Camiones Andinos del Ecuador GMICA Ecuador Cia. Ltda.	Ecuador
GM APO Holdings, LLC	Delaware
GM Auslandsprojekte GmbH	Germany
GM Auto World Korea Co.	Korea, Republic of
GM Automotive Services Belgium NV	Belgium
GM Automotive UK	England
GM AutoWorld Yugen Kaisha	Japan
GM Car Company LLC	Delaware
GM Components Holdings, LLC	Delaware
GM Daewoo Auto & Technology Company	Korea, Republic of
GM Eurometals, Inc.	Delaware
GM Europe GmbH	Germany
GM Europe Treasury Company AB	Sweden
GM Factoring Sociedade de Fomento Comercial Ltda.	Brazil
GM Finance Co. Holdings LLC	Delaware
GM GEFS HOLDINGS (CHC4) ULC	Canada
GM GEFS HOLDINGS CANADA ULC	Canada
GM GEFS L.P.	Nevada
GM Global Purchasing and Supply Chain Romania Srl	Romania

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GM Global Steering Holdings, LLC	Delaware
GM Global Technology Operations, Inc.	Delaware
GM Global Tooling Company, Inc.	Delaware
GM Holden Ltd.	Australia
GM International Sales Ltd.	Cayman Islands
GM Inversiones Santiago Limitada	Chile
GM Korea Co., Ltd.	Korea, Republic of
GM LAAM Holdings, LLC	Delaware
GM Nigeria Limited	Nigeria
GM Overseas Funding, LLC	Delaware
GM Personnel Services, Inc.	Delaware
GM Plats (Proprietary) Limited	South Africa
GM Powertrain Holding B.V.	Netherlands
GM Preferred Finance Co. Holdings LLC	Delaware
GM Preferred Receivables LLC	Delaware
GM Purchasing Vauxhall UK Limited	England
GM Retirees Pension Trustees Limited	England
GM Subsystems Manufacturing, LLC	Delaware
GM Supplier Receivables LLC	Delaware
GM Technologies, LLC	Delaware
GM Warranty LLC	Delaware
GM Worldwide Purchasing Sweden AB	Sweden
GM-AVTOVAZ CJSC	Russia
GM-DI Leasing Corporation	Delaware
GM-Saab Communication GmbH	Switzerland
GM-UMI Technology Research and Development Ltd.	Israel
GMAC Holding S.A. de C.V.	Mexico
GMAC Inc.	Delaware
GMCH&SP Private Equity II L.P.	Canada
GMCH&SP Private Equity L.P.	Canada
GMEH Holding, LLC	Delaware
GMETR Trade Receivables LLC	Delaware
GMI Diesel Engineering Limited K.K.	Japan
GMOC Administrative Services Corporation	Delaware
GMODC Receivables Funding LLC	Delaware
GMODC Trade Receivables LLC	Delaware
Grand Pointe Holdings, Inc.	Michigan

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H.S.H. Limited	England and Wales
Haines & Strange Limited	England and Wales
Hicom-Chevrolet, Sdn Bhd	Malaysia
HOLDCORP S.A.	Ecuador
Holden Employees Superannuation Fund Pty Ltd.	Australia
Holden New Zealand Limited	New Zealand
HRL Laboratories, LLC	Delaware
Hydrogenics Corporation	Canada
Hérouville Motors SARL	France
IBC Pension Trustees Limited	England
IBC Vehicles (Distribution) Limited	England
IBC Vehicles Limited	England
Ile de France Automobiles	France
Industries Mecaniques Maghrebines, S.A.	Tunisia
ISF Internationale Schule Frankfurt-Rhein-Main GmbH & Co. KG	Germany
ISPOL Holding B.V.	Netherlands
Isuzu Motors Polska Sp. z o.o.	Poland
Isuzu Truck South Africa (Pty.) Limited (ITSA)	South Africa
Jeffery (Wandsworth) Limited	England and Wales
Joe Morgan Chevrolet Cadillac, Inc.	Delaware
JS Folsom Automotive, Inc.	Delaware
Koneyren, Inc.	Michigan
Lange (West End) Limited	England and Wales
Las Cruces Automotive Group, Inc.	Delaware
LCV Platform Engineering Corp.	Japan
Lease Ownership Cooperative LLC	Delaware
Lidlington Engineering Company, Ltd.	Delaware
Lookers Birmingham Limited	England and Wales
MAC International FZCO	United Arab Emirates
MacLeods of Perth Limited	Scotland
Mangino Chevrolet, Inc.	Delaware
Marshall of Ipswich Limited	England and Wales
Marshall of Peterborough Limited	England and Wales
Marshall of Stevenage Ltd.	England and Wales
Mascoma Corp.	Delaware
Metal Casting Technology, Inc.	Delaware
Millbrook Pension Management Limited	England

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Millbrook Proving Ground Limited	England
Milton Chevrolet, Inc. (Sobh-Locklear Chevrolet)	Delaware
Monetization of Carve-Out, LLC	Delaware
Moran Cadillac - GMC, Inc.	Delaware
Moran Chevrolet, Inc.	Delaware
Morris Pontiac-GMC, Inc.	Delaware
Motorbodies Luton Limited	England and Wales
Motors Holding San Fernando Valley, Inc.	Delaware
Motors Properties Limited	England and Wales
Multi-Use Lease Entity Trust	Delaware
Murketts of Cambridge Limited	England and Wales
NJDOI/GMAM Core Plus Real Estate Investment Program, L.P.	Delaware
NJDOI/GMAM CT High Grade Partners II, L.P.	Delaware
NJDOI/GMAM Opportunistic Real Estate Investment Program, L.P.	Delaware
North American New Cars, Inc.	Delaware
Now Motor Retailing Limited	England and Wales
OEConnection LLC	Delaware
OEConnection Manager Corp.	Delaware
Omnibus BB Transportes, S. A.	Ecuador
OnStar Global Services Corporation	Delaware
OnStar, LLC	Delaware
Opel Danmark A/S	Denmark
Opel Eisenach GmbH	Germany
Opel Live GmbH	Germany
Opel Southeast Europe	Hungary
Opel Special Vehicles GmbH	Germany
Opel Sverige AB	Sweden
P. T. Mesin Isuzu Indonesia	Indonesia
P.T. G M AutoWorld Indonesia	Indonesia
P.T. General Motors Indonesia	Indonesia
Pan Asia Technical Automotive Center Company, Ltd.	China
Parkwood Holdings Ltd.	Cayman Islands
Patrick (Durham) Limited	England and Wales
Pearl (Crawley) Limited	England and Wales
Performance Equity Management, LLC	Delaware
Peter Vardy (Perth) Limited	Scotland
PIMS Co.	Delaware

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<b>Subsidiaries included in the Registrant's consolidated financial statements</b>	
Plan Automotor Ecuatoriano S.A. Planautomotor	Ecuador
Project Rhodes Holding Corporation	Delaware
Promark Absolute Return Strategies Fund, LLC	Delaware
Promark Global Advisors Limited	England
Promark Global Advisors, Incorporated	Delaware
Promark Investment Advisors, Inc.	Delaware
Promark Investment Trustees Limited	England
Promark Real Estate Advisors, LLC	Delaware
Promark Trust Bank, N.A.	New York
ProSTEP AG	Germany
Quantum Fuel Systems Technologies Worldwide, Inc.	Delaware
RAG BILDUNG Opel GmbH	Germany
Randstad WorkNet GmbH	Germany
Reeve (Derby) Limited	England and Wales
Reg Vardy (VMC) Limited	England and Wales
Renaissance Center Management Company	Michigan
Renton Cadillac Pontiac GMC, Inc.	Delaware
Rhodes Automotive Manufacturing Pty Ltd.	Australia
Rhodes Germany GmbH	Germany
Rhodes Holding I Sarl	Luxembourg
Rhodes Holding II Sarl	Luxembourg
Rhodes Holding Netherlands BV	Netherlands
Rhodes I LLC	Michigan
Rhodes II LLC	Michigan
Rhodes Italy Srl	Italy
Rhodes Otomotiv Sanayi ve Ticaret Limited Sirketi	Turkey
Riverfront Holdings III, Inc.	Delaware
Riverfront Holdings Phase II, Inc.	Delaware
Riverfront Holdings, Inc.	Delaware
Rumble (Bedworth) Limited	England and Wales
Saab Automobile AB	Sweden
Saab Automobile Investering AB	Sweden
Saab Cars North America, Inc.	Delaware
Saab City Limited	England
Saab Deutschland GmbH	Germany
Saab GB Pension Plan Trustees Company Limited	England and Wales
Saab Great Britain Limited	England

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Saginaw Industria e Comercio de Auto Pecas Ltda.	Brazil
Saginaw Steering (Suzhou) Co. Ltd.	China
SAIC General Motors Investment Limited	China
SAIC GM Wuling Automobile Company Limited	China
Salmon Street Ltd.	Australia
San Fernando Valley Automotive, LLC	Delaware
San Patricio Automotive Group, Inc.	Delaware
Sarmiento 1113 S.A. (en liquidacion)	Argentina
Saturn County Bond Corporation	Delaware
SB (Helston) Limited	England and Wales
Scott Drummond Motors Ltd.	Canada
Segway Inc.	Delaware
Seward (Wessex) Limited	England and Wales
Shanghai General Motors Corporation Ltd.	China
Shanghai GM (Shenyang) Norsom Motors Co. Ltd.	China
Shanghai GM Dong Yue Motors Company Limited	China
Shanghai GM Dong Yue Powertrain Company Limited	China
Sherwoods (Darlington) Limited	England and Wales
Sirius XM Radio, Inc.	Florida
Sistemas de Compra Programada Chevrolet, C.A.	Venezuela
Sistemas para Automotores de Mexico, S. de R.L. de C.V.	Mexico
Skurrays Limited	England
Slaters (GM) Limited	England and Wales
Slaughter Motor Company, Inc.	Delaware
Smokey Point Buick Pontiac GMC, Inc.	Delaware
Southern (Merthyr) Limited	England and Wales
Steering Solutions Corporation	Delaware
Steering Solutions Expat Holding Corporation	Delaware
Steering Solutions IP Holding Corporation	Delaware
Steering Solutions Services Corporation	Delaware
STEERINGMEX, S. de RL de CV	Mexico
Superbroad Limited	United Kingdom
Superior Chevrolet, Inc.	Delaware
SW Houston Motors, Inc.	United States
Taft Automotive, Inc.	Delaware
The DeCuir Group, Inc.	Delaware
Thurlow Nunn (JV) Limited	England and Wales

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Todd Wenzel Chevrolet, Inc.	Delaware
Trimarco Pontiac-Buick-GMC, Inc. (Gary Trimarco Automotive)	Delaware
Truck and Bus Engineering U.K., Limited	Delaware
United States Advanced Battery Consortium, LLC	Michigan
United States Automotive Materials Partnership, LLC	Michigan
United States Council for Automotive Research LLC	Michigan
Universal Motors Israel Ltd.	Israel
Uptown Chevrolet-Cadillac, Inc.	Delaware
Vauxhall Powertrain Limited	England
Vehicle Asset Universal Leasing Trust	Delaware
Vehicle Recycling Partnership, LLC	Michigan
Vence Lone Star Motors, Inc.	Delaware
Vertu Motors (VMC) Limited	England and Wales
VHC Sub-Holdings (UK)	England
Vickers (Lakeside) Limited	England and Wales
Vietnam-Daewoo Motor Co., Ltd.	Viet Nam
Vision Motors Limited	England and Wales
VM Holdings B.V.	Netherlands
VM Motori S.p.A.	Italy
VM North America, Inc.	Delaware
VMO Properties Limited	England and Wales
VRP Venture Capital Rheinland-Pfalz Nr. 2 GmbH & Co. KG	Germany
W. Grose Northampton Limited	England and Wales
Wheatcroft (Worksop) Limited	England and Wales
Whitehead (Rochdale) Limited	England and Wales
Whitmore's of Edenbridge Limited	England and Wales
Wilson & Co. (Motor Sales) Limited	England and Wales
Wind Point Partners III, L.P.	Delaware
WRE, Inc.	Michigan
<b>Count = 435</b>	

**POWER OF ATTORNEY**

The undersigned, a director of General Motors Company (GM), hereby constitutes and appoints Nick S. Cyprus, James C. Jordan and Anne T. Larin, and each of them, my true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for me and in my name, place and stead, in any and all capacities (including my capacity as a director of GM), to sign:

SEC Report(s) on

Form 10-K

Covering

Year Ended December 31, 2009

and any or all amendments to such Annual Report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or my substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1934, this power of attorney has been executed by the undersigned.

/s/ DANIEL F. AKERSON

Daniel F. Akerson

March 2, 2010

Date

**POWER OF ATTORNEY**

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/s/ DAVID BONDERMAN

David Bonderman

March 2, 2010

Date

**POWER OF ATTORNEY**

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Pursuant to the requirements of the Securities Act of 1934, this power of attorney has been executed by the undersigned.

/s/ ERROLL B. DAVIS, JR.

Erroll B. Davis, Jr.

March 2, 2010

Date

**POWER OF ATTORNEY**

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Pursuant to the requirements of the Securities Act of 1934, this power of attorney has been executed by the undersigned.

/s/ STEPHEN J. GIRSKY

Stephen J. Girsky

March 2, 2010

Date

**POWER OF ATTORNEY**

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Pursuant to the requirements of the Securities Act of 1934, this power of attorney has been executed by the undersigned.

/s/ E. NEVILLE ISDELL

E. Neville Isdell

March 2, 2010

Date

**POWER OF ATTORNEY**

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/s/ ROBERT D. KREBS

Robert D. Krebs

March 2, 2010

Date

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/s/ KENT KRESA

Kent Kresa

March 2, 2010

Date

**POWER OF ATTORNEY**

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Pursuant to the requirements of the Securities Act of 1934, this power of attorney has been executed by the undersigned.

/s/ PHILIP A. LASKAWY

Philip A. Laskawy

March 2, 2010

Date

**POWER OF ATTORNEY**

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Pursuant to the requirements of the Securities Act of 1934, this power of attorney has been executed by the undersigned.

/s/ KATHRYN V. MARINELLO

Kathryn V. Marinello

March 2, 2010

Date

**POWER OF ATTORNEY**

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Pursuant to the requirements of the Securities Act of 1934, this power of attorney has been executed by the undersigned.

/s/ PATRICIA F. RUSSO

Patricia F. Russo

March 2, 2010

Date

**POWER OF ATTORNEY**

The undersigned, a director of General Motors Company (GM), hereby constitutes and appoints Nick S. Cyprus, James C. Jordan and Anne T. Larin, and each of them, my true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for me and in my name, place and stead, in any and all capacities (including my capacity as a director of GM), to sign:

SEC Report(s) on

Form 10-K

Covering

Year Ended December 31, 2009

and any or all amendments to such Annual Report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or my substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1934, this power of attorney has been executed by the undersigned.

/s/ CAROL M. STEPHENSON

Carol M. Stephenson

March 2, 2010

Date

## CERTIFICATION

I, Edward E. Whitacre, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K of General Motors Company;
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 officer 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 (the registrant's fourth fiscal quarter in the case of an annual report) 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 officer 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.

/s/ EDWARD E. WHITACRE, JR.

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Edward E. Whitacre, Jr.  
Chairman and Chief Executive Officer

Date: April 7, 2010

## CERTIFICATION

I, Christopher P. Liddell, certify that:

1. I have reviewed this Annual Report on Form 10-K of General Motors Company;
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 officer 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 (the registrant's fourth fiscal quarter in the case of an annual report) 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 officer 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.

/s/ CHRISTOPHER P. LIDDELL

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Christopher P. Liddell  
Vice Chairman and Chief Financial Officer

Date: April 7, 2010

**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 Annual Report of General Motors Company (the "Company") on Form 10-K for the period ended December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Edward E. Whitacre, Jr., Chairman and 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 to the best of my knowledge:

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.

/s/ EDWARD E. WHITACRE, JR.

\_\_\_\_\_  
Edward E. Whitacre, Jr.

Chairman and Chief Executive Officer

Date: April 7, 2010

**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 Annual Report of General Motors Company (the "Company") on Form 10-K for the period ended December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Christopher P. Liddell, Vice Chairman and 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 to the best of my knowledge:

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.

/s/ CHRISTOPHER P. LIDDELL

Christopher P. Liddell  
Vice Chairman and Chief Financial Officer

Date: April 7, 2010

**Explanatory Note Regarding Financial Statements of GMAC Inc.**

As discussed in our Form 10-K, GMAC Inc. (GMAC) converted its status to a C corporation effective June 30, 2009. At that date, Old GM began to account for its investment in GMAC using the cost method rather than the equity method as Old GM no longer exercised significant influence over GMAC. Since we do not have the ability to exert control or influence over GMAC, we are unable to obtain from GMAC its financial statements for the six months ended June 30, 2009 that retrospectively reflect GMAC's change in segments and its discontinued operations, which occurred after June 30, 2009. Therefore, we are not including such financial statements required by Rule 3-09 of Regulation S-X. In lieu thereof, in addition to providing GMAC's financial statements for the years ended 2008 and 2007, we have provided financial statements for GMAC for the year ended 2009. Those financial statements reflect the change in segments and GMAC's discontinued operations. Investors reviewing the 2009 financial statements of GMAC are urged to take into account the fact that we hold only a 16.6% interest in GMAC, of which 9.9% is held in an independent trust, and that we account for GMAC as a cost method investment as of June 30, 2009. We also urge investors to read footnote 31 to GMAC's Annual Report on Form 10-K, which provides selected quarterly financial data for GMAC.

# Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of GMAC Inc.:

We have audited the accompanying Consolidated Balance Sheet of GMAC Inc. and subsidiaries (the "Company") as of December 31, 2009 and 2008, and the related Consolidated Statements of Income, Changes in Equity, and Cash Flows for each of the three years in the period ended December 31, 2009. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2009 and 2008, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2009, in conformity with accounting principles generally accepted in the United States of America.

/s/ DELOITTE & TOUCHE LLP

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Deloitte & Touche LLP

Detroit, Michigan

February 26, 2010

# Consolidated Statement of Income

GMAC Inc. Form 10-K

Year ended December 31, (\$ in millions)	2009	2008	2007
<b>Revenue</b>			
Finance receivables and loans			
Consumer	\$ 4,774	\$ 6,524	\$ 9,379
Commercial	1,715	2,287	2,863
Notes receivable from General Motors	212	225	304
Total finance receivables and loans	6,701	9,036	12,546
Loans held-for-sale	470	1,054	1,450
Interest on trading securities	134	130	300
Interest and dividends on available-for-sale investment securities	233	385	677
Interest bearing cash	104	384	615
Other interest income	87	347	536
Operating leases	5,715	7,582	6,617
Total financing revenue and other interest income	13,444	18,918	22,741
<b>Interest expense</b>			
Interest on deposits	703	711	644
Interest on short-term borrowings	588	1,781	2,615
Interest on long-term debt	6,368	8,805	11,147
Total interest expense	7,659	11,297	14,406
Depreciation expense on operating lease assets	3,748	5,478	4,552
Impairment of investment in operating leases	—	1,218	—
Net financing revenue	2,037	925	3,783
<b>Other revenue</b>			
Servicing fees	1,559	1,779	2,191
Servicing asset valuation and hedge activities, net	(1,104)	(263)	(542)
Total servicing income, net	455	1,516	1,649
Insurance premiums and service revenue earned	1,977	2,710	2,806
Gain (loss) on mortgage and automotive loans, net	596	(605)	597
Gain on extinguishment of debt	665	12,628	563
Other gain (loss) on investments, net	331	(1,095)	(590)
Other income, net of losses	200	(644)	939
Total other revenue	4,224	14,510	5,964
<b>Total net revenue</b>	<b>6,261</b>	<b>15,435</b>	<b>9,747</b>
<b>Provision for loan losses</b>	<b>6,043</b>	<b>3,410</b>	<b>3,067</b>
<b>Noninterest expense</b>			
Compensation and benefits expense	1,608	1,979	2,200
Insurance losses and loss adjustment expenses	1,042	1,402	1,376
Other operating expenses	5,506	5,252	4,472
Impairment of goodwill	—	16	438
Total noninterest expense	8,156	8,649	8,486
<b>(Loss) income from continuing operations before income tax expense (benefit)</b>	<b>(7,938)</b>	<b>3,376</b>	<b>(1,806)</b>
Income tax expense (benefit) from continuing operations	78	(60)	395
<b>Net (loss) income from continuing operations</b>	<b>(8,016)</b>	<b>3,436</b>	<b>(2,201)</b>
Loss from discontinued operations, net of tax	(2,282)	(1,568)	(131)
<b>Net (loss) income</b>	<b>\$ (10,298)</b>	<b>\$ 1,868</b>	<b>\$ (2,332)</b>

The Notes to the Consolidated Financial Statements are an integral part of these statements.

# Consolidated Balance Sheet

GMAC Inc. ̄ Form 10-K

December 31, (\$ in millions)	2009	2008
<b>Assets</b>		
Cash and cash equivalents		
Noninterest bearing	\$ 1,840	\$ 1,504
Interest bearing	12,948	13,647
Total cash and cash equivalents	14,788	15,151
Trading securities	739	1,207
Investment securities		
Available-for-sale	12,155	6,234
Held-to-maturity	3	3
Total investment securities	12,158	6,237
Loans held-for-sale (\$5,545 fair value elected at December 31, 2009)	20,625	7,919
Finance receivables and loans, net of unearned income		
Consumer (\$1,303 and \$1,861 fair value elected)	42,849	63,963
Commercial	33,941	36,110
Notes receivable from General Motors	911	1,655
Allowance for loan losses	(2,445)	(3,433)
Total finance receivables and loans, net	75,256	98,295
Investment in operating leases, net	15,995	26,390
Mortgage servicing rights	3,554	2,848
Premiums receivable and other insurance assets	2,720	4,507
Other assets	19,887	26,922
Assets of operations held-for-sale	6,584	—
<b>Total assets</b>	<b>\$172,306</b>	<b>\$189,476</b>
<b>Liabilities</b>		
Deposit liabilities		
Noninterest bearing	\$ 1,755	\$ 1,496
Interest bearing	30,001	18,311
Total deposit liabilities	31,756	19,807
Debt		
Short-term borrowings	10,292	10,386
Long-term debt (\$1,293 and \$1,899 fair value elected)	88,021	115,935
Total debt	98,313	126,321
Interest payable	1,637	1,517
Unearned insurance premiums and service revenue	3,192	4,356
Reserves for insurance losses and loss adjustment expenses	1,215	2,895
Accrued expenses and other liabilities	10,456	12,726
Liabilities of operations held-for-sale	4,898	—
<b>Total liabilities</b>	<b>151,467</b>	<b>167,622</b>
<b>Equity</b>		
Common stock and paid-in capital (Members' interests at December 31, 2008)	13,829	9,670
Preferred stock held by U.S. Department of Treasury (Preferred interests held by U.S. Department of Treasury at December 31, 2008)	10,893	5,000
Preferred stock (Preferred interests at December 31, 2008)	1,287	1,287
(Accumulated deficit) retained earnings	(5,630)	6,286
Accumulated other comprehensive income (loss)	460	(389)
<b>Total equity</b>	<b>20,839</b>	<b>21,854</b>
<b>Total liabilities and equity</b>	<b>\$172,306</b>	<b>\$189,476</b>

The Notes to the Consolidated Financial Statements are an integral part of these statements.

# Consolidated Statement of Changes in Equity

GMAC Inc. Y Form 10-K

(\$ in millions)	Members' interest	Preferred interests held by U.S. Department of Treasury	Preferred interests	Retained earnings	Accumulated other comprehensive income (loss)	Total equity	Comprehensive income (loss)
<b>Balance at December 31, 2006</b>	\$ 6,711			\$ 7,173	\$ 485	\$14,369	
Conversion of preferred membership interests	1,121		\$ 1,052			2,173	
Capital contributions	1,080					1,080	
Net loss				(2,332)		(2,332)	\$ (2,332)
Preferred interests dividends				(192)		(192)	
Other comprehensive income					450	450	450
Cumulative effect of a change in accounting principle, net of tax: Adoption of FASB ASC Topic 715, <i>Compensation-Retirement Benefits</i>					17	17	
<b>Balance at December 31, 2007</b>	\$ 8,912		\$ 1,052	\$ 4,649	\$ 952	\$15,565	\$ (1,882)
Cumulative effect of a change in accounting principle, net of tax: Adoption of FASB ASC Topic 820, <i>Fair Value Measurements and Disclosures</i> (a)				\$ 23		\$ 23	
Adoption of fair value option in accordance with FASB ASC Topic 825, <i>Financial Instruments</i> (a)				(178)		(178)	
<b>Balance at January 1, 2008, after cumulative effect of adjustments</b>	\$ 8,912		\$ 1,052	\$ 4,494	\$ 952	\$15,410	
Capital contributions (b)	758					758	
Net income				1,868		1,868	\$ 1,868
Dividends to members (b)				(79)		(79)	
Issuance of preferred interests to the U.S. Department of Treasury		\$ 5,000				5,000	
Issuance of preferred interest			235			235	
Other				3		3	
Other comprehensive loss					(1,341)	(1,341)	(1,341)
<b>Balance at December 31, 2008</b>	\$ 9,670	\$ 5,000	\$ 1,287	\$ 6,286	\$ (389)	\$21,854	\$ 527
Capital contributions (b)	\$ 1,247					\$ 1,247	
Net loss				\$ (4,578)		(4,578)	\$ (4,578)
Preferred interest dividends paid to the U.S. Department of Treasury				(160)		(160)	
Preferred interests dividends				(195)		(195)	
Dividends to members (b)				(119)		(119)	
Issuance of preferred interests to the U.S. Department of Treasury		\$ 7,500				7,500	
Other comprehensive income					\$ 497	497	497
<b>Balance at June 30, 2009, before conversion from limited liability company to a corporation (c)</b>	\$ 10,917	\$ 12,500	\$ 1,287	\$ 1,234	\$ 108	\$26,046	\$ (4,081)

# Consolidated Statement of Changes in Equity

GMAC Inc. Y Form 10-K

<i>(\$ in millions)</i>	Common stock and paid-in capital	Preferred stock held by U.S. Department of Treasury	Preferred stock	Retained earnings (accumulated deficit)	Accumulated other comprehensive income	Total equity	Comprehensive income (loss)
<b>Balance at June 30, 2009, after conversion from limited liability company to a corporations (c)</b>	<b>\$ 10,917</b>	<b>\$ 12,500</b>	<b>\$ 1,287</b>	<b>\$ 1,234</b>	<b>\$ 108</b>	<b>\$26,046</b>	<b>\$ (4,081)</b>
Capital contributions (b)	55					55	
Net loss				(5,720)		(5,720)	\$ (5,720)
Preferred stock dividends paid to the U.S. Department of Treasury				(695)		(695)	
Preferred stock dividends (b)				(175)		(175)	
Dividends to shareholders (b)				(274)		(274)	
Issuance of preferred stock to the U.S. Department of Treasury		1,250				1,250	
Conversion of preferred stock to the U.S. Department of Treasury to common stock	2,857	(2,857)					
Other comprehensive income					352	352	352
<b>Balance at December 31, 2009</b>	<b>\$ 13,829</b>	<b>\$ 10,893</b>	<b>\$ 1,287</b>	<b>\$ (5,630)</b>	<b>\$ 460</b>	<b>\$20,839</b>	<b>\$ (9,449)</b>

(a) Refer to Note 27 to the Consolidated Financial Statements for further detail.

(b) Refer to Note 25 to the Consolidated Financial Statements for further detail.

(c) Effective June 30, 2009, GMAC LLC was converted from a Delaware limited liability company into a Delaware corporation and renamed GMAC Inc. Each unit of each class of common membership interest issued and outstanding by GMAC LLC immediately prior to the conversion was converted into an equivalent number of shares of common stock of GMAC Inc. with substantially the same rights and preferences as the common membership interests. Upon conversion, holders of GMAC LLC preferred interests also received an equivalent number of GMAC Inc. preferred stock with substantially the same rights and preferences as the former preferred interests. Refer to Note 19 to the Consolidated Financial Statements for further details.

The Notes to the Consolidated Financial Statements are an integral part of these statements.

# Consolidated Statement of Cash Flows

GMAC Inc. Form 10-K

Year ended December 31, (\$ in millions)	2009	2008	2007
<b>Operating activities</b>			
Net (loss) income	\$ (10,298)	\$ 1,868	\$ (2,332)
Reconciliation of net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	5,958	6,722	5,998
Operating lease impairment	—	1,234	—
Impairment of goodwill and other intangible assets	607	58	455
Other impairment	1,516	—	—
Amortization and valuation adjustments of mortgage servicing rights	142	2,250	1,260
Provision for loan losses	6,173	3,683	3,096
(Gain) loss on sale of loans, net	(192)	1,825	(508)
Net (gains) losses on investment securities	(2)	1,203	737
Gain on extinguishment of debt	(665)	(12,628)	(563)
Originations and purchases of loans held-for-sale	(88,283)	(132,023)	(128,576)
Proceeds from sales and repayments of loans held-for-sale	78,673	141,312	121,620
Net change in:			
Trading securities	734	741	628
Deferred income taxes	(402)	(396)	95
Interest payable	83	(651)	(332)
Other assets	3,711	(1,213)	(121)
Other liabilities	(1,473)	178	686
Other, net	(1,414)	(68)	(683)
Net cash (used in) provided by operating activities	(5,132)	14,095	1,460
<b>Investing activities</b>			
Purchases of available-for-sale securities	(21,148)	(16,202)	(16,682)
Proceeds from sales of available-for-sale securities	10,153	14,068	8,049
Proceeds from maturities of available-for-sale securities	4,527	7,502	8,080
Net decrease (increase) in finance receivables and loans	14,259	5,570	(41,972)
Proceeds from sales of finance receivables and loans	260	1,366	70,903
Change in notes receivable from GM	803	(62)	138
Purchases of operating lease assets	(732)	(10,544)	(17,268)
Disposals of operating lease assets	6,612	7,633	5,472
Sales of mortgage servicing rights, net	—	797	561
Acquisitions of subsidiaries, net of cash acquired	—	—	(209)
Proceeds from sale of business units, net	296	319	15
Other, net (a)	2,098	471	1,157
Net cash provided by investing activities	17,128	10,918	18,244

# Consolidated Statement of Cash Flows

GMAC Inc. Y Form 10-K

Year ended December 31, (\$ in millions)	2009	2008	2007
<b>Financing activities</b>			
Net change in short-term debt	(338)	(22,815)	(9,248)
Net increase in bank deposits	10,703	6,447	3,078
Proceeds from issuance of long-term debt	30,679	44,724	70,230
Repayments of long-term debt	(61,493)	(59,627)	(82,134)
Proceeds from issuance of common stock	1,247	—	—
Proceeds from issuance of preferred stock held by U.S. Department of Treasury	8,750	5,000	—
Dividends paid	(1,592)	(113)	(179)
Other, net (b)	1,064	(1,784)	675
Net cash used in financing activities	(10,980)	(28,168)	(17,578)
Effect of exchange-rate changes on cash and cash equivalents	(602)	629	92
Net increase (decrease) in cash and cash equivalents	414	(2,526)	2,218
Cash and cash equivalents reclassified to assets held-for-sale	(777)	—	—
Cash and cash equivalents at beginning of year	15,151	17,677	15,459
Cash and cash equivalents at end of year	\$ 14,788	\$ 15,151	\$ 17,677
<b>Supplemental disclosures</b>			
Cash paid for:			
Interest	\$ 7,868	\$ 12,092	\$ 14,871
Income taxes	355	130	481
Noncash items:			
Increase in equity (c)	—	235	2,173
Loans held-for-sale transferred to finance receivables and loans	1,186	2,618	13,834
Finance receivables and loans transferred to loans-held-for sale	5,065	4,798	8,181
Finance receivables and loans transferred to other assets	732	1,294	2,976
Available-for-sale securities transferred to restricted assets (d)	—	548	—
Originations of mortgage servicing rights from sold loans	807	1,182	1,597
Decrease in mortgage loans held-for-investment upon initial adoption of the fair value option election	—	3,847	—
Decrease in collateralized borrowings upon initial adoption of the fair value option election	—	3,668	—
Capital contributions from stockholders/members	34	758	56
Other disclosures:			
Proceeds from sales and repayments of mortgage loans held-for-investment originally designated as held-for-sale	1,010	1,747	6,790
Proceeds from sales of repossessed, foreclosed, and owned real estate	1,013	1,796	2,180
Liabilities assumed through acquisition	—	—	1,030
Consolidation of loans, net	1,410	—	—
Consolidation of collateralized borrowings	1,184	—	—
Deconsolidation of loans, net	—	2,353	25,856
Deconsolidation of collateralized borrowings	—	2,539	26,599

(a) Includes securities-lending transactions where cash collateral is received and a corresponding liability is recorded, both of which are presented in investing activities in the amount of \$856 million for 2007.

(b) 2007 includes a \$1 billion capital contribution from General Motors pursuant to the sale of 51% of GMAC to FIM Holdings LLC.

(c) Represents long-term debt exchanged for preferred interests in 2008 and conversion of preferred membership interests in 2007.

(d) Represents the noncash effects of the loss portfolio transfer further described in Note 17 of the Consolidated Financial Statements.

The Notes to the Consolidated Financial Statements are an integral part of these statements.

# Notes to Consolidated Financial Statements

GMAC Inc. Form 10-K

## 1. Description of Business and Significant Accounting Policies

GMAC Inc. (referred to herein as GMAC, we, our, or us) was founded in 1919 as a wholly owned subsidiary of General Motors Corporation (currently General Motors LLC or GM). We are a leading, independent, globally diversified, financial services firm with approximately \$172 billion in assets and operations in 40 countries. On December 24, 2008, the Board of Governors of the Federal Reserve System approved our application to become a bank holding company under the Bank Holding Company Act of 1956, as amended (the BHC Act). Our primary banking subsidiary is Ally Bank, which is an indirect wholly owned subsidiary of GMAC Inc.

### Residential Capital, LLC

Residential Capital, LLC (ResCap), one of our mortgage subsidiaries, has been negatively impacted by the events and conditions in the mortgage banking industry and the broader economy. The market deterioration has led to fewer sources of, and significantly reduced levels of, liquidity available to finance ResCap's operations. ResCap is highly leveraged relative to its cash flow and has recognized credit and valuation losses resulting in a significant deterioration in capital. During 2009, ResCap received capital contributions from GMAC of \$4.0 billion in the form of cash, mortgage loans held-for-sale (which GMAC acquired from Ally Bank), receivables, the forgiveness of debt and affiliated payables, and recognized a gain on extinguishment of debt of \$1.7 billion as a result of contributions and forgiveness of ResCap's outstanding notes, which GMAC previously repurchased in the open market at a discount or through our private debt exchange and cash tender offers. Accordingly, ResCap's consolidated tangible net worth, as defined, was \$275 million as of December 31, 2009, and remained in compliance with all of its consolidated tangible net worth covenants. For this purpose, consolidated tangible net worth is defined as ResCap's consolidated equity excluding intangible assets and any equity in Ally Bank to the extent included on ResCap's consolidated balance sheet. There continues to be a risk that ResCap during December 2009 will not be able to meet its debt service obligations, will default on its financial debt covenants due to insufficient capital, and/or will be in a negative liquidity position in 2010 or future periods.

ResCap actively manages its liquidity and capital positions and is continually working on initiatives to address its debt covenant compliance and liquidity needs including debt maturing in the next twelve months and other risks and uncertainties. ResCap's initiatives include, but are not limited to, the following: continuing to work with key credit providers to optimize all available liquidity options; continued reduction of assets and other restructuring activities; focusing production on government and prime conforming products; exploring strategic alternatives such as alliances, joint ventures, and other transactions with third parties; and continually exploring opportunities for funding and capital support from GMAC and its affiliates. The outcomes of most of these initiatives are to a great extent outside of ResCap's control resulting in increased uncertainty as to their successful execution.

On December 30, 2009, we announced that as a result of our ongoing strategic review of how to best deploy GMAC's current and future capital liquidity, we have decided to pursue strategic alternatives with respect to ResCap. In order to maximize value, we will consider a variety of options including one or more sales, spin-offs, or other potential transactions. The timing and form of execution of any such transactions will depend on market conditions.

Coincident with this announcement, ResCap determined, in conjunction with GMAC, to change its intent with respect to a significant portion of its portfolio of previously held-for-investment mortgage loans to held-for-sale. GMAC also announced its decision to commit to a plan to sell ResCap's U.K. and continental Europe platforms. As a result of these actions, ResCap incurred valuation losses of approximately \$1.1 billion related to its change in intent with respect to certain of its mortgage loan portfolio and impairments of \$903 million related to its commitment to sell the U.K. and continental Europe platforms. These actions, inclusive of operating losses for the period, required GMAC to make capital contributions of \$2.8 billion that were made to ResCap during December 2009 in the form of cash, asset contributions, and forgiveness of certain affiliate payables and debt to ensure that ResCap maintained a minimum acceptable level of required capital to meet certain covenants.

In the future, GMAC and ResCap may take actions with respect to ResCap as each party deems appropriate. These actions may include GMAC providing or declining to provide additional liquidity and capital support for ResCap; refinancing or restructuring some or all of ResCap's existing debt; the purchase or sale of ResCap debt securities in the public or private markets for cash or other consideration; entering into derivative or other hedging or similar transactions with respect to

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ResCap or its debt securities; GMAC purchasing assets from ResCap; or undertaking corporate transactions such as a tender offer or exchange offer for some or all of ResCap's outstanding debt securities, a merger, sale, asset sales, consolidation, spin-off, distribution, or other business combination or reorganization or similar action with respect to all or part of ResCap and/or its affiliates. In this context, GMAC and ResCap typically consider a number of factors to the extent applicable and appropriate including, without limitation, the financial condition, results of operations and prospects of GMAC and ResCap, ResCap's ability to obtain third-party financing, tax considerations, the current and anticipated future trading price levels of ResCap's debt instruments, conditions in the mortgage banking industry and general economic conditions, other investment and business opportunities available to GMAC and/or ResCap, and any nonpublic information that ResCap may possess or that GMAC receives from ResCap.

ResCap remains heavily dependent on GMAC and its affiliates for funding and capital support, and there can be no assurance that GMAC or its affiliates will continue such actions or that GMAC will be successful in executing one or more sales, spin-offs, or other potential transactions with respect to ResCap.

Although our continued actions through various funding and capital initiatives demonstrate support for ResCap, other than as described above, there are currently no commitments or assurances for future funding and/or capital support. Consequently, there remains substantial doubt about ResCap's ability to continue as a going concern. Should we no longer continue to support the capital or liquidity needs of ResCap or should ResCap be unable to successfully execute other initiatives, it would have a material adverse effect on ResCap's business, results of operations, and financial position.

