

**HEARING DATE AND TIME: February 9, 2011 at 9:45 a.m. (Eastern Time)**  
**OBJECTION DEADLINE: February 2, 2011 at 4:00 p.m. (Eastern Time)**

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Northwest, N.A., as Agent to the TPC Lenders

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
: :  
GENERAL MOTORS CORP., *et al.*, : Case No. 09-50026 (REG)  
: :  
Debtors. : (Jointly Administered)  
----- X

**MOTION OF THE TPC LENDERS FOR AN ENTRY OF AN ORDER  
(I) INITIATING VALUATION PROCEEDINGS IN ACCORDANCE WITH  
THE SALE ORDER, AND (II) ESTABLISHING A SCHEDULE  
WITH RESPECT TO THE VALUATION PROCEEDINGS**

Wells Fargo Bank Northwest, N.A. ("Wells Fargo"), as Agent (the "Agent"), on behalf of Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator (the "Administrator"), Hannover Funding Company ("Hannover" or the "CP Lender"), and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, as purchasers, (collectively with the Administrator, the "TPC Lenders"), hereby moves

this Court for entry of an order initiating valuation proceedings in accordance with the Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement With NGMCO, Inc., a U.S. Treasury-sponsored purchaser (the “MPA”); (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection With the Sale; and (III) Granting Related Relief entered as of July 5, 2009 (the “Sale Order”) [Docket Entry No. 2968] and establishing a schedule for the valuation proceedings for the TPC Property (as defined below) (the “Motion”).

### **BACKGROUND CONCERNING RELIEF REQUESTED**

1. The purpose of this Motion is to institute proceedings to value the TPC Property and, as a consequence, value the secured claim of the Agent relating to the TPC Property. The TPC Property comprises real estate, improvements, fixtures, and various additional property located at two of General Motors Corporation’s (“Old GM”) facilities -- a transmission manufacturing plant in White Marsh, Maryland (the “Maryland Facility”) and a distribution center in Memphis, Tennessee (the “Tennessee Facility” and, together with the Maryland Facility, the “Facilities” or the “TPC Property”). The principal facts relating to this Motion are set forth in the Proof of Claim filed by the Agent in these chapter 11 cases, which Proof of Claim has been assigned claim number 39030 by the Court-appointed claims agent, and which is incorporated herein by reference.

2. In brief, however, on June 30, 2004, Wilmington Trust Company, in its capacity as Owner Trustee under GM Facilities Trust No. 1999-1 (in such capacity, the “Lessor”); Hannover, in its capacity as CP Lender; certain purchasers (each a “Purchaser” and, collectively with the CP Lender, the “Lenders”) of commercial paper pursuant to that certain liquidity asset purchase agreement dated as of June 30, 2004; the Administrator; and the Agent

entered into that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the “Participation Agreement” and, collectively with the Lease Agreements, as defined herein, the “Financing Agreements”) with Old GM.

3. In accordance with the terms and conditions of the Participation Agreement, the Lessor, the CP Lender, the Agent, and the Administrator entered into that certain Amended and Restated Loan Agreement dated as of June 30, 2004 (the “Loan Agreement”). Pursuant to the terms and conditions of the Loan Agreement, the CP Lender provided financing to the Lessee for the purchase of the Facilities and certain other facilities used in Old GM’s business and construction of improvements thereon. Old GM acknowledged the Participation Agreement and related agreements respecting these transactions in the Sale Order. *See* Sale Order at ¶ CC (describing TPC Lenders’ liens and originating documents).

4. Old GM entered into leases and related documentation prior to the Petition Date granting security interests to the Agent in various property to secure Old GM’s obligations. In particular, and without limitation, on November 18, 1999, GM, the Agent and Joseph B. Pitt, Jr., in his capacity as deed of trust trustee, entered into that certain Tennessee Master Lease and Open End Leasehold Deeds of Trust (as amended and supplemented from time to time, the “Tennessee Lease”). Pursuant to Section 16.5 of the Tennessee Lease, GM granted a security interest (the “Tennessee Liens”) to the Agent in any and all real estate fixtures purchased with funds advanced by the Agent located at the property described in the Tennessee Lease (the “Tennessee Property”) to secure GM’s obligations under the Participation Agreement and the Loan Agreement. The Tennessee Property secured approximately \$26.8 million of the unpaid balance of the Loan Agreement (the “Tennessee Balance”). *See* Proof of Claim at ¶ 5. In addition, on September 8, 1999, GM and the Agent entered into that certain Maryland Master

