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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SKIP BARBER RACING SCHOOL LLC,

Case No. 17-35871 (CGM)

Debtor.

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**MOTION OF THE DEBTOR FOR (I) AN ORDER (A) APPROVING
BIDDING PROCEDURES; (B) SCHEDULING BID DEADLINE,
AUCTION DATE, AND SALE HEARING AND APPROVING NOTICE
THEREOF; AND (C) APPROVING PROCEDURES TO FIX CURE
AMOUNTS RELATED TO ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND
APPROVING NOTICE THEREOF; AND (II) AN ORDER APPROVING
(A) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS
FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND
LIABILITIES AND (B) THE ASSUMPTION, SALE AND ASSIGNMENT
TO BUYER OF CERTAIN CONTRACTS OF DEBTOR**

Skip Barber Racing School LLC (the “Debtor”), the debtor and debtor-in-possession, by
and through its attorneys Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, files this
motion (the “Motion”) for:

- (1) entry of an order, in substantially the form attached as Exhibit 1 hereto (the “Bidding
Procedures Order”), (a) approving bidding procedures (the “Bidding Procedures”), to be
used for the sale (the “Sale”) of substantially all of the Debtor’s assets and related

personal property (the “Purchased Assets”),¹ and the proposed Asset Purchase Agreement (the “Purchase Agreement”) in conjunction therewith, (b) scheduling the bid deadline, auction date, and sale hearing and approving the form and manner of notice thereof, (c) approving procedures to fix cure amounts related to the assumption, sale and assignment of certain executory contracts and unexpired leases and approving notice thereof, and

- (2) following a subsequent hearing (the “Sale Hearing”), entry of an order (the “Sale Order”) approving (a) the sale of the Purchased Assets under the Purchase Agreement to the prevailing bidder (the “Prevailing Bidder”) to be determined at the Auction, free and clear of liens, claims and interests, except for Assumed Liabilities and Permitted Encumbrances, (b) the Purchase Agreement and the obligations incurred by the Debtor and the Prevailing Bidder thereunder, (c) the assumption, sale and assignment to the Prevailing Bidder, of certain contracts, and (d) granting related relief.

In support of the Motion, the Debtor respectfully states as follows:

I. JURISDICTION & VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested in this Motion are 11 U.S.C. §§ 105(a), 363(b), 363(f), 363(k), 363(m), 365, 503 and 507, Federal Rules of Bankruptcy

¹ Any capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures.

Procedure (the “Bankruptcy Rules”) 2002, 6004, 6006 and 9014, and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

II. BACKGROUND

1. On May 22, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee, examiner or committee of creditors has been appointed in this case.

3. The factual background concerning the Debtor’s history, assets and operations, and events leading up to the bankruptcy filing is contained in the Declaration of Michael C. Culver Under Local Rule 1007-2 in Connection with Chapter 11 Filing and in Support of Certain “First Day” Motions (“Culver Declaration”) (ECF No. 3), which is fully incorporated herein by reference.

4. The Debtor was founded in 1976 by Skip Barber to teach motor racing. The Debtor continues to operate a motor vehicle racing school catering to individuals, corporate groups, aspiring competitors and race car drivers through its training and racing schools, race series, and corporate events.

5. The Debtor filed this chapter 11 case so that it could continue to operate while pursuing a sale of its assets. The Debtor intends to reorganize by selling its business as a going concern through an auction process under the supervision of the Bankruptcy Court.

6. The Debtor is presently managed by Michael C. Culver who is the majority membership interest holder of the Debtor. The Debtor employs approximately 20 people.

7. The history and background of the sale process is set forth in the Declaration of Michael. C. Culver filed in connection with this Motion.

8. Despite the Debtor's robust marketing process, to date, none of the interested potential bidders has come forward to serve as a stalking horse for the Sale process. So, in the interests of time, and in order to maintain maximum flexibility with respect to the Sale, the Debtor has opted to push forward with the auction process. The Debtor believes that, once bid deadlines and procedures are in place, interested parties will commit and that a competitive bidding process will result.²

9. The Sale of the Purchased Assets contemplated herein is subject to a competitive Auction process that will assure that the maximum value for the Purchased Assets will be realized for the Debtor's estate and its creditors. Accordingly, the Debtor has filed this Motion seeking the approval of the Bidding Procedures and, following a subsequent hearing (i.e., the Sale Hearing), approval of the Sale of the Purchased Assets.

III. RELIEF REQUESTED

10. This Motion seeks relief in two parts. First, the Motion seeks approval of various procedures relating to the proposed sale and the scheduling of a second hearing. Second, the Motion seeks approval of the proposed sale and related transactions following the conclusion of the second hearing.

A. Bidding Procedures & Purchase Agreement

11. The hearing to seek approval of the order approving the Bidding Procedures is intended to, among other things, establish the form and manner of notice of the Sale and establish the Bidding Procedures by which parties may participate in the Auction. A copy of the

² Under the Bid Procedures, the Debtor reserves the right to select a stalking horse purchaser, with bid protections not to exceed a break-up fee of 3%, in the event that the Debtor believes that it is in the best interest of the estate to offer such protections and People's Bank, its senior secured lender consents to such bid protections.

proposed Bidding Procedures the Debtor seeks to have approved is set forth in Exhibit A to the Bidding Procedures Order, which is attached hereto as Exhibit 1.

12. The proposed Sale to the Prevailing Bidder shall be under the Purchase Agreement, which will be filed by the Debtor with the Court in advance of the Bidding Procedures Hearing and attached to the Bidding Procedures Order as Exhibit B, will set forth the terms and conditions Sale transaction shall be consummated, and the form that Potential Bidders will use to submit Qualified Bids marked to show any changes in such bidder's proposed bid. Accordingly, utilizing the proposed Purchase Agreement will provide a uniform basis for Potential Bidders to bid and the Debtor to analyze Qualified Bids.

B. Proposed Notice Procedures

13. The Debtor will cause to be served, within five (5) business days after issuance of the Bidding Procedures Order, by first-class mail, postage prepaid, (i) notice of the Bid Deadline, Auction, and Sale Hearing substantially in the form annexed to the Bidding Procedures Order as Exhibit C (the "Notice of Bid Deadline, Auction, and Sale Hearing"), (ii) the Bidding Procedures Order including the Bidding Procedures attached thereto and (iii) the Motion (the Notice of Bid Deadline, Auction and Sale Hearing, this Order and the Bidding Procedures, the Motion, collectively, the "Sale Package"), upon: (a) all potential buyers previously identified or solicited by the Debtor and any additional parties who have previously expressed an interest in potentially acquiring the Purchased Assets, (b) all other potentially interested parties identified by the Debtor or their professionals; (c) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), (d) each non-Debtor counter-party to the Debtor's executory contracts and unexpired leases (collectively, the "Contracts"), (e) all parties in interest who have requested notice in the Case under Bankruptcy Rule 2002, (f) all parties who are known to

possess or assert a lien, claim, encumbrance or interest in or upon any of the Purchased Assets, including but not limited to People's United Bank, N.A. ("Peoples") and CMS Mezzanine Debt Subpartnership ("CMS"), (g) counsel for the Official Committee of Unsecured Creditors, if one is appointed, (h) the Internal Revenue Service, (i) the Attorney General for the State of New York, Attorney General for the State of Georgia and the Attorney General for the State of Delaware, (j) the United States Attorney's office, and (k) all applicable federal, state and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested in the Motion. Due to the size and complexity of the Case, the Debtor's known creditors (other than if included in (a) – (k)) will receive only the Notice of Bid Deadline, Auction and Sale Hearing.

14. In addition, the Debtor seeks approval of the following procedures with respect to the assumption and assignment of Contracts:

A. The Debtor shall send notice within five (5) business days of the date of the issuance of the Bidding Procedures Order substantially in the form annexed to the Bidding Procedures Order as Exhibit D (the "Notice of Assumption and Assignment") to all non-Debtor counter-parties to the Contracts. The Notice of Assumption and Assignment shall set forth (i) that such Contract may be assumed by the Debtor and assigned to the Prevailing Bidder under the Bidding Procedures and (ii) the Cure Amount (as defined in the Notice of Assumption and Assignment) associated with the assumption and assignment of such Contract. Upon receipt of any Qualified Bid submitted by a Qualified Bidder, the Debtor shall promptly determine whether a Notice of Assumption and Assignment needs to be given to any additional non-Debtor parties to Contracts, which are listed on any schedule to such Prevailing Bidder's version of the Purchase

Agreement to be assumed and assigned to such Qualified Bidder (the “Assigned Contracts”), and shall mail, or otherwise serve by overnight courier service or other prompt method of service, within three (3) business days of receipt of such Qualified Bid, such additional Notices of Assumption and Assignment as may be required. A counterparty to a Contract which later receives a notice that a Qualified Bidder has designated that Contract for assumption and assignment may object as set forth in subparagraphs B. and E., below.

B. All objections to the assumption, sale and assignment of any Assigned Contract or to any Cure Amount (each, an “Assumption and/or Cure Objection”) must be filed with the Court and served upon the Objection Notice Parties (defined below) so as to be actually received no later than the Sale Objection Deadline. All Assumption and/or Cure Objections must state with specificity the nature of such objection and may be heard by the Court at the Sale Hearing or such other date and time as the Debtor may schedule with the Court.

C. If an objection timely filed and served in accordance with sub-paragraph B. above challenges a Cure Amount, such objection must set forth the amount of cure being claimed by the objecting party (the “Claimed Cure Amount”) with appropriate documentation in support thereof. Upon receipt of a timely filed and served objection to a Cure Amount, the Prevailing Bidder shall include in the Post-Closing Cure Reserve Amount an amount equal to the Claimed Cure Amount, which amount may be released and paid to such counterparty by the Debtor after the Cure Amount is fixed by the Court or agreed upon by the Debtor and the objecting party as the Claimed Cure Amount. So long as the Claimed Cure Amount shall have been set aside in the Escrow Account, the

Debtor shall be authorized, without further delay, to assume, sell and assign the Assigned Contract that is the subject of such Claimed Cure Amount objection to the Prevailing Bidder.

D. If no objection to the Cure Amount or the proposed assumption, sale and assignment in respect of an Assigned Contract is timely filed and served: (i) the Debtor may assume, sell and assign to the Prevailing Bidder such Assigned Contracts (ii) the Cure Amount set forth in the Notice of Assumption and Assignment shall be binding upon the respective non-Debtor party to the Assigned Contract for all purposes in these Cases, and (iii) the respective non-Debtor party shall be forever barred from objecting to the assumption, sale and assignment of the relevant Assigned Contract and/or Cure Amount, and from asserting against the Debtor or the Prevailing Bidder any right of setoff, condition to assignment and/or any additional cure or other amount with respect to such Assigned Contract.

