

## **TERMS AND CONDITIONS OF SALE**

**WHEREAS**, on June 19, 2017, the debtors, Ben-Khe Trans. Corp., Bimbo Taxi, LLC, Dragonfly Taxi Inc., Ducati Taxi Inc., Golden Beetle Taxi LLC, Grasshopper Taxi LLC, Jolly Hacking Corp., Moth Taxi LLC, Pelican Taxi LLC, Privet Taxi Inc., Purlie Trans Corp., Saint Tropez Taxi Inc., Split Transit Inc., Trestomos Trans Inc., Wasp Taxi LLC and Wolverine Taxi LLC (the “Wolverine Taxi Debtors”), along with four other entities, each filed separate voluntary petitions for relief pursuant to Chapter 11 of Title 11 of Bankruptcy Code in the NJ Bankruptcy Court;

**WHEREAS**, by Order dated June 28, 2017, the cases were jointly administered under Wolverine Taxi LLC [Case No. 17-22500 (VFP)];

**WHEREAS**, on August 29, 2017, the debtors, Antibes Taxi Inc., Beaujolais Taxi Inc., Belvedere Taxi LLC, Betmar Express Cab Corp., Black Label Taxi LLC, Body Slam Taxi LLC, Bordeaux Taxi Inc., Calvados Taxi LLC, Chamonix Taxi LLC, Chardonnay Taxi Inc., Cognac Taxi LLC, Cuervo Taxi LLC, Filya Taxi Inc., Finlandia Taxi LLC, Frangelico Taxi LLC, Gaze Service Co. Inc., Hankuri Taxi Inc., Loire Valley Taxi LLC, Mediterranean Taxi Inc., Razor Service Corp., Sambuca Taxi LLC, Sardinia Taxi Inc., Two Hump Taxi, LLC, Wrestler Taxi LLC, and XO Taxi Inc. (collectively, the “Wrestler Taxi Debtors”) each filed separate voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, District of New Jersey (the “NJ Bankruptcy Court”);

**WHEREAS**, by Order dated September 5, 2017 [Dkt No. 24], these cases were jointly administered under Wrestler Taxi LLC [Case No. 17-27436 (VFP)];

**WHEREAS**, on August 29, 2017, the debtors, A&J Cab Corp., Almanac Hacking Corp., Avignon Taxi, LLC, Avit Trans Inc., Butterscotch Taxi LLC, Brownie Taxi LLC, Portofino Taxi Inc., Pupsik Hacking Corp., Smores Taxi LLC, Shurik Taxi Corp., and Soly Cab Corp. (“Brownie Taxi Debtors”) each filed separate voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code in the NJ Bankruptcy Court;

**WHEREAS**, by Order dated September 5, 2017, the cases were jointly administered under Brownie Taxi LLC [Case No. 17-27507 (VFP)];

**WHEREAS**, on August 30, 2017, the debtors, Barcelona Taxi Inc., Devil Dog Taxi LLC, Diamond Castle Taxi Inc., Ferco Hacking Corp., Geneva Taxi Inc., Gstaad Taxi LLC, Kabbalah Taxi Inc., Maserati Taxi Inc., Monte Carlo Taxi Inc., Provance Taxi Inc., Smirnoff Taxi Inc., Sshri Trans Corp., and Young Cab Corp. (the “Kabbalah Taxi Debtors”, along with Wolverine, Wrestler and Brownie Debtors are collectively referred to herein as the “Debtors”) each filed separate voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code in the NJ Bankruptcy Court;

**WHEREAS**, by Order dated September 5, 2017, the cases were jointly administered under Kabbalah Taxi Inc. [Case No. 17-27566 (VFP)];

**WHEREAS**, on October 30, 2017, the Debtors' cases were transferred to the United States Bankruptcy Court, Eastern District of New York (the "Bankruptcy Court");

**WHEREAS**, by Order dated January 8, 2018, the Debtors' cases were converted to ones under Chapter 7 of the Bankruptcy Code;

**WHEREAS**, by Notice of Appointment dated January 10, 2018, Gregory Messer was appointed as the interim Chapter 7 Trustee of the Debtors' estates, and has since duly qualified and is the permanent Trustee administering the Debtors' estates;

**WHEREAS**, the Debtors own medallions (collectively, the "Medallions") issued by the New York City Taxi and Limousine Commission ("TLC");