GMAC has extensive financing and hedging arrangements with ResCap that could be at risk of nonpayment if ResCap were to file for bankruptcy. As of December 31, 2009, we had approximately \$2.6 billion in secured financing arrangements with ResCap of which approximately \$1.9 billion in loans had been utilized. Amounts outstanding under the secured financing and hedging arrangements fluctuate. If ResCap were to file for bankruptcy, ResCap's repayments of its financing facilities, including those with us, could be slower than if ResCap had not filed for bankruptcy. In addition, we could be an unsecured creditor of ResCap to the extent that the proceeds from the sale of our collateral are insufficient to repay ResCap's obligations to us. It is possible that other ResCap creditors would seek to recharacterize our loans to ResCap as equity contributions or to seek equitable subordination of our claims so that the claims of other creditors would have priority over our claims. As a holder of unsecured notes, we would not receive any distributions for the benefit of creditors in a ResCap bankruptcy before secured creditors are repaid. In addition, should ResCap file for bankruptcy, our \$275 million investment related to ResCap's equity position would likely be reduced to zero. If a ResCap bankruptcy were to occur and a substantial amount of our credit exposure is not repaid to us, it would have an adverse impact on our near-term net income and capital position, but we do not believe it would have a materially adverse impact on GMAC's consolidated financial position over the longer term.

## GMAC Conversion

Effective June 30, 2009, GMAC converted (the Conversion) from a Delaware limited liability company to a Delaware corporation pursuant to Section 18-216 of the Delaware Limited Liability Company Act and Section 265 of the Delaware General Corporation Law and was renamed "GMAC Inc." In connection with the Conversion, each unit of each class of membership interest issued and outstanding immediately prior to the Conversion was converted into shares of capital stock of GMAC with substantially the same rights and preferences as such membership interests. Refer to Note 23 for additional information regarding the tax impact of the conversion.

## Consolidation and Basis of Presentation

The consolidated financial statements include our accounts and accounts of our majority-owned subsidiaries after eliminating all significant intercompany balances and transactions and include all variable interest entities (VIEs) in which we are the primary beneficiary. Refer to Note 28 for further details on our VIEs. Our accounting and reporting policies conform to accounting principles generally accepted in the United States of America (GAAP).

We operate our international subsidiaries in a similar manner as we operate in the United States of America (U.S. or United States), subject to local laws or other circumstances that may cause us to modify our procedures accordingly. The financial statements of subsidiaries that operate outside of the United States generally are measured using the local currency

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as the functional currency. All assets and liabilities of foreign subsidiaries are translated into U.S. dollars at year-end exchange rates. The resulting translation adjustments are recorded in accumulated other comprehensive income, a component of equity. Income and expense items are translated at average exchange rates prevailing during the reporting period.

## Use of Estimates and Assumptions

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and that affect income and expenses during the reporting period. In developing the estimates and assumptions, management uses all available evidence; however, actual results could differ because of uncertainties associated with estimating the amounts, timing, and likelihood of possible outcomes.

## Significant Accounting Policies

### Cash and Cash Equivalents

Cash and cash equivalents include cash on hand and short-term, highly liquid investments with original maturities of 90 days or less. Cash and cash equivalents that have restrictions on our ability to withdraw the funds are included in other assets on our Consolidated Balance Sheet. The balance of cash equivalents was \$1.8 billion and \$7.9 billion at December 31, 2009 and 2008, respectively. The book value of cash equivalents approximates fair value because of the short maturities of these instruments. Certain securities with original maturities less than 90 days that are held as a portion of longer-term investment portfolios, primarily held by GMAC Insurance, are classified as investment securities.

### Securities

Our portfolio of securities includes government securities, corporate bonds, equity securities, asset- and mortgage-backed securities, notes, interests in securitization trusts, and other investments. Securities are classified based on management's intent. Our trading securities primarily consist of retained and purchased interests in certain securitizations. The retained interests are carried at fair value with changes in fair value recorded in current period earnings. Debt securities that management has the intent and ability to hold to maturity are classified as held-to-maturity and reported at amortized cost. All other securities are classified as available-for-sale and carried at fair value with unrealized gains and losses included in accumulated other comprehensive income or loss, a component of equity, on an after-tax basis. Premiums and discounts on debt securities are amortized as an adjustment to investment yield over the contractual term of the security. We employ a systematic methodology that considers available evidence in evaluating potential other-than-temporary impairment of our investments classified as available-for-sale or held-to-maturity. If the cost of an investment exceeds its fair value, we evaluate, among other factors, the magnitude and duration of the decline in fair value. We also evaluate the financial health of and business outlook for the issuer, the performance of the underlying assets for interests in securitized assets, and our intent and ability to hold the investment.

Once a decline in fair value of an equity security is determined to be other than temporary, an impairment charge is recorded to other gain (loss) on investments, net, in our Consolidated Statement of Income, and a new cost basis in the investment is established. Once a decline in value of a debt security is determined to be other than temporary, the other-than-temporary impairment is separated into credit and noncredit components in accordance with applicable accounting standards. Noncredit component losses of a debt security are recorded in other comprehensive income (loss) when the Company does not intend to sell the security or is not more likely than not to have to sell the security prior to the security's anticipated recovery. Noncredit component losses are amortized over the remaining life of the debt security by offsetting the recorded value of the asset. Credit component losses of a debt security are charged to earnings. Realized gains and losses on investment securities are reported in other gain (loss) on investments, net, and are determined using the specific identification method.

### Loans Held-for-sale

Loans held-for-sale may include automotive, commercial finance, and residential mortgage receivables and loans and are carried at the lower of aggregate cost or estimated fair value. Loan origination fees, as well as discount points and incremental direct origination costs, are initially recorded as an adjustment of the cost of the loan and are reflected in the gain or loss on

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sale of loans when sold. Fair value is determined by type of loan and is generally based on contractually established commitments from investors, current investor yield requirements, current secondary market pricing, or cash flow models using market-based yield requirements. Certain of our domestic residential mortgages are reported at fair value as a result of the fair value option election. Refer to Note 27 for details on fair value measurement.

## **Finance Receivables and Loans**

Finance receivables and loans are reported at the principal amount outstanding, net of unearned income, premiums and discounts, and allowances. Unearned income, which includes deferred origination fees reduced by origination costs and unearned rate support received from an automotive manufacturer, is amortized over the contractual life of the related finance receivable or loan using the interest method. Loan commitment fees are generally deferred and amortized into commercial revenue over the commitment period.

We classify finance receivables and loans between loans held-for-sale and loans held-for-investment based on management's assessment of our intent and ability to hold loans for the foreseeable future or until maturity. Management's intent and ability with respect to certain loans may change from time to time depending on a number of factors including economic, liquidity, and capital conditions. Management's view of the foreseeable future is generally a twelve-month period based on the longest reasonably reliable net income, liquidity, and capital forecast period.

## **Nonaccrual Loans**

Consumer and commercial revenue recognition is suspended when finance receivables and loans are placed on nonaccrual status. Generally, finance receivable and loans are placed on nonaccrual status when delinquent for 90 days or when determined not to be probable of full collection. Exceptions include nonprime retail automotive receivables and commercial real estate loans that are placed on nonaccrual status when delinquent for 60 days. Revenue accrued, but not collected, at the date finance receivables and loans are placed on nonaccrual status is reversed and subsequently recognized only to the extent it is received in cash until it qualifies for return to accrual status. However, where there is doubt regarding the ultimate collectability of loan principal, all cash received is applied to reduce the carrying value of such loans. Finance receivables and loans are restored to accrual status only when contractually current and the collection of future payments is reasonably assured.

## **Impaired Loans**

Loans are considered impaired when we determine it is probable that we will be unable to collect all amounts due according to the terms of the loan agreement. Income recognition is consistent with that of nonaccrual loans discussed above. If the recorded investment in impaired loans exceeds the fair value, a valuation allowance is established as a component of the allowance for loan losses. In addition to commercial loans specifically identified for impairment, we have pools of loans that are collectively evaluated for impairment, as discussed within the allowance for loan losses accounting policy.

Impaired loans also include loans that have been modified in troubled debt restructurings as a concession to borrowers experiencing financial difficulties. Trouble debt restructurings typically result from our loss mitigation activities and could include rate reductions, principal forgiveness, forbearance, and other actions intended to minimize the economic loss and to avoid foreclosure or repossession of collateral. A troubled debt restructuring involving only a modification of terms requires that the restructured loan be measured at the present value of the expected future cash flows discounted at the effective interest rate at the time of modification, as based upon the original loan rate. Alternately, the loan may be measured for impairment based upon the fair value of the underlying collateral if the loan is collateral dependent. If the measure of the loan is less than the recorded investment in the loan, we recognize an impairment by creating a valuation allowance or by adjusting an existing valuation allowance for the impaired loan.

## **Charge-offs**

As a general rule, consumer secured closed-end installment loans are written down to estimated collateral value, less costs to sell, once a loan becomes 120 days past due; and consumer unsecured open-end (revolving) loans are charged off at 180 days past due. Closed-end consumer loans secured by real estate are written down to estimated collateral value, less costs to sell, once a mortgage loan becomes 180 days past due. Retail loans in bankruptcy that are 60 days past due are charged off within 60 days of receipt of notification of filing from the bankruptcy court.

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Commercial loans are individually evaluated and where collectability of the recorded balance is in doubt are written down to fair value of the collateral less costs to sell. Generally, all commercial loans are charged off when they are 360 days or more past due.

## Allowance for Loan and Lease Losses

The allowance for loan and lease losses (the allowance) is management's estimate of incurred losses in the lending portfolios. Portions of the allowance are specified to cover the estimated losses on commercial loans specifically identified for impairment in accordance with applicable accounting standards. The unspecified portion of the allowance covers estimated losses on the homogeneous portfolios of finance receivables and loans collectively evaluated for impairment in accordance with applicable accounting standards. Amounts determined to be uncollectible are charged against the allowance on our Consolidated Balance Sheet. Additionally, losses arising from the sale of repossessed assets, collateralizing automotive finance receivables, and loans are charged to the allowance. Recoveries of previously charged-off amounts are credited at time of collection.

Loans that are individually evaluated and determined not to be impaired are grouped into pools, based on similar risk characteristics, and evaluated for impairment in accordance with applicable accounting standards. Loans determined to be specifically impaired are measured based on the present value of expected future cash flows discounted at the loan's effective interest rate, an observable market price, or the fair value of the collateral, whichever is determined to be the most appropriate. Estimated costs to sell or realize the value of the collateral on a discounted basis are included in the impairment measurement.

We perform periodic and systematic detailed reviews of our lending portfolios to identify inherent risks and to assess the overall collectability of those portfolios. The allowance related to portfolios collectively reviewed for impairment (generally consumer finance receivables and loans) is based on aggregated portfolio evaluations by product type. Loss models are utilized for these portfolios, which consider a variety of factors including, but not limited to, historical loss experience, current economic conditions, anticipated repossessions or foreclosures based on portfolio trends, delinquencies and credit scores, and expected loss factors by receivable and loan type. Loans in the commercial portfolios are generally reviewed on an individual loan basis, and if necessary, an allowance is established for individual loan impairment. Loans subject to individual reviews are analyzed based on factors including, but not limited to, historical loss experience, current economic conditions, collateral performance, performance trends within specific geographic and portfolio segments, and any other pertinent information that results in the estimation of the allowance. The evaluation of these factors for both consumer and commercial finance receivables and loans involves complex, subjective judgments.

## Securitizations and Other Off-balance Sheet Transactions

We securitize, sell, and service retail finance receivables, operating leases, wholesale loans, securities, and residential loans. Securitizations are accounted for either as sales or secured financings. Interests in the securitized and sold assets are generally retained in the form of senior or subordinated interests, interest- or principal-only strips, cash reserve accounts, residual interests, and servicing rights. With the exception of servicing rights and senior interests, our retained interests are generally subordinate to investors' interests. The investors and the securitization trusts generally have no recourse to our other assets outside of customary market representation and warranty repurchase provisions and in certain transactions, early payment default provisions and other forms of guarantee or commitments.

We retain servicing responsibilities for all of our retail finance receivable, operating lease, and wholesale loan securitizations and for the majority of our residential loan securitizations. We may receive servicing fees based on the securitized loan balances and certain ancillary fees, all of which are reported in servicing fees in the Consolidated Statement of Income. We also retain the right to service the residential loans sold to Ginnie Mae, Fannie Mae, and Freddie Mac. We also serve as the collateral manager in the securitizations of commercial investment securities.

Gains or losses on securitizations and sales depend on the previous carrying amount of the assets involved in the transfer and are allocated between the assets sold and the retained interests based on relative fair values except for certain servicing assets or liabilities, which are initially recorded at fair value at the date of sale. The estimate of the fair value of the retained interests requires us to exercise significant judgment about the timing and amount of future cash flows from interests. Refer to the Note 27 for a discussion of fair value estimates.

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Gains or losses on securitizations and sales are reported in gain (loss) on mortgage and automotive loans, net, in our Consolidated Statement of Income for retail finance receivables, wholesale loans, and residential loans. Declines in the fair value of retained interests below the carrying amount are reflected in other comprehensive income, a component of equity, or as other (loss) gain on investments, net, in our Consolidated Statement of Income if declines are determined to be other than temporary or if the interests are classified as trading. Retained interests, as well as any purchased securities, are generally included in available-for-sale investment securities, trading investment securities, or other assets. Designation of available-for-sale or trading depends on management's intent. Securities that are noncertificated and cash reserve accounts related to securitizations are included in other assets on our Consolidated Balance Sheet.

## **Mortgage Servicing Rights**

Primary servicing rights represent our right to service mortgages securitized by us or sold through agency and third-party whole loan sales. Primary servicing involves the collection of payments from individual borrowers and the distribution of these payments to the investors. Master servicing rights represent our right to service mortgage- and asset-backed securities and whole-loan packages issued for investors. Master servicing involves the collection of borrower payments from primary servicers and the distribution of those funds to investors in mortgage- and asset-backed securities and whole-loans packages. We also purchase and sell primary and master servicing rights through transactions with other market participants.

We capitalize the value expected to be realized from performing specified mortgage servicing activities for others as mortgage servicing rights (MSRs). These capitalized servicing rights are purchased or retained upon sale or securitization of mortgage loans. Mortgage servicing rights are not recorded on securitizations accounted for as secured financings. We measure mortgage servicing assets and liabilities at fair value at the date of sale.

We define our classes of servicing rights based on both the availability of market inputs and the manner in which we manage the risks of our servicing assets and liabilities. We leverage all available relevant market data to determine the fair value of our recognized servicing assets and liabilities.

Since quoted market prices for MSRs are not available, we estimate the fair value of MSRs by determining the present value of future expected cash flows using modeling techniques that incorporate management's best estimates of key variables including expected cash flows, credit losses, prepayment speeds, and return requirements commensurate with the risks involved. Cash flow assumptions are modeled using our internally forecasted revenue and expenses, and where possible, the reasonableness of assumptions is periodically validated through comparisons to other market participants. Credit loss assumptions are based upon historical experience and the characteristics of individual loans underlying the MSRs. Prepayment speed estimates are determined from historical prepayment rates on similar assets or obtained from third-party data. Return requirement assumptions are determined using data obtained from market participants, where available, or based on current relevant interest rates plus a risk-adjusted spread. We also consider other factors that can impact the value of the MSRs, such as surety provider termination clauses and servicer terminations that could result if we failed to materially comply with the covenants or conditions of our servicing agreements and did not remedy the failure. Since many factors can affect the estimate of the fair value of mortgage servicing rights, we regularly evaluate the major assumptions and modeling techniques used in our estimate and review these assumptions against market comparables, if available. We monitor the actual performance of our MSRs by regularly comparing actual cash flow, credit, and prepayment experience to modeled estimates.

## **Reposessed and Foreclosed Assets**

Assets are classified as reposessed and foreclosed and included in other assets when physical possession of the collateral is taken regardless of whether foreclosure proceedings have taken place. Reposessed and foreclosed assets are carried at the lower of the outstanding balance at the time of repossession or foreclosure or the fair value of the asset less estimated costs to sell. Losses on the revaluation of reposessed and foreclosed assets are charged to the allowance for loan and lease losses at the time of repossession.

## **Goodwill and Other Intangibles**

Goodwill and other intangible assets, net of accumulated amortization, are reported in other assets. In accordance with applicable accounting standards, goodwill represents the excess of the cost of an acquisition over the fair value of net assets acquired. Goodwill is reviewed for impairment utilizing a two-step process. The first step of the impairment test requires us to define the reporting units and compare the fair value of each of these reporting units to the respective carrying value. The fair

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value of the reporting units in our impairment test is determined based on various analyses including discounted cash flow projections. If the carrying value is less than the fair value, no impairment exists, and the second step does not need to be completed. If the carrying value is higher than the fair value or there is an indication that impairment may exist, a second step must be performed to compute the amount of the impairment, if any. Applicable accounting standards require goodwill to be tested for impairment annually at the same time every year and whenever an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. Our annual goodwill impairment assessment is concluded upon during the fourth quarter each year. Refer to Note 14 for a discussion of the related goodwill impairment charge in 2009 and 2008.

Other intangible assets, which include customer lists, trademarks, and other identifiable intangible assets, are amortized on a straight-line basis over an estimate useful life of 3 to 15 years and are subject to impairment testing.

## **Investment in Operating Leases**

Investment in operating leases is reported at cost, less accumulated depreciation and net of impairment charges and origination fees or costs. Income from operating lease assets that includes lease origination fees, net of lease origination costs, is recognized as operating lease revenue on a straight-line basis over the scheduled lease term. Depreciation of vehicles is generally provided on a straight-line basis to an estimated residual value over a period, consistent with the term of the underlying operating lease agreement. We evaluate our depreciation policy for leased vehicles on a regular basis.

We have significant investments in the residual values of assets in our operating lease portfolio. The residual values represent an estimate of the values of the assets at the end of the lease contracts and are initially determined based on residual values established at contract inception by consulting independently published residual value guides. Realization of the residual values is dependent on our future ability to market the vehicles under the prevailing market conditions. Over the life of the lease, we evaluate the adequacy of our estimate of the residual value and may make adjustments to the depreciation rates to the extent the expected value of the vehicle (including any residual support payments from GM) at lease termination changes. In addition to estimating the residual value at lease termination, we also evaluate the current value of the operating lease asset and test for impairment to the extent necessary based on market considerations and portfolio characteristics. Impairment is determined to exist if the undiscounted expected future cash flows are lower than the carrying value of the asset. If our operating lease assets are considered to be impaired, the impairment is measured as the amount by which the carrying amount of the assets exceeds the fair value as estimated by discounted cash flows. Certain triggering events necessitated an impairment review of the investment in operating leases of our Global Automotive Services beginning in the second quarter of 2008. Refer to Note 11 for a discussion of the impairment charges recognized in 2008.

When a lease vehicle is returned to us, the asset is reclassified from investment in operating leases to other assets at the lower-of-cost or estimated fair value, less costs to sell.

## **Impairment of Long-lived Assets**

The carrying value of long-lived assets (including property and equipment and certain identifiable intangibles) are evaluated for impairment whenever events or changes in circumstances indicate that their carrying values may not be recoverable from the estimated undiscounted future cash flows expected to result from their use and eventual disposition. Recoverability of assets to be held and used is measured by a comparison of their carrying amount to future net undiscounted cash flows expected to be generated by the assets. If these assets are considered to be impaired, the impairment is measured as the amount by which the carrying amount of the assets exceeds the fair value as estimated by discounted cash flows. Refer to the previous section of this note titled Investment in Operating Leases for a discussion pertaining to impairments related to our investment in operating leases in 2009. No material impairment was recognized in 2008 or 2007.

An impairment test on an asset group to be discontinued, held-for-sale, or otherwise disposed of is performed upon occurrence of a triggering event or when certain criteria are met (e.g., the asset can be disposed of within twelve months, appropriate levels of authority have approved the sale, and there is an active program to locate a buyer). Long-lived assets held-for-sale are recorded at the lower of their carrying amount or estimated fair value less cost to sell. If the carrying value of the assets held-for-sale exceeds the fair value less cost to sell, we recognize an impairment loss based on the excess of the carrying amount over the fair value of the assets less cost to sell. During 2009, impairment losses were recognized on asset groups that were classified as held-for-sale or disposed of by sale. Refer to Note 2 for a discussion of held-for-sale and discontinued operations.

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## Property and Equipment

Property and equipment stated at cost, net of accumulated depreciation and amortization, are reported in other assets. Included in property and equipment are certain buildings, furniture and fixtures, leasehold improvements, company vehicles, IT hardware and software, and capitalized software costs. Depreciation is computed on the straight-line basis over the estimated useful lives of the assets, which generally ranges from 3 to 30 years. Capitalized software is generally amortized on a straight-line basis over its useful life, which generally ranges from three to five years. Capitalized software that is not expected to provide substantive service potential or for which development costs significantly exceed the amount originally expected is considered impaired and written down to fair value. Software expenditures that are considered general, administrative, or of a maintenance nature are expensed as incurred.

## Deferred Policy Acquisition Costs

Commissions, including compensation paid to producers of automotive service contracts and other costs of acquiring insurance that are primarily related to and vary with the production of business, are deferred and recorded in other assets. Deferred policy acquisition costs are amortized over the terms of the related policies and service contracts on the same basis as premiums and revenue are earned except for direct response advertising costs, which are amortized over their expected future benefit. We group costs incurred for acquiring like contracts and consider anticipated investment income in determining the recoverability of these costs.

## Private Debt Exchange and Cash Tender Offers

In evaluating the accounting for the private debt exchange and cash tender offers (the Offers) in 2008, management was required to make a determination as to whether the Offers should be accounted for as a troubled debt restructuring (TDR) or an extinguishment of GMAC and ResCap debt. In concluding on the accounting, management evaluated applicable accounting guidance. The relevant accounting guidance required us to determine whether the exchanges of debt instruments should be accounted for as a TDR. A TDR results when it is determined, evaluating six factors considered to be indicators of whether a debtor is experiencing financial difficulties, that the debtor is experiencing financial difficulties, and the creditors grant a concession; otherwise, such exchanges should be accounted for as an extinguishment or modification of debt. The assessment of this critical accounting estimate required management to apply a significant amount of judgment in evaluating the inputs, estimates, and internally generated forecast information to conclude on the accounting for the Offers.

In assessing whether GMAC was experiencing financial difficulties for the purpose of accounting for the Offers, management applied applicable accounting guidance. Our assessment considered internal analyses such as our short- and long-term liquidity projections, net income forecasts, and runoff projections. These analyses were based upon our consolidated financial condition and our comprehensive ability to service both GMAC and ResCap obligations and were based only on our current business capabilities and funding sources. In addition to our baseline projections, these analyses incorporated stressed scenarios reflecting continued deterioration of the credit markets, further GM financial distress, and significant curtailments of loans originations. Management assigned probability weights to each scenario to determine an overall risk-weighted projection of our ability to meet our consolidated obligations as they come due. These analyses indicated that we could service all GMAC and ResCap obligations as they came due in the normal course of business.

Our assessment also considered capital market perceptions of our financial condition, such as our credit agency ratings, market values for our debt, analysts' reports, and public statements made by us and our stakeholders. Due to the rigor applied to our internal projections, management placed more weight on our internal projections and less weight on capital market expectations.

Based on this analysis and after the consideration of the applicable accounting guidance, management concluded the Offers were not deemed to be a TDR. As a result of this conclusion, the Offers were accounted for as an extinguishment of debt.

Applying extinguishment accounting, we recognized a gain at the time of the exchange for the difference between the carrying value of the exchanged notes and the fair value of the newly issued securities. In accordance with applicable fair value accounting guidance related to Level 3 fair value measures, we performed various analyses with regard to the valuation of the newly issued instruments. Level 3 fair value measures are valuations that are derived primarily from unobservable inputs and rely heavily on management assessments, assumptions, and judgments. In determining the fair value of the newly

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issued instruments, we performed an internal analysis using trading levels on the trade date, December 29, 2008, of existing GMAC unsecured debt, adjusted for the features of the new instruments. We also obtained bid-ask spreads from brokers attempting to make a market in the new instruments.

Based on the determined fair values, we recognized a pretax gain upon extinguishment of \$11.5 billion and reflected the newly issued preferred shares at their face value, which was estimated to be \$234 million on December 29, 2008. The majority of costs associated with the Offers were deferred in the basis of the newly issued bonds. In the aggregate, the offers resulted in an \$11.7 billion increase to our consolidated equity position.

## **Unearned Insurance Premiums and Service Revenue**

Insurance premiums, net of premiums ceded to reinsurers, and service revenue are earned over the terms of the policies. The portion of premiums and service revenue written applicable to the unexpired terms of the policies is recorded as unearned insurance premiums or unearned service revenue. For extended service and maintenance contracts, premiums and service revenues are earned on a basis proportionate to the anticipated loss emergence. For other short duration contracts, premiums and unearned service revenue are earned on a pro rata basis.

## **Reserves for Insurance Losses and Loss Adjustment Expenses**

Reserves for insurance losses and loss adjustment expenses are established for the unpaid cost of insured events that have occurred as of a point in time. More specifically, the reserves for insurance losses and loss adjustment expenses represent the accumulation of estimates for both reported losses and those incurred, but not reported, including claims adjustment expenses relating to direct insurance and assumed reinsurance agreements. Estimates for salvage and subrogation recoverable are recognized at the time losses are incurred and netted against provision for insurance losses and loss adjustment expenses. Reserves are established for each business at the lowest meaningful level of homogeneous data. Since the reserves are based on estimates, the ultimate liability may vary from such estimates. The estimates are regularly reviewed and adjustments, which can potentially be significant, are included in earnings in the period in which they are deemed necessary.

## **Reserves for Loans Sold with Recourse**

Reserves for loans sold with recourse result from customary market representations and warranties we provide when we sell or securitize loans. These provisions are generally triggered in cases of origination fraud, missing or insufficient underwriting documentation, or borrower compliance violations that exist at the time of sale. The initial reserve, classified in accrued expenses and other liabilities on our Consolidated Balance Sheet, is established on the transfer date at fair value and is recorded as gain (loss) on mortgage and automotive loans, net, on our Consolidated Statement of Income. We recognize changes in the liability as other operating expenses on our Consolidated Statement of Income. We use internally developed models to estimate the liability. Significant assumptions in the models include borrower performance, investor repurchase demand behavior, historic loan defect experience, and loss severity. Adjustments may be made to the modeled losses to take into account qualification factors, such as macroeconomic and other external factors. We regularly evaluate the major assumptions and modeling techniques used in our estimate, and we align assumptions with our allowance and cash flow forecasting models. The models and assumptions require the use of judgment and can have a significant impact on the determination of the liability.

## **Derivative Instruments and Hedging Activities**

In accordance with applicable accounting standards, all derivative financial instruments, whether designated for hedge accounting or not, are required to be recorded on the balance sheet as assets or liabilities carried at fair value. At inception of a hedging relationship, we designate each qualifying derivative financial instrument as a hedge of the fair value of a specifically identified asset or liability (fair value hedge), as a hedge of the variability of cash flows to be received or paid related to a recognized asset or liability (cash flow hedge), or as a hedge of the foreign currency exposure of a net investment in a foreign operation. We also use derivative financial instruments, which although acquired for risk management purposes, do not qualify for hedge accounting under GAAP. Changes in the fair value of derivative financial instruments that are designated and qualify as fair value hedges, along with the gain or loss on the hedged asset or liability attributable to the hedged risk, are recorded in the current period earnings. For qualifying cash flow hedges, the effective portion of the change in the fair value of the derivative financial instruments is recorded in accumulated other comprehensive income, a component of equity, and recognized in the income statement when the hedged cash flows affect earnings. For a derivative designated as hedging the foreign currency exposure of a net investment in a foreign operation, the gain or loss is reported in accumulated other

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comprehensive income as part of the cumulative translation adjustment with the exception of the spot to forward difference, which is recorded in current period earnings. Changes in the fair value of derivative financial instruments held for risk management purposes that do not meet the criteria to qualify as hedges under GAAP are reported in current period earnings. The ineffective portions of fair value and cash flow hedges are immediately recognized in earnings.

We formally document all relationships between hedging instruments and hedged items and our risk management objectives for undertaking various hedge transactions. This process includes linking all derivatives that are designated as fair value, cash flow, or net investment hedges to specific assets and liabilities on our Consolidated Balance Sheet to specific firm commitments or the forecasted transactions. Both at the hedge's inception and on an ongoing basis, we formally assess whether the derivatives that are used in hedging relationships are highly effective in offsetting changes in fair values or cash flows of hedged items.

The hedge accounting treatment described herein is no longer applied if a derivative financial instrument is terminated or the hedge designation is removed or is assessed to be no longer highly effective. For these terminated fair value hedges, any changes to the hedged asset or liability remain as part of the basis of the asset or liability and are recognized into income over the remaining life of the asset or liability. For terminated cash flow hedges, unless it is probable that the forecasted cash flows will not occur within a specified period, any changes in fair value of the derivative financial instrument previously recognized remain in other comprehensive income, a component of equity, and are reclassified into earnings in the same period that the hedged cash flows affect earnings. The previously recognized net derivative gain or loss for a net investment hedge should continue to remain in accumulated other comprehensive income until earnings are impacted by sale or liquidation of the associated foreign operation. In all instances, any subsequent changes in fair value of the derivative instrument will be recorded into earnings.

## Loan Commitments

We enter into commitments to make loans whereby the interest rate on the loans is set prior to funding (i.e., interest rate lock commitments). Interest rate lock commitments for loans to be originated or purchased for sale and for loans to be purchased and held-for-investment are derivative financial instruments carried at fair value in accordance with applicable accounting standards with changes in fair value included within current period earnings. The fair value of the interest rate lock commitments include expected net future cash flows related to the associated servicing of the loan are accounted for through earnings for all written loan commitments accounted at fair value. Servicing assets are recognized as distinct assets once they are contractually separated from the underlying loan by sale or securitization. Interest rate lock commitments are recorded at fair value with changes in value recognized in current period earnings. Day-one gains or losses on derivative interest rate lock commitments are recognized when applicable.

## Income Taxes

As of June 30, 2009, GMAC converted from an LLC to a Delaware corporation, thereby ceasing to be a pass-through entity for income tax purposes. As a result, we recorded our deferred tax assets and liabilities using the estimated corporate effective tax rate. Our banking, insurance, and foreign subsidiaries were generally always corporations and continued to be subject to tax and provide for U.S. federal, state, and foreign income taxes.

Deferred tax assets and liabilities are established for future tax consequences of events that have been recognized in the financial statements or tax returns based on enacted tax laws and rates. Deferred tax assets are recognized subject to management's judgment that realization is more likely than not. Deferred tax assets are reduced through the recording of valuation allowances in cases where realization is not more likely than not. In addition, tax benefits related to positions considered uncertain are recognized only if, based on the technical merits of the issue, we are more likely than not to sustain the position and then at the largest amount that is greater than 50% likely to be realized upon ultimate settlement.

## Recently Adopted Accounting Standards

### Accounting Standards Codification (ASC) (Formerly SFAS No. 168)

In June 2009, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 168, *The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles—a replacement of FASB Statement No. 162* (SFAS 168). This standard established the FASB Codification as the

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exclusive authoritative reference for U.S. GAAP and superseded all existing non-SEC accounting and reporting standards. As a result, we updated the references to accounting literature contained in our financial statement disclosures to reflect the ASC structure.

## **Disclosures about Derivative Instruments and Hedging Activities (Formerly SFAS No. 161)**

As of January 1, 2009, we adopted SFAS No. 161 (SFAS 161), which amended ASC Topic 815, *Derivatives and Hedging*. SFAS 161 required specific disclosures regarding the location and amounts of derivative instruments in the financial statements, how derivative instruments and related hedged items were accounted for, and how derivative instruments and related hedged items affected the financial position, financial performance, and cash flows. Because SFAS 161 impacted only the disclosure and not the accounting treatment for derivative instruments and related hedged items, the adoption of SFAS 161 did not have an impact on our financial statements. Refer to Note 21 for disclosures required by SFAS 161.

## **Interim Disclosures about Fair Value of Financial Instruments (Formerly FSP FAS No. 107-1 and APB No. 28-1)**

As of June 30, 2009, we adopted FSP FAS No. 107-1 and APB No. 28-1, which amended ASC Topic 825, *Financial Instruments*, to require disclosures about the fair value of financial instruments in interim periods. Additionally, the guidance amends ASC Topic 270, *Interim Reporting*, to require these disclosures in all interim financial statements. Since this guidance related only to disclosures, adoption did not have a material effect on our financial statements.

## **Recognition and Presentation of Other-Than-Temporary Impairments (Formerly FSP FAS No. 115-2 and FSP FAS No. 124-2)**

As of April 1, 2009, we adopted FSP FAS No. 115-2 and FSP FAS 124-2, which amended the guidance for determining and recognizing impairment on debt securities. Under this FSP, an other-than-temporary impairment must be recognized if an entity has the intent to sell the debt security or if it is more likely than not that it will be required to sell the debt security before recovery of its amortized cost basis. In addition, the guidance changed the amount of impairment to be recognized in current period earnings when an entity does not have the intent to sell or it is more likely than not that it will be required to sell the debt security. In these cases, only the amount of the impairment associated with credit losses is recognized in earnings with all other fair value components in other comprehensive income. The guidance also required additional disclosures regarding the calculation of credit losses as well as factors considered in reaching a conclusion that an investment is not other-than-temporarily impaired. This guidance was effective for periods ending after June 15, 2009, and its adoption did not have a material impact on our financial statements.

## **Determining Fair Value for Assets in Inactive or Distressed Markets (Formerly FAS No. 157-4)**

As of April 1, 2009, we adopted FSP FAS No. 157-4, which amended ASC Topic 820, *Fair Value Measurements and Disclosures*, and clarified the guidance for determining fair value. This standard provided application guidance to assist preparers in determining whether an observed transaction had occurred in an inactive market and if the transaction was distressed. This standard was effective for periods ending after June 15, 2009, and its adoption did not have a material impact on our financial statements.

## **Recently Issued Accounting Standards**

### **Accounting for Transfers of Financial Assets (Accounting Standards Update (ASU) 2009-16) (Formerly SFAS No. 166)**

In December 2009, the FASB issued ASU 2009-16, which amends ASC Topic 860, *Transfers and Servicing*. This standard removes the concept of a qualifying special-purpose entity (QSPE) and creates more stringent conditions for reporting a transfer of a portion of a financial asset as a sale. To determine if a transfer is to be accounted for as a sale, the transferor must assess whether it and all of the entities included in its consolidated financial statements have surrendered control of the assets. This standard is effective for us as of January 1, 2010, with adoption applied prospectively for transfers that occur on and after the effective date. The elimination of the QSPE concept will require us to retrospectively assess all current off-balance sheet QSPE structures for consolidation under ASC Topic 810, *Consolidation*, and record a cumulative-effect adjustment to retained earnings for any consolidation change. Retrospective application of ASU 2009-16, specifically the QSPE removal, is being assessed as part of the analysis required from ASU 2009-17, *Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities*. Refer to the section below for further information related to ASU 2009-17.

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## **Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities (ASU 2009-17) (Formerly SFAS No. 167)**

In December 2009, the FASB issued ASU 2009-17, which amends ASC Topic 810, *Consolidation*. This standard addresses the primary beneficiary assessment criteria for determining whether an entity is required to consolidate a variable interest entity (VIE). This standard requires an entity to determine whether it is the primary beneficiary by performing a qualitative assessment; rather than using the quantitative-based model required under the previous accounting guidance. The qualitative assessment consists of determining whether the entity has both the power to direct the activities that most significantly impact the VIE's economic performance and has the right to receive benefits or obligation to absorb losses that could potentially be significant to the VIE. This standard is effective for us as of January 1, 2010. As a result of the implementation of ASU 2009-16 and ASU 2009-17, we will be required to consolidate various securitization structures that were previously held off-balance sheet. On January 1, 2010, this consolidation will result in a net increase of \$17.6 billion to assets and liabilities on our Consolidated Balance Sheet (\$10.1 billion of the increase relates to operations classified as held-for-sale). As part of the day-one entry, there will also be an immaterial adjustment to our opening equity balance.

## **2. Discontinued and Held-for-sale Operations**

### **Discontinued Operations**

During the three months ended September 30, 2009, we committed to sell the U.S. consumer property and casualty insurance business of our Insurance operations. These operations provide vehicle and home insurance in the United States through a number of distribution channels, including independent agents, affinity groups, and the internet. Additionally, during the three months ended December 31, 2009, we committed to sell the U.K. consumer property and casualty insurance business. In connection with the classification of these operations as held-for-sale we recognized pretax losses, including estimated direct costs to transact a sale, of \$250 million during the year ended December 31, 2009. The losses represent the impairment recognized to present the discontinued operations at the lower of cost or fair value less costs to sell. The fair values less costs to sell were determined based on sales price negotiations with potential third-party purchasers (a Level 2 fair value input) and price discoveries with potential third-party purchasers adjusted for factors deemed appropriate by management (a Level 3 fair value input). We expect to complete the respective sales during 2010.

During the three months ended December 31, 2009, we committed to sell the continental Europe operations of ResCap's International Business Group (IBG). These operations included residential mortgage loan origination, acquisition, servicing, asset management, sale, and securitizations in the Netherlands and Germany. In connection with the classification of these operations as held-for-sale, we recognized pretax losses, including estimated direct costs to transact a sale, of \$723 million during the three months ended December 31, 2009. The losses represent the impairment recognized to present the held-for-sale operations at the lower of cost or fair value less costs to sell. The fair values less costs to sell were determined based on sales price negotiations with potential third-party purchasers adjusted for anticipated price fades or other factors deemed appropriate by management (a Level 3 fair value input). We expect to complete the sale of the IBG's continental Europe operations during 2010.

During the three months ended September 30, 2009, we committed to sell certain operations of our International Automotive Finance operations. These include the sale of our Argentina operations and our Masterlease operations in the United Kingdom and Italy. Our Masterlease operations provide full-service individual leasing and fleet leasing products, including maintenance, fleet, and accident management services as well as fuel programs, short-term vehicle rental, and title and licensing services. Additionally, during the three months ended December 31, 2009, we committed to sell our operations in Poland and Ecuador as well as our Masterlease operations in Australia, Belgium, France, Mexico, the Netherlands, and Poland. In connection with the classification of these operations as held-for-sale we recognized pretax losses of \$416 million during the year ended December 31, 2009. The losses represent the impairment recognized to present the discontinued operations at the lower of cost or fair value less costs to sell. The fair value less costs to sell were determined using final sales agreements or sales price negotiations entered into by willing parties (a Level 2 fair value input). As of December 31, 2009, the sale of the Masterlease operations in Mexico, Italy, and the Netherlands was completed. We expect to complete the remaining sales of these operations during 2010.