E. However, due to the timing and nature of the Sale process set forth in the Bidding Procedures and the Bidding Procedures Order, non-Debtor parties to Assigned Contracts may raise objections to adequate assurance of future performance under the Assigned Contracts at the Sale Hearing.

F. The effective date of any assumption, sale and assignment of any Assigned Contract shall be the Closing (as defined in the Purchase Agreement). Accordingly, any Cure Amounts to be paid under any Assigned Contract shall be paid in accordance with the Purchase Agreement of the Prevailing Bidder upon or as soon as reasonably practicable after the Closing Date or as soon thereafter as the Cure Amount is

fixed by the Court or agreed upon by the Debtor, the Prevailing Bidder and the objecting party.

15. To be considered by the Court, any objections to either (x) the Sale of the Purchased Assets to the Prevailing Bidder or to the Purchase Agreement submitted by the Prevailing Bidder or (y) the assumption and assignment of contracts or the proposed cure amount shall (a) be in writing, (b) conform to the Bankruptcy Rules and the Local Rules, (c) set forth the name of the objecting party, the nature and amount of any claims or interest held or asserted against the Debtor's estate or its properties, the basis for the objection and the specific grounds therefor and (d) be filed with the Court and served on the following (collectively, the "Objection Notice Parties"): (i) the Office of the United States Trustee, 74 Chapel Street, Suite 200, Albany, NY 12207, attn: Alicia M. Leonhard, Esq.; (ii) counsel to People's Bank, Updike, Kelly & Spellacy, P.C., 100 Pearl Street, Hartford, CT 06103, attn: Edward Pontacoloni, Esq., (iii) counsel to CMS, Drinker Biddle & Reath LLP, 321 Great Oaks Blvd., Albany, NY 12203 attn: Stacy A. Lutkus, Esq., (iv) Debtor's counsel, Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, 333 Earle Ovington Boulevard, Uniondale, NY 11553, attn: Gerard R. Luckman, Esq., (v) counsel for the Official Committee of Unsecured Creditors, if one is appointed, and (vi) counsel for the Prevailing Bidder.

16. The Debtor requests that any party failing to timely file and serve an objection on the Objection Notice Parties shall be barred from asserting an objection to the Motion, the Sale to the Prevailing Bidder (including any objection to the Debtor's ability to transfer the Purchased Assets free and clear of all liens, claims, encumbrances and interests ("Liabilities") (other than any Liabilities assumed under the Purchase Agreement submitted by the Prevailing Bidder) the

proposed Cure Amount and the assumption, sale and assignment of any Assigned Contract to the Prevailing Bidder.

C. Approval of Sale

17. The Debtor requests that at the conclusion of the Sale Hearing, that the Court enter the Sale Order approving the proposed sale of the Purchased Assets, free and clear of Liabilities (except for Liabilities assumed by the Prevailing Bidder) in accordance with the terms and conditions contained in the Purchase Agreement to the Prevailing Bidder, authorizing the assumption and assignment of certain executory contracts and unexpired leases in accordance with the Purchase Agreement, and granting such other relief as is necessary to effectuate the transactions contemplated by the Purchase Agreement.

18. The Debtor also requests that the Court waive the fourteen (14) day stay that otherwise may be applicable under Bankruptcy Rules 6004(h) and 6006(d), so that each of the Bidding Procedures Order and the Sale Order is effective immediately upon entry.

IV. BASIS FOR RELIEF REQUESTED

19. In accordance with Bankruptcy Rule 6004, sales of property outside the ordinary course of business may be by private sale or public auction. The Debtor has determined that a sale of the Purchased Assets, which will be the result of a process in which parties may make qualifying bids and participate in an open auction, will enable the Debtor to obtain the most consideration possible for the Debtor's assets, for the benefit of all parties in interest. The proposed Bidding Procedures will facilitate that objective.

A. The Proposed Bidding Procedures and Proposed Purchase Agreement are Reasonable and Appropriate

20. Courts have made clear that a trustee or debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. *See, e.g., In re Integrated Resources, Inc.*, 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992). The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *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."); *Integrated Resources*, 147 B.R. at 659 (same); *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988) (same). In that regard, 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 sales. *Integrated Resources*, 147 B.R. at 659.

21. The proposed Bidding Procedures will allow the Debtor to consider Qualified Bids for the Purchased Assets and, if the Debtor receives such Qualified Bids, to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially able bidders who demonstrate the ability to close a transaction. This will increase the likelihood that the Debtor will receive the greatest possible consideration for the Purchased Assets. The Bidding Procedures also set forth a schedule for achieving these objectives in an expeditious matter, balancing the Debtor's desire to maximize recovery for the benefit of the Debtor's estate, with the need to move quickly to preserve the value of the Debtor's business as a going concern. Moreover, the proposed Purchase Agreement will also promote these objectives by providing a uniform basis for Potential Bidders to bid and the Debtor to analyze Qualified Bids.

22. For these reasons, the Debtor requests that the Court authorize the Bidding Procedures and the proposed Purchase Agreement.

B. The Sale of Assets Pursuant to the Purchase Agreement is Authorized by Section 363(b) of the Bankruptcy Code

23. Section 363(b)(1) of the Bankruptcy Code provides that a 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). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts require that such use, sale or lease be based upon a debtor’s sound business judgment of the debtor. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983).

24. The business judgment rule shields a trustee or debtor’s management from judicial second-guessing. *See 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”). Once a debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *Integrated Resources*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

25. The prompt sale of the Purchased Assets the best opportunity to maximize the value for the Debtor’s estate. Pursuant to the Purchase Agreement that will be submitted by the Prevailing Bidder, the Prevailing Bidder will provide substantial consideration to the Debtor’s

estates. Namely, the consideration to be paid by the Prevailing Bidder for the Purchased Assets. The proposed Purchase Agreement will provide for payment of the Purchase Price by the Prevailing Bidder plus payment of other obligations, most importantly, Cure Amounts for any Assigned Contracts (thereby reducing claims against the Debtor's estate). Accordingly, the value to be obtained for the Debtor's estate through this process is significant and should bring about a meaningful result for the Debtor's creditors. The Debtor submits that the proposed Sale will satisfy the business judgment test.

26. In addition, based on the Debtor's marketing efforts prior to the Petition Date and the Debtor's and its professionals' marketing efforts since the Petition Date, the Debtor submits that the consideration to be paid by the Prevailing Bidder under the Purchase Agreement with such bidder will be fair and reasonable. Accordingly, as a result of the Auction process it will be clear that the consideration being paid by the Prevailing Bidder is the best available.

27. For all of these reasons, the Debtor has determined that the best if not only viable opportunity to maximize value for the Debtor's estate is to sell the Purchased Assets as set forth in this Motion. Accordingly, it is a valid exercise of the Debtor's business judgment to seek approval of the Bidding Procedures and the Sale.

C. Approval of Sale Free and Clear of All Liens, Claims, Interests, Encumbrances & Liabilities

28. The Debtor respectfully submits that it is appropriate to sell the Purchased Assets free and clear of Liabilities (except for Liabilities assumed by the Prevailing Bidder) pursuant to section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances or interests attaching to the net sale proceeds of the Purchased Assets to the extent applicable. Section

363(f) of the Bankruptcy Code authorizes a trustee or debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

- A. applicable nonbankruptcy law permits sale of such property free and clear of such interests;
- 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.

See 11 U.S.C. § 363(f). This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

29. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Purchased Assets “free and clear” of liens and interests. *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, *12 (Bankr. S.D.N.Y. Mar. 6, 1992) (“Section 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 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 section 363(f) of the Bankruptcy Code is met).

30. The Debtor is aware of multiple lienholders and parties that have asserted a lien on the Debtor's assets, including, most significantly, the liens and security interests of the People's and CMS. The Debtor believes that for any known or unknown lienholders that exist, one or more of the tests of section 363(f) will be satisfied with respect to the transfer of the Purchased Assets pursuant to the Purchase Agreement submitted by the Prevailing Bidder. In particular, any and all lienholders will be adequately protected by having their liens against the Debtor or the estate, attach to the cash proceeds of the Purchased Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force and effect that such creditor had prior to the sale, subject to any claims and defenses the Debtor and the Debtor's estate may possess with respect thereto. Accordingly, section 363(f) of the Bankruptcy Code authorizes the transfer and conveyance of the Purchased Assets free and clear of any such Liabilities.

D. The Purchased Assets Should be Sold Free and Clear of Successor Liability

31. Under the Purchase Agreement, the Prevailing Bidder will be assuming only those Liabilities expressly assumed and set forth therein. The Prevailing Bidder, therefore, should not be liable for any of the Debtor's liabilities in connection with the sale of the Purchased Assets as a successor to the Debtor's business or otherwise, unless expressly assumed.

32. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 of the Bankruptcy Code sale takes free from successor liability resulting from pre-existing claims. *See In re Chrysler LLC*, 576 F.3d 108, 126 (2d Cir. 2009), *cert. granted, judgment vacated sub nom. Indiana State Police Pension Trust v. Chrysler LLC*, 558 U.S. 1087, 130 S. Ct. 1015, 175 L. Ed. 2d 614 (2009), and *vacated sub nom. In re Chrysler, LLC*, 592 F.3d 370 (2d Cir. 2010) (sale authorized free and clear of products liability claims); *but see In Matter*

of Motors Liquidation Co., 829 F.3d 135 (2d Cir. 2016), *cert. denied sub nom. Gen. Motors LLC v. Elliott*, No. 16-764, 2017 WL 1427591 (U.S. Apr. 24, 2017) (creditors with ignition switch claims were entitled to notice by direct mail or some equivalent, not mere publication notice); *see also Ninth Ave. Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor's employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D. R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes).

33. The purpose of an order purporting to authorize the transfer of assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the Prevailing Bidder arising from the Debtor's pre-Sale conduct. Under section 363(f) of the Bankruptcy Code, the Prevailing Bidder is entitled to know that the Purchased Assets are not infected with latent claims that will be asserted against the Prevailing Bidder after the proposed transaction is completed.

34. Accordingly, consistent with the above-cited case law, the order approving the sale of the Purchased Assets should state that the Prevailing Bidder is not liable as a successor under any theory of successor liability, for claims that encumber or relate to the Purchased Assets (except for Liabilities assumed by the Prevailing Bidder).