**WHEREAS**, Banco Popular North America has a first priority security interest in the Medallions owned by the Wrestler Taxi Debtors, Bank Leumi USA has a first priority security interest in the Medallions owned by the Brownie Taxi Debtors, Bethpage Federal Credit Union has a first priority security interest in the Medallions owned by the Kabbalah Taxi Debtors and Melrose Federal Credit Union or Latka LLC has a first priority security interest in the Medallions owned by the Wolverine Taxi Debtors 4 (Latka, LLC, Banco Popular North America, Bank Leumi USA, Bethpage Federal Credit Union, Melrose Credit Union, collectively, the "Participating Lenders");

**WHEREAS**, the Trustee, through his retained auctioneer Maltz Auction Inc. ("Maltz Auction"), shall conduct one or more public auctions of the Medallions as the Trustee and the Participating Lenders (the "Public Auction(s)") deem appropriate;

**WHEREAS**, the first Public Auction shall be held on **June 14, 2018 at 2:00 p.m.** at the Sheraton LaGuardia East Hotel, 135-20 39th Avenue, Flushing, New York 11354; and

**WHEREAS**, a hearing to confirm the results of each Public Auction shall be scheduled by the Bankruptcy Court, located at 271 Cadman Plaza East, Brooklyn, New York 11201, on such date and time based upon the Court availability and for the entry of an Order confirming the sale of the Medallions to the highest or best bidder(s) from the Public Auction (the "Sale Confirmation Order(s)").

**NOW, THEREFORE**, in consideration of the promises and the mutual agreements and undertakings hereinafter set forth, the Trustee and each bidder (together, the "Parties") hereby agree as follows:

1. The Trustee, through his retained professionals, shall sell the Debtors' Medallions in pools of 20 Medallions (each, a "Medallion Pool") until such time that less than 20 Medallions remain, at which time the pool shall consist of 19 Medallions (the "Final Medallion Pool").

2. The Medallion Pools shall each consist of 12 unrestricted Medallions, 3 hybrid/alternative fuel Medallions and 5 handicap Medallions.

3. The Final Medallion Pool shall consist of 15 unrestricted Medallions, 2 hybrid/alternative fuel Medallions and 2 handicap Medallions.

4. No bids for less than: a) 20 Medallions in any Medallion Pool; or b) 19 Medallions in the Final Medallion Pool will be accepted at the Public Auction unless otherwise agreed to by the Trustee and the Participating Lenders.

5. On the day of the Public Auction, each bidder must submit executed copies of the Sale Terms and the Bidder Identification and Offer Form, annexed hereto as Exhibit "1", (collectively, the "Required Bid Documents") and a deposit of \$20,000 per Medallion for an aggregate amount of no less than \$400,000 for a Medallion Pool (the "Deposit") or \$380,000 for the Final Medallion Pool, by cashier's check only made payable to "Gregory M. Messer, as Trustee". Upon submission of the Required Bid Documents and the Deposit at the Public Auction, such bidder shall be deemed a qualified bidder (the "Qualified Bidder").

6. Only Qualified Bidder(s) and the Debtors' Participating Lenders will be allowed to submit a bid at the Public Auction, subject to the terms and conditions of the March 15, 2018 Trustee Sales and Carve-Out Agreement entered into by the Trustee and the Participating Lenders (the "Trustee Sale and Carve-Out Agreement").

7. The Trustee, upon the consent of the Participating Lenders and after consultation with Maltz, shall be permitted to offer at any Public Auction additional pools of Medallions over and above the Medallion Pool.

8. If additional pools of Medallions are offered at the Public Auction(s), Qualified Bidders will be authorized to submit bids on one or more pools of Medallions.

9. Bid increments shall be at the discretion of the Trustee and the Trustee's Professionals.

10. The Qualified Bidder(s) that the Trustee, upon the consent of the Participating Lenders, determines to have made the highest or best bid(s) (the "Successful Bid") for the Medallions (the "Successful Purchaser") and the competing bidder who the Trustee, upon the consent of the Participating Lenders, determines to have made the second highest or best bid for the Medallions (the "Second Highest Bidder") must execute, and thereby agree to be bound by, these Terms and Conditions of Sale (the "Sale Terms").