Lease and Mortgages agreement (the “Maryland Lease” and, collectively with the Tennessee Lease, the “Lease Agreements”). Pursuant to Section 16.4 of the Maryland Lease, GM granted a security interest (the “Maryland Liens” and, collectively with the Tennessee Liens, the “Liens”) to the Agent in property described in Exhibit A to the Maryland Lease and any improvements thereon (the “Maryland Property” and, collectively with the Tennessee Property, the “Leased Property”) to secure GM’s obligations under the Participation Agreement and the Loan Agreement. The Maryland Property secured approximately \$63.9 million of the unpaid balance of the Loan Agreement (collectively with the Tennessee Balance, the “Loan Balance”). See Proof of Claim at ¶ 6.

5. As of June 1, 2009 (*i.e.*, the date Old GM filed its chapter 11 petition), the aggregate amount of the loan balance owing by Old GM under the Lease Agreements and the other Financing Agreements was at least \$90.7 million in principal obligations; plus all unpaid interest, fees, and expenses (including, but not limited to, the Agent’s professional fees) that are chargeable and reimbursable under the Financing Agreements, and any other obligations arising under the Financing Agreements that were contingent or unmatured as of the Petition Date (collectively, the “Lender Claims”). (*See* Proof of Claim at ¶ 8). The Proof of Claim identified certain indemnification rights and other elements of the Agent’s claims against Old GM. The Agent’s Proof of Claim has not been objected to in the course of these chapter 11 cases.

6. On June 1, 2009 (the “Petition Date”), Old GM and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). Also on that date, Old GM filed a motion requesting, among other things, the Bankruptcy Court’s authorization to sell the majority of its assets (the “363 Sale Motion”).

Of relevance to this Motion, the assets sought to be sold under the 363 Sale Motion included the Maryland Facility and the Tennessee Facility.

7. The TPC Lenders filed a Limited Objection to the 363 Sale Motion for the discrete purpose of preserving their rights and interests as holders of first-priority secured claims against the Facilities, including, among other things, their entitlement to adequate protection for their secured claims. Although the TPC Lenders were and are entitled to recover upon their indisputably secured claims, the TPC Lenders negotiated with Old GM to establish a procedure by which the TPC Lenders would be able to recover the value of their secured claims (and, if applicable, any unsecured deficiency) through negotiations or, if those negotiations were unsuccessful, through proceedings before this Court subsequent to entry of the order approving the 363 Sale Motion. In particular, the parties' negotiations resulted in terms included in the Sale Order that provided as follows:

- a. the TPC Lenders have an allowed secured claim equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "Leased Property Value"), as determined at a valuation hearing before the Court or by mutual agreement of the Debtors, NGMCO, Inc.<sup>1</sup> ("New GM") and the TPC Lenders (such claim, the "Secured Claim") (*See* Sale Order at ¶ 36);
- b. as adequate protection for the Secured Claim, \$90.7 million (the "Escrow Amount") in cash has been placed into an interest-bearing escrow account (the "Escrow Account"). Pursuant to the terms of the Sale Order, interest earned on the Escrow Amount shall follow the principal. Further, promptly after the determination of the Leased Property Value, an amount of cash equal to the Secured Claim plus the pro rata share of interest that has accrued on the Secured Claim shall be released from the Escrow Account and paid to the TPC Lenders (*see id.* at ¶ 37);
- c. if the value of the Secured Claim is less than \$90.7 million, the TPC Lenders shall have, in addition to the Secured Claim, an allowed unsecured claim against GM's estate equal to the lesser of (i) \$45 million and (ii) the difference between \$90.7 million and the value of the Secured Claim. If, however, the value of the Secured Claim exceeds \$90.7 million, then the TPC Lenders shall be entitled to assert a

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<sup>1</sup> NGMCO, Inc. ultimately changed its name to General Motors, LLC.