E. The Prevailing Bidder is a Good Faith Purchaser and is Entitled to the Full Protections of Section 363(m) of the Bankruptcy Code

35. The Debtor requests that the Court find that the Prevailing Bidder is entitled to the full protections of section 363(m) of the Bankruptcy Code. Courts have indicated that a party would have to show fraud or collusion between the buyer and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. *See In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997) (“Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”); *See also In re Angelika Films 57th, Inc.*, 1997 U.S. Dist. LEXIS 7463 at *19-*28 (S.D.N.Y. May 29, 1997).

36. As discussed, there is ample business justification for the proposed Sale of the Debtor’s assets, the sale and the Purchase Agreement will have been pursued in good faith, and there will have been no fraud or collusion between the Debtor, the Prevailing Bidder or any other bidder. In addition, the Purchase Agreement will be the product of extensive, arm’s length negotiations between the Debtor and the Prevailing Bidder.

37. Further, the Prevailing Bidder will have recognized that the Debtor is free to deal with any other party interested in acquiring the Purchased Assets. In fact, the Bidding Procedures and Auction process contemplated by this Motion make this point abundantly clear. At the Sale Hearing, the Debtor will be able to demonstrate that the Prevailing Bidder has also complied with the Bidding Procedures Order and agreed to subject its bid to the competitive Bidding Procedures. Additionally, all payments to be made to the Prevailing Bidder and other agreements or arrangements entered into by the Prevailing Bidder in connection with the Sale will have been disclosed. In this regard, the Debtor intends to offer evidence at the Sale Hearing

to show that such Prevailing Bidder is entitled to the protection of section 363(m) of the Bankruptcy Code.

F. The Court Should Approve the Assumption, Assignment and Sale of the Executory Contracts and Unexpired Leases Identified in the Purchase Agreement

38. Section 365(a) of the Bankruptcy Code provides that “the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” *See* 11 U.S.C. § 365(a). Although the Bankruptcy Code does not itself set forth guidelines for courts to apply in determining whether to approve the decision of a trustee or debtor in possession to assume or reject an executory contract or unexpired lease, the overwhelming majority of courts have consistently applied the well-established “business judgment” test. *See, e.g., Group of Institutional Investors v. Chicago M. St. P. & Pac. R.R.*, 318 U.S. 523, 550; 63 S. Ct. 727, 742-43 (1943); *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39-40 (3d Cir. 1989); *Robertson v. Pierce (In re Chi-Feng Huang)*, 23 B.R. 798, 800 (B.A.P. 9th Cir. 1982); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1046-47 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 43 (2d Cir. 1979); *Carey v. Mobil Oil Corp. (In re Tilco, Inc.)*, 558 F.2d 1369, 1372 (10th Cir. 1977).

39. In applying the business judgment standard, courts show great deference to the debtor’s or trustee’s decisions to assume or reject. *See, e.g., NRLB v. Bildisco & Bildisco*, 465 U.S. at 513 (1984); *In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003). A trustee or debtor in possession satisfies the “business judgment” test when it decides, in good faith, that assumption or rejection may benefit the estate. *In re Federal Mogul Global, Inc.*, 293

B.R. at 126; *In re FCX, Inc.*, 60 B.R. 405, 411 (E.D.N.C. 1986); *In re Chipwich, Inc.*, 54 B.R. 427, 430-31 (Bankr. S.D.N.Y. 1985); *Commercial Fin. Ltd. v. Hawaii Dimensions (In re Hawaii Dimensions)*, 47 B.R. 425, 427 (Bankr. D. Haw. 1985). Bankruptcy courts thus generally approve a debtor's decision to assume or reject unless there is: (i) a showing of bad faith or abuse of discretion; or (ii) a clear demonstration that assumption or rejection will not benefit the estate or creditors. *In re Federal Mogul Global, Inc.*, at 126 (D. Del. 2003) (court should approve a debtor's or trustee's decision to reject a contract unless that decision is the product of bad faith or a gross abuse of discretion); *In re FCX, Inc.*, 60 B.R. at 411; *In re Chipwich, Inc.*, 54 B.R. at 430-31.

40. Here, the Debtor will have amply demonstrated sound business judgment in entering into the Purchase Agreement with the Prevailing Bidder, which will provide for the assumption and assignment of certain Assigned Contracts. As discussed above, the Assigned Contracts will be assigned in conjunction with the sale of certain of the Debtor's assets, pursuant to a transaction that will provide significant consideration to the Debtor's estate.

41. Where any of the contracts may be in default, the Debtor must cure, or provide adequate assurance of a prompt cure, of any defaults thereunder and provide adequate assurance of future performance under the contract. 11 U.S.C. § 365(b)(1). The requirements of section 365(b)(1) of the Bankruptcy Code will be fully satisfied in this case. As set forth in the proposed procedures above, the Debtor will provide notice to the non-Debtor parties to the Contracts of the Debtor's calculation of the Cure Amounts owing thereunder, if any, and the non-Debtor parties will have an opportunity to object. Under the proposed Purchase Agreement (and the Purchase Agreement with the Prevailing Bidder), any Cure Amounts owed to non-Debtor counterparties will be paid either at closing by the Prevailing Bidder (in accordance with the Purchase

Agreement) or, to the extent that the Debtor and a Contract counterparty do not agree on the amount necessary to cure defaults prior to closing (so long as such counterparty shall have filed a written objection prior to the deadline setting forth the amount it believes is owed to cure any defaults), from an escrow account to be funded as of the Closing Date as a reserve for disputed Cure Amounts. Amounts will be released from the escrow account to the Debtor and paid to the non-Debtor counterparty when any such dispute over the cure amount is resolved, either by the Court or settlement, in accordance with any Court order or settlement, as applicable, and any excess amounts remaining in the escrow account after all cure amounts have been resolved will be released and paid back to the Prevailing Bidder.

G. Relief Under Bankruptcy Rules 6004(h) And 6006(d) Is Appropriate

42. 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). Also, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease ... is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d). The Debtors requests that any order approving the proposed Purchase Agreement (or the Bidding Procedures in connection with the sale proposed thereunder) be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

43. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should

“order otherwise” and eliminate or reduce the 14-day stay period, Collier suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Lawrence P. King, Collier on Bankruptcy, 6004.10 (16th Ed. 2011). Collier further provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to seek a stay, unless the court determines that the need to proceed sooner outweighs the interests of the objecting party. *Id.*

44. To maximize the value received for the Purchased Assets, the Debtor seek to implement the Bidding Procedures and Auction process as quickly as possible after the Bidding Procedures Hearing, as well as close the Sale as soon as possible after the Sale Hearing. Accordingly, the Debtor hereby requests that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed, reduce the stay period to the minimum amount of time needed by the objecting party to seek a stay pending appeal.

VI. NOTICE

45. The Debtor is serving this Motion in accordance with paragraph 13, above. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter the Bidding Procedures Order attached hereto as Exhibit 1 and, following the subsequent Sale Hearing, enter the Sale Order in substantially the form attached hereto as Exhibit 2, and grant such other relief as this Court deems proper and just.

Dated: Uniondale, New York
June 20, 2017

Respectfully Submitted,

Forchelli, Curto, Deegan, Schwartz,
Mineo, Cohn & Terrana, LLP
Attorneys for Debtor/
Debtor-in-Possession

By: /s/ Gerard R. Luckman
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Gerard R. Luckman
Brian J. Hufnagel

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re: Chapter 11

SKIP BARBER RACING SCHOOL LLC, Case No. 17-35871 (CGM)

Debtor.

-----X

**DECLARATION OF MICHAEL C. CULVER IN SUPPORT OF MOTION
OF THE DEBTOR FOR ORDER SCHEDULING EXPEDITED HEARING
AND SHORTENING TIME FOR NOTICE OF HEARING ON MOTION
OF THE DEBTOR FOR ORDER (I) APPROVING BIDDING
PROCEDURES; (II) SCHEDULING BID DEADLINE, AUCTION DATE
AND SALE HEARING AND APPROVING NOTICE THEREOF; AND (III)
APPROVING PROCEDURES RELATED TO ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES AND APPROVING NOTICE THEREOF**

Michael C. Culver declares pursuant to 28 U.S.C. § 1746 as follows:

BACKGROUND

1. On May 22, 2017 (the "Petition Date"), Skip Barber Racing School LLC (the "Debtor"), filed a voluntary petition for relief under chapter 11 of titl1 11, United States Code (the "Bankruptcy Code") in this Court. The Debtor is authorized to continue to operate and manage its business and property as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108.

2. I am the chairman, chief executive officer, and managing member of the Debtor. In that capacity I have first-hand knowledge of the facts set forth herein. I submit this declaration in support of (i) the Debtor's motion to schedule a hearing on bid procedures on an expedited basis and (ii) the Debtor's motion to sell substantially all of its assets through an auction process.

3. The background concerning the Debtor's history, assets and operations, and events leading up to the bankruptcy filing is contained in the Declaration of Michael C. Culver Under Local Rule 1007-2 in Connection with Chapter 11 Filing and in Support of Certain "First Day" Motions ("Culver Declaration") (ECF No. 3), which is fully incorporated herein by reference.

The Debtor's Financing and Efforts to Sell the Business

4. I became the majority interest holder of the Debtor in July 2009, and became Managing Member. At that time the Debtor's debt was owned by an adverse investor, Signature Capital (Sherman Oaks, CA).

5. In January 2011, I found two lenders to refinance the Signature Capital debt and provide capital for operations. CMS Mezzanine Debt Subpartnership ("CMS") invested \$3.5 million and on that basis, and the Debtor was able to attract People's United Bank, N.A. ("Peoples") to provide a \$1 million revolving line of credit, which was a Small Business Administration backed loan.

6. Additionally, in May 2015, I loaned \$2 million to the Debtor through a participation agreement with CMS.

7. Previously in 2013, the Debtor retained Morpheus Capital to raise additional needed funds. Morpheus found an investor that made an offer but it was decided that the proposal would not work for the company.

8. Subsequently, the Debtor retained Regions Bank as an investment banker to find capital. There was an offer from Tengram Capital Partners, LLC ("Tengram") which resulted in a letter of intent. Unfortunately, there was an error in the historical financials that yielded higher revenues than actual and Tengram LOI expired. Regions and the Debtor then decided to terminate the engagement.