During the three months ended December 31, 2009, we committed to sell the U.S.-based factoring business of our Commercial Finance Group. In connection with the classification of these operations as held-for-sale we recognized pretax

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losses of \$30 million during the year ended December 31, 2009. The losses represent the impairment recognized to present the held-for-sale operations at the lower of cost or fair value, less costs to transact the sale. The fair value less costs to sell was determined based on preliminary bids with potential third-party purchasers (a Level 2 fair value input). We expect to complete the sale during 2010.

The pretax losses recognized as of December 31, 2009, including the direct costs to transact a sale, for the discontinued operations could differ from the ultimate sales price due to the fluidity of ongoing negotiations, price volatility, changing interest rates, changing foreign currency rates, and future economic conditions.

Selected financial information of these discontinued operations held-for-sale is summarized below.

Year ended December 31, (\$ in millions)	2009	2008	2007
<b>Select Mortgage operations</b>			
Total net (loss)	\$ (301)	\$ (1,215)	\$ (167)
Pretax (loss) including direct costs to transact a sale	(1,198)	(1,555)	(302)
Tax expense (benefit)	2	31	(52)
<b>Select Insurance operations</b>			
Total net revenue	\$ 1,448	\$ 1,780	\$ 1,737
Pretax (loss) income including direct costs to transact a sale	(810)	97	121
Tax (benefit) expense	(99)	25	38
<b>Select International operations</b>			
Total net revenue	\$ 248	\$ 325	\$ 358
Pretax (loss) income including direct costs to transact a sale	(318)	(23)	31
Tax expense	30	7	11
<b>Select Commercial Finance operations</b>			
Total net revenue	\$ 39	\$ 49	\$ 64
Pretax (loss) income including direct costs to transact a sale	(32)	(23)	18
Tax (benefit) expense	(9)	1	2

At December 31, 2009, we classified the assets and liabilities of these operations as discontinued operations held-for-sale using generally accepted accounting principles in the United States of America, as the associated operations and cash flows will be eliminated from our ongoing operations and we will not have any significant continuing involvement in their operations after the respective sale transactions. For all periods presented, all of the operating results for these operations have been removed from continuing operations and are presented separately as discontinued operations, net of tax. The Notes to Consolidated Financial Statements have been adjusted to exclude discontinued operations unless otherwise noted.

## Held-for-sale Operations

As discussed in the previous section, all of our discontinued operations are classified as held-for-sale as of December 31, 2009. In addition to the discontinued operations, we have classified the U.K.-based operations of ResCap's IBG operations as held-for-sale. Since the operations did not qualify as discontinued operations, the results are reflected as a component of continuing operations. The U.K.-based operations of IBG include residential mortgage loan origination, acquisition, servicing, asset management, sale, and securitizations. In connection with the classification as held-for-sale, we recognized a pretax loss, including estimated direct costs to transact a sale, of \$181 million. The loss represents the impairment recognized to present the held-for-sale operations at the lower of cost or fair value less costs to sell. The fair values less costs to sell were determined based on price discoveries with potential third-party purchasers adjusted for anticipated price fades or other factors deemed appropriate by management (a Level 3 fair value input). We expect to complete the sale of these operations within the next twelve months. The pretax losses, including the direct costs to transact a sale, for the held-for-sale operations could differ from the ultimate sales price due to the fluidity of the negotiations, price volatility, changing interest rates, changing foreign currency rates, and future economic conditions.

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The assets and liabilities of operations held-for-sale at December 31, 2009, are summarized below.

(\$ in millions)	Select Mortgage operations (a)	Select Insurance operations (b)	Select International operations (c)	Select Commercial Finance Group operations (d)	Total held-for- sale operations
<b>Assets</b>					
Cash and cash equivalents					
Noninterest bearing	\$ 4	\$ 578	\$ 33	\$ —	\$ 615
Interest bearing	151	—	11	—	162
Total cash and cash equivalents	155	578	44	—	777
Trading securities	36	—	—	—	36
Investment securities — available-for-sale	—	794	—	—	794
Loans held-for-sale	214	—	—	—	214
Finance receivables and loans, net of unearned income					
Consumer	2,650	—	400	—	3,050
Commercial	—	—	246	233	479
Notes receivable from General Motors	—	—	14	—	14
Allowance for loan losses	(89)	—	(11)	—	(100)
Total finance receivables and loans, net	2,561	—	649	233	3,443
Investment in operating leases, net	—	—	885	—	885
Mortgage servicing rights	(26)	—	—	—	(26)
Premiums receivable and other insurance assets	—	1,126	—	—	1,126
Other assets	512	176	135	—	823
Impairment on assets of held-for-sale operations	(903)	(231)	(324)	(30)	(1,488)
<b>Total assets</b>	<b>\$ 2,549</b>	<b>\$ 2,443</b>	<b>\$ 1,389</b>	<b>\$ 203</b>	<b>\$ 6,584</b>
<b>Liabilities</b>					
Debt					
Short-term borrowings	\$ —	\$ 34	\$ 57	\$ —	\$ 91
Long-term debt	1,749	—	237	—	1,986
Total debt	1,749	34	294	—	2,077
Interest payable	3	—	1	—	4
Unearned insurance premiums and service revenue	—	517	—	—	517
Reserves for insurance losses and loss adjustment expenses	—	1,471	—	—	1,471
Accrued expenses and other liabilities	430	84	128	187	829
<b>Total liabilities</b>	<b>\$ 2,182</b>	<b>\$ 2,106</b>	<b>\$ 423</b>	<b>\$ 187</b>	<b>\$ 4,898</b>

(a) Includes the operations of ResCap's International Business Group in continental Europe and in the United Kingdom.

(b) Includes the U.S. and U.K. consumer property and casualty insurance businesses.

(c) Includes the International Automotive Finance operations of Argentina, Ecuador, and Poland and Masterlease in the United Kingdom, Italy, Australia, Belgium, France, Mexico, the Netherlands, and Poland.

(d) Includes the U.S.-based factoring business of our Commercial Finance Group.

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## 3. Insurance Premiums and Service Revenue Earned

The following table is a summary of insurance premiums and service revenue written and earned:

Year ended December 31, (\$ in millions)	2009		2008		2007	
	Written	Earned	Written	Earned	Written	Earned
<b>Insurance premiums</b>						
Direct	\$ 795	\$ 854	\$ 982	\$1,054	\$ 951	\$1,007
Assumed	604	680	737	682	644	652
Gross insurance premiums	1,399	1,534	1,719	1,736	1,595	1,659
Ceded	(604)	(695)	(481)	(321)	(183)	(190)
Net insurance premiums	795	839	1,238	1,415	1,412	1,469
Service revenue	685	1,138	964	1,295	1,118	1,337
<b>Insurance premiums and service revenue written and earned</b>	<b>\$ 1,480</b>	<b>\$ 1,977</b>	<b>\$ 2,202</b>	<b>\$2,710</b>	<b>\$ 2,530</b>	<b>\$2,806</b>

## 4. Other Income, Net of Losses

Details of other income, net of losses, were as follows:

Year ended December 31, (\$ in millions)	2009	2008	2007
Late charges and other administrative fees (a)	\$ 162	\$ 164	\$177
Mortgage processing fees and other mortgage income (loss)	130	(252)	73
Remarketing fees	128	120	99
Full-service leasing fees	128	154	125
Other equity method investments (b)	17	(496)	74
Fair value adjustment on certain derivatives (c)	(56)	(99)	100
Fair value adjustments due to fair value option elections, net (d)	(215)	(237)	—
Real estate services, net	(267)	(62)	218
Other, net	173	64	73
<b>Total other income, net of losses</b>	<b>\$ 200</b>	<b>\$(644)</b>	<b>\$939</b>

(a) Includes nonmortgage securitization fees.

(b) During 2008, we recognized \$765 million in losses related to an investment accounted for using the equity method. The losses included \$195 million as an estimate of our share of the investee's net loss and the impairment of our remaining investment interests of \$570 million. As of December 31, 2008, we have no remaining balance in our investment, no further financial obligations, and have ceased equity method accounting.

(c) Refer to Note 21 for a description of derivative instruments and hedging activities.

(d) Refer to Note 27 for a description of fair value option elections.

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## 5. Other Operating Expenses

Details of other operating expenses were as follows:

Year ended December 31, ( <i>\$ in millions</i> )	2009	2008	2007
Mortgage representation and warranty expense, net	\$1,495	\$ 294	\$ 256
Insurance commissions	635	803	831
Technology and communications expense	603	583	598
Professional services	509	619	401
Advertising and marketing	202	156	207
Vehicle remarketing and repossession	197	289	199
Lease and loan administration	165	153	208
Full-service leasing vehicle maintenance costs	132	150	115
Rent and storage	116	172	202
Premises and equipment depreciation	91	139	165
Restructuring expenses	67	212	134
Other	1,294	1,682	1,156
<b>Total other operating expenses</b>	<b>\$5,506</b>	<b>\$5,252</b>	<b>\$4,472</b>

## 6. Trading Securities

The fair value for our portfolio of trading securities was as follows:

December 31, ( <i>\$ in millions</i> )	2009	2008
Trading securities		
U.S. Treasury	\$ —	\$ 409
Mortgage-backed		
Residential	143	316
Commercial	—	7
Asset-backed	596	474
Debt and other	—	1
<b>Total trading securities</b>	<b>\$739</b>	<b>\$ 1,207</b>
Net unrealized gains (losses) (a)	\$203	\$(1,864)
Pledged as collateral	\$ 61	\$ 827

(a) Unrealized gains and losses are included in other gain (loss) on investments, net, on a current period basis. Net unrealized losses totaled \$1,590 million during the year ended December 31, 2007.

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## 7. Investment Securities

Our portfolio of investment securities includes bonds, equity securities, asset- and mortgage-backed securities, notes, interests in securitization trusts, and other investments. The cost, fair value, and gross unrealized gains and losses on available-for-sale and held-to-maturity securities were as follows:

December 31, (\$ in millions)	2009			2008				
	Cost	Gross unrealized		Fair value	Cost	Gross unrealized		Fair value
gains		losses	gains			losses		
<b>Available-for-sale securities</b>								
Debt securities								
U.S. Treasury and federal agencies	\$ 3,501	\$ 15	\$ (6)	\$ 3,510	\$ 389	\$ 31	\$ —	\$ 420
States and political subdivisions	779	36	(4)	811	876	31	(26)	881
Foreign government	1,161	20	(8)	1,173	887	25	—	912
Mortgage-backed								
Residential (a)	3,404	76	(19)	3,461	191	6	(2)	195
Commercial	—	—	—	—	17	—	(2)	15
Asset-backed	1,000	7	(2)	1,005	664	—	(2)	662
Corporate debt securities	1,408	74	(9)	1,473	2,431	24	(165)	2,290
Other	47	—	—	47	350	4	(1)	353
Total debt securities (b)	11,300	228	(48)	11,480	5,805	121	(198)	5,728
Equity securities	631	52	(8)	675	525	79	(98)	506
Total available-for-sale securities	\$ 11,931	\$ 280	\$ (56)	\$ 12,155	\$ 6,330	\$ 200	\$ (296)	\$ 6,234
<b>Held-to-maturity securities</b>								
Total held-to-maturity securities	\$ 3	\$ —	\$ —	\$ 3	\$ 3	\$ —	\$ —	\$ 3

(a) Residential mortgage-backed securities include agency-backed bonds totaling \$2,248 million and \$16 million at December 31, 2009 and 2008, respectively.

(b) In connection with certain borrowings and letters of credit relating to certain assumed reinsurance contracts, \$164 million and \$154 million of primarily U.K. Treasury securities were pledged as collateral as of December 31, 2009 and 2008, respectively.

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The maturity distribution of available-for-sale debt securities outstanding is summarized in the following tables. Prepayments may cause actual maturities to differ from scheduled maturities.

December 31, 2009 (\$ in millions)	Total		Due in one year or less		Due after one year through five years		Due after five years through ten years		Due after ten years (a)	
	Amount	Yield	Amount	Yield	Amount	Yield	Amount	Yield	Amount	Yield
Fair value of available-for-sale debt securities (b)										
U.S. Treasury and federal agencies	\$ 3,510	1.9%	\$ 103	1.1%	\$ 3,390	1.9%	\$ 17	4.1%	\$ —	—%
States and political subdivisions	811	7.0	9	7.0	175	7.2	147	7.0	480	6.9
Foreign government	1,173	3.8	66	1.7	872	3.8	229	4.5	6	5.3
Mortgage-backed										
Residential	3,461	6.5	—	—	2	6.5	36	13.0	3,423	6.4
Asset-backed	1,005	2.5	34	5.2	735	2.3	186	2.6	50	3.9
Corporate debt	1,473	5.2	283	3.4	575	5.8	570	5.4	45	6.9
Other	47	3.6	—	—	32	3.4	15	4.0	—	—
<b>Total available-for-sale debt securities</b>	<b>\$ 11,480</b>	<b>4.3%</b>	<b>\$ 495</b>	<b>2.8%</b>	<b>\$ 5,781</b>	<b>2.8%</b>	<b>\$ 1,200</b>	<b>5.2%</b>	<b>\$ 4,004</b>	<b>6.5%</b>
<b>Amortized cost of available-for-sale debt securities</b>	<b>\$ 11,300</b>		<b>\$ 473</b>		<b>\$ 5,728</b>		<b>\$ 1,169</b>		<b>\$ 3,930</b>	

(a) Investments with no stated maturities are included as contractual maturities of greater than 10 years. Actual maturities may differ due to call or prepayment options.

(b) Yields on tax-exempt obligations have been computed on a tax-equivalent basis.

December 31, 2008 (\$ in millions)	Total		Due in one year or less		Due after one year through five years		Due after five years through ten years		Due after ten years (a)	
	Amount	Yield	Amount	Yield	Amount	Yield	Amount	Yield	Amount	Yield
Fair value of available-for-sale debt securities (b)										
U.S. Treasury and federal agencies	\$ 420	3.9%	\$ 81	3.1%	\$ 208	4.0%	\$ 109	4.5%	\$ 22	4.5%
States and political subdivisions	881	7.6	16	9.2	223	7.6	210	7.4	432	7.7
Foreign government	912	3.4	403	1.2	325	4.9	166	5.3	18	9.2
Mortgage-backed										
Residential	195	5.3	2	10.3	—	—	—	—	193	5.2
Commercial	15	5.4	—	—	2	6.0	—	—	13	5.4
Asset-backed	662	0.4	585	0.1	63	2.7	10	4.4	4	0.7
Corporate debt	2,290	5.7	324	4.5	999	5.8	888	5.9	79	6.5
Other	353	3.7	320	3.6	32	4.9	1	—	—	—
<b>Total available-for-sale debt securities</b>	<b>\$ 5,728</b>	<b>4.8%</b>	<b>\$ 1,731</b>	<b>2.1%</b>	<b>\$ 1,852</b>	<b>5.5%</b>	<b>\$ 1,384</b>	<b>5.9%</b>	<b>\$ 761</b>	<b>6.8%</b>
<b>Amortized cost of available-for-sale debt securities</b>	<b>\$ 5,805</b>		<b>\$ 1,726</b>		<b>\$ 1,856</b>		<b>\$ 1,425</b>		<b>\$ 798</b>	

(a) Investments with no stated maturities are included as contractual maturities of greater than 10 years. Actual maturities may differ due to call or prepayment options.

(b) Yields on tax-exempt obligations have been computed on a tax-equivalent basis.

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The following table presents gross gains and losses realized upon the sales of available-for-sale securities and other-than-temporary impairment.

Year ended December 31, (\$ in millions)	2009	2008	2007
Gross realized gains	\$ 349	\$ 109	\$253
Gross realized losses	(129)	(238)	(65)
Other-than-temporary impairment	(55)	(223)	(5)
Net realized gains (losses)	\$ 165	\$(352)	\$183

The following table presents interest and dividends on investments.

Year ended December 31, (\$ in millions)	2009	2008	2007
Taxable interest	\$321	\$446	\$910
Taxable dividends	9	26	37
Interest and dividends exempt from U.S. federal income tax	37	43	30
Total interest and dividends	\$367	\$515	\$977

Certain available-for-sale securities were sold at a loss in 2009, 2008, and 2007 as a result of market conditions within these respective periods (e.g., a downgrade in the rating of a debt security). The table below summarizes available-for-sale securities in an unrealized loss position in accumulated other comprehensive income. Based on the methodology described below that has been applied to these securities, we believe that the unrealized losses relate to factors other than credit losses in the current market environment. As of December 31, 2009, we do not have the intent to sell the debt securities with an unrealized loss position in accumulated other comprehensive income, and it is not more likely than not that we will not be required to sell these securities before recovery of their amortized cost basis. Also, as of December 31, 2009, we had the ability and intent to hold equity securities with an unrealized loss position in accumulated other comprehensive income. As a result, we believe that the securities with an unrealized loss position in accumulated other comprehensive income are not considered to be other-than-temporarily impaired as of December 31, 2009. Refer to Note 1 to the Consolidated Financial Statements for further information related to investment securities and our methodology for evaluating potential other-than-temporary impairment.

(\$ in millions)	2009				2008			
	Less than 12 months		12 months or longer		Less than 12 months		12 months or longer	
	Fair value	Unrealized loss						
<b>Available-for-sale securities</b>								
<b>Debt securities</b>								
U.S. Treasury and federal agencies	\$1,430	\$ (6)	\$ —	\$ —	\$ 7	\$ —	\$ 1	\$ —
States and political subdivisions	82	(2)	8	(2)	251	(18)	56	(8)
Foreign government	536	(8)	—	—	36	—	19	—
Mortgage-backed	811	(14)	6	(5)	19	(2)	23	(2)
Asset-backed	202	(1)	22	(1)	13	(2)	18	—
Corporate debt securities	47	(1)	120	(8)	1,190	(144)	235	(21)
Other	7	—	—	—	1	—	4	—
Total temporarily impaired debt securities	3,115	(32)	156	(16)	1,517	(166)	356	(31)
Equity securities	115	(5)	52	(3)	249	(98)	4	—
Total temporarily impaired available-for-sale securities	\$3,230	\$ (37)	\$ 208	\$ (19)	\$1,766	\$ (264)	\$ 360	\$ (31)

We employ a systematic methodology that considers available evidence in evaluating other-than-temporary impairment of our investments classified as available-for-sale. If the cost of an investment exceeds its fair value, we evaluated, among other factors, the magnitude and duration of the decline in fair value, the financial health of and business outlook for the

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issuer, changes to the rating of the security by a rating agency, the performance of the underlying assets for interests in securitized assets, whether we intend to sell the investment, and whether it is more likely than not we will be required to sell the debt security before recovery of its amortized cost basis. We had other-than-temporary impairment write-downs of \$55 million, \$223 million, and \$5 million for the years ended December 31, 2009, 2008, and 2007, respectively. Gross unrealized gains and losses on investment securities available-for-sale totaled \$278 million and \$123 million, respectively as of December 31, 2007.

In April 2009, the FASB amended the other-than-temporary impairment model for debt securities. The impairment model for equity securities was not affected. Under the new guidance, other-than-temporary impairment losses for debt securities must be recognized in earnings if an entity has the intent to sell the security or it is more likely than not that it will be required to sell the security before recovery of its amortized cost basis. However, even if an entity does not expect to sell a security, it must evaluate expected cash flows to be received and determine if a credit loss has occurred. In the event of a credit loss, only the amount of impairment associated with the credit loss is recognized in earnings. Amounts relating to factors other than credit losses are recorded in other comprehensive income. The guidance also requires additional disclosures regarding the calculation of credit losses as well as factors considered in reaching a conclusion that an investment is not other-than-temporarily impaired. We adopted the new guidance effective for the period ended June 30, 2009. We did not record a transition adjustment for securities held at June 30, 2009, that were previously considered other-than-temporarily impaired as all previously impaired securities remaining in the portfolio were either equity securities or debt securities with impairments relating to credit losses.

## 8. Loans Held-for-sale

The composition of loans held-for-sale was as follows:

December 31, (\$ in millions)	2009			2008		
	Domestic	Foreign	Total	Domestic	Foreign	Total
<b>Consumer</b>						
Automobile	\$ 9,417	\$ 184	\$ 9,601	\$ 3,805	\$ —	\$3,805
1st Mortgage	9,269	530	9,799	1,576	1,052	2,628
Home equity	1,068	—	1,068	—	1	1
<b>Total consumer</b>	<b>19,754</b>	<b>714</b>	<b>20,468</b>	<b>5,381</b>	<b>1,053</b>	<b>6,434</b>
<b>Commercial</b>						
<b>Commercial and industrial</b>						
Automobile	—	—	—	148	103	251
Resort finance (a)	—	—	—	1,223	—	1,223
Other	—	157	157	—	9	9
<b>Commercial real estate</b>						
Mortgage	—	—	—	2	—	2
<b>Total commercial</b>	<b>—</b>	<b>157</b>	<b>157</b>	<b>1,373</b>	<b>112</b>	<b>1,485</b>
<b>Total loans held-for-sale</b>	<b>\$ 19,754</b>	<b>\$871</b>	<b>\$20,625</b>	<b>\$6,754</b>	<b>\$ 1,165</b>	<b>\$7,919</b>

(a) The resort finance business of our Commercial Finance Group provides capital to resort and timeshare developers. As of March 31, 2009, the resort finance business was reclassified from loans held-for-sale to commercial finance receivables and loans, net of unearned income, on the Consolidated Balance Sheet because it was unlikely a sale would occur within the foreseeable future.

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During the year ended December 31, 2009, our Mortgage operations reclassified loans with an unpaid principal balance of \$8.5 billion from finance receivables and loan, net of unearned income, to loans held-for-sale on our Consolidated Balance Sheet. Due to capital preservation strategies, business divestitures, and future liquidity considerations, we changed our intent to hold these mortgage loans for the foreseeable future. These loans were measured at fair value immediately prior to the transfer resulting in a valuation loss of approximately \$3.4 billion during the year ended December 31, 2009. We recognized the credit and noncredit component of these losses in provision for loan losses and gain (loss) on mortgage loans, net, respectively, in our Consolidated Statement of Income.

## 9. Finance Receivables and Loans, Net of Unearned Income

The composition of finance receivables and loans, net of unearned income, before allowance for loan losses was as follows:

December 31, (\$ in millions)	2009			2008		
	Domestic	Foreign	Total	Domestic	Foreign	Total
<b>Consumer</b>						
Automobile	\$ 12,514	\$ 17,731	\$ 30,245	\$ 16,281	\$ 21,705	\$ 37,986
1st Mortgage (a)	7,960	405	8,365	13,542	4,604	18,146
Home equity	4,238	1	4,239	7,777	54	7,831
<b>Total consumer</b>	<b>24,712</b>	<b>18,137</b>	<b>42,849</b>	<b>37,600</b>	<b>26,363</b>	<b>63,963</b>
<b>Commercial</b>						
<b>Commercial and industrial</b>						
Automobile	19,601	7,035	26,636	16,913	9,094	26,007
Mortgage	1,572	96	1,668	1,627	195	1,822
Resort finance	843	—	843	—	—	—
Other	1,845	437	2,282	3,257	960	4,217
<b>Commercial real estate</b>						
Automobile	2,008	221	2,229	1,941	167	2,108
Mortgage	121	162	283	1,696	260	1,956
<b>Total commercial</b>	<b>25,990</b>	<b>7,951</b>	<b>33,941</b>	<b>25,434</b>	<b>10,676</b>	<b>36,110</b>
Notes receivable from General Motors	3	908	911	—	1,655	1,655
<b>Total finance receivables and loans (b)</b>	<b>\$ 50,705</b>	<b>\$ 26,996</b>	<b>\$ 77,701</b>	<b>\$ 63,034</b>	<b>\$ 38,694</b>	<b>\$ 101,728</b>

(a) Domestic residential mortgages include \$1.3 billion and \$1.9 billion at fair value as a result of fair value option election as of December 31, 2009 and 2008, respectively. Refer to Note 27 for additional information.

(b) Totals are net of unearned income of \$2.5 billion and \$3.4 billion at December 31, 2009 and 2008, respectively.

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The following table presents an analysis of the activity in the allowance for loan losses on finance receivables and loans.

Year ended December 31, (\$ in millions)	2009			2008		
	Consumer	Commercial	Total	Consumer	Commercial	Total
Allowance at beginning of year	\$ 2,536	\$ 897	\$ 3,433	\$ 2,141	\$ 614	\$ 2,755
Provision for loan losses	5,149	894	6,043	2,661	749	3,410
Charge-offs						
Domestic	(2,425)	(955)	(3,380)	(1,714)	(478)	(2,192)
Foreign	(557)	(76)	(633)	(326)	(21)	(347)
Write downs related to transfers to held-for-sale	(3,428)	(10)	(3,438)	—	—	—
Total charge-offs	(6,410)	(1,041)	(7,451)	(2,040)	(499)	(2,539)
Recoveries						
Domestic	257	19	276	197	22	219
Foreign	71	5	76	67	4	71
Total recoveries	328	24	352	264	26	290
Net charge-offs	(6,082)	(1,017)	(7,099)	(1,776)	(473)	(2,249)
Reduction of allowance due to fair value option election	—	—	—	(489)	—	(489)
Reduction of allowance due to deconsolidation (a)	—	—	—	(127)	—	(127)
Other	61	7	68	126	7	133
Allowance at end of year	\$ 1,664	\$ 781	\$ 2,445	\$ 2,536	\$ 897	\$ 3,433

(a) During 2008, our Mortgage operations completed the sale of residual cash flows related to a number of on-balance sheet securitizations. Our Mortgage operations completed the actions necessary to cause the securitization trusts to satisfy the QSPE requirements. The actions resulted in the deconsolidation of various securitization trusts.

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The following tables present information about our commercial impaired finance receivables and loans.

December 31, (\$ in millions)	2009	2008
Impaired finance receivables and loans		
With an allowance	\$1,760	\$2,780
Without an allowance	296	106
Total impaired loans	\$2,056	\$2,886
Allowance for impaired loans	\$ 488	\$ 703

Year ended December 31, (\$ in millions)	2009	2008	2007
Average balance of impaired loans during the year	\$2,768	\$1,600	\$1,066
Interest income recognized on impaired loans during the year	\$ 16	\$ 9	\$ 6

We have loans that were acquired in a transfer, which at acquisition had evidence of deterioration of credit quality since origination and for which it was probable (at acquisition) that all contractually required payments would not be collected. The carrying amount of these loans included in the balance sheet amounts of finance receivables and loans, was as follows:

December 31, (\$ in millions)	2009	2008	2007
Consumer finance receivables	\$318	\$ 965	\$1,641
Allowance for loan losses	(37)	(147)	(121)
Total carrying amount	\$281	\$ 818	\$1,520

For loans acquired after December 31, 2005, we are required to record revenue using an accretable yield method. The following table represents accretable yield activity:

Year ended December 31, (\$ in millions)	2009	2008
Accretable yield at beginning of year	\$ 6	\$ 98
Additions	—	—
Accretions	(5)	(14)
Reclassification from nonaccretable difference	2	(71)
Disposals	(1)	(7)
Accretable yield at end of year	\$ 2	\$ 6

Loans acquired during each year for which it was probable at acquisition that all contractually required payments would not be collected are as follows:

Year ended December 31, (\$ in millions)	2009	2008
Contractually required payments receivable at acquisition — consumer	\$ —	\$157
Cash flows expected to be collected at acquisition	—	154
Basis in acquired loans at acquisition	—	91

## 10. Off-balance Sheet Securitizations

We sell pools of automotive and residential mortgage loans via securitization transactions that qualify for off-balance sheet treatment under GAAP. The purpose of these securitizations is to provide permanent funding and asset and liability management. In executing the securitization transactions, we typically sell the pools to wholly owned special-purpose entities (SPEs), which then sell the loans to a separate, transaction-specific bankruptcy remote SPE (a securitization trust) for cash, servicing rights, and in some transactions, retained interests. The securitization trust issues and sells interests to

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investors that are collateralized by the secured loans and entitle the investors to specified cash flows generated from the securitized loans. The following discussion and related information is only applicable to the transfers of finance receivables and loans that qualify as off-balance sheet.

Each securitization is governed by various legal documents that limit and specify the activities of the securitization vehicle. The securitization vehicle is generally allowed to acquire the loans being sold to it, issue interests to investors to fund the acquisition of the loans, and to enter into derivatives or other yield maintenance contracts to hedge or mitigate certain risks related to the asset pool or debt securities. Additionally, the securitization vehicle is required to service the assets it holds and the debt or interest it has issued. A servicer appointed within the underlying legal documents performs these functions. Servicing functions include, but are not limited to, collecting payments from borrowers, performing escrow functions, monitoring delinquencies, liquidating assets, investing funds until distribution, remitting payments to investors, and accounting for and reporting information to investors.

Generally, the assets initially transferred into the securitization vehicle are the sole funding sources to the investors and the various other parties that perform services for the transaction, such as the servicer or the trustee. In certain transactions, a liquidity provider or facility may exist to provide temporary liquidity to the structure. The liquidity provider generally is reimbursed prior to other parties in subsequent distribution periods. Bond insurance may also exist to cover certain shortfalls to certain investors. In certain securitizations, the servicer is required to advance scheduled principal and interest payments due on the pool regardless of whether they have been received from borrowers. The servicer is allowed to reimburse itself for these servicing advances. Lastly, certain securitization transactions may allow for the acquisition of additional loans subsequent to the initial transaction. Principal collections on other loans and/or the issuance of new interests, such as variable funding notes, generally fund these loans; we are often contractually required to invest in these new interests. Additionally, we provide certain guarantees as discussed in Note 30.

As part of our securitizations, we typically retain servicing responsibilities and other retained interests. Accordingly, our servicing responsibilities result in continued involvement in the form of servicing the underlying asset (primary servicing) and/or servicing the bonds resulting from the securitization transactions (master servicing) through servicing platforms. As noted above, certain securitizations require the servicer to advance scheduled principal and interest payments due on the pool regardless of whether they are received from borrowers. Accordingly, we are required to provide these servicing advances when applicable. In certain of our securitizations, we may be required to fund certain investor-triggered put redemptions and are allowed to reimburse ourselves by repurchasing loans at par. Typically, we have concluded that the fee we are paid for servicing retail automotive finance receivables represents adequate compensation and consequently we do not recognize a servicing asset or liability. We do not recognize a servicing asset or liability for automotive wholesale loans because of their short-term revolving nature. As of December 31, 2009, the weighted average basic servicing fees for our primary servicing activities were 100 basis points and 27 basis points of the outstanding principal balance for sold retail automotive finance receivables and residential mortgage loans, respectively. Additionally, we retain the rights to cash flows remaining after the investors in most securitization trusts have received their contractual payments. Refer to Note 1 and Note 27 regarding the valuation of servicing rights.

We maintain cash reserve accounts at predetermined amounts for certain securitization activities in the event that deficiencies occur in cash flows owed to the investors. The amounts available in these cash reserve accounts related to securitizations of retail automotive finance receivables, automotive wholesale loans, and residential mortgage loans, totaled \$119 million, \$0 million, and \$221 million as of December 31, 2009, respectively, and \$136 million, \$576 million, and \$202 million as of December 31, 2008, respectively.

The retained interests we may receive represent a continuing economic interest in the securitization. Retained interests include, but are not limited to, senior or subordinate mortgage- or asset-backed securities, interest-only strips, principal-only strips, and residuals. Certain of these retained interests provide credit enhancement to the securitization structure as they may absorb credit losses or other cash shortfalls. Additionally, the securitization documents may require cash flows to be directed away from certain of our retained interests due to specific over-collateralization requirements, which may or may not be performance driven. The value of any interests that continue to be held take into consideration the features of the securitization transaction and are generally subject to credit, prepayment, and/or interest rate risks on the transferred financial assets. Refer to Note 1 and Note 27 regarding the valuation of retained interests. We are typically not required to continue retaining these interests. In the past, we have sold certain of these retained interests when it best aligns to our economic or strategic plans.

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The investors and/or securitization trusts have no recourse to us with the exception of customary market representation and warranty repurchase provisions and in certain transactions, early payment default provisions. Representation and warranty repurchase provisions generally require us to repurchase loans to the extent it is subsequently determined that the loans were ineligible or were otherwise defective at the time of sale. Due to market conditions, early payment default provisions were included in certain securitization transactions that require us to repurchase loans if the borrower is delinquent in making certain specific payments subsequent to the sale.

We hold certain conditional repurchase options that allow us to repurchase assets from the securitization. The majority of the securitizations provide us, as servicer, with a call option that allows us to repurchase the remaining assets or outstanding debt once the asset pool reaches a predefined level, which represents the point where servicing is burdensome rather than beneficial. Such an option is referred to as a clean-up call. As servicer, we are able to exercise this option at our discretion anytime after the asset pool size falls below the predefined level. The repurchase price for the loans is typically par plus accrued interest. Additionally, we may hold other conditional repurchase options that allow us to repurchase the asset if certain events outside our control are met. The typical conditional repurchase option is a delinquent loan repurchase option that gives us the option to purchase the loan if it exceeds a certain pre-specified delinquency level. We have complete discretion regarding when or if we will exercise these options, but generally we will do so when it is in our best interest. We purchased \$1 million and \$2 million of mortgage loans under delinquent loan repurchase options during the years ended December 31, 2009 and 2008, respectively.

As required under GAAP, the loans sold into off-balance sheet securitization transactions are removed from our balance sheet. The assets obtained from the securitization are reported as cash, retained interests, or servicing rights. We have elected fair value treatment for our existing mortgage servicing rights portfolio. We classify our retained interest portfolio as trading securities, available-for-sale securities, or other assets. The portfolio is carried at fair value with valuation adjustments reported through earnings or equity. We report the valuation adjustments related to trading securities as other income (loss) on investments, net, in our Consolidated Statement of Income. The valuation adjustments related to unrealized gains and losses of our available-for-sale securities are reported as a component of accumulated other comprehensive income on our Consolidated Balance Sheet. We report the realized gains and losses of our available-for-sale securities as other income (loss) on investments, net, in our Consolidated Statement of Income. The valuation adjustments and any gains and losses recognized by our retained interests classified as other assets are reported as other income, net of losses, in our Consolidated Statement of Income. Liabilities incurred as part of the transaction, such as representation and warranty provisions, are recorded at fair value at the time of sale and are reported as accrued expenses and other liabilities on our Consolidated Balance Sheet. Upon the sale of the loans, we recognize a gain or loss on sale for the difference between the assets recognized, the assets derecognized, and the liabilities recognized as part of the transaction.

The following summarizes the type and amount of loans held by the securitization trusts in transactions that qualified for off-balance sheet treatment:

December 31, (\$ in billions)	2009	2008
<b>Securitization</b>		
Retail finance receivables	\$ 7.5	\$ 13.3
Wholesale loans	—	12.5
Mortgage loans (a)	99.6	126.2
<b>Total off-balance sheet activities</b>	<b>\$107.1</b>	<b>\$152.0</b>

(a) Excludes \$237 million and \$1.6 billion at December 31, 2009 and 2008, respectively, of delinquent loans held by securitization trusts that we have the option to repurchase as they are included in consumer finance receivables and loans.

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Key economic assumptions used in measuring the estimated fair value of retained interests of sales completed during 2009, 2008, and 2007, as of the dates of those sales, were as follows:

Year ended December 31,	Retail finance receivables (a)	Mortgage operations (b)
<b>2009</b>		
<b>Key assumptions (c)</b>		
Prepayment speed (d)	(e)	10.0–12.0%
Weighted average life (in years)	(e)	4.6–6.3
Expected credit losses	(e)	11.0%
Discount rate	(e)	0.6–16.0%
<b>2008</b>		
<b>Key assumptions (c)</b>		
Prepayment speed (d)	1.2–1.4%	1.9–30.0%
Weighted average life (in years)	1.9–2.0	2.4–9.1
Expected credit losses	1.6–2.5%	0.0–3.5%
Discount rate	22.0–25.0%	2.8–25.0%
<b>2007</b>		
<b>Key assumptions (c)</b>		
Prepayment speed (d)	1.2–1.4%	0.6–43.4%
Weighted average life (in years)	1.8–1.9	1.1–14.0
Expected credit losses	1.5–2.1%	0.0–14.5%
Discount rate	16.0–20.0%	4.3–32.6%

(a) The fair value of retained interests in wholesale securitization approximates carrying value because of the short-term and floating-rate nature of wholesale loans.

(b) Included within residential mortgage loans are home equity loans and lines, high loan-to-value loans, and residential first and second mortgage loans.

(c) The assumptions used to measure the expected yield on variable-rate retained interests are based on a benchmark interest rate yield curve plus a contractual spread, as appropriate. The actual yield curve utilized varies depending on the specific retained interests.

(d) Based on monthly prepayment speeds for finance receivables and constant prepayment rate (CPR) for mortgage loans.

(e) During 2009, no new off-balance sheet retail finance receivables were sold.

The following table summarizes pretax gains on securitizations and certain cash flows received from and paid to securitization trusts for transfers of finance receivables and loans completed during 2009.

Year ended December 31, (\$ in millions)	2009		
	Retail finance receivables	Wholesale loans	Mortgage operations
Pretax gains on securitization	\$ —	\$ 110	\$ 21
<b>Cash inflows</b>			
Proceeds from new securitizations	—	—	1,258
Servicing fees received	111	39	272
Other cash flows received on retained interests	269	1,009	119
Proceeds from collections reinvested in revolving securitizations	—	5,998	—
Repayments of servicing advances	45	—	1,266
<b>Cash outflows</b>			
Servicing advances	(27)	—	(1,389)
<b>Purchase obligations and options</b>			
Representations and warranties obligations	—	—	(64)
Administrator or servicer actions	(58)	—	—
Asset performance conditional calls	—	—	(1)
Cleanup calls	(24)	—	—

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The following table summarizes pretax gains on securitizations and certain cash flows received from and paid to securitization trusts for transfers of finance receivables and loans completed in 2008 and 2007.