11. At the conclusion of the Public Auction(s), Maltz Auction will return Deposits to all Bidders, except for the Successful Purchaser(s) and the Second Highest Bidder(s). The Deposit of the party deemed to be the Second Highest Bidder shall be returned within two (2) business days following the Successful Purchaser posting the total required 20% Deposit.

12. Should the Second Highest Bidder of a pool of Medallions also be the Successful Bidder on a separate pool of Medallions, such Second Highest Bidder shall be entitled to withdraw its second highest bid and in that case the Trustee shall select the third highest bid and the third highest bidder shall be deemed the Second Highest Bidder for that pool of Medallions.

13. Within two (2) business days from the conclusion of the Public Auction, the Successful Purchaser shall deliver to the Trustee, by certified check or wire transfer, an amount equal to 20% of its Successful Bid minus the initial Deposit, as applicable (the “Additional Deposit” and, together with the Deposit, as applicable, the “Successful Purchaser’s Deposit”).

14. The Medallions will be sold and transferred “**AS IS**”, “**WHERE IS**”, “**WITH ALL FAULTS AND DEFECTS**”, without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, and free and clear of any and all liens, claims, encumbrances, interests or adverse claims to title, of whatever kind or nature (collectively, the “Liens”). The Trustee and the Trustee’s Professionals have not made, and do not make, any representations or warranties of any kind, nature or description about the Medallions.

15. The Sale Confirmation Order shall, among other things:

- a. include authorization for the Trustee to sell and transfer the Medallions to the Successful Purchaser, and in the event, of a Successful Purchaser’s Default (as defined in paragraph 18), the Second Highest Bidder(s);
- b. provide that on the Closing Date (as defined in paragraph 17), the Successful Purchaser shall pay in full and in cash an amount equal to the Successful Bid minus the Successful Purchaser’s Deposit;
- c. provide that the Successful Purchaser is responsible for the transfer tax;
- d. provide that the transfer of the Medallions to the Successful Purchaser(s) shall be contingent only upon approval by the TLC and upon no other contingencies, and which approval the Successful Purchaser shall: i) promptly seek in good faith and at the sole cost and expense of the Successful Purchaser; and ii) advise the Trustee of within 3 days of being so-advised by the TLC;
- e. include a finding of fact that the Successful Purchaser is making its purchase of the Medallions in good faith within the meaning of Bankruptcy Code §§ 363(m) and 363(n) and that any reversal or modification on appeal of the authorization of the Sale Confirmation Order(s) shall not affect the validity of any sale of Medallions under Bankruptcy Code § 363(m); and
- f. provide that the sale and transfer of the Medallions to the Successful Purchaser is free and clear of any and all Liens pursuant to Bankruptcy Code §§ 363(b) and (f).

16. The payment of the balance of the Successful Purchase Price shall be paid in cash on the Closing Date (as defined in paragraph 17).

17. The closing (the “Closing”) of the transactions contemplated by the Sale Terms shall take place at the offices of LaMonica Herbst & Maniscalco LLP, 3305 Jerusalem Avenue,

Suite 201, Wantagh, New York 11793, or such other location as the Trustee and the Successful Purchaser may agree upon, no later than ten (10) business days after approval of the transfer of the Medallions(s) by the TLC (the “Closing Date”), **TIME BEING OF THE ESSENCE AS TO THE SUCCESSFUL PURCHASER**, although the Closing Date may be extended solely by the Trustee and upon the consent of the Participating Lenders. On the Closing Date, the Trustee shall convey the Medallions to the Successful Purchaser by delivery of a bill of sale and such other documents in order to transfer the Medallions to the Successful Purchaser (the “Transfer Documents”).