9. In early 2016, Loeb Partners ("Loeb") was very interested in representing the Debtor for a capital raise. Unfortunately the Debtor could not come up with the \$50,000 retainer required by Loeb. On request of CMS, the Debtor interviewed various firms to sell control via new capital coming into the business or sell the company. Several firms were interviewed. Most were too expensive so the decision was made to retain Capital Research Partners & Co., a mid-market firm, as our investment banker.

10. In these various efforts to obtain an equity infusion, the Debtor's leveraged balance sheet inhibited new capital being invested in the Company and an outright sale was pursued.

11. Due to its operating difficulties described above, the Debtor over at least the last 18 months has engaged in extensive efforts to sell the business as a going concern, or alternatively, to obtain a new infusion of capital.

12. The Debtor has met with, spoken to, and explored the sale of the business with in excess of 50 interested parties including investment bankers, private equity

lenders, hedge funds, wealthy Skip Barber alumni/customers, track partners, vehicle manufacturers/dealers, competitors, brokers, and other potential investors.

13. Despite extensive negotiations, the Debtor has been unable to secure a buyer outside of a bankruptcy process. Accordingly in the interests of time, and in order to maintain maximum flexibility with respect to the Sale, the Debtor has opted to push forward with an auction process through this bankruptcy case.

14. The Debtor believes that, once bid deadlines and procedures are in place, interested parties will commit and that a competitive bidding process will result. Indeed, the Debtor has expressions of interest from at least one potential bidder at an initial price acceptable to its senior secured creditor.

The Need for an Expedited Sale Process

15. The Debtor filed a voluntary petition under chapter 11 on May 22, 2017 so that it could continue to operate while pursuing a sale of its assets. The Debtor always knew that a prompt sale was required because significant capital is needed to sustain operations including: (i) sustaining current operations including track rent and employee wages, (ii) booking future dates and paying track deposits so that seats can be sold for future events, and (iii) maintaining and increasing the size of the Debtor's vehicle fleet to continue events and to operate cash flow positive.

16. Due to the uncertainties with the bankruptcy process, and the expected sale/change of ownership, the Debtor's ability to book tracks and sell seats for future events has been below expected levels. Additionally, the Debtor has faced operational difficulties post-petition that further require an auction as soon as possible. In particular, customers have processed "chargebacks" (in effect cancellations/refunds) post-petition

that have impaired the Debtor's cash flow. Although the Debtor has always had a "no refund" policy, and has won every chargeback dispute both prior to and during the bankruptcy, it can take up to 120 days to contest these cancellations. The cut in income on a daily basis has impaired the ability to continue to run events, forcing additional cancellations/rescheduling of events which have had a ripple effect on operations.

17. However, I believe the Debtor has significant value as a going concern. With fresh equity from a new purchaser, the Debtor, under new ownership post-sale, will continue to operate and should return to profitability.

18. Accordingly, the Debtor proposes the following sale schedule:

Bid Procedures Hearing:	June 23, 2017 (or such other date as is available from the Court)
General Bid Deadline:	July 18, 2017 at 5 p.m. (prevailing ET)
Auction:	July 20, 2017 at 10:00 a.m. (prevailing ET)
Sale Hearing:	July 24, 2017 at 11:00 a.m. (prevailing ET)
Sale Closing:	on or before July 31, 2017

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 20, 2017

/s/ Michael C. Culver
Michael C. Culver

EXHIBIT 1

BIDDING PROCEDURES ORDER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SKIP BARBER RACING SCHOOL LLC,

Chapter 11

Case No. 17-35871 (CGM)

Debtor.

-----x

**ORDER (I) APPROVING BIDDING PROCEDURES; (II) SCHEDULING
BID DEADLINE, AUCTION DATE AND SALE HEARING AND
APPROVING NOTICE THEREOF; AND (III) APPROVING
PROCEDURES RELATED TO ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND
APPROVING NOTICE THEREOF**

Upon the Motion (the "Motion") of Skip Barber Racing School LLC, debtor and debtor in possession (the "Debtor"), dated June 20, 2017, under sections 105, 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rule 6004-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Rules") and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for the entry of: (i) this initial order (the "Bidding Procedure Order"), (a) approving the bidding procedures (the "Bidding Procedures"), substantially similar to the procedures attached to this Bidding Procedures Order as Exhibit A, (b) approving the form of notice of the Bidding Procedures, Auction, Sale Hearing and Sale, (c) approval of procedures for the assumption by the Debtors and assignment to the Prevailing Bidder of Assigned Contracts, including notice of proposed cure amounts; (d) and granting other related relief; and (ii) the entry of a second order (the "Sale Order"), (a) authorizing the Debtor to enter into the Proposed Asset Purchase Agreement (the "Purchase Agreement") and approving the sale to the bidder for the Purchased Assets set forth in the Purchase Agreement (the "Sale"), (b) the assumption and

assignment to the Prevailing Bidder of the Assigned Contracts and (c) granting other relief related thereto; the Court having reviewed the Motion and scheduled a hearing (the “Procedures Hearing”) on the Motion, and the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion and Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interest of the Debtor’s estate and its creditors; and good and sufficient cause having been shown; it is hereby ORDERED, as follows:

1. The Motion (as it pertains to approval of the matters set forth herein) is granted. Any objections to this Bidding Procedures Order that have not been previously resolved or withdrawn are overruled on the merits. This Bidding Procedures Order shall be valid, binding and enforceable on all parties in interest and fully effective immediately upon entry.

2. The Debtors shall cause to be served, within five (5) business days after issuance of this Bidding Procedures Order, by first-class mail, postage prepaid, or by electronic mail (i) notice of the Bid Deadline, Auction and Sale Hearing substantially in the form annexed hereto as Exhibit C (the “Notice of Bid Deadline, Auction, and Sale Hearing”), (ii) this Bidding Procedures Order, including the Bidding Procedures attached hereto as Exhibit A, and (iii) the Motion (the Notice of Bid Deadline, Auction, and Sale Hearing, this Bidding Procedures Order and the Bidding Procedures, the Motion, collectively, the “Sale Package”), upon: (a) all potential buyers previously identified or solicited by the Debtor and any additional parties who have previously expressed an interest in potentially acquiring the Purchased Assets, (b) all other potentially interested parties identified by the Debtor or its professionals; (c) the Office of the

United States Trustee for the Southern District of New York (the “U.S. Trustee”), (d) each non-Debtor counter-party to the Debtor’s executory contracts and unexpired leases (collectively, the “Contracts”), (e) all parties in interest who have requested notice in the Cases under Bankruptcy Rule 2002, (f) all parties who are known to possess or assert a lien, claim, encumbrance or interest in or upon any of the Purchased Assets, including but not limited to the People’s United Bank, N.A. (“People’s”) and CMS Mezzanine Debt Subpartnership (“CMS”) and counsel to People’s and counsel to CMS, (g) counsel for the Official Committee of Unsecured Creditors (the “Creditors’ Committee”), if one is appointed, (h) the Internal Revenue Service, (i) the Attorney General for the State of New York, Attorney General for the State of Georgia and the Attorney General for the State of Delaware, (j) the United States Attorney’s office, (k) all applicable federal, state and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested in the Motion. Due to the size and complexity of the Case, the Debtors’ known creditors (other than if included in (a) - (j)) will receive only the Notice of Bid Deadline, Auction and Sale Hearing. Such notice shall be sufficient and appropriate notice of the Sale with respect to known interested parties.

BIDDING PROCEDURES AND AUCTION

3. The Bidding Procedures, annexed hereto as Exhibit A, are incorporated herein by reference and are approved and shall govern the qualification of bidders, the submission, content and qualification of all Qualified Bids and bidding procedures relating to the Auction of the Purchased Assets. The Bidding Procedures are necessary and reasonable under the circumstances of this case, are intended and are likely to preserve and enhance the value of the Debtors’ estates and are approved in their entirety.

4. The proposed Purchase Agreement, annexed hereto as Exhibit B, is incorporated herein by reference and is approved as the form of agreement to be used by bidders in conjunction with the Bidding Procedures.

5. Subject to the terms and conditions set forth in the Bidding Procedures, the Debtor is hereby authorized and directed to (a) solicit any person to become a Potential Bidder, (b) permit Potential Bidders to conduct a due diligence investigation in connection with the Sale, (c) in consultation with People's, CMS, and the Creditors' Committee (if one is appointed), determine whether a bid timely submitted by a Potential Bidder is a Qualified Bid, (d) if one or more Qualified Bids is submitted, conduct an Auction, (e) at the conclusion of such Auction, in consultation with People's, CMS, and the Creditors' Committee (if one is appointed), designate the highest or otherwise best offer as the Prevailing Bidder and the next highest or otherwise best offer and the Back-Up Bidder, and (f) in consultation with People's, CMS and the Creditors' Committee (if one is appointed), seek Bankruptcy Court approval at the Sale Hearing of the Prevailing Bid submitted by the Prevailing Bidder and the Back-Up Bid submitted by the Back-Up Bidder.

SALE HEARING AND OBJECTIONS TO THE SALE

6. The Court shall hold the Sale Hearing on **July _____, 2016 at _____M.** (Eastern Time), or such other date and time as may be convenient to the Court, or as may be announced at the Sale Hearing without further notice.

7. To be considered by the Court, any objections to the Sale of the Purchased Assets to the Prevailing Bidder under the Purchase Agreement shall (a) be in writing, (b) conform to the Bankruptcy Rules and the Local Rules, (c) set forth the name of the objecting party, the nature and amount of any claims or interest held or asserted against the Debtor's estate or its properties,

the basis for the objection and the specific grounds therefor and (d) be filed with the with the Clerk of the Bankruptcy Court with a courtesy copy delivered to the chambers of the Honorable Cecilia G. Morris, Chief United States Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York at 355 Main Street, Poughkeepsie, NY 12601 and served on the following (collectively, the “Objection Notice Parties”): (i) the Office of the United States Trustee, 74 Chapel Street, Suite 200, Albany, NY 12207, attn.: Alicia M. Leonhard, Esq.; (ii) Edward Pontacoloni, Esq., counsel to People’s Bank, Updike, Kelly & Spellacy, P.C., 100 Pearl Street, Hartford, CT 06103, (iii) counsel to CMS, Drinker Biddle & Reath LLP, 321 Great Oaks Blvd., Albany, NY 12203 attn: Stacy A. Lutkus, Esq., and (iv) Debtor’s counsel, Gerard R. Luckman, Esq., Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, located at 333 Earle Ovington Boulevard, Uniondale, NY 11553, (v) counsel for the Official Committee of Unsecured Creditors, if one is appointed, and (vi) counsel for the Prevailing Bidder, so as to be received no later than ____ .M. (Eastern time) on _____ 2017 (the “Sale Objection Deadline”).

