

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

<b>IN RE:</b>	)	<b>Chapter 11 Proceeding</b>
	)	
<b>NEW CITY AUTO GROUP, INC.,</b>	)	<b>Case No. 18-21890</b>
	)	
<b>Debtor,</b>	)	<b>Hon. James Ahler</b>
	)	

**AMENDED MOTION TO AUTHORIZE (1) BIDDING PROCEDURES AND BID PROTECTIONS, (2) SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS, (3) ASSUMPTION AND ASSIGNMENT OF RELATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (4) FORM AND MANNER OF NOTICE WITH RESPECT THERETO, AND (5) RELATED RELIEF**

Pursuant to §§ 105(a), 363 and 365 of the United States Bankruptcy Code (11 U.S.C. § 101 et.seq., hereinafter the “Code”) and Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (hereinafter each a “Rule” and collectively the “Rules”), New City Auto Group, Inc., (“Debtor”) hereby requests that this Court enter orders authorizing (i) bidding procedures and bid protections in connection with the Debtor’s intended sale of substantially all of the Debtor’s assets located at 1301 Indianapolis Blvd., Schererville, Indiana (the “Assets”); (ii) the sale of the Assets free and clear of liens, claims and interests (the “Sale”); (iii) the assumption and assignment of related executory contracts and unexpired leases (the “Designated Agreements”); (iv) the form and manner of notice with respect to the Sale; and (v) related relief. In support of this Motion, the Debtor respectfully states as follows:

**I. INTRODUCTION**

**A. THE DEBTOR’S CHAPTER 11 CASE**

1. On July 16, 2018 (“Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Code. Since then, the Debtor has remained in possession of

its assets and has continued to operate its business as a debtor in possession in accordance with §§ 1107 and 1108 of the Code. The Debtor has all of the rights and powers of a trustee in bankruptcy pursuant to § 1107(a) of the Code.

2. No committee has been appointed for the unsecured creditors.
3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicates for the relief requested herein are §§ 105, 363, 365 and 1146 of the Code and Rule 2014(a) of the Rules.

**B. THE DEBTOR'S BUSINESS**

5. The Debtor prior to the filing of this bankruptcy case operated as a registered Nissan automobile dealer located at 1301 Indianapolis Blvd., Schererville, Indiana, selling new and used Nissan vehicles and other used vehicles.
6. The Debtor is an Indiana corporation that owns and operates the Assets.
7. The Assets constitutes vehicles, parts, machinery, and other assets used in the operation of an automobile dealership.

**C. ASSERTED INTERESTS IN THE ASSETS**

8. **Nissan North America Claim.** Nissan North America, Inc. ("Nissan") has asserted claims against the Debtor and others in an adversary proceeding that Nissan filed in the Debtor's bankruptcy case (Adv. No 18-02055) as follows:
  - a) Nissan sought the imposition of a constructive trust and related causes of action pertaining to the Debtor's purchase of 50 new Nissan vehicles (the "New Vehicle Claim").

- b) As a part of a proposed settlement between Nissan and the Debtor, Nissan must receive from the proceeds of the sale of the Assets contemplated by this motion, after payment of the direct expenses of that sale have been deducted, the sum of \$1,000,000.00 or such other sum as Nissan agrees to accept (“Minimum Payment Requirement”). In the event the Bankruptcy Court enters an order approving the sale of the Assets at a gross sale price in excess of \$2,500,000, Nissan will be entitled to receive 33% of the difference between the gross sale price and \$2,500,000 up to a maximum of \$1,317,208.00. The simultaneous approval of the proposed settlement is a precondition to Nissan’s consent to the sale of the assets as set forth herein.
- c) In the event that the highest bid from the sale of the Assets does not produce sufficient net proceeds after the payment of direct expenses to allow Nissan to receive the Minimum Payment Requirement, unless Nissan specifically and affirmatively agrees to accept a lesser amount, the Debtor will not seek court approval of the Asset Sale or the proposed settlement.
- d) In addition to the settlement payments, Nissan asserts a security interest in and asserts property rights in all signs identifying the Debtor’s relationship with Nissan and has filed a UCC-1 financing statement to secure its claim.
9. **Adrienne Berke Claim.** Prior to the Petition Date, the Debtor obtained \$1,545,000.00 in financing from Adrienne Berke, who is the sister of one of the Debtor’s shareholders and directors and thus an insider. The Debtor used the monies obtained from Adrienne Berke to purchase the assets of the dealership previously operating at the Debtor’s current location as Napleton Auto Werks of Indiana. To

secure the financing provided by Adrienne Berke, Adrienne Berke filed a UCC-1 financing statement asserting a lien on:

- a) all of the Debtor's assets, including all accounts, contract rights, general intangibles, letters of credit, letter of credit rights (whether or not the letter of credit is evidenced by a writing), supporting obligations, instruments (including promissory notes), chattel paper (whether tangible or electronic), documents, notes, Franchise Agreements, and cash;
- b) all of the new motor vehicles owned by the Debtor before and after February 6, 2018 from Nissan and/or Napleton Auto Werks of Indiana.
- c) all of the sale funds from all of the new motor vehicles purchased by New City Auto Group, Inc. d/b/a Prime Time Nissan of Schererville, before and after February 6, 2018 from Nissan and/or Napleton Auto Werks of Indiana during the term of this Note, except those funds in excess of the vehicle's purchase price paid to Nissan.

10. **Steven R. Dobrofsky Claim.** Prior to the Petition Date, the Debtor obtained \$1,100,000.00 in financing from Steven R. Dobrofsky, who is one of the Debtor's shareholders and directors and thus an insider. The Debtor used the monies obtained from Seven R. Dobrofsky to purchase the assets of the dealership previously operating at the Debtor's current location, as Napleton Auto Werks of Indiana. To secure the financing provided by Steven R. Dobrofsky, Steven R. Dobrofsky filed a UCC-1 financing statement asserting a lien on:

- a) All of the assets of the Nissan Dealership, including but not limited to its Dealership Agreement with Nissan, which is defined below, and the assets

transferred by the asset purchase agreement between Napleton Auto Werks of Indiana, Inc. and Michael Helmstetter by which the Debtor purchased its initial assets. Steven R. Dobrofsky's lien specifically excluded any automobiles on the Debtor's premises.

11. **Lease Corporation of America Claim.** Lease Corporation of America provided certain automotive equipment having an original value of \$117,570.00 and filed a UCC-1 financing statement asserting a lien on that equipment.
12. **Valvoline Claim.** Valvoline owns certain equipment used by the Debtor in its service department.

**D. EVENTS LEADING TO CHAPTER 11**

13. Prior to the Petition Date, the Debtor became embroiled in a dispute with Nissan concerning the Debtor's obligation under its Dealership Term Sales and Service Agreement (the "Dealership Agreement") with Nissan.
14. As a result of the dispute, Nissan declared the Debtor in default of its obligations under that Dealership Agreement and declared that the Dealership Agreement was terminated. The Bankruptcy Court entered an order denying the Debtor's motion to enforce the automatic stay provided under 11 U.S.C. § 362 in which the Debtor asserted that Nissan violated the automatic stay by taking the position that the Dealership Agreement was terminated. The Debtor filed a motion to reconsider the Court's order. As a result of the filing of the motion to reconsider on which the Court has not ruled, the determination of the status of the Dealership Agreement is in dispute. Notwithstanding the dispute, the Debtor has not operated as a Nissan dealer during its bankruptcy case.

15. As a part of the proposed settlement with Nissan, the Dealership Agreement will be terminated, and the Debtor will conduct an auction for the Assets, subject to Court approval. Only prospective purchasers that have been approved by Nissan as “Qualified Bidders” will be allowed to bid at the auction. The Debtor agrees that if Nissan determines that a prospective purchaser is not qualified to be an approved purchaser, such purchaser cannot be a “Qualified Bidder”, and the Debtor will not accept a purchase proposal or bid from that prospective purchaser. The successful bidder, provided Nissan deems the successful bidder qualified and the purchase price is sufficient to meet the Minimum Payment Requirement requirement as set forth above, will enter into a new dealer sales and service agreement with Nissan.

**E. THE DEBTOR’S RETENTION OF MICHAEL SHANAHAN**

16. The Debtor has employed Michael Shanahan, an Indiana attorney whose practice includes the marketing, negotiating and effectuation of transactions such as the transaction proposed in this motion, who will direct the marketing and sale of the Assets to a third-party subject to the approval of Nissan and the Court.

**II. PROPOSED SALE OF ASSETS**

**A. Initial Bid**

17. The Debtor and Bridget Lupient, on behalf of herself or her corporate designee (“Lupient”), have been in discussions concerning the purchase of the Assets, free of any liens, claims or other encumbrances. Lupient, who is the owner of several dealerships in the Midwest has delivered a letter of intent that the Debtor anticipates will be formalized by contract for the purchase of the Assets. Lupient has submitted an offer to purchase the Assets. Lupient is not sought nor received Nissan’s approval

as a Qualified Bidder. Lupient has submitted a letter of intent under the following terms:

- a) **Fixed Assets, Special Tools, Furniture and Fixtures:** Lupient would purchase all fixed assets, company owned vehicles, computers, software, catalog systems, and all special tools for Three Hundred Thousand Dollars (\$300,000.00).
- b) **Goodwill and General Intangibles:** Lupient would purchase all signs, graphics, telephone numbers, customer lists, URL's, websites, goodwill and intangibles for One Million Three Hundred Thousand Dollars (\$1,300,000.00).
- c) **New Cars:** Lupient would purchase all of the Debtor's new, undamaged and untitled 2018 and 2019 model year new vehicle inventory at dealer's net invoice for such vehicles, less any holdback, rebates, floor plan assistance, advertising allowance, dealer prep, curtailment allowances or similar credits paid or payable to the Debtor by Nissan.
- d) **Used Cars:** Lupient would purchase selected used vehicles at a mutually agreed upon price. Lupient would not be obligated to buy any of the Debtor's used vehicles, but Lupient retains the right of first refusal on all used vehicles.
- e) **Parts and Accessories:** Lupient would purchase all new, unused and undamaged, fully returnable parts and accessories that are currently listed in the parts book catalog, including all superseded parts that are under 12 months of age at the time of the purchase. The price for such parts shall be equal to the current invoice price, less all available stock paid or other discounts. All other parts shall become the property of Lupient without an additional payment.

- f) **Real Estate Lease:** Lupient would assume the current real estate lease and release all current guarantees on said lease.

**B. OTHER BIDS**

- 18. The Debtor is in the midst of discussions with various other potential purchasers for the Assets. In order to facilitate the Sale process and maximize the value of the Assets through an opportunity for competitive bidding, the Debtor, in consultation with Michael Shanahan and its other advisors, has designed the bidding procedures (“Bidding Procedures”) and the asset purchase agreement (“APA”) for use in connection with a Sale.

**C. THE BIDDING PROCESS**

- 19. The Debtor and its professionals have assessed available options to restructure the Debtor’s affairs and maximize the value of its estate. As noted above, the Debtor has determined that the sale of the Assets is an essential element of any feasible restructuring strategy. The Debtor has further determined, in the exercise of its business judgment that the best mechanism for maximizing the value of the Assets for the benefit of its estate and creditors is through an auction sale under § 363 of the Code.
- 20. The Debtor requests authority to sell the Assets free and clear of liens, claims and other interests under § 363(f) of the Code and through the competitive bidding process described below. Through Michael Shanahan and the Debtor’s President, Michael Helmstetter, the Debtor has actively solicited various dealers to purchase the Assets since mid-November 2018. As described below, the Debtor intends to actively

market and solicit competitive bids for the Assets using the proposed form of APA to be filed as Exhibit 1 prior to the hearing on this Motion.

21. Through this motion, the Debtor requests the entry of an order approving the Bidding Procedures attached hereto as Exhibit 2, and allowing associated preliminary relief in accordance with this motion. Additionally, the Debtor requests that this Court schedule a final hearing (the “Sale Hearing”) to approve the sale of the Assets pursuant to this motion and the Bidding Procedures. The Debtor requests that the Court enter a final order at the Sale Hearing substantially in the form attached hereto as Exhibit 3 (the “Sale Order”): (a) authorizing the Debtor to sell the Assets free and clear of all liens, claims and interests on substantially the terms and conditions set forth in a negotiated form of the APA; (b) authorizing the Debtor to pay to Nissan the Minimum Payment Requirement, and (c) authorizing the Debtor to (i) assume any applicable executory contracts and unexpired leases (the “Designated Agreements”), (ii) assign the Designated Agreements to the successful purchaser, and (iii) pay the amounts, if any, necessary to cure existing defaults or arrearages under the Designated Agreements, all as subject to the assumption and assignment procedures detailed below.
22. The Debtor will enter into nondisclosure agreements with prospective purchasers and provide them with access to an electronic data room containing diligence materials on the Assets.
23. As set forth more specifically in the Bidding Procedures, in order to participate in the sale process, each potential purchaser (a “Bidder”) must satisfy the requirements set forth in Section 2 of the Bidding Procedures, including, without limitation (i)

demonstrating that it has the financial capability to consummate its bid; (ii) obtaining the status of a Qualified Bidder from Nissan; (iii) tendering its bid in the form of a marked-up APA, (iv) submitting a deposit (the “Deposit”) in an amount equal to 15% of the cash component of its bid. As the initial bidder, however, Lupient will not be required to submit the Deposit. In order to bid at the Debtor’s intended auction of the Assets (“Auction”), all Bidders (other than Approved Credit Bidders, as defined in section 4 of the Bidding Procedures) must submit along with a proposed APA, such that all bids and proposed APA’s are received electronically or by overnight delivery no later than 5:00 p.m. (EST) on April 30, 2019 by each of the following:

- (a) Automotive Counsel to the Debtor, Michael Shanahan, Mallor Grodner, 101 West Ohio Street, Suite 1600, Indianapolis IN 46204 ([mike@indianadealercounsel.com](mailto:mike@indianadealercounsel.com));
- (b) Bankruptcy counsel to the Debtor, Gregory Jordan, Jordan & Zito LLC, 55 West Monroe Street, Suite 3600, Chicago, Illinois 60603 ([gjordan@jz-llc.com](mailto:gjordan@jz-llc.com)); and
- (c) Counsel to Nissan, Charles M. Tatelbaum, Tripp Scott PA. 110 SE 6<sup>th</sup> Street, 15<sup>th</sup> Floor, Fort Lauderdale, Florida 33301 (“[cmt@trippscott.com](mailto:cmt@trippscott.com)”).

