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

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In re:

Chapter 11
Case No.: 19-43148 NHL

NORTHERN BOULEVARD AUTOMALL, LLC,
d/b/a Long Island City Volkswagen,

Debtor.

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**MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING:
(A) BID PROCEDURES; (B) STALKING HORSE BIDDER AND OVERBID
PROTECTIONS; AND (C) FORM AND MANNER OF NOTICES; (II) SCHEDULING
AN AUCTION AND SALE HEARING; (III) APPROVING THE SALE OF
SUBSTANTIALLY ALL THE ASSETS OF THE DEBTOR, FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS;
AND (IV) GRANTING RELATED RELIEF**

Northern Boulevard Automall, LLC d/b/a Long Island City Volkswagen, as debtor and debtor-in-possession in the above-captioned case (“*Northern*” or the “*Debtor*”) hereby files this *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Overbid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtor Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (IV) Granting Related Relief* (the “*Motion*”) seeking the entry of an order, substantially in the form attached as **Exhibit A**, (a) approving the Bid Procedures, (b) approving the Stalking Horse Bidder and Overbid Protections (each defined below), (c) approving form and manner of notices, (d) scheduling an auction and sale hearing, (e) approving

the sale of substantially all of the assets of the Debtor free and clear of all liens, claims, encumbrances and interests pursuant to an asset purchase agreement consistent with the terms and conditions set forth on the Term Sheet (as defined below), and (f) granting related relief. In support of this Motion, the Debtor respectfully states as follows:

I.
PRELIMINARY STATEMENT

1. After considering available options within the context of the current status of its operations, the Debtor determined in its business judgment to conduct a competitive bid-and sale process for the orderly sale of all or substantially all of the Debtor’s assets, including the Dealership (the “*Assets*”) under §363(b) and (f) of the Bankruptcy Code and transition of the Debtor’s Dealership (defined below) to a new ownership group. After extensive and arms-length negotiations, the Debtor negotiated a Term Sheet (defined below) to sell the Assets and transition the Dealership to Respect Auto Queens I LLC, or its designee (collectively “**Respect**”) pursuant to preliminary terms and conditions identified in the Term Sheet (“*Respect Proposal*” or “**Term Sheet**”).

2. The terms and conditions identified in the Term Sheet and the to-be-finalized buy-sell agreement (“*Buy Sell*” or “*Stalking Horse APA*”) between Respect and the Debtor are subject to higher and better bids at an auction. However, to induce Respect to serve as the “stalking horse” bidder in the Court-approved sale process, the Debtor has agreed to certain bid procedures and protections, including a “break-up” fee. Under this Motion, the Debtor seek court approval of the sale procedures, sale, and bid protections as set forth herein.

II.
JURISDICTION

3. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and venue is proper under 28 U.S.C. §§ 1408 and 1409.

4. The legal predicates for the relief requested in this Motion are §§ 105(a), 363, 365, 503(b), 507(a), 541, 1107(a), and 1108 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), and rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

III.
BACKGROUND

A. **Bankruptcy Case and Efforts to Sell**

5. On March 7, 2019 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), thereby initiating the above-captioned bankruptcy case (“**Chapter 11 Case**”) in the Bankruptcy Court for the Eastern District of New York (the “**Court**”) and creating its bankruptcy estate (the “**Estate**”). The Debtor operates one (1) Volkswagen dealership with two (2) locations (a showroom location and a service center location) (the “**Dealership**”).

6. The Debtor continues to operate and to manage its businesses as “debtor-in-possession” pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

7. Subject to this Court’s approval, the Debtor retained the undersigned as counsel to the Debtor effective as of March 7, 2019. On March 24, 2019, the Debtor filed its Application For Retention Of Counsel For Debtor.

8. Any party interested in the proposed Sale process should contact Robert J. Spence, Spence Law Office, P.C., 55 Lumber Road, Suite 5, Roslyn, New York 11576; telephone: 516-336-2060; email: rspence@spencelawpc.com .

9. The Debtor has begun a marketing process of the Assets and the Dealership, which includes the following:

- (a) Compiling relevant documents about the Dealership, financial status, and operations;
- (b) Negotiating and executing non-disclosure agreements with interested parties;
- (c) Marketing the Debtor on an informal basis to prospective buyers;
- (d) Speaking with brokers in an effort to engage a broker that is strategically situated to handle an expedited sale;
- (e) Requesting manufacturer assistance from VWGoA in locating a buyer;
- (f) Having numerous informal discussions with prospective bidders regarding the Dealership and bidder due diligence;
- (g) Filing the to-be-finalized Stalking Horse APA on this Court's docket and providing the same in Word format to any party interested in making a Qualified Bid who executes a nondisclosure agreement with the Debtor; and
- (h) Analyzing bids, selecting the stalking-horse bidder, negotiating the form buy-sell agreement, and securing for the Debtor the highest or best offer(s) for the Assets.
- (i) the Debtor also seeks authority to publish notice of the Sale and of the Sale Hearing in the weekly trade publication titled *The Auto News*.

10. The Debtor has each spent substantial time communicating with parties interested in the Assets and the Dealership, including Respect. All parties interested in buying the Assets and the Dealership should contact Debtor's counsel unless and until the Debtor retains a broker.

11. No trustee, examiner, or statutory committee of unsecured creditors has been appointed in this Chapter 11 Case.

B. The Debtor's Business and Assets and Significant Obligations.

12. The Debtor, a New York limited liability company, owns and operates a Volkswagen vehicle franchise (the "**Dealership**") pursuant to a franchise agreement (the "**Franchise Agreement**") by and between the Debtor and Volkswagen of America, Inc. ("**VWoA**"), the manufacturer. The Dealership is located at 56-15 Northern Boulevard, Woodside, New York 11377 (the "**Showroom**"), and 54-20 Broadway, Woodside, NY 11377 (aka 33-20 55th Street) (the "**Service Department**") (collectively, the "**Premises**") and operates under the name "Long Island City Volkswagen." The Debtor sells and services new and used vehicles from the Premises. The Debtor also stores new vehicles at 40-22 College Point Blvd, Flushing, NY 11354-5115 (the "**New Vehicle Lot**").

Leases for Premises and New Vehicle Lot

13. Since it began operations, the Debtor has occupied the Showroom, as tenant, with 142 North LLC, as lessor (the "**Showroom Landlord**").

14. The Debtor also occupies the Service Center, as a tenant, with 54 Bway LLC, as lessor (the "**Service Center Landlord**") (the Showroom Landlord and the Service Center Landlord are collectively referred to herein as the "**Landlords**").

15. One of the Debtor's members, Spyro Avdoulos, owns and or controls the Landlords of the Premises. The Landlords and Mr. Avdoulos have represented to the Debtor and the Court that they will cooperate with the Debtor's sale efforts in all reasonable respects and that they will entertain all lease offers from Qualified Bidders provided the offers are for fair market rent for the Premises. Prospective purchasers who desire to maintain the dealership at the same Premises, should submit their offers/bids with the market rent they are willing to pay for the Premises. The Bid Procedures provide for this requirement. There may be an opportunity for the

assumption/assignment of existing leases for the Premises in which event, the Debtor will discuss any cure amounts with prospective purchasers.

16. The Debtor leases the New Vehicle Lot from MP Flushing, LLC. Upon information and belief, the Debtor is currently occupying the New Vehicle Lot on a month-to-month basis under which it is required to pay \$7500.00 per month (approximately \$100.00/mo per car).

Security Interest of VCI

17. In 2016, the Debtor and VCI entered into certain loan documents contemporaneously with the commencement of the Dealership's operations (the "**VCI Loan Documents**"). Under the VCI Loan Documents, VCI asserts that it provided financing that allowed the Debtor to purchase new and used vehicles necessary to operate the Dealership. VCI asserts a first priority security interest in all of the Debtor's assets and filed a Form UCC-1 financing statement to perfect that security interest.

18. VCI asserts that as of March 7, 2019, the Debtor is obligated to VCI under the VCI Loan Documents in the approximate sum of approximately \$7 million (the "**VCI Debt**") with approximately \$900,000 of said obligation alleged to be "out of trust."

19. The Debtor is in the process of reviewing the Loan Documents and determining the extent, validity and priority of the VCI Debt and liens.

20. Absent the sale of Debtor's Dealership Assets, it is unlikely that the Debtor will be able to create sufficient revenue to repay VCI and other debts in a reasonable time. No further purpose can be served in maintaining the Debtor's operations for a prolonged period and incurring the extra cost and expense of seeking to reorganize the Debtor's business pursuant to a confirmed chapter 11 plan of reorganization. The Debtor strongly believes that the Debtor's Dealership and related assets must be sold as quickly as possible in order to preserve the value of existing assets.

21. Bids must not contain any financing contingencies.

IV.
RELIEF REQUESTED

22. By this Motion, the Debtor seek approval of (a) the competitive bid process and procedures outlined in and attached to the proposed bid procedures order (“*Bid Procedures Order*”); (b) Respect as the “stalking-horse bidder” (the “*Stalking-Horse Bidder*”) and its entitlement to a break-up fee assuming entry of the Bid Procedures Order, approval of the Bid Procedures (defined below), execution of a buy-sell agreement by the Debtor and Respect and performance by Respect in connection with the buy-sell agreement (as provided in the Term Sheet); and (c) the sale of the Assets and Dealership to the highest or best offer(s).

23. Specifically, the Debtor seek entry of an order substantially in the form of the Bid Procedures Order, which is attached as **Exhibit A**:

- (a) approving the bidding procedures, in the form attached as **Exhibit 1** to the Bid Procedures Order and incorporated by reference herein (the “*Bid Procedures*”), inclusive of the overbid and break-up fee protections set forth therein for the Stalking Horse Bidder (the “*Overbid Protections*”) to facilitate the orderly sale (the “*Sale*”) of substantially all of the Assets;
- (b) approving the form and manner of notice of the hearing to approve the Sale (the “*Sale Hearing*,” and the notice thereof, the “*Sale Notice*”) attached as **Exhibit 2** to the Bid Procedures Order and incorporated by reference herein;
- (c) subject to modification as necessary, fixing certain dates and deadlines relating to the Bid Procedures, the auction, the Sale Hearing, and filing of certain related objections:
- i. **Good-Faith Deposit Deadline for the Stalking-Horse Bidder: 3:00 p.m. prevailing Eastern Standard Time on April 15, 2019**, as the deadline by which the Stalking-Horse Bidder will pay the \$80,000.00 good-faith deposit.
 - ii. **APA Filing Deadline for the Stalking-Horse Bidder: April 12, 2019**, as the deadline by which the Stalking Horse Bidder and the Debtor will execute and file the Stalking Horse APA and the proposed form of the Sale Order;

iii. **Assumption and Assignment Notice Deadline:** April 24, 2019, as the deadline by which the Debtor will file with the Court a notice identifying the proposed cure amounts for all unexpired leases and executory contracts;

iv. **Bid Deadline:** **4:00 p.m. prevailing Eastern Standard Time on May _____, 2019**, as the deadline (the “*Bid Deadline*”) by which Potential Bidders/Qualified Bidders (as defined in the Bid Procedures) must deliver written copies of their bidding materials consistent with the Bid Procedures to the Debtor and others entitled to receive such copies;

v. **Auction:** **10:00 a.m. prevailing Eastern Standard Time on May [4-5 days after the date in (iv)], 2019**, as the date on which an auction for the Assets (the “*Auction*”), if one is necessary, will commence at the Spence Law Office, P.C., 55 Lumber Road, Suite 5, Roslyn, New York 11576;

vi. **Sale Objection Deadline:** **4:00 p.m. prevailing Eastern Standard Time on May [1 day after date in (v)], 2019**, as the deadline (the “*Sale Objection Deadline*”) by which objections, if any, to the entry of the order approving the Sale Order (defined below) must be filed and served consistent with the Bid Procedures;

vii. **Objections to Cure Amounts:** **4:00 p.m. prevailing Eastern Standard Time on May [same date as in (vi)], 2019**, as the deadline by which objections, if any, to the proposed cure amounts related to the assumption and assignment of unexpired leases and executory contracts, if any, must be filed and served consistent with the Bid Procedures; and

viii. **Sale Hearing:** **May [7 days after date in (vii)], 2019, or such other date selected by the Court** on which the Sale Hearing will be held in the United States Bankruptcy Court; and

(d) granting related relief.