8. Any entity that fails to file and serve its objection before the expiration of the Sale Objection Deadline and otherwise in accordance with this Bidding Procedures Order shall be prohibited from asserting at the Sale Hearing or at any time thereafter any objection to the Motion or the consummation and performance of the Sale as contemplated by the terms of the Purchase Agreement submitted by the Prevailing Bidder, including the transfer of the Purchased Assets free and clear of all Liabilities (other than Liabilities assumed by the Prevailing Bidder).

9. If the Debtor receives more than one Qualified Bid from Qualified Bidders the Debtor shall conduct an Auction commencing at 10:00 A.M. (Eastern Time) on July 20, 2017 at Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, 333 Earle Ovington Blvd., Suite 1010, Uniondale, New York 11553 or such other time or place as the Debtor, at least two (2)

business days before the Auction, notifies all Qualified Bidders who have submitted Qualified Bids. The Debtor shall conduct an open Auction in accordance with the Bidding Procedures on the record, recorded by a court reporter. Each Qualified Bidder participating at the Auction shall confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

ASSUMPTION AND ASSIGNMENT OF CONTRACTS

10. The Debtor shall send notice within five (5) business days of the date of the entry of this Bidding Procedures Order substantially in the form annexed hereto as Exhibit D (the “Notice of Assumption and Assignment”) to all non-Debtor counter-parties to the Contracts. The Notice of Assumption and Assignment shall set forth (i) that such Contract may be assumed by the Debtor and assigned to the Prevailing Bidder under the Bidding Procedures and (ii) the Cure Amount (as defined in the Notice of Assumption and Assignment) associated with the assumption and assignment of such Contract. Upon receipt of any Qualified Bid submitted by a Qualified Bidder, the Debtor shall promptly determine whether a Notice of Assumption and Assignment needs to be given to any additional non-Debtor parties to Contracts, which are listed on any schedule to such Prevailing Bidder's version of the Purchase Agreement to be assumed and assigned to such Qualified Bidder (the “Assumed Contracts”), and shall mail, or otherwise serve by overnight courier service or other prompt method of service, within three (3) business days of receipt of such Qualified Bid, such additional Notices of Assumption and Assignment as may be required. A counterparty to a Contract which later receives a notice that a Qualified Bidder has designated that Contract for assumption and assignment may object as set forth in paragraphs 11 and 14, below.

11. All objections to the assumption, sale and assignment of any Assigned Contract or to any Cure Amount (each, an “Assumption and/or Cure Objection”) must be filed with the

Court and served upon the Objection Notice Parties so as to be actually received no later than the Sale Objection Deadline. All Assumption and/or Cure Objections must state with specificity the nature of such objection and may be heard by the Court at the Sale Hearing or such other date and time as the Debtor may schedule with the Court.

12. If an objection is timely filed and served in accordance with paragraph 11 above challenges a Cure Amount, such objection must set forth the amount of cure being claimed by the objecting party (the "Claimed Cure Amount") with appropriate documentation in support thereof. Upon receipt of a timely filed and served objection to a Cure Amount, the Prevailing Bidder shall include in the Post-Closing Cure Reserve Amount an amount equal to the Claimed Cure Amount, which amount may be released and paid to such counterparty by the Debtor after the Cure Amount is fixed by the Court or agreed upon by the Debtor and the objecting party as the Claimed Cure Amount. So long as the Claimed Cure Amount shall have been set aside in the Escrow Account, the Debtor shall be authorized, without further delay, to assume, sell and assign the Assigned Contract that is the subject of such Claimed Cure Amount objection to the Prevailing Bidder.

13. If no objection to the Cure Amount or the proposed assumption, sale and assignment in respect of an Assigned Contract is timely filed and served: (i) the Debtor may assume, sell and assign to the Prevailing Bidder such Assigned Contracts (ii) the Cure Amount set forth in the Notice of Assumption and Assignment shall be binding upon the respective non-Debtor party to the Assigned Contract for all purposes in this Case, and (iii) the respective non-Debtor party shall be forever barred from objecting to the assumption, sale and assignment of the relevant Assigned Contract and/or Cure Amount, and from asserting against the Debtor or

the Prevailing Bidder any right of setoff, condition to assignment and/or any additional cure or other amount with respect to such Assigned Contract.

14. Due to the timing of the Sale process set forth in the Bidding Procedures and this Bidding Procedures Order, non-Debtor parties to Assigned Contracts may raise objections to adequate assurance of future performance under the Assigned Contracts at the Sale Hearing.

15. The effective date of any assumption, sale and assignment of any Assigned Contract shall be the Closing (as defined in the Purchase Agreement). Accordingly, any Cure Amounts to be paid under any Assigned Contract shall be paid in accordance with the Purchase Agreement of the Prevailing Bidder upon or as soon as reasonably practicable after the Closing Date or as soon thereafter as the Cure Amount is fixed by the Court or agreed upon by the Debtor, the Prevailing Bidder and the objecting party.

ADDITIONAL PROVISIONS

16. The proposed Purchase Agreement and any exhibits and schedules thereto (collectively, the "Transaction Documents") may be amended, modified or supplemented, or the provisions thereof waived, in accordance with the terms of the proposed Purchase Agreement and/or as required to implement the Bidding Procedures and Sale process without further order of this Court or notice thereof to any party, other than Potential Bidders or Qualified Bidders.

17. The failure to include or reference in this Bidding Procedures Order any particular provisions of the Bidding Procedures shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Bidding Procedures be authorized and approved in their entirety.

18. This Court shall retain exclusive jurisdiction to interpret, construe, enforce and implement the terms of this Bidding Procedures Order and grant any remedy, at law or equity, as the circumstances require.

19. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Bidding Procedures Order shall not be stayed for fourteen (14) days after the entry hereof and shall be effective and enforceable immediately upon signature hereof.

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

EXHIBIT A

BIDDING PROCEDURES

BIDDING PROCEDURES

These bidding procedures (the “Bidding Procedures”) set forth the terms by which Skip Barber Racing School LLC, (the “Debtor” or the “Seller”), Debtor and debtor in possession may effectuate a sale (the “Sale”) of substantially all of its assets (the “Purchased Assets”) subject to the terms and conditions and in accordance with the process and procedures set forth herein. These Bidding Procedures were approved by an order (the “Bidding Procedures Order”) entered on June __, 2017, by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) in the following proceeding: In re Skip Barber Racing School LLC, Case No. 17-35871 (CGM).

I. Important Dates, Contact Information, and Terms

The following dates and deadlines apply to the proposed Sale.

General Bid Deadline:	July 18, 2017 at 5 p.m. (prevailing ET)
Auction:	July 20, 2017 at 10:00 a.m. (prevailing ET)
Sale Hearing:	July 24, 2017 at 11:00 a.m. (prevailing ET)
Sale Closing:	on or before July 31, 2017

The key dates in the sale process may be extended by the Debtor in consultation with the Consultation Parties (defined below) or by the Bankruptcy Court for cause.

Parties interested in the Assets may contact the Debtor through their attorneys by contacting Gerard R. Luckman, Esq, Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, 333 Earle Ovington Blvd., Suite 1010, Uniondale, NY 11553, telephone: (516) 248-1700, email: gluckman@forchellilaw.com.

“Consultation Parties” means, collectively, the Debtor and its professionals and advisors, People’s United Bank, N.A. (“People’s”) and its professionals and advisors, CMS Mezzanine Debt Subpartnership (“CMS”) and its professionals and advisors, and the Official Committee of Unsecured Creditors, if one is appointed in this case (the “Creditors Committee”), and its professionals and advisors.

II. Due Diligence and Participation

To participate in the sale process as a potential purchaser, conduct due diligence upon the Assets and be entitled to submit a bid for consideration hereunder, a party (each an “Interested Party”) must deliver the following to the Debtor:

- (A) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor;

- (B) a statement and other factual support demonstrating to the Debtor's reasonable satisfaction, after consultation with the Consultation Parties, that the Interested Party has a *bona fide* interest in purchasing the Assets or some subset of the Assets; and
- (C) sufficient information, as determined by the Debtor in consultation with the Consultation Parties, to confirm that the Interested Party has the financial wherewithal and any required corporate, legal or other authorization necessary to close the Sale, including, but not limited to, a form of financial disclosure acceptable to the Debtor in their discretion.

Upon satisfactory receipt of the items above, as determined by the Debtor in consultation with the Consultation Parties, then such Interested Party will be deemed a "Potential Bidder," and the Debtor will deliver to such Potential Bidder: (A) an information package containing information and financial data with respect to the Assets (the "Information Package"); and (B) access information for the Debtor's confidential electronic data room concerning the Assets (the "Data Room"). The identity of each Potential Bidder may be disclosed to any other Potential Bidders. The Debtor will deliver a list of all current Potential Bidders to the Consultation Parties within one (1) business day after each Potential Bidder is added.

Until the business day immediately preceding the Bid Deadline, the Debtor will provide any Potential Bidder such due diligence access or additional information as the Debtor, in consultation with the Consultation Parties, determine to be reasonably requested and appropriate under the circumstances. In the event that any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, the Debtor will provide such materials to all Potential Bidders to the extent practicable, as well as to the Consultation Parties. The Debtor retains the right to establish, maintain and make available a "virtual data room" containing due diligence material in written form, access to which shall be made available to all Potential Bidders.

Unless otherwise determined by the Debtor, in consultation with the Consultation Parties, the availability of additional due diligence to a Potential Bidder will cease if (A) the Potential Bidder does not become a Qualified Bidder or (B) the bidding process is terminated in accordance with its terms. Except as provided above with respect to the Information Package and access to the Data Room, neither the Debtor nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Purchased Assets to any party

A party may participate in the bidding process by submitting a bid to purchase less than all of the Purchased Assets. In addition, parties may participate in the bidding process by submitted a joint bid to purchase all, or less than all, of the Purchased Assets.

III. General Bid Deadline

A Potential Bidder that desires to make a bid shall deliver written and electronic copies of its bid in both PDF and Word format to the Notice Parties listed below so as to be received no later than 5:00 p.m. (prevailing Eastern Time) on July 18, 2017 (the "General Bid Deadline").