Year ended December 31, (\$ in millions)	2008			2007		
	Retail finance receivables	Wholesale loans	Mortgage operations	Retail finance receivables	Wholesale loans	Mortgage operations
Pretax (losses) gains on securitization	\$ (68)	\$ 269	\$ (161)	\$ 141	\$ 511	\$ 45
<b>Cash inflows</b>						
Proceeds from new securitizations	4,916	—	2,333	11,440	1,318	35,861
Servicing fees received	165	117	385	96	157	545
Other cash flows received on retained interests	301	505	193	284	522	401
Proceeds from collections reinvested in revolving securitizations	—	57,022	—	—	87,985	122
Repayments of servicing advances	65	—	1,145	79	—	987
<b>Cash outflows</b>						
Servicing advances	(72)	—	(1,195)	(90)	—	(1,023)
<b>Purchase obligations and options</b>						
Mortgage loans under conditional call options	—	—	—	—	—	(147)
Representations and warranties obligations	—	—	(160)	—	—	(457)
Administrator or servicer actions	(62)	—	—	(39)	—	(54)
Asset performance conditional calls	—	—	(2)	—	—	(101)
Cleanup calls	(6)	—	—	(8)	—	(254)

The following table summarizes the key economic assumptions and the sensitivity of the fair value of retained interests at December 31, 2009 and 2008, to immediate 10% and 20% adverse changes in those assumptions.

December 31, (\$ in millions)	2009		2008	
	Retail finance receivables (a)	Mortgage operations	Retail finance receivables (a)	Mortgage operations
Carrying value/fair value of retained interests	\$661	\$268	\$897	\$369
Weighted average life (in years)	0.0–0.9	0.0–4.6	0.0–1.5	0.9–10.4
Annual prepayment rate	0.2– 1.1% WAM	0.6– 97.5% WAM	0.6– 1.1% WAM	0.1– 85.5% CPR
Impact of 10% adverse change	\$(1)	\$(20)	\$(5)	\$(10)
Impact of 20% adverse change	(2)	(36)	(9)	(21)
Loss assumption	1.1–4.8% (b)	0.0–100.0%	0.2–3.4% (b)	0.0–59.0%
Impact of 10% adverse change	\$(13)	\$(4)	\$(23)	\$(9)
Impact of 20% adverse change	(26)	(8)	(46)	(16)
Discount rate	40%	0.2–102.5%	9.5–33.0%	(1.3)–125.3%
Impact of 10% adverse change	\$(23)	\$(10)	\$(42)	\$(16)
Impact of 20% adverse change	(44)	(20)	(81)	(30)
Market rate	(c)	(c)	(c)	(c)
Impact of 10% adverse change	\$—	\$(3)	\$—	\$(2)
Impact of 20% adverse change	—	(4)	—	(3)

- (a) The fair value of retained interests in wholesale securitizations approximates the carrying value of zero and \$710 million at December 31, 2009 and 2008, respectively, because of the short-term and floating-rate nature of wholesale receivables.
- (b) Net of a reserve for expected credit losses totaling \$0 million and \$8 million at December 31, 2009 and 2008, respectively. These amounts are included in the fair value of the retained interests, which are classified as investment securities.
- (c) Forward benchmark interest rate yield curve plus contractual spread.

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These sensitivities are hypothetical and should be viewed with caution. Changes in fair value based on a 10% and 20% variation in assumptions generally cannot be extrapolated because the relationship of the change in assumption to the change in fair value may not be linear. Also, in this table, the effect of a variation in a particular assumption on the fair value of the retained interest is calculated without changing any other assumption. In reality, changes in one factor may result in changes in another, which may magnify or counteract the sensitivities. Additionally, we utilize derivative instruments to mitigate interest rate and prepayment risks associated with certain of the retained interests; the effects of these hedge strategies have not been considered herein.

Expected static pool net credit losses include actual incurred losses plus projected net loan losses divided by the original balance of the outstandings comprising the securitization pool. The following table displays the expected static pool net credit losses on our securitization transactions.

December 31, (a)	2009	2008	2007
Retail automotive	2.9%	1.9%	1.1%
Residential mortgage	0.0–100.0%	0.0–59.0%	0.0–38.0%

(a) Static pool losses not applicable to wholesale finance receivable securitizations because of their short-term nature.

The following table presents components of securitized financial assets and other assets managed along with quantitative information about delinquencies and net credit losses.

December 31, (\$ in millions)	Total finance receivables and loans		Amount 60 days or more past due		Net credit losses	
	2009	2008	2009	2008	2009	2008
Retail automotive	\$ 47,187	\$ 55,884	\$ 1,224	\$ 1,060	\$ 1,411	\$ 1,034
Residential mortgage	126,853	154,841	19,135	13,266	7,478	5,247
Total consumer	174,040	210,725	20,359	14,326	8,889	6,281
Wholesale	25,566	35,205	89	157	21	10
Other automotive and commercial	9,286	13,636	1,262	1,303	793	417
Total commercial	34,852	48,841	1,351	1,460	814	427
Total managed portfolio (a)	208,892	259,566	\$ 21,710	\$ 15,786	\$ 9,703	\$ 6,708
Securitized finance receivables and loans	(110,566)	(149,919)				
Loans held-for-sale	(20,625)	(7,919)				
Total finance receivables and loans	\$ 77,701	\$ 101,728				

(a) Managed portfolio represents finance receivables and loans on the balance sheet or that have been securitized, excluding securitized finance receivables and loans that we continue to service but have no other continuing involvement (i.e., in which we retain an interest or risk of loss in the underlying receivables).

## 11. Investment in Operating Leases

Investments in operating leases were as follows:

December 31, (\$ in millions)	2009	2008
Vehicles and other equipment, after impairment	\$23,919	\$35,625
Accumulated depreciation	(7,924)	(9,235)
Investment in operating leases, net	\$15,995	\$26,390

The future lease nonresidual rental payments due from customers for equipment on operating leases at December 31, 2009, totaled \$5,466 million and are due as follows: \$3,664 million in 2010, \$1,475 million in 2011, \$279 million in 2012, \$46 million in 2013, and \$2 million in 2014 and after.

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Our investment in operating lease assets represents the net book value of our leased assets based on the expected residual value upon remarketing the vehicle at the end of the lease. As described in Note 25, GM may sponsor residual support programs that result in the contractual residual value being in excess of our standard residual value. GM reimburses us if remarketing sales proceeds are less than the customer's contract residual value limited to our standard residual value. In addition to residual support programs, GM also participates in a risk-sharing arrangement whereby GM shares equally in residual losses to the extent that remarketing proceeds are below our standard residual rates (limited to a floor). In connection with the sale of 51% ownership interest in GMAC, GM settled its estimated liabilities with respect to residual support and risk sharing on a portion of our operating lease portfolio. Based on the December 31, 2009, outstanding U.S. operating lease portfolio, the maximum amount that could be paid by GM under the residual support programs and the risk-sharing arrangement is approximately \$1.1 billion and \$1.3 billion, respectively, as more fully discussed in Note 25.

In light of the significant declines in used vehicle prices during 2008 in the United States, Canada, and several international markets, we concluded certain triggering events occurred during the year ended December 31, 2008, requiring an evaluation of recoverability for certain operating lease assets within our Global Automotive Finance operations. We grouped these operating lease assets at the lowest level that we could reasonably estimate the identifiable cash flows. In assessing for recoverability, we compared our estimates of future cash flows related to these lease assets to their corresponding carrying values. We considered all of the expected cash flows including customer payments, the expected residual value upon remarketing the vehicle at lease termination, and any payments from GM under residual and risk-sharing agreements. To the extent these undiscounted cash flows were less than their respective carrying values, we discounted the cash flows to arrive at an estimated fair value. As a result of this evaluation, during the year ended December 31, 2008, we reduced our carrying values to equal the estimated fair values and realized impairment charges of \$1,234 million. Impairments recognized by our North American Automotive Finance operations consisted of \$808 million related to sport-utility vehicles and trucks in the United States and Canada and \$384 million related to the car portfolio in the United States. The impairment recognized by our International Automotive Finance operations totaled \$42 million for full-service leasing portfolio. During the year ended December 31, 2009, \$16 million of the 2008 impairment charges related to the full-service leasing portfolio were reclassified to discontinued operations.

While we believe our estimates of discounted future cash flows used for the impairment analysis were reasonable based on current market conditions, the process required the use of significant estimates and assumptions. In developing these estimates and assumptions, management used all available evidence. However, because of uncertainties associated with estimating the amounts, timing, and likelihood of possible outcomes, the actual cash flows could ultimately differ from those estimated as part of the recoverability and impairment analyses.

Imbedded in our residual value projections are estimates of projected recoveries from GM relative to residual support and risk-sharing agreements. No adjustment to these estimates has been made for the collectability of the projected recoveries from GM. As of December 31, 2009, expected residual values included estimates of payments from GM of approximately \$1.0 billion related to residual support and risk-sharing agreements. To the extent GM is not able to fully honor its obligations relative to these agreements, our depreciation expense and remarketing performance would be negatively impacted.

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## 12. Mortgage Servicing Rights

We define our classes of mortgage servicing rights (MSRs) based on both the availability of market inputs and the manner in which we manage our risks of our servicing assets and liabilities. Sufficient market inputs exist to determine the fair value of our recognized servicing assets and servicing liabilities.

The following table summarizes activity related to MSRs carried at fair value.

<i>(\$ in millions)</i>	2009	2008
Estimated fair value at January 1,	\$ 2,848	\$ 4,703
Additions obtained from sales of financial assets	807	1,182
Additions from purchases of servicing rights	19	—
Subtractions from sales of servicing assets	(19)	(797)
Changes in fair value:		
Due to changes in valuation inputs or assumptions used in the valuation model	1,120	(1,401)
Recognized day-one gains on previously purchased MSRs upon adoption of fair value measurement	—	11
Other changes in fair value (a)	(1,261)	(849)
Other changes that affect the balance	15	(1)
Transfer to assets of operations held-for-sale	25	—
Estimated fair value at December 31,	\$ 3,554	\$ 2,848

(a) Other changes in fair value primarily include the accretion of the present value of the discount related to forecasted cash flows and the economic runoff of the portfolio.

We pledged MSRs of \$1.5 billion and \$1.8 billion as collateral for borrowings at December 31, 2009 and 2008, respectively.

Changes in fair value due to changes in valuation inputs or assumptions used in the valuation models include all changes due to a revaluation by a model or by a benchmarking exercise. This line item also includes changes in fair value due to a change in valuation assumptions and/or model calculations. Other changes in fair value primarily include the accretion of the present value of the discount related to forecasted cash flows and the economic runoff of the portfolio, foreign currency adjustments, and the extinguishment of mortgage servicing rights related to clean-up calls of securitization transactions.

The key economic assumptions and sensitivity of the current fair value of MSRs to immediate 10% and 20% adverse changes in those assumptions are as follows:

<i>December 31, (\$ in millions)</i>	2009	2008
Range of prepayment speeds (constant prepayment rate)	2.4–47.1%	0.7–46.5%
Impact on fair value of 10% adverse change	\$(167)	\$(239)
Impact on fair value of 20% adverse change	(321)	(449)
Range of discount rates	7.2–15.5%	2.7–130.3%
Impact on fair value of 10% adverse change	\$(82)	\$(32)
Impact on fair value of 20% adverse change	(160)	(62)

These sensitivities are hypothetical and should be considered with caution. Changes in fair value based on a 10% variation in assumptions generally cannot be extrapolated because the relationship of the change in assumptions to the change in fair value may not be linear. Also, the effect of a variation in a particular assumption on the fair value is calculated without changing any other assumption. In reality, changes in one factor may result in changes in another (e.g., increased market interest rates may result in lower prepayments and increased credit losses) that could magnify or counteract the sensitivities. Further, these sensitivities show only the change in the asset balances and do not show any expected change in the fair value of the instruments used to manage the interest rates and prepayment risks associated with these assets.

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The primary risk of our servicing rights is interest rate risk and the resulting impact on prepayments. A significant decline in interest rates could lead to higher-than-expected prepayments that could reduce the value of the MSR. Historically, we have economically hedged the income statement impact of these risks with both derivative and nonderivative financial instruments. These instruments include interest rate swaps, caps and floors, options to purchase these items, futures, and forward contracts and/or purchasing or selling U.S. Treasury and principal-only securities. The fair value of derivative financial instruments used to mitigate these risks amounted to \$198 million and \$977 million at December 31, 2009 and 2008, respectively. The change in fair value of the derivative financial instruments amounted to a loss of \$1 billion and a gain of \$2 billion for the years ended December 31, 2009 and 2008, respectively, and is included in servicing asset valuation and hedge activities, net, in the Consolidated Statement of Income. Refer to Note 21 for a discussion of the derivative financial instruments used to hedge mortgage servicing rights.

The components of mortgage servicing fees were as follows:

Year ended December 31, (\$ in millions)	2009	2008
Contractual servicing fees, net of guarantee fees and including subservicing	\$1,080	\$1,227
Late fees	78	113
Ancillary fees	163	144
Total	\$1,321	\$1,484

Our Mortgage operations that conduct primary and master servicing activities are required to maintain certain servicer ratings in accordance with master agreements entered into with a government-sponsored entity. The servicer ratings provided by certain rating agencies are highly correlated with our Mortgage operations' consolidated tangible net worth and overall financial strength. At December 31, 2009, our Mortgage operations were in compliance with the servicer-rating requirements of the master agreements.

In certain of our Mortgage operation's domestic securitizations, the surety or other provider of contractual credit support is entitled to declare a servicer default and terminate the servicer upon the failure of the loans to meet certain portfolio delinquency and/or cumulative loss thresholds. In 2009, our Mortgage operations received notice of termination from surety providers with respect to securitizations having an unpaid principal balance of \$4.8 billion. Our Mortgage operations also recorded a loss on its MSRs of \$78 million due to existing or anticipated delinquency and/or cumulative loss threshold breaches.

## 13. Premiums Receivable and Other Insurance Assets

Premiums receivable and other insurance assets consisted of the following:

December 31, (\$ in millions)	2009	2008
Prepaid reinsurance premiums	\$ 346	\$ 511
Reinsurance recoverable on unpaid losses	670	1,660
Reinsurance recoverable on paid losses	114	126
Premiums receivable (a)	388	698
Deferred policy acquisition costs	1,202	1,512
Total premiums receivable and other insurance assets	\$2,720	\$4,507

(a) Net of a \$7 million and \$18 million allowance for uncollectible premiums receivables at December 31, 2009 and 2008, respectively.

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## 14. Other Assets

Other assets consisted of:

December 31, (\$ in millions)	2009	2008
Property and equipment at cost	\$ 1,416	\$ 1,535
Accumulated depreciation	(1,080)	(1,104)
Net property and equipment	336	431
Restricted cash collections for securitization trusts (a)	3,654	3,143
Fair value of derivative contracts in receivable position	2,654	5,014
Servicer advances	2,180	2,126
Derivative collateral placed with counterparties	1,760	826
Cash reserve deposits held-for-securitization trusts (b)	1,594	3,160
Restricted cash and cash equivalents	1,590	2,014
Debt issuance costs	829	788
Prepaid expenses and deposits	749	428
Other accounts receivable	573	2,300
Goodwill	526	1,357
Investment in used vehicles held-for-sale	522	574
Interests retained in securitization trusts	471	1,001
Real estate and other investments (c)	340	642
Reposessed and foreclosed assets, net, at lower of cost or fair value	336	916
Accrued interest and rent receivable	326	591
Other assets	1,447	1,611
<b>Total other assets</b>	<b>\$19,887</b>	<b>\$26,922</b>

(a) Represents cash collection from customer payments on securitized receivables. These funds are distributed to investors as payments on the related secured debt.

(b) Represents credit enhancement in the form of cash reserves for various securitization transactions we have executed.

(c) Includes residential real estate investments of \$50 million and \$189 million and related accumulated depreciation of \$1 million and \$2 million for the years ended December 31, 2009 and 2008, respectively.

The changes in the carrying amounts of goodwill for the periods shown were as follows:

(\$ in millions)	North American Automotive Finance operations		International Automotive Finance operations		Insurance	Other	Total
Goodwill acquired prior to December 31, 2007	\$	14	\$	527	\$ 953	\$ 1,541	\$ 3,035
Accumulated impairment losses		—		—		(1,539)	(1,539)
Goodwill at December 31, 2007	\$	14	\$	527	\$ 953	\$ 2	\$ 1,496
Impairment losses (a)		(14)		—	(42)	(2)	(58)
Foreign currency translation effect		—		(37)	(44)	—	(81)
Goodwill at December 31, 2008 (b)	\$	—	\$	490	\$ 867	\$ —	\$ 1,357
Sale of reporting unit		—		—	(107)	—	(107)
Impairment losses (a)		—		—	(607)	—	(607)
Transfer of assets of discontinued operations held-for-sale		—		(22)	(108)	—	(130)
Foreign currency translation		—		1	12	—	13
Goodwill at December 31, 2009 (c)	\$	—	\$	469	\$ 57	\$ —	\$ 526

(a) During the three months ended December 31, 2008, and the three months ended June 30, 2009, our Insurance operations initiated an evaluation of goodwill for potential impairment, which was in addition to our annual impairment evaluation. These tests were initiated in light of a more-than-likely expectation that a reporting unit or a significant portion of a reporting unit will be sold. The fair value was determined using offers provided by willing purchasers. Based on the preliminary results of the assessments, our Insurance operations concluded that the carrying value of these reporting units exceeded the fair value resulting in an impairment loss during both 2008 and 2009.

(b) Net of accumulated impairment losses of \$14 million for North American Automotive Finance operations and \$42 million for Insurance operations.

(c) Net of accumulated impairment losses of \$649 million for Insurance operations.

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## 15. Deposit Liabilities

Deposit liabilities consisted of the following:

December 31, (\$ in millions)	2009	2008
<b>Domestic deposits</b>		
Noninterest-bearing deposits	\$ 1,755	\$ 1,496
NOW and money market checking accounts	7,213	3,578
Certificates of deposit	19,861	13,705
Dealer wholesale deposits	1,041	342
<b>Total domestic deposits</b>	<b>29,870</b>	<b>19,121</b>
<b>Foreign deposits</b>		
NOW and money market checking accounts	165	9
Certificates of deposit	1,555	638
Dealer deposits	166	39
<b>Total foreign deposits</b>	<b>1,886</b>	<b>686</b>
<b>Total deposit liabilities</b>	<b>\$31,756</b>	<b>\$19,807</b>

Noninterest bearing deposits primarily represent third-party escrows associated with our Mortgage operations' loan servicing portfolio. The escrow deposits are not subject to an executed agreement and can be withdrawn without penalty at any time. At December 31, 2009 and 2008, certificates of deposit included \$4.8 billion and \$1.9 billion, respectively, of domestic certificates of deposit in denominations of \$100 thousand or more.

The following table presents the scheduled maturity of total certificates of deposit at December 31, 2009.

Year ended December 31, (\$ in millions)	
2010	\$18,017
2011	2,148
2012	611
2013	307
2014	333
<b>Total certificates of deposit</b>	<b>\$21,416</b>

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## 16. Debt

The following table presents the composition of our debt portfolio at December 31, 2009 and 2008.

December 31, (\$ in millions)	Weighted average interest rates (a)		2009			2008		
	2009	2008	Unsecured	Secured	Total	Unsecured	Secured	Total
<b>Short-term debt</b>								
Commercial paper			\$ 8	\$ —	\$ 8	\$ 146	\$ —	\$ 146
Demand notes			1,311	—	1,311	1,342	—	1,342
Bank loans and overdrafts			1,598	—	1,598	2,963	—	2,963
Repurchase agreements and other (b)			348	7,027	7,375	657	5,278	5,935
<b>Total short-term debt</b>	<b>4.6%</b>	6.5%	<b>3,265</b>	<b>7,027</b>	<b>10,292</b>	5,108	5,278	10,386
<b>Long-term debt</b>								
Due within one year	4.0%	4.8%	7,429	18,898	26,327	10,279	18,858	29,137
Due after one year (c)	5.6%	5.8%	38,331	22,834	61,165	37,101	48,972	86,073
<b>Total long-term debt (d)</b>	<b>5.1%</b>	5.6%	<b>45,760</b>	<b>41,732</b>	<b>87,492</b>	47,380	67,830	115,210
Fair value adjustment (e)			529	—	529	725	—	725
<b>Total debt</b>			<b>\$ 49,554</b>	<b>\$ 48,759</b>	<b>\$ 98,313</b>	\$ 53,213	\$ 73,108	\$ 126,321

(a) The weighted average interest rates include the effects of derivative financial instruments designated as hedges of debt.

(b) Repurchase agreements consist of secured financing arrangements with third parties at ResCap. Other primarily includes nonbank secured borrowings and notes payable to GM. Refer to Note 25 for additional information.

(c) Includes \$7,400 million as of December 31, 2009, guaranteed by the Federal Deposit Insurance Corporation (FDIC) under the Temporary Liquidity Guarantee Program (TLGP) and \$2,747 million of junior subordinated notes related to trust preferred securities.

(d) Secured long-term debt includes \$1.3 billion and \$1.9 billion at fair value as of December 31, 2009 and 2008, respectively, as a result of fair value option election. Refer to Note 27 for additional information.

(e) Amount represents the hedge accounting adjustment on fixed-rate debt.

The following table presents the scheduled maturity of long-term debt at December 31, 2009, assuming no early redemptions will occur. The actual payment of secured debt may vary based on the payment activity of the related pledged assets.

Year ended December 31, (\$ in millions)	Unsecured (a)	Secured (b)	Total
2010	\$ 7,484	\$ 19,648	\$ 27,132
2011	9,952	12,606	22,558
2012	12,463	2,916	15,379
2013	1,882	1,824	3,706
2014	1,991	1,453	3,444
2015 and thereafter	16,362	1,344	17,706
Original issue discount (c)	(4,374)	—	(4,374)
Troubled debt restructuring concession (d)	—	457	457
<b>Long-term debt (e)</b>	<b>45,760</b>	<b>40,248</b>	<b>86,008</b>
Collateralized borrowings in securitization trusts (f)	—	1,484	1,484
<b>Total long-term debt</b>	<b>\$ 45,760</b>	<b>\$ 41,732</b>	<b>\$ 87,492</b>

(a) Scheduled maturities of ResCap unsecured long-term debt are as follows: \$1,316 million in 2010; \$208 million in 2011; \$358 million in 2012; \$528 million in 2013; \$118 million in 2014; and \$103 million in 2015 and thereafter. These maturities exclude ResCap debt held by GMAC.

(b) Scheduled maturities of ResCap secured long-term debt are as follows: \$1,554 million in 2010; \$0 million in 2011; \$0 million in 2012; \$707 million in 2013; \$707 million in 2014; and \$929 million in 2015 and thereafter. These maturities exclude ResCap debt held by GMAC.

(c) Scheduled amortization of original issue discount is as follows: \$1,244 million in 2010; \$1,015 million in 2011; \$337 million in 2012; \$252 million in 2013; \$176 million in 2014; and \$1,350 million in 2015 and thereafter.

(d) In the second quarter of 2008, ResCap executed an exchange offer that resulted in a concession being recognized as an adjustment to the carrying value of certain new secured notes. This concession is being amortized over the life of the new notes through a reduction to interest expense using an effective yield methodology. Scheduled remaining amortization of the troubled debt restructuring is as follows: \$110 million in 2010; \$101 million in 2011; \$105 million in 2012; \$83 million in 2013; \$46 million in 2014; and \$12 million in 2015 and thereafter.

(e) Debt issues totaling \$10,735 million are redeemable at or above par, at our option, anytime before the scheduled maturity dates, the latest of which is November 2049.

(f) Collateralized borrowings in securitization trust represents mortgage lending-related debt that is repaid upon the principal payment of underlying assets.

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To achieve the desired balance between fixed- and variable-rate debt, we utilize interest rate swap and interest rate cap agreements. The use of these derivative financial instruments had the effect of synthetically converting \$33.4 billion of our \$74.1 billion of fixed-rate debt into variable-rate obligations and \$26.6 billion of our \$28.2 billion of variable-rate debt into fixed-rate obligations at December 31, 2009. In addition, certain of our debt obligations are denominated in currencies other than the currency of the issuing country. Foreign currency swap agreements are used to hedge exposure to changes in the exchange rates of obligations.

The following summarizes assets restricted as collateral for the payment of the related debt obligation primarily arising from securitization transactions accounted for as secured borrowings and repurchase agreements:

December 31, (\$ in millions)	2009		2008	
	Assets	Related secured debt (a)	Assets	Related secured debt (a)
Loans held-for-sale	\$ 1,420	\$ 454	\$ 1,549	\$ 660
Mortgage assets held-for-investment and lending receivables	1,946	1,673	7,011	5,422
Retail automotive finance receivables (b)	19,203	13,597	30,676	22,091
Wholesale automotive finance receivables	16,352	8,565	20,738	11,857
Investment securities	63	—	646	481
Investment in operating leases, net	13,323	9,208	18,885	16,744
Real estate investments and other assets	4,468	5,129	6,579	6,550
Ally Bank (c)	24,276	10,133	25,548	9,303
<b>Total</b>	<b>\$81,051</b>	<b>\$ 48,759</b>	<b>\$111,632</b>	<b>\$ 73,108</b>

(a) Included as part of secured debt are repurchase agreements of \$26 million and \$588 million where we have pledged assets as collateral for approximately the same amount of debt at December 31, 2009 and 2008, respectively.

(b) Included as part of retail automotive finance receivables are \$1.9 billion of assets and \$1.6 billion of secured debt related to Ally Bank.

(c) Ally Bank has an advance agreement with the Federal Home Loan Bank of Pittsburgh (FHLB) and access to the Federal Reserve Bank Discount Window and Term Auction Facility program. Ally Bank had assets pledged and restricted as collateral to the FHLB and Federal Reserve Bank totaling \$22.4 billion and \$21.9 billion as of December 31, 2009 and 2008, respectively. Furthermore, under the advance agreement the FHLB has a blanket lien on certain Ally Bank assets including approximately \$11.5 billion and \$18.3 billion in real estate-related finance receivables and loans and \$2.7 billion and \$1.6 billion in other assets as of December 31, 2009 and 2008, respectively. Availability under these programs is generally only for the operations of Ally Bank and cannot be used to fund the operations or liabilities of GMAC or its subsidiaries.

## Private Debt Exchange and Cash Tender Offers

On November 20, 2008, we commenced separate private exchange and cash tender offers to purchase and/or exchange certain of our and our subsidiaries (the GMAC Offers) and ResCap's (the ResCap Offers) outstanding notes held by eligible holders for cash, newly issued notes of GMAC, and in the case of the GMAC Offers only, preferred stock of a wholly owned GMAC subsidiary.

In the GMAC Offers, we offered to purchase and/or exchange any and all of certain old GMAC notes (the GMAC Old Notes) held by eligible holders for, at the election of each eligible holder, either (a)(1) newly issued senior guaranteed notes of GMAC on substantially the same terms as the applicable series of GMAC Old Notes exchanged (the Guaranteed Notes), except for the Guaranteed Notes being guaranteed by certain subsidiaries of GMAC, and (2) newly issued 9% perpetual senior preferred stock (which has been subsequently reduced to 7% pursuant to the terms of such securities) with a liquidation preference of \$1,000 per share of a wholly owned nonconsolidated subsidiary of GMAC (the New Preferred Stock) or (b) cash, in each case in the amounts per \$1,000 principal amount of GMAC Old Notes as specified in the related offering materials. To the extent that cash required to purchase all GMAC Old Notes tendered pursuant to cash elections exceeded \$2 billion, each eligible holder who made a cash election had the amount of GMAC Old Notes it tendered for cash accepted on a pro rate basis across all series such that the aggregate amount of cash spent in the offers equaled \$2 billion, and the balance of GMAC Old Notes each such holder tendered that was not accepted for purchase for cash was exchanged into new securities as if such holder had made a new securities election in accordance with option (a) described above.

# Notes to Consolidated Financial Statements

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The Guaranteed Notes (the Note Guarantees) are guaranteed, on a joint and several basis, by GMAC Latin America Holdings LLC, GMAC International Holdings Coöperatief U.A., GMAC Continental LLC, IB Finance Holding Company LLC, and GMAC US LLC (each a Note Guarantor), which are all wholly owned subsidiaries of GMAC. The Note Guarantees are senior obligations of each Note Guarantor and rank equally with all existing and future senior debt of each Note Guarantor. The Note Guarantees rank senior to all subordinated debt of each Note Guarantor.

In the ResCap Offers, GMAC offered to purchase and/or exchange any and all of certain ResCap notes (the ResCap Old Notes) held by eligible holders for, at the election of each eligible holder, either (a)(1) in the case of 8.50% notes of ResCap maturing on May 15, 2010, newly issued 7.50% senior notes of GMAC due 2013 (the New Senior Notes) or (2) in the case of all other series of ResCap Old Notes, a combination of New Senior Notes and newly issued 8.00% subordinated notes of GMAC due 2018 (the Subordinated Notes), or (b) cash, in all cases in the amount of \$1,000 principal amount of ResCap Old Notes as specified in the related offering materials. To the extent that cash required to purchase all ResCap Old Notes tendered pursuant to cash elections exceeded \$500 million, each eligible holder who made a cash election had the amount of ResCap Old Notes it tendered for cash accepted on a pro rata basis across all series such that the aggregate amount of cash spent in the offers equaled \$500 million, and the balance of ResCap Old notes each such holder tendered that was not accepted for purchase for cash was exchanged into new securities as if such holder had made a new securities election in accordance with option (a) described above.

The GMAC Offers and ResCap offers (collectively, the Offers) settled on December 31, 2008. Approximately \$17.5 billion in the aggregate principal amount (or 59%) of the outstanding GMAC Old Notes were validly tendered and accepted in the GMAC Offers, and approximately \$3.7 billion in aggregate principal amount (or 39%) of the outstanding ResCap Old Notes were validly tendered and accepted in the ResCap Offers.

The GMAC Offers and the ResCap Offers were accounted for as a debt modification and resulted in a pretax gain on extinguishment of debt of \$11.5 billion. The gain on extinguishment consisted of a \$3.8 billion principal discount, a \$5.4 billion discount representing the difference between the face value and the estimated fair value of the new GMAC and ResCap notes, and a \$2.3 billion discount representing the difference between the face value and estimated fair value of new preferred stock. The discount of the new GMAC and ResCap notes will be amortized as interest expense over the terms of the new notes using the effective interest method.

The accounting for the GMAC Offers and ResCap Offers required the use of critical accounting judgments and estimates. Refer to Note 1 for additional information.

In the fourth quarter of 2007, we paid \$900 million through open-market repurchases and \$241 million through a tender offer for publicly traded ResCap debt securities resulting in an after-tax gain of \$563 million. Also in the fourth quarter of 2007, we paid \$287 million through open-market repurchases of GMAC debt securities resulting in an after-tax gain of \$16 million.

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## Funding Facilities

The following table highlights credit capacity under our secured and unsecured funding facilities as of December 31, 2009 and 2008. We utilize both committed and uncommitted credit facilities. The financial institutions providing the uncommitted facilities are not legally obligated to advance funds under them. The amounts in the outstanding column in the table below are generally included on our Consolidated Balance Sheet with the exception of approximately \$3.1 billion, which is mainly composed of funding generated by special-purpose entities known as New Center Asset Trust (NCAT) and Total Asset Collateralized Notes LLC (TACN).

December 31, (\$ in billions)	Total capacity		Current capacity (a)		Potential capacity (b)		Outstanding	
	2009	2008	2009	2008	2009	2008	2009	2008
<b>Committed unsecured</b>								
Automotive Finance operations	\$ 0.8	\$ 1.7	\$ 0.1	\$ 0.2	\$ —	\$ —	\$ 0.7	\$ 1.5
<b>Committed secured</b>								
Automotive Finance operations (c)	35.8	56.2	3.1	0.7	9.0	15.6	23.7	39.9
Mortgage operations	2.1	5.4	—	—	0.4	2.3	1.7	3.1
Other	0.2	2.8	—	—	0.1	0.9	0.1	1.9
<b>Total committed facilities</b>	<b>38.9</b>	<b>66.1</b>	<b>3.2</b>	<b>0.9</b>	<b>9.5</b>	<b>18.8</b>	<b>26.2</b>	<b>46.4</b>
<b>Uncommitted unsecured</b>								
Automotive Finance operations	0.9	2.1	0.1	0.2	—	—	0.8	1.9
Mortgage operations	—	0.1	—	0.1	—	—	—	—
<b>Uncommitted secured</b>								
Automotive Finance operations (d)	5.7	4.4	1.9	4.1	0.1	—	3.7	0.3
Mortgage operations (e) (f)	8.6	9.5	1.7	0.2	0.2	—	6.7	9.3
<b>Total uncommitted facilities</b>	<b>15.2</b>	<b>16.1</b>	<b>3.7</b>	<b>4.6</b>	<b>0.3</b>	<b>—</b>	<b>11.2</b>	<b>11.5</b>
<b>Total</b>	<b>\$54.1</b>	<b>\$ 82.2</b>	<b>\$ 6.9</b>	<b>\$ 5.5</b>	<b>\$ 9.8</b>	<b>\$18.8</b>	<b>\$37.4</b>	<b>\$ 57.9</b>
Whole-loan forward flow agreements (g)	\$ 9.4	\$ 17.8	\$ —	\$ —	\$ 9.4	\$ 17.8	\$ —	\$ —
<b>Total commitments</b>	<b>\$63.5</b>	<b>\$100.0</b>	<b>\$ 6.9</b>	<b>\$ 5.5</b>	<b>\$19.2</b>	<b>\$36.6</b>	<b>\$37.4</b>	<b>\$ 57.9</b>

(a) Funding is generally available upon request as excess collateral resides in certain facilities.

(b) Funding is generally available to the extent incremental collateral is contributed to the facilities.

(c) Potential capacity at December 31, 2008, included undrawn credit commitments that served as backup liquidity to support our asset-backed commercial paper program (NCAT). There was \$9.0 billion of potential capacity that was supporting \$8.0 billion of outstanding NCAT commercial paper as of December 31, 2008. The NCAT commercial paper outstanding was not included on our Consolidated Balance Sheet.

(d) Included \$5.3 billion and \$4.0 billion of capacity from Federal Reserve Bank advances with \$3.4 billion and no amounts outstanding as of December 31, 2009 and 2008, respectively.

(e) Included \$2.5 billion of capacity from Federal Reserve Bank advances with \$1.6 billion outstanding as of December 31, 2009.

(f) Included \$5.9 billion and \$9.5 billion of capacity from FHLB advances with \$5.1 billion and \$9.3 billion outstanding as of December 31, 2009 and 2008, respectively.

(g) Represents commitments of financial institutions to purchase U.S. automotive retail assets.

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## 17. Reserves for Insurance Losses and Loss Adjustment Expenses

The following table provides a reconciliation of the activity in the reserves for insurance losses and loss adjustment expenses.

Year ended December 31, (\$ in millions)	2009	2008	2007
Balance at beginning of year	\$ 2,895	\$ 3,089	\$ 2,630
Reinsurance recoverables	(1,660)	(893)	(876)
Net balance at beginning of year	1,235	2,196	1,754
Net reserves ceded — retroactive reinsurance (a)	—	(703)	—
Net reserves from acquisitions	—	—	418
Net reserves from sale (b)	(82)	—	—
Incurred from continuing operations related to			
Current year	1,021	1,437	1,439
Prior years (c)	19	(41)	(57)
Total incurred from continuing operations	1,040	1,396	1,382
Incurred from discontinued operations related to			
Current year	1,007	1,142	1,083
Prior years (d)	(4)	(16)	(14)
Total incurred from discontinued operations	1,003	1,126	1,069
Paid related to			
Current year	(1,353)	(1,692)	(1,641)
Prior years	(583)	(931)	(808)
Total paid	(1,936)	(2,623)	(2,449)
Net reserves reclassified to liabilities of discontinued operations held-for-sale (e)	(784)	—	—
Effects of exchange-rate changes	69	(157)	22
Net balance at end of year (f)	545	1,235	2,196
Reinsurance recoverables	670	1,660	893
Balance at end of year	\$ 1,215	\$ 2,895	\$ 3,089

(a) On November 3, 2008, we entered into a loss portfolio transfer that ceded our losses and loss adjustment expenses related to business underwritten by our U.S. reinsurance agency, which was sold on the same date. The loss portfolio transfer was accounted for as retroactive reinsurance. Retroactive reinsurance balances result from reinsurance placed to cover losses on insured events occurring prior to the inception of a reinsurance contract.

(b) During 2009, the Company completed the sale of a personal automotive insurance division.

(c) Incurred losses and loss adjustment expenses during 2009, 2008, and 2007 from continuing operations were adjusted by \$19 million, (\$41) million, and (\$57) million, respectively, as a result of decreases in prior years' reserve estimates for certain reinsurance coverages assumed and international private passenger automobile coverages. In 2009, there was a positive development in prior years' reserves estimates related to dealer-related products.

(d) Incurred losses and loss adjustment expenses during 2009, 2008, and 2007 from discontinued operations were reduced by \$4 million, \$16 million, and \$14 million, respectively, as a result of decreases in prior years' reserve estimates that were lower than anticipated for certain private passenger automobile coverages.

(e) Reclassification is net of reinsurance recoveries.

(f) Includes exposure to asbestos and environmental claims from the reinsurance of general liability, commercial multiple peril, homeowners' and workers' compensation claims. Reported claim activity to date has not been significant. Net reserves for loss and loss adjustment expenses for these matters were \$3 million, \$4 million, and \$5 million at December 31, 2009, 2008, and 2007, respectively.

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## 18. Accrued Expenses and Other Liabilities

Accrued expenses and other liabilities consisted of:

December 31, (\$ in millions)	2009	2008
Loan repurchase liabilities	\$ 1,953	\$ 790
Fair value of derivative contracts in payable position	1,895	2,653
Reserves for loans sold with recourse	1,322	314
Accounts payable	1,275	2,586
Taxes payable, net	756	506
Securitization trustee payable	528	821
Derivative liabilities received from counterparties	432	1,486
Employee compensation and benefits	403	453
Deferred income taxes, net	302	558
Reinsurance payable	208	134
GM payable, net	179	322
Deferred revenue	91	602
Factored client payables	15	394
Other liabilities	1,097	1,107
<b>Total accrued expenses and other liabilities</b>	<b>\$10,456</b>	<b>\$12,726</b>

## 19. Equity

### Common Stock

We currently have a total of 2,021,384 shares of common stock authorized for issuance, and as of February 25, 2010, a total of 799,120 shares of common stock were issued and outstanding. Our common stock is not registered with the Securities and Exchange Commission, and there is no established trading market for the shares. The U.S. Department of Treasury (the Treasury) holds 56.33% of GMAC common stock.