18. Provided the Sale Confirmation Order has been entered and is not subject to a stay, the Successful Purchaser is obligated to close on the sale and transfer of the Medallions on the Closing Date and, except as set forth in ¶ 25 below, there are no contingencies of any kind or nature that will permit the Successful Purchaser to cancel or avoid its obligations under these Sale Terms. **FAILURE OF THE SUCCESSFUL PURCHASER TO SUBMIT THE NECESSARY PAPERWORK AND INFORMATION IN ACCORDANCE WITH TLC RULES SECTIONS 58-43 THROUGH 58-48 TO OBTAIN TLC APPROVAL WITHIN TEN (10) BUSINESS DAYS OF THE BANKRUPTCY COURT’S ENTRY OF THE SALE CONFIRMATION ORDER FOR THE TRANSFER OF THE MEDALLIONS OR TO CLOSE FOR ANY REASON WHATSOEVER, INCLUDING THE FAILURE TO PAY THE PURCHASE PRICE ON THE CLOSING DATE AND RELATED SALE OR TRANSFER TAXES DUE (IF ANY) ON THE CLOSING DATE WILL RESULT IN THE TRUSTEE RETAINING THE SUCCESSFUL PURCHASER’S DEPOSIT AS LIQUIDATED DAMAGES AND THE TERMINATION OF THE SUCCESSFUL PURCHASER’S RIGHT TO ACQUIRE THE MEDALLIONS UNDER THESE SALE TERMS AND/OR THE SALE CONFIRMATION ORDER. THE SOLE REMEDY OF THE TRUSTEE FOR THE SUCCESSFUL PURCHASER’S FAILURE TO CLOSE SHALL BE THE RETENTION OF THE SUCCESSFUL PURCHASER’S DEPOSIT AND THE TERMINATION OF THE SUCCESSFUL PURCHASER’S RIGHT TO ACQUIRE THE MEDALLIONS UNDER THESE SALE TERMS (the “Successful Purchaser’s Default”).**

19. Notwithstanding anything contained herein, the sale and transfer of the Medallions is contingent upon the approval of the transfer of the Medallions to the Successful Purchaser by the TLC. All funds paid by the Successful Purchaser to the Trustee in accordance with these Sale Terms that are payable to the TLC shall be held by the Trustee in a segregated estate account pending TLC approval. The Successful Purchaser represents and warrants that it knows of no reason why it cannot or will not be approved as the transferee of the Medallions. The Successful Purchaser specifically represents that it has not been convicted of a white-collar crime or fraud as these may be grounds for automatic rejection by the TLC. In the event the Successful Purchaser is denied TLC approval, excluding for an above referenced reason, the Successful Purchaser may declare these Sale Terms to be null and void, at which time all funds (but without interest) held by the Trustee under these Sale Terms shall be returned to the Successful Purchaser in full, with no liability accruing to either party herein.

20. The Successful Purchaser agrees to act in good faith and make its best efforts, and shall submit all the necessary paperwork and information in accordance with TLC Rules

Sections 58-43 through 58-48 to obtain TLC Approval necessary to effectuate the transfer of the Medallions to the Successful Purchaser(s) within ten (10) business days of the Bankruptcy Court's entry of the Sale Confirmation Order and at the Successful Purchaser's sole costs and expense. The Trustee shall sign such forms and provide such information and documentation as the Successful Purchaser shall reasonably request in connection with this approval process.

21. The Trustee, in his sole and absolute discretion, may, within three (3) business days of Successful Purchaser's Default, deem the Second Highest Bidder to hold all benefits and obligations under the Terms and Conditions of Sale such that the Second Highest Bidder shall be the new Successful Purchaser (the "New Successful Purchaser(s)").

22. In the event that the Successful Purchaser fails to tender the balance of the Successful Purchase Price for the Medallions to the Trustee on the Closing Date in accordance with the Sale Confirmation Order, or fails to submit the necessary paperwork and information in accordance with TLC Rules Sections 58-43 through 58-48 to obtain TLC Approval within five (5) business days of the Bankruptcy Court's entry of the Sale Confirmation Order for the transfer of the Medallions or fails to otherwise perform any of its obligations under these Sale Terms for whatever reason, the Trustee, at his sole option, shall be authorized to sell and transfer the Medallions to the New Successful Purchaser(s) from the Public Auction, without any further notice and without giving credit for any monies forfeited by the Successful Purchaser under these Sale Terms and upon such other terms and conditions as the Trustee deems appropriate. The Trustee shall then notify in writing the New Successful Purchaser(s) of the Successful Purchaser's Default (the "New Successful Purchaser(s) Notice"). The New Successful Purchaser(s) agrees to act in good faith and make its best efforts, and shall submit all the necessary paperwork and information in accordance with TLC Rules Sections 58-43 through 58-48 to obtain TLC Approval necessary to effectuate the transfer of the Medallions to the New Successful Purchaser(s) within ten (10) business days of the New Successful Purchaser(s) Notice and at the New Successful Purchaser(s)' sole cost and expense.