24. Further, the Debtor seeks entry of an order (the “*Sale Order*”), approving (a) the sale of substantially all of the Assets free and clear of all liens, claims, encumbrances, and interests, together or in one or more asset packages (an “*Asset Package*”), and (b) the assumption and assignment of certain executory contracts and unexpired leases related to and utilized in connection with the Assets to either (x) the Stalking Horse Bidder or (y) the Qualified Bidder who submits the highest or best bid in accordance with the Bid Procedures (either, the “*Successful Bidder*”).

V.
FACTUAL BACKGROUND

25. To maximize value of the Assets and the Dealership, the Debtor has obtained a non-binding term sheet (the “*Term Sheet*”), which is attached as **Exhibit B**, setting forth a “stalkinghorse” bid from Respect for the purchase of substantially all of the assets of the Debtor, including the Dealership and certain related assets used in the operation of the dealerships for a cash purchase price of \$800,000.00. As part of the Term Sheet, Respect agreed to act as the Stalking Horse Bidder and incur the expenses associated with such a role, subject to the inclusion of the Overbid Protections in the Bid Procedures. With the Stalking Horse Bidder and a minimum purchase price now in place, the Debtor believes that it is a proper exercise of its business judgment to implement the competitive bidding process outlined in the Bid Procedures and promptly effectuate a Sale, either to the Stalking Horse Bidder or to another Qualified Bidder(s) who submits a higher or better Qualified Bid(s) for the Assets and the Dealership. The proposed Sale transaction is fair and appropriate and will maximize the value of the Assets and the Dealership for the stakeholders of the Estate. Accordingly, the Debtor seeks this Court's approval of a proposed Sale transaction and related Bid Procedures so that it could solicit competing offers for the Assets and the Dealership.

26. The Debtor and its professionals have analyzed the Debtor's circumstances and have discussed them with various interested parties, including VCI, and VWoA, and the Debtor's management and members, and have decided that the prompt sale of the Dealership and its assets is in the best interests of creditors and the estate.

27. The Debtor believes that the entire process of obtaining the necessary approval from the Bankruptcy Court of the sale procedures delineated herein, the marketing of the Dealership franchise to solicit higher or better offers, review of the Dealer Application (defined below) and

related documents by VWoA, and a sale should take approximately two months from the entry of the Order approving the relief requested herein.

VI.
BASIS FOR THE RELIEF REQUESTED

A. The Court Should Approve the Proposed Bid Procedures.

28. The proposed Bid Procedures are attached to the Bid Procedures Order, which is **Exhibit A** to this Motion. Any person interested in making an offer to purchase the Assets must comply with the Bid Procedures when they are approved by the Court. Generally, the Bid Procedures provide:

- (a) If approved as the stalking-horse bidder, Respect will pay the \$80,000.00 good-faith deposit into a non-interest bearing escrow account, which will either be (i) applied to the purchase price at a closing on the Sale if Respect is the purchaser or (ii) refunded to Respect if Respect is not the ultimate buyer of the Assets, subject to the terms and conditions in the Term Sheet and the Stalking Horse APA.
- (b) If prior to approval of the Bid Procedures through entry of the Bid Procedures Order, another party approaches the Debtor, or any court retained broker (“*Sale Team*”) with a proposal that the Sale Team determines in the Debtor’s business judgment to be more valuable and a better proposal than the Term Sheet, the Debtor reserve the right to amend the Bid Procedures Motion to incorporate such proposal as a higher or better proposal than the Respect Proposal, on such terms as the Debtor determines through such use of its business judgment.
- (c) The Debtor shall provide written notice to all parties with whom it has executed non-disclosure agreements concerning the marketing of the Assets, of the Stalking Horse APA executed between the Debtor and Respect within one business day after filing of the executed the Stalking Horse APA.
- (d) If the Bid Procedures order is entered and thereafter no other Qualified Bid is received prior to the Bid Deadline, then the

Respect Proposal, as formalized through the Stalking Horse APA, shall constitute the Successful Bid.

- (e) If other Qualified Bid(s) are received by the Bid Deadline, then the Debtor shall conduct the Auction and select the highest or otherwise best Qualified Bid or Qualified Bids for the Assets and the Dealership as the Successful Bid(s).
- (f) The successful purchaser's obligation to close will be subject to the following conditions, in addition to the customary conditions in a "Section 363" sale, to be set forth in the Terms and Conditions of Sale:
 - (1) Selection by the Debtor and determination by the Court that the Highest Offeror's offer for the Dealership Assets (including the Purchaser) is the highest or the best offer;
 - (2) The completion of a VWoA Dealer Agreement Application and related forms to be provided to the Debtor by VWoA;
 - (3) Acceptance by VWoA of the Highest Offeror as an approved franchisee;
 - (4) Entry of a Sale Approval Order (defined below); and
 - (5) The Sale Approval Order shall provide that (a) the sale is also free and clear of any encumbrances, and (b) the ten day stay following entry of the Sale Approval Order shall be waived.

29. This Court should approve the proposed Bid Procedures because they will promote active bidding from interested parties and will identify the best or highest offer(s) for the sale of the Assets. The proposed Bid Procedures will allow the Debtor to conduct the sale process and Auction, if necessary, in a controlled, fair, and open fashion that are designed to encourage active participation by financially-capable bidders who have the ability and the desire to close the transaction. The Debtor believes that the Bid Procedures, inclusive of the Overbid Protections for the Stalking Horse Bidder, are (a) sufficient to encourage active bidding for the Assets; (b) consistent with other procedures previously approved by bankruptcy courts; and (c) appropriate under relevant standards governing auction proceedings and bidding incentives in bankruptcy case.

30. Once a debtor articulates a valid business justification for proposed Bid Procedures incident to an auction and sale, bankruptcy courts evaluate that justification under the business-judgment rule, which 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 Co.*, 186 B.R. 98 (Bankr. N.D. II. 1995); *see also In re Broughton Ltd. P’ship*, 474 B.R. 206, 218 (Bankr. N.D. Tex. 2012) (citing *In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[T]he court relies on an estate representative’s sound business judgment in approving acts outside the ordinary course of business.”); *In re Integrated Res., 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.”)(See also, *In re The Brooklyn Hospital Center*, 341 B.R. 405, 411 (EDNY 2006) (“Courts will not interfere with a board’s decision ‘as long as [the decision is] attributable to any rational business purpose.’” (quoting *Integrated*, 147 B.R. at 656).

31. Courts have made clear that a debtor’s business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets of the estate. *See, e.g., In re Redwine Res.*, 2010 WL 5209287 at *2 (Bankr. N.D. Tex., June 24, 2010) (approving the debtor’s proposed Bid Procedures where finding the debtors “have exercised sound business judgment and presented sound business reasons for approval of the [b]id [p]rocedures.”); *Integrated Res.*, 147 B.R. at 656-57 (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (same).

32. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988) (“It is a well-established principle of bankruptcy law that the trustee’s [and the Debtor’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”).

33. Courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy transactions. *See, e.g., Integrated Res.*, 147 B.R. at 659 (such procedures “encourage bidding and to maximize the value of the debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991), (“court imposed rules for the disposition of assets ... [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

34. Here, the Bid Procedures contain terms typical for a process through which a sale of bankruptcy estate assets and business is consummated, and will increase the likelihood that the Estate will receive the greatest possible consideration and value, because they will ensure a competitive and fair bidding process. Further, the Debtor believes that the consideration offered by the Stalking Horse Bidder in the Term Sheet for the Assets is fair and adequate under the circumstances, and the Debtor are prepared to proceed to a sale to Respect for such consideration after the final terms and conditions are finalized in the Stalking Horse APA. However, to ensure that the Debtor maximize the value of the Assets and the Dealership, the Debtor has identified sound business justifications for seeking approval of the Bid Procedures at this time to determine whether the consideration offered in the Term Sheet is the highest and best consideration for the Assets and

the Dealership. The Debtor believes that the presence of the Stalking Horse Bidder will not chill competitive bidding. To the contrary, the Debtor believes that the presence of a stalking horse bidder combined with a fair and open process will increase interest and value of the Assets and the Dealership for the stakeholders. In fact, prior to approval of the Bid Procedures, the Debtor remains free to consider proposals other than the Respect Proposal to determine if such proposals are higher or better than the Respect Proposal and may supplant the Respect Proposal as the one to propose as the Stalking Horse Bid, if, in the Debtor's business judgment, such other proposal is higher or better than the Respect Proposal.

35. In consideration for acting as the Stalking Horse Bidder and in consideration of the extensive time and diligence costs incurred and to be incurred by Respect, the Debtor requests that the Court approve the Overbid Protections, including the proposed break-up fee of \$24,000 (which is 3% of the cash purchase price as defined in the Term Sheet)¹, a minimum initial bid of \$50,000 more than the consideration to be paid by Respect under the Term Sheet and to-be-finalized Stalking Horse APA. Break-up fees and reimbursements are a normal and, in many case, necessary component of significant sales conducted under § 363 of the Bankruptcy Code: "[b]reak-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets . . . In fact, because the . . . corporation ha[s] a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize values." *Integrated Resources*, 147 B.R. at 659-60. Specifically, "break-up fees and other strategies may be legitimately necessary to convince a 'white knight' bidder to enter the bidding by providing some form of compensation for the risks it is undertaking." *In re 995 Fifth Ave. Assoc., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (quotations

¹ A party in interest has raised an issue as to whether the Break-Up Fee should be applied against the \$150,000 parts component of the Respect purchase price. This is a \$4500 issue that will likely be resolved prior to the Bid Procedures Hearing.

omitted); (*Integrated Resources*, 147 B.R. at 660-61 (break-up fees can prompt bidders to commence negotiations and "ensure that a bidder does not retract its bid"); *In re Hupp Industries, Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) ("without such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence")).