24. Under the Bidding Procedures, all Bidders must be evaluated and approved by Nissan in order to be determined to be a Qualified Bidder. On or before April 30, 2019, all Bidders must submit to Nissan a dealer application along with a copy of its bid and the proposed APA provided to the Debtor. Bidder may, if they choose, submit a Nissan dealer application prior to the April 30, 2019 deadline. Nissan shall no later than May 14, 2019 either designate a Bidder as a Qualified Bidder or designate such Bidder as not a Qualified Bidder. Once Nissan has determined whether a Bidder is a

Qualified Bidder, it shall provide notice to Michael Shanahan and Michael Shanahan shall then notify Bidders of Nissan's determination. Notice shall be considered given upon a verbal conversation with the Bidder, the transmission of an email to the Bidder, the sending of a facsimile to the Bidder, or the placing of an overnight delivery package with a national carrier for delivery to the Bidder. In order to determine if a Bidder is a Qualified Bidder, Nissan shall be guided by Section 15(B) of the Standard Provisions contained in Nissan's standard dealership term sales and service agreement, and shall also consider whether each Bidder is reasonably likely (based on availability of financing, experience and other considerations) to submit a bona fide offer and to be able to consummate a Sale if selected as the successful Bidder. Nissan's determination as to whether a Bidder is a Qualified Bidder shall be final in all respects.

25. The Bidding Procedures also provide for the submission and determination of credit bids in accordance with § 363(k) of the Code. The Bidding Procedures provide for any secured creditor interested in submitting a credit bid to file a notice of its intent to submit a credit bid and his, her or its credit bid ("Intended Credit Bid") by April 30, 2019. As with all Bidders, any submitting an Intended Credit Bid must be approved as a Qualified Bidder by Nissan in the same manner and consistent with the same timeline as other Bidders. In the event that the secured creditor is not approved by Nissan as a Qualified Bidder, the secured creditor will not be allowed to submit a credit bid at the Auction. Such notice must state the basis and amount of such secured creditor's claim and the evidence of its lien on the Assets. Objections, if any, to an Intended Credit Bid ("Credit Bid Objection") must be in writing, must state the

legal and factual basis for the Credit Bid Objection and the specific grounds therefor, and must be filed with the Court by May 7, 2019 (“Credit Bid Objection Deadline”). In the event that no Credit Bid Objection is filed with regard to an Intended Credit Bid by the Credit Bid Objection Deadline, such Intended Credit Bid shall constitute an “Approved Credit Bid” under the Bidding Procedures and the applicable Secured Creditor shall constitute an “Approved Credit Bidder.” If a Credit Bid Objection is filed with regard to an Intended Credit Bid by the Credit Bid Objection Deadline, the Court shall conduct a hearing (“Credit Bid Hearing”) to determine the extent to which such Intended Credit Bid shall constitute an Approved Credit Bid under the Bidding Procedures and the extent to which the applicable Secured Creditor shall constitute an Approved Credit Bidder. Any Approved Credit Bidder will be required to deliver by wire or other form of immediate funds required by the Debtor at least equal to the Minimum Payment Requirement. Subject to the Court’s calendar, the Debtor respectfully requests that the Court schedule the Credit Bid Hearing to take place approximately one week after the Credit Bid Objection Deadline.

26. If two or more Qualified Bids are submitted, the Debtor intends to conduct an auction (the “Auction”) with respect to the Assets. Subject to Court approval, the Auction shall take place at 10:00 a.m. (CDT) on May 21, 2019 at the offices of Jordan & Zito LLC, 55 West Monroe Street, Suite 3600, Chicago, Illinois, or such later time or other place as the Debtor shall select. Michael Shanahan and the Debtor’s other attorneys shall direct and preside over the Auction in accordance with the Bidding Procedures, and only the Debtor, Qualified Bidders, Nissan and their respective advisors shall be entitled to attend. Based upon the terms of the Qualified Bids

received prior to the Auction, and such other information as it determines to be relevant, the Debtor will conduct the Auction in the manner it determines will result in the highest or otherwise best offer for the Assets.

27. The Auction shall continue until there is only one Qualified Bid that the Debtor determines in its reasonable business judgment, is the highest or otherwise best Qualified Bid (such Qualified Bid, the “Successful Bid,” and such Qualified Bidder, the “Successful Bidder”) at which point, the Debtor shall accept such bid subject to Court approval, and the Auction will be closed. When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtor may consider the following factors in addition to any other factors that the Debtor deems appropriate: (a) the number, type, and nature of any changes to the applicable APA requested by the Qualified Bidder, including the type and amount of obligations to be assumed in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder’s ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Estate from the transaction contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid.

28. At the conclusion of the Auction, the Debtor will also identify the Qualified Bidder with the next highest or otherwise second-best bid for the Assets (such Qualified Bid, the “Backup Bid,” and such Qualified Bidder, the “Backup Bidder”). Upon a failure to consummate the Sale because of a breach or failure on the part of the holder of the Successful Bid, the Debtor may deem the Backup Bid to be the Successful Bid without further auction or order of the Court. At the Sale Hearing, the Debtor shall

present the Successful Bid and the Backup Bid to this Court for authorization. Because the underlying agreements for such Bid will be negotiated at arm's-length and tempered by competitive bidding at the Auction, the Debtor will also request a finding that the holders of the Successful Bid and the Backup Bid acted in good faith within the meaning of § 363(m) of the Code and are consequently entitled to all of its protections.

#### **D. APPLICABLE LEGAL AUTHORITY FOR PROPOSED SALE**

##### **Sales Outside the Ordinary Course of Business**

29. § 363 of the Code provides that the Debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” *See* 11 U.S.C. § 363(b). To approve the use, sale or lease of property outside the ordinary course of business, this court need only determine that the Debtor’s decision is supported by “some articulated business justification.” *See, e.g., Fulton State Bank v. Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *Committee of Equity Sec. Holders v. Lionel Corp.* (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); *see also Stephens Ind., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986); *In re Abbott Dairies of Pa., Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986); *In re Telesphere Communications, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991).
30. Once the Debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re S.N.A. Nut Company*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *In re Integrated Resources, Inc.*, 147 B.R. 650, 656

(S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a Debtor’s management decisions.”).

31. Indeed, when applying the “business judgment” rule, courts show great deference to the debtor’s decision-making. *See Summit Land Co. v. Allen* (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981). Accordingly, this court should grant the relief requested in this motion if the Debtor demonstrates a sound business justification therefor. *See Schipper*, 933 F.2d at 515; *In re Lionel Corp.*, 722 F.2d at 1071; *In re Delaware Hudson Ry. Co.*, 124 B.R. 169 at 179.

32. As explained above, the Debtor has a sound business justification for selling the Assets at this time. The Debtor simply lacks the financial resources and access to capital necessary to attempt a reorganization that does not contemplate a sale of the Assets. Moreover, the Assets have been, and will continue to be, marketed to prospective purchasers by Michael Shanahan. That marketing process and the competitive bidding contemplated by the Bidding Procedures will permit the Debtor to achieve the highest available value for the Assets. The successful bid, after being subjected to a “market check” in the form of the Auction, will constitute the highest or otherwise best offer for the Assets and will provide a greater recovery for the estate than any other practicably available alternative. For these reasons, the Debtor has determined, in the exercise of its business judgment, that the most viable option for maximizing the value of the Assets is through the Sale in the manner and in the timeframe set forth in the Bidding Procedures. The Debtor’s request for approval to

sell the Assets in accordance with the Bidding Procedures should be allowed accordingly.

33. The Debtor believes that the proposed Bid Protections satisfy this standard. The primary circumstance compelling allowance of the Bid Protections is the Debtor's desire to entice a hard offer for the Assets in order to establish a firmer framework for competitive bidding at the Auction.

**Sales Free and Clear of Liens, Claims and Interests**

34. Under § 363(f) of the Code, a debtor in possession may sell property free and clear of any lien, claim, or interest in such property if, among other things:

- a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- b) such entity consents;
- c) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- d) such interest is in bona fide dispute; or
- e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

35. Because § 363(f) of the Code is drafted in the disjunctive, the Debtor's satisfaction of any one of its five requirements will be sufficient to permit the sale of the Assets free and clear of liens, claims and other interests (collectively, the "Interests"). The Debtor believes that the only entities holding liens on the Assets (other than liens arising from real estate taxes) are the Secured Creditors. To the extent that any of the Secured Creditors do not provide their consent in accordance with the requirements of § 363(f)(2), the Debtor intends to demonstrate its satisfaction of one or more of the other requirements of § 363(f) at the Sale Hearing.

36. Moreover, all holders of Interests can be compelled to accept a money satisfaction of such Interests in legal or equitable proceedings in accordance with § 363(f)(5). Such legal or equitable proceedings include proceedings to confirm a plan of reorganization, under which the holder of a lien may be compelled to accept payment in satisfaction of its lien pursuant to § 1129(b)(2)(A) of the Code.
37. Indeed, § 1129(b)(2)(A) of the Code specifically allows a debtor in possession to sell property subject to a lien, free and clear of such lien, if such lien attaches to the net proceeds of the sale, subject to any claims and defenses the debtor may possess with respect thereto. In this case, the Debtor proposes that any Interests in the Assets that are not assumed liabilities under the Sale shall attach to the net proceeds of the Sale.

### **III. PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. PROPOSED ASSUMPTION AND ASSIGNMENT PROCEDURE**

38. As part of this motion, the Debtor seeks authority to assume and assign certain agreements and leases to the Successful Bidder or the Backup Bidder to the extent necessary. Because of the need to close any such transaction as quickly as possible in order to maximize the value of the Assets, the Debtor proposes the following procedures for assuming and assigning agreements and leases included in the Successful Bid and the Backup Bid:
39. Provided the purchase price is sufficient to pay to Nissan the Minimum Payment Requirement, not more than two business days following the conclusion of the Auction, the Debtor shall (i) file a notice (the “Assignment Notice”) that (A) identifies those executory contracts and unexpired leases that the Debtor proposes to assume and assign in connection with the Sale transaction (“Designated

Agreements”); (B) describes the basis for the Debtor’s belief that there is adequate assurance of the future performance of the Successful Bidder and any Backup Bidder under such Designated Agreements; and (C) state the cure amounts, if any, that the Debtor believes are necessary to satisfy in order to assume such Designated Agreements pursuant to 11 U.S.C. § 365; and (ii) serve such Assignment Notice by hand delivery, overnight delivery or electronic mail on each non-Debtor party to those Designated Agreements together with any Adequate Assurance Information (as defined in the Bidding Procedures) provided to the Debtor by the Successful Bidder and any Backup Bidder. At the Sale Hearing, the Debtor shall request the entry of an order requesting authority to assume and assign the Designated Agreements subject to the actual closing of an applicable Sale transaction. Any non-Debtor party that is served with an Assignment Notice shall be entitled to appear at the Sale Hearing and object to the proposed assumption and assignment of its Designated Agreement.

**B. APPLICABLE LEGAL AUTHORITY FOR PROPOSED ASSUMPTION AND ASSIGNMENT**

40. As a debtor in possession, the Debtor has the right, subject to court approval, to assume any executory contracts or unexpired leases. *See* 11 U.S.C. § 365(a). The assumption of an unexpired lease by a debtor in possession is subject to review under the business judgment standard. If such business judgment has been reasonably exercised, a court should approve the assumption. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Sharon Steel Corp. v. National Fuel Gas Distribution*, 872 F.2d 36, 39-40 (3d Cir. 1989); *In re RLR Celestial Homes, Inc.*, 109 B.R. 36, 46 (Bankr. S.D.N.Y. 1989).

41. Section 365(b)(1) of the Code sets forth the requirements for assumption. This subsection provides as follows:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee-

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

42. The requirement of “adequate assurance of future performance” also applies when assumption is coupled with an intended assignment. Section 365(f)(2) of the Code provides that:

[t]he trustee may assign an executory contract or unexpired lease of the debtor only if --

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

43. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.”

*See, e.g., EBG Midtown South Corp. v. McLaren/Hart Env. Engineering Corp.* (In re

Sanshoe Worldwide Corp.), 139 B.R. 585, 593 (S.D.N.Y. 1992); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”); *Carlisle Homes, Inc. v. Azzari* (*In re Carlisle Homes, Inc.*), 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

44. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).
45. In the exercise of its business judgment, the Debtor intends to assume and assign the Designated Agreements. To the extent that any defaults exist under any Designated Agreement that is to be assumed and assigned, the Debtor, the Successful Bidder, or the Backup Bidder will cure any such default as a condition to such assumption and assignment. Moreover, the Debtor will adduce facts at the Sale Hearing demonstrating the financial wherewithal of the Successful Bidder and the Backup Bidder and their willingness and ability to perform under the Designated Agreements to be assumed and assigned.
46. The Sale Hearing will therefore provide the Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of the Successful Bidder and the Backup Bidder to provide adequate assurance of future performance

under the Designated Agreements. The Court should therefore have a sufficient basis to authorize the Debtor to assume and assign those Designated Agreements.

#### **IV. FORM AND MANNER OF NOTICE**

47. Rules 2002(a)(2) and 6004(a) of the Rules require that notice of a proposed sale of substantially all of a debtor's assets be sent to all creditors. On the next business day of the filing of this Motion, the Debtor intends to serve the form of notice attached hereto as Exhibit 4 by mail or through the Court's CM/ECF system to the following persons: (i) counsel to the United States Trustee; (ii) all entities reasonably known by the Debtor to have an Interest in the Assets or their counsel where an entry of their appearance through counsel has been made in the case; (iii) the creditors identified on the Debtor's matrix list of creditors; (iv) all non-Debtor parties to Designated Agreements; provided, however, that notice to such parties is permitted in accordance with the specific procedures outlined herein and service shall be deemed sufficient to their counsel or their designees where an entry of their appearance through counsel has been made in the case; and (v) all parties that have filed appearances or requested notices through the Court's CM/ECF system. The Debtor respectfully requests that this Court find the foregoing notice to be constitute adequate notice of the Sale, the Auction and the Sale Hearing for all purposes and that it waive any further notice for cause shown.