The “Notice Parties” means each of the following: (A) the Debtor c/o Michael C. Culver, 5489 Technology Parkway, Braselton, GA 30517, telephone: (203) 434-7711, mculver@skipbarber.com; (B) counsel to the Debtor, Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, 333 Earle Ovington Blvd., Ste. 1010, Uniondale, New York 11553, attn: Gerard R. Luckman, gluckman@forchellilw.com and Brian J. Hufnagel, bhufnagel@forchellilaw.com; (C) counsel to People’s, Updike, Kelly & Spellacy, P.C., 100 Pearl Street, P.O. Box 231277, Hartford, CT 06123-1277, attn: Kevin J. McEleney, kmceleney@uks.com and Ed Pontacoloni, epontacoloni@uks.com, (D) counsel to CMS, Drinker Biddle & Reath LLP, 321 Great Oaks Blvd., Albany, NY 12203 attn: Stacy A. Lutkus, stacy.lutkus@dbr.com, (D) counsel to the Creditors’ Committee if one is appointed.

IV. Qualified Bids

Assuming that there is an Auction, a Potential Bidder will not be entitled to participate in any Auction or otherwise purchase the Assets, unless it shall have submitted a Qualified Bid by the General Bid Deadline in accordance with these Bidding Procedures that includes all of the following items (the “Bid Package”):

- (A) An executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor;
- (B) The true identity of the party submitting the bid and details regarding any other parties participating in the bid;
- (C) A written acknowledgment by the Qualified Bidder and each participant in such bid that it/they agrees to all of the terms set forth in these Bidding Procedures;
- (D) Written evidence that the Qualified Bidder has obtained authorization and approval from its board of directors (or comparable governing body) with respect to the submission of its bid and acceptance of the terms set forth in these Bidding Procedures, or representation that no such authorization or approval is required; provided, however, that neither People’s nor CMS, or their designated affiliate(s) shall be required to provide such information;
- (E) Audited (if in existence) or unaudited financial statements and/or other written evidence of a financing commitment or other evidence, satisfactory to the Debtor, in consultation with the Consultation Parties, of the financial ability to close under its asset purchase agreement within the deadline described above; provided, however, that neither Peoples nor CMS, or their designated affiliate(s) shall be required to provide such information;
- (F) A signed Purchase Agreement, in form and substance substantially similar to the form Asset Purchase Agreement attached hereto as Exhibit 1 and incorporated herein by reference, which shall contain a list of the unexpired leases and executory contracts to be assumed and assigned to the bidder;

- (G) The Potential Bidder will pay any and all cure costs associated with the assumption of any unexpired leases or executory contracts;
- (H) The bid is formal, binding and unconditional (except for those conditions expressly set forth in the applicable APA, including expressly stating any conditions relating to the assumption and assignment of contracts and leases) and is not subject to any due diligence or financing contingency and is irrevocable until the earlier of 48 hours after the Sale of the Purchased Assets has closed or 30 days after the conclusion of the Sale Hearing;
- (I) Does not entitle the Potential Bidder to any breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and includes a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the Assets;
- (J) A Good Faith Deposit (defined below); and
- (K) The Qualified Bid is received by the Bid Deadline.

With the exception of Peoples and CMS, or their designated affiliate(s), a Potential Bidder must deposit with counsel to the Debtor as escrow agent (the "Deposit Agent") a cash deposit equal to the greater of (i) \$100,000 or (ii) five (5%) percent of the cash purchase price set forth in the Purchase Agreement submitted by the Potential Bidder (any such deposit, a "Good Faith Deposit"). The Good Faith Deposit must be made by wire transfer and will be held by the Deposit Agent.

If a bid is received and, in the Debtor's judgment, after consultation with the Consultation Parties, it is not clear whether the bid is a Qualified Bid, the Debtor and the Consultation Parties may consult with the Potential Bidder and seek additional information in an effort to establish whether or not a bid is a Qualified Bid.

The Debtor shall provide to the Consultation Parties copies of each Bid Package received. A Bid Package received from a Potential Bidder that is determined by the Debtor, after consultation with the Consultation Parties, to meet the above requirements (or any modification to the above requirements made after consultation with the Consultation Parties) will be considered a "Qualified Bid," and each Potential Bidder that submits a Qualified Bid will be considered a "Qualified Bidder." For purposes of the Auction, People's and CMS, or their designated affiliate(s), will each be deemed a Qualified Bidder without the requirement of any deposit but subject in all respects to the Credit Bidding section set forth below.

A Qualified Bid and bids at the Auction may be valued by the Debtor, after consultation with the Consultation Parties, based upon factors such as: (A) the purported amount of the Qualified Bid, including the bid's impact on all constituents of the Debtor, any benefit to the Debtor's bankruptcy estate from any assumption of liabilities, the waiver of liabilities through a Credit Bid, and an analysis of other non-cash consideration; (B) the value to be provided to the

Debtor under the Qualified Bid, including the net economic effect upon the Debtor's estate; (C) contingencies with respect to the Sale and the ability to close the proposed Sale without delay, and any incremental costs to the Debtor in closing delays; (D) the ability to obtain any and all necessary governmental approvals for the proposed transaction; and (E) any other factors the Debtor, after consultation with the Consultation Parties, may deem relevant.

Except with respect to People's and CMS, or their designated affiliate(s), the Debtor, in consultation with the Consultation Parties, reserves the right to impose additional terms and conditions with respect to all Qualified Bidders.

V. Credit Bid

For purposes of these Bidding Procedures and the Auction, People's and CMS, or their designated affiliate(s), shall each be deemed a Qualified Bidder, and shall have the right to submit a credit bid up to the full amount of its respective allowed secured claim for the Purchased Assets at the Auction ("Credit Bid"). As a condition to Credit Bidding any portion of its secured claim, People's and CMS, or their designated affiliate(s), shall include an offer to fund, in cash, at Closing, the Carve-out (as that term is defined in the Interim Cash Collateral Order, or a later final order approving the use of cash collateral) and any reasonable, allowed estate professional fees and expenses incurred and unpaid as of Closing. Notwithstanding the foregoing, nothing contained herein shall be deemed consent by the Creditors' Committee, if any, of People's, CMS, or their designated affiliate(s)' ability to Credit Bid its secured claim and all such rights to object to Credit Bidding are hereby preserved. In the event there is an objection to the rights of People's or CMS to credit bid up to the full amount of its respective secured claim, such dispute shall be subject to the determination of the Bankruptcy Court.

VI. Baseline Bid and Stalking Horse Selection

The Debtor, after consultation with the Consultation Parties, will select what they determine to be the highest or best Qualified Bid (or collection of Qualified Bids) for the Purchased Assets (the "Baseline Bid") to serve as the starting point at the Auction. As soon as practicable, the Debtor will identify the Baseline Bid and provide to all Qualified Bidders copies of all Qualified Bids (with such distribution permissible by electronic means, including posting to the Data Room).

The Debtor reserves the right to negotiate any offer made to purchase the Assets, and to determine whether it is beneficial to the estate and its creditors to enter into a stalking-horse agreement for the Assets prior to the Auction, provided that the Debtor will not concede to a break-up fee in excess of 3.0% of the stalking-horse bid without further order of the Court, and provided further that the first Bid following the Baseline Bid, if the stalking horse bidder submits the baseline Bid, shall equal or exceed the amount of the stalking-horse purchaser's bid plus the break-up fee.

VII. Auction

If more than one Qualified Bid is received by the General Bid Deadline, then the Debtor will conduct an auction (the "Auction") to take place at 10:00 a.m. (prevailing ET) on July 20, 2018, at Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, 333 Earle Ovington Blvd., Suite 1010, Uniondale, New York 11552, or such other time as the Debtor, after consultation with the Consultation Parties, may notify Qualified Bidders who have submitted Qualified Bids.

Only Qualified Bidders and their designated agents will be eligible to participate at the Auction, subject to such modifications and limitations as the Debtor may impose in good faith, after consultation with the Consultation Parties. Professionals and/or other representatives of the Consultation Parties and a representative from the Office of the United States Trustee for the Southern District of New York will be able to attend and observe the Auction.

At the Auction, participants will be permitted to increase their bids. Bidding on the Assets will start at the purchase price and terms proposed in the Baseline Bid, and will proceed thereafter in increments of \$20,000 (the "Minimum Overbid").

The Debtor may adopt rules, after consultation with the Consultation Parties, for the Auction at any time that the Debtor determines to be appropriate to promote the goals of the bidding process and are not inconsistent with these Bidding Procedures, including auctioning subsets of the Purchased Assets first but making any "winning bid" on a subset of the Purchased Assets contingent upon the outcome of the Auction of all of the Purchased Assets. The Debtor, in consultation with the Consultation Parties, is permitted, but not required, to ascribe a liquidation value to certain assets to assist the Debtor in comparing bids for a subset of the Purchased Assets against bids for all of the Purchased Assets, provided that any ascribed liquidation value shall not be determinative of the actual value of such Purchased Assets. If the Debtor believes that such value would be overly speculative under the circumstances, however, they may decline to assign any such liquidation values. Any rules developed by the Debtor will provide that all bids will be made and received in one room, on an open basis, and all other Qualified Bidders will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder will be fully disclosed to all other Qualified Bidders and that all material terms of each Qualified Bid submitted in response to the Baseline Bid or to any successive bids made at the Auction will be fully disclosed to all other Qualified Bidders throughout the entire Auction, and each Qualified Bidder will be permitted to take what the Debtor and the Consultation Parties determine to be an appropriate amount of time to respond to the previous bid at the Auction.

The Debtor reserves the right to and may, after consultation with the Consultation Parties, reject at any time before entry of the relevant Sale Order (as defined below) any bid that, in the Debtor's judgment, is: (A) inadequate or insufficient; (B) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures or the terms and conditions of the Sale; or (C) contrary to the best interests of the Debtor and the estate. In doing so, the Debtor may take into account the factors set forth above regarding the contents of a Qualified Bid.

Prior to the conclusion of the Auction, the Debtor, after consultation with the Consultation Parties, will: (A) review and evaluate each bid made at the Auction on the basis of

financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale; (B) identify the highest or otherwise best offer or collection of offers (the “Prevailing Bid”); (C) determine which Qualified Bid is the Prevailing Bid and which is the next highest or otherwise best bid (the “Back-Up Bid”) for the Purchased Assets; and (D) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the Prevailing Bidder, the amount and other material terms of the Prevailing Bid and the identity of the party that submitted the Back-Up Bid (the “Back-Up Bidder”). At the Sale Hearing, the Debtor will present the Prevailing Bid and the Back-Up Bid to the Bankruptcy Court for approval.