secured claim against GM's estate to the extent that the TPC Lenders would have an allowed claim for such amount under section 506 of the Bankruptcy Code (the "Excess Secured Claim") (*see id.* at ¶¶ 38-39);

- d. the rights and arguments of all parties in interest concerning the determination of the Secured Claim are reserved; provided, however, that in consideration for settlement between Old GM and the TPC Lenders, as set forth in the Sale Order, the TPC Lenders agreed to waive any legal argument that they are entitled to a secured claim equal to the face amount of their claim under section 363 or any other provision of the Bankruptcy Code on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders' secured claim in order to transfer the Leased Property to New GM (*see id.* at ¶ 39).

8. On July 5, 2009, the Court entered the Sale Order (including the provisions referenced above), which provided for the sale of substantially all of the assets, including the Facilities, of Old GM to New GM. Today, the Agent understands that New GM, among other things, manufactures, distributes and sells automobiles and other vehicles through its utilization of the facilities and assets acquired under the Sale Order, including the Facilities.

9. Since entry of the Sale Order, the TPC Lenders have commissioned appraisals of the two Facilities and have engaged in discussions with New GM in an effort reach agreement upon the value of the Facilities. To date, those discussions have not been successful in reaching an agreed-upon value for the Facilities. Accordingly, the Agent, on behalf of the TPC Lenders, submits this Motion to initiate valuation proceedings for the Facilities as contemplated by the Sale Order. (Sale Order ¶ 36).

10. The Agent requests by this Motion that the Court establish a comprehensive schedule, as set forth in the accompanying proposed order, for determining the value of the Facilities, including establishing a briefing schedule, discovery deadlines, and, if the Court believes it to be appropriate, setting a date for an evidentiary hearing.

## **JURISDICTION**

11. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

## **BASIS FOR RELIEF REQUESTED**

12. The Sale Order clearly provides that the value of the Facilities may be determined “at a valuation hearing conducted by the Court,” and that such proceedings may be initiated by the TPC Lenders. (Sale Order ¶ 36). The Sale Order further expressly permits the TPC Lenders (acting in this case through the Agent) to file a motion with the Bankruptcy Court to determine the TPC Value on twenty (20) days notice. (*Id.*) This Motion requests that the Court establish an appropriate schedule, including a briefing schedule, discovery deadlines and setting a date for an evidentiary hearing.

13. As part of the requested scheduling, the Agent proposes that all discovery relating to the valuation of the TPC Property be concluded by March 18, 2011, with pre-hearing memoranda to be submitted to the Court by the parties (including, for the avoidance of doubt, New GM) on or before April 1, 2011. An evidentiary hearing respecting the valuation of the TPC Property would then be scheduled for April 2011 at the Court’s convenience. The requested schedule is reasonable given that discussions between New GM and the Agent have already resulted in the informal exchange of some documentation relating to the proposed valuation. Furthermore, upon entry of the accompanying proposed order, the Agent is prepared to serve discovery requests on New GM immediately pursuant to Fed. R. Bankr. P. 9014, Local Rule 9014-1 and Case Management Order No. 1 [Docket No. 157].<sup>2</sup>

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<sup>2</sup> The Agent is permitted by the Federal Rules of Bankruptcy Procedure, the Local Rules and this Court’s Case Management Order No. 1 [Docket No. 157], as amended, to seek discovery in connection with this contested matter. The Agent will serve its discovery requests on Old GM based on its understanding from discussions with Old GM that Old GM is in possession of the Facilities and all documentation relevant to the valuation of the Facilities,

14. Scheduling the valuation proceedings as requested by the Agent is also beneficial in that it will resolve a significant outstanding secured claim against Old GM's estate and an issue remaining from the sale of Old GM's assets. Accordingly, subject to the Court's availability for scheduling of the requested evidentiary hearing, no legitimate reason exists to delay the valuation proceedings.

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including the historical records of Old GM's business. To the extent that Old GM, or any other party, is in possession of documentation relevant to the valuation of the Facilities, the Agent reserves its rights to seek and obtain discovery from such parties in connection with this matter.