#### **V. CONCLUSION**

WHEREFORE, New City Auto Group, Inc., the debtor and debtor in possession, respectfully requests that the Court enter orders substantially in the forms annexed hereto: (i) approving the Bidding Procedures and the Bid Protections, (ii) the sale of substantially all of the Debtor's Assets subject to the conditions stated herein; (iii) authorizing the

Debtor's sale of the Assets free and clear of liens, claims and other Interests; (iii) authorizing the Debtor's assumption and assignment of the Designated Agreements; (iv) limiting and shortening notice as requested herein; and (v) granting such other and further relief as is just and proper.

**NEW CITY AUTO GROUP, INC.**

By: /s/ Gregory J. Jordan  
One of Its Attorneys

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# Exhibit 1

## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "Agreement") is dated \_\_\_\_\_, 2018 ("Effective Date"), by and among \_\_\_\_\_, an \_\_\_\_\_, its successors and/or assigns ("Buyer"), and **New City Auto Group, Inc. d/b/a Prime Time Nissan and d/b/a Prime Time Nissan of Schererville**, an Indiana corporation ("Seller").

### Preamble

The Seller has filed a voluntary petition under chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Indiana on July 16, 2018 (the date of the commencement of such filing, the "Petition Date");

The Seller, upon proper authorization from the Bankruptcy Court, may sell and assign its assets outside of the ordinary course of business;

Seller is the owner of the certain assets used in the operation of an automobile dealership at the address commonly known as 1301 Indianapolis Blvd., Schererville, Indiana;

The parties to this Agreement intend to effectuate the transactions contemplated by this Agreement through a sale pursuant to § 363 of the Bankruptcy Code; and

The execution and delivery of this Agreement and Seller's ability to consummate the transactions set forth below are subject, inter alia, to entry of an order of the Bankruptcy Court approving this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements,

### Article I: Definitions; Construction

The rules of construction set forth on the attached Appendix 1 shall apply with respect to the interpretation of the meaning of this Agreement, and, unless otherwise defined in this Agreement, capitalized terms have the meanings provided to them on that Appendix.

### Article II: Operations Purchase and Sale; Purchase Price

Section 2.01 **Sale and Purchase.** Subject to the terms of this Agreement, on the Closing Date (as defined in Section 6.01) PTN shall sell and deliver to the Buyer, and the Buyer will purchase and acquire from PTN, free and clear of all Liens, substantially all of the assets (excluding the Excluded Assets), owned, used or useful in the Business and all Assumed Contracts (collectively, the "Purchased Assets"). The purchase price for the Purchased Assets is the aggregate values of the following (collectively, the "Purchase Price"):

Subject to the terms and conditions set forth in this Agreement (including the entry of the Sale Order), at the Closing, Seller shall sell, contribute, convey, assign, transfer and deliver to Purchaser, free and clear of all Liens and other interests to the maximum extent permitted under § 363(f) of the Bankruptcy Code (except for the Assumed Obligations and Permitted Liens), and Purchaser shall purchase, acquire and take assignment and delivery of the Purchased Assets, for the consideration specified herein and the Assumed Contracts.

The Purchased Assets shall include each of the following:

(a) All rights in and to all of PTN's personal properties and assets owned or used in the Business as follows: (i) the rights or obligations of PTN, or any of its Affiliates, in and to all Assumed Purchase Orders, transferrable Assumed Contracts, agreements and arrangements as set forth on Schedule 2.01 (a)(i); (ii) all assignable Permits, authorizations, franchises and licenses, of every character whatsoever issued by a Governmental Authority or any Person that are owned or held by PTN as set forth on Schedule

2.01 (a)(ii); (iii) the Intellectual Property, telephone numbers, facsimile numbers, email addresses, website addresses and rights to listings of same all as set forth on Schedule 2.01(a)(iii); (iv) all rights, privileges, credits, claims, demands, causes of action, indemnity rights, warranty claims and other claims as set forth on Schedule 2.01(a)(iv); (v) all product manuals, brochures, operating manuals, and service manuals, whether in electronic, computer, paper or other form as set forth on Schedule 2.01(a)(v); (vi) all customer lists, as set forth on Schedule 2.01(a)(vi); (vii) all franchise value and goodwill of PTN and all other rights, properties and assets of any character whatsoever that are owned or used in the Business. The foregoing assets described in this subsection (a) are collectively referred to as Goodwill, the Value of which shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

(b) All machinery, service equipment, fixtures, furniture, equipment, tooling, tools, special tools, office equipment, furnishings, signs, and other items of personal property as identified on Schedule 2.01(b) owned by PTN (collectively, the "Fixed Assets"), the Value of which shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

(c) All New Vehicles, as identified on Schedule 2.01(c), for the same sum, with all of the same factory credits and set-offs as Seller received and were otherwise entitled to when Seller purchased the new Vehicles. For clarification, the intent is that the Buyer will be purchasing the New Vehicles for the same price as the Seller could have originally purchased them from the Manufacturer. Such price shall be increased by the Seller's actual verifiable cost of any installed accessories or equipment.

(d) All Demonstrators, as identified on Schedule 2.01(d), for the same value shall be valued the same as New Vehicles except that a reduction of twenty-five cents (\$0.25) for each mile in excess of One Thousand Five Hundred (1,500) miles, but less than Five Thousand (5,000) miles. Any vehicle with more than Five Thousand (5,000) miles shall be considered a Used Vehicle.

(e) All Loaner Vehicles, as identified on Schedule 2.01(e), for a value to be agreed upon by the Parties.

(f) All Used Vehicles, as identified on Schedule 2.01(f), for the Midwest region MMR-average book, plus/less for options, mileage and/or damage as appropriate except any vehicles that can be sold as New Vehicles under Indiana law shall be valued at NADA clean retail.

(g) Prorations, as identified on Schedule 2.01(g), such as work-in-process, due slips or "we owes", advertisements, vacation benefits, customer deposits and other prepaid items, for the adjusted pro rata value at closing.

(h) OEM Parts and Accessories, as identified on Schedule 2.01(h), that are undamaged and not obsolete as determined by industry standards, for the value equal to the most recent factory replacement cost in the most recent Manufacturer's parts catalogue, less any Incentives received or to be received by PTN with respect to the OEM Parts and Accessories.

(i) Other Parts and Accessories, as identified on Schedule 2.01(i), which are undamaged and suitable for retail sale, shall be valued at 50% of PTN's net actual verifiable cost of such item.

(j) All Miscellaneous Supplies such as office supplies, gas, oil, grease, nuts and bolts existing on the Closing Date at net actual verifiable cost of such item.

(k) The required cure amount of any Assumed Contracts.

(l) Except as otherwise stated herein, the "value" of the Purchased Assets identified in Section 2.01(b)-(j) will be determined based on a physical inventory conducted leading up to and concluded on the Closing Date (as defined in Section 6.01). The parties agree that the inventory will be jointly conducted and mutually agreed upon by the Buyer and PTN, or the inventory may be conducted on behalf of the Buyer by a Person selected by the Buyer that is reasonably satisfactory to PTN. If an

inventory service is used to conduct the inventory, the cost of such inventory service shall be paid by the Buyer. The inventory will commence ten (10) days prior to the Closing Date or as otherwise agreed to by the parties.

Section 2.02 **Excluded Assets.** The Buyer is not buying the following assets (the "Excluded Assets"): (a) all cash on hand or cash equivalents, and all other funds or investments whatsoever, including all bank accounts, investment accounts, savings accounts, and marketable securities; (b) all accounts receivable of PTN representing amounts receivable for goods shipped, products sold and delivered, or services rendered to customers of PTN prior to the Closing Date; (c) any parts and accessories not purchased by Buyer hereunder; (d) the minute book, corporate and accounting records, and corporate seal of PTN; (e) any security deposits, prepaid and deferred items of Seller not expressly assigned to Buyer hereunder; (f) the consideration for the assets to be delivered by PTN to the Buyer pursuant to this Agreement; (g) Avoidance Actions, (h) all claim for money, for property, or for enforcement of a right provided by law or in equity for money due, for property, for damages, whether or not Seller has filed a lawsuit or initiated legal action to collect or enforce the same; (i) all contracts other than the Assumed Contracts; (j) all insurance policies; (k) all employee benefit plans and any trusts, insurance contracts or administrative service agreements pertaining thereto, and all employment agreements; (l) all insurance proceeds relating to the Excluded Liabilities; (m) all insurance refunds or other payments relating to contracts that are not Assumed Contracts; (n) all causes of action and claims that may be asserted against the Buyer and/or any of its affiliates and all rights of the Seller under this Agreement or any other agreements or instruments otherwise delivered in connection with this Agreement; and (o) any other assets listed on Schedule 2.02(h).

Section 2.03 Assumption and Assignment.

- (a) Effective as of the Closing Date, Seller shall assign the Assumed Contracts to Buyer;
- (b) Effective as of the Closing Date, Buyer shall assume the Assumed Liabilities;
- (c) Seller agree to cure all defaults under the Assumed Contracts as of the Closing including, without limitation, payment of any applicable cure amounts to effectuate the valid assignment of the Assumed Contracts;
- (d) In the event a dispute exists as of the Closing between the Seller and any party to one or more of the agreements as to whether such agreement(s) constitutes a "true lease" (requiring cure of defaults and assumption and assignment) or a financing transaction, Seller agree to obtain as a part of the Sale Order providing that Buyer shall receive either transfer of title to the assets described in the agreement(s) subject to such dispute, free and clear of all liens, claims and encumbrances pursuant to § 363 of the Bankruptcy Code or, alternatively, an assignment of such agreement(s) pursuant to § 365 of the Bankruptcy Code, upon final determination by a court of competent jurisdiction (and pending such determination, Buyer shall be entitled to possession and control of the property subject to such dispute); and
- (e) Buyer shall assume and thereafter in due course pay, fully satisfy, discharge and perform all of the obligations under the Assumed Contracts arising on or after the Closing Date pursuant to § 365 of the Bankruptcy Code.

Section 2.04 **Payment Terms; Allocation of Purchase Price.** The cash portion of the Purchase Price shall be paid at the Closing by wire transfer of immediately available funds to the account designated by Seller. The Purchase Price shall be allocated for Tax purposes consistent with the values assigned in Section 2.01 and in accordance with Schedule 2.03. Schedule 2.03 will be agreed to by the parties at Closing, with each party exercising its reasonable discretion in approving the same. The Buyer and the Seller shall prepare, and file all Returns, including IRS Form 8594, in a manner consistent with such allocations and shall not take any position contrary to such allocations with any Governmental Authority.

Section 2.05 **Operations Prorations.** The following prorations relating to the Purchased Assets and Assumed Liabilities (defined below) will be made as of the Effective Time, with the Seller being liable to the extent

such items relate to any time prior to the Effective Time and the Buyer being liable to the extent such items relate to periods subsequent to, and inclusive of, the Effective Time: (a) any rents, prepaid items, pre-payments under the Assumed Contracts, and (b) ad valorem taxes with respect to the Purchased Assets for the calendar year in which the Closing Date occurs. If the actual expense of any of the above items for the billing period within which the Closing Date occurs is not known on the Closing Date, the proration shall be made as mutually agreed upon by the Buyer and PTN. The ad valorem taxes for the year that includes the Closing Date will be prorated pursuant to the terms of this Section 2.05. The Seller agrees to furnish the Buyer with such documents and records as are reasonably required to confirm all proration calculations.

### **Article III: Real Estate**

Section 3.01 **Real Estate Lease.** Prior to or contemporaneously with the Closing, Buyer shall execute a new lease on the Realty or shall have accepted an assignment of the existing Lease, and all PTN's obligations under the current Lease shall terminate.

### **Article IV: Escrow/Deposit**

Section 4.01 **Escrow/Deposit.** The Buyer shall make an earnest money deposit of 15% of the cash component of the Purchase Price deposited with Mallor Grodner, LLP, which shall be held in escrow and applied to the Purchase Price at the Closing of the Contemplated Transactions (the "Deposit").

### **Article V: Assumption of Certain Liabilities**

Section 5.01 **Assumed Liabilities.** The Buyer agrees to assume at the Closing the following (collectively, the "Assumed Liabilities"): (a) those obligations and liabilities incurred on and after the Effective Time under the Assumed Contracts, which are set forth on Schedule 5.01(a); and (b) those obligations accruing and incurred after the Effective Time with respect to the Work-in-Process, Due Bills and Assumed Purchase Orders set forth on Schedule 5.01(b).

Section 5.02 **Excluded Liabilities.** Except for the Assumed Liabilities, the Buyer assumes no Liability whatsoever of Seller, including, without limitation, any Liability arising out of or related to (a) the ownership, control or use of the Seller's Property or the operation or control of the Business prior to the Closing Date, (b) Seller's compliance or non-compliance with any Applicable Laws, and (c) Taxes (all such non-assumed Liabilities, including those in through (c) are collectively referred to as the "Excluded Liabilities"). The Excluded Liabilities shall be the responsibility of, and shall be paid, performed and discharged, by Seller.

### **Article VI: Closing; Closing Deliveries**

Section 6.01 **Closing Time and Transactions.** The closing of the Contemplated Transactions (the "Closing") shall take place in person at the Business or a location agreed to by the parties on the date that is no longer than ten (10) business days after the entry of the Sale Order (the "Closing Date"). Notwithstanding the foregoing, the Closing shall be deemed to have occurred as of 12:01 a.m. on the day of the Closing Date (the "Effective Time").

Section 6.02 **Seller's Closing Deliveries.** At the Closing or at the time otherwise provided below, the Seller shall do the following:

- (a) Deliver to the Buyer such bills of sale and other transfer instruments effectively vesting the Buyer with good and marketable title to the Purchased Assets, all of which shall be free and clear of all Liens (except Assumed Liabilities), in such form and of such content which is commercially reasonable;
- (b) Execute and deliver to the Buyer certificates of the Seller confirming (i) the accuracy of the representations and warranties, (ii) good standing, (iii) the performance of Seller, and (iv) the occurrence of all actions necessary to authorize the Contemplated Transactions;

(c) Resolutions, certified by the Seller's Secretary or its equivalent, evidencing the Seller's authority to consummate the Contemplated Transactions;

(d) Furnish all keys, key fobs, certificates of title/origin, in Seller's possession, to all vehicles being purchased hereunder; and

(e) Such other documents and instruments as the Buyer shall request, that are commercially reasonable, to further evidence the Contemplated Transactions.