No additional bids may be submitted or considered after the conclusion of the Auction.

EACH BID - INCLUDING BIDS CONTAINED IN THE BID PACKAGE SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE QUALIFIED BIDDER(S) FROM THE TIME THE BID IS SUBMITTED UNTIL THE EARLIER OF 48 HOURS AFTER THE SALE OF THE ASSETS HAS CLOSED OR 30 DAYS AFTER THE CONCLUSION OF THE SALE HEARING.

VIII. Acceptance of Qualified Bids

The Debtor presently intends to consummate the Sale with the Prevailing Bidder, or if the Prevailing Bidder cannot or refuses to consummate the Sale because of the breach or failure on the part of the Prevailing Bidder, then with the Back-Up Bidder. However, the Debtor’s presentation of the Prevailing Bid and the Back-Up Bid to the Bankruptcy Court for approval does not constitute the Debtor’s acceptance of such bid. The Debtor will be deemed to have accepted the Prevailing Bid or the Back-Up Bid, as applicable, only when such bid has been approved by the Sale Order.

If for any reason the Prevailing Bidder fails to consummate the purchase of the Purchased Assets, or any subset thereof, the Back-Up Bidder may be deemed by the Debtor (after consultation with the Consultation Parties) to be the highest or best bid, and the Debtor and the Back-Up Bidder will thereafter effect the sale of the Purchased Assets to the Back-Up Bidder as soon as is commercially reasonable. If such failure to consummate the purchase is the result of a breach by the Prevailing Bidder, the Debtor shall have the right to retain the Good Faith Deposit until required to return it by an order of the Bankruptcy Court and shall reserve the right to seek all available damages from the Prevailing Bidder, including, but not limited to, with respect to the Good Faith Deposit.

IX. The Sale Hearing

On or before July 24, 2017, subject to any continuance or postponement by the Bankruptcy Court, the Bankruptcy Court shall conduct a hearing (the “Sale Hearing”) to determine whether to approve the Sale of Purchased Assets free and clear of all liens, claims, interests, encumbrances and liabilities, including the assumption and assignment of certain executory contracts and unexpired leases as described in the applicable Purchase Agreement.

At the Sale Hearing, the Debtor will seek Bankruptcy Court Approval of the Sale of the Purchased Assets to the Prevailing Bidder and the Back-Up Bidder. In the event the Prevailing Bidder cannot or refuses to consummate the Sale because of the breach or failure on the part of the Prevailing Bidder, the Debtor will be permitted to close with the Back-Up Bidder without further order of the Bankruptcy Court. The Debtor's presentation to the Bankruptcy Court for approval of these particular bids does not constitute acceptance of any bids. The Debtor has accepted a bid only when the Bankruptcy Court, following the Sale Hearing, has approved the Sale and entered an order authorizing and approving the Sale, which shall be in form and substance acceptable to the Debtor and the Prevailing Bidder or the Back-Up Bidder, as applicable (the "Sale Order"). After consultation with the Consultation Parties, the Sale Hearing may be adjourned or rescheduled without notice or with limited and shortened notice to parties other than the Consultation Parties, including by (A) an announcement of such adjournment at the Sale Hearing or at the Auction or (8) the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Sale Hearing.

X. Terms of Sale: "As Is, Where Is"

Any Sale shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtor, their agents or the Debtor's chapter 11 estate, whether written or verbal, whether express, implied or by operation of law, except and solely to the extent expressly set forth in the Purchase Agreement of the Prevailing Bidder or the Back-Up Bidder, as applicable. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets that are the subject of the Auction prior to making its bid, that it has relied solely upon its own independent review and investigation in making its bid. Except as otherwise provided in the Purchase Agreement of the Prevailing Bidder or the Back-Up Bidder, as applicable, all of the Debtor's right, title and interest in the Purchased Assets shall be sold free and clear of liens, claims, interests, encumbrances and liabilities as proposed in the form of Sale Order (collectively, "Liabilities"), with any Liabilities to attach to the proceeds of the Sale as permitted by law and provided in the proposed form of Sale Order.

XI. Closing

Except to the extent of any contrary provision in the Purchase Agreement of the Prevailing Bidder or the Back-Up Bidder, as applicable, the closing (the "Closing") shall occur on or before July 31, 2017, subject to the right of the Debtor and the Prevailing Bidder or the Back-Up Bidder, as applicable, to extend such date consistent with such party's Purchase Agreement and these Bidding Procedures.

XII. General

The Debtor may, after consultation with the Consultation Parties, amend these Bidding Procedures or the bidding process at any time and from time to time in any manner that they determine will best promote the goals of the Bidding Procedures, including extending or modifying any of the dates described herein. The Debtor shall promptly notify parties in interest and Potential Bidders of any such modifications. No bidder has any rights against the Debtor,

the estate, or any of the Debtor's other professionals by virtue of any modification of these Bidding Procedures, or by virtue of having or not having its bid accepted by the Debtor or approved by the Bankruptcy Court. To participate in the Auction, each Qualified Bidder will sign an acknowledgment of no rights or claims against the Debtor, the estate, or the Debtor's professionals for the foregoing.

XIII. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders will be held in escrow by the Deposit Agent and while held in escrow will not become property of the Debtor's bankruptcy estate unless released from escrow pursuant to terms of the applicable escrow agreement or pursuant to further order of the Bankruptcy Court. The Deposit Agent will retain the Good Faith Deposits of the Prevailing Bidder and the Back-Up Bidder until the closing of the Sale unless otherwise ordered by the Bankruptcy Court. The Good Faith Deposits of the other Qualified Bidders will be returned within four business days of the entry of the Sale Order. At the closing of the Sale contemplated by the Prevailing Bid, the Prevailing Bidder will be entitled to a credit for the amount of its Good Faith Deposit. The Good Faith Deposit of the Back-Up Bidder will be released by the Debtor four (4) business days after the Closing of the Sale.

XIV. Consultation with Consultation Parties

In the event that any Consultation Party or an affiliate of any of the foregoing, submits a Qualified Bid, including without limitation, People's or CMS or their designated affiliate(s), then such party shall cease to be a Consultation Party.

For the avoidance of doubt, if a member of the Creditors' Committee submits a Qualified Bid, the Creditors' Committee will continue to have Consultation Rights; provided, however, that the Creditors' Committee shall exclude such member from any discussions or deliberations regarding the sale of the Purchased Assets and shall not provide any information regarding the sale of the Purchased Assets to such member.

XV. No Modification to Cash Collateral Order(s)

Nothing herein is intended to or shall be deemed to vary, modify, alter or supersede in any way the terms of the Interim Cash Collateral Order entered by the Bankruptcy Court (or any final order approving the use of cash collateral, if entered by the Bankruptcy Court).

XVI. Reservation of Rights

In consultation with the Consultation Parties, the Debtor reserves the right to amend or modify the proposed Bidding Procedures, including without limitation, the proposed Bid Deadline, Auction Date, and Sale Hearing date, in connection with the conditions or requirements of any Qualified Bidder (as defined in the Bidding Procedures) who may wish to be a "stalking horse bidder" for the Purchased Assets.

EXHIBIT B

ASSET PURCHASE AGREEMENT

(to be filed prior to hearing on Bidding Procedures)

EXHIBIT C

NOTICE OF BID DEADLINE, AUCTION, AND SALE HEARING

Forchelli, Curto, Deegan,
Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553
Tel. No. (516) 248-1700
Fax No. (516) 248-1729
Gerard R. Luckman
Brian J. Hufnagel

Auction: July 20, 2017 @ 10:00 a.m. ET
@ Forchelli, Curto, Deegan, Schwartz
Mineo & Terrana, LLP
Sale Hearing
Hearing Date: July 24, 2017 @ 11:00 a.m. ET
Obj. Date: July __, 2017 @ 5:00 p.m. ET

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

SKIP BARBER RACING SCHOOL LLC,

Case No. 17-35871 (CGM)

Debtor.
-----X

**NOTICE OF BID DEADLINE, AUCTION AND SALE HEARING FOR
THE APPROVAL OF THE SALE OF SUBSTANTIALLY ALL OF THE
ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS, CLAIMS
AND INTERESTS**

PLEASE TAKE NOTICE, that on June __, 2017 the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order (the "Bidding Procedures Order") approving certain bidding and auction procedures (the "Bidding Procedures") and related schedules and deadlines for the sale by Skip Barber Racing School LLC (the "Debtor"), the debtor and debtor-in-possession in the above captioned case (the "Case"), of substantially all of the assets and personal property (the "Purchased Assets") of the Debtor.

PLEASE TAKE FURTHER NOTICE that all interested parties are invited to seek to become a Qualified Bidder and submit a Qualified Bid to purchase the Purchased Assets in accordance with the terms of the Bidding Procedures Order and the Bidding Procedures. Only Qualified Bidders who have submitted Qualified Bids shall be eligible to participate in the Auction. *All interested potential bidders should carefully read the Bidding Procedures, a copy*

of which is attached hereto as Exhibit A. All interested potential bidders should contact counsel for the Debtors for a copy of the proposed Purchase Agreement referenced in the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that the following dates and times shall apply with respect to the Bidding Procedures:

General Bid Deadline:	July 18, 2017 at 5 p.m. (prevailing ET)
Auction:	July 20, 2017 at 10:00 a.m. (prevailing ET)
Sale Hearing:	July 24, 2017 at 11:00 a.m. (prevailing ET)
Sale Closing:	on or before July 31, 2017

PLEASE TAKE FURTHER NOTICE THAT PURSUANT TO 11 U.S.C. §§ 363(b) AND (f), THE PROPOSED SALE IS FREE AND CLEAR OF LIABILITIES (OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES) OF OTHERS, AND ALL SUCH LIABILITIES SHALL ATTACH TO THE PROCEEDS OF THE SALE WITH THE SAME VALIDITY AND PRIORITY THAT EXISTED IMMEDIATELY PRIOR TO THE SALE.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court shall hold a sale hearing (the "Sale Hearing") on July 24, 2017 at 11:00 a.m. (Eastern Time), or such other date and time as may be convenient to the Bankruptcy Court, or as may be announced at the Sale Hearing without further notice. At the Sale Hearing, the Debtor intends to request that the Bankruptcy Court enter an order approving, among other things, the Prevailing Bid for the Purchased Assets, and under that order the Debtor will transfer the Purchased Assets to the Prevailing Bidder free and clear of Liabilities (other than Liabilities assumed by the Prevailing Bidder), including Assigned Contracts. At the Sale Hearing, the Bankruptcy Court may enter

such orders as it deems appropriate under applicable law and as required by the circumstances and equities of the Case.