36. Bankruptcy courts frequently approve break-up fees and expense reimbursements in connection with proposed bankruptcy sales. In the process, courts generally consider "(1) whether the relationship of the parties who negotiated the fee is marked by self-dealing or manipulation; (2) whether the fee hampers, rather than encourages, bidding; and (3) whether the amount of the fee is reasonable in relation to the proposed purchase price." *In re Twenver, Inc.*, 149 B.R. 954, 956 (Bankr. D. Colo. 1992); *In re Bidermann Industries U.S.A., Inc.*, 203 B.R. 547, 552 (Bankr. S.D.N.Y. 1997).

37. In the context of bankruptcy cases, it is frequently appropriate to grant protections to the "stalking horse" bidder. Buyer protections (including break-up fees) are designed to compensate a prospective purchaser for the costs and risk involved in preparing and proposing a bid that will establish a minimum standard for competing bids. *See In re Integrated Resources, Inc.*, 147 B.R. 650, 658 (S.D.N.Y. 1992) (break-up fees are "important tools to encourage bidding and to maximize the value of the debtor's assets."); *In re APP Plus, Inc.*, 223 B.R. 870, 874 (Bkrcty. E.D.N.Y. 1998) (break-up fees compensate a prospective purchaser "for the time, efforts, resources, lost opportunity costs and risks incurred").

38. Moreover, the Bid Procedures require that each initial Competing Bid is required to be in an amount not less than \$850,000 (comprised of the Respect proposed purchase price, plus the initial overbid in the amount of \$50,000.00) (the "**Initial Overbid Price**") with bidding increments of \$25,000.00 thereafter. This mechanism ensures that the Debtor's estate is

compensated for foregoing a known, willing purchaser in Respect for a new, unknown potential buyer. It also ensures that there is a real increase in proceeds to the estate after deducting the Break-Up Fee should the Proposed Purchaser not be the successful bidder.

39. The Initial Overbid Price is fair and reasonable and is supported by applicable case law. *See e.g., In re Colony Hill Assoc.*, 111 F.3d 269 (2d Cir. 1998) (requiring minimum overbid of purchaser's initial offer by at least 8.6%).

40. The Debtor believes that the proposed break-up fee is reasonable and appropriate in this Chapter 11 Case for, among others, the following reasons:

- (a) the Break-Up Fee is well within the range approved by bankruptcy courts in similar circumstances;
- (b) the Break-Up Fee would be paid by any successful higher bidder at the Auction through the initial overbid, as opposed to being paid directly by the Estate;
- (c) there is no self-dealing or manipulation, but rather arms-length negotiations; and
- (d) the dollar amount of the bid by the Stalking Horse Bidder sets a floor price – not a ceiling – for the sale of the Assets, which will ensure that the Estate preserves and hopefully maximizes value of the Assets and the Dealership.

41. As additional support, § 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In the Debtor's business judgment, the best option for maximizing the value of the Assets is through a sale of the Assets pursuant to the proposed Bid Procedures. Accordingly, the Debtor requests that the Court permit Respect to act as the Stalking Horse Bidder pursuant to the Bid Procedures, and the Debtor further requests that Respect have the protections

afforded by the Overbid Protections, including authorization to pay the Break-Up Fee if Respect is not the Successful Bidder and the Break-Up Fee is otherwise due.

B. The Sale Is An Exercise of Sound Business Judgment And Should Be Approved.

42. § 363 of the Bankruptcy Code authorizes a debtor to sell assets of the estate other than in the ordinary course of business and provides, in relevant part: “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Courts approve proposed sales of property pursuant to §363 if the transaction represents the reasonable business judgment of the debtor. *See Inst. Creditors of Cont’l. Air Lines, Inc. v. Cont’l. Air Lines, Inc. (In re Cont’l. Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty ... there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) (“A sale of assets under § 363 ... is subject to court approval and must be supported by an articulated business justification, good business judgment, or sound business reasons.”); *In re Delaware & Hudson Rv. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a “sound business reason” justifying the preconfirmation sale of assets); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a Chapter 11 case are “that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith”); *see also Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986).

43. If a valid business justification exists for the sale – as it does in this Chapter 11 Case – a debtor’s decision to sell property out of the ordinary course of business enjoys a strong

presumption “that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) (“The business judgment standard in section 363 is flexible and encourages discretion.”); *GBL Holding Co. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005) (“Great judicial deference is given to the [t]rustee’s exercise of business judgment” [in approving a proposed sale under section 363].). Therefore, any party objecting to the proposed sale must make a showing of “bad faith, self-interest or gross negligence.” *In re Integrated Res., Inc.*, 147 B.R. at 656 (citing *Smith v. Van Gorkom*, 488 A.2d 858, 872-73 (Del. 1985)); *see also Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re JohnsManville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D. N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”).

44. In determining whether a proposed § 363(b)(1) sale satisfies the “business judgment standard,” courts consider the following: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the price is fair and reasonable; and (d) whether the parties have acted in good faith. *See, e.g., In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). The Debtor will show that the proposed sale of the Assets satisfies all of these factors.

45. First, sound business justification exists for the Sale. The Debtor’s liquidity is currently limited, and the Debtor faces challenges to fix that limitation in the near future.

Accordingly, at this time, the proposed orderly sale of the Assets is the only viable alternative to maximize value of the Assets and the Dealership. The Debtor submits that the proposed Sale of the Assets is supported by a number of sound business reasons, and the facts support an expeditious but regulated and controlled sale of the Assets to preserve value.

46. Second, marketing efforts will continue and the Debtor will provide adequate and reasonable notice of the Sale. Notice will be given to interested parties of the Bid Procedures, the Auction, and the date of the Sale as required in the Bid Procedures Order. The Debtor submits that that such notice constitutes adequate and reasonable notice to interested parties, as set forth in the Bid Procedures Order, under the circumstances and should be approved.

47. Third, the ultimate purchase price for the Assets will be dictated by the market and (presumptively) fair and reasonable. Whether sold to the Stalking Horse Bidder for the price contemplated in the Respect Proposal, or to a Qualified Bidder willing to pay more, the value to be received by the Estate pursuant to the Bid Procedures and Auction is necessarily the highest possible value.

48. Fourth, under the Bid Procedures, the Debtor will have acted in good faith to canvas the market to ensure that the ultimate sales price for the Assets is the highest value possible. The Debtor submits that the approval of the proposed Sale is appropriate and warranted under § 363 of the Bankruptcy Code.

C. The Sale of the Assets Will Be Free and Clear of Liens, Claims, Encumbrances, and Interests.

49. § 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances in property of an entity other than the estate if

- (a) applicable non-bankruptcy law permits a 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 to be sold is greater than the 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).

50. Because § 363(f) of the Bankruptcy Code is drafted “in the disjunctive,” satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests. *In re Nature Leisure Times, LLC*, 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007); *see also Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) is met); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at *4 (Bankr. S.D. N.Y. Mar. 6, 1992) (“[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D. N.Y. 1986). The Court also may authorize the sale of a debtor’s assets free and clear of any liens pursuant to § 105 of the Bankruptcy Code, even if § 363(f) did not apply. *See Matter of Selby Farms*, 15 B.R. 372, 375 (Bankr. S.D. Miss. 1981) (“The power of the Bankruptcy Court to sell property free and clear of liens has long been recognized.” (citing *Van Huffel v. Harkelrode*, 284 U.S. 225, 227-28 (1931))); *In re Trans World Airlines, Inc.*, No. 01-0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) (“Bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f).”); *see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D.

Ohio 1987) (“Authority to conduct such sales [free and clear of liens] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”).

51. With regard to the sale of the Assets, the Debtor believes that at least one of the tests in § 363(f) will be satisfied. In particular, the Debtor believes that §§ 363(f)(2) and (f)(5) will be satisfied first, because (a) VCI and any other party asserting a lien on the Assets to be sold will have consented to this Motion and (b) absent such consent, VCI and any other party asserting a lien on the Assets to be sold could be compelled to accept a monetary satisfaction of its security interest in the Assets. Further, all liens of any secured party against the Assets will attach to the proceeds from the sale of the Assets to the same extent and priority as such liens exist in the Assets.

D. The Assumption And Assignment of Contracts Is Authorized By § 365 of The Bankruptcy Code

52. §§ 365(a) and (b) of the Bankruptcy Code authorize a debtor-in-possession to assume, subject to the court’s approval, executory contracts or unexpired leases of the debtor. In turn, §365(b)(1) of the Bankruptcy Code codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing 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 ...;
- 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.

53. In analyzing whether the assumption or rejection of an executory contract or unexpired lease pursuant to § 365(a) should be approved, courts apply the “business-judgment” test, which requires a determination that the requested assumption or rejection be “advantageous to the estate and the decision be based on sound business judgment.”² In making this determination, courts generally will not second-guess a debtor’s business judgment concerning the assumption of an executory contract.³

54. Here, the Debtor’s assumption and assignment of the Assigned Contracts to the Stalking Horse Bidder as set forth in the Term Sheet or the to-be-finalized Stalking Horse APA – or the ultimate Successful Bidder after an Auction – meets the business-judgment standard and satisfies the requirements of § 365 of the Bankruptcy Code. First, the scope of the Assigned Contracts is focused and reasonable. As noted in the Term Sheet, the Assigned Contracts identified by the Stalking Horse Bidder are the contract rights, leases of dealership locations, and leases of real and personal property related to the Dealership to be sold in the Sale. As mentioned, the Debtor’s liquidity is challenged, and the Sale transactions contemplated by this process will preserve and maximize value of the Assets and the Dealership. Because the Debtor cannot obtain such preservation and maximization without the assumption and assignment of the Assigned Contracts, the assumption of these Assigned Contracts is a sound exercise of the Debtor’s business judgment.

² See *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993) (holding that, when deciding whether to grant a motion to assume, a court must put itself in the trustee’s position and determines whether such assumption would be a good decision or a bad one).

³ See e.g., *In re Paolo Gucci*, 193 B.R. 411, 414 (S.D.N.Y. 1996); *Sharon Steel Corp. v. National Gas Fuel Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989); *In re III Enter., Inc.*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) (“Generally, a court will give great deference to a debtor’s decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment – a standard which we have concluded many times is not difficult to meet.”).

55. Further, a debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with § 365(a), and provides adequate assurance of future performance by the assignee, “whether or not there has been a default” under the agreement. 11 U.S.C. § 365(f)(2).

56. Here, in the event there are any unexpired leases or executory contracts to be assigned, the Debtor will identify such leases and contracts and provide for any cure amounts related thereto. All monetary defaults that must be cured under § 365(b) as a pre-condition to the assumption and assignment of the Assigned Contracts will be cured prior to the proposed closing or the Debtor will secure an agreement for the cure of same through the sale process.

57. By April 24, 2019, which is well enough in advance of the proposed Sale hearing, the Debtor will file with the Court and serve on each non-debtor party to an executory contract or unexpired lease a notice setting forth the amount of cure owed thereunder according to the Debtor’s books and records (the "*Cure Notice*"). The Cure Notice shall state the cure amount that the Debtor believes is necessary to assume such contract or lease pursuant to §365 of the Bankruptcy Code (the "*Cure Amount*"), and notify each non-debtor party that such party's lease or contract may be assumed and assigned to the Stalking Horse Bidder or to the successful bidder identified at the conclusion of the Auction, if any.