Section 6.03 **Buyer's Closing Deliveries.** At the Closing, the Buyer shall deliver to the Seller the following:

(a) The Purchase Price payable in accordance with the terms of Section 2.04;

(b) An assumption agreement to evidence the assumption of the Assumed Liabilities by the Buyer;

(c) Resolutions, certified by the Buyer's Secretary or its equivalent, evidencing the Buyer's authority to consummate the Contemplated Transactions; and,

(d) Such other documents and instruments as the Seller shall reasonably request to further evidence the Contemplated Transactions.

Section 6.04 **Closing Costs.**

(a) Unless otherwise indicated in this Agreement, the Seller shall pay the following costs and expenses in connection with the Closing:

(1) Prorations payable by the Seller, as set forth in Section 2.05 above; and,

(2) Seller's legal fees and other professional fees.

(b) Unless otherwise indicated in this Agreement, the Buyer shall pay the following costs and expenses in connection with the Closing:

(i) Prorations payable by the Buyer, as set forth in Section 2.05 above; and,

(ii) Buyer's legal fees and other professional fees; and,

(iii) All costs and expenses incurred by the Buyer with respect to the conducting of any inventory of the Purchased Assets, or portion thereof, including that contemplated in Section 2.01.

## **Article VII: Representations and Warranties of the Seller**

Except as set forth in this Article VII, the sale of PTN's assets is made "as is" and "where is." Seller represents and warrants to the Buyer as follows:

Section 7.01 **Organization and Good Standing.** PTN is a corporation duly organized, validly existing and in good standing under the laws of Indiana and all other jurisdictions where the conduct of the Business requires them to be qualified with full power and authority to own their properties and to carry on the Business as presently conducted.

Section 7.02 **Authority.** Subject to the approval of the United States Bankruptcy Court, the execution, delivery and performance of this Agreement and the Purchase Documents, and the consummation of the Contemplated Transactions, have been duly authorized and approved by all necessary corporate or other actions of

the Seller. This Agreement and the Purchase Documents have been duly executed and delivered by the Seller and are legal, valid and binding obligations of the Seller, enforceable against it in accordance with their terms, except as such enforcement may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or (b) by general equitable principles.

Section 7.03 **Title to and Sufficiency of the Operating Assets.** Except as set forth on Schedule 7.03, PTN possesses, or will possess as of the Closing Date, good and marketable title to the Purchased Assets, which will be at the time of Closing free and clear of all Liens (other than Permitted Encumbrances).

Section 7.04 **Disclosure.** To the Seller's Knowledge, neither this Agreement, the Purchase Documents and all Schedules thereto, nor the Seller's responses to any due diligence request, contains or will contain any material untrue statement of any fact, or omits or will omit to state any material fact required to be stated in order to make such statement, document or instrument not misleading.

Section 7.05 **Finder's or Broker's Fee.** Seller has not engaged in any conduct that has given or will give rise to any liability for any fee, compensation, or reimbursement of expenses to any agent, finder, or broker, either in the nature of a finder's fee or otherwise, in connection with the Transactions.

Section 7.06 **Survival of Representations and Warranties.** The representations, warranties and agreements of Seller set forth in this Agreement and the Purchase Documents are made as of the date of this Agreement and shall be true, correct, complete and accurate on and as of the Closing Date and at all times between the date of this Agreement and the Closing Date. The representations and warranties of Seller (as applicable) set forth in this Agreement and the Purchase Documents shall survive the Closing, subject to the limitations set forth in Section 13.04 of this Agreement.

#### **Article VIII: Representations and Warranties of the Buyer**

The Buyer represents and warrants to the Seller that:

Section 8.01 **No Conflict.** The execution, delivery and performance of this Agreement and the Purchase Documents by the Buyer and the consummation of the Contemplated Transactions do not and will not (with or without notice or lapse of time) conflict with, violate, result in the termination of, or constitute a default under, or give to any other Person any right of termination, payment, acceleration, vesting, cancellation or modification of or under, or accelerate the performance required by or maturity of, (a) any Applicable Law, (b) the organizational documents of the Buyer, or (c) any agreements to which it is a party.

Section 8.02 **Financial Ability.** The Buyer has the financial ability to consummate the Contemplated Transactions and has provided to PTN reasonable evidence of the same in the form and manner required by PTN.

Section 8.03 **Financial Statements.** The Buyer is not relying on the profitability or past performance of PTN as a factor in consummating the Contemplated Transactions.

Section 8.04 **Access to Documents.** The Buyer shall maintain all documents and records left in its possession as a result of the Contemplated Transactions for the applicable statute of limitations period as though Buyer were acquiring such assets in a stock sale (the "Maintained Documents and Records"); and, Buyer shall provide PTN reasonable access after the Effective Time to the Maintained Documents and Records in the event the need for such access arises out of or is related to the pursuit or defense of any audit, claim, investigation, or other similar matter by or against Seller or its Affiliates.

Section 8.05 **Manufacturer Approval.** As a part of a proposed settlement between the Manufacturer and Seller, Seller's dealership agreement will be terminated and provided Nissan North America deems the Buyer qualified, the Manufacturer will enter into a new dealership agreement with the Buyer. The Buyer acknowledges that in the event that the Manufacturer determines that the Buyer is not qualified to be a Nissan dealer by the Manufacturer, this Agreement shall be null and void with each party bearing its own costs.

Section 8.06 **Broker's or Finder's Fee.** Buyer has not engaged in any conduct that has given or will give rise to any liability for any fee, compensation, or reimbursement of expenses to any agent, finder, or broker, either in the nature of a finder's fee or otherwise, in connection with the Transactions.

Section 8.07 **Assumed Agreements.** The Buyer is and will be capable of satisfying the conditions contained in § 365(b)(1)(C) and 365(f)(2) of the Bankruptcy Code with respect to the Assumed Contracts to be assumed by the Buyer.

Section 8.08 **Survival of Representations and Warranties.** The representations, warranties and agreements of the Buyer set forth in this Agreement and the Purchase Documents are made as of the date of this Agreement and shall be true, correct, complete and accurate on and as of the Closing Date and at all times between the date of this Agreement and the Closing Date. The representations and warranties of the Buyer set forth in this Agreement and the Purchase Documents shall survive the Closing, subject to the limitations set forth in Section 13.04.

#### **Article IX: Buyer's Conditions Precedent**

The obligations of the Buyer under this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any or all of which the Buyer may waive

Section 9.01 **Representations, Warranties and Performance.** Each of the representations and warranties of the Seller set forth in this Agreement and the Purchase Documents shall be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date. The Seller shall have performed and complied with all of their covenants and agreements set forth in this Agreement and the Purchase Documents which are required to be performed or complied with on or prior to the Closing Date.

Section 9.02 **Manufacturer Approvals.** Seller shall have obtained the approval of the Manufacturer to enter into a dealer agreement.

Section 9.03 **Deliveries.** All documents and things required to be delivered by the Seller at or prior to the Closing shall have been delivered to the Buyer.

Section 9.04 **Bankruptcy Court Approval.** Buyer shall have obtained the approval of the Bankruptcy Court to enter into a dealer agreement.

Section 9.05 **Governmental Authority Approval.** The Buyer shall have received all authorizations, consents or approvals of all Governmental Authorities in connection with the Contemplated Transactions necessary or appropriate for the Buyer to consummate the same, including without limitation the Governmental Approvals with respect to the Buyer's proposed operation of the Business.

Section 9.06 **Contemplated Transactions.** The prior or simultaneous closing of the Contemplated Transactions.

Section 9.07 **Proceedings.** No Proceeding shall have been commenced by any Governmental Authority or Person that questions the validity of this Agreement or the Purchase Documents or any action taken or to be taken in connection herewith or the consummation of the Contemplated Transactions.

#### **Article X: Seller's Conditions Precedent**

The obligations of the Seller under this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any or all of which the Seller may waive in writing.

Section 10.01 **Representations, Warranties and Performance.** The representations and warranties of the Buyer set forth in this Agreement and the Purchase Documents shall be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date. The Buyer shall have performed and

complied with all of its covenants and agreements set forth in this Agreement and the Purchase Documents which are required to be performed or complied with on or prior to the Closing Date.

Section 10.02 **Deliveries**. All documents and the Purchase Price required to be delivered by the Buyer at or prior to the Closing to the Seller, including, those required by Section 6.02 and Section 8.02, shall have been delivered to the Seller.

Section 10.03 **Contemplated Transactions**. The prior or simultaneous closing of the Contemplated Transactions.

#### **Article XI: Further Covenants**

Section 11.01 **Information Prior to Closing**. From the date of this Agreement to the Closing Date (and with reasonable advanced notice for any on-site visits to the Seller's Property, the Seller will provide the Buyer and its authorized representatives (collectively, the "Representatives"): (a) reasonable access to, and permit such Persons to review the Purchased Assets in order that the Buyer may prepare for Closing; (b) updated financial information for Seller as such information becomes available; and, (c) prompt notice in writing of any fact, condition, event or occurrence that could reasonably be expected to result in the failure of any of the conditions contained in Article IX to be satisfied.

Section 11.02 **Expenses; Transfer Taxes**. Except as set forth in this Section 11.02, Section 6.04 and subject to Section 14.01, each party shall be responsible for and shall pay all of its respective expenses arising in connection with the negotiation and consummation of the Contemplated Transactions. This Section 11.02 will survive the Closing or termination of this Agreement.

Section 11.03 **Further Actions**. Subject to the terms and conditions herein, each party agrees to (i) use all commercially reasonable good faith efforts to take all actions and to do all things necessary, proper or advisable to consummate the Contemplated Transactions and (ii) cooperate with the other parties and their respective authorized representatives and to execute and deliver or cause to be executed and delivered at all reasonable times and places (including post-Closing) such additional instruments and documents as the other party or parties may reasonably request for the purpose of carrying out the purposes and intent of this Agreement. The Buyer and the Seller shall coordinate their contact with the Manufacturer in requesting its approval of the Contemplated Transactions.

Section 11.04 **Tax Clearance Laws; Bulk Sales**. The Seller acknowledges that it shall comply with Indiana sales and use tax clearance laws (except for the payment of any bulk sales tax imposed by reason of the sale contemplated hereunder, which the parties agree shall be borne by the Buyer).

Section 11.05 **Confidentiality**.

(a) Except as disclosed by Seller as a part of the Sale Motion, the Buyer and the Seller will maintain in confidence and will cause their managers, directors, officers, employees, agents and advisors to maintain in confidence (i) any written information obtained in confidence ("Confidential Information") from any other party in connection with this Agreement or the Contemplated Transactions, or (ii) any Confidential Information concerning the Contemplated Transactions; provided, however, the Buyer and the Seller may disclose the foregoing:

(1) to their respective managers, directors, officers, employees, vendors, agents and advisors as such may be necessary to effectuate the Contemplated Transactions, (2) in such a manner as may be reasonably necessary or appropriate to effect any filing or obtaining of any consent necessary to consummate the Contemplated Transactions, (3) as is necessary for the Buyer to secure financing for the Contemplated Transactions, or (4) as is necessary for any such party to enforce its rights under this Agreement; provided, further, that the obligation of confidentiality set forth in this Section 11.05(a) shall not apply to:

(1) Confidential Information which at the time of disclosure is in the public domain, (2) Confidential Information which after disclosure becomes generally available to the public by publication or otherwise through no fault of the Buyer, (3) Confidential Information which was available to the Buyer on a non-confidential basis prior to its disclosure, (4) Confidential Information independently developed by the Buyer without the use of such information, (5) Confidential Information which is or was made available by the Seller to a third party without similar restrictions, or (6) Confidential Information which is required to be disclosed by a court order, injunction, writ, law, rule or regulation of whatever nature applicable to or binding on such party.

(b) Either party may furnish such Confidential Information as is requested in connection with a subpoena, deposition, request for documents, civil investigation demand or similar process only after (i) promptly notifying the other party of the request, (ii) consulting with the other party on the advisability of taking steps to resist or narrow such request, and (iii) assisting the other party (at the other party's expense) in seeking a protective order or a then appropriate remedy. In the event that a protective order or other remedy is not obtained, or the other party waives compliance, the party may disclose only that portion of the Confidential Information which such party's legal counsel advises that it is legally bound to disclose. Except as otherwise required by law or the rules of any securities exchange, prior to the Closing Date, any public announcement or any similar publicity with respect to this Agreement or the Contemplated Transactions (including press releases) will be issued, if at all, at such time and in such manner as the Buyer and the Seller jointly agree.

Section 11.06 **Delivery of Schedules.** After the Effective Date, the Schedules (and copies of all documents referenced in this Agreement) shall be delivered by and to the respective party within ten (10) business days of such party's written request except as otherwise specified herein and in any event, shall be updated for Closing.

Section 11.07 **Approvals and Consents.** The Buyer and the Seller shall coordinate their contact with the Manufacturer in requesting their approval of the Contemplated Transactions. The Buyer shall initiate the process of obtaining approval from the Manufacturer by submitting to the Manufacturer a dealer application along with a copy of the bid to purchase the Buyer delivered to the Seller and this Agreement no later than April 30, 2019. Thereupon, the Buyer shall seek to procure from the Manufacturer the designation of a Qualified Bidder. Buyer shall submit, via overnight delivery service and/or electronic mail if appropriate, any supplement materials required by the Manufacturer within two (2) business days of the Manufacturer's request for such information. The Buyer covenants and agrees to make prompt application for any other approvals or consents required to consummate the Contemplated Transactions including such application to the state of Indiana as may be required to obtain approval to operate a dealership in conjunction with the Buyer's purchase of the Assets. The Seller and Buyer shall exercise good faith, due diligence and commercially reasonable efforts to process said approvals and/or consents.