### Preferred Stock

#### Series F-2 Preferred Stock

On December 30, 2009, GMAC entered into a Securities Purchase and Exchange Agreement (the Purchase Agreement) with the Treasury, pursuant to which, among other things, the following transactions occurred:

- GMAC issued and sold to the Treasury 25,000,000 shares of GMAC's newly issued Fixed Rate Cumulative Mandatorily Convertible Preferred Stock, Series F-2 (the New MCP), with an aggregate liquidation preference of \$1,250,000,000;
- GMAC issued and sold to the Treasury a ten-year warrant to purchase up to 1,250,000 additional shares of New MCP, with an aggregate liquidation preference of \$62,500,000, at an initial exercise price of \$0.01 per security (the MCP Warrant) (the Treasury immediately exercised the MCP Warrant in full);
- GMAC exchanged shares of its existing preferred stock held by the Treasury with an aggregate liquidation preference of \$10,125,000,000 consisting of (1) 5,000,000 shares of GMAC's Fixed Rate Cumulative Perpetual Preferred Stock, Series D-1 (the Series D-1 Preferred Stock); (2) 250,000 shares of GMAC's Fixed Rate Cumulative Perpetual Preferred Stock, Series D-2 (the Series D-2 Preferred Stock); and (3) 97,500,000 shares of GMAC Fixed Rate Cumulative Mandatorily Convertible Preferred Stock, Series F (the Series F Preferred Stock), for 202,500,000 shares of New MCP, with an aggregate liquidation preference of \$10,125,000,000; and
- 60,000,000 shares of existing Series F Preferred Stock, all of which were owned by the Treasury, were converted into 259,200 shares of GMAC common stock in accordance with the conversion terms applicable to the Series F Preferred Stock.

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As a result of the above transactions, the Treasury currently holds 228,750,000 shares of New MCP, with a total liquidation preference of \$11,437,500,000 (which are convertible into an additional 988,200 shares of GMAC common stock if converted as of the filing date of this Form 10-K). Each share of the new MCP has a liquidation preference of \$50 and dividends accrue at 9% per annum. The previously issued Series D-1 Preferred Stock, Series D-1 Preferred Stock and Series F Preferred Stock, are no longer outstanding.

## Series G Preferred Stock

Effective June 30, 2009, and as previously disclosed, GMAC was converted (the Conversion) from a Delaware limited liability company into a Delaware corporation in accordance with applicable law, and was renamed "GMAC Inc." In connection with the Conversion, the 7% Cumulative Perpetual Preferred Stock (the Blocker Preferred) of Preferred Blocker Inc. (PBI), a wholly-owned subsidiary of GMAC, was required to be converted into or exchanged for preferred stock of GMAC. For this purpose, GMAC had previously authorized for issuance its 7% Fixed Rate Cumulative Perpetual Preferred Stock, Series G (the Series G Preferred Stock). Pursuant to the terms of a Certificate of Merger, effective October 15, 2009, PBI merged with and into GMAC with GMAC continuing as the surviving entity. At this time each share of the Blocker Preferred issued and outstanding immediately prior to the effective time of the merger was converted into the right to receive an equal number of newly issued shares of Series G Preferred Stock. In the aggregate, 2,576,601 shares of Series G Preferred Stock were issued to holders of the Blocker Preferred in connection with the merger. The Series G Preferred Stock bears interest at a rate of 7% per annum and ranks equally in right of payment with each of GMAC's outstanding series of preferred stock in accordance with the terms thereof.

## Series A Preferred Stock

We currently have authorized 4,021,764 shares of GMAC Fixed Rate Perpetual Preferred Stock, Series A (the Series A Preferred Stock), 1,021,764 of which are outstanding and held by GM Preferred Finance Co. Holdings Inc., a wholly owned subsidiary of GM. We are required to make distributions for each fiscal quarter with respect to the Series A Preferred Stock if certain conditions are met. Distributions are made in cash no later than the tenth business day following the delivery of our quarterly and annual financial statements and are paid at the rate of 10% per annum. The GMAC Board of Directors is permitted to reduce any distribution to the extent required to avoid a reduction of the equity capital of GMAC below a minimum amount of equity capital as specified in our Certificate of Incorporation. In addition, with the consent of GM, the GMAC Board of Directors may suspend the payment of distributions with respect to any one or more fiscal quarters. Distributions not made do not accumulate.

## 20. Regulatory Capital and Other Regulatory Matters

As a bank holding company, we and our wholly owned banking subsidiary, Ally Bank, are subject to risk-based capital and leverage guidelines by federal regulators that require that our capital-to-assets ratios meet certain minimum standards. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary action by regulators that, if undertaken, could have a direct material effect on our consolidated financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, we must meet specific capital guidelines that involve quantitative measures of our assets and certain off-balance sheet items as calculated under regulatory accounting practices. Our capital amounts and classifications are also subject to qualitative judgments by the regulators about components, risk-weightings, and other factors.

The risk-based capital ratios are determined by allocating assets and specified off-balance sheet financial instruments into several broad risk categories with higher levels of capital being required for the categories perceived as representing greater risk. Under the guidelines, total capital is divided into two tiers: Tier 1 capital and Tier 2 capital. Tier 1 capital generally consists of common equity, minority interests, and qualifying preferred stock (including fixed-rate cumulative preferred stock issued and sold to the Treasury) less goodwill and other adjustments. Tier 2 capital generally consist of preferred stock not qualifying as Tier 1 capital, limited amounts of subordinated debt and the allowance for loan losses, and other adjustments. The amount of Tier 2 capital may not exceed the amount of Tier 1 capital.

Total risk-based capital is the sum of Tier 1 and Tier 2 capital. Under the guidelines, banking organizations are required to maintain a minimum Total risk-based capital ratio (total capital to risk-weighted assets) of 8% and a Tier 1 risk-based capital ratio of 4%.

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The federal banking regulators also have established minimum leverage ratio guidelines. The leverage ratio is defined as Tier 1 capital divided by adjusted average total assets (which reflect adjustments for disallowed goodwill and certain intangible assets). The minimum Tier 1 leverage ratio is 3% or 4% depending on factors specified in the regulations.

A banking institution is considered “well-capitalized” when its Total risk-based capital ratio equals or exceeds 10% and its Tier 1 risk-based capital ratio equals or exceeds 6% unless subject to regulatory directive to maintain higher capital levels and for insured depository institutions, a leverage ratio that equals or exceeds 5%.

In conjunction with the conclusion of the Supervisory Capital Assessment Program (S-CAP), the banking regulators have developed a new measure of capital called “Tier 1 common” defined as Tier 1 capital less noncommon elements including qualified perpetual preferred stock, qualifying minority interest in subsidiaries, and qualifying trust preferred securities.

On July 21, 2008, GMAC, FIM Holdings, IB Finance Holding Company, LLC, Ally Bank, and the FDIC entered into a Capital and Liquidity Maintenance Agreement (CLMA). The CLMA requires capital at Ally Bank to be maintained at a level such that Ally Bank’s leverage ratio is at least 11% for a three-year period and thereafter, remain “well-capitalized.” For this purpose, leverage ratio is determined in accordance with the FDIC’s regulations related to capital maintenance.

Additionally, on May 21, 2009, the Federal Reserve Board (FRB) granted Ally Bank an expanded exemption from Section 23A of the Federal Reserve Act. The exemption enables Ally Bank to make certain extensions of credit for the purchase of GM vehicles or vehicles floorplanned by GMAC. The exemption requires GMAC to maintain a Total risk-based capital ratio of 15% and Ally Bank to maintain a Tier 1 leverage ratio of 15%.

The minimum risk-based capital requirements adopted by the federal banking agencies follow the Capital Accord of the Basel Committee on Banking Supervision. Currently all U.S. banks are subject to the Basel I capital rules. The Basel Committee issued Basel II Capital Rules, and the U.S. regulators have issued companion rules applicable to certain U.S.-domiciled institutions. GMAC qualified as a “mandatory” bank holding company that must comply with the U.S. Basel II rules. The Basel Committee on Banking Supervision has issued additional guidance regarding market risk capital rules and Basel II capital rules for securitizations. U.S. banking regulators have not yet issued any companion guidance. We continue to monitor developments with respect to Basel II requirements and are working to ensure successful execution within the required time.

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The following table summarizes our capital ratios. GMAC was not required to calculate risk-based capital ratios, a leverage ratio, or a Tier 1 common ratio prior to becoming a bank holding company in December 2008.

(\$ in millions)	December 31, 2009			
	Amount	Ratio	Required minimum	Well-capitalized minimum
<b>Risk-based capital</b>				
Tier 1 (to risk-weighted assets)				
GMAC Inc.	\$ 22,398	14.15%	4.00%	6.00%
Ally Bank	7,768	20.85%	(a)	6.00%
Total (to risk-weighted asset)				
GMAC Inc.	\$ 24,623	15.55%	15.00% (b)	10.00%
Ally Bank	8,237	22.10%	(a)	10.00%
Tier 1 leverage (to adjusted average assets) (c)				
GMAC Inc.	\$ 22,398	12.70%	3.00–4.00%	(d)
Ally Bank	7,768	15.42%	15.00% (a)	5.00%
Tier 1 common (to risk-weighted assets)				
GMAC Inc.	\$ 7,678	4.85%	n/a	n/a
Ally Bank	n/a	n/a	n/a	n/a

n/a = not applicable

- (a) Ally Bank, in accordance with the FRB exemption from Section 23A, is required to maintain a Tier 1 leverage ratio of 15%. Ally Bank is also required to maintain well-capitalized levels for Tier 1 risk-based capital and total risk-based ratios pursuant to the CLMA.
- (b) GMAC, in accordance with the FRB exemption from Section 23A, is required to maintain a Total risk-based capital ratio of 15%.
- (c) Federal regulatory reporting guidelines require the calculation of adjusted average assets using a daily average methodology. We currently calculate using a combination of monthly and daily average methodologies. We are in the process of modifying information systems to address the daily average requirement.
- (d) There is no Tier 1 leverage component in the definition of a well-capitalized bank holding company.

At December 31, 2009, GMAC and Ally Bank met all required minimum ratios and exceeded “well-capitalized” under the federal regulatory agencies’ definitions as summarized in the table above. Furthermore, following the additional investments and related transactions with the Treasury on December 30, 2009, GMAC has achieved the capital buffer required under the Federal Reserve’s Supervisory Capital Assessment Program needed to meet the worse-than-expected economic scenario. For details of those transactions, refer to the two GMAC Form 8-Ks filed on January 5, 2010.

## Parent Company Agreement

On July 21, 2008, GMAC, FIM Holdings, IB Finance, Ally Bank, and the FDIC (collectively, the Contracting Parties) entered into a Parent Company Agreement (PA). The PA requires that GMAC maintain a total equity to total assets ratio of at least 5% (Equity Ratio). The PA defines “total equity” and “total assets” as total equity and total assets, respectively, as reported on our Consolidated Balance Sheet in our quarterly and annual reports filed with the United States Securities and Exchange Commission. The PA further requires that GMAC, beginning December 31, 2008, maintain a ratio of tangible equity to tangible assets of at least 5% (Tangible Equity Ratio). For this purpose, “tangible equity” means “total equity” minus goodwill and other intangible assets, net of accumulated amortization (other than mortgage servicing assets), and “tangible assets” means “total assets” less all goodwill and other intangible assets (other than mortgage servicing assets). As of December 31, 2009, GMAC’s Equity Ratio and Tangible Equity Ratio were 12.09% and 11.82%, respectively.

## International Banks, Finance Companies, and Other Non-U.S. Operations

Certain of our foreign subsidiaries operate in local markets as either banks or regulated finance companies and are subject to regulatory restrictions. These regulatory restrictions, among other things, require that our subsidiaries meet certain minimum capital requirements and may restrict dividend distributions and ownership of certain assets. Total assets in regulated international banks and finance companies were approximately \$13.6 billion and \$17.3 billion as of December 31, 2009 and 2008, respectively. In addition, the Bank Holding Company Act imposes restrictions on GMAC’s ability to invest equity abroad without FRB approval. Many of our other operations are also heavily regulated in many jurisdictions outside the United States.

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## Depository Institutions

On December 24, 2008, Ally Bank received approval from the Utah Department of Financial Institutions (UDFI) to convert from an industrial bank to a commercial nonmember state chartered bank. Ally Bank, which provides services to both our North American Automotive Finance and Mortgage operations, was previously chartered as an industrial bank pursuant to the laws of Utah, and its deposits are insured by the FDIC. GMAC is required to file periodic reports with the FDIC concerning its financial condition. Assets in Ally Bank approximated \$55.3 billion and \$32.9 billion as of December 31, 2009 and 2008, respectively.

As a commercial nonmember bank chartered by the State of Utah, Ally Bank is subject to various regulatory capital requirements administered by state and federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory and discretionary actions by regulators that, if undertaken, could have a direct material effect on Ally Bank's results of operations and financial condition. Under capital adequacy guidelines and the regulatory framework for prompt corrective actions, Ally Bank must meet specific capital guidelines that involve quantitative measures of Ally Bank's assets, liabilities, and certain off-balance sheet items as calculated under regulatory accounting practices. Ally Bank's capital amounts and classification are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors. Quantitative measures established by regulation to ensure capital adequacy require Ally Bank to maintain minimum amounts and ratios of total and Tier 1 capital to risk-weighted assets, and of Tier 1 capital to average assets. As of December 31, 2009, Ally Bank was in compliance with its regulatory capital requirements.

## U.S. Mortgage Business

Our U.S. mortgage business is subject to extensive federal, state, and local laws, rules, and regulations, in addition to judicial and administrative decisions that impose requirements and restrictions on this business. As a Federal Housing Administration lender, certain of our U.S. mortgage subsidiaries are required to submit audited financial statements to the Department of Housing and Urban Development on an annual basis. It is also subject to examination by the Federal Housing Commissioner to assure compliance with Federal Housing Administration regulations, policies, and procedures. The federal, state, and local laws, rules, and regulations to which our U.S. mortgage business is subject, among other things, impose licensing obligations and financial requirements; limit the interest rates, finance charges, and other fees that can be charged; regulate the use of credit reports and the reporting of credit information; impose underwriting requirements; regulate marketing techniques and practices; require the safeguarding of nonpublic information about customers; and regulate servicing practices, including the assessment, collection, foreclosure, claims handling, and investment and interest payments on escrow accounts.

## Insurance Companies

GMAC Insurance is subject to certain minimum aggregated capital requirements, restricted net assets, and restricted dividend distributions under applicable state insurance law, the National Association of Securities Dealers, the Financial Services Authority in England, the Office of the Superintendent of Financial Institutions of Canada, and the National Insurance and Bonding Commission of Mexico.

Under various U.S. state insurance regulations, dividend distributions may be made only from statutory unassigned surplus, and the state regulatory authorities must approve these distributions if they exceed certain statutory limitations. As of December 31, 2009, the maximum dividend that could be paid by the insurance subsidiaries over the next twelve months without prior statutory approval approximates \$211 million.

## 21. Derivative Instruments and Hedging Activities

We enter into interest rate and foreign currency swaps, futures, forwards, options, swaptions, and credit default swaps in connection with our market risk management activities. Derivative instruments are used to manage interest rate risk relating to specific groups of assets and liabilities, including investment securities, loans held-for-sale, mortgage servicing rights, debt, and deposits. In addition, we use foreign exchange contracts to mitigate foreign currency risk associated with foreign-currency-denominated debt and foreign exchange transactions. Our primary objective for utilizing derivative financial instruments is to manage market risk volatility associated with interest rate and foreign currency risks related to the assets and liabilities of our automotive finance and mortgage operations. One of the key goals of our risk-mitigation strategy is to modify the asset and liability and interest rate mix including the assets and liabilities associated with securitization transactions that

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may be recorded in off-balance sheet SPEs. In addition, we use derivative financial instruments to mitigate the risk of changes in the fair values of loans held-for-sale and mortgage servicing rights.

## Interest Rate Risk

We execute interest rate swaps to modify our exposure to interest rate risk by converting certain fixed-rate instruments to a variable rate. We have applied hedge accounting for certain derivative instruments used to hedge fixed-rate debt. We monitor our mix of fixed- and variable-rate debt in relationship to the rate profile of our assets. When it is cost effective to do so, we may enter into interest rate swaps to achieve our desired mix of fixed- and variable-rate debt.

Our fair value hedges consist of hedges of fixed-rate debt obligations where individual swaps are designated as one-for-one hedges of specific fixed-rate debt obligations. As of December 31, 2009, outstanding interest rate swaps designated as fair value accounting hedges held in an asset position had a fair value of \$478 million, and those held in a liability position had a fair value of \$47 million. The outstanding notional amount as of December 31, 2009, was \$16.9 billion.

We enter into economic hedges to mitigate exposure for the following categories:

- **Mortgage servicing rights and retained interests** — Our mortgage servicing rights and retained interest portfolios are generally subject to loss in value when mortgage rates decline. Declining mortgage rates generally result in an increase in refinancing activity that increases prepayments and results in a decline in the value of mortgage servicing rights and retained interests. To mitigate the impact of this risk, we maintain a portfolio of financial instruments, primarily derivatives that increase in value when interest rates decline. The primary objective is to minimize the overall risk of loss in the value of mortgage servicing rights due to the change in fair value caused by interest rate changes and their interrelated impact to prepayments.

We use a multitude of derivative instruments to manage the interest rate risk related to mortgage servicing rights and retained interests. They include, but are not limited to, interest rate futures contracts, call or put options on U.S. Treasuries, swaptions, MBS futures, U.S. Treasury futures, interest rate swaps, interest rate floors, and interest rate caps. While we do not utilize nonderivative instruments (e.g., U.S. Treasuries) to hedge this portfolio, we have utilized them previously and may utilize them again in the future. We monitor and actively manage our risk on a daily basis, and therefore trading volume can be large.

As of December 31, 2009, outstanding contracts held in an asset position had a fair value of \$805 million, and those held in a liability position had a fair value of \$816 million. The outstanding notional amount was \$153.8 billion as of December 31, 2009.

- **Mortgage loan commitments and mortgage and automotive loans held-for-sale** — We are exposed to interest rate risk from the time an interest rate lock commitment (IRLC) is made until the time the mortgage loan is sold. Changes in interest rates impact the market price for our loans; as market interest rates decline, the value of existing IRLCs and loans held-for-sale go up and vice versa. Our primary objective in risk management activities related to IRLCs and mortgage and automotive loans held-for-sale is to eliminate or greatly reduce any interest rate risk associated with these items.

The primary derivative instrument we use to accomplish this objective for mortgage loans and IRLCs is forward sales of mortgage-backed securities, primarily Fannie Mae or Freddie Mac to-be-announced securities. These instruments typically are entered into at the time the IRLC is made. The value of the forward sales contracts moves in the opposite direction of the value of our IRLCs and mortgage loans held-for-sale. We also use other derivatives, such as interest rate swaps, options, and futures, to hedge automotive loans held-for-sale and certain portions of the mortgage portfolio. Nonderivative instruments may also be periodically used to economically hedge the mortgage portfolio, such as short positions on U.S. Treasuries. We monitor and actively manage our risk on a daily basis.

We do not apply hedge accounting to our derivative portfolio held to economically hedge the IRLCs and mortgage and automotive loans held-for-sale. As of December 31, 2009, outstanding contracts held in an asset position had a fair value of \$225 million, and those held in a liability position had a fair value of \$132 million. The outstanding notional amount was \$45.5 billion as of December 31, 2009.

# Notes to Consolidated Financial Statements

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- **Off-balance sheet securitization activities** — We enter into interest rate swaps to facilitate securitization transactions where the underlying receivables are sold to a nonconsolidated qualifying special-purpose entity (QSPE). As the underlying assets are carried in a nonconsolidated entity, the interest rate swaps do not qualify for hedge accounting treatment. As of December 31, 2009, outstanding contracts held in an asset position had a fair value of \$139 million. The outstanding notional amount was \$4.4 billion as of December 31, 2009.
- **Debt** — As part of our previous on-balance sheet securitizations and/or secured aggregation facilities, certain interest rate swaps or interest rate caps have been included within consolidated variable interest entities; these swaps or caps were generally required to meet certain rating agency requirements or were required by the facility lender/provider. The interest rate swaps and/or caps are generally entered into when the debt is issued; accordingly, current trading activity on this particular derivative portfolio is minimal.

With the exception of a portion of our fixed-rate debt, we have not applied hedge accounting to our derivative portfolio held to economically hedge our debt portfolio. Typically, the significant terms of the interest rate swaps match the significant terms of the underlying debt resulting in an effective conversion of the rate of the related debt. As of December 31, 2009, outstanding contracts held in an asset position had a fair value of \$392 million, and those held in a liability position had a fair value of \$548 million. The outstanding notional was \$53.5 billion as of December 31, 2009.

- **Other** — We enter into futures, options, swaptions, and credit default swaps to hedge our net fixed versus variable interest rate exposure. As of December 31, 2009, outstanding contracts held in an asset position had a fair value of \$51 million, and those in a liability position had a fair value of \$23 million. The outstanding notional amount was \$12.6 billion as of December 31, 2009.

## Foreign Currency Risk

We enter into derivative financial instrument contracts to hedge exposure to variability in cash flows related to foreign currency financial instruments. Currency swaps and forwards are used to hedge foreign exchange exposure on foreign-currency-denominated debt by converting the funding currency to the same currency of the assets being financed. Similar to our interest rate hedges, the swaps are generally entered into or traded concurrent with the debt issuance with the terms of the swap matching the terms of the underlying debt.

Our non-U.S. subsidiaries maintain both assets and liabilities in local currencies; these local currencies are the subsidiaries' functional currencies for accounting purposes. Foreign currency exchange rate gains and losses arise when the assets or liabilities of our subsidiaries are denominated in currencies that differ from its functional currency. In addition, our equity is impacted by the cumulative translation adjustments resulting from the translation of foreign subsidiary results; this impact is reflected in our other comprehensive income (loss). We enter into foreign currency forwards with external counterparties to hedge foreign exchange exposure on the Company's net investments in foreign subsidiaries. Our net investment hedges are recorded at fair value with changes recorded to other comprehensive income (loss) with the exception of the spot to forward difference that is recorded in current period earnings.

In addition, we have a centralized lending program to manage liquidity for all of our subsidiary businesses. Foreign-currency-denominated loan agreements are executed with our foreign subsidiaries in their local currencies. We evaluate our foreign currency exposure resulting from intercompany lending and manage our currency risk exposure by entering into foreign currency derivatives with external counterparties. Our foreign currency derivatives are recorded at fair value with changes recorded as income offsetting the gains and losses on the hedged foreign currency transactions.

With limited exceptions, we have elected not to treat any foreign currency derivatives as hedges for accounting purposes principally because the changes in the fair values of the foreign currency swaps are substantially offset by the foreign currency revaluation gains and losses of the underlying assets and liabilities.

As of December 31, 2009, outstanding foreign currency swaps designated as cash flow accounting hedges held in a liability position had a fair value of \$112 million. The outstanding notional amount was \$334 million.

# Notes to Consolidated Financial Statements

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As of December 31, 2009, outstanding foreign currency exchange derivatives designated as net investment hedges for accounting purposes held in an asset position had a fair value of \$10 million, and those held in a liability position had a fair value of \$41 million. The outstanding notional amount was \$2.4 billion as of December 31, 2009.

As of December 31, 2009, outstanding foreign currency exchange derivatives not designated as hedges for accounting purposes held in an asset position had a fair value of \$555 million, and those held in a liability position had a fair value of \$175 million. The outstanding notional amount was \$22.9 billion as of December 31, 2009.

## Credit Risk

Derivative financial instruments contain an element of credit risk if counterparties are unable to meet the terms of the agreements. Credit risk associated with derivative financial instruments is measured as the net replacement cost should the counterparties that owe us under the contract completely fail to perform under the terms of those contracts, assuming no recoveries of underlying collateral as measured by the market value of the derivative financial instrument. At December 31, 2009 and 2008, the market value of derivative financial instruments in an asset or receivable position was \$2.7 billion and \$5.0 billion including accrued interest of \$314 million and \$271 million, respectively. At December 31, 2009 and 2008, the market value of derivative financial instruments in a liability or payable position was \$1.9 billion and \$2.7 billion including accrued interest of \$91 million and \$104 million, respectively.

To further mitigate the risk of counterparty default, we maintain collateral agreements with certain counterparties. The agreements require both parties to maintain collateral in the event the fair values of the derivative financial instruments meet established thresholds. In the event that either party defaults on the obligation, the secured party may seize the collateral. Generally, our collateral arrangements are bilateral such that we and the counterparty post collateral for the value of their total obligation to each other. Contractual terms provide for standard and customary exchange of collateral based upon changes in the market value of the outstanding derivatives. The securing party posts additional collateral when their obligation has risen or removes collateral when it has fallen. We also have unilateral collateral agreements whereby we are the only entity required to post collateral. We have placed collateral totaling \$1.8 billion and \$1.6 billion December 31, 2009 and 2008, respectively, in accounts maintained by counterparties. We have received cash collateral from counterparties totaling \$432 million and \$1.5 billion at December 31, 2009 and 2008, respectively. The collateral placed and received are included on our Consolidated Balance Sheet in other assets and accrued expenses and other liabilities, respectively. In certain circumstances, we receive or post securities as collateral with counterparties. In accordance with FASB ASC 860-30-25-5, we do not record such collateral received on our statement of financial position unless certain conditions have been met.

## Balance Sheet Presentation

The following table summarizes the fair value amounts of derivative instruments reported on our Consolidated Balance Sheet. The fair value amounts are presented on a gross basis, are segregated by derivatives that are designated and qualifying as hedging instruments or those that are not, and are further segregated by type of contract within those two categories.

	Fair value of derivative contracts in	
	Receivable position (a)	Liability position (b)
December 31, 2009 (\$ in millions)		
Derivatives designated as hedging instruments		
Interest rate risk	\$ 478	\$ 47
Foreign exchange risk	10	153
Total derivatives designated as hedging instruments	488	200
Derivatives not designated as hedging instruments		
Interest rate risk	1,611	1,520
Foreign exchange risk	555	175
Total derivatives not designated as hedging instruments	2,166	1,695
Total derivatives	\$ 2,654	\$ 1,895

(a) Reported as other assets on the Consolidated Balance Sheet.

(b) Reported as accrued expenses and other liabilities on the Consolidated Balance Sheet.

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## Statement of Income Presentation and Accumulated Other Comprehensive Information

The following table summarizes the location and amounts of gains and losses reported in our Consolidated Statement of Income on derivative instruments and related hedge items and amounts flowing through accumulated other comprehensive income. Gains and losses are presented separately for (1) derivative instruments and related hedged items designated and qualifying in fair value hedges; (2) the effective portion of gains and losses on derivative instruments designated and qualifying in cash flow hedges that were recognized in other comprehensive income during the period; (3) the effective portion of gains and losses on derivative instruments designated and qualifying as cash flow hedges recorded in accumulated other comprehensive income during the term of the hedging relationship and reclassified into earnings in the current period; (4) the portion of gains and losses on derivative instruments designated and qualifying in cash flow hedges representing the hedges ineffectiveness and the amount, if any, excluded from the hedge effectiveness assessment; and (5) derivative instruments not designated as hedging instruments.

Year Ended December 31, (\$ in millions)	2009
<b>Derivatives in fair value hedging relationships</b>	
<b>(Loss) recognized in earnings on derivatives</b>	
Interest rate contracts	
Interest on long-term debt	\$ (311)
<b>Gain recognized in earnings on hedged items</b>	
Interest rate contracts	
Interest on long-term debt	260
Total designated interest rate contracts	(51)
<b>Derivatives not designated as hedging relationships</b>	
<b>Gain (loss) recognized in earnings on derivatives</b>	
Interest rate contracts	
Servicing asset valuation and hedge activities, net	(998)
Loss on mortgage and automotive loans, net	(156)
Other loss on investments, net	(4)
Other income, net of losses	183
Other operating expenses	(14)
Total nondesignated interest rate contracts	(989)
Foreign exchange contracts (a)	
Interest on long-term debt	(44)
Other income, net of losses	(195)
Total foreign exchange contracts	(239)
Loss recognized in earnings on derivatives	\$(1,279)

(a) Amount represents the difference between the changes in the fair values of the currency hedge, net of the revaluation of the related foreign denominated debt or foreign denominated receivable.

Year Ended December 31 (\$ in millions)	2009
<b>Derivatives in cash flow hedging relationships</b>	
<b>Gain recognized in other comprehensive income</b>	
Foreign exchange contracts (a)	
Other comprehensive income	\$ 10
<b>Derivatives used as net investment hedges</b>	
<b>Loss recognized in other comprehensive loss</b>	
Foreign exchange contracts (a)	
Other comprehensive loss	(31)
Loss recognized in other comprehensive loss	\$ (21)

(a) Amount represents the effective portion, net of the revaluation of the related foreign denominated debt or net investment.

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## 22. Employee Benefit Plans

### Defined Contribution Plan

A significant number of our employees are covered by defined contribution plans. Employer contributions vary based on criteria specific to each individual plan and amounted to \$61 million, \$76 million, and \$71 million in 2009, 2008, and 2007, respectively. These costs were recorded in compensation and benefit expenses in our Consolidated Statement of Income. We expect contributions for 2010 to be similar to contributions made in 2009.

### Defined Benefit Pension Plan

Certain of our employees are eligible to participate in separate retirement plans that provide for pension payments to eligible employees upon retirement based on factors such as length of service and salary. Pursuant to the Sale Transactions, we transferred, froze, or terminated a portion of our other defined benefit plans. During 2006, we curtailed the GMAC Commercial Finance UK and GMAC Commercial Finance Canada (CF Canada) retirement plans and subsequently terminated the CF Canada plan in 2007. We recorded a curtailment charge of approximately \$9 million in 2006 for these plans that was revised to approximately \$4 million in 2007. During 2007, we closed the GMAC UK (Car Care) pension plan to future accrual, thereby freezing the benefits for all participants. This resulted in a minimal impact on earnings. Additionally, during 2009 we began the process of terminating certain of our international pension plans that resulted in a minimal impact on earnings. All income and expense noted for pension accounting was recorded in compensation and benefits expense in our Consolidated Statement of Income.

The following summarizes information related to our pension plans:

Year ended December 31, (\$ in millions)	2009	2008
Projected benefit obligation	\$ 457	\$ 435
Fair value of plan assets	356	295
Underfunded status	\$(101)	\$(140)

The underfunded status of our pension plans decreased primarily due to the improvement of the fair value of plan assets in 2009 as a result of market performance. The underfunded position is recognized on the Consolidated Balance Sheet and the change in the underfunded position was recorded in other comprehensive income (loss).

The weighted average assumptions used for determining the net periodic benefit cost were as follows:

Year ended December 31,	2009	2008
Discount rate	5.81%	5.84%
Expected long-term return on plan assets	8.23%	8.27%
Rate of compensation increase	2.94%	2.56%

Net periodic pension expense (income) includes curtailment, settlement, and other gains and losses and was minimal for 2009, 2008, and 2007.

Employer contributions to our pension plan for both 2009 and 2008 were approximately \$5 million. We expect these contribution levels to remain minimal in 2010. The weighted-average asset allocations for our pension plans by asset category were as follows:

Year ended December 31,	2009	2008
Equity securities	53%	49%
Debt securities	34%	41%
Other	13%	10%

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## Other Postretirement Benefits

Certain of our subsidiaries participated in various postretirement medical, dental, vision, and life insurance plans. We have provided for certain amounts associated with estimated future postretirement benefits other than pensions and characterized such amounts as other postretirement benefits. Other postretirement benefits expense (income), which is recorded in compensation and benefits expense in our Consolidated Statement of Income, was minimal in 2009, 2008, and 2007. We expect our other postretirement benefit expense to continue to be minimal in future years.

## 23. Income Taxes

Effective June 30, 2009, GMAC LLC converted (the Conversion) from a limited liability company (LLC) treated as a pass-through entity for U.S. federal income tax purposes to a corporation and was renamed GMAC Inc. As a result of the Conversion, GMAC Inc. became subject to corporate U.S. federal, state, and local taxes beginning in the third quarter of 2009. Due to this change in tax status as of June 30, 2009, an additional net deferred tax liability of \$1.2 billion was established through income tax expense from continuing operations.

Prior to the Conversion, GMAC LLC and certain U.S. subsidiaries were pass-through entities for U.S. federal income tax purposes. U.S. federal, state, and local income taxes were generally not provided for these entities as they were not taxable entities except in a few local jurisdictions that tax LLCs or partnerships. LLC members were required to report their share of GMAC taxable income on their respective income tax returns. In addition, GMAC LLC's banking, insurance, and foreign subsidiaries generally were and continue to be corporations that are subject to, and required to provide for U.S. and foreign income taxes. The Conversion did not change the tax status of these subsidiaries. The income tax expense related to these corporations is included in income tax expense in the Consolidated Statement of Income, along with other miscellaneous state, local and franchise taxes of GMAC and certain other subsidiaries.

The significant components of income tax expense from continuing operations were as follows:

Year ended December 31, (\$ in millions)	2009	2008	2007
Current income tax expense (benefit)			
U.S. federal	\$ 146	\$ 148	\$229
Foreign	182	181	71
State and local	14	27	(58)
Total current expense	342	356	242
Deferred income tax (benefit) expense			
U.S. federal	(109)	(166)	108
Foreign	(37)	(216)	13
State and local	(118)	(34)	32
Total deferred (benefit) expense	(264)	(416)	153
Total income tax expense (benefit) from continuing operations	\$ 78	\$ (60)	\$395

A reconciliation of the statutory U.S. federal income tax rate to our effective tax rate applicable to income and the change in tax status is shown in the following table.

Year ended December 31,	2009	2008	2007
Statutory U.S. federal tax rate	35.0%	35.0%	35.0%
Change in tax rate resulting from			
Change in tax status	(15.7)	—	—
LLC results not subject to federal or state income taxes	(6.9)	(57.8)	(50.4)
Effect of valuation allowance change	(29.2)	18.9	(5.1)
Foreign income tax rate differential	(1.9)	2.1	(1.8)
Foreign capital loss	13.2	—	—
State and local income taxes, net of federal income tax benefit	3.6	0.8	—
Tax-exempt income	0.2	(0.3)	0.5
Other	0.7	(0.5)	(0.2)
Effective tax rate	(1.0)%	(1.8)%	(22.0)%

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Deferred tax assets and liabilities result from temporary differences between assets and liabilities measured for financial reporting purposes and those measured for income tax return purposes. The Conversion resulted in a \$1.2 billion increase in income tax expense related to the establishment of deferred tax liabilities and assets of \$2.5 billion and \$1.3 billion, respectively.

At December 31, 2009, we had U.S. federal and state net operating and capital loss carryforwards of \$878 million and \$803 million, respectively. The federal net operating loss carryforwards expire in the years 2026–2029. The capital loss carryforwards expire in the year 2014. The corresponding expiration periods for the state operating and capital loss carryforwards are 2014–2029 and 2014, respectively.

Also, at December 31, 2009, and 2008, we had foreign net operating loss carryforwards of \$1.8 billion and \$2.9 billion, respectively. The foreign operating loss carryforwards in the United Kingdom, Germany, and Australia have an indefinite carryforward period. The Canadian loss carryforwards expire in the years 2028–2029. The remaining net operating loss carryforwards expire in the years 2014 and 2029.

At December 31, 2009, valuation allowances have been established against our domestic net deferred tax assets and certain international net deferred tax assets. Valuation allowances have been established because we have determined that it is more likely than not that certain of these tax assets will not be realized before they expire. As a result, included within tax expense were charges of \$2.3 billion in 2009, \$1.0 billion in 2008, and \$91 million in 2007 establishing valuation allowances reflecting management's judgment that certain tax assets will not be realized.

The significant components of deferred tax assets and liabilities are reflected in the following table.

December 31, (\$ in millions)	2009	2008
<b>Deferred tax liabilities</b>		
Lease transactions	\$ 1,556	\$ 1,320
Deferred acquisition costs	401	503
Unrealized gains on securities	368	—
Mortgage servicing rights	278	—
Tax on unremitted earnings	19	53
Other	80	8
Gross deferred tax liabilities	2,702	1,884
<b>Deferred tax assets</b>		
Provision for loan losses	1,702	382
Tax loss carryforwards	1,121	943
Basis difference in subsidiaries	917	—
State and local taxes	242	(19)
Contingency	207	128
Unearned insurance premiums	184	252
Mark-to-market on consumer loans	160	—
Hedging transactions	29	(1)
Sales of finance receivables and loans	22	132
Tax credit carryforwards	18	60
Postretirement benefits	16	10
Unrealized losses on securities	—	80
Other	285	283
Gross deferred tax assets	4,903	2,250
Valuation allowance	(2,503)	(924)
Net deferred tax assets	\$ 2,400	\$ 1,326
Net deferred tax liability	\$ 302	\$ 558

At December 31, 2008, the book basis of our net assets for flow-through entities exceeded their tax basis by approximately \$9.8 billion, primarily related to debt transactions, lease transactions, mortgage servicing rights, and sales of finance receivables.

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Foreign pretax losses totaled \$2.7 billion, \$3.5 billion, and \$333 million in 2009, 2008, and 2007, respectively. Foreign pretax income is subject to U.S. taxation when effectively repatriated. Through the Conversion date, our U.S. incorporated insurance and banking operations provided federal income taxes on the undistributed earnings of foreign subsidiaries to the extent these earnings were not deemed indefinitely reinvested outside the United States. It was the responsibility of our members to provide for federal income taxes on the undistributed foreign subsidiary earnings of GMAC's disregarded entities to the extent the earnings were not indefinitely reinvested. Subsequent to the Conversion date, GMAC and all of its domestic subsidiaries fully provide for federal income taxes on the undistributed earnings of foreign subsidiaries except to the extent these earnings are indefinitely reinvested outside the United States. At December 31, 2009, \$2.9 billion of accumulated undistributed earnings of foreign subsidiaries were indefinitely reinvested. Quantification of the unrecognized deferred tax liability for temporary differences related to investments in foreign subsidiaries that are permanent in duration is not practicable.

Under the terms of the Purchase and Sale Agreement between GM and FIM Holdings LLC, our tax-sharing agreement with GM was terminated as of November 30, 2006. Terms of the sale agreement stipulate GM will indemnify us for any tax liabilities related to periods before November 30, 2006, in excess of those established as of the sale date. Conversely, GM is entitled to any tax refunds in excess of those established on the closing balance sheet as of the sale date. Through December 31, 2009, \$133 million of tax refunds in excess of the amount on the closing balance sheet at the time of the sale have been remitted to GM as dividends as a result of this agreement.

The following table provides a reconciliation of the beginning and ending amount of unrecognized tax benefits.