58. In this Motion, the Debtor will request that this Court order that, no later than seven (7) days prior to the Sale Hearing, any objection to the Cure Amount must be filed with the Court (the "*Cure Amount Objection Deadline*"). Any objection to the Cure Amount must state with particularity what alternative cure amount the non-debtor party believes is required with appropriate supporting documentation and the legal and factual bases for that belief. If no objection is timely received, the Bid Procedures Order will provide that Cure Amount set forth in the Cure Notice shall

be controlling, notwithstanding anything to the contrary in any executory contract, unexpired lease, or other document that exists on the date of the Cure Notice; the nondebtor party to the executory contract or unexpired lease shall be deemed to have stipulated that the Cure Amount set forth in the Cure Notice is correct; the non-debtor party shall be forever barred, estopped, and enjoined from asserting or claiming that any additional amounts are due or other defaults exist under the unexpired lease or executory contract, that conditions to assignment must be satisfied or that there is any objection or defense to the assumption and assignment of such contract or lease, including any argument that there exist conditions to assumption and assignment that must be satisfied or that any required consent to assignment has not been given. Any objections to the Cure Notice and Cure Amounts filed by the Cure Amount Objection Deadline shall be heard at the Sale Hearing.

59. At the Sale Hearing, the Debtor will demonstrate that the Stalking Horse Bidder or other ultimately Successful Bidder has sufficient assets to continue performance under any Assigned Contract. The Debtor submits that the assumption and assignment of the Assigned Contracts to be disclosed by April 24, 2019, should be approved.

60. To assist in the assumption and assignment of the Assigned Contracts, the Debtor requests that the Court enter an order providing that any anti-assignment provisions, if any, in the Assigned Contracts shall not restrict, limit, or prohibit the assumption and assignment of the Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of § 365(f) of the Bankruptcy Code. § 365(f)(1) of the Bankruptcy Code permits a debtor-in-possession to assign unexpired leases and executory contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

[N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may

assign such contract or lease under paragraph (2) of this subsection . .

..

11 U.S.C. § 365(f)(1).

61. By operation of law, § 365(f)(1) invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease.⁴ § 365(f)(3) goes beyond the scope of § 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof.⁵

62. Other courts have recognized that provisions that have the effect of restricting assignments also cannot be enforced.⁶ Accordingly, the Debtor requests that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption and assignment of the Assigned Contracts and be deemed and found to be unenforceable anti-assignment provisions within the meaning of § 365(f) of the Bankruptcy Code.

E. The Ultimate Purchaser Will Be Entitled to Protections as a Good-Faith Purchaser

63. Bankruptcy Code § 363(m) states, in relevant part:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or

⁴See, e.g., *Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F. 3d 904, 910-11 (9th Cir. 1997) (“[N]o principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365.”).

⁵ See, e.g., *In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D. N.Y. 1996) (finding that § 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled antiassignment clauses, are subject to court’s scrutiny regarding anti-assignment effect).

⁶ See *In re Rickel Home Centers, Inc.*, 240 B.R. 826, 831 (D. Del. 1998) (“In interpreting Section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions.”); see also *In re U.L Radio Corp.*, 19 B.R. 537, 543 (Bankr. S.D. N.Y. 1982) (“Any lease provision, not merely one entitled ‘anti-assignment clause,’ would be subject to the court’s scrutiny regarding its anti-assignment effect.”).

not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

64. A sale to a good-faith purchaser cannot be avoided under § 363(m), unless the sale authorization was stayed pending appeal. *See* 11 U.S.C. § 363(m). Additionally, for the sale to be considered in good-faith, consideration must: (1) be fair and reasonable; (2) be the highest and best offer for the property, and; (3) constitute reasonably equivalent value, fair value, and fair consideration.

65. First, the Debtor will show at the Sale Hearing that they negotiated with the Stalking Horse Bidder at arm's-length, in good faith, and in an effort to achieve the best offer for the Assets. The Debtor will show that the Stalking Horse Bidder who was represented by independent counsel, recognized the need for and actively encouraged transparency in, the solicitation of competing bids via the Bid Procedures. As such, the Debtor will show that the Stalking Horse Bidder is entitled to the protections of a good-faith purchaser under § 363(m) of the Bankruptcy Code, and the sale of the Assets does not constitute an avoidable transaction pursuant to § 363(n).

66. Similarly, if Respect is not the successful purchaser of the Assets, the ultimate purchaser of the Assets will have, by definition, participated in a good faith manner if such prospective purchaser complies with the Bid Procedures and submits a Qualified Bid. An Auction conducted in accordance with the Bid Procedures will further ensure that the sale of the Assets will be the result of arm's length, good faith negotiations between the Debtor and each party submitting a Qualified Bid. The Bid Procedures, coupled with the prospect of an open Auction, definitively preclude any conduct that would cause or permit the sale to be set aside under § 363(n) of the Bankruptcy Code.

67. Finally, the Debtor reiterates that any agreement executed with or related to the sale of the Assets will provide substantial, essential value to the bankruptcy estate because it will

facilitate an efficient liquidation for fair and reasonable consideration. *Mellon Bank, NA. v. Metro Communications, Inc.*, 945 F.2d 635 (3d Cir. 1991) (same), *cert. denied*, 503 U.S. 937 (1992); *see also Mellon Bank, N.A. v. Official Comm. of Unsecured Creditors (In re R.M.I., Inc.)*, 92 F.3d 139 (3d Cir. 1996); *In re China Resource Prod. Ltd. v. Favda Intern., Inc.*, 856 F. Supp. 856, 866 (D. Del. 1994) (citing *Geyer v. Ingersoll Publications Co.*, 621 A.2d 784, 792 (Del. Ch. 1992)). Through the Bid Procedures, exposure of the Assets will not be limited or constricted, but the Assets will instead be subjected to an open process, subject to review by the Court, that recognizes the rights of all parties-in-interest while providing the estate with reasonably equivalent value in exchange for the Assets. The Debtor believes that the to-be-determined ultimate purchaser of the Assets is therefore a “good faith” purchaser within the meaning of Bankruptcy Code, and will be entitled to the full protections afforded by § 363(m). Accordingly, the Debtor requests that the Sale Order contain findings and protections pursuant to Bankruptcy Code § 363(m).

F. Cause Exists To Eliminate Any Stay Imposed By The Bankruptcy Rules.

68. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006 provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

69. The Debtor requests that any order approving this Motion (or authorizing a transaction to sell the Assets) be effective immediately, thereby waiving the 14-day stays imposed by Bankruptcy Rules 6004 and 6006. These waivers or eliminations of the 14-day stays are necessary for the Sale to close and the funding to be received as expeditiously as possible. The Debtor

respectfully submits that it is in the best interest of the Estate to close the Sale as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtor requests that the Court eliminate the 14-day stays imposed by Bankruptcy Rules 6004 and 6006.

G. Notice.

70. The Debtor will cause to be served (a) copies of this Motion, together with the exhibits and notice of the Hearing by Within one (1) business days after the Court enters this Order, the Debtor shall serve a copy of the Notice by (i) the Court's electronic filing system on those parties receiving electronic notice by such system; (ii) first class United States mail, postage prepaid, and (iii) via electronic mail where possible, including, without limitation, on (a) the United States Trustee for the Eastern District of New York; (b) Volkswagen Credit, Inc. ("VCI") and its counsel; (c) Volkswagen Group of America ("VWoA") and its counsel; (d) Landlords and their counsel, (e) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (f) the Stalking Horse Bidder and its counsel; (g) the Internal Revenue Service, (h) the Attorney General (NYS Dept. of Taxation and Finance); and (i) all parties in interest and counsel having filed written requests for notice of appearance in this case.

71. As set forth above, the Debtor also seeks authority to publish notice of the Sale and of the Sale Hearing in the weekly trade publication titled *The Auto News*. *The Automotive News* circulates to about 57,000 people throughout the United States and also has an internet website located at www.autonews.com. The Debtor proposes to publish notice of the sale in at least one edition of the weekly printed publication and posted for a two week period in the classified section of the online publication.

72. The Debtor submits that such notice complies with the applicable requirements of the Bankruptcy Code and Rules, including the notice requirements of Bankruptcy Rules 2002 and 6004, and respectfully submits that no other or further notice is necessary.

WHEREFORE, the Debtor respectfully requests that this Court enter the Bid Procedures Order in substantially the form attached as **Exhibit A** and thereby:

- (a) approve the Bid Procedures;
- (b) approve the Stalking Horse Bidder, including the Overbid Protections;
- (c) approve the form and manner of Notice of the Bid Procedures and the Auction;
- (d) approve the procedures for objections to this Motion;
- (e) schedule the Auction and the Sale Hearing; and
- (f) grant the related relief set forth herein.

Further, the Debtor respectfully requests at the conclusion of the Sale Hearing that this Court enter the Sale Order, thereby:

- (a) authorize and approve the sale of the Assets to (i) the Stalking Horse Bidder in accordance with the terms and conditions of the Stalking Horse APA; or (ii) to the party or parties that timely submit the highest and best Qualified Bid in compliance with the Bid Procedures that, in the Debtor's business judgment, constitutes the highest or best offer, in either case, free and clear of all claims, encumbrances, liens, and other interests; and
- (b) for such related, other and further relief as is just and proper.

Dated: Roslyn, New York
April 4, 2019

SPENCE LAW OFFICE, P.C.
Proposed Attorneys for Debtor and Debtor-in-Possession
By: /s/ Robert J. Spence
Robert J. Spence, Esq.
55 Lumber Road, Suite 5
Roslyn, New York 11576
(516) 336-2060

Exhibit A

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

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In re:

Chapter 11
Case No.: 19-43148 NHL

NORTHERN BOULEVARD AUTOMALL, LLC,
d/b/a Long Island City Volkswagen,

Debtor.

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**ORDER (I) AUTHORIZING AND APPROVING: (A) BID PROCEDURES; (B)
STALKING HORSE BIDDER AND OVERBID PROTECTIONS;
AND (C) FORM AND MANNER OF NOTICES; AND
(II) SCHEDULING AN AUCTION AND SALE HEARING**

The matter having come before this Court on the Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Overbid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtor assets and the Dealership (the “Assets”) Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (IV) Granting Related Relief [Docket No. ____] (the “*Motion*”)¹ filed by Northern Boulevard Automall, LLC d/b/a Long Island City Volkswagen (the “*Debtor*”).