Section 11.08 **Due Bills; Assumed Purchase Orders.** The Buyer will perform all obligations accruing and incurred on and after the Effective Time with respect to the "due bills" as listed on Schedule 5.01(b) to be delivered by the Seller to the Buyer at the Closing; provided, however, that the Buyer will receive a credit towards the payment of the Purchase Price for the amount of the actual verifiable cost as determined by the Buyer to perform such obligations (such obligations are the "Due Bills"). If a customer has made a deposit under an Assumed Purchase Order, the Buyer will receive a credit towards the payment of the Purchase Price for an amount equal to any and all such deposits.

## **Article XII: Bankruptcy Court Approval and Related Matters**

(a) The Buyer acknowledges that Sale Motion contemplates the submission of competing bids for all or a portion of the business and assets of Seller and that Buyer may not be deemed the Successful Bidder at the Auction.

(b) The Closing of the Contemplated Transactions will occur provided the Buyer is deemed to be the Successful Bidder at the auction.

(c) Seller shall (in each case, in accordance with all applicable requirements of, and

procedures under, the Bankruptcy Code and subject in all cases to the approval of the Bankruptcy Court) (a) assign to Buyer at the Closing, each of the Assumed Contracts to which it is a party, and thereafter take all actions as may be reasonably necessary to cause the order or orders effectuating this Agreement to be issued, entered and become a final order under the Bankruptcy Code

(d) Seller and Buyer shall cooperate reasonably with the other and its representatives in connection with the Chapter 11 Case as it relates to the Sale Motion. Nothing contained herein shall require either Party to agree to any amendment of this Agreement, to expend any out-of-pocket funds (other than customary professional (including attorneys) fees and filing fees incident to such proceedings) or to agree to any condition or requirement adverse to such Party.

(e) If following the Closing, the Sale Motion, the Sale Order or any other order of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), Seller shall take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and Buyer agrees to cooperate in such efforts, and each party hereto shall endeavor to obtain an expedited resolution of such appeal. Nothing contained herein shall modify the termination rights set forth in Section 2 of this Agreement.

(f) Buyer agrees to cooperate with Seller in connection with furnishing information pertaining to the satisfaction of the requirement of adequate assurances of future performance as required under §365(f)(2)(B) of the Bankruptcy Code.

### **Article XIII: Indemnification**

Section 13.01 **Buyer's Indemnification.** The Buyer hereby agrees to defend, indemnify, and hold the Seller, its Affiliates and their respective officers, directors, employees, shareholders, members, agents and their respective successors and assigns (the "Buyer's Indemnitees") harmless against any and all Damages incurred or sustained by the Buyer's Indemnitees as a result of:

(a) Any material breach or misrepresentation or warranty of the Buyer contained in this Agreement or the Purchase Documents;

(b) Any material breach of any covenant or agreement of the Buyer contained in this Agreement or the Purchase Documents;

(c) The Buyer's failure to pay or perform the Assumed Liabilities after the Effective Time in accordance with the terms and subject to the conditions of this Agreement;

(d) Any claim for fees, commissions or similar compensation owed by Buyer in connection with the Contemplated Transactions; and/or

(e) Any Liability arising from or related to Buyer's non-compliance with any tax clearance laws, bulk sales laws or fraudulent transfer laws with respect to the Contemplated Transactions.

Section 13.02 **Third Party Claims.** In seeking indemnification pursuant to this Article XIII or otherwise pursuant to this Agreement Seller as an "Indemnified Party" shall give prompt notice to the Buyer as the "Indemnifying Party" of the assertion of any lawsuit or claim by a third party (a "Claim") in respect of which indemnity may be sought hereunder. Notwithstanding the foregoing, the right to indemnification hereunder shall not be affected by any failure of the Indemnified Party to give any notice (or the delay by the Indemnified Party to give any notice) unless, and then only to the extent that, the rights and remedies of the Indemnifying Party shall have been materially prejudiced as a result of the failure to give, or the delay in giving, such notice. The Indemnifying Party will have the right, at its option and expense, to participate in and control the defense, negotiation or settlement of such a proceeding or claim.

Section 13.03 **Payment of Indemnified Obligations.** Any uncontested indemnified obligation shall be

paid in full within thirty (30) days after receipt of written demand of payment by the Indemnifying Party, and will thereafter bear interest at the “prime rate” of interest (base rate on corporate loans at the nation's largest banks) quoted in The Wall Street Journal, adjusted on the annual due date of the obligation.

Section 13.04 **Limitations on Representations and Warranties**. The representations and warranties made herein shall survive the Closing for a period of twelve (12) months following the Effective Time.

#### **Article XIV: Termination**

Section 14.01 **Grounds for Termination**. This Agreement may not be terminated, except as:

- (a) By the non-breaching party upon the breach of a material representation, warranty or covenant set forth in this Agreement, the Purchase Documents or both, which breach is not cured within five (5) business days after receipt of written notice of such breach by the breaching party;
- (b) By an agreement in writing signed by the Buyer and the Seller;
- (c) By the Seller in the event Buyer has not closed the Contemplated Transactions by \_\_\_\_\_;
- (d) By the Buyer, if Buyer fails to obtain Manufacturer’s written approval of the Contemplated Transactions as required under Section 8.05; and
- (e) By the Seller, if the Bankruptcy Court does not approve the Contemplated Transactions.

Section 14.02 **Effect of Termination**.

- (a) In the event: (i) Seller shall default hereunder or (ii) the conditions under Article IX: of this Agreement in favor of Buyer have been satisfied or waived by the Buyer, Buyer has complied with all terms and provisions required to be complied with by Buyer hereunder, and Buyer is ready, willing and able to close hereunder but for the default of Seller, then upon the occurrence of either of such events, Buyer shall have the right to terminate this Agreement.
- (b) In the event: (i) Buyer and/or its assign shall default hereunder or (ii) the conditions under Article X of this Agreement in favor of Seller have been satisfied or waived by the Seller, Seller has complied with all terms and provisions required to be complied with by Seller hereunder, and Seller is ready, willing and able to close hereunder but for the default of Buyer, then upon the occurrence of either of such events, Seller shall retain the Deposit in addition to having all other remedies available under Law.
- (c) If this Agreement is terminated pursuant to Section 14.01, all obligations of the parties under this Agreement will terminate, except that the obligations that by the express language of this Agreement survive termination and the obligations of the parties in this Section 14.02.

#### **Article XV: Miscellaneous**

Section 15.01 **Survival**. Subject to the limitations set forth in Section 13.04, Buyer and the Seller acknowledge and agree that those Sections of this Agreement which by their terms must survive the Closing.

Section 15.02 **Entire Agreement; Amendment**. This Agreement and the Purchase Documents contain the entire agreement of the parties hereto with respect to the transactions described therein, and nothing which alters, modifies, limits or adds to the terms or conditions of this Agreement or the Purchase Documents shall have any force or effect unless it is in writing and executed by the Buyer and the Seller. This Agreement may only be amended by a writing signed by the Buyer and the Seller.

Section 15.03 **Assignment; Time is of the Essence; Computation of Time**. This Agreement shall inure to the benefit of, and be binding upon and enforceable by, the parties hereto and their respective heirs, successors and permitted assigns. The Seller shall not assign their rights or obligations under this Agreement in whole or in part without the prior written consent of the Buyer, except as when a Manufacturer exercises its rights of first refusal, but in any event, Buyer shall unreasonably withhold consent. The Buyer may, without the consent of the Seller, assign its respective rights and obligations under this Agreement in whole or in part to any one or more of its respective Affiliates or any entity that acquires a substantial part of its assets or a successor by merger, consolidation or other corporate restructuring. With regard to all dates and time periods set forth in this Agreement, time is of the essence. Should any period of time specified herein, except the Effective Time, end on a Saturday, Sunday, or legal holiday, the period of time shall automatically be extended to 5:00 p.m. of the next full business day.

Section 15.04 **Notices**. All notices, requests, demands, waivers, consents, approvals, payments or other communications which are required by or permitted hereunder shall be in writing and be deemed delivered (a) upon receipt, if by hand delivery, (b) upon transmission, if sent by email with confirmation of receipt, (c) the next day, if sent by overnight mail, or (d) on the fifth (5th) day following deposit in the United States mail, certified, postage prepaid, return requested addressed as follows

If to the Buyer:

Attn:

Email:

If to the Seller:

New City Auto Group, Inc.  
c/o Michael Shanahan  
Mallor Grodner  
101 West Ohio Street, Suite 1600  
Indianapolis IN 46204  
Email: [mike@indianadealercounsel.com](mailto:mike@indianadealercounsel.com)

with a copy to:

Gregory Jordan  
Jordan & Zito LLC  
55 West Monroe Street, Suite 3600  
Chicago, Illinois 60603  
Email: [gjordan@jz-llc.com](mailto:gjordan@jz-llc.com)); and

Nissan North America, Inc.  
c/o Charles M. Tatelbaum  
Tripp Scott PA.  
110 SE 6<sup>th</sup> Street, 15<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301  
Email: [cmt@trippscott.com](mailto:cmt@trippscott.com)

Section 15.05 **Execution in Counterparts**. This Agreement may be executed in any number of counterparts (whether facsimile, as attachments to email or original), each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

Section 15.06 **Indulgences, etc.** Neither the failure nor any delay on the part of either party to exercise any right, remedy, power or privilege under this Agreement or any of the Purchase Documents shall operate as a

waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence.

Section 15.07 **Provisions Several.** The provisions of this Agreement are independent of and several from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

Section 15.08 **Prevailing Party.** If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to its reasonable costs, its reasonable attorney and paralegal fees incurred prior to and at trial or arbitration as determined by the arbitrator or trial court, and if any appeal is taken from such decision, attorney and paralegal fees as determined on appeal and any petition for review.

Section 15.09 **Headings.** The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

Section 15.10 **Governing Law; Venue.** All questions relating to the validity, construction and interpretation of this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana without regard to the choice-of-law rules of this or any other jurisdiction, and without the aid of any rule or custom requiring construction against the draftsman. Any Proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in any state or federal court located in the County of Marion, Indiana. Each party to this Agreement: (a) expressly and irrevocably consents and submits to the sole and exclusive jurisdiction of each state and federal court located in the County of Marion, Indiana (and each appellate court located in the State of Indiana) in connection with any such Proceeding; (b) agrees that each state and federal court located in the County of Marion, Indiana shall be deemed to be a convenient forum; and (c) agrees not to assert (by way of motion, as a defense or otherwise), in any such Proceeding commenced in any state or federal court located in the County of Marion, Indiana, any claim that such party is not subject personally to the jurisdiction of such court, that such Proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

Section 15.11 **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, THE CONTEMPLATED TRANSACTIONS, THE PERFORMANCE OF THIS AGREEMENT, OR THE RELATIONSHIP CREATED BY THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY TO THIS AGREEMENT OF THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

Section 15.12 **Advice of Counsel.** Each party acknowledges that it has been advised by its own counsel with respect to this Agreement, and specifically with respect to the terms of the Section 15.11, which concerns the waiver of each party's right to trial by jury.

[signature page follows]

The parties have executed and delivered this Agreement as of the date first above written.

<b>SELLER:</b>  <b>New City Auto Group, Inc.</b> <b>d/b/a Prime Time Nissan</b> <b>d/b/a Prime Time Nissan of Schererville</b>  By: _____ Printed: _____ Title: _____	<b>BUYER:</b>    By: _____ Printed: _____ Title: _____
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[Signature Page to Asset Purchase Agreement]

## APPENDIX & SCHEDULES

### APPENDIX 1: DEFINITIONS

“Affiliate” of a Person means a Person that, through one or more intermediaries, controls, is controlled by or is under control with the first Person. “Control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Applicable Laws” means all federal, state, local, or foreign statutes, codes, laws, rules, regulations, ordinances or orders of any Governmental Authority (including, all applicable laws, building codes, common law, zoning codes, employee safety laws and other statutes, judgments, injunctions, orders, decisions, permits, requirements, guidelines, decrees or consents of or agreements with any Governmental Authority) applicable to the Seller, the Business, the Operating Assets or the Seller's Property.

"Assumed Contracts" means the (i) real property leases, equipment leases and other agreements that the Buyer elects to acquire by written notice to Seller and parties to such agreements three (3) days prior to the Sale Hearing, which under the Bankruptcy Code and/or by the terms of all such agreements are assignable, but (except as otherwise expressly provided in this Agreement) no other contracts or agreements.

“Auction” means an auction of the Seller’s assets to be conducted on May 21, 2019 at the offices of Jordan & Zito LLC, 55 West Monroe Street, Suite 3600, Chicago Illinois at 10:00 am (prevailing central time) in the event the Buyer receives more than one Qualified Bid.

“Avoidance Actions” shall mean any and all avoidance, recovery, or subordination actions or remedies that may be brought by or on behalf of the Seller or its bankruptcy estate, including causes of action arising under chapter 5 of the Bankruptcy Code or applicable non-bankruptcy law.

“Bankruptcy Code” shall have the meaning set forth in the Preamble hereto.

“Bankruptcy Court” shall have mean the United States Bankruptcy Court for the Northern District of Indiana sitting in Hammond, Indiana.

“Bankruptcy Rule” or “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Bidding Procedures Order” means the order of the Bankruptcy Court entered in the Seller’s Chapter 11 Case on \_\_\_\_\_, 2019, which (i) scheduled the Sale Hearing, (ii) authorized competitive bidding procedures pursuant to which counteroffers for the Assets may be solicited, made and accepted, and (iii) providing for an auction of the Assets.

“Buyer” has the meaning set forth in the preamble.

“Assumed Purchase Orders” means the outstanding customer purchase orders for vehicles ordered but not delivered prior to the Closing Date that are set forth on Schedule 5.01(b) and are on terms and conditions consistent with the historical operations of the Seller.

“Business” means the new automobile dealership of the franchises of Seller, vehicle maintenance and repair services, replacement part and accessory sales, extended warranty sales, vehicle financing, automobile dealer management and services and such other activities.

“Chapter 11 Case” means the case commenced by Seller under Chapter 11 of the Bankruptcy Code

in the Bankruptcy Court and administered under the caption In re New City Auto Group, Inc. Case No. Case No. 18-21890.

“Claim” shall have the meaning set forth in § 101(5) of the Bankruptcy Code.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contemplated Transactions” means each of the transactions set forth in the Preamble.