WHEREFORE, the Agent, on behalf of the TPC Lenders, respectfully requests that this Court enter an order (I) initiating valuation proceedings pursuant to the Sale Order; (II) establishing an appropriate schedule in respect of such valuation proceedings; and (III) granting such other relief as is just and reasonable.

Dated: New York, New York  
January 14, 2011

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as Agent to the TPC Lenders*

**HEARING DATE AND TIME: February 9, 2011 at 9:45 a.m. (Eastern Time)**  
**OBJECTION DEADLINE: February 2, 2011 at 4:00 p.m. (Eastern Time)**

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Northwest, N.A., as Agent to the TPC Lenders

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
: :  
GENERAL MOTORS CORP., *et al.*, : Case No. 09-50026 (REG)  
: :  
Debtors. : (Jointly Administered)  
----- X

**NOTICE OF HEARING ON MOTION OF THE TPC LENDERS  
FOR AN ENTRY OF AN ORDER (I) INITIATING VALUATION PROCEEDINGS  
IN ACCORDANCE WITH THE SALE ORDER, AND (II) ESTABLISHING  
A SCHEDULE WITH RESPECT TO THE VALUATION PROCEEDINGS**

PLEASE TAKE NOTICE that, upon the annexed Motion of Wells Fargo Bank  
Northwest, N.A., as Agent to the TPC Lenders, for entry of an Order (I) Initiating Valuation  
Proceedings in Accordance With the Sale Order, and (II) Establishing a Schedule With Respect  
to the Valuation Proceedings, dated January 14, 2011 (the "Motion"), a hearing will be held  
before the Honorable Robert E. Gerber, United States Bankruptcy Judge, United States

Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **February 9, 2011 at 9:45 a.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the Motion must be made in writing, with a hard copy to chambers, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and be filed with the Court and served in accordance with the Fifth Amended Order Pursuant To 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management Procedures in these cases [Docket No. 8360] so as to be actually received not later than **February 2, 2011 at 4:00 p.m. (prevailing Eastern Time)**. Only those objections or responses that have been timely filed and served may be considered by the Court at the hearing.

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PLEASE TAKE FURTHER NOTICE that, if no responses are timely filed and served with respect to the Motion, the relief requested in the Motion may be granted without a hearing.

Dated: New York, New York  
January 14, 2011

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
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GENERAL MOTORS CORP., *et al.*, : Case No. 09-50026 (REG)  
: :  
Debtors. : (Jointly Administered)  
----- X

**ORDER GRANTING MOTION OF WELLS FARGO BANK  
NORTHWEST, N.A., AS AGENT FOR AN ENTRY OF AN ORDER  
(I) INITIATING VALUATION PROCEEDINGS IN ACCORDANCE  
WITH THE SALE ORDER, AND (II) ESTABLISHING A SCHEDULE  
WITH RESPECT TO THE VALUATION PROCEEDINGS**

Upon the Motion dated January 14, 2011 of Wells Fargo Bank Northwest, N.A. (“Wells Fargo”), as Agent (the “Agent”), on behalf of Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator (the “Administrator”), Hannover Funding Company (the “CP Lender”), and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, as purchasers, (collectively, with the Administrator, the “TPC Lenders”), for an entry of an order initiating valuation proceedings in accordance with the Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement With NGMCO, Inc., a U.S. Treasury-sponsored purchaser (the “MPA”); (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection With the Sale; and (III) Granting Related Relief entered as of July 5, 2009 (the “Sale Order”) [Docket No. 2968] and establishing a schedule for the valuation proceedings for the TPC Property (as defined in the Sale Order) (the “Motion”); and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is appropriate

pursuant to the Sale Order, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore it is:

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to the Sale Order, valuation proceedings before this Court to determine the value of the TPC Property have been properly initiated by the TPC Lenders; and it is further

ORDERED that discovery in connection with the valuation proceeding shall be concluded by March 18, 2011; and it is further

ORDERED that pre-hearing memoranda shall be submitted to the Court by the parties on or before April 1, 1011; and it is further

ORDERED that an evidentiary hearing with respect to the to the valuation proceeding shall be held on April \_\_, 2011 at \_\_: \_\_.m (Eastern Time); and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York

\_\_\_\_\_, 2011

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United States Bankruptcy Judge