Having reviewed the Motion and all matters brought to the Court’s attention at the hearing on April 11, 2019 (the “*Bid Procedures Hearing*”), and after due deliberation and consideration, and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, that this is a core proceeding pursuant to 28 U.S.C. § 157(b), and that venue of this proceeding and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, the Court finds that:

¹ All capitalized terms not defined herein shall have the meaning given to them in the Motion.

a) It has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

b) The notice given of the Motion and the Bid Procedures Hearing thereon was reasonable and sufficient in light of the circumstances and nature of the relief requested, and no other or further notice of the Bid Procedures Hearing is necessary. A reasonable and fair opportunity to object to the Motion and the relief granted in this Order has been afforded under the circumstances.

c) The legal and factual bases set forth in the Motion and at the Bid Procedures Hearing establish just cause for the relief granted herein; granting the relief is in the best interests of the Debtor, the Estate, and the creditors thereof.

d) The Debtor has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion as provided herein. Such good and sufficient reasons were set forth in the Motion and on the record at the Bid Procedures Hearing and are incorporated by reference herein and, among other things, form the basis for the findings of fact and conclusions of law set forth herein. Specifically, the Debtor has demonstrated a sound business justification for the Court to approve (i) Respect Auto Queens I LLC or its assignee ("***Respect***") as the Stalking Horse Bidder and (ii) the payment of the Break-Up Fee (as defined herein) to Respect on the terms and conditions identified in the Term Sheet, the Motion, and the Stalking Horse APA ("***Respect Proposal***" or "***Term Sheet***").

e) The Debtor has also demonstrated a compelling and sound business justification for the relief granted herein and the timeline proposed by the Debtor set forth below is reasonable:

- i. **Good-Faith Deposit Deadline for the Stalking-Horse Bidder: 3:00 p.m. prevailing Eastern Standard Time on April 15, 2019**, as the deadline by which the Stalking-Horse Bidder will pay the \$80,000.00 good-faith deposit.
- ii. **APA Filing Deadline for the Stalking-Horse Bidder: April 12, 2019**, as the deadline by which the Stalking Horse Bidder and the Debtor will execute and file the Stalking Horse APA and the proposed form of the Sale Order;
- iii. **Assumption and Assignment Notice Deadline: April 24, 2019**, as the deadline by which the Debtor will file with the Court a notice identifying the proposed cure amounts for all unexpired leases and executory contracts;
- iv. **Bid Deadline: 4:00 p.m. prevailing Eastern Standard Time on May _____, 2019**, as the deadline (the "***Bid Deadline***") by which Potential Bidders/Qualified Bidders (as defined in the Bid

Procedures) must deliver written copies of their bidding materials consistent with the Bid Procedures to the Debtor and others entitled to receive such copies;

- v. **Auction: 10:00 a.m. prevailing Eastern Standard Time on May [4-5 days after the date in (iv)] , 2019**, as the date on which an auction for the Assets (the “*Auction*”), if one is necessary, will commence at the Spence Law Office, P.C., 55 Lumber Road, Suite 5, Roslyn, New York 11576;
- vi. **Sale Objection Deadline: 4:00 p.m. prevailing Eastern Standard Time on May [1 day after date in (v)], 2019**, as the deadline (the “*Sale Objection Deadline*”) by which objections, if any, to the entry of the order approving the Sale Order (defined below) must be filed and served consistent with the Bid Procedures;
- vii. **Objections to Cure Amounts: 4:00 p.m. prevailing Eastern Standard Time on May [same date as in (vi)], 2019**, as the deadline by which objections, if any, to the proposed cure amounts related to the assumption and assignment of unexpired leases and executory contracts, if any, must be filed and served consistent with the Bid Procedures; and
- viii. **Sale Hearing: May [7 days after date in (vii)], 2019, or such other date selected by the Court** on which the Sale Hearing will be held in the United States Bankruptcy Court .

f) The bid procedures (the “*Bid Procedures*”) set forth in the attached **Exhibit 1** (i) were proposed by the Debtor in good faith with the goal of maximizing value of the Dealership and the Assets for the benefit of all creditors of the Estate and (ii) are fair, reasonable, and appropriate and are designed to maximize the value of the Assets to be sold.

g) Approval of the following bid protections (the “*Overbid Protections*”) as part of the Bid Procedures is a necessary and appropriate inducement to the Stalking Horse Bidder to make an initial offer that will serve as a “floor” for further bidding, and to enter into the Stalking Horse APA and consummate the transactions contemplated thereby, which are as follows:

- i. a break-up fee of \$_____ payable to Respect (a) in cash upon consummation of a sale to another bidder at a higher or better offer or (b) as an allowed administrative expense claim under § 503(b) of the Bankruptcy Code if the Debtor fail to close under the Stalking Horse APA for any reason other than (x) a material breach by Respect or (y) the termination of the Stalking Horse APA or the Term Sheet by Respect (the “*Break-Up Fee*”);
- ii. an initial overbid requirement the Respect purchase price plus \$50,000; and
- iii. subsequent incremental bids must be at least \$25,000 more than the previous bid.

h) The form of notice (the “*Notice*”) attached as Exhibit 2 is adequate and reasonably calculated to provide due, proper, and timely notice to all interested parties of (i) the Bid Procedures; (ii) the objection deadline to the Motion and related transactions; (iii) the date and time set for the Auction, if necessary, (iv) the date and time set for the Sale Hearing in accordance with Bankruptcy Rule 2002 and the applicable provisions of the Bankruptcy Code, and (v) entry of this Order. Except as otherwise set forth herein, no other or further notice is necessary.

i) If held, the Auction is necessary to determine which Qualified Bid represents the highest or otherwise best Qualified Bid.

j) The Break-Up Fee and the Overbid Protections are fair and reasonable and were negotiated by the parties at arm’s length and in good faith. The Debtor’s obligation to pay the Break-Up Fee, consistent with terms of the Term Sheet, is (i) an actual and necessary cost and expense of preserving the Debtor’s bankruptcy Estate, within the meaning of § 503(b) of the Bankruptcy Code, (ii) of substantial benefit to the Debtor’s Estate, (iii) reasonable and appropriate, and (iv) necessary to ensure that Respect will continue to pursue its proposed acquisition of the Dealership and the Assets.

k) Respect is unwilling to commit to hold open its offer to purchase the Assets under the terms of the Term Sheet unless the Break-Up Fee and Overbid Protections are approved. Assurance to Respect of payment of the Break-Up Fee has promoted and will promote more competitive bidding by inducing Respect’s bid that otherwise would not have been made, and without which bidding would have been and would continue to be limited. Further, because the Break-Up Fee induced Respect to submit a bid that will serve as a minimum floor bid on which other bidders and the Debtor may rely, Respect has provided a substantial benefit to the Estate by increasing the likelihood that the price at which the Assets are sold will reflect the true value of the Assets.

l) The findings of fact and conclusions of law herein constitute the Court’s findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND ECREEED THAT:

1. The Motion is granted, and the Bid Procedures are hereby approved in their entirety to be used in connection with the proposed sale of the Assets. The Debtor are hereby granted the power and authority to take all steps necessary or appropriate to carry out the provisions of this Order and the Bid Procedures. The Bid Procedures are incorporated herein by reference as if fully set forth herein. Notwithstanding the foregoing, the consummation of the sale of the Assets shall remain subject to the entry of a Sale Order approving the sale of the Assets and related transactions as contemplated in the Motion.

2. The Bid Procedures and the Bid Protections are fair and reasonable, are reasonably calculated to produce the best or highest offers for the Assets, and will confer actual benefit on the Debtor and its Estate. The Bid Procedures and the Bid Protections represent an exercise of the Debtor's sound business judgment and will facilitate an orderly sale process.

3. The Debtor are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures. As described in the Bid Procedures, if the Debtor does not receive any Qualified Bids, the Auction will not be held. If one or more Qualified Bids is timely received from a Qualified Bidder in accordance with the Bid Procedures, then the Debtor shall determine the Initial Bid and conduct the Auction as set forth therein. Any disputes as to the final selection of the highest or best Qualified Bid, or any other dispute arising from the implementation of the Bid Procedures, shall be resolved by this Court.

4. Respect is hereby approved as the Stalking Horse Bidder on the terms and conditions set forth in the Term Sheet attached to the Motion and the Stalking Horse APA.

5. The Break-Up Fee (\$_____) is approved. Respect shall be entitled to an allowed administrative expense in the amount of the Break-Up Fee under § 503(b) of the Bankruptcy Code in accordance with the terms of the Term Sheet and may rely on this Order for such administrative-expense claim without the need to file a separate motion with the Court, and the Debtor is authorized and directed to pay the Break-Up Fee from the proceeds of sale at closing

6. If an Auction is held and Respect is not the Successful Bidder or any other conditions set forth in the Term Sheet governing the Break-Up Fee are satisfied, then Respect will be entitled to the benefits afforded by the Overbid Protections including payment of the Break-Up Fee. However, Respect shall be entitled to credit bid the Break-Up Fee during each round of bidding at any Auction.

7. The Overbid Protections are approved.

8. Within three (3) business days after the Court enters this Order, the Debtor shall serve a copy of the Notice by (i) the Court's electronic filing system on those parties receiving electronic notice by such system; (ii) first class United States mail, postage prepaid, and (iii) via electronic mail where possible, including, without limitation, on (a) the United States Trustee for the Eastern District of New York; (b) Volkswagen Credit, Inc. ("VCI") and its counsel; (c) Volkswagen Group of America ("VWoA") and its counsel; (d) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (e) the Stalking Horse Bidder and its counsel; (f) the Internal Revenue Service, (g) the Attorney General (NYS Dept. of Taxation and Finance); and (h) all parties in interest and counsel having filed written requests for notice of appearance in this case.

9. Within three (3) business days after the Court enters this Order, consistent with the terms of the Term Sheet, Respect shall place into an interest-bearing and segregated escrow account a deposit of \$80,000 (the "*Good-Faith Deposit*").

10. The Sale Hearing shall be held on May , 2019, at .m. **prevailing Eastern Standard Time** before the Honorable Nancy Hershey Lord, United States Bankruptcy Judge, at the United States Bankruptcy Court, Eastern District of New York, Conrad B. Duberstein Courthouse, 271-C Cadman Plaza East, Courtroom 3577, Brooklyn, NY 11201-1800.

11. Any objections, if any, to the Motion must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure, and (d) be filed with this Court, on or before **4:00 p.m., prevailing Eastern Standard time, on May , 2019** (the "*Objection Deadline*").

12. Any person or entity failing to timely file an objection to the Motion shall be forever barred from objecting thereto, including (a) the sale of all of the Debtor's right, title and interest in, to, and in substantially all of its Assets free and clear of any and all liens, encumbrances, claims, and other interests; and (b) the assumption and assignment of certain specified executory contracts and unexpired leases related to and utilized in connection with the Assets and will be deemed to consent to the sale of such Assets free and clear of any and all liens, encumbrances, claims and other interests and the assumption and assignment of certain specified executory contracts and unexpired leases.

13. By April 12, the Debtor will file a copy of the executed Stalking Horse APA with this Court. Within one (1) business day after the Stalking Horse APA is filed with the Court, the

Debtor shall provide written notice of such filed document to all parties with whom it has executed non-disclosure agreements concerning the marketing of the Assets.

14. By April 24, 2019, the Debtor will file with the Court and serve on each nondebtor party to an executory contract or unexpired lease a notice setting forth the amount of cure owed thereunder according to the Debtor's books and records (the "*Cure Notice*"). The Cure Notice shall state the cure amount that the Debtor believe is necessary to assume such contract or lease pursuant to § 365 of the Bankruptcy Code (the "*Cure Amount*"), and notify each nondebtor party that such party's lease or contract may be assumed and assigned to the Stalking Horse Bidder or to the successful bidder identified at the conclusion of the Auction, if any.