“Cure Costs” shall means all cure costs associated with any Assumed Contract that is subject to a cure pursuant to § 365 of the Bankruptcy Code.

“Damages” means any claim, Liability, loss, diminution of value, damage, assessment, judgment, cost or expense of any kind or character, including costs of investigation, defense and reasonable attorneys' and paralegals' fees and costs, whenever incurred.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“GAAP” means generally accepted accounting principles in the United States, as in effect from time to time.

“Governmental Authority” means any federal, state, local, municipal, foreign, or other entity or organization exercising executive, legislative, judicial, regulatory or administrative functions, including, any governmental authority, agency, department, board, commission or instrumentality of the United States, any State of the United States, foreign jurisdiction or any political subdivision thereof, any tribunal or arbitration body of competent jurisdiction, and any self-regulatory organization.

“Liability” means with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Liens” means debts, conditions, equitable interests, options, mortgages, claims, security interests, pledges, rights of others, liens, encumbrances, pledges, assessments, restrictions and charges of every nature as of the Closing Date with the understanding that certain Liens will be satisfied at or near the Closing Date.

“Manufacturer” means Nissan North America, Inc. and/or its applicable affiliates.

“Material Adverse Change” means, with respect to the Business, an event or change that has, or could reasonably be expected to have, an adverse change on it or its prospects, including without limitation, events or changes resulting from (a) any adverse change in Manufacturer, customer, distributor, supplier or similar relationships resulting therefrom, or (b) adverse changes (i) in the industries in which the Business operates, (ii) material adverse changes in the economy, financial markets or securities markets, (iii) in any Applicable Laws or the interpretation thereof, and/or (iv) caused by acts of terrorism or war (whether or not declared), hurricanes, tornadoes or other natural disasters, occurring after the date of this Agreement.

“New Vehicles” means (a) all 2018 or newer model year Nissan automobiles which are undamaged or have been repaired, but had less than the amount of damage required to be disclosed under Indiana's damage disclosure statute, for each such automobile which (i) are in the Seller's inventory or in-transit to the Seller on the Closing Date, and (ii) have less than Five Thousand (5,000) miles on the odometer, and (iii) can be sold as “new” under Indiana law.

“OEM Parts and Accessories” means all new, unused, undamaged, unopened (in original packaging), and returnable Nissan replacement automobile parts and accessories in the inventory of Seller on the Closing

Date. A part will be deemed returnable if it is eligible for return by the Buyer after the Closing in accordance with the Manufacturer's then current policies and procedures including with respect to condition and packaging.

"Other Parts and Accessories" means all new, unused, undamaged, other automobile and truck parts and accessories in the inventory of Seller on the Closing Date that are neither OEM Parts and Accessories nor Miscellaneous Supplies.

"Permitted Encumbrances" shall mean Liens securing indebtedness or other monetary obligations that constitute an Assumed Liability.

"Person" means any natural person, firm, partnership, association, corporation, company, limited liability company, trust, business trust, Governmental Authority or other entity (foreign or domestic).

"Proceeding" means any material action, arbitration, mediation, EEOC action, audit, hearing, investigation, demand, Claim, litigation or suit (whether civil, criminal, administrative, judicial or investigative) or other proceeding or governmental investigation.

"Purchase Documents" means all agreements, documents or instruments to be executed or delivered in connection with the Contemplated Transactions, other than this Agreement.

"Qualified Bid" means a Qualified Bid as that term is defined in the Sale Motion.

"Qualified Bidder" means a Qualified Bidder as that term is defined in the Sale Motion.

"Returns" means any return, report, declaration, form, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

"Sale Motion" means the Amended Motion to Authorize (1) Bidding Procedures and Bid Protections, (2) Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims and Interests, (3) Assumption and Assignment of Related Executory Contracts and Unexpired Leases, (4) Form and Manner of Notice with Respect Thereto, and (5) Related Relief filed by Seller in the Chapter 11 Case.

"Sale Hearing" means the hearing of the Bankruptcy Court to approve this Agreement and the transactions contemplated herein, as the same may be continued from time to time.

"Sale Order" means the order of the Bankruptcy Court, substantially in the form of Exhibit B attached hereto, to be entered by the Bankruptcy Court pursuant to §§ 363 and 365 of the Bankruptcy Code and otherwise reasonably acceptable to the Purchaser and Seller.

"Seller's Knowledge" or similar terms used in this Agreement means the present actual knowledge of the shareholders of Seller, with no duty to investigate.

"Service Vehicles" means all automobiles used by the Seller as part of its Business, including all automobiles, courtesy vans and delivery trucks owned by Seller, which are not held for sale.

"Successful Bidder" means the party submitting the bid at the Auction that the Seller determines in its reasonable business judgment, is the highest or otherwise best qualified bid.

"Tax" or "Taxes" means any federal, state, local, foreign or other income, alternative, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, windfall profits, gross receipts, value added, sales (not including taxes applicable to bulk sales), use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, (including, but not limited to, taxes under § 59A of the Code), real property, personal property, inventory, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment

insurance, social security, disability, workers' compensation, payroll, health care, withholding, estimated or other similar tax, duty or other governmental charge or assessment or deficiencies thereof, including, but not limited to, all interest and penalties thereon and additions thereto whether disputed or not.

“Work-in-Process” means the vehicle repair and maintenance services (whether customer, warranty or insurance) for customers of Seller, which have been commenced but are not completed as of the Closing Date, including sublet repairs and prepaid expenses, which are all on customary terms and conditions and consistent with the historical practices of the Seller.

**Rules of Construction:**

In addition, in this Agreement, unless a clear contrary intention appears: (a) the singular includes the plural and vice versa; (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) reference to any gender includes each other gender; (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (e) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof; (f) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; (g) “or” is used in the inclusive sense of “and/or”; (h) with respect to the determination of any period of time, “from” means “from but excluding” and “to” means “to and including”; (i) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto and (j) references to “automobiles” and “vehicles” include cars, trucks, sport utility vehicles, and crossovers.

# Exhibit 2

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

<b>IN RE:</b>	)	<b>Chapter 11 Proceeding</b>
	)	
<b>NEW CITY AUTO GROUP, INC.,</b>	)	<b>Case No. 18-21890</b>
	)	
<b>Debtor,</b>	)	<b>Hon. James Ahler</b>
	)	

**AMENDED BIDDING AND SALE PROCEDURES**

In furtherance of the Amended Motion to Authorize (1) Bidding Procedures and Bid Protections, (2) Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims and Interests, (3) Assumption and Assignment of Related Executory Contracts and Unexpired Leases, (4) Form and Manner of Notice with Respect Thereto, and (5) Related Relief (“Sale Motion”) filed by New City Auto Group, Inc. (the “Debtor”), the Debtor will follow bidding and sale procedures (the “Bidding Procedures”) below. Any interested party who has not received the Sale Motion may contact the Debtor’s counsel listed below. These Bidding Procedures set forth the process by which is authorized to conduct the auction (the “Auction”) for the sale (the “Sale”) of substantially all of the Debtor’s assets located at 1301 Indianapolis Blvd., Schererville, Indiana and related assets (the “Assets”).

**1. “As Is, Where Is”**

The proposed transfer of the Assets will be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor or the Estate. All of the Debtor’s right, title, and interest in and to the Assets will be transferred free and clear of all pledges, liens, security interests, encumbrances, claims,

charges, options, and interests to the fullest extent permitted under § 363(f) of the Code, except as otherwise agreed to by the Debtor.

Each Bidder for the Assets will be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct due diligence regarding the Assets prior to making its Bid; (b) has relied solely upon its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid; and (c) did not rely upon or receive any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Assets, or the completeness of any information provided in connection with the Sale or the Auction.

All due diligence requests of potential Bidders shall be coordinated through the Debtor's automotive counsel, Michael Shanahan, and such due diligence must be completed not less than seven (7) days prior to the Bid Deadline (as defined below), except to the extent that the Debtor permits otherwise. All potential Bidders shall be required to execute and return to the Debtor's counsel a nondisclosure agreement in the form approved by the Debtor's attorneys before any access to due diligence materials will be provided.

## **2. Bid Requirements**

Subject to Section 4 hereof, any proposal, solicitation, or offer (each, a "Bid") by a person interested in purchasing the Assets (such person who submits a Bid, a "Bidder") must be submitted in writing and determined by the Debtor, in its reasonable business judgment, to have satisfied the following requirements (collectively, the "Bid Requirements"):

- (a) Purchase Price: Each Bid must clearly set forth the purchase price to be paid, including cash and non-cash components, if any (the “Purchase Price”). For the avoidance of doubt, the Purchase Price may include an Approved Credit Bid (as defined below), in whole or in part, as provided herein.
- (b) Deposit: Each Bid must be accompanied by a cash deposit in an amount equal to 15 percent (15%) of the cash component of the Purchase Price of the Bid to be held in a non-interest bearing account to be identified and established by the Debtor (the “Deposit”).
- (c) Qualified Bidder: In addition to all other financial and other requirements required to submit a Bid, the Debtor will not accept a Bid at the Auction unless Nissan North America, Inc. (“Nissan”) has advised the Debtor that Nissan has determined that the prospective purchaser is qualified to be an approved dealer under Nissan’s standards (a “Qualified Bidder”). It will be the responsibility of each prospective purchaser to submit a dealer application package to Nissan on or before April 30, 2019.
- (d) Initial Overbid: After submission of an initial bid for the Assets (as defined in the initial bidder’s APA) the aggregate consideration proposed by each Bid must equal or exceed the sum of:
  - i) (A) cash in an amount equal to the Minimum Payment Requirement (as defined in the Sale Motion); plus  
(B) \$75,000.00 in cash (the “Initial Overbid”); or
  - ii) an Approved Credit Bid in an amount equal to the Initial Overbid; provided that any such Approved Credit Bid must include cash in an amount necessary

to satisfy any secured claims that are senior in priority, including a cash component in an amount at least equal to the Minimum Payment Requirement to Nissan (“Senior Claims”) to the secured claim of the holder of such Approved Credit Bid; or

- iii) a Bid composed of both cash and an Approved Credit Bid in an amount equal to the Initial Bid and (ii) the Senior Claims.
- (e) APA: Reference is made to that certain sale agreement attached as Exhibit A (the “APA”). Each Bid must expressly include the APA with a blackline clearly marked to show changes requested by the Bidder.
- (f) Same or Better Terms; Bid Documents: Except as otherwise provided herein, each Bid must be, in the Debtor’s reasonable business judgment, substantially on the same or better terms than the terms of the APA. Each Bid must include duly executed transaction documents necessary to effectuate the transactions contemplated in the Bid (the “Bid Documents”). The Bid Documents shall include (i) a copy of the APA clearly marked to show all changes requested by the Bidder (including those related to the Purchase Price) as well as all other material documents integral to such Bid, and (ii) written evidence of the Bidder’s ability to provide adequate assurance of future performance with respect to the assumption and assignment of any applicable contracts or leases included in the Bid (“Adequate Assurance Information”), such as audited financial statements of the Bidder, information regarding the capitalization of the Bidder, and information allowing the Seller to evaluate the value of any applicable guaranties.

- (g) Demonstrated Financial Capacity; Committed Financing: A Bidder must have, in the Debtor's reasonable business judgment, the necessary financial capacity to consummate the proposed transactions required by its Bid. Each Bid must also include committed financing, documented to the Debtor's reasonable satisfaction, that demonstrates the Bidder has received sufficient debt and/or equity funding commitments to satisfy the Bidder's Purchase Price and other obligations under its Bid, including the identity and contact information of the specific person(s) or entity(s) responsible for such committed financing whom the Debtor and the Debtor's attorneys may contact regarding such committed financing. Such funding commitments or other financing shall not be subject to any internal: (i) approvals; (ii) syndication requirements; (iii); diligence; or, (iv) credit committee approvals. Such financing shall have covenants and conditions reasonably acceptable to the Debtor.
- (h) Identity: Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed officers, directors, equity holders, or financial backers of the Debtor be associated with any Bid. Each Bid must also include contact information for the specific person(s) whom the Debtor and the Debtor's attorneys may contact regarding such Bid.

- (i) Contingencies; No Financing or Diligence Outs: Except as noted in this paragraph, a Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall not be more burdensome, in the Debtor's reasonable business judgment, than those set forth in the APA. Notwithstanding the foregoing, a Bidder may withdraw its bid on or before May 7, 2019, if such Bidder demonstrates to the Debtor and Nissan that such Bidder is unable to obtain floor plan financing or that it is unlikely to obtain a dealer's license from the state of Indiana.
- (j) Irrevocable: Except as provided in ¶ 2(i) above, a Bidder's Bid shall be irrevocable unless and until the Debtor accepts a higher Qualified Bid (as defined herein), and such Bidder is not selected as the Backup Bidder (as defined herein).
- (k) Expenses: Each Bidder presenting a Bid or Bids shall bear its own costs and expenses (including legal fees) in connection with the proposed transaction.
- (l) Authorization: Each Bid must contain evidence that the Bidder has obtained authorization or approval from its Board of Directors (or a comparable governing body acceptable to the Debtor) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (m) As-Is, Where-Is Acknowledgment: Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or

inspection of any documents and/or the Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's proposed APA.

- (n) Bid Deadline: Each Bid must be transmitted via overnight mail or email (in .pdf or similar format) so as to be actually received on or before April 30, 2019 at 5:00 p.m. (prevailing Eastern Time) (the "Bid Deadline") to each of the following:
- i) Automotive Counsel to the Debtor, Michael Shanahan, Mallor Grodner, 101 West Ohio Street, Suite 1600, Indianapolis IN 46204 ([mike@indianadealercounsel.com](mailto:mike@indianadealercounsel.com)); and
  - ii) Bankruptcy counsel to the Debtor, Gregory Jordan, Jordan & Zito LLC, 55 West Monroe Street, Suite 3600, Chicago, Illinois 60603 ([gjordan@jz-llc.com](mailto:gjordan@jz-llc.com)).
  - iii) Counsel to Nissan, Charles M. Tatelbaum, Tripp Scott PA. 110 SE 6<sup>th</sup> Street, 15<sup>th</sup> floor, Fort Lauderdale, Florida 33301 ("[cmt@trippscott.com](mailto:cmt@trippscott.com)").