(\$ in millions)	2009	2008	2007
<b>Balance at January 1,</b>	<b>\$150</b>	<b>\$155</b>	<b>\$126</b>
Additions based on tax positions related to the current year	27	8	13
Additions for tax positions of prior years	24	33	5
Reductions for tax positions of prior years	(24)	(19)	(2)
Settlements	(28)	(2)	(1)
Foreign currency translation adjustments	23	(25)	14
<b>Balance at December 31,</b>	<b>\$172</b>	<b>\$150</b>	<b>\$155</b>

The amount of unrecognized tax benefits that, if recognized, would impact our effective tax rate is approximately \$157 million. If the domestic and certain foreign positions are recognized and impact the effective tax rate, it would ultimately impact net operating loss carryforwards, which currently attract a full valuation allowance.

We recognize interest and penalties accrued related to uncertain income tax positions in interest expense and other operating expenses, respectively. For the years ended December 31, 2009, 2008, and 2007, \$12 million, \$25 million, and \$38 million were accrued for interest and penalties, respectively, with the cumulative accrued balance totaling \$170 million as of December 31, 2009, \$132 million as of December 31, 2008, and \$164 million as of December 31, 2007. In addition, the accrued balances for interest and penalties were impacted by translation adjustments on those denominated in foreign currencies.

We anticipate the examination of our U.S. income tax returns for 2004 through 2006 along with the examinations by various foreign, state, and local jurisdictions will be completed within the next twelve months. As such, it is reasonably possible that certain tax positions may be settled and the unrecognized tax benefits would decrease by approximately \$63 million.

We file tax returns in the U.S. federal jurisdiction and various states and foreign jurisdictions. For our most significant operations, as of December 31, 2009, the oldest tax years that remain subject to examination are: United States — 2004, Canada — 2003; Germany — 2004, United Kingdom — 1995, Mexico — 2004, Brazil — 2004, and Australia — 2004.

## 24. Share-based Compensation Plans

In 2009, based on the transactions with the Treasury as described in Note 19 to the Consolidated Financial Statements, we are required to comply with the limitations on executive pay as determined by the Special Master of TARP Compensation (Special Master). As such, we established Deferred Stock Units (DSUs) and Incentive Restricted Share Units (IRSUs) as

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forms of compensation to our senior executives, which were subsequently approved by the Special Master. We also grant Restricted Share Units (RSUs) to executives under the Long-Term Equity Compensation Incentive Plan, which was established to replace the previously approved Long-Term Phantom Interest Plan (LTIP) and the Management Profits Incentive Plan (MPI). Each of our approved compensation plans and awards were designed to provide our executives with an opportunity to share in the future growth in value of GMAC, which is necessary to attract and retain key executives. These incentive plans are share-based compensation plans accounted for under ASC 718, *Compensation – Stock Compensation*.

RSU awards are incentive awards granted to executives in terms of basis points in the fair value of GMAC. The majority of awards granted in 2008 and 2009 vest ratably on an annual basis based on continued service on December 31, with the final tranche vesting on December 31, 2012. Annual award payouts are made in the quarter following their vesting and are based on the fair value of GMAC at each year-end as recommended by the Compensation Committee (Committee) and approved by the Board annually. Participants have the option at grant date to defer the valuation and payout for any tranche until the final year of the award. Under applicable accounting rules, the awards require liability treatment and are remeasured quarterly at fair value until they are paid. The compensation costs related to these awards are ratably charged to expense over the applicable service period. We utilize an internal process to estimate the fair value of the RSU awards based on the estimated fair value of GMAC using changes in our performance, market, and industry. Changes in fair value related to the portion of the awards that have vested and have not been paid are recognized in earnings in the period in which the changes occur. The total RSU awards outstanding at December 31, 2009, represented approximately 281 basis points, with 166 basis points awarded during 2008 and 115 basis points awarded during the 2009. The fair value of the awards granted during 2008 was diluted by the capital transactions that occurred at the end of 2008. We recognized compensation expense of \$25 million and \$3 million for the years ended December 31, 2009 and 2008, respectively.

DSU awards are granted in terms of basis points in the fair value of GMAC to senior executives as part of their base salary. The DSU awards are granted ratably each pay period throughout the year, vest immediately upon grant, and are paid in cash three years after grant. Under applicable accounting rules, the awards require liability treatment and are remeasured quarterly at fair value until they are paid, with each change in value fully charged to compensation expense in the period in which the change occurs. The fair value for the DSU awards is determined based on the valuation of the RSU awards. The total DSU awards outstanding at December 31, 2009, represented approximately 57 basis points. We recognized compensation expense of \$35 million for the year ended December 31, 2009, for the outstanding awards.

IRSU awards are incentive awards granted to senior executives in terms of basis points in the fair value of GMAC. The IRSU awards cliff vest three years from the date of grant based on continued service with GMAC. The IRSU awards are paid out in 25% increments once we pay the Treasury a corresponding 25% increment of our TARP obligations. A participant must be employed by GMAC at the time of the payback to receive a payout for their award. The payouts are based on the fair value of GMAC at the time of payback. Under applicable accounting rules, the awards require liability treatment and are remeasured quarterly at fair value until they are paid. The fair value for the IRSU awards is determined based on the valuation of the RSU awards. The compensation costs related to these awards are ratably charged to expense over the requisite service period. Changes in fair value relating to the portion of the awards that have vested and have not been paid are recognized in earnings in the period in which the changes occur. The total IRSU awards outstanding at December 31, 2009, represented approximately 45 basis points. We recognized compensation expense of \$1 million for the year ended December 31, 2009, for the outstanding awards.

During the third quarter of 2008, the Committee approved GMAC's purchase of substantially all of the MPI awards from the participants and the grant of RSU awards in exchange for the forfeiture of the majority of LTIP awards. The MPI awards were equity-based awards granted to senior executives. The MPI purchase agreements contain provisions that were designed to enhance GMAC's ability to retain the senior executives who participated in the purchase. The total cash paid for the purchased MPI awards was \$28 million, and the total compensation expense recognized during the year ended December 31, 2008, was \$26 million. The majority of the expense represented the accelerated recognition at the purchase date of the previously unrecognized compensation expense associated with the purchase of unvested MPI awards. The LTIP awards were liability-based awards granted to executives. Based on GMAC's results and the program requirements for payout, we did not have any compensation expense accrued for the LTIP awards at the time of the exchange. During the year ended December 31, 2008, we recognized a reduction of compensation expense for the LTIP awards of \$12 million due to a decline in the estimated fair value of the liability.

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## 25. Related Party Transactions

### Balance Sheet

A summary of the balance sheet effect of transactions with GM, FIM Holdings, and affiliated companies follows:

December 31, (\$ in millions)	2009	2008
<b>Assets</b>		
Available-for-sale investment in asset-backed security – GM (a)	\$ 20	\$ 35
<b>Secured</b>		
Finance receivables and loans, net of unearned income		
Wholesale automotive financing – GM (b)	280	595
Term loans to dealers – GM (b)	71	105
Lending receivables – GM	—	26
Lending receivables – affiliates of FIM Holdings	54	91
Investment in operating leases, net – GM (c)	69	291
Notes receivable from GM (d)	884	1,464
Other — GM	102	32
Total secured	1,460	2,604
<b>Unsecured</b>		
Notes receivable from GM (d)	27	191
<b>Other assets</b>		
Subvention receivables (rate and residual support) – GM	165	53
Lease pull-ahead receivable – GM	21	28
Other – GM	26	49
Total unsecured	239	321
<b>Liabilities</b>		
<b>Unsecured debt</b>		
Notes payable to GM	154	566
<b>Secured debt</b>		
Cerberus model home term loan	—	8
<b>Accrued expenses and other liabilities</b>		
Wholesale payable – GM	161	319
Deferred revenue — GM (e)	—	318
Other payables – GM	18	45

- (a) In November 2006, GMAC retained an investment in a note secured by operating lease assets transferred to GM. As part of the transfer, GMAC provided a note to a trust, a wholly owned subsidiary of GM. The note is classified in investment securities on the Consolidated Balance Sheet.
- (b) Represents wholesale financing and term loans to certain dealerships wholly owned by GM or in which GM has an interest. The loans are generally secured by the underlying vehicles or assets of the dealerships.
- (c) Includes vehicles, buildings, and other equipment classified as operating lease assets that are leased to GM-affiliated entities. These leases are secured by the underlying assets.
- (d) Represents wholesale financing we provide to GM for vehicles, parts, and accessories in which GM retains title while primarily in the United Kingdom and Italy. The financing to GM remains outstanding until the title is transferred to GMAC or the dealers. The amount of financing provided to GM under this arrangement varies based on inventory levels. These loans are secured by the underlying vehicles or other assets (except loans relating to parts and accessories in Italy).
- (e) Represents prepayments made by GM in connection with the November 30, 2006, sale by GM of a 51% interest in GMAC (Sale Transactions) requiring that the aggregate amount of certain unsecured obligations of GM to us not exceed a prescribed cap. Subsequent to December 31, 2008, a new agreement was reached between GMAC and GM with new limitations on unsecured exposure going forward. Generally, unsecured exposure based on what we believe, from time to time, to be “probable” amounts owed from GM will be limited to \$2.1 billion; and unsecured exposures based on “maximum” possible amounts owed will be limited to \$4.1 billion. This distinction was established to more easily manage exposures since certain amounts that will be owed to us from GM (e.g., pursuant to risk-sharing and similar arrangements) are based on variables and assumptions that may change over time.

# Notes to Consolidated Financial Statements

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## Statement of Income

A summary of the income statement effect of transactions with GM, FIM Holdings, and affiliated companies follows:

Year ended December 31, (\$ in millions)	2009	2008	2007
<b>Net financing revenue</b>			
GM and affiliates lease residual value support — North American operations (a)	\$195	\$779	\$ 473
GM and affiliates rate support — North American operations	770	985	1,351
Wholesale subvention and service fees from GM	215	304	269
Interest earned on wholesale automotive financing	14	25	52
Interest earned on term loans to dealers	3	4	7
Interest expense on loans with GM	(46)	(52)	(23)
Interest on notes receivable from GM and affiliates	63	122	125
Interest on wholesale settlements (b)	149	103	179
Interest income (expense) on loans with FIM Holdings affiliates, net	3	(40)	17
Consumer lease payments from GM (c)	78	66	39
<b>Other revenue</b>			
Insurance premiums earned from GM	159	242	254
Service fees on transactions with GM	6	6	6
Revenues from GM-leased properties, net	9	13	13
Losses on model home asset sales with an affiliate of Cerberus	—	(27)	—
Other (d)	(3)	5	9
<b>Servicing fees</b>			
U.S. automotive operating leases (e)	25	85	156
<b>Servicing asset valuation</b>			
Losses on sales of securitized excess servicing to Cerberus	—	(24)	—
<b>Expense</b>			
Employee retirement plan costs allocated by GM	—	—	(1)
Off-lease vehicle selling expense reimbursement (f)	(26)	(47)	(38)
Payments to GM for services, rent, and marketing expenses (g)	122	206	159

(a) Represents total amount of residual support and risk sharing earned under the residual support and risk-sharing programs.

(b) The settlement terms related to the wholesale financing of certain GM products are at shipment date. To the extent that wholesale settlements with GM are made before the expiration of transit, we receive interest from GM.

(c) GM sponsors lease pull-ahead programs whereby consumers are encouraged to terminate lease contracts early in conjunction with the acquisition of a new GM vehicle with the customer's remaining payment obligation waived. For certain programs, GM compensates us for the waived payments adjusted based on remarketing results associated with the underlying vehicle.

(d) Includes income or (expense) related to derivative transactions that we enter into with GM as counterparty.

(e) Represents servicing income related to automobile leases distributed as a dividend to GM on November 22, 2006.

(f) An agreement with GM provides for the reimbursement of certain selling expenses incurred by us on off-lease vehicles sold by GM at auction.

(g) We reimburse GM for certain services provided to us. This amount includes rental payments for our primary executive and administrative offices located in the Renaissance Center in Detroit, Michigan, and exclusivity and royalty fees.

# Notes to Consolidated Financial Statements

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## Statement of Changes in Equity

A summary of the changes to the statement of changes in equity related to transactions with GM, FIM Holdings, and affiliated companies follows:

Year ended December 31, (\$ in millions)	2009	2008	2007
<b>Equity</b>			
Capital contributions received (a)	\$ 1,280	\$ 758	\$ 1,080
Dividends paid to shareholders/members (b)	393	79	—
Preferred interest dividends — GM	128	—	—
Preferred interests (c)	—	—	1,052
Conversion of preferred membership interests (c)	—	—	1,121
Preferred interest accretion to redemption value and dividends	—	—	192

- (a) On January 16, 2009, we completed a \$1.25 billion rights offering pursuant to which we issued additional common membership interests to FIM Holdings and a subsidiary of GM. On December 29, 2008, GM and an affiliate of Cerberus Capital Management contributed to GMAC \$750 million subordinated participations in a \$3.5 billion senior secured credit facility between GMAC and ResCap in exchange for additional common membership interests in GMAC. During the first quarter of 2007, under the terms of the Sale Transactions, GM made a capital contribution of \$1 billion to GMAC.
- (b) Pursuant to the operating agreement with our shareholders, our shareholders are permitted distributions to pay the taxes they incurred from ownership of their GMAC interests prior to our conversion from a tax partnership to a corporation. In March 2009, we executed a transaction that had 2008 tax-reporting implications for our shareholders. In accordance with the operating agreement, the approval of both the GMAC Board of Directors and the Treasury was obtained in advance for the payment of tax distributions to our shareholders. Amounts distributed to GM and FIM Holdings were \$220 million and \$173 million, respectively, for the year ended December 31, 2009. Included in the 2009 amount is \$55 million of remittances to GM for tax settlements and refunds received related to tax periods prior to the Sale Transactions. The 2008 amounts primarily represent remittances to GM for tax settlements and refunds received related to tax period prior to the Sale Transactions as required by the terms of the Purchase and Sale Agreement between GM and FIM Holdings.
- (c) During the fourth quarter of 2007, GM and FIM Holdings converted \$1.1 billion of preferred membership interest into common equity interests. Refer to Note 1 to the Consolidated Financial Statements of our 2007 Annual Report on Form 10-K for further discussion.

GM, GM dealers, and GM-related employees compose a significant portion of our customer base, and our Global Automotive Service operations are highly dependent on GM production and sales volume. As a result, a significant adverse change in GM's business, including significant adverse changes in GM's liquidity position and access to the capital markets, the production or sale of GM vehicles, the quality or resale value of GM vehicles, the use of GM marketing incentives, GM's relationships with its key suppliers, GM's relationship with the United Auto Workers and other labor unions, and other factors impacting GM or its employees could have a significant adverse effect on our profitability and financial condition.

We provide vehicle financing through purchases of retail automotive and lease contracts with retail customers of primarily GM dealers. We also finance the purchase of new and used vehicles by GM dealers through wholesale financing, extend other financing to GM dealers, provide fleet financing for GM dealers to buy vehicles they rent or lease to others, provide wholesale vehicle inventory insurance to GM dealers, provide automotive extended service contracts through GM dealers, and offer other services to GM dealers. In 2009, our share of GM retail sales and sales to dealers were 20% and 78%, respectively, in markets where GM operates. As a result, GM's level of automobile production and sales directly impacts our financing and leasing volume; the premium revenue for wholesale vehicle inventory insurance; the volume of automotive extended service contracts; and the profitability and financial condition of the GM dealers to whom we provide wholesale financing, term loans, and fleet financing. In addition, the quality of GM vehicles affects our obligations under automotive extended service contracts relating to such vehicles. Further, the resale value of GM vehicles, which may be impacted by various factors relating to GM's business such as brand image, the number of new GM vehicles produced, the number of used vehicles remarketed, or reduction in core brands, affects the remarketing proceeds we receive upon the sale of repossessed vehicles and off-lease vehicles at lease termination.

Our Global Automotive Service operations are highly dependent on GM sales volume. In 2008 and 2009, global vehicle sales declined rapidly, and there is no assurance that the global automotive market or GM's share of that market will not suffer a significant further downturn. Vehicle sales volume could be further adversely impacted by ongoing restructuring that is expected to reduce the number of GM retail channels and core brands or consolidate GM's dealer network. Furthermore,

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with GM's recent emergence from bankruptcy protection, it is difficult to predict with certainty the consequences of the bankruptcy filing and the impact it could have on consumer sentiment and GM's business in the future. Any negative impact could in turn have a material adverse affect on our business, results of operations, and financial position.

Our credit exposure to GM is significant. As of December 31, 2009, we had an estimated \$1.5 billion in secured credit exposure, which included primarily wholesale vehicle financing to GM-owned dealerships, notes receivable from GM, and vehicles leased directly to GM. We further had approximately \$1.6 billion in unsecured exposure, which included estimates of payments from GM related to residual support and risk-sharing agreements. Under the terms of certain agreements between GMAC and GM, GMAC has the right to offset certain of its exposures to GM against amounts GMAC owes to GM.

## Retail and Lease Programs

GM may elect to sponsor incentive programs (on both retail contracts and operating leases) by supporting financing rates below the standard market rates at which we purchase retail contracts and leases. These marketing incentives are also referred to as rate support or subvention. When GM utilizes these marketing incentives, they pay us the present value of the difference between the customer rate and our standard rate at contract inception, which we defer and recognize as a yield adjustment over the life of the contract.

GM may also sponsor residual support programs as a way to lower customer monthly payments. Under residual support programs, the customer's contractual residual value is adjusted above our standard residual values. In addition, under risk-sharing programs and eligible contracts, GM shares equally in residual losses at the time of the vehicle's disposal to the extent that remarketing proceeds are below our standard residual values (limited to a floor).

For North American lease originations and balloon retail contract originations occurring in the United States after April 30, 2006, and in Canada after November 30, 2006, that remained with us after the consummation of the Sale Transactions, GM agreed to begin payment of the present value of the expected residual support owed to us at contract origination as opposed to after contract termination at the time of sale of the related vehicle. The residual support amount GM actually owes us is finalized as the leases actually terminate. Under these terms of the residual support program, in cases where the estimate was incorrect, GM may be obligated to pay us, or we may be obligated to reimburse GM.

Based on the December 31, 2009, outstanding North American operating lease and retail balloon portfolios, the additional maximum amount that could be paid by GM under the residual support programs is approximately \$1.1 billion and would be paid only in the unlikely event that the proceeds from the entire portfolio of lease assets were lower than both the contractual residual value and our standard residual rates.

Based on the December 31, 2009, outstanding North American operating lease portfolio, the maximum amount that could be paid under the risk-sharing arrangements is approximately \$1.3 billion and would be paid only in the unlikely event that the proceeds from all outstanding lease vehicles were lower than our standard residual rates and no higher than the contractual risk-sharing floor.

Retail and lease contracts acquired by us that included rate and residual subvention from GM, payable directly or indirectly to GM dealers as a percent of total new retail and lease contracts acquired, were as follows:

December 31,	2009	2008
GM and affiliates subvented contracts acquired		
North American operations	69%	79%
International operations	52%	40%

## Distribution of Operating Lease Assets

In connection with the Sale Transactions, we transferred to GM certain U.S. lease assets, related secured debt, and other assets, respectively. We retained an investment in a note, which had a balance on December 31, 2009, of \$19.7 million and was secured by the lease assets distributed to GM. We continue to service the assets and related secured debt on behalf of GM and receive a fee for this service. As required for other securitization transactions, we are obligated as servicer to repurchase

# Notes to Consolidated Financial Statements

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any lease asset that is in breach of any of the covenants of the securitization documents. In addition, in a number of the transactions securitizing the lease assets transferred to GM, the trusts issued one or more series of floating-rate debt obligations and entered into primary derivative transactions to remove the market risk associated with funding the fixed payment lease assets with floating interest rate debt. To facilitate these securitization transactions, we entered into secondary derivative transactions with the primary derivative counterparties essentially offsetting the primary derivatives. As part of the distribution, GM assumed the rights and obligations of the primary derivatives whereas we retained the secondary, leaving both companies exposed to market value movements of their respective derivatives. GMAC and GM have subsequently entered into derivative transactions with each other intended to offset the exposure each party has to its component of the primary and secondary derivatives.

## Exclusivity Arrangement

On November 30, 2006, and in connection with the Sale Transactions, GM and GMAC entered into several service agreements that codified the mutually beneficial historical relationship between the companies. One such agreement was the United States Consumer Financing Services Agreement (the Financing Services Agreement). The Financing Services Agreement, among other things, provided that subject to certain conditions and limitations, whenever GM offers vehicle financing and leasing incentives to customers (e.g., lower interest rates than market rates), it would do so exclusively through GMAC. This requirement was effective through November 2016, and in consideration for this, GMAC paid to GM an annual exclusivity fee and was required to meet certain targets with respect to consumer retail and lease financings of new GM vehicles.

Effective December 29, 2008, and in connection with the approval of GMAC's application to become a bank holding company, GM and GMAC modified certain terms and conditions of the Financing Services Agreement. Certain of these amendments include the following : (1) for a two-year period, GM can offer retail financing incentive programs through a third-party financing source under certain specified circumstances and, in some cases, subject to the limitation that pricing offered by such third party meets certain restrictions, and after such two-year period GM can offer any such incentive programs on a graduated basis through third parties on nonexclusive, side-by-side basis with GMAC, provided that pricing of such third parties meets certain requirements; (2) GMAC will have no obligation to provide operating lease products; and (3) GMAC will have no targets against which it could be assessed penalties. After December 31, 2013, GM will have the right to offer retail financing incentive programs through any third-party financing source, including GMAC, without any restrictions or limitations. A primary objective of the Financing Services Agreement continues to be supporting distribution and marketing of GM products.

## GM Call Option

In connection with the Sale Transactions, GM retained an option to repurchase certain assets from us related to the Automotive Finance operations of our North American operations and our International operations. In connection with approval of our application to become a bank holding company, the option was terminated effective December 29, 2008, and GM waived all its rights related to the option and released us from all obligations related to the option.

## Royalty Agreement

For certain insurance products, GM and GMAC have entered into the Intellectual Property License Agreement for the right of GMAC to use the GM name on certain insurance products. In exchange, GMAC will pay to GM a minimum annual guaranteed royalty fee of \$15 million.

## Other

We have entered into various services agreements with GM that are designed to document and maintain our current and historical relationship. We are required to pay GM fees in connection with certain of these agreements related to our financing of GM consumers and dealers in certain parts of the world.

# Notes to Consolidated Financial Statements

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GM also provides payment guarantees on certain commercial assets we have outstanding with certain third-party customers. As of December 31, 2009 and 2008, commercial obligations guaranteed by GM were \$68 million and \$88 million, respectively. Additionally, GM is bound by repurchase obligations to repurchase new vehicle inventory under certain circumstances, such as dealer franchise termination. We also have a consignment arrangement with GM for commercial inventories in Europe. As of December 31, 2009 and 2008, wholesale inventories related to this arrangement were \$12 million and \$141 million, respectively, and are reflected in other assets on the Consolidated Balance Sheet.

## 26. Comprehensive Income (Loss)

Comprehensive income is composed of net income and other comprehensive income (loss), which includes the after-tax change in unrealized gains and losses on available-for-sale securities, foreign currency translation adjustments, cash flow hedging activities, and the recognition of defined benefit pension plan overfunded/underfunded positions. The following table presents the components and annual activity in other comprehensive income (loss):

<i>(\$ in millions)</i>	Unrealized gains (losses) on investments (a)	Translation adjustments (b)	Cash flow hedges	Defined benefit pension plans over/(under) funded	Accumulated other comprehensive income (loss)
Balance at December 31, 2006	\$ 106	\$ 362	\$ 17	\$ —	\$ 485
2007 net change	(14)	490	(26)	17	467
Balance at December 31, 2007	92	852	(9)	17	952
2008 net change	(164)	(1,020)	(19)	(138)	(1,341)
Balance at December 31, 2008	(72)	(168)	(28)	(121)	(389)
2009 net change	223	601	1	24	849
<b>Balance at December 31, 2009</b>	<b>\$ 151</b>	<b>\$ 433</b>	<b>\$ (27)</b>	<b>\$ (97)</b>	<b>\$ 460</b>

(a) Primarily represents the after-tax difference between the fair value and amortized cost of our available-for-sale securities portfolio.

(b) Includes after-tax gains and losses on foreign currency translation from operations for which the functional currency is other than the U.S. dollar. Net change amounts are net of tax benefit of \$10 million, tax benefit of \$61 million, and tax expense of \$11 million for the years ended December 31, 2009, 2008, and 2007, respectively.

The net changes in the following table represent the sum of net unrealized gains (losses) of investments and net unrealized gains (losses) on cash flow hedges with the respective reclassification adjustments. Reclassification adjustments are amounts recognized in net income during the current year and that were reported in other comprehensive income (loss) in previous years.

<i>Year ended December 31, (\$ in millions)</i>	2009	2008	2007
<b>Investments (a):</b>			
Net unrealized gains (losses) arising during the period, net of taxes (b)	\$ 115	\$(255)	\$ (1)
Reclassification adjustment for net losses (gains) included in net income, net of taxes (c)	108	91	(13)
<b>Net change</b>	<b>223</b>	<b>(164)</b>	<b>(14)</b>
<b>Cash flow hedges:</b>			
Net unrealized losses on cash flow hedges, net of taxes (d)	—	(24)	(71)
Reclassification adjustment for net losses (gains) included in net income, net of taxes (e)	1	5	45
<b>Net change</b>	<b>\$ 1</b>	<b>\$ (19)</b>	<b>\$(26)</b>

(a) Represents our available-for-sale securities and certain interests retained in securitization trusts.

(b) Net of tax expense of \$75 million for 2009, tax benefit of \$153 million for 2008, and tax expense of \$24 million for 2007.

(c) Net of tax expense of \$58 million for 2009, tax expense of \$49 million for 2008, and tax expense of \$8 million for 2007.

(d) Net of tax benefit of \$13 million for 2009 and tax benefit of \$12 million for 2007. There was no tax impact for 2008.

(e) Net of tax benefit of \$12 million for 2007. There was no tax impact for 2009 or 2008.

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## 27. Fair Value

### Fair Value Measurements

FASB ASC Topic 820, *Fair Value Measurements and Disclosures*, provides a definition of fair value, establishes a framework for measuring fair value, and requires expanded disclosures about fair value measurements. The standard applies when GAAP requires or allows assets or liabilities to be measured at fair value; therefore, it does not expand the use of fair value in any new circumstance.

For purposes of this disclosure, fair value is defined 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. Fair value should be based on the assumptions market participants would use when pricing an asset or liability and establishes a fair value hierarchy that prioritizes the information used to develop those assumptions. The fair value hierarchy gives the highest priority to quoted prices available in active markets (i.e., observable inputs) and the lowest priority to data lacking transparency (i.e., unobservable inputs). Additionally, entities are required to consider all aspects of nonperformance risk, including the entity's own credit standing, when measuring the fair value of a liability.

A three-level hierarchy is to be used when measuring and disclosing fair value. An instrument's categorization within the fair value hierarchy is based on the lowest level of significant input to its valuation. The following is a description of the three hierarchy levels:

- |         |  |
|---------|--|
| Level 1 | Inputs are quoted prices in active markets for identical assets or liabilities as of the measurement date. Additionally, the entity must have the ability to access the active market, and the quoted prices cannot be adjusted by the entity.   |
| Level 2 | Inputs are other than quoted prices included within Level 1 that are observable for the asset or liability either directly or indirectly. Level 2 inputs include quoted prices in active markets for similar assets or liabilities; quoted prices in inactive markets for identical or similar assets or liabilities; or inputs that are observable or can be corroborated by observable market data by correlation or other means for substantially the full term of the assets or liabilities. |
| Level 3 | Unobservable inputs are supported by little or no market activity. The unobservable inputs represent management's best assumptions of how market participants would price the assets or liabilities. Generally, Level 3 assets and liabilities are valued using pricing models, discounted cash flow methodologies, or similar techniques that required significant judgment or estimation.  |

Following are descriptions of the valuation methodologies used to measure material assets and liabilities at fair value and details of the valuation models, key inputs to those models, and significant assumptions utilized.

- **Trading securities** — Trading securities are recorded at fair value and may be asset-backed or asset-related securities (including senior and subordinated interests), principal-only, or residual interests and may be investment grade, noninvestment grade, or unrated securities. We base our valuation of trading securities on observable market prices when available; however, observable market prices are not available for a significant portion of these assets due to illiquidity in the markets. When observable market prices are not available, valuations are primarily based on internally developed discounted cash flow models that use assumptions consistent with current market conditions. The valuation considers recent market transactions, experience with similar securities, current business conditions, and analysis of the underlying collateral, as available. In order to estimate cash flows, we utilize various significant assumptions including market observable inputs (e.g., forward interest rates) and internally developed inputs (e.g., prepayment speeds, delinquency levels, and credit losses). We classified 94% and 60% of the trading securities reported at fair value as Level 3 at December 31, 2009 and 2008, respectively. Trading securities account for 2% and 4% of all assets reported at fair value at December 31, 2009 and 2008, respectively.

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- **Available-for-sale securities** — Available-for-sale securities are carried at fair value primarily based on observable market prices. If observable market prices are not available, our valuations are based on internally developed discounted cash flow models that use a market-based discount rate and consider recent market transactions, experience of similar securities, current business conditions, and analysis of the underlying collateral, as available. To estimate cash flows, we are required to utilize various significant assumptions including market observable inputs (e.g., forward interest rates) and internally developed inputs (including prepayment speeds, delinquency levels, and credit losses). We classified less than 1% and 10% of the available-for-sale reported at fair value as Level 3 at December 31, 2009 and 2008, respectively. Available-for-sale securities account for 37% and 22% of all assets reported at fair value at December 31, 2009 and 2008, respectively.
- **Loans held-for-sale** — We elected the fair value option for certain mortgage loans held-for-sale. The loans elected were government and agency eligible residential loans funded after July 31, 2009. These loans are presented in the table of recurring fair value measurements. Refer to the section within this Note titled *Fair Value Option of Financial Assets and Financial Liabilities* for additional information. The loans not elected under the fair value option are accounted for at the lower of cost or fair value. We classified 49% and 63% of the loans held-for-sale at fair value as Level 3 at December 31, 2009 and 2008, respectively. Loans held-for-sale account for 32% and 9% of all assets reported at fair value at December 31, 2009 and 2008, respectively.

Approximately 4% and 6% of the total loans held-for-sale carried at fair value are automotive loans at December 31, 2009 and 2008, respectively. These automotive loans are presented in the nonrecurring fair value measurement table. We based our valuation of automotive loans held-for-sale on internally developed discounted cash flow models or terms established under fixed-pricing forward flow agreements and classified all these loans as Level 3. These valuation models estimate the exit price we expect to receive in the loan's principal market, which depending upon characteristics of the loans may be the whole-loan market, the securitization market, or committed prices contained in forward flow agreements. Although we utilize and give priority to market observable inputs, such as interest rates and market spreads within these models, we are typically required to utilize internal inputs, such as prepayment speeds, credit losses, and discount rates. While numerous controls exist to calibrate, corroborate, and validate these internal inputs, these internal inputs require the use of judgment and can have a significant impact on the determination of the loan's value. Accordingly, we classified all automotive loans held-for-sale as Level 3.

Approximately 96% and 94% of the total loans held-for-sale carried at fair value are mortgage loans at December 31, 2009 and 2008, respectively. The increase was primarily due to strategic actions taken to sell certain legacy mortgage assets during the three months ended December 31, 2009, resulting in the reclassification of those assets from held-for-investment to held-for-sale. We originate or purchase mortgage loans in the United States that we intend to sell to Fannie Mae, Freddie Mac, and Ginnie Mae (collectively, the Agencies). Additionally, we originate or purchase mortgage loans both domestically and internationally that we intend to sell into the secondary markets through whole-loan sales or securitizations, although this activity was substantially curtailed beginning in 2008.

Mortgage loans held-for-sale are typically pooled together and sold into certain exit markets depending upon underlying attributes of the loan, such as agency eligibility (domestic only), product type, interest rate, and credit quality. Two valuation methodologies are used to determine the fair value of loans held-for-sale. The methodology used depends on the exit market as described below.

*Loans valued using observable market prices for identical or similar assets* — This includes all domestic loans that can be sold to the Agencies, which are valued predominantly by published forward agency prices. This will also include all nonagency domestic loans or international loans where recently negotiated market prices for the loan pool exist with a counterparty (which approximates fair value) or quoted market prices for similar loans are available. As these valuations are derived from quoted market prices, we classify these valuations as Level 2 in the fair value disclosures. As of December 31, 2009 and 2008, 52% and 40%, respectively, of the mortgage loans held-for-sale currently being carried at fair value are classified as Level 2. Due to the current illiquidity of the mortgage market, it may be necessary to look for alternative sources of value, including the whole-loan purchase market for similar loans and place more reliance on the valuations using internal models.

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*Loans valued using internal models* — To the extent observable market prices are not available, we will determine the fair value of loans held-for-sale using internally developed valuation models. These valuation models estimate the exit price we expect to receive in the loan's principal market, which depending upon characteristics of the loan may be the whole-loan or securitization market. Although we utilize and give priority to market observable inputs such as interest rates and market spreads within these models, we are typically required to utilize internal inputs, such as prepayment speeds, credit losses, and discount rates. While numerous controls exist to calibrate, corroborate, and validate these internal inputs, the generation of these internal inputs requires the use of judgment and can have a significant impact on the determination of the loan's fair value. Accordingly, we classify these valuations as Level 3 in the fair value disclosures. As of December 31, 2009 and 2008, 48% and 60%, respectively, of the mortgage loans held-for-sale currently being carried at fair value are classified as Level 3.

Due to limited sales activity and periodically unobservable prices in certain markets, certain loans held-for-sale may transfer between Level 2 and Level 3 in future periods.

- **Consumer finance receivables and loans, net of unearned income** — We elected the fair value option for certain mortgage loans held-for-investment. The elected loans collateralized on-balance sheet securitization debt in which we estimated credit reserves pertaining to securitized assets that could have, or already had, exceeded our economic exposure. The elected loans represent a portion of the consumer finance receivable and loans on the Consolidated Balance Sheet. The balance that was not elected was reported on the balance sheet at the principal amount outstanding, net of charge-offs, allowance for loan losses, and premiums or discounts.

The mortgage loans held-for-investment that collateralized securitization debt are legally isolated from us and are beyond the reach of our creditors. The loans are measured at fair value using a portfolio approach or an in-use premise. Values of loans held on an in-use basis may differ considerably from loans held-for-sale that can be sold in the whole-loan market. This difference arises primarily due to the liquidity of the asset- and mortgage-backed securitization market and is evident in the fact that spreads applied to lower rated asset- and mortgage-backed securities are considerably wider than spreads observed on senior bonds classes and in the whole-loan market. The objective in fair valuing the loans and related securitization debt is to account properly for our retained economic interest in the securitizations. As a result of reduced liquidity in capital markets, values of both these loans and the securitized bonds are expected to be volatile. Since this approach involves the use of significant unobservable inputs, we classified all the mortgage loans held-for-investment elected under the fair value option as Level 3, as of December 31, 2009 and 2008. Consumer finance receivables and loans account for 4% and 7% of all assets reported at fair value at December 31, 2009 and 2008, respectively. Refer to the section within this note titled *Fair Value Option of Financial Assets and Financial Liabilities* for additional information.

- **Commercial finance receivables and loans, net of unearned income** — We evaluate our commercial finance receivables and loans, net of unearned income, for impairment. We generally base the evaluation on the fair value of the underlying collateral supporting the loans when expected to be the sole source or repayment. When the carrying value exceeds the fair value of the collateral, an impairment loss is recognized and reflected as a nonrecurring fair value measurement. As of December 31, 2009 and 2008, we classified 94% and 73% of the impaired commercial finance receivables and loans as Level 3, respectively. Commercial finance receivables and loans accounted for 4% and 8% of all assets reported at fair value at December 30, 2009 and 2008, respectively.
- **Mortgage servicing rights** — We typically retain MSR's when we sell assets into the secondary market, MSR's do not trade in an active market with observable prices; therefore, we use internally developed cash flow models to estimate the fair value of MSR's. These internal valuation models estimate net cash flows based on internal operating assumptions that we believe would be used by market participants combined with market-based assumptions for loan prepayment rates, interest rates, and discount rates that we believe approximate yields required by investors in this asset. Cash flows primarily include servicing fees, float income, and late fees in each case less operating costs to service the loans. The estimated cash flows are discounted using an option-adjusted spread-derived discount rate. All MSR's are classified as Level 3 at December 31, 2009 and 2008. MSR's account for 10% of all assets reported at fair value at December 31, 2009 and 2008.

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- **Interest retained in securitization trusts** — Interests retained in securitization trusts are carried at fair value. Due to current inactivity in the market, valuations are based on internally developed discounted cash flow models that use a market-based discount rate. The valuation considers recent market transactions, experience with similar assets, current business conditions, and analysis of the underlying collateral, as available. To estimate cash flows, we utilize various significant assumptions, including market observable inputs (e.g., forward interest rates) and internally developed inputs (e.g., prepayment speeds, delinquency levels, and credit losses). All interests retained in securitization trusts were classified as Level 3 at December 31, 2009 and 2008. Interests retained in securitization trusts accounted for less than 1% and 3% of all assets reported at fair value at December 31, 2009 and 2008, respectively.
- **Derivative instruments** — We manage risk through our balance of loan production and servicing businesses while using portfolios of financial instruments (including derivatives) to manage risk related specifically to the value of loans held-for-sale, loans held-for-investment, MSRs, foreign currency debt; and we enter into interest rate swaps to facilitate transactions where the underlying receivables are sold to a nonconsolidated QSPE. During the twelve months ended December 31, 2009, we recorded net economic hedge losses of \$390 million. During the twelve months ended December 31, 2008, we recorded net economic hedge gains of \$1.2 billion. Refer to Note 21 for additional information regarding changes in the fair value of economic hedges.

We enter into a variety of derivative financial instruments as part of our hedging strategies. Certain of these derivatives are exchange traded, such as Eurodollar futures, or traded within highly active dealer markets, such as agency to-be-announced securities. To determine the fair value of these instruments, we utilize the exchange price or dealer market price for the particular derivative contract; therefore, we classified these contracts as Level 1. We classified 7% of the derivative assets and 9% of the derivative liabilities reported at fair value as Level 1 at December 31, 2009. We classified less than 1% of the derivative assets and 3% of the derivative liabilities at fair value as Level 1 at December 31, 2008.