15. No later than five (7) days prior to the Sale Hearing, any objection to the Cure Amount must be filed with the Court (the "*Cure Amount Objection Deadline*"). Any objection to the Cure Amount must state with particularity what alternative cure amount the non-debtor party believes is required with appropriate supporting documentation. If no objection is timely received, the Cure Amount set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any executory contract, unexpired lease or other document as of the date of the Cure Notice; the non-debtor party to the executory contract or unexpired lease shall be deemed to have stipulated that the Cure Amount set forth in the Cure Notice is correct; the non-debtor party shall be forever barred, estopped and enjoined from asserting or claiming that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied or that there is any objection or defense to the assumption and assignment of such contract or lease, including any argument that there exist conditions to assumption and assignment that must be satisfied or that any required consent to assignment has not been given.

16. Notwithstanding Bankruptcy Rules 6004, 6006, or otherwise, this Order shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

17. The terms of this Order shall control to the extent of any conflict with the Motion.

18. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

END OF ORDER

EXHIBIT 1: Bid Procedures

BIDDING AND SALE PROCEDURES

Set forth below are the bid and sale procedures (the “***Bid Procedures***”) to be employed with respect to the proposed disposition (the “***Sale***”) of substantially all of the Assets of Northern Boulevard Automall, LLC d/b/a Long Island City Volkswagen (the “***Debtor***”), in the above-captioned, jointly administered Chapter 11 case (the “***Chapter 11 Case***”).

BID PROCEDURES MOTION

On April ____, 2019, the Debtor filed a *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Overbid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtor Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (IV) Granting Related Relief* [Docket No. ____] (the “***Sale Motion***”) in the United States Bankruptcy Court, Eastern District of New York, Brooklyn Division (the “***Bankruptcy Court***”) seeking the entry of an order: (a) approving the Bid Procedures, (b) approving the Stalking Horse Bidder and Overbid Protections, (c) approving form and manner of notices, (d) scheduling an auction and sale hearing, (e) approving the sale of substantially all of the assets of the Debtor free and clear of all liens, claims, encumbrances and interests pursuant to an asset purchase agreement consistent with the terms and conditions set forth on the Term Sheet (as defined below), and (f) granting related relief.

These Bid Procedures were approved and authorized by the Bankruptcy Court’s *Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Overbid Protections; and (C) Form and Manner of Notices; and (II) Scheduling an Auction and Sale Hearing* [Docket No. ____] (the “***Bid Procedures Order***”) in the Chapter 11 Case.

THE BIDDING PROCESS

1. **Bidding Process**. Set forth below is the general process to be employed by the Debtor with respect to the Sale of substantially all of its Assets, such Assets consisting primarily of the Dealership and certain related assets used in the operation of the Dealership (as defined in the Sale Motion):

- a) The Debtor shall market the Assets to those parties reasonably known to have a potential interest in purchasing such Assets.
- b) The Debtor has obtained a “stalking-horse” bid from Respect Auto Queens I, LLC (the “***Stalking Horse Bidder***”). The Debtor and the Stalking Horse Bidder have entered into a nonbinding term sheet (the “***Term Sheet***”) attached to the Sale Motion, which contemplates the sale of the Assets (referred to as the “Property” in the Term Sheet) to the

Stalking Horse Bidder for (i) a cash purchase price of \$800,000.00, (ii) the assumption of certain liabilities (leases of equipment, as applicable), and (iii) the payoff of existing-inventory/floor plan liens.

- c) Any person interested in making an offer to purchase the Assets shall comply with these Bidding Procedures. Only Qualified Bids (as defined below) shall be considered by the Debtor.
- d) If the Debtor does not receive another Qualified Bid prior to the Bid Deadline (as defined below), then the Stalking Horse Bidder's offer to acquire the Assets under the Term Sheet shall constitute the Successful Bid (as defined below).
- e) If the Debtor receives another Qualified Bid prior to the Bid Deadline, then the Debtor, after consultation with its counsel and professionals, shall select the highest or otherwise best Qualified Bid as the Successful Bid after the Auction (as defined below) considering, among other things, the financial and contractual terms relevant to the Sale, including those factors affecting speed and certainty of consummating the Sale or the overall value to be provided thereby.
- f) Upon failure to consummate the Sale because of a breach on the part of the Successful Bidder (as defined below) after an order entered at the Sale Hearing, the Debtor shall be permitted to (i) retain the Successful Bidder's Deposit (as defined below) as liquidated damages and (ii) select the next highest or otherwise best Qualified Bid to be the Successful Bid and to consummate such transaction without further order of the Bankruptcy Court.
- g) All Qualified Bidders (as defined below) at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidder's contemplated transaction documents, as applicable.

PARTICIPATION REQUIREMENTS

2. **Potential Bidder.** Any person other than the Stalking Horse Bidder desiring to participate in the bidding process (each, a "***Potential Bidder***") will be required to deliver (unless previously delivered) to the Notice Parties (defined below), on or before the Bid Deadline, a Qualified Bid inclusive of a complete Bid Package (defined below).

3. **Qualified Bid Requirements.** “*Qualified Bid*” means (a) the Stalking Horse Bidder’s offer to acquire the Assets pursuant to the Stalking Horse APA (b) a competing bid from a Potential Bidder if (i) the Debtor determines that such bid is higher or otherwise better than the bid set forth in the Stalking Horse APA and would be consummated if selected as the Successful Bid and (ii) such bid was received prior to the Bid Deadline and included each of the following (collectively, a “*Bid Package*”):

- a) An unqualified and binding bid (*contingent only upon (i) the Potential Bidder being the highest and best bid as determined by the Debtor and subject to Bankruptcy Court approval; (ii) approval by VWoA of a Potential or Qualified Bidder as a VWoA franchisee; or the entry of an Order by the Bankruptcy Court authorizing the assumption and assignment of the franchise agreement with VWoA and (ii) if applicable, lease agreement(s) with the Debtor’s landlords for any or all of the space currently occupied by the Debtor*) in an amount of total consideration that exceeds the consideration offered by the Stalking Horse Bidder by at least \$50,000 (provided that in determining the value of the Bid, the Debtor will not be limited to evaluating the dollar value of the consideration but may also consider other factors including the speed, certainty and value of the proposed transaction);
- b) A **signed** form of asset purchase agreement, based on the Stalking Horse APA, marked to show changes from the Stalking Horse APA, inclusive of all schedules and exhibits thereto which is subject only to the aforementioned contingencies in paragraph 3(a) above;
- c) An earnest-money deposit (the “*Deposit*”) in cash or in other form of immediately available U.S. funds equal to \$50,000 to be held in the Debtor’s counsel’s trust account, which shall be refundable as set forth herein; and
- d) Current financial statements of the Potential Bidder, or if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current financial statements of the equity holder(s) of the Potential Bidder and such other information as required by the Debtor, in its sole discretion sufficient to allow the Debtor to make a reasonable determination as to such bidder’s ability to consummate the submitted asset purchase agreement; and
- e) Disclosure of the qualification of the Potential Bidder and its principal(s) and such other information as required by the Debtor, in its sole discretion sufficient to allow the Debtor to make a reasonable determination as to such bidder’s ability to be approved by VWoA as a VW dealer franchisee; and

- f) With respect to the current locations of the Debtor's business operations, (i) a statement that the bid is not conditioned on the retention of the space at the current business location(s) or, (ii) in the event the Potential Bidder desires to maintain the Assets at the Debtor's current location(s), the Potential Bidder shall include in its bid, an offer to the Debtor's landlord(s) of fair market rent for the locations desired to be retained whether short term or long term; and
- g) Provide as much of the information on Schedule 3(g) as possible with the bid. The submission of this information is in anticipation of the information to be requested by VWOA and the Debtor intends to expedite the sale approval process by gather as much information as possible in advance of VWOA's review of Potential Bidders; and
- h) Provided the Potential Bidder has complied with the above terms (a) through (f), within seven (7) days business days after a document request letter delivered by VWOA and or the Debtor, the Potential Bidder shall submit to VWOA all documents necessary or reasonably requested for a determination of *whether a Potential or Qualified Bidder qualifies as a VWOA franchisee*. The failure of the Winning Bidder to timely submit such documents shall constitute a failure of the Potential Bidder to comply with the Bidding Procedures and the Debtor may, in its sole discretion, eliminate the Potential Bidder from consideration as a Qualified Bidder.
- i) Notwithstanding anything to the contrary in the Term Sheet or herein, the Stalking Horse Bidder must also comply with provisions (d) through (h) no later than the deadlines for other Potential or Qualified Bidders.

To be considered a Qualified Bid, each Potential Bidder's APA shall remain open, enforceable, and irrevocable in accordance with its terms until after the Debtor closes the purchase and sale of the Assets and shall:

- a) Fully disclose the identity of the entity that will be bidding or participating in connection with such Bid, including any terms regarding or restricting such participation, and provide proof the Potential Bidder is legally empowered, by power of attorney or otherwise, to legally bind such Bidder to an enforceable Bid;
- b) Provide that the Assets are being purchased "as is, where is," and that such Potential Bidder is not relying on any representation or warranty from the Debtor, or its

- bankruptcy estate or any person or entity, except as otherwise provided in the Stalking Horse APA, if any;
- c) Contain no (i) contingencies of any kind or character (*except shall be contingent only upon (a) approval by VWoA of a Potential or Qualified Bidder as a VWoA franchisee; or (b) the entry of an Order by the Bankruptcy Court authorizing the assumption and assignment of the franchise agreement with VWoA and (iii) if applicable, lease agreement(s) with the Debtor's landlords for any or all of the space currently occupied by the Debtor*); (ii) indemnities, (iii) purchase price adjustments, or (iv) qualifications relating to due diligence, financing or board approval;
 - d) Contain no conditions to closing of the Sale on the receipt of any third-party approvals (excluding required Bankruptcy Court approval and VWoA approval as described herein);
 - e) Provide that the offer is irrevocable through thirty (30) days after the entry of the Sale Order approving the Sale.
 - f) Provide an express statement that: (i) the Potential Bidder agrees to all terms of the Sale Procedures; and (ii) the Potential Bidder has not engaged in any collusive discussion with any other Potential Bidder.

The Stalking Horse Bidder shall be deemed to be a Qualified Bidder provided it complies with paragraph 3(i) hereof.

Manufacturer Approval. The Debtor and its representatives are authorized to release any and all of the Bid Packages received to VWoA. VWoA shall deliver to the Debtor within five (5) business days of receipt of any signed APA and related documents from the Debtor, document request letter(s) to Potential Bidder(s). VWoA shall have a period of thirty (30) days after the receipt of the aforementioned documents from Potential Bidders within which to file with the Clerk of the Bankruptcy Court and serve upon counsel for the Debtor any objections to any Potential and or Qualified Bidder. In the event no timely objections are filed, VWoA shall be deemed to consent to to a Potential and or Qualified Bidder being a franchisee of VWoA.

Qualified Bidder. Only Qualified Bidders may participate in the bidding process. A Potential Bidder who delivers the documents described above (including all subparagraphs) and who the Debtor determines, in its sole and absolute discretion, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale will be deemed to be a "***Qualified Bidder.***" The Debtor shall determine whether a Potential Bidder is a Qualified Bidder and shall provide written notice of its determination to such Potential Bidder and to each

then existing Qualified Bidder. The Auction Sale may take place before VWoA has approved and or consented to a Potential Bidder or Qualified Bidder and, if so, shall remain subject to VWoA approval following the Auction Sale.