### 3. Qualified Bidders

- (a) A Bid that satisfies each of the Bid Requirements, as determined in the Debtor's reasonable business judgment but in all events meeting the requirements of Section 2(c) above, shall constitute a "Qualified Bid," and such Bidder shall be a "Qualified Bidder." The Debtor shall notify each Qualified Bidder that such party is a Qualified Bidder on or before May 16, 2019.

- (b) If any Bid is determined by the Debtor not to be a Qualified Bid, the Debtor shall cause such Bidder to be refunded its Deposit on or before May 20, 2019.
- (c) Between the date that the Debtor notifies a Bidder that it is a Qualified Bidder and the Auction, the Debtor and the Debtor's attorneys may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Bidder's proposed APA, without the written consent of the Debtor, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; provided that any Qualified Bid may be improved at the Auction as set forth herein; provided further that any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth herein.

#### **4. Approved Credit Bids**

- (a) Subject to the terms of this Section 4, any holder of a claim against the Debtor secured by a lien on the Assets ("Secured Creditor") shall have the right to credit bid all or a portion of such Secured Creditor's claim within the meaning of § 363(k) of the Code (a "Credit Bid"). Prior to submitting an Intended Credit Bid at the Auction, such secured creditor must first be approved as a Qualified Bidder by Nissan. In the event that the Secured Creditor is not approved by Nissan as a Qualified Bidder, the Secured Creditor will not be able to submit a Credit Bid.
- (b) Any Secured Creditor interested in submitting a Credit Bid shall file a notice of its intent to submit a Credit Bid ("Intended Credit Bid") by April 30, 2019. Such

notice shall state the basis and amount of such Secured Creditor's claim and the evidence of its lien on the Assets.

- (c) Objections, if any, to an Intended Credit Bid ("Credit Bid Objection") must be in writing, must state the legal and factual basis for the Credit Bid Objection and the specific grounds therefor, and must be filed with the Court by May 7, 2019 ("Credit Bid Objection Deadline").
- (d) In the event that no Credit Bid Objection is filed with regard to an Intended Credit Bid by the Credit Bid Objection Deadline, such Intended Credit Bid shall constitute an "Approved Credit Bid" and the applicable Secured Creditor shall constitute an "Approved Credit Bidder," provided, however, that as with all Bidders, any submitting an Intended Credit Bid must be approved as a Qualified Bidder by Nissan in the same manner and consistent with the same timeline as other Bidders. In the event that a Credit Bid Objection is filed with regard to an Intended Credit Bid by the Credit Bid Objection Deadline, the Court shall conduct a hearing ("Credit Bid Hearing") to determine the extent to which such Intended Credit Bid shall constitute an Approved Credit Bid and the extent to which the applicable Secured Creditor shall constitute an Approved Credit Bidder. The Debtor will in conjunction with the filing of its objection request that the Court set a date and time for a Credit Bid Hearing before the Honorable James R. Ahler in the Courtroom designated by him in advance at the United States Courthouse, 5400 Federal Plaza, Hammond, Indiana 46320 or before any other judge who may be sitting in his place and stead or at the Court's discretion pursuant to a telephonic hearing.

- (e) All Bids that include an Approved Credit Bid must satisfy each Bid Requirement in order to constitute a Qualified Bid except as specifically provided by this Section 4. For the avoidance of doubt, a Bid that includes an Approved Credit Bid must include a cash component to the extent of any secured claim that is senior in priority to the lien of the applicable Approved Credit Bidder and an amount sufficient to satisfy the Minimum Payment Requirement to Nissan.
- (f) For purposes of Section 2(f) hereof, the Bid Documents required to be submitted by any Approved Credit Bidder who submits a Bid that includes an Approved Credit Bid shall include only: (i) the applicable APA(s) clearly marked to accommodate an Approved Credit Bid and to show all changes requested by the Approved Credit Bidder; and (ii) the Approved Credit Bidder's proposed form of Sale Order clearly marked to show all changes requested by the Approved Credit Bidder versus the proposed form of Sale Order attached as Exhibit 4 to the Sale Motion.
- (g) Notwithstanding Section 2(f) hereof, any Approved Credit Bidder that submits a Bid that includes an Approved Credit Bid shall be required to demonstrate committed financing documented to the Debtor's reasonable satisfaction only to the extent of the required cash components of such Bid which cash component shall be sufficient to satisfy the Minimum Payment Requirement to Nissan.

## **5. Auction**

No later than May 20, 2019 at 12:00 p.m. (Central Time), the Debtor will notify each Qualified Bidder of the highest or otherwise best Qualified Bid as determined in the Debtor's reasonable business judgment (the "Baseline Bid"), and provide copies of the

applicable Bid Documents supporting such Baseline Bid to each Qualified Bidder. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the Estate, including, *inter alia*: (a) the number, type, and nature of any changes to the applicable APA requested by the Qualified Bidder, including the Assumed Obligations to be assumed in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (d) the net economic effect of any changes to the value to be received by the Estate from the transaction contemplated by the Bid Documents (collectively, the "Bid Assessment Criteria").

If two or more Qualified Bids are submitted, the Debtor intends to conduct an Auction with respect to the Assets at 10:00 a.m. (CDT) on May 21, 2019 at the offices of Jordan & Zito LLC, 55 West Monroe Street, Suite 3600, Chicago, Illinois, or such later time or other place as the Debtor shall select. Michael Shanahan and the Debtor's other attorneys shall direct and preside over the Auction in accordance with the Bidding Procedures, and only the Debtor, Qualified Bidders, Nissan and their respective advisors shall be entitled to attend. Based upon the terms of the Qualified Bids received prior to the Auction, and such other information as it determines to be relevant, the Debtor will conduct the Auction in the manner it determines will result in the highest or otherwise best offer for the Assets.

If only one Qualified Bid is submitted, the Debtor may adjourn or cancel the Auction and may decide, in its reasonable business judgment without further approval of

the Court, to designate the Qualified Bid as the Successful Bid. If no Qualified Bids are submitted, the Debtor may adjourn or cancel the Auction.

(a) The Debtor and the Debtor's Attorneys Shall Conduct the Auction.

The Debtor and the Debtor's attorneys shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders.

Only the Debtor, Nissan, Qualified Bidders and their respective legal and financial advisors shall be entitled to attend the Auction, and the Qualified Bidders shall appear in person and through duly authorized representatives at the Auction. Only Qualified Bidders and their legal and financial advisors shall be entitled to bid at the Auction.

(b) Terms of Overbids.

"Overbid" means any bid made at the Auction by a Qualified Bidder subsequent to the Debtor's announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

- i) Minimum Overbid Increment. All Overbids shall initially be in minimum increments of \$75,000.00 in cash or Credit Bids. Thereafter, the Debtor may adjust bidding increments in such manner and amounts as it determines will result in the highest and best offer for the Assets. For the avoidance of doubt, any Bidder may submit an Overbid that is greater than \$75,000.00 in cash or Credit Bid.

- ii) Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Estate than any prior Qualified Bid or Overbid, as determined in the Debtor's reasonable business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
- iii) Announcing Overbids. The Debtor shall announce at the Auction the material terms of each Overbid, the basis, whether subjective or objective, for calculating the total consideration offered in each such Overbid, and the Debtor's opinion on the resulting benefit to the Estate based on, inter alia, the Bid Assessment Criteria.

During the course of the Auction, the Debtor shall, after the submission of each Overbid, promptly inform each Qualified Bidder of the Overbid that reflects, in the Debtor's view, the highest or otherwise best Bid.

(c) Consideration of Overbids.

The Debtor reserves the right, in its reasonable business judgment, to adjourn the Auction one or more times to, among other things: facilitate discussions between the Debtor and Qualified Bidders; allow Qualified Bidders to consider how they wish to proceed; and provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as it in its reasonable business judgment may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

(d) Closing the Auction.

- i) The Auction shall continue until there is only one Qualified Bid that the Debtor determines in its reasonable business judgment, is the highest or otherwise best Qualified Bid (such Qualified Bid, the “Successful Bid,” and such Qualified Bidder, the “Successful Bidder”) at which point, the Debtor shall accept such bid subject to Court approval and the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid. Notwithstanding anything herein to the contrary, the Debtor’s acceptance of the Successful Bid shall be conditioned upon approval by the Court of the Successful Bid.
- ii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtor or its professionals from exercising their respective fiduciary duties under applicable law.
- iii) The Debtor shall not consider any Bids or Overbids submitted after the conclusion of the Auction and any and all such Bids and Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- iv) As soon as reasonably practicable after closing the Auction, the Debtor shall cause the Bid Documents for the Successful Bid and Backup Bid to be filed with the Court.

(e) No Collusion; Good Faith Bona Fide Offer.

Each Qualified Bidder participating at the Auction will be required to confirm on the record that: (i) it has not engaged in any collusion with respect to the bidding; and (ii)

its Qualified Bid is a good faith bona fide offer, and it intends to consummate the proposed transaction if selected as the Successful Bidder.

**6. Backup Bidder**

- (a) Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction, as determined by the Debtor in the exercise of its reasonable business judgment, shall be required to serve as a backup bidder (the “Backup Bidder”).
- (b) The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtor at the conclusion of the Auction at the same time the Debtor announces the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the Successful Bidder. The Backup Bidder’s Deposit shall be held in escrow until the closing of the transaction with the Successful Bidder.
- (c) If a Successful Bidder fails to consummate an approved transaction contemplated by its Successful Bid, the Debtor may select the applicable Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder’s Deposit shall be forfeited to the Debtor, and the Debtor specifically

reserves the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

#### **7. Highest or Otherwise Best Bid**

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtor may, in its sole discretion, consider the following factors in addition to any other factors that the Debtor deems appropriate: (a) the number, type, and nature of any changes to the applicable APA requested by the Qualified Bidder, including the type and amount of obligations to be assumed in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Estate from the transaction contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid.

#### **8. Reservation of Rights**

The Debtor reserves its rights to modify these Bidding Procedures, in its reasonable business judgment, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing (as defined below) in open court without further notice; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) rejecting any or all Bids or Qualified Bids; and (f) adjusting the minimum overbid increment, including by requesting that Qualified Bidders submit last or final bids on a "blind" basis.

## **9. Consent to Jurisdiction**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the United States Bankruptcy Court for the Northern District of Indiana (the “Court”) and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Bid Documents, as applicable.

## **10. Sale Hearing**

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the “Sale Hearing”) is presently scheduled to take place on May 22, 2019 at 10:00 a.m. (prevailing Central Time), or as soon thereafter as counsel may be heard, before the Honorable James R. Ahler in the Courtroom designated by him in advance at the United States Courthouse, 5400 Federal Plaza, Hammond, Indiana 46320, or before any other judge who may be sitting in his place and stead.

The Debtor may continue the Sale Hearing to a later date by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Debtor shall present the Successful Bid to the Court for approval.

## **11. Return of Deposit**

The Successful Bidder’s Deposit shall be applied to the purchase price of such transaction at closing. The Deposits for each Qualified Bidder shall be held in a non-interest bearing escrow account on terms acceptable to the Debtor in its sole discretion

and shall be returned (other than with respect to any Successful Bidder or Backup Bidder) on or within five (5) business days after the Auction.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtor will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be forwarded to, and retained by, the Debtor as damages, without limiting any and all rights, remedies, and/or causes of action that may be available to the Debtor, and the Debtor shall be free to consummate the proposed transaction with the Backup Bidder without the need for an additional hearing or order of the Court. The Debtor's attorney will hold such forfeited deposit in trust subject to further order of the Court.

## **12. No Modification of Bidding Procedures**

Except as provided by Section 8 hereof, these Bidding Procedures may not be modified except with the Debtor's express written consent.

Respectfully submitted,

**NEW CITY AUTO GROUP, INC.**

By: /s/ Gregory J. Jordan  
One of Its Attorneys

Gregory J. Jordan (Indiana Bar #5553-45)  
Mark R. Zito (Admitted Pro Hac Vice)  
Jordan & Zito LLC  
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Chicago IL 60603  
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[gjordan@jz-llc.com](mailto:gjordan@jz-llc.com)  
[mzito@jz-llc.com](mailto:mzito@jz-llc.com)

# Exhibit 3

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

<b>IN RE:</b>	)	<b>Chapter 11 Proceeding</b>
	)	
<b>NEW CITY AUTO GROUP, INC.,</b>	)	<b>Case No. 18-21890</b>
	)	
<b>Debtor,</b>	)	<b>Hon. James Ahler</b>
	)	

**ORDER AUTHORIZING (1) ASSET PURCHASE AND SALE AGREEMENT (2) SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS, AND (3) RELATED RELIEF**

Upon final consideration of the motion (the “Sale Motion”) of New City Auto Group, Inc. (the “Debtor”) for the entry of an order authorizing (i) bidding procedures and bid protection in connection with the Debtor’s intended sale of substantially all of the Debtor’s assets located at 1301 Indianapolis Blvd., Schererville, Indiana (the “Assets”); (ii) the sale of the Assets free and clear of liens, claims and interests (the “Sale”); (iii) the assumption and assignment of related executory contracts and unexpired leases (the “Designated Agreements”); (iv) the form and manner of notice with respect to the Sale; and (v) related relief; the Court having entered an order on \_\_\_\_\_, 2019 (the “Bidding Procedures Order”) approving proposed bidding procedures (the “Bidding Procedures”); and the Debtor’s requests for related preliminary relief; an auction of the Assets (the “Auction”) having been held on \_\_\_\_\_, 2019 in accordance with the Bidding Procedures; the Debtor having executed a certain Asset Purchase and Sale Agreement (the “Agreement”) with \_\_\_\_\_ (the “Purchaser”) in accordance with the Bidding Procedures; the Purchaser having been determined by the Debtor to have submitted the highest or otherwise best bid at the Auction for the Assets; a final hearing on the Sale Motion having been held on \_\_\_\_\_, 2019 (the

“Sale Hearing”); the Debtor having submitted into evidence the transcript of the Auction at the Sale Hearing; all interested parties having been afforded an opportunity to be heard with respect to the Sale Motion; the Court having reviewed and considered (i) the Sale Motion, (ii) the objections thereto, if any, and (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; the Court having considered and approved the Motion filed by the Debtor under Bankruptcy Rule 9019 [ECF No. \_\_\_\_] to effect a settlement with Nissan North America, Inc.; and it appearing that the relief requested in the Sale Motion and authorization of the sale of the Assets identified in the Agreement and the assumption and assignment of the Designated Agreements is in the best interests of the Debtor, its estate, creditors, and other parties in interest; and based on the Sale Motion, the statements of counsel, the record of the Sale Hearing and the Auction and the record in this case, the Court having determined and concluded as follows:<sup>1</sup>

- A. On July 16, 2018 (“Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since then, the Debtor has remained in possession of its assets and has continued to operate its business as a debtor in possession in accordance with 11 U.S.C. §§ 1107 and 1108. The Debtor has all of the rights and powers of a trustee in bankruptcy pursuant to 11 U.S.C. § 1107(a).
- B. As a debtor in possession, the Debtor continues to manage the affairs of its estate and exercise all of the rights and powers of a trustee serving in a case under chapter 11 of the Bankruptcy Code in accordance with 11 U.S.C. § 1107. Among those rights and powers are (i) the right and power to sell property of the Debtor’s estate out of the

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<sup>1</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bank. P. 7052

ordinary course of business, free and clear of liens and interests, and (ii) the right and power to assume and assign unexpired leases and executory contracts, subject to approval by this Court after appropriate notice and an opportunity for a hearing. *See* 11 U.S.C. §§ 363(b), 363(f), 365(a) and 365(f).