We also execute over-the-counter derivative contracts, such as interest rate swaps, floors, caps, corridors, and swaptions. We utilize third-party-developed valuation models that are widely accepted in the market to value these over-the-counter derivative contracts. The specific terms of the contract and market observable inputs (such as interest rate forward curves and interpolated volatility assumptions) are entered into the model. We classified these over-the-counter derivative contracts as Level 2 because all significant inputs into these models were market observable. We classified 77% of the derivative assets and 73% of the derivative liabilities reported at fair value as Level 2 at December 31, 2009. We classified 69% of the derivative assets and 44% of the derivative liabilities reported at fair value as Level 2 at December 31, 2008.

We also hold certain derivative contracts that are structured specifically to meet a particular hedging objective. These derivative contracts often are utilized to hedge risks inherent within certain on-balance sheet securitizations. To hedge risks on particular bond classes or securitization collateral, the derivative's notional amount is often indexed to the hedged item. As a result, we typically are required to use internally developed prepayment assumptions as an input into the model to forecast future notional amounts on these structured derivative contracts. Accordingly, we classified these derivative contracts as Level 3. We classified 16% of the derivative assets and 18% of the derivative liabilities reported at fair value as Level 3 at December 31, 2009. We classified 31% of the derivative assets and 53% of the derivative liabilities reported at fair value as Level 3 at December 31, 2008.

We are required to consider all aspects of nonperformance risk, including our own credit standing, when measuring fair value of a liability. We consider our credit risk and the credit risk of our counterparties in the valuation of derivative instruments through a credit valuation adjustment (CVA). The CVA calculation utilizes our credit default swap spreads and the spreads of the counterparty. The CVA calculates the probable or potential future exposure on the derivative under different interest and currency exchange rate environments using simulation tool. For each simulation, a CVA is calculated using either our credit default spread or the default spread of the counterparty and, in both cases, the potential exposure of the simulation.

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Derivative assets accounted for 8% and 17% of all assets reported at fair value at December 31, 2009 and 2008, respectively. Derivative liabilities accounted for 59% and 58% of all liabilities reported at fair value at December 31, 2009 and 2008, respectively.

- **Derivative collateral placed with counterparties** — Collateral in the form of investment securities are primarily carried at fair value using quoted prices in active markets for similar assets. We classified 96% of securities posted as collateral as Level 1 at December 31, 2009. Securities posted as collateral accounted for 2% of all assets reported at fair value at December 31, 2009.
- **Reposessed and foreclosed assets** — Foreclosed on or reposessed assets resulting from loan defaults are carried at the lower of either cost or fair value less costs to sell and are included in other assets on the Consolidated Balance Sheet. The fair value disclosures include only assets carried at fair value less costs to sell.

The majority of assets acquired due to default are foreclosed assets. We revalue foreclosed assets on a periodic basis. We classified properties that are valued by independent third-party appraisals less costs to sell as Level 2. When third-party appraisals are not obtained, valuations are typically obtained from third-party broker price opinion; however, depending on the circumstances, the property list price or other sales price information may be used in lieu of a broker price opinion. Based on historical experience, we adjust these values downward to take into account damage and other factors that typically cause the actual liquidation value of foreclosed properties to be less than broker price opinion or other price sources. This valuation adjustment is necessary to ensure the valuation ascribed to these assets considers unique factors and circumstances surrounding the foreclosed asset. As a result of applying internally developed adjustments to the third-party-provided valuation of the foreclosed property, we classified these assets as Level 3 in the fair value disclosures. As of December 31, 2009, 51% and 49% of foreclosed and reposessed properties carried at fair value less costs to sell were classified as Level 2 and Level 3, respectively. As of December 31, 2008, 38% and 62% of foreclosed and reposessed properties carried at fair value less costs to sell were classified as Level 2 and Level 3, respectively. Reposessed and foreclosed assets accounted for less than 1% and 2% of all assets reported at fair value at December 31, 2009 and 2008, respectively.

- **On-balance sheet securitization debt** — We elected the fair value option for certain mortgage loans held-for-investment and on-balance sheet securitization debt. In particular, we elected the fair value option on securitization debt issued by domestic on-balance sheet securitization vehicles as of January 1, 2008, in which we estimated credit reserves pertaining to securitized assets could have, or already had, exceeded our economic exposure. The objective in measuring the loans and related securitization debt at fair value was to approximate our retained economic interest and economic exposure to the collateral securing the securitization debt. The remaining on-balance sheet securitization debt that was not elected under the fair value option is reported on the balance sheet at cost, net of premiums or discounts and issuance costs.

We value securitization debt that was elected pursuant to the fair value option and any economically retained positions using market observable prices whenever possible. The securitization debt is principally in the form of asset- and mortgage-backed securities collateralized by the underlying mortgage loans held-for-investment. Due to the attributes of the underlying collateral and current market conditions, observable prices for these instruments are typically not available. In these situations, we consider observed transactions as Level 2 inputs in our discounted cash flow models. Additionally, the discounted cash flow models utilize other market observable inputs, such as interest rates, and internally derived inputs including prepayment speeds, credit losses, and discount rates. Fair value option elected financing securitization debt is classified as Level 3 as a result of the reliance on significant assumptions and estimates for model inputs. On-balance sheet securitization debt accounted for 41% and 42% of all liabilities reported at fair value at December 31, 2009 and 2008, respectively. As a result of reduced liquidity in capital markets, values of both the elected loans and the securitized debt are expected to be volatile. Refer to the section within this note titled *Fair Value Option for Financial Assets and Financial Liabilities* for a complete description of these securitizations.

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## Recurring Fair Value

The following tables display the assets and liabilities measured at fair value on a recurring basis, including financial instruments elected for the fair value option. We often economically hedge the fair value change of our assets or liabilities with derivatives and other financial instruments. The table below displays the hedges separately from the hedged items; therefore, they do not directly display the impact of our risk management activities.

December 31, 2009 (\$ in millions)	Recurring fair value measurements			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Trading securities				
Mortgage-backed				
Residential	\$ —	\$ 44	\$ 99	\$ 143
Asset-backed	—	—	596	596
Total trading securities	—	44	695	739
Investment securities				
Available-for-sale securities				
Debt securities				
U.S. Treasury and federal agencies	1,989	1,521	—	3,510
States and political subdivisions	—	811	—	811
Foreign government	911	262	—	1,173
Mortgage-backed				
Residential	—	3,455	6	3,461
Asset-backed	—	985	20	1,005
Corporate debt securities	2	1,471	—	1,473
Other	47	—	—	47
Total debt securities	2,949	8,505	26	11,480
Equity securities	671	4	—	675
Total available-for-sale securities	3,620	8,509	26	12,155
Loans held-for-sale (a)	—	5,545	—	5,545
Consumer finance receivables and loans, net of unearned income (a)	—	—	1,303	1,303
Mortgage servicing rights	—	—	3,554	3,554
Other assets				
Cash reserve deposits held-for-securitization trusts	—	—	31	31
Interests retained in securitization trusts	—	—	471	471
Derivative assets, net (b)	12	644	103	759
Derivative collateral placed with counterparties	808	37	—	845
Total assets	\$ 4,440	\$ 14,779	\$ 6,183	\$ 25,402
<b>Liabilities</b>				
Secured debt				
On-balance sheet securitization debt (a)	\$ —	\$ —	\$ (1,294)	\$ (1,294)
Total liabilities	\$ —	\$ —	\$ (1,294)	\$ (1,294)

(a) Carried at fair value due to fair value option election.

(b) At December 31, 2009, derivative assets within Level 1, Level 2, and Level 3 were \$184 million, \$2.0 billion, and \$435 million, respectively. Additionally, derivative liabilities within Level 1, Level 2, and Level 3 were \$172 million, \$1.4 billion, and \$332 million, respectively.

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December 31, 2008 (\$ in millions)	Recurring fair value measurements			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Trading securities	\$ 1	\$ 486	\$ 720	\$ 1,207
<b>Investment securities</b>				
Available-for-sale securities	1,736	3,867	631	6,234
Consumer finance receivables and loans, net of unearned income (a)	—	—	1,861	1,861
Mortgage servicing rights	—	—	2,848	2,848
<b>Other assets</b>				
Cash reserve deposits held-for-securitization trusts	—	—	41	41
Interests retained in securitization trusts	—	—	1,001	1,001
Derivative (liabilities) assets, net (b)	(51)	2,263	149	2,361
<b>Total assets</b>	<b>\$ 1,686</b>	<b>\$ 6,616</b>	<b>\$ 7,251</b>	<b>\$15,553</b>
<b>Liabilities</b>				
<b>Secured debt</b>				
On-balance sheet securitization debt (a)	\$ —	\$ —	\$(1,899)	\$(1,899)
<b>Total liabilities</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$(1,899)</b>	<b>\$(1,899)</b>

(a) Carried at fair value due to fair value option election.

(b) At December 31, 2008, derivative assets within Level 1, Level 2, and Level 3 were \$21 million, \$3.4 billion, and \$1.5 billion, respectively. Additionally, derivative liabilities within Level 1, Level 2, and Level 3 were \$72 million, \$1.1 billion, and \$1.4 billion, respectively.

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The following tables present the reconciliation for all Level 3 assets and liabilities measured at fair value on a recurring basis. We often economically hedge the fair value change of our assets or liabilities with derivatives and other financial instruments. The Level 3 items presented below may be hedged by derivatives and other financial instruments that are classified as Level 1 or Level 2. Thus, the following tables do not fully reflect the impact of our risk management activities.

	Level 3 recurring fair value measurements						
	Fair value as of January 1, 2009	Net realized/ unrealized gains (losses)		Purchases, issuances, and settlements, net	Net transfers into/ (out of) Level 3	Fair value as of December 31, 2009	Net unrealized (losses) gains included in earnings still held as of December 31, 2009
		Included in earnings	Included in other comprehensive income (a)				
<b>Assets</b>							
<b>Trading securities</b>							
Mortgage-backed							
Residential	\$ 211	\$ (42) (b)	\$ —	\$ (89)	\$ 19	\$ 99	\$ 33 (b)
Asset-backed	509	165 (b)	13	(91)	—	596	166 (b)
<b>Total trading securities</b>	<b>720</b>	<b>123</b>	<b>13</b>	<b>(180)</b>	<b>19</b>	<b>695</b>	<b>199</b>
<b>Investment securities</b>							
<b>Available-for-sale securities</b>							
<b>Debt securities</b>							
Mortgage-backed							
Residential	2	—	(4)	—	8	6	—
Asset-backed	607	6 (b)	5	(598)	—	20	—
<b>Total debt securities</b>	<b>609</b>	<b>6</b>	<b>1</b>	<b>(598)</b>	<b>8</b>	<b>26</b>	<b>—</b>
Equity securities	22	—	1	—	(23)	—	—
<b>Total available-for-sale securities</b>	<b>631</b>	<b>6</b>	<b>2</b>	<b>(598)</b>	<b>(15)</b>	<b>26</b>	<b>—</b>
<b>Consumer finance receivables and loans, net of unearned income (c)</b>							
	1,861	941 (d)	—	(1,499)	—	1,303	480 (d)
<b>Mortgage servicing rights</b>	<b>2,848</b>	<b>(122) (e)</b>	<b>—</b>	<b>828</b>	<b>—</b>	<b>3,554</b>	<b>(110) (e)</b>
<b>Other assets</b>							
Cash reserve deposits held-for-securitization trusts	41	2 (f)	—	(12)	—	31	3 (f)
Interests retained in securitization trusts	1,001	(14) (f)	3	(519)	—	471	(10) (f)
Fair value of derivative contracts in receivable (liability) position, net	149	324 (g)	(5)	(510)	145	103	917 (g)
<b>Total assets</b>	<b>\$ 7,251</b>	<b>\$ 1,260</b>	<b>\$ 13</b>	<b>\$ (2,490)</b>	<b>\$ 149</b>	<b>\$ 6,183</b>	<b>\$ 1,479</b>
<b>Liabilities</b>							
<b>Secured debt</b>							
On-balance sheet securitization debt (c)	\$ (1,899)	\$ (875) (h)	\$ —	\$ 1,480	\$ —	\$ (1,294)	\$ (445) (h)
<b>Total liabilities</b>	<b>\$ (1,899)</b>	<b>\$ (875)</b>	<b>\$ —</b>	<b>\$ 1,480</b>	<b>\$ —</b>	<b>\$ (1,294)</b>	<b>\$ (445)</b>

(a) Includes foreign currency translation adjustments, if any.

(b) The fair value adjustment is reported as other gain (loss) on investments, net, and the related interest is reported as interests and dividends on investment securities in the Consolidated Statement of Income.

(c) Carried at fair value due to fair value option elections.

(d) The fair value adjustment is reported as other income, net of losses, and the related interest is reported as consumer financing revenue in the Consolidated Statement of Income.

(e) Fair value adjustment reported as servicing asset valuation and hedge activities, net, in the Consolidated Statement of Income.

(f) Reported as other income, net of losses, on investments, net, in the Consolidated Statement of Income.

(g) Refer to Note 21 for information related to the location of the gains and losses on derivative instruments in the Consolidated Statement of Income.

(h) Fair value adjustment is reported as other income, net of losses, and the related interest is reported within total interest expense in the Consolidated Statement of Income.

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(\$ in millions)	Level 3 recurring fair value measurements						Net unrealized (losses) gains included in earnings still held as of December 31, 2008
	Fair value as of January 1, 2008	Net realized/unrealized gains (losses)		Purchases, issuances, and settlements, net	Net transfers into Level 3	Fair value as of December 31, 2008	
		Included in earnings	Included in other comprehensive income (a)				
<b>Assets</b>							
Trading securities	\$ 1,642	\$ (767) (b)	\$ (16)	\$ (139)	\$ —	\$ 720	\$ (325) (b)
<b>Investment securities</b>							
Available-for-sale securities	868	(26)	(8)	(203)	—	631	(1) (b)
<b>Consumer finance receivables and loans, net of unearned income (c)</b>							
	6,684	(2,391) (d)	—	(2,432)	—	1,861	(3,467) (d)
Mortgage servicing rights	4,713	(2,333) (e)	—	468	—	2,848	(2,250) (e)
<b>Other assets</b>							
Cash reserve deposits held-for-securitization trusts	141	(21) (f)	(7)	(72)	—	41	(296) (f)
Interests retained in securitization trusts	1,465	(196) (f)	8	(276)	—	1,001	(499) (f)
Fair value of derivative contracts in (liability) receivable position, net	(46)	539 (g)	22	(368)	2	149	767 (g)
<b>Total assets</b>	<b>\$ 15,467</b>	<b>\$ (5,195)</b>	<b>\$ (1)</b>	<b>\$ (3,022)</b>	<b>\$ 2</b>	<b>\$ 7,251</b>	<b>\$ (6,071)</b>
<b>Liabilities</b>							
<b>Secured debt</b>							
On-balance sheet securitization debt (c)	\$ (6,734)	\$ 2,478 (h)	\$ —	\$ 2,357	\$ —	\$ (1,899)	\$ 2,916 (h)
Collateralized debt obligations (c)	(351)	101 (i)	—	250	—	—	111 (i)
<b>Total liabilities</b>	<b>\$ (7,085)</b>	<b>\$ 2,579</b>	<b>\$ —</b>	<b>\$ 2,607</b>	<b>\$ —</b>	<b>\$ (1,899)</b>	<b>\$ 3,027</b>

(a) Includes foreign currency translation adjustments, if any.

(b) The fair value adjustment is reported as other gain (loss) on investments, net, and the related interest is reported as consumer interest and dividends on investment securities in the Consolidated Statement of Income.

(c) Carried at fair value due to fair value option election.

(d) The fair value adjustment is reported as other income, net of losses, and the related interest is reported as consumer financing revenue in the Consolidated Statement of Income.

(e) Fair value adjustment reported as servicing asset valuation and hedge activities, net, in the Consolidated Statement of Income.

(f) Reported as other income, net of losses, in the Consolidated Statement of Income.

(g) Refer to Note 21 for information related to the location of the gains and losses on derivative instruments in the Consolidated Statement of Income.

(h) Fair value adjustment is reported as other income, net of losses, and the related interest is reported as total interest expense in the Consolidated Statement of Income.

(i) Reported as other gain (loss) on investments, net, and the related interest is reported as total interest expense in the Consolidated Statement of Income.

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## Nonrecurring Fair Value

We may be required to measure certain assets and liabilities at fair value from time to time. These periodic fair value measures typically result from the application of lower of cost or fair value accounting or certain impairment measures under GAAP. These items would constitute nonrecurring fair value measures.

The following tables display the assets and liabilities measured at fair value on a nonrecurring basis.

December 31, 2009 (\$ in millions)	Nonrecurring fair value measurements				Lower of cost or fair value or valuation reserve allowance	Total gains (losses) included in earnings for the year ended
	Level 1	Level 2	Level 3	Total		
<b>Assets (a)</b>						
Loans held-for-sale (b)	\$ —	\$ 31	\$ 5,453	\$ 5,484	\$ (227)	n/m (c)
Commercial finance receivables and loans, net of unearned income (d)	—	85	1,443	1,528	(770)	\$ (87) (e)
Other assets						
Real estate and other investments (f)	—	49	65	114	n/m (g)	(226)
Repossessed and foreclosed assets, net (h)	—	111	108	219	(104)	n/m (c)
Goodwill (i)	—	—	—	—	n/m (g)	(607)
<b>Total assets</b>	<b>\$ —</b>	<b>\$ 276</b>	<b>\$ 7,069</b>	<b>\$ 7,345</b>	<b>\$ (1,101)</b>	<b>\$ (920)</b>

n/m = not meaningful

- (a) Refer to Note 2 for the nonrecurring fair value measurements recognized on our discontinued and held-for-sale operations. The measurements were recognized to present these operations at the lower of cost or fair value less costs to sell.
- (b) Represents assets held-for-sale that are required to be measured at the lower of cost or fair value. The table above includes only assets with fair value below cost as of December 31, 2009. The related valuation allowance represents the cumulative adjustment to fair value of those specific assets. Refer to Note 8 for information related to the fair value measurement recognized on certain mortgage loans reclassified to held-for-sale on our Consolidated Balance Sheet during the year ended December 31, 2009.
- (c) We consider the applicable valuation or loan loss allowance to be the most relevant indicator of the impact on earnings caused by the fair value measurement. Accordingly, the table above excludes total gains and losses included in earnings for these items. The carrying values are inclusive of the respective valuation or loan loss allowance.
- (d) Represents the portion of the commercial portfolio impaired as of December 31, 2009. The related credit allowance represents the cumulative adjustment to fair value of those specific receivables.
- (e) Represents losses recognized on the impairment of our resort finance business, which provided debt capital to resort and timeshare developers.
- (f) Represents assets impaired as of December 31, 2009. The total loss included in earnings represents adjustments to the fair value of the portfolio based on actual sales during the year ended December 31, 2009.
- (g) The total loss included in earnings is the most relevant indicator of the impact on earnings.
- (h) The allowance provided for repossessed and foreclosed assets represents any cumulative valuation adjustment recognized to adjust the assets to fair value less costs to sell.
- (i) Represents goodwill impaired as of December 31, 2009. The impairment related to a reporting unit within our Insurance operations. As of December 31, 2009, these losses were classified with income (loss) from discontinued operations, net of tax, on the Consolidated Statement of Income. Refer to Note 14 for additional goodwill information.

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December 31, 2008 (\$ in millions)	Nonrecurring fair value measurements				Lower of cost or fair value allowance or valuation reserve	Total losses included in earnings for the year ended
	Level 1	Level 2	Level 3	Total		
<b>Assets</b>						
Loans held-for-sale (a)	\$ —	\$ 925	\$ 1,550	\$ 2,475	\$ (917)	(b)
Commercial finance receivables and loans, net of unearned income (c)	—	566	1,511	2,077	(703)	(b)
Investment in operating leases, net (d)	—	—	4,730	4,730	(e)	\$ (1,234)
<b>Other assets</b>						
Real estate and other investments (d)	—	81	—	81	(e)	(54)
Repossessed and foreclosed assets, net (f)	—	250	405	655	(256)	(b)
Goodwill (g)	—	—	—	—	(e)	(16)
Investment in used vehicles held-for-sale (a)	—	—	461	461	(86)	(b)
<b>Total assets</b>	<b>\$ —</b>	<b>\$ 1,822</b>	<b>\$ 8,657</b>	<b>\$ 10,479</b>	<b>\$ (1,962)</b>	<b>\$ (1,304)</b>

n/m = not meaningful

- (a) Represents assets held-for-sale that are required to be measured at the lower of cost or fair value. The table above includes only assets with fair values below cost as of December 31, 2008. The related valuation allowance represents the cumulative adjustment to fair value of those specific assets.
- (b) We consider the applicable valuation or loan loss allowance to be the most relevant indicator of the impact on earnings caused by the fair value measurement. Accordingly, the table above excludes total gains and losses included in earnings for these items. The carrying values are inclusive of the respective valuation or loan loss allowance.
- (c) Represents the portion of the commercial portfolio impaired as of December 31, 2008. The related credit allowance represents the cumulative adjustment to fair value of those specific receivables. Refer to Note 1 for additional information related to impaired loans.
- (d) Represents assets impaired as of December 31, 2008. The total loss included in earnings represents adjustments to the fair value of the portfolio based on actual sales during the year ended December 31, 2008.
- (e) The total loss included in earnings is the most relevant indicator of the impact on earnings.
- (f) The allowance provided for repossessed and foreclosed assets represents any cumulative valuation adjustment recognized to adjust the assets to fair value less costs to sell.
- (g) Represents goodwill impaired as of December 31, 2008. The entire goodwill balance of our North American Automotive Finance operations and our Commercial Finance Group were deemed to have a fair value of zero as of December 31, 2008.

## Fair Value Option for Financial Assets and Financial Liabilities

On January 1, 2008, our Mortgage operations elected to measure at fair value certain mortgage loans held-for-investment and the related debt held in the financing securitization structures that existed. During the three months ended September 30, 2009, our Mortgage operations also elected the fair value option for government and agency-eligible residential loans held-for-sale funded after July 31, 2009. Our intent in electing fair value for these items was to mitigate a divergence between accounting losses and economic exposure for certain assets and liabilities.

A description of financial assets and liabilities elected to be measured at fair value is as follows.

- On-balance sheet securitizations** — In years prior to 2008, our Mortgage operations executed certain domestic securitizations that did not meet sale criteria. As part of these domestic on-balance sheet securitizations, we typically retained the economic residual interest in the securitization. The economic residual entitles us to excess cash flows that remain at each distribution date after absorbing any credit losses in the securitization. Because sale treatment was not achieved, the mortgage loan collateral remained on the balance sheet and was classified as consumer finance receivables and loans; the securitization's debt was classified as secured debt; and the economic residuals were not carried on the balance sheet. After execution of the securitizations, we were required under GAAP to continue recording an allowance for loan losses on these held-for-investment loans.

As a result of market conditions and deteriorating credit performance of domestic residential mortgages, our economic exposure on certain of these domestic on-balance sheet securitizations was reduced to zero, thus indicating we expected minimal to no future cash flows to be received on the economic residual. While we no

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longer were economically exposed to credit losses in the securitizations, we were required to continue recording additional allowance for loan losses on the securitization collateral as credit performance deteriorated. Further, in accordance with GAAP, we did not record any offsetting reduction in the securitization's debt balances, even though any nonperformance of the assets would ultimately pass through as a reduction of the amount owed to the debt holders once they are contractually extinguished. As a result, we were required to record accounting losses beyond our economic exposure.

To mitigate the divergence between accounting losses and economic exposure, we elected the fair value option for a portion of the domestic on-balance sheet securitizations on January 1, 2008. In particular, we elected the fair value option for domestic on-balance sheet securitization vehicles in which we estimated that the credit reserves pertaining to securitized asset could, or already had, exceeded our economic exposure. The fair value option election was made at a securitization level; thus the election was made for both the mortgage loans held-for-investment and the related portion of on-balance sheet securitized debt for these particular securitizations.

We carry the fair value-elected loans as consumer finance receivables and loans, net of unearned income, on the Consolidated Balance Sheet. Our policy is to separately record interest income on the fair value-elected loans (unless the loans are placed on nonaccrual status), which continues to be classified as consumer financing revenue in the Consolidated Statement of Income. We classified the fair value adjustment recorded for the loans as other income, net of losses, in the Consolidated Statement of Income.

We continue to record the fair value-elected debt balances as secured debt on the Consolidated Balance Sheet. Our policy is to separately record interest expense on the fair value-elected securitization debt, which continues to be classified as interest expense in the Consolidated Statement of Income. We classified the fair value adjustment recorded for this fair value-elected debt as other income, net of losses, in the Consolidated Statement of Income.

• **Government and agency eligible loans** — During the three months ended September 30, 2009, our Mortgage operations elected the fair value option for government and agency eligible residential loans held-for-sale funded after July 31, 2009. We elected the fair value option to mitigate earnings volatility by better matching the accounting for the assets with the related hedges.

Excluded from the fair value option were government and agency eligible loans funded on or prior to July 31, 2009, and those repurchased or re-recognized. The loans funded on or prior to July 31, 2009, were ineligible because the election must be made at the time of funding. Repurchased and re-recognized government and agency eligible loans were not elected because the elections will not mitigate earning volatility. We repurchase or re-recognize loans due to representation and warranty obligations or conditional repurchase options. Typically, we will be unable to resell these assets through regular channels due to characteristics of the assets. Since the fair value of these assets is influenced by factors that cannot be hedged, we did not elect the fair value option.

We carry the fair value-elected government and agency eligible loans as loans held-for-sale on the Consolidated Balance Sheet. Our policy is to separately record interest income on the fair value-elected loans (unless they are placed on nonaccrual status), which continues to be classified as loans held-for-sale revenue in the Consolidated Statement of Income. Upfront fees and costs related to the fair value-elected loans are not deferred or capitalized. The fair value adjustment recorded for these loans is classified as gain (loss) on mortgage loans, net, in the Consolidated Statement of Income. In accordance with GAAP, the fair value option election is irrevocable once the asset is funded even if it is subsequently determined that a particular loan cannot be sold under government programs or to the agencies.

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The following tables summarize the fair value option election and information regarding the amounts recorded as earnings for each fair value option elected item.

(\$ in millions)	Changes included in the Statement of Income for the year ended December 31, 2009						Change in fair value due to credit risk (a)
	Consumer financing revenue	Loans held- for-sale revenue	Total interest expense	Gain on mortgage loans, net	Other income, net of losses	Total included in earnings	
<b>Assets</b>							
Loans held-for-sale	\$ —	\$ 85	\$ —	\$ 344	\$ —	\$ 429	\$ — (b)
Consumer finance receivables and loans, net of unearned income	508	—	—	—	433	941	(118) (c)
<b>Liabilities</b>							
Secured debt							
On-balance sheet securitization debt	\$ —	\$ —	\$ (227)	\$ —	\$ (648)	\$ (875)	\$ 230 (d)
<b>Total</b>						<b>\$ 495</b>	

- (a) Factors other than credit quality that impact fair value include changes in market interest rates and the illiquidity or marketability in the current marketplace. Lower levels of observable data points in illiquid markets generally result in wide bid/offer spreads.
- (b) The credit impact for loans held-for-sale is assumed to be zero because the loans are either suitable for sale or are covered by a government guarantee.
- (c) The credit impact for consumer finance receivables and loans was quantified by applying internal credit loss assumptions to cash flow models.
- (d) The credit impact for on-balance sheet securitization debt is assumed to be zero until our economic interests in a particular securitization is reduced to zero at which point the losses on the underlying collateral will be expected to be passed through to third-party bondholders. Losses allocated to third-party bondholders, including changes in the amount of losses allocated, will result in fair value changes due to credit. We also monitor credit ratings and will make credit adjustments to the extent any bond classes are downgraded by rating agencies.

(\$ in millions)	Changes included in the Statement of Income for the year ended December 31, 2008						Change in fair value due to credit risk (a)
	Consumer financing revenue	Total interest expense	Other gain (loss) on investments, net	Other income, net of losses	Total included in earnings		
<b>Assets</b>							
Consumer finance receivables and loans, net of unearned income	\$ 709	\$ —	\$ —	\$ (3,101)	\$ (2,392)	\$ (809) (b)	
<b>Liabilities</b>							
Secured debt							
On-balance sheet securitization debt	\$ —	\$ (387)	\$ —	\$ 2,865	\$ 2,478	\$ 618 (c)	
Collateralized debt obligations	—	(10)	111	—	101	— (d)	
<b>Total</b>					<b>\$ 187</b>		

- (a) Factors other than credit quality that impact fair value include changes in market interest rates and the illiquidity or marketability in the current marketplace. Lower levels of observable data points in illiquid markets generally result in wide bid/offer spreads.
- (b) The credit impact for consumer finance receivables and loans were quantified by applying internal credit loss assumptions to cash flow models.
- (c) The credit impact for on-balance sheet securitization debt is assumed to be zero until our economic interests in a particular securitization is reduced to zero at which point the losses on the underlying collateral will be expected to be passed through to third-party bondholders. Losses allocated to third-party bondholders, including changes in the amount of losses allocated, will result in fair value changes due to credit. We also monitor credit ratings and will make credit adjustments to the extent any bond classes are downgraded by rating agencies.
- (d) The credit impact for collateralized debt obligations is assumed to be zero until our economic interests in the securitization is reduced to zero at which point the losses projected on the underlying collateral will be expected to be passed through to the securitization's bonds. We also monitor credit ratings and will make credit adjustments to the extent any bond classes are downgraded by rating agencies.

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Interest income on mortgage loans held-for-investment is measured by multiplying the unpaid principal balance on the loans by the coupon rate and the number of days of interest due. Interest expense on the on-balance sheet securitizations is measured by multiplying bond principal by the coupon rate and the number of days of interest due to the investor.

The following tables provide the aggregate fair value and the aggregate unpaid principal balance for the fair value option-elected loans and long-term debt instruments.

December 31, 2009 (\$ in millions)	Unpaid principal balance	Premium/ (discount)	Loan advances/ other	Accrued interest	Fair value allowance	Fair value
<b>Assets</b>						
Loans held-for-sale						
Total loans	\$ 5,427	\$ 94	\$ —	\$ 6	\$ 19	\$ 5,546
Nonaccrual loans	3	—	—	—	—	3
Loans 90+ days past due (a)	—	—	—	—	—	—
Consumer finance receivables and loans, net of unearned income						
Total loans	7,180	—	(147)	59	(5,789)	1,303
Nonaccrual loans	2,343	(b)	(b)	(b)	(b)	(b)
Loans 90+ days past due (a)	1,434	(b)	(b)	(b)	(b)	(b)
<b>Liabilities</b>						
Secured debt						
On-balance sheet securitization debt	\$ (7,166)	\$ —	\$ —	\$ (15)	\$ 5,888	\$ (1,293)

(a) Loans 90+ days past due are also presented within the nonaccrual loan balance and within the total loan balance.

(b) The fair value of loans held-for-investment is calculated on a pooled basis, which does not allow us to reliably estimate the fair value of loans 90+ days past due or nonaccrual loans. As a result, the fair value of these loans is not included in the table above. Unpaid principal balances were provided to allow assessment of the materiality of loans 90+ days past due and nonaccrual loans relative to total loans. For further discussion regarding the pooled basis, refer to the previous section of this note titled, *Consumer finance receivables, net of unearned income*.

December 31, 2008 (\$ in millions)	Unpaid principal balance	Loan advances/ other	Accrued interest	Fair value allowance	Fair value
<b>Assets</b>					
Consumer finance receivables and loans, net of unearned income					
Total loans	\$ 8,735	\$ (135)	\$ 90	\$ (6,829)	\$ 1,861
Nonaccrual loans	1,695	(a)	(a)	(a)	(a)
Loans 90+ days past due (b)	1,204	(a)	(a)	(a)	(a)
<b>Liabilities</b>					
Secured debt					
On-balance sheet securitization debt	\$ (8,414)	\$ (2)	\$ (18)	\$ 6,535	\$ (1,899)

(a) The fair value of loans held-for-sale is calculated on a pooled basis, which does not allow us to reliably estimate the fair value of loans 90+ days past due or nonaccrual loans. As a result, the fair value of these loans is not included in the table above. Unpaid principal balances were provided to allow assessment of the materiality of loans 90+ days past due and nonaccrual loans relative to total loans. For further discussion regarding the pooled basis, refer to the previous section of this note titled, *Consumer finance receivables, net of unearned income*.

(b) Loans 90+ days past due are also presented within the nonaccrual loan balance and within the total loan balance.

## Fair Value of Financial Instruments

The following table presents the carrying and estimated fair value of assets and liabilities that are considered financial instruments. Accordingly, items that do not meet the definition of a financial instrument are excluded from the table. When possible, we use quoted market prices to determine fair value. Where quoted market prices are not available, the fair value is

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internally derived based upon appropriate valuation methodologies with respect to the amount and timing of future cash flows and estimated discount rates. However, considerable judgment is required in interpreting market data to develop estimates of fair value, so the estimates are not necessarily indicative of the amounts that could be realized or would be paid in a current market exchange. The effect of using different market assumptions or estimation methodologies could be material to the estimated fair values. Fair value information presented herein is based on information available at December 31, 2009 and 2008. Although management is not aware of any factors that would significantly affect the estimated fair value amounts, such amounts have not been updated since those dates; therefore, the current estimates of fair value at dates after December 31, 2009 and 2008, could differ significantly from these amounts.

December 31, (\$ in millions)	2009		2008	
	Carrying value	Fair value	Carrying value	Fair value
<b>Financial assets</b>				
Trading securities	\$ 739	\$ 739	\$ 1,207	\$ 1,207
Investment securities	12,158	12,158	6,237	6,237
Loans held-for-sale (a)	20,625	19,855	7,919	8,182
Finance receivables and loans, net	75,256	72,213	98,295	92,681
Derivative assets	2,654	2,654	5,014	5,014
Derivative collateral placed with counterparties (b)	845	845	—	—
Interests retained in securitization trusts	471	471	1,001	1,001
<b>Financial liabilities</b>				
Debt (c)	\$ 98,819	\$ 95,588	\$ 126,771	\$ 106,119
Deposit liabilities (d)	30,549	30,795	19,221	19,298
Derivative liabilities	1,895	1,895	2,653	2,653

(a) The balance includes options to repurchase delinquent assets from certain off-balance securitizations and agency whole-loan sales. We are not exposed to the losses on these delinquent loans, unless we exercise the repurchase option. Until we exercise the option, the carrying value of these loans equals the unpaid principal balance and the fair value is based on internal valuation models. As a result, the carrying value (or unpaid principal balance) is greater than the fair value due to the underlying characteristics of the loans.

(b) Represents collateral in the form of investment securities.

(c) Debt includes deferred interest for zero-coupon bonds of \$506 million and \$450 million as of December 31, 2009 and 2008, respectively.

(d) The carrying value and fair value amounts exclude dealer deposits.

The following describes the methodologies and assumptions used to determine fair value for the respective classes of financial instruments. In addition to the valuation methods discussed below, we also followed guidelines for determining whether a market is not active and a transaction is not distressed. As such, we assumed the price that would be received in an orderly transaction (including a market-based return) and not forced liquidation or distressed sale.

- **Trading securities** — Refer to the previous section of this note titled *Trading securities* for a description of the methodologies and assumptions used to determine fair value.
- **Investment securities** — Bonds, equity securities, notes, and other available-for-sale investment securities are carried at fair value. Refer to the previous section of this note titled *Available-for-sale securities* for a description of the methodologies and assumptions used to determine fair value. The fair value of the held-to-maturity investment securities is based on valuation models using market-based assumption.
- **Loans held-for-sale** — Refer to the previous sections of this note also titled *Loans held-for-sale* for a description of methodologies and assumptions used to determine fair value.
- **Finance receivables and loans, net** — With the exception of mortgage loans held-for-investment, the fair value of finance receivables was based on discounted future cash flows using applicable spreads to approximate current rates applicable to each category of finance receivables (an income approach). The carrying value of wholesale receivables in certain markets and certain other automotive- and mortgage-lending receivables for which interest rates reset on a short-term basis with applicable market indices are assumed to approximate fair value either because

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of the short-term nature or because of the interest rate adjustment feature. The fair value of wholesale receivables in other markets was based on discounted future cash flows using applicable spreads to approximate current rates applicable to similar assets in those markets.

For mortgage loans held-for-investment used as collateral for securitization debt, we used a portfolio approach or an in-use premise to measure these loans at fair value. The objective in fair valuing these loans (which are legally isolated and beyond the reach of our creditors) and the related collateralized borrowings is to reflect our retained economic position in the securitizations. For mortgage loans held-for-investment that are not securitized, we used valuation methods and assumptions similar to those used for mortgage loans held-for-sale. These valuations consider unique attributes of the loans such as geography, delinquency status, product type, and other factors. Refer to the previous section in this note titled *Loans held-for-sale* for a description of methodologies and assumptions used to determine the fair value of mortgage loans held-for-sale.

- **Derivative assets and liabilities** — Refer to the previous section of this note titled *Derivative instruments* for a description of the methodologies and assumptions used to determine fair value.
- **Derivative collateral placed with counterparties** — Derivative collateral placed with counterparties in the table above represents only collateral in the form of investment securities. Refer to the previous section of this note titled *Investment securities* for additional information.
- **Interests retained in securitization trusts** — Interest retained in securitization trusts are carried at fair value. Refer to the previous sections of this note titled *Interests retained in securitization trusts* for a description of the methodologies and assumptions used to determine fair value.
- **Debt** — The fair value of debt was determined using quoted market prices for the same or similar issues, if available, or was based on the current rates offered to us for debt with similar remaining maturities.
- **Deposit liabilities** — Deposit liabilities represent certain consumer bank deposits as well as mortgage escrow deposits. The fair value of deposits with no stated maturity is equal to their carrying amount. The fair value of fixed-maturity deposits was estimated by discounting cash flows using currently offered rates for deposits of similar maturities.

## 28. Variable Interest Entities

The following describes the VIEs that we have consolidated or in which we have a significant variable interest. We have certain secured funding arrangements that are structured through consolidating entities, as described in further detail in Note 16.

- **On-balance sheet securitization trusts** — We have certain securitization transactions that are not qualifying special-purpose entities (QSPEs) and are VIEs. We typically hold the first loss position in these securitization transactions and, as a result, anticipate absorbing the majority of the expected losses of the VIE. Accordingly, we are the primary beneficiary; thus, we have consolidated these securitization trusts entities. The assets of the consolidated securitization trusts totaled \$38.4 billion and \$49.9 billion at December 31, 2009 and 2008, respectively. The majority of the assets are included as finance receivables and loans, net of unearned interest, on the Consolidated Balance Sheet. The liabilities of these securitization trust entities totaled \$28.9 billion and \$39.0 billion at December 31, 2009 and 2008, respectively. The majority of these liabilities were included as secured debt on the Consolidated Balance Sheet.