NOTICE PARTIES

5. **Notice Parties.** The following parties are referred to herein and defined as the “Notice Parties” for the purpose of these Bid Procedures:

Counsel for the Debtor:

Spence Law Office, P.C.
Robert J. Spence, Esq. (RS3506)
Proposed Attorneys for the Debtor
55 Lumber Road, Suite 5
Roslyn, New York 11576
Tel.:(516) 336-2060

Counsel for the Stalking Horse Bidder:

Jeffrey Herz, Esq.
Matthew Roseman, Esq.
Cullen and Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Tel: 516.357.3700

Counsel for Volkswagen Credit, Inc. (“VCI”):

Joann Sternheimer, Esq.
Deily & Glastetter, LLP
8 Southwoods Blvd., Suite 207
Albany, NY 12211
Tel: 518.436.0344

Counsel for Volkswagen Group of America (“VWofA”)

Morgan Filbey, Esq.
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171
Tel: (703) 364-7101

Counsel for the Landlords

James Vincequerra, Esq.

Alston & Bird, LLP
90 Park Avenue
New York, NY 10016
Tel: (212)210-9503

United States Trustee:

Rachel Wolf, Esq.
Marylou Martin, Esq.
Office of the United States Trustee
201 Varick Street Suite 1006
New York, New York 10014
Tel: (212) 510-0500

BID DEADLINE AND REQUIREMENTS

6. **Bid Deadline.** A Qualified Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver written copies of its Bid Package by email so that such is **actually received** by counsel for the Debtor no later than **4:00 p.m. prevailing Eastern Standard Time on May _____, 2019** (the “*Bid Deadline*”). Spence Law Office, P.C., 55 Lumber Road, Ste. 5, Roslyn, New York 11576, Fax (516) 605-2084; email address: rspence@spencelaw.com. The Debtor shall then distribute any Bid Packages received prior to the Bid Deadline to the Notice Parties.

7. **Bid Rejection.** In determining whether a bid is a Qualified Bid, the Debtor shall reject any bid that: (a) is on terms that are materially more burdensome or conditional than the terms of the Stalking Horse APA; (b) requires the Debtor to indemnify the Qualified Bidder or any other person; (c) includes non-cash consideration that is not freely marketable; or (d) is subject to any due-diligence condition, financing condition, or other contingencies or conditions that are not included in the Stalking Horse APA.

8. **Initial Bid.** After the Bid Deadline, the Debtor shall determine which Qualified Bid represents the then highest or otherwise best value to the Debtor (the “*Initial Bid*”). No later than 12:00 p.m. prevailing Eastern Standard Time on the day prior to the Auction, if any, the Debtor shall distribute copies of the Initial Bid to each Qualified Bidder.

AUCTION

9. **Auction.** If the Debtor receives at least one Qualified Bid (other than that of the Stalking Horse Bidder) on or prior to the Bid Deadline, the Debtor will conduct an auction (the

“*Auction*”) for the sale of the Assets. **If necessary, the Auction will commence at 10:00 a.m. prevailing Eastern Standard Time on May _____, 2019 at the Spence Law Office, P.C. 55 Lumber Road, Suite 5, Roslyn, New York 11576.**

10. **Participation.** Only Qualified Bidders are eligible to participate in the Auction. No later than 5:00 p.m. prevailing Eastern Standard Time on the day prior to the Auction, each Qualified Bidder must inform the Debtor whether it intends to participate in the Auction. The Debtor will promptly thereafter inform in writing each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction. If the Debtor does not receive any Qualified Bids other than the Stalking Horse APA or if no Qualified Bidder other than the Stalking Horse Bidder has indicated its intent to participate in the Auction, the Debtor will not hold an auction and the Stalking Horse Bidder will be named the Successful Bidder.

11. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a) **Attendance.** Only the Debtor, Stalking Horse Bidder, and any other Qualified Bidder who has submitted a Qualified Bid, the Debtor’s Landlords, and each of their respective advisors and representatives will be entitled to attend the Auction, and only the Stalking Horse Bidder and Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction;
- b) **No Collusion.** Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale;
- c) **Minimum Overbid.** The Auction shall begin with the Initial Bid and proceed therefrom in minimum additional cash increments of \$25,000;
- d) **Credit for Break-Up Fee.** The Stalking Horse Bidder shall be entitled to credit bid the Break-Up Fee during each round at the Auction;
- e) **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one room, on an open basis, and all Qualified Bidders will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other bidders and that all material terms of each subsequent bid will be fully disclosed to all other bidders throughout the entire Auction;
- f) **Bidding Conclusion.** The Auction shall continue in one or more rounds of bidding and will conclude after (i) each

participating Qualified Bidder has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid or bids and (ii) there is only one offer that the Debtor determines is the Successful Bid; and,

- g) No Post-Auction Bids. No bids will be considered for any purpose after the Auction has concluded.

SELECTION OF SUCCESSFUL BID

12. **Successful Bid Selection**. At the conclusion of the Auction, or as soon as practicable thereafter, the Debtor, in consultation with its advisors will: (a) review each Qualified Bid, considering, among other things, in its sole discretion, (i) the amount of the purchase price, (ii) the form of consideration being offered, (iii) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof and (iv) the net benefit to the Estate; and (b) identify the highest or otherwise best offer for the Assets received at the Auction (the "***Successful Bid***" and the bidder making such bid, the "***Successful Bidder***").

13. **Successful Bid Acknowledgement**. Within one business day after adjournment of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

THE SALE HEARING

14. **Sale Hearing**. On May, 2019 at _____, the Debtor will seek entry of an order from the bankruptcy court at a hearing (the "***Sale Hearing***") to approve and authorize a Sale to the Successful Bidder pursuant to the Successful Bid (the "***Sale Order***"). With the consent of the Successful Bidder, the Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing or otherwise.

BACK-UP BIDDER

15. **Back-Up Bidding**. At the conclusion of the Auction, the second highest Qualified Bidder will serve as a "Back-Up Bidder" and remain obligated to close the Sale at the terms set forth in its last Bid the ("***Back-Up Bid***") in the event that the Sale to the Successful Bidder does

not close. The Back-Up Bidder shall be obligated until ten (10) business days after the Sale Order becomes final and non-appealable, or such other time period as agreed to by the Back-Up Bidder and Sellers (the “**Back-Up Release Date**”).

RETURN OF DEPOSITS

16. **Return Date.** The Deposits of all Qualified Bidders – including the Good Faith Deposit – will be held in an interest-bearing escrow account and all Qualified Bids (other than the Back-Up Bid and the Successful Bid) will remain open until two (2) business days following the Sale Hearing (the “**Return Date**”). The Deposit of the Back-Up Bidder will be held in an interest-bearing account until the earlier of (a) the next business day following the closing with the Successful Bidder and (b) the Back-Up Release Date. The Deposit submitted by the Successful Bidder, together with interest thereon, will be applied against the payment of the Purchase Price upon the closing of the Sale to the Successful Bidder. On the Return Date, the Debtor will return the Deposits of all other Qualified Bidders, including the Good Faith Deposit, together with the accrued interest thereon.

RESERVATION OF RIGHTS

17. **Sellers’ Reservation of Rights.** The Debtor has the right to adopt such other rules for the Auction that the Debtor believes in its business judgment will promote the goals of the Auction, including, without limitation, that the Debtor can continue to take and negotiate bids in lot or in bulk until the Successful Bid(s) have been selected. Further, the Debtor may (a) determine which Qualified Bid is the highest or otherwise best offer(s); and (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid(s), any bid that, in the discretion of the Debtor, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (iii) contrary to the best interests of Debtor’s Estate and its creditors. At or before the conclusion of the Auction, the Debtor may impose such other terms and conditions on Qualified Bidders as the Debtor determines to be in the best interests of the Debtor’s estate. Further, the Debtor may (a) determine, which Qualified Bid is the highest or otherwise best offer, (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures or the terms and conditions of sale

or (iii) contrary to the best interests of the Debtor, its Estate and creditors, and (c) change the Bid Procedures to maximize the value of the Dealership and Assets and in the best interests of the bankruptcy Estate and the stakeholders thereof.

**SALE OF THE ASSETS FREE OF ANY AND ALL LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS**

18. **Assets to be Sold.** The Debtor seeks to sell substantially all of its Assets, inclusive of the Dealership, in one or more Asset Package(s) (the “*Purchased Assets*”). The Debtor are considering all bid proposals but are seeking a comprehensive sale of its Assets and therefore encourage bidders to provide flexibility with regard to the Assets included in proposals.

19. **Sale Free and Clear.** Except as otherwise provided in the Sale Motion and any exhibits thereto, all of the Debtor’s rights, title, and interest in and to the Purchased Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the “*Interests*”) in accordance with § 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets. However, notwithstanding anything contained in these Bid Procedures or the Sale Motion to the contrary, no sale under 11 U.S.C. § 363 shall occur without approval by the Bankruptcy Court.

SCHEDULE 3(g) TO BID PROCEDURES

1. Personal Information

- Background check applications (owners and authorized representative)
- Personal financial statements of applicants
- Resume and/or Bio of applicants
- Business Plan

2. Financial Documentation

- Sales & Profit Forecast (S&P)
- Source of Funds Statement
- Verification of funds (3 months of bank records)
- Bank verification of funds deposited (deposit slip or bank statement for a new business entity)
- Copy of capital loan approval (if applicable)
- Copy of Dealer Floor Plan Authorization Letter from Dealer
- Copy of Floor Plan Letter from finance source
- Copy of EFT and ACH Bank Forms
- Copy of Trust Financial Statement (if applicable)

3. Performance Documentation

- CSI/SSI (current and previous year-end for all franchises owned vs. National Average)
- Sales and registration data (current and previous year-end for all franchises owned)
- Current automotive dealership financial statements for all franchises owned (current and previous year-end)

4. Corporate Structure

- Certificate of Secretary Form for Corporate Shareholders
- Certificate of Secretary Form for other Corporate/LLC/LP/Trust to validate layered ownership proposals (if applicable)
- Attorney's Letter to include all layers of ownership
- Articles of Incorporation or Articles of Organization (LLC) or Partnership Agreement (LP)
- Bylaws (Corp.) or Operating Agreement (LLC)
- State registration of corporate/DBA names - Name must conform to VWoA Policy 05 - Dealership Name Policy (see below)
- Copies of corporate stock certificates, both sides (if Corporation)
- Meeting minutes with consent from members or officers approving proposed change/ownership/management
- Copy of all agreements between shareholders/members/partners
- Copy of Trust Agreements (if applicable)

5. Ownership & Site Agreements

- Asset/Stock/Interest Purchase Agreement Exhibits and Schedules
- Copy of executed lease agreement (with renewal options) or purchase agreement
- Letter of Gift (if applicable)

6. Facilities

- Facility & Land Survey Form
- Photos of proposed VW facility site and key import dealer locations
- Map reflecting current location and surrounding dealers
- Proposed location site plan and temporary site plan (if applicable) (for new construction only)
- Proposed facility plan (pictures, description, temporary address (if applicable))

7. Dealer Forms

- Signage Vendor Form
- Design Service Enrollment Form
- Service Xpress Form
- VW Care Enrollment Form
- LMA Enrollment Form

Dealership Name Policy:

- Potential Bidders must provide the proposed d/b/a name of the dealership which includes the word “Volkswagen” for approval by VWoA.