PLEASE TAKE FURTHER NOTICE that objections to the sale of the Purchased Assets to the Prevailing Bidder or to the Purchase Agreement submitted by the Prevailing Bidder shall (a) be in writing, (b) conform to the Bankruptcy Rules and the Local Rules, (c) set forth the name of the objecting party, the nature and amount of any claims or interest held or asserted against the Debtor's estate or its properties, the basis for the objection and the specific grounds therefor and (d) be filed with the with the Clerk of the Bankruptcy Court with a courtesy copy delivered to the chambers of the Honorable Cecilia G. Morris, Chief United States Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York at 355 Main Street, Poughkeepsie, NY 12601 and served on the following (collectively, the "Objection Notice Parties"): (i) the Office of the United States Trustee, 74 Chapel Street, Suite 200, Albany, NY 12207, attn.: Alicia M. Leonhard, Esq.; (ii) Edward Pontacoloni, Esq., counsel to People's Bank, Updike, Kelly & Spellacy, P.C., 100 Pearl Street, Hartford, CT 06103, (iii) counsel to CMS, Drinker Biddle & Reath LLP, 321 Great Oaks Blvd., Albany, NY 12203 attn: Stacy A. Lutkus, Esq., and (iv) Debtor's counsel, Gerard R. Luckman, Esq., Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, located at 333 Earle Ovington Boulevard, Uniondale, NY 11553, (v) counsel for the Official Committee of Unsecured Creditors, if one is appointed, and (vi) counsel for the Prevailing Bidder, so as to be received no later than ____ .M. (Eastern time) on ____ _ 2017 (the "Sale Objection Deadline").

PLEASE TAKE FURTHER NOTICE THAT any entity that fails to file and serve an objection before the Sale Objection Deadline shall be prohibited from asserting at the Sale Hearing or at any time thereafter any objection to the Motion for approval of the Sale

of the Purchased Assets or the consummation and performance of the Sale as contemplated by the terms of the Purchase Agreement submitted by a Prevailing Bidder, including the transfer of the Purchased Assets free and clear of all Liabilities (other than Liabilities assumed by the Prevailing Bidder).

PLEASE TAKE FURTHER NOTICE THAT if a copy of the Motion to approve the Sale of the Purchased Assets is not enclosed, you may obtain a copy by contacting counsel for the Debtor at the address set forth above.

PLEASE TAKE FURTHER NOTICE THAT this Notice is subject to the full terms and conditions of the Bidding Procedures and the Bidding Procedures Order, which shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER NOTICE OR HEARING.

Dated: Uniondale, New York
June __, 2017

Forchelli, Curto, Deegan,
Schwartz, Mineo & Terrana, LLP
Attorneys for the Debtor

By: s/ Gerard R. Luckman
Gerard R. Luckman
333 Earle Ovington Blvd, Suite 1010
Uniondale, New York 11553
Tel. No. (516) 248-1700
Fax No. (516) 248-1729
gluckman@forchellilaw.com

EXHIBIT D

NOTICE OF ASSUMPTION AND ASSIGNMENT

Forchelli, Curto, Deegan,
Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553
Tel. No. (516) 248-1700
Fax No. (516) 248-1729
Gerard R. Luckman
Brian J. Hufnagel

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

SKIP BARBER RACING SCHOOL LLC,

Case No. 17-35871 (CGM)

Debtor.
-----X

**NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE, that on June __, 2017 the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”) approving certain bidding and auction procedures (the “Bidding Procedures”) and related schedules and deadlines for the sale by Skip Barber Racing School LLC (the “Debtor”), the debtor and debtor-in-possession in the above captioned case (the “Case”), of substantially all of the assets and personal property (the “Purchased Assets”) of the Debtor and the procedure for the fixing of cure amounts (the “Cure Amounts”) related to the Debtor’s assumption, sale and assignment of certain executory contracts and unexpired leases (the “Assigned Contracts”) as set forth herein. .

PLEASE TAKE FURTHER NOTICE that the Debtor will assume, sell and assign the Assigned Contracts to the Prevailing Bidder under the terms of the Asset Purchase Agreement, as submitted by the Prevailing Bidder after the Auction (as amended, together with the exhibits

and schedules thereto, the “Purchase Agreement”), as determined under the Bidding Procedures Order. In addition, under the Purchase Agreement, Qualified Bidders, and ultimately, the Prevailing Bidder may designate any contract listed on Schedule A1 (which is attached hereto) (the “Pending Contracts”) to be included as an Assigned Contract at any time through and after the Auction in accordance with the Bidding Procedures and the Purchase Agreement. Accordingly, any Qualified Bidder, and ultimately the Prevailing Bidder, may elect to assume or not assume any of the Pending Contracts at any time through and after the Auction, if one is held, in accordance with the Bidding Procedures and the Purchase Agreement, in which case the contents of the Assigned Contracts list contained herein and Pending Contract list in Schedule A1 will change. A supplemental and revised notice in the same form as this Notice will be filed with the Bankruptcy Court and served on all Contract parties and shall identify any such changes. Any Pending Contract that becomes an Assigned Contract will be assumed, sold and assigned to the Prevailing Bidder under the terms and conditions of the Purchase Agreement submitted by the Prevailing Bidder.

PLEASE TAKE FURTHER NOTICE that the Debtor believes that any and all defaults (other than the commencement of these Cases) and actual pecuniary losses in respect of particular Assigned Contracts will be cured by the payment of the respective Cure Amount set forth in the following chart and, in respect of any Pending Contract that is designated as an Assigned Contract, by payment of the respective Cure Amount set forth on Schedule A1.

CHART OF CURE AMOUNTS FOR ASSIGNED CONTRACTS

Contract Counter-Party	Contract Description	Cure Amount
<i>None at this time</i>	<i>None at this time</i>	

PLEASE TAKE FURTHER NOTICE that the following procedures shall apply with respect to the Assigned Contracts:

1. Except as otherwise provided herein, all objections to the assumption, sale and assignment of any Assigned Contract, including on grounds of lack of adequate assurance of future performance by the Prevailing Bidder, or to the Cure Amount set forth above in respect of any such Contract must be in writing and state with specificity the nature of such objection and the cure amount being claimed by the objecting party with appropriate documentation in support thereof (an “Assumption and/or Cure Objection”). A counter-party to an Assigned Contract that the Prevailing Bidder has designated for assumption and assignment which later receives notice that a rival Qualified Bidder has also designated such Contract for assumption and assignment may also object to that rival Qualified Bidder’s assumption of the Assigned Contract, in accordance with paragraph 2 below.

2. If an objection is timely filed, served and challenges a Cure Amount set forth above in this Notice or on Schedule A1 (for any Pending Contract that is subsequently designated as an Assigned Contract), such objection must set forth the amount of cure being claimed by the objecting party (the “Claimed Cure Amount”) with appropriate documentation in support thereof. Upon receipt of a timely filed and served objection to a Cure Amount, the Prevailing Bidder shall include in the Post-Closing Cure Reserve Amount an amount equal to the Claimed Cure Amount, which amount may be released and paid to such counterparty by the Debtor after the Cure Amount is fixed by the Bankruptcy Court or agreed upon by the Debtor and the objecting party as the Claimed Cure Amount. So long as the Claimed Cure Amount shall have been set aside in the Escrow Account, the Debtor shall be authorized, without further delay, to assume, sell and assign the Assigned Contract that is the subject of such Claimed Cure Amount objection to the Prevailing Bidder. Due to the timing and nature of the Sale process set forth in the Bidding Procedures and the Bidding Procedures Order, non-Debtor counterparties to Assigned Contracts may raise objections to adequate assurance of future performance under the Assigned Contracts at the Sale Hearing.

3. An Assumption and/or Cure Objection must be filed with the Bankruptcy Court and served so as to be actually received by the parties below no later than the deadlines established in paragraph 1 above. An Assumption and/or Cure Objection must be served on the following “Objection Notice Parties”: (i) the Office of the United States Trustee, 74 Chapel Street, Suite 200, Albany, NY 12207, attn.: Alicia M. Leonhard, Esq.; (ii) Edward Pontacoloni, Esq., counsel to People’s Bank, Updike, Kelly & Spellacy, P.C., 100 Pearl Street, Hartford, CT 06103, (iii) counsel to CMS, Drinker Biddle & Reath LLP, 321 Great Oaks Blvd., Albany, NY 12203 attn: Stacy A. Lutkus, Esq., and (iv) Debtor’s counsel, Gerard R. Luckman, Esq., Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, located at 333 Earle Ovington Boulevard, Uniondale, NY 11553, (v) counsel for the Official Committee of Unsecured Creditors, if one is appointed, and (vi) counsel for the Prevailing Bidder. An Assumption and/or Cure Objection may be heard by the Bankruptcy Court at the hearing on July 24, 2017 at 11:00 a.m. (Eastern Time),

(the “Sale Hearing”) or such other date and time as the Debtor may schedule with the Bankruptcy Court.

4. If no objection to the Cure Amount or the proposed assumption, sale and assignment in respect of an Assigned Contract is timely filed and served: (i) the Debtor may assume, sell and assign to the Prevailing Bidder such Assigned Contracts (ii) the Cure Amount set forth in the Notice of Assumption and Assignment shall be binding upon the respective non-Debtor party to the Assigned Contract for all purposes in this Case, and (iii) the respective non-Debtor party shall be forever barred from objecting to the assumption, sale and assignment of the relevant Assigned Contract and/or Cure Amount, and from asserting against the Debtor or the Prevailing Bidder any right of setoff, condition to assignment and/or any additional cure or other amount with respect to such Assigned Contract.

5. The effective date of any assumption, sale and assignment of any Assigned Contract shall be the Closing (as defined in the Purchase Agreement). Accordingly, any Cure Amounts to be paid under any Assigned Contract shall be paid in accordance with the Purchase Agreement of the Prevailing Bidder upon or as soon as reasonably practicable after the Closing Date or as soon thereafter as the Cure Amount is fixed by the Bankruptcy Court or agreed upon by the Debtor, the Prevailing Bidder and the objecting party.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE
BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED WITHOUT
FURTHER NOTICE OR HEARING.**

Dated: Uniondale, New York
June __, 2017

Forchelli, Curto, Deegan,
Schwartz, Mineo & Terrana, LLP
Attorneys for the Debtor

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EXHIBIT 2

SALE ORDER

(to be filed in advance of Sale Hearing)