The nature of, purpose of, activities of, and our continuing involvement with the consolidated securitization trusts are virtually identical to those of our off-balance sheet securitization trusts, which are discussed in Note 10. The assets of the securitization trusts generally are the sole source of repayment on the securitization trusts' liabilities. The creditors of the securitization trusts do not have recourse to our general credit with the exception of the customary representation and warranty repurchase provisions and, in certain transactions, early payment default provisions.

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During 2009, we executed an amendment to a wholesale automotive securitization transaction that was previously classified as a QSPE and, therefore, was not consolidated. The amendment contractually required us to deposit additional cash into a collateral account held by the trust. Management determined the amendment caused the trust to no longer be classified as a QSPE. As a result, the trust became a consolidated entity.

- **Mortgage warehouse funding** — We transfer international residential mortgage loans into SPEs to obtain funding. The facilities have advance rates less than 100% of the pledged asset values, and in certain cases, we have provided a subordinated loan to the facility to serve as additional collateral. For certain facilities, we provide an unconditional guarantee of the entity's repayment on the related debt to the facility that provides the facility provider with recourse to our general credit. We continue to service the assets within the mortgage warehouse facilities.

The over-collateralization and the subordinated loan support the liability balance and are the primary source of repayment of the entities' liabilities. Assets can be sold from the facilities so long as we support the minimum cash reserve under the borrowing base should the eligibility/concentration limit of the remaining assets require it. We are entitled to excess cash flows generated from the assets beyond those necessary to pay the facility during a particular period; therefore, we hold an economic residual. There are no other forms of support that we provide to the SPE beyond the assets (over-collateralization and subordinated loan) initially provided and the guarantee of the entities' performance.

Due to the subordinated loan and the guarantee, we anticipate absorbing the majority of the expected losses of the VIE. Accordingly, we are the primary beneficiary and thus have consolidated these entities.

The assets of these residential mortgage warehouse entities totaled \$264 million, and liabilities totaled \$400 million at December 31, 2009. At December 31, 2008, the assets of these residential mortgage warehouse entities totaled \$1.4 billion, and liabilities totaled \$1.5 billion. The majority of the assets and liabilities are included in loans held-for-sale or assets of operations held-for-sale and secured debt, respectively, on the Consolidated Balance Sheet. The creditors of these VIEs do not have legal recourse to our general credit.

- **Model home financings** — In June 2008, Cerberus purchased certain assets of our Mortgage operations with a carrying value of approximately \$480 million for consideration consisting of \$230 million in cash and Series B junior preferred membership interests in the newly formed entity, CMH, which is not a subsidiary of our Mortgage operations and the managing member of which is an affiliate of Cerberus. CMH purchased model home and lot option assets from our Mortgage operations.

In conjunction with this agreement, Cerberus entered into a term loan and a revolving loan with CMH. The term loan principal amount was \$230 million, and the revolving loan maximum amount was \$10 million. Both loans had a five-year term and a 15% interest rate. The term loan and related interest are paid from the dispositions of the model homes and lot options.

The term loan and interest due are repaid out of the dispositions of the models after CMH has repaid the loan and paid the accrued interest. Cash is distributed in the following order: (1) to the Class A senior preferred member all unreturned preferred capital including a preferred return equal to 20% of total cash outlay less the aggregate amount of interest payments made, (2) to the Class B junior preferred member all unreturned preferred capital including a preferred return equal to 20% of the initial Class B capital account, (3) to the Class B member until all reimbursable costs have been returned, and (4) to the common unit member (Cerberus). Based on the market conditions and market valuation adjustments, there is a risk that our Mortgage operations will not receive all of its Tier 2 payments.

As of June 30, 2009, Cerberus was repaid in full under the term loan and was paid their preferred return on Class A Senior Preferred Capital.

We consolidate CMH as we hold all the remaining interests in CMH and are, therefore, the primary beneficiary. The assets of CMH were \$55 million and \$186 million as of December 31, 2009 and 2008, respectively, and were included in other assets on the Consolidated Balance Sheet. The liabilities of CMH were less

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than \$1 million and \$47 million as of December 31, 2009 and 2008, respectively, which were classified as debt and accrued expenses and other liabilities on the Consolidated Balance Sheet. The beneficial interest holders of this VIE do not have legal recourse to our general credit. We do not have a contractual obligation to provide any type of financial support in the future, nor have we provided noncontractual financial support or any type of support to the entity during the year ended December 31, 2009.

We continue to service, account for, market, and sell the assets without a servicing fee. However, we do receive reimbursement of expenses directly related to the assets such as property taxes and other direct out-of-pocket expenses. This VIE does not conduct new business; therefore, no new assets were transferred into CMH.

- **Servicing funding** — To assist in the financing of our servicing advance receivables, our Mortgage operations formed an SPE that issues term notes to third-party investors that are collateralized by servicing advance receivables. These servicing advance receivables are transferred to the SPE and consist of delinquent principal and interest advances made by our Mortgage operations, as servicer, to various investors; property taxes and insurance premiums advanced to taxing authorities and insurance companies on behalf of borrowers; and amounts advanced for mortgages in foreclosure. The SPE funds the purchase of the receivables through financing obtained from the third-party investors and subordinated loans or an equity contribution from our Mortgage operations. Management determined that we are the primary beneficiary of the SPE and therefore consolidated the entity. The assets of this entity totaled \$1.4 billion and \$1.2 billion as of December 31, 2009 and 2008, respectively, which are included in other assets on the Consolidated Balance Sheet. The liabilities of this entity totaled \$1.4 billion at December 31, 2009, consisting of \$700 million in third-party term notes that are included in debt on the Consolidated Balance Sheet, and \$677 million in affiliate payables to our Mortgage operations, which are eliminated in consolidation. The liabilities of this entity totaled \$1.2 billion at December 31, 2008, consisting of \$700 million in third-party term notes that are included in debt on the Consolidated Balance Sheet and \$507 million in affiliate payables to our Mortgage operations that are eliminated in consolidation. The beneficial interest holder of this VIE does not have legal recourse to our general credit. We do not have a contractual obligation to provide any type of financial support in the future, nor have we provided noncontractual financial support to the entity during the year ended December 31, 2009.
- **Commercial Finance receivables** — We transfer asset-backed lending receivables and commercial trade receivables into bank-sponsored multiseller commercial paper conduits. These conduits provide a funding source to us (and to other transferors into the conduit) as they fund the purchase of the receivables through the issuance of commercial paper. Total assets and liabilities outstanding in these bank-sponsored conduits approximated \$231 million and \$82 million, respectively, as of December 31, 2009. Total assets and liabilities outstanding in these bank-sponsored conduits approximated \$2.1 billion and \$781 million, respectively, as of December 31, 2008. Although we have a variable interest in these conduits, we may prepay all of the loans at our discretion at any time, and as such, on January 11, 2010, these conduits were settled and discontinued due to the availability of alternative funding.

Prior to July 21, 2009, we also had a facility in which we transferred commercial-lending receivables to a 100% owned SPE that, in turn, issued notes to third-party financial institutions, our Commercial Finance Group, and asset-backed commercial paper conduits. The SPE funded the purchase of receivables from us with cash obtained from the sale of notes. Management determined we were the primary beneficiary of the SPE and therefore consolidated the entity. Additionally, beneficial interest holders of this variable interest entity did not have legal recourse to our general credit. On July 21, 2009, this facility was settled and discontinued due to the availability of alternative funding. As a result, there were no remaining assets or liabilities included in our Consolidated Balance Sheet as of December 31, 2009. As of December 31, 2008, the assets and liabilities of the SPE totaled \$2.2 billion and \$1.1 billion respectively, and they were included in finance receivables and loans, net of unearned income, on our Consolidated Balance Sheet.

- **Preferred Blocker Inc.** — In connection with the fourth quarter 2008 private debt exchange, we transferred GMAC Preferred Membership Interests (the Blocker Preferred) to Preferred Blocker Inc. (Blocker), a newly formed taxable C-corporation. Blocker was established for the sole purpose of investing in the Blocker Preferred and financing them through the issuance of preferred stock (the Blocker Preferred Stock) to third-party investors in

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connection with the December 2008 private debt exchange. Blocker did not engage in any business activities, hold any assets, or incur any liabilities other than in connection with the issuance and maintenance of Blocker Preferred Stock. In connection with the arrangement described above, GMAC held 5,000,000 shares of Blocker common stock with a par value of \$0.01. Additionally, we were bound by a Keep-Well Agreement with Blocker in which we were required to make payment to Blocker in the event that Blocker's expenses, primarily its income tax expense, were greater than the dividend spread between the Blocker Preferred (11.86% dividend rate per annum) and the Blocker Preferred Stock (7% dividend rate per annum). Due to the spread in rates, Blocker's tax rate would have to have exceeded 41.0% before we would have been required to make payment under the Keep-Well Agreement. Since this rate is in excess of common corporate taxable rates, the potential for loss under the agreement was considered remote, unless corporate tax rates increased. Although we held these variable interests in Blocker, we were not considered to be the primary beneficiary as we did not retain the majority of the expected losses or returns. Blocker was a wholly owned nonconsolidated subsidiary of GMAC. In connection with GMAC's June 30, 2009, conversion from a limited liability company to a corporation, effective October 15, 2009, Blocker was merged with and into GMAC with GMAC continuing as the surviving entity. The Blocker Preferred Stock was required by its terms to be converted into or exchanged for preferred stock of GMAC. As such, the Blocker Preferred Stock was converted into the right to receive an equal number of newly issued shares of GMAC's 7% Fixed Rate Cumulative Perpetual Preferred Stock, Series G, which has substantially the same rights, preferences, and economic benefits as previously provided to the holders of the Blocker Preferred Stock. The Blocker Preferred, held by Blocker, was canceled and returned to authorized but unissued status. Additionally, the Keep-Well Agreement was terminated in accordance with its terms.

## 29. Segment and Geographic Information

Operating segments are defined as components of an enterprise that engage in business activity from which revenues are earned and expenses incurred for which discrete financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance.

### Change in Reportable Segment Information

As a result of a change in management's view of our operations, we have changed the presentation and profit measures of our reportable operating segments as of December 31, 2009. These changes include the following:

- We presented our North American Automotive Finance operations, International Automotive Finance operations, and Insurance operations reportable operating segments under the new collective business description, Global Automotive Services. Previously our North American Automotive Finance operations and International Automotive Finance operations reportable operating segments were collectively described as our Global Automotive Finance operations. The combination of these three reportable operating segments under the Global Automotive Services description is consistent with the organizational alignment of these businesses and management's current view of the automotive finance and insurance businesses.
- We have implemented a funds-transfer-pricing (FTP) methodology for the majority of our business operations. The FTP methodology assigns charge rates and credit rates to classes of assets and liabilities based on expected duration and the LIBOR swap curve plus an assumed credit spread. Matching duration allocates interest income and interest expense to these reportable segments so their respective results are insulated from interest rate risk. This methodology is consistent with our asset liability management (ALM) practices, which includes managing interest rate risk centrally at a corporate level. The net residual impact of the FTP methodology is included within the results of Corporate and Other as summarized below.

We may periodically refine our segment reporting methodology as our management reporting practices and businesses change. Amounts for 2008 and 2007 have been reclassified to conform to the current management view.

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Financial information for our reportable operating segments is summarized as follows:

Year ended December 31, (\$ in millions)	Global Automotive Services (a)					Corporate and Other (d)	Consolidated (e)
	North American Automotive Finance operations	International Automotive Finance operations (b)	Insurance operations	Mortgage operations (c)			
<b>2009</b>							
Net financing revenue (loss)	\$ 3,202	\$ 782	\$ —	\$ 441	\$ (2,388)	\$ 2,037	
Other revenue	757	288	2,271	168	740	4,224	
Total net revenue (loss)	3,959	1,070	2,271	609	(1,648)	6,261	
Provision for loan losses	611	239	—	4,702	491	6,043	
Other noninterest expense	1,596	932	1,942	3,208	478	8,156	
Income (loss) from continuing operations before income tax expense (benefit)	1,752	(101)	329	(7,301)	(2,617)	(7,938)	
Income tax expense (benefit) from continuing operations	1,206	115	57	(228)	(1,072)	78	
Net income (loss) from continuing operations	546	(216)	272	(7,073)	(1,545)	(8,016)	
Loss from discontinued operations, net of tax	—	(349)	(711)	(1,200)	(22)	(2,282)	
Net income (loss)	\$ 546	\$ (565)	\$ (439)	\$ (8,273)	\$ (1,567)	\$ (10,298)	
Total assets	\$ 68,282	\$ 21,802	\$ 10,614	\$ 38,894	\$ 32,714	\$ 172,306	
<b>2008</b>							
Net financing revenue (loss)	\$ 1,646	\$ 948	\$ —	\$ 291	\$ (1,960)	\$ 925	
Other revenue	1,066	398	2,961	662	9,423	14,510	
Total net revenue	2,712	1,346	2,961	953	7,463	15,435	
Provision for loan losses	1,198	218	—	1,984	10	3,410	
Impairment of goodwill and other intangible assets	14	—	—	—	2	16	
Other noninterest expense	1,707	987	2,462	2,977	500	8,633	
(Loss) income from continuing operations before income tax expense (benefit)	(207)	141	499	(4,008)	6,951	3,376	
Income tax expense (benefit) from continuing operations	88	22	112	(7)	(275)	(60)	
Net (loss) income from continuing operations	(295)	119	387	(4,001)	7,226	3,436	
(Loss) income from discontinued operations, net of tax	—	(40)	72	(1,586)	(14)	(1,568)	
Net (loss) income	\$ (295)	\$ 79	\$ 459	\$ (5,587)	\$ 7,212	\$ 1,868	
Total assets	\$ 71,981	\$ 29,290	\$ 12,013	\$ 44,763	\$ 31,429	\$ 189,476	

# Notes to Consolidated Financial Statements

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Year ended December 31, (\$ in millions)	Global Automotive Services (a)						Consolidated (e)
	North American Automotive Finance operations	International Automotive Finance operations (b)	Insurance operations	Mortgage operations (c)	Corporate and Other (d)		
<b>2007</b>							
Net financing revenue (loss)	\$ 3,421	\$ 939	\$ —	\$ 925	\$ (1,502)	\$	3,783
Other revenue (loss)	1,531	432	3,164	847	(10)	\$	5,964
Total net revenue (loss)	4,952	1,371	3,164	1,772	(1,512)	\$	9,747
Provision for loan losses	390	117	—	2,550	10	\$	3,067
Impairment of goodwill and other intangible assets	—	—	—	438	—	\$	438
Other noninterest expense	1,539	782	2,618	2,915	194	\$	8,048
Income (loss) from continuing operations before income tax expense (benefit)	3,023	472	546	(4,131)	(1,716)	\$	(1,806)
Income tax expense (benefit) from continuing operations	490	108	170	(2)	(371)	\$	395
Net income (loss) from continuing operations	2,533	364	376	(4,129)	(1,345)	\$	(2,201)
Income (loss) from discontinued operations, net of tax	—	16	83	(250)	20	\$	(131)
Net income (loss)	\$ 2,533	\$ 380	\$ 459	\$ (4,379)	\$ (1,325)	\$	(2,332)
Total assets	\$ 85,191	\$ 36,066	\$ 13,770	\$ 81,307	\$ 32,605	\$	248,939

- (a) North American operations consist of automotive financing in the United States, Canada, and Puerto Rico. International operations consist of automotive financing and full-service leasing in all other countries.
- (b) Amounts include intrasegment eliminations between North American operations, International operations, and Insurance operations.
- (c) Represents the ResCap legal entity and the mortgage activities of Ally Bank and ResMor Trust.
- (d) Represents our Commercial Finance Group, certain equity investments, other corporate activities, net impact from ALM activities, and reclassifications and eliminations between the reportable operating segments. At December 31, 2009, total assets were \$3.3 billion for the Commercial Finance Group.
- (e) Net financing revenue after the provision for loan losses totaled \$(4,006) million, \$(2,485) million, and \$716 million in 2009, 2008, and 2007, respectively.

# Notes to Consolidated Financial Statements

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Information concerning principal geographic areas was as follows:

Year ended December 31, (\$ in millions)	Revenue (a)	Long-lived assets (b)
<b>2009</b>		
Canada	\$ 654	\$ 3,985
Europe	594	906
Latin America	761	33
Asia-Pacific	(14)	8
Total foreign	1,995	4,932
Total domestic	4,266	11,399
Total	\$ 6,261	\$ 16,331
<b>2008</b>		
Canada	\$ (116)	\$ 6,211
Europe	397	2,349
Latin America	1,026	167
Asia-Pacific	25	179
Total foreign	1,332	8,906
Total domestic	14,103	17,915
Total	\$ 15,435	\$ 26,821
<b>2007</b>		
Canada	\$ 434	\$ 9,861
Europe	744	2,725
Latin America	1,006	186
Asia-Pacific	69	238
Total foreign	2,253	13,010
Total domestic	7,494	19,897
Total	\$ 9,747	\$ 32,907

(a) Revenue consists of net financing revenue (loss) and total other revenue as presented in our Consolidated Statement of Income.

(b) Consists of investment in operating leases, net, and net property and equipment.

## 30. Guarantees, Commitments, Contingencies, and Other Risks

### Guarantees

Guarantees are defined as contracts or indemnification agreements that contingently require us to make payments to third parties based on changes in an underlying agreement that is related to a guaranteed party. The following summarizes our outstanding guarantees made to third parties on our Consolidated Balance Sheet, for the periods shown.

December 31, (\$ in millions)	2009		2008	
	Maximum liability	Carrying value of liability	Maximum liability	Carrying value of liability
Letters of credit	\$ 395	\$ 21	\$ 467	\$ 10
Agency loan	1,208	56	4,369	—
Guarantees for repayment of third-party debt	782	—	717	3
Credit enhancement guarantees	192	4	111	1
Default repurchases	699	81	674	7
Capmark guarantees	177	47	195	—
Trust preferred securities	2,670	—	—	—
Other guarantees	40	25	40	13

# Notes to Consolidated Financial Statements

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## Letters of Credit

Our Commercial Finance Group issues both trade and standby letters of credit to clients that represent irrevocable guarantees of payment of specified financial obligations. Trade letters of credit issued to our clients are primarily used as payment methods to support their buying and selling of merchandise with third-party beneficiaries. These are utilized primarily for the importation and exportation of goods. Standby letters of credit represent our various contingent liabilities in the event our client defaults on an obligation with the third-party beneficiaries. Standby letters of credit are primarily utilized by third-party beneficiaries as insurance in the event of nonperformance by our client. Letters of credit are generally collateralized by assets of the client (i.e., trade receivables, inventory, and cash deposits). Expiration dates on letters of credit range from certain ongoing commitments that will expire during the upcoming year to terms of several years for certain letters of credit.

If nonperformance by a client occurs for letters of credit, we can be liable for payment of the letter of credit to the beneficiary with our likely recourse being a charge back to the client. The majority of clients with whom we have letter of credit exposure fall into the “acceptable” risk-rating category of our Commercial Finance Group’s internal risk-rating system. This category is essentially at the midpoint of our risk rating classifications. While the overall credit of a borrower in this category is considered “acceptable,” a higher degree of risk may be evident. The borrower assessment factors may have elements that reflect marginally acceptable conditions warranting a more careful review, analysis, and monitoring. Additionally, tighter terms, covenants, or greater collateral protection may be necessary to help mitigate the risks associated with the financial condition of a borrower in this category.

In addition, our Mortgage operations issue financial standby letters of credit as part of its warehouse and construction-lending activities. Expiration dates on the letter of credit range from 2010 to ongoing commitments and are generally collateralized by borrower assets.

## Agency Loan Program

Our Mortgage operations deliver loans to certain agencies that allow streamlined loan processing and limited documentation requirements. The majority of these loans are originated under an employee benefit plan available to GM and GMAC employees. In the event any loans delivered under these programs reach a specified delinquency status, we may be required to provide certain documentation or, in some cases, repurchase the loan or indemnify the investors for any losses sustained. Each program includes termination features whereby once the loan has performed satisfactorily for a specified time we are no longer obligated under the program. The maximum liability represents the principal balance for loans sold under these programs.

## Guarantees for Repayment of Third-party Debt

Under certain arrangements, our International Automotive Finance operations guarantee the repayment of third-party debt obligations in the case of default. These guarantees are collateralized by retail loans or finance leases.

Our Commercial Finance Group provides credit protection to customers that guarantee payments of specified financial obligations of third-party beneficiaries without purchasing the obligations. These obligations primarily represent customer receivables due to certain of our factoring clients. While most of the specific receivables for which we provide guarantees are collected within 60 days, these arrangements are typically ongoing in nature. In the event a customer fails to perform on an obligation, we can be liable for payment of the obligation to the client. The majority of customers that we guarantee fall into the “acceptable” risk-rating category or higher on our Commercial Finance Group’s internal risk-rating system. The acceptable rating category is described further in the Letters of credit section above.

## Credit Enhancement Guarantees

Our Mortgage operations have sold certain mortgage loans to investors that contain a guarantee for the payment of third-party debt in the event of default or loss.

## Default Repurchases

Our International Automotive Finance operations provide certain investors in our on- and off-balance sheet arrangements (securitizations) and whole-loan transactions with repurchase commitments for loans that become contractually delinquent

# Notes to Consolidated Financial Statements

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within a specified period of time from their date of origination or purchase. The maximum obligation represents the principal balance for loans sold that are covered by these stipulations. Refer to Note 10 and Note 28 for further information regarding our securitization trusts.

## Capmark Guarantees

Capmark Financial Group Inc. (Capmark) is a commercial real estate finance company formed in 2006 as a result of the sale of our former commercial mortgage operations. In connection with this sale, we retained certain guarantees related to Low Income Housing Tax Credit (LIHTC) investment funds that Capmark sponsored that provided certain minimum yield guarantees to investors in the LIHTC funds. Under the terms of the guarantee arrangements, we are indemnified by Capmark for payments made or liabilities incurred by us in connection with these guarantees. On October 25, 2009, Capmark announced that it and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. As a result of the Capmark bankruptcy filing during the fourth quarter of 2009, we recorded a liability for the guarantee arrangement of \$47 million as of December 31, 2009.

## Trust Preferred Securities

On December 30, 2009, we entered into a Securities Purchase and Exchange Agreement with the Treasury and GMAC Capital Trust I, a Delaware statutory trust (the Trust) established by GMAC. As part of the agreement, the Trust sold to the Treasury 2,540,000 trust preferred securities issued by the Trust with an aggregate liquidation preference of \$2.5 billion. Additionally, we issued and sold to the Treasury a ten-year warrant to purchase up to 127,000 additional trust preferred securities with an aggregate liquidation preference of \$127 million, at an initial exercise price of \$0.01 per security, which the Treasury immediately exercised in full. We fully and unconditionally guarantee, on a subordinated basis, for the benefit of the holders of the trust preferred securities, the payment of certain amounts due on the trust preferred securities to the extent not paid by or on behalf of the Trust. Our maximum exposure is the equivalent of the unpaid amount of our 8.00% junior subordinated unsecured debentures (the Debentures) that the Trust purchased from us with the proceeds from the sale of the trust preferred securities. The trust preferred securities have no stated maturity date but must be redeemed upon the redemption or maturity (February 15, 2040) of the Debentures.

## Other Guarantees

We have other standard indemnification clauses in certain of our funding arrangements that would require us to pay lenders for increased costs resulting from certain changes in laws or regulations. Since any changes would be dictated by legislative and regulatory actions, which are inherently unpredictable, we are not able to estimate a maximum exposure under these arrangements. To date, we have not made any payments under these indemnification clauses.

Our Mortgage operations have guaranteed certain amounts related to servicing advances.

In connection with the fourth quarter 2008 private debt exchange, we transferred GMAC Preferred Membership Interests to Preferred Blocker Inc. (Blocker), a newly formed taxable C-corporation. Blocker was established for the sole purpose of investing in a series of GMAC Preferred Membership Interests and financing it through the issuance of Blocker Preferred Stock to third-party investors in connection with the private debt exchange. We were bound by a Keep-Well Agreement with Blocker in which we were required to make payment to Blocker in the event that Blocker's expenses, primarily its income tax expense, were greater than the dividend spread between the GMAC Preferred Membership Interests (11.86% dividend rate per annum) and the Blocker Preferred Stock (7% dividend rate per annum). In connection with GMAC's June 30, 2009, conversion from a limited liability company to a corporation, effective October 15, 2009, Blocker was merged with and into GMAC with GMAC continuing as the surviving entity. No liability was reflected on our Consolidated Balance Sheet as of December 31, 2009, as the Keep-Well Agreement was terminated in accordance with its terms. No liability was reflected on our Consolidated Balance Sheet as of December 31, 2008, because the potential for loss under the Keep-Well Agreement was considered remote. Refer to Note 28 for additional information.

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## Commitments

### Financing Commitments

The contract amount and gain and loss positions of financial commitments were as follows:

December 31, (\$ in millions)	2009			2008		
	Contract amount	Gain position	Loss position	Contract amount	Gain position	Loss position
<b>Commitments to</b>						
Originate/purchase mortgages or securities (a)	\$ 9,193	\$ 25	\$ (39)	\$ 4,837	\$ 47	\$ (1)
Sell mortgages or securities (a)	10,465	125	(5)	5,032	135	(46)
Sell retail automotive receivables (b)	4,807	—	—	7,933	—	—
Provide capital to investees (c)	145	—	—	223	—	—
Fund construction lending (d)	—	—	—	10	—	—
Unused mortgage-lending commitments (e)	1,291	—	—	1,273	—	—
Home equity lines of credit (f)	2,972	—	—	4,300	—	—
Unused revolving credit line commitments (g)	3,006	—	—	4,093	—	—

- (a) The fair value is estimated using published market information associated with commitments to sell similar instruments. Included as of December 31, 2009 and 2008, are commitments accounted for as derivatives with a contract amount of \$19,600 million and \$9,840 million, a gain position of \$150 million and \$182 million, and a loss position of \$44 million and \$46 million, respectively.
- (b) We have entered into agreements with third-party banks to sell automotive retail receivables in which we transfer all credit risk to the purchaser (whole-loan sales).
- (c) We are committed to lend equity capital to certain private equity funds. The fair value of these commitments is considered in the overall valuation of the underlying assets with which they are associated.
- (d) We are committed to fund the completion of the development of certain lots and model homes up to the amount of the agreed upon amount per project.
- (e) The fair value of these commitments is considered in the overall valuation of the related assets.
- (f) We are committed to fund the remaining unused balances on home equity lines of credit. The unused lines of credit reset at prevailing market rates and, as such, approximate market value. Included in the home equity lines of credit are both lines of credit on our Consolidated Balance Sheet and those within certain off-balance sheet securitizations. As provided by the securitization structure, we become obligated to fund any incremental draws, subject to customary borrower requirements, on home equity lines of credit by borrowers if certain triggers are met. These draws are referred to as excluded amounts and are funded directly to the borrower by us. In return, our lending balances are collected from an allocated portion of the remitted funds of all the borrowers within the trusts. We actively manage the available lines of credit within these trusts to reduce this potential funding risk. At December 31, 2009, the cumulative funds drawn were \$397 million, which we classified as finance receivables and loans, net of unearned income, on the Consolidated Balance Sheet. These receivables are subject to allowance for loan losses. At December 31, 2009, the commitments to fund home equity lines of credit in off-balance sheet securitizations represented \$1.3 billion of the total unfunded commitments of \$3.0 billion.
- (g) The unused portion of revolving lines of credit reset at prevailing market rates and, as such, approximate market value.

The mortgage-lending and revolving credit line commitments contain an element of credit risk. Management reduces its credit risk for unused mortgage-lending and unused revolving credit line commitments by applying the same credit policies in making commitments as it does for extending loans. We typically require collateral as these commitments are drawn.

### Lease Commitments

Future minimum rental payments required under operating leases, primarily for real property, with noncancelable lease terms expiring after December 31, 2009, are as follows:

Year ended December 31, (\$ in millions)	
2010	\$117
2011	94
2012	81
2013	66
2014	51
2015 and thereafter	118
<b>Total minimum payment required</b>	<b>\$527</b>

# Notes to Consolidated Financial Statements

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Certain of the leases contain escalation clauses and renewal or purchase options. Rental expenses under operating leases were \$104 million, \$189 million, and \$227 million in 2009, 2008, and 2007.

## Contractual Commitments

We have entered into multiple agreements for information technology, marketing and advertising, and voice and communication technology and maintenance. Many of the agreements are subject to variable price provisions, fixed or minimum price provisions, and termination or renewal provisions. Future payment obligations under these agreements totaled \$787 million and are due as follows: \$322 million in 2010, \$293 million in 2011 and 2012, \$164 million in 2013 and 2014, and \$8 million in 2015 and thereafter.

## Automotive Service and Maintenance Contract Commitments

Automotive service contract programs provide consumers with expansions and extensions of vehicle warranty coverage for specified periods of time and mileages. The coverage generally provides for the repair or replacement of components in the event of failure. The terms of these contracts, which are sold through automobile dealerships and direct mail, range from 3 to 120 months.

The following table presents an analysis of activity in unearned service contract revenue.

Year ended December 31, (\$ in millions)	2009	2008
Balance at beginning of year	\$ 2,609	\$ 2,947
Written service contract revenue	685	964
Earned service contract revenue	(1,138)	(1,295)
Revenue reclassified to discontinued operations	(2)	(1)
Foreign currency translation effect	3	(6)
Liability reclassified to held-for-sale	(6)	—
Balance at end of year	\$ 2,151	\$ 2,609

## Legal Contingencies

We are subject to potential liability under laws and government regulations and various claims and legal actions that are pending or may be asserted against us.

We are named as defendants in a number of legal actions and are, from time to time, involved in governmental proceedings arising in connection with our various businesses. Some of the pending actions purport to be class actions. We establish reserves for legal claims when payments associated with the claims become probable and the costs can be reasonably estimated. The actual costs of resolving legal claims may be substantially higher or lower than the amounts reserved for those claims. Based on information currently available, advice of counsel, available insurance coverage, and established reserves, it is the opinion of management that the eventual outcome of the actions against us will not have a material adverse effect on our consolidated financial condition, results of operations, or cash flows.

## Other Contingencies

We are subject to potential liability under various other exposures including tax, nonrecourse loans, self-insurance, and other miscellaneous contingencies. We establish reserves for these contingencies when the item becomes probable and the costs can be reasonably estimated. The actual costs of resolving these items may be substantially higher or lower than the amounts reserved for any one item. Based on information currently available, it is the opinion of management that the eventual outcome of these items will not have a material adverse effect on our consolidated financial condition, results of operations, or cash flows.

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## Other Risks

### Concentration Risk

#### Consumer

We monitor our consumer loan portfolio for concentration risk across the geographies in which we lend. The highest concentrations of loans are in California and Texas, which represent an aggregate of 15% of our total outstanding consumer loans.

Concentrations in our mortgage operations are closely monitored given the volatility of the housing markets. Our consumer mortgage loan concentrations in California, Florida, and Arizona receive particular attention as their real estate value depreciation has been the most severe. The asset reclassifications to held-for-sale significantly reduced our concentrations in those real estate markets.

Our foreign automotive finance receivables and loans outstanding are heavily concentrated in Canada and Germany, representing 20% and 13%, respectively, of total consumer automotive loans outstanding.

The following table shows held-for-investment consumer finance receivables and loans reported at gross carrying value by state and foreign concentration.

December 31,	2009		2008	
	Automobile	1st Mortgage and home equity	Automobile	1st Mortgage and home equity
California	2.7%	23.3%	2.8%	19.8%
Texas	7.5	2.9	8.3	1.9
Florida	2.1	4.4	2.0	5.3
Illinois	1.9	4.4	2.0	3.4
New York	2.4	2.9	3.3	3.1
Michigan	1.4	5.4	0.9	4.4
Pennsylvania	2.4	1.8	2.5	1.7
Virginia	0.8	5.5	0.8	4.3
Arizona	0.8	4.0	0.9	3.6
Maryland	0.7	4.4	0.7	3.5
Other United States	18.7	37.4	18.6	29.5
Canada	20.1	3.6	16.7	0.8
Germany	13.3	—	12.5	6.9
Brazil	6.8	—	4.3	—
Other foreign	18.4	—	23.7	11.8
<b>Total consumer loans</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

The following table includes our five largest state and foreign concentrations based on our higher risk held-for-investment loans reported at gross carrying value as of December 31, 2009.

December 31, 2009 (\$ in millions)	High original loan-to-value (greater than 100%) mortgage loans	Payment-option adjustable-rate mortgage loans	Interest-only mortgage loans	Below market rate (teaser) mortgages	All higher risk loans
California	\$ 1	\$ 2	\$ 1,128	\$ 102	\$ 1,233
Virginia	—	—	397	13	410
Maryland	—	—	309	8	317
Michigan	—	—	259	11	270
Illinois	—	—	230	9	239
All other domestic and foreign	6	5	2,023	188	2,222
<b>Total</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ 4,346</b>	<b>\$ 331</b>	<b>\$ 4,691</b>

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## Commercial Real Estate

The commercial real estate portfolio consists of loans issued primarily to developers, homebuilders and commercial real estate firms. The following table shows held-for-investment commercial real estate loans reported at gross carrying value by geographic region and property type.

December 31,	2009	2008
<b>Geographic region</b>		
Florida	11.8%	11.6%
Texas	11.2	13.8
California	9.8	16.2
Michigan	8.5	5.4
Virginia	3.9	3.7
New York	3.7	3.7
Pennsylvania	3.4	2.1
Oregon	2.1	0.8
Alabama	2.1	1.2
Georgia	2.1	2.5
Other United States	26.2	28.5
United Kingdom	7.3	4.5
Canada	4.3	4.1
Germany	0.6	—
Other foreign	3.0	1.9
<b>Total outstanding commercial real estate loans</b>	<b>100.0%</b>	<b>100.0%</b>
<b>Property type</b>		
Automobile dealers	84.3%	51.9%
Land and land development	5.7	42.4
Apartments	2.9	2.8
Residential	2.7	2.9
Other	4.4	—
<b>Total outstanding commercial real estate loans</b>	<b>100.0%</b>	<b>100.0%</b>

## Commercial Criticized Exposure

Exposures deemed criticized represent loans that are classified by regulatory authorities as special mention, substandard, or doubtful. The following table shows industry concentrations for held-for-investment commercial criticized loans reported at gross carrying value.

December 31,	2009	2008
<b>Industry</b>		
Automotive	50.1%	60.5%
Resort finance	17.1	—
Health/medical	7.9	4.4
Real estate	6.1	25.5
Manufacturing	3.2	0.6
Retail	2.7	1.7
Services	2.2	0.4
Banks and finance companies	2.0	3.1
All other	8.7	3.8
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>

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## Loan Repurchases and Obligations Related to Loan Servicing

When our Mortgage operations sell loans through whole-loan, agency sales or securitizations, we are required to provide representations and warranties about the loans to the purchaser or securitization trust. Upon discovery of a breach of a representation, we will either correct the loans in a manner conforming to the provisions of the sale agreement, replace the loans with similar loans that conform to the provisions, or purchase the loans at a price determined by the related transaction documents, consistent with industry practice. We purchased \$857 million in mortgage loans under these provisions during 2009 and \$988 million in 2008. In addition, we have a reserve for expected future losses in connection with these activities totaling \$1.2 billion and \$225 million at December 31, 2009 and 2008 respectively. Refer to Note 10 and Note 28 for further information regarding our securitization trusts. In addition, we are subject to various contractual obligations as a servicer of loans, and a breach of such obligations could result in potential liability.

## 31. Quarterly Financial Statements (unaudited)

2009 (\$ in millions)	First quarter	Second quarter	Third quarter	Fourth quarter
Net financing revenue	\$ 477	\$ 393	\$ 564	\$ 603
Total other revenue	1,263	617	1,442	902
Total net revenue	1,740	1,010	2,006	1,505
Provision for loan losses	795	1,134	682	3,432
Other noninterest expense	1,685	1,738	2,191	2,542
Loss from continuing operations before income tax (benefit) expense	(740)	(1,862)	(867)	(4,469)
Income tax (benefit) expense from continuing operations	(126)	1,099	(292)	(603)
<b>Net loss from continuing operations</b>	<b>(614)</b>	<b>(2,961)</b>	<b>(575)</b>	<b>(3,866)</b>
<b>Loss from discontinued operations, net of tax</b>	<b>(61)</b>	<b>(942)</b>	<b>(192)</b>	<b>(1,087)</b>
<b>Net loss</b>	<b>\$ (675)</b>	<b>\$ (3,903)</b>	<b>\$ (767)</b>	<b>\$ (4,953)</b>
<b>2008</b>				
Net financing revenue (loss)	\$ 712	\$ 222	\$ 448	\$ (457)
Total other revenue	1,557	1,040	599	11,314
Total net revenue	2,269	1,262	1,047	10,857
Provision for loan losses	439	675	1,045	1,251
Impairment of goodwill	—	—	16	—
Other noninterest expense	1,892	2,207	2,543	1,991
(Loss) income from continuing operations before income tax (benefit) expense	(62)	(1,620)	(2,557)	7,615
Income tax (benefit) expense from continuing operations	(22)	156	(104)	(90)
<b>Net (loss) income from continuing operations</b>	<b>(40)</b>	<b>(1,776)</b>	<b>(2,453)</b>	<b>7,705</b>
<b>Loss from discontinued operations, net of tax</b>	<b>(549)</b>	<b>(706)</b>	<b>(70)</b>	<b>(243)</b>
<b>Net (loss) income</b>	<b>\$ (589)</b>	<b>\$ (2,482)</b>	<b>\$ (2,523)</b>	<b>\$ 7,462</b>

## 32. Subsequent Events

### Declaration of Quarterly Dividend Payments

On January 8, 2010, the GMAC Board of Directors declared quarterly dividend payments on certain outstanding preferred stock. This included a cash dividend of \$0.56 per share, or a total of \$129 million, on Fixed Rate Cumulative Mandatorily Convertible Preferred Stock, Series F-2 and a cash dividend of \$17.31 per share, or a total of \$45 million, on Fixed Rate Cumulative Perpetual Preferred Stock, Series G. The dividends were paid on February 15, 2010.

## **February 2010 Notes Offering**

On February 12, 2010, we completed a private securities offering of \$2 billion in aggregate principal amount of GMAC senior guaranteed notes due 2015. The notes bear interest at a rate of 8.3% per annum and are unconditionally guaranteed by certain GMAC subsidiaries.