EXHIBIT 2: Form of Notice

Spence Law Office, P.C.
Robert J. Spence, Esq. (RS3506)
Proposed Attorneys for the Debtor
55 Lumber Road, Suite 5
Roslyn, New York 11576
Tel.:(516) 336-2060

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

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In re:

Chapter 11
Case No.: 19-43148 NHL

NORTHERN BOULEVARD AUTOMALL, LLC,
d/b/a Long Island City Volkswagen,

Debtor.

-----X

**NOTICE OF (I) SALE OF SUBSTANTIALLY
ALL ASSETS OF THE DEBTORS AND (II) SALE HEARING**

PLEASE TAKE NOTICE that, on April ____, 2019, NORTHERN BOULEVARD AUTOMALL, LLC, d/b/a Long Island City Volkswagen (the “**Debtor**”) filed a *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Overbid Protections; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Debtor Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (IV) Granting Related Relief* [Docket No. ____] (the “**Sale Motion**”) in the United States Bankruptcy Court for the Eastern District of New York, Brooklyn Division (the “**Bankruptcy Court**”) seeking the entry of an order: (a) approving the Bid Procedures, (b) approving the Stalking Horse Bidder and Overbid Protections, (c) approving form and manner of notices, (d) scheduling an auction and sale hearing, (e) approving the sale of substantially all of the assets of the Debtor free and clear of all liens, claims, encumbrances and interests pursuant to an asset purchase agreement consistent with the terms and conditions set forth on the Term Sheet (as defined below), (f) approving the assumption and assignment of the “Assigned Contracts” as defined in the Term Sheet and or as may be applicable, and (g) granting related relief. The Sale Motion set forth the Debtor’s intent to sell substantially all of its assets to Respect Auto Queens I LLC or its designee (the “**Purchaser**”).

On April ____, 2019, the Court entered its *Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Stalking Horse Bidder and Overbid Protections; and (C) Form and Manner of Notices; and (II) Scheduling an Auction and Sale Hearing* [Docket No. ____] (the “**Bid Procedures Order**”) in the Chapter 11 Case.

PLEASE TAKE FURTHER NOTICE that the hearing (the “**Sale Hearing**”) to approve the Motion will be held on May ____, 2019 at ____ .m. before the Honorable Nancy Hershey Lord, United States Bankruptcy Judge, at the United States Bankruptcy Court, Eastern

District of New York, Conrad B. Duberstein Courthouse, 271-C Cadman Plaza East, Courtroom 3577, Brooklyn, NY 11201-1800.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Sale(s) is **May __, 2019 at 4:00 P.M. EST.** Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure, and (d) be filed with the Court and served on undersigned counsel for the Debtor.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed sale, including the Sale Procedures Order (and attached bid procedures) approved by the Court, are available on the Bankruptcy Court's website at <https://ecf.nyeb.uscourts.gov/>. You can also request any pleading you need from the proposed counsel for the Debtor listed below.

Dated: Roslyn, New York
April __, 2019

SPENCE LAW OFFICE, P.C.
Proposed Attorneys for Debtor and Debtor-
in-Possession

By: /s/ Robert J. Spence
Robert J. Spence, Esq.
55 Lumber Road, Suite 5
Roslyn, New York 11576
(516) 336-2060

TERM SHEET

Debtor:	Northern Boulevard Automall, LLC, d/b/a Long Island City Volkswagen
Bankruptcy Case:	Case No. 19-41348 pending before the Bankruptcy Court
Bankruptcy Court:	United States Bankruptcy Court for the Eastern District of New York
Secured Lender:	Volkswagen Credit, Inc.
Purchaser/ Stalking Horse:	Respect Auto Queens I LLC, or its designee (collectively " Respect ").
Property:	<p>The Debtor operates its showroom pursuant to a lease at its main location, 56-15 Northern Boulevard, Woodside, NY 11377 (the "Showroom"), and leases property for its service department located at 33-20 55th Street (a/k/a 54-20 Broadway, Woodside, NY 11377) (the "Service Department"). The Debtor owns the businesses that operate out of the Showroom and Service Department as well as all associated furniture, fixtures, equipment and personal property including, without limitation, the auto parts contained therein (collectively, the "Property"). The Property is sold on an "as is" "where is" basis and without representations or warranties of any kind, nature or description, whether written or verbal, whether express, implied, or by operation of law.</p> <p>Excluded from the sale are any receivables, vehicles owned by the dealership, all claims and causes of action of any kind, Chapter 5 avoidance actions, causes of action for damages, breach of contract, preferential payments, fraudulent conveyance under applicable laws, insurance claims, the purchase price, security deposits, utility deposits, refunds for pre-paid expenses, insurance refunds, other refunds of any kind, any original corporate minute books or stock/interests ledger of the Seller.</p>
Sale of Property:	The Debtor and Respect intend to enter into a definitive agreement for Respect to purchase the Property (the " Respect APA ") under the terms and conditions set forth herein along with such other terms as Debtor and Respect mutually agreed upon.

Respect APA:

The Respect APA remains subject to the negotiation and documentation by the Debtor and Respect is to be entered into, subject to Bankruptcy Court approval, within 10 days of the date hereof. Respect and the Debtor intend that the Respect APA will be consistent with the terms of this Term Sheet and contain additional customary terms and provisions for a transaction of this type as well as the following terms:

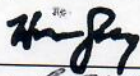
- On the closing date for Respect's purchase of the Property, Respect will pay in good and available funds the amount of \$800,000 (Eight Hundred Thousand Dollars), \$150,000 of which shall be allocated to the auto parts that comprise a portion of the Property, in accordance with the Respect APA. Respect will receive a credit for its Contract Deposit (as defined herein).
- Closing of the transaction contemplated by the Respect APA shall be subject to the following contingencies: (i) approval by Volkswagen Group of America ("VWGoA") of the transfer of Debtor's Volkswagen franchise, with Respect as franchisee, with an auto sales showroom and auto service department at the location of Debtor's Showroom and Service Department; (ii) Respect entering into a lease for each of the parcels of real property at which the Showroom and Service Department are presently located with the owners of such parcels, the terms and conditions of which must be acceptable to Respect in all respects and in its sole discretion, and (iii) the Bankruptcy Court holding a hearing on the sale of the Property within sixty (60) days following the execution of the Respect APA.
- The transaction contemplated by the Respect APA shall be subject to Bankruptcy Court Approval, VWGoA approval, and an auction, if necessary, to determine the highest and best offer as determined by the Bankruptcy Court.
- Closing shall take place the later of (i) 5 business days following receipt of final approval by VWGoA or (ii) ten days after the Bankruptcy Court Order approving the sale to Respect becomes final and non-appealable. Respect shall provide reasonable proof of financial ability to close the subject transaction within 2 days of executing this Term Sheet. Respect shall have in place floor plan financing as a condition of closing .

<p>Bankruptcy Sale Process – Generally:</p>	<p>The Respect APA will be drafted to accommodate a sales process in the Debtor’s Bankruptcy Case.</p> <p>Debtor will, as soon as practicable, and in any event not more than five (5) days following execution of the Respect APA, file a motion seeking authority to conduct the marketing and sale process, and for the approval of bid and sale procedures.</p> <p>The marketing of the Property will commence as soon as practical, with the following anticipated timetable (subject to Bankruptcy Court approval):</p> <ul style="list-style-type: none"> • Initial bids for the Property will be due 45 days after the broker has finalized offering materials; • During such 45 day period, potential bidders may visit/inspect the Property and conduct other due diligence subject to NDA; • If a bid is submitted by a Qualified Bidder(s) in addition to the Stalking Horse, Debtor will evaluate the bids submitted by Qualified Bidder(s) and will determine if an auction is necessary or appropriate; • Debtor may conduct an auction (see “Sales Process – Auction”) or encourage the submission of revised offers during the following two (2) week period, following which the winning bid will be selected (with the runner up to hold its bid open pending closing); and • The sale of the Property will be free and clear of all liens, claims and interests.
<p>Bankruptcy Sale Process– Stalking Horse</p>	<p>Respect will act as a Stalking Horse with respect to the sale, and the parties will draft the Respect APA accordingly, which agreement will include customary bidder protections, including a breakup fee of not less than three percent (3%) and/or expense reimbursement; provided, however, under a Bankruptcy Sale Process, the terms and conditions of the Respect APA (including bid procedures and bidder protections) will be subject to the approval of the Bankruptcy Court. Upon such Bankruptcy Court approval of Respect as the “stalking horse bidder” (a) Respect shall deposit with Debtor’s counsel \$80,000 (the “Contract Deposit”) to be held in escrow pending any closing, release per the Respect APA or Court Order, and (b) any such breakup fees and/or expense reimbursement shall be allowed administrative expenses under the Bankruptcy Code except that Respect shall not be entitled to</p>

	<p>the break-up fee if it breaches the Respect APA. Each party will be responsible for its own costs and expenses including its attorneys fees incurred in connection with this potential transaction.</p>
<p>Bankruptcy Sale Process – Essential Bidding Terms:</p>	<p>In order for a bid to be a “Qualified Bid”, such bid must contain at a minimum the following items: (a) purchase price of not less than \$50,000 (Fifty Thousand Dollars) greater than the Respect APA purchase price, (b) a description of any contingencies to such bid, (c) a statement that the bid is not subject to any further due diligence, (d) a deposit in the form of a letter of credit or cash in an amount equal three percent (3%) of the face amount of such bid, (e) a markup of the form of proposed sale agreement (a form of which will be attached to the motion seeking approval of the bid procedures), and (f) other customary and usual terms and items. (g) the high bidder and back up bidder shall increase their deposit to 10% of the purchase price within 24 hours of the close of the auction. Notwithstanding the foregoing, the bid from the Stalking Horse, shall be a Qualified Bid.</p>
<p>Bankruptcy Sale Process – Auction:</p>	<p>Assuming that at least one Qualified Bid for the Property is received from a Qualified Bidder in addition to the Stalking Horse, an auction may be conducted with respect to the Property. This provision is, of course, subject to the Bankruptcy Court’s review and approval.</p>
<p>Miscellaneous</p>	<p>This Agreement shall be governed by the laws of the State of New York. The Bankruptcy Court shall have exclusive jurisdiction arising from any disputes hereunder. This Agreement and the Respect APA are subject to Bankruptcy Court approval. This Agreement may be executed in any number of counterparts, 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. An email, facsimile or "pdf" copy of a party’s signature on this Agreement shall be considered an original. Until the Respect APA is entered into and approved by the Bankruptcy Court, the parties do not have a binding agreement.</p>


AGREED:

RESPECT AUTO QUEENS I LLC

By: 
 Name: HARRISON GRAY
 Title: MANAGING MEMBER
 Date: 3-22-19

ACCEPTED:

NORTHERN BOULEVARD AUTOMALL, LLC
d/b/a LONG ISLAND CITY VOLKSWAGEN

By: 
Name: Nikolaos Letsios
Title: Managing Member
Date: 2/29/19