- C. This Court has core subject matter jurisdiction to hear and resolve the Sale Motion pursuant to 28 U.S.C. §§ 1334(b), 1334(e), 157(b)(2)(A), 157(b)(2)(M), 157(b)(2)(N), 157(b)(2)(O) and applicable local rules regarding the referral to this court of cases under title 11 of the United States Code.
- D. The Assets are property of the Debtor's estate. *See* 28 U.S.C. § 1334(e); 11 U.S.C. § 541(a).
- E. As evidenced by the certificate of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Sale Motion, the Auction, the Sale Hearing, the Sale, and the assumption and assignment to the Purchaser of the Designated Agreements through the Assignment Notice has been provided or otherwise excused in accordance with 11 U.S.C. §§ 102(1), 105(a), 363, and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, 9006, 9007 and 9014; (ii) such notice was reasonable, sufficient, and appropriate under the circumstances; and (iii) no other or further notice of the Sale Motion, the Auction, Sale Hearing, the Sale, or the assumption and assignment of the Designated Agreements is or shall be required.
- F. A reasonable opportunity to object or be heard with respect to the Sale Motion and the assumption and assignment of the Designated Agreements has been afforded to all interested persons and entities, including: (i) counsel to the Secured Creditors; (ii)

counsel to the United States Trustee; (iii) all entities reasonably known by the Debtor to have an Interest in the Assets; (iv) the creditors identified on the Debtor's matrix list of creditors filed in this case; (v) all non-Debtor parties to Designated Agreements; (vi) all parties that have made a written appearance in the Debtor's case.

- G. As demonstrated by (i) the evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtor has adequately marketed the Assets and conducted the Sale process in substantial compliance with the Bidding Procedures Order.
- H. The Debtor (i) has full power and authority to execute the Agreement and all other documents contemplated thereby, (ii) has all of the power and authority necessary to consummate the transactions contemplated by the Agreement, and (iii) has taken all action necessary to authorize and approve the Agreement and the consummation by such Debtor of the transactions contemplated thereby.
- I. The Debtor has demonstrated sound business justifications for the Sale pursuant to 11 U.S.C. § 363(b) prior to, and outside the context of, a plan of reorganization.
- J. The Agreement was negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the Agreement to be avoided under 11 U.S.C. § 363(n). The Purchaser is a good faith purchaser under 11 U.S.C. § 363(m) and, as such, is entitled to all of the protections afforded thereby.
- K. The consideration provided by the Purchaser for the Assets pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the

Assets, (iii) will provide a greater recovery for the Debtor's creditors and other interested parties than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

- L. The transfer of the Assets to the Purchaser will be a legal, valid, and effective transfer of the Assets, and will vest the Purchaser with all right, title and interest of the Debtor in the Assets free and clear of all liens, claims and interests whatsoever (collectively, "Interests").
- M. The Purchaser would not have entered into the Agreement and will not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, its estate, and its creditors, if the sale of the Assets to the Purchaser were not free and clear of all Interests of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of the Interests and, subject to the terms of the Agreement, if the assignment of the Designated Agreements could not be made under 11 U.S.C. § 365.
- N. The Debtor may sell the Assets free and clear of all Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f) has been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). Those holders of Interests who did object fall within one or more of the other subsections of 11 U.S.C. § 363(f) and are adequately protected by having their Interests, if any, attach to the net proceeds of the

Sale ultimately attributable to the property against or in which they claim or may claim an Interest.

- O. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Designated Agreements to the Purchaser in connection with the consummation of the Sale, and the assumption and assignment of the Designated Agreements is in the best interests of the Debtor, its estate, and its creditors. The Designated Agreements being assigned to, and the liabilities being assumed by (“Assumed Liabilities”), the Purchaser, are an integral part of the Assets being purchased by the Purchaser and, accordingly, such assumption and assignment of Designated Agreements and the Assumed Liabilities’ are reasonable, enhance the value of the Debtor’s estate, and do not constitute unfair discrimination.
- P. Authorization of the Agreement, the assumption and assignment of the Designated Agreements and consummation of the Sale at this time are in the best interests of the Debtor, its creditors, its estate and other parties in interest.

NOW THEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Sale Motion is granted as further described herein.
2. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits.
3. Pursuant to 11 U.S.C. § 363(b), the Debtor is authorized to consummate the Sale pursuant to and in accordance with the terms and conditions of the Agreement in the form attached hereto as Exhibit 1.

4. The Debtor is authorized to execute and deliver, and is empowered to perform under, consummate, and implement, the Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement, and to take all further actions as may be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser or reducing to possession, the Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement.
5. The Debtor is authorized and directed to immediately after the closing on the sale pay to Nissan North America, Inc. the portion of the sale proceeds that constitute the Minimum Payment Requirement (as defined in the Sale Motion).
6. Except as expressly permitted or otherwise specifically provided for in the Agreement or this Sale Order, pursuant to 11 U.S.C. §§ 105(a) and 363(f), the Assets shall be transferred to the Purchaser, and as of the date (“Closing Date”) of the closing of the transactions contemplated in the Agreement (“Closing”), shall be free and clear of all Interests of any kind or nature whatsoever, with all such Interests of any kind or nature whatsoever to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Assets, subject to any claims and defenses the Debtor may possess with respect thereto.
7. Except as expressly permitted or otherwise specifically provided for in the Agreement or this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding Interests of any kind or nature whatsoever

against or in the Debtor or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Assets, the operation of the Debtor's business prior to the Closing Date, or the transfer of the Assets to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property, or the Assets, such persons' or entities' Interests.

8. The transfer of the Assets to the Purchaser pursuant to the Agreement shall constitute a legal, valid and effective transfer of the Assets, and shall vest the Purchaser with all right, title and interest of the Debtor in and to the Assets free and clear of all Interests of any kind or nature whatsoever, other than the Assumed Liabilities.
9. On the Closing Date of the Sale, each of the Debtor's creditors is authorized to execute such documents and take all other actions as may be necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist.
10. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing Interests in the Debtor or the Assets shall not have delivered to the Debtor prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests which the person or entity has with respect to the Debtor or the Assets or otherwise, then (a) the Debtor is hereby authorized to execute and file such statements, instruments, releases and other

documents on behalf of the person or entity with respect to the Assets, and (b) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Assets of any kind or nature whatsoever.

11. Subject to and conditioned upon the Closing of the Sale, the Debtor's assumption and assignment of the Designated Agreements to the Purchaser is hereby approved pursuant to 11 U.S.C. §§ 105(a) and 365.
12. Subject to and conditioned upon the Closing of the Sale, the Debtor is hereby authorized, in accordance with 11 U.S.C. §§ 105(a) and 365, to (a) assume and assign to the Purchaser, effective upon the Closing of the Sale, the Designated Agreements free and clear of all Interests of any kind or nature whatsoever, and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Designated Agreements to the Purchaser.
13. Notwithstanding anything to the contrary in this Sale Order, under 11 U.S.C. § 365, the Purchaser is assuming all liabilities arising under the Designated Agreements whether such liabilities arise or arose pre- or post-Closing. In addition, all liquidated monetary defaults, claims or other obligations of the Debtor arising or accruing on or before the Closing Date under the Designated Agreements and actually known to the non-Debtor party to the Designated Agreement (without giving effect to any acceleration clauses or any default provisions of the kind specified in 11 U.S.C. §§ 365(b)(2) or (f)(2)) shall be promptly cured as provided in 11 U.S.C. § 365(b)(1) by the Purchaser on behalf of the Debtor.

14. Except as otherwise provided in this Sale Order or any other applicable order of this Court, all rights and remedies of any non-Debtor party or the Purchaser under any of the Designated Agreements (the “Rights and Remedies”) are fully preserved and shall be fully enforceable after the Closing against the Purchaser or the non-Debtor party unless such Rights and Remedies are or were expressly waived in a separate agreement or on the record at the Auction or Sale Hearing.
15. The consideration provided by the Purchaser for the Assets under the Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.
16. This Sale Order (a) shall be effective as a determination that, on \_\_\_\_\_, 2019 the Closing Date, all Interests of any kind or nature whatsoever existing as to the Debtor or the Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets.

17. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.
18. Except as expressly permitted or otherwise specifically provided for in the Agreement or this Sale Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Assets.
19. This Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of possession of the Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed to the Debtor, (c) resolve any disputes arising under or related to the Agreement, except as otherwise provided therein, and (d) interpret, implement, and enforce the provisions of this Sale Order.
20. The transactions contemplated by the Agreement are undertaken by the Purchaser in good faith, as that term is used in 11 U.S.C. § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Purchaser, unless such authorization is duly stayed pending such appeal prior to the Closing. The Purchaser is a purchaser in good faith of the Assets, and the Purchaser is entitled to all of the protections afforded by 11 U.S.C. § 363(m).
21. The terms and provisions of the Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, and its creditors,

the Purchaser, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting Interests in the Assets to be sold to the Purchaser pursuant to the Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

22. The failure specifically to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.
23. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estates.
24. Except as provided in the Agreement, this Sale Order, or other order of this Court, after the Closing, the Debtor and its estate shall have no further liabilities or obligations with respect to any assumed liabilities and all holders of such claims are forever barred and estopped from asserting such claims against the Debtor, its successors or assigns, its property or the Assets.
25. As provided by Fed. R. Bankr. P. 6004(h), this Sale Order shall not be stayed for 14 days after the entry of the Sale Order and shall be effective and enforceable immediately upon entry.

Date: \_\_\_\_\_

ENTER:

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United States Bankruptcy Judge

Gregory J. Jordan (Indiana Bar #5553-45)  
Mark R. Zito (Admitted Pro Hac Vice)  
Jordan & Zito LLC  
55 West Monroe St., Suite 3600  
Chicago IL 60603  
(312) 854-7181  
[gjordan@jz-llc.com](mailto:gjordan@jz-llc.com)  
[mzito@jz-llc.com](mailto:mzito@jz-llc.com)

# Exhibit 4

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

<b>IN RE:</b>	)	<b>Chapter 11 Proceeding</b>
	)	
<b>NEW CITY AUTO GROUP, INC.,</b>	)	<b>Case No. 18-21890</b>
	)	
<b>Debtor,</b>	)	<b>Hon. James Ahler</b>
	)	

**NOTICE OF INTENDED AUCTION SALE OF  
SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS**

**PLEASE TAKE NOTICE AS FOLLOWS:**

1. On July 16, 2018, New City Auto Group, Inc. (“Debtor”) filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code.
2. On March 1, 2019, the Debtor filed its Amended Motion to Authorize (1) Bidding Procedures and Bid Protections, (2) Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims and Interests, (3) Assumption and Assignment of Related Executory Contracts and Unexpired Leases, (4) Form and Manner of Notice with Respect Thereto, and (5) Related Relief (the “Sale Motion”).<sup>1</sup> Through the Sale Motion, the Debtor requests authority to sell substantially all of its assets located at 1301 Indianapolis Blvd., Schererville, Indiana (the “Assets”) free and clear of liens, claims and interests through a competitive bidding process.
3. A final hearing (the “Sale Hearing”) to consider (1) the approval of the timing and extent of notice of the Debtor’s intended sale of the Assets free and clear of liens, claims and interests; (2) the approval of bidding and sale procedures (“Bidding Procedures”); and (3) providing the Debtor with supplemental and related relief in accordance with the Sale Motion, including authorization to accept the Successful Bid and Backup Bid for the Assets and the Debtor’s request to assume and assign any Designated Agreements to the Successful Bidder or the Backup Bidder, shall commence on May 22, 2019 at 10:00 a.m. (CDT) in the United States Courthouse, 5400 Federal Plaza, Hammond, Indiana 46320 before the Hon. James Ahler, Bankruptcy Judge, or such other Judge who may be sitting in his place and stead. Such hearing may be continued from time to time without further notice other than by announcement in open court.
4. Objections, if any, to the authorization of the Successful Bid and the Backup Bid for the Assets and the remaining relief sought in the Sale Motion must be made in writing and they must be filed with the bankruptcy court on or before 8:00 p.m. on May 21,

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Sale Motion.

2019 and simultaneously served upon the Debtor's counsel at the address listed below. Anyone having an objection is expected to be present at the Sale Hearing.

5. Additional information about the Assets may be obtained from Mallor Grodner, 101 West Ohio Street, Suite 1600, Indianapolis IN 46204 ([mike@indianadealercounsel.com](mailto:mike@indianadealercounsel.com)), (317) (317) 839-4240. A copy of the Bidding Procedures is attached as Exhibit A to this Notice. Further information about the Auction and the Bidding Procedures and copies of the Sale Motion may be obtained from the Debtor's counsel at the address listed below.

Dated: March 1, 2019

**NEW CITY AUTO GROUP, INC.**

By: /s/ Gregory J. Jordan  
One of Its Attorneys

Gregory J. Jordan (Indiana Bar #5553-45)  
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