23. The New Successful Purchaser(s) shall assume all obligations under these Terms of Sale, including but not limited to the obligation to immediately pay the Deposit and Additional Deposit.

24. Should the New Successful Purchaser(s) fail to close on the Medallions within such time as the Parties and the Participating Lenders may agree (but not to exceed ten (10) business days from TLC approval of the transfer), or fail to submit the necessary paperwork and information in accordance with TLC Rules Sections 58-43 through 58-48 to obtain TLC Approval within five (5) business days of the New Successful Purchaser(s) Notice, the Trustee shall be authorized to sell and transfer the Medallions to the next highest or best offeror(s) from the Public Auction without the necessity of any further notice, without giving such next highest or best offeror(s) credit for any monies forfeited under these Sale Terms, and upon such other terms and conditions that the Trustee and the Participating Lenders deems necessary and appropriate.

25. If the Trustee is unable to deliver the Medallions in accordance with these Sale Terms for any reason whatsoever, his only obligation will be to refund to the Successful

Purchaser any monies paid by the Successful Purchaser and, upon such refund, the Successful Purchaser will have no claim or recourse against the Trustee, the Trustee's professionals, the Debtors' estates, or the Participating Lenders.

26. The Qualified Bidder represents and warrants that it has full power and authority to enter into, execute and deliver these Sale Terms to the Trustee.

27. The Qualified Bidder represents and warrants that it is capable of performing its obligations under these Sale Terms and has the financial wherewithal to perform its obligations under these Sale Terms.

28. The Qualified Bidder represents and warrants that it has never been affiliated in any manner whatsoever with the Debtors, Evgeny "Gene" Freidman, or any entity in which he has any direct or indirect interest and has never held any interest in any of the Debtors.

29. The Qualified Bidder acknowledges that it had an opportunity to, or waived any right to, inspect and examine all pertinent documents with respect to the Medallions prior to entering into these Sale Terms, and that the Successful Purchaser relied solely on its review and upon its own investigation of the Medallions in entering into these Sale Terms. The Qualified Bidder is not relying upon any written or oral statements, representations, or warranties of the Trustee or the Trustee's professionals, including their respective representatives.

30. The only commission that will be paid is a commission paid to Maltz by the Debtors' estates. **EXPENSES INCURRED BY THE QUALIFIED BIDDER CONCERNING ANY DUE DILIGENCE SHALL BE THE SOLE RESPONSIBILITY OF THE QUALIFIED BIDDER AND UNDER NO CIRCUMSTANCES SHALL THE TRUSTEE, THE TRUSTEE'S PROFESSIONALS, THE DEBTORS' ESTATES, OR THE PARTICIPATING LENDERS BE RESPONSIBLE FOR, OR PAY, SUCH EXPENSES.**

31. Nothing contained in these Sale Terms is intended to supersede or alter any provisions of the Bankruptcy Code or otherwise interfere with the jurisdiction of the Bankruptcy Court. Non-material terms and conditions set forth in these Sale Terms are subject to modification as may be directed by the Trustee and/or by the Bankruptcy Court. The Trustee reserves the right to modify these Sale Terms, upon the consent of the Participating Lenders, to maintain consistency with the provisions of the Bankruptcy Code and/or Orders of the Bankruptcy Court, provided, however, those modifications shall not be of a material nature.

32. The results of the Public Auction(s) are subject to the Trustee's approval in his discretion and upon the consent of the Participating Lenders and confirmation by the Bankruptcy Court.

33. These Sale Terms represent the entire understanding between the Qualified Bidder and the Trustee related to the subject matter hereof and supersede all prior and contemporaneous understandings of the Parties whether oral or written.

34. The Qualified Bidder has read these Sale Terms and agrees to be bound by them.

35. In the event of any conflict between these Sale Terms and the Trustee Sales and Carve-Out Agreement, the Trustee Sales and Carve-Out Agreement shall control.

Dated: \_\_\_\_\_, 2018  
\_\_\_\_\_, New York

**QUALIFIED BIDDER**

\_\_\_\_\_

Name, Title

Dated: \_\_\_\_\_, 2018  
\_\_\_\_\_, New York

**Gregory M. Messer, as Chapter 7 Trustee of jointly administered estates of Wolverine Taxi, LLC *et al.*, Wrestler Taxi LLC *et al.*, Brownie Taxi LLC *et al.*, and Kabbalah Taxi Inc. *et al.***

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