

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
VOLKSWAGEN GROUP OF	:
AMERICA, INC.,	: NO.: 20 CV 1043 (AT)(SN)
	:
Plaintiff,	: <b>AMENDED COMPLAINT</b>
	:
-against-	:
	:
GPB CAPITAL HOLDINGS, LLC,	:
	:
Defendant.	:
	:
-----X	

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., (“VWoA”) brings this declaratory judgment action against GPB Capital Holdings, LLC (“GPB”) and respectfully pleads as follows:

**PARTIES**

1. VWoA is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Herndon, Virginia.
2. GPB is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in New York, New York. On February 14, 2019, David Rosenberg, signatory to the Corporate Shareholder Addendum, represented that David Gentile, a natural person, is the sole beneficial and record member of all the outstanding interest of GPB, and maintains an address at 1581 Franklin Ave., Mineola, New York 11501. (*See* Amended Compl. Ex. 6, pp. 60-61). On information and belief, David Gentile is a citizen of New York. As such, GPB is a citizen of Delaware and New York.

3. Thus, there is complete diversity between the parties.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this civil action pursuant to 28 U.S.C. § 1332. There is complete diversity between VWoA and GPB and the amount in controversy, exclusive of interest and costs, exceeds \$75,000. This litigation involves an agreement with a stated value in excess of the minimum requirements for purposes of diversity jurisdiction.

5. This Court may exercise personal jurisdiction over GPB by virtue of GPB residing in the Southern District of New York and transacting business in this district.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant GPB resides in this judicial district.

### **FACTS GIVING RISE TO THIS ACTION**

#### **A. GPB Capital Holdings, LLC History of Breach**

7. Upon information and belief, GPB Capital Holdings, LLC, along with its other similarly named “GPB” entities (collectively “GPB Group”), claimed to be an alternative asset management firm based in Mineola, New York. Based on its publicly available information, the GPB Group was founded by David Gentile and is now based in New York, New York. Also, on information and belief, the GPB Group decided to “invest” in motor vehicle dealerships in or around 2011.

8. VWoA first became aware of the GPB Group in 2014 through a purported acquisition of an ownership interest in an existing Volkswagen dealership known as Lash Auto Group, LLC dba Lash Volkswagen of White Plains (“Lash”). Lash and the GPB

Group entered into one or more purchase agreements for an interest in Lash during 2013 through which GPB acquired its initial ownership in Lash without the requisite prior notice and consent of VWoA as is required by contract and by applicable law.

9. The improper ownership transfer of Lash, as well as a related Volkswagen dealership known as Lash Auto Group 2, LLC dba Volkswagen Oneonta, resulted in a notice of termination, followed by litigation filed in the Supreme Court of the State of New York, County of Westchester, which was later settled by a Confidential Settlement Agreement and Release (the “Lash Settlement”).

10. The Rosenberg family has owned and operated motor vehicle dealerships throughout the upper eastern coastal region for over fifty years. The late Ira Rosenberg, David Rosenberg’s father, was a well-known motor vehicle dealership owner/manager. David Rosenberg has been involved in the motor vehicle dealership business for many years. David Rosenberg had an established, successful, and well regarded track record as the owner/manager of several motor vehicle dealerships, including VWoA dealerships.

11. In or around May of 2017, certain GPB Group entities entered into a Purchase and Sale Agreement with Rosenberg for the purchase of a majority interest in Saco Auto Holdings VW, LLC dba Prime Volkswagen (“Prime”), as well as other dealerships operated by Rosenberg. Under this Purchase and Sale Agreement Rosenberg was to continue to have a material ownership interest in his dealerships and would continue to operate them as the chief managing officer with the power to act independent of GPB’s influence or control.

12. Upon information and belief, later in 2017, Rosenberg agreed to operate the GPB Group's entire portfolio of motor vehicle dealerships, and he became the Chief Executive Officer, President, and Manager of the GPB automotive related business entities, including but not limited to Automile Holdings, LLC, Automile Parent Holdings, LLC, GPB Prime Holdings, LLC, and the Prime Automotive Group, which is a trade name for the GPB automotive businesses.

13. When VWoA received information regarding the proposed purchase by GPB of a majority interest in Prime, the prior litigation and settlement of the Lash dealership caused VWoA to review the ownership of the Lash dealership. As a result, it was discovered that the terms of the prior settlement had not been met and that GPB had acquired the ownership that was directly contrary to the terms of the Lash Settlement.

14. Notwithstanding the breach of the terms of the Lash Settlement, VWoA, at the request of GPB Group and Rosenberg, continued with the review of the proposed sale of the Prime dealership, as well as another Volkswagen dealership located in Watertown NY. In order to prevent a situation similar to what had occurred with the Lash dealership, and in consideration for VWoA's agreement not to enforce the terms of that settlement agreement, VWoA and GPB agreed to the terms of a separate agreement as described below.

**B. The Business Relationship and Settlement Agreement**

15. On October 19, 2017, VWoA and GPB entered into a Business Relationship and Settlement Agreement and subsequently, its amendments (collectively, the "BRA"). A true and correct copy of the BRA with its exhibits "A" through "J" is attached to this

Amended Complaint as Exhibit “1,” along with the First Amendment to Business Relationship and Settlement Agreement with its exhibits “A” and “E” as Exhibit “2.” The BRA was specifically entered into due to the prior misrepresentations regarding ownership of the Lash dealership and the failure of GPB to comply with the terms of the prior settlement. The BRA covered the existing dealerships owned by GPB (including Lash of White Plains and Volkswagen Oneonta) as well as subsequently acquired dealerships.

16. The Volkswagen dealerships that currently include an ownership interest by GPB are:

- a. Saco Auto Holdings VW, LLC d/b/a Prime Volkswagen (“Prime”) located at 784 Portland Road, Saco, Maine 04072;
- b. FX Caprara VW, LLC dba FX Caprara Volkswagen (“Caprara”) located at 18493 US Route 11, Watertown, New York 13601 and;
- c. AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood (“Norwood”) located at 1280 Providence Highway, Norwood, Massachusetts, 02062.

17. Under the BRA, and specifically to avoid a situation similar to that of the Lash dealership, VWoA specifically stated that Rosenberg was the approved operator of the Volkswagen dealerships and that “neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) shall ever exercise any operational control, directly or indirectly, over Dealer, and [ ] neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) shall have any authority to direct or control the Approved Operators in the exercise of their duties and responsibilities in the management of Dealer.” Ex. 1 at p.4, ¶ 7D.

18. David Rosenberg (“Rosenberg”), due to his personal business experience, is the only Approved Operator for all Dealerships. Ex. 2 at p. 6, exhibit E thereto. As the Approved Operator, Rosenberg is to exercise full operational control over each Dealership in addition to maintaining at all times the full authority to vote all ownership interests of any GPB Group company as such related in any way to the operations of each Dealership. Ex. 1 at p.4, § 7D.

19. GPB unilaterally removed Rosenberg from his approved position at the Volkswagen dealerships, and unilaterally appointed an unknown individual as the Approved Operator without any prior notice or approval by VWoA. Regardless, whom GPB proposed to replace Rosenberg is a GPB officer and employee and no such person shall ever exercise any operational control, directly or indirectly, over the dealerships. In addition, VWoA was not provided prior notice as required by the BRA, and the actions of GPB are contrary to VWoA interests. This is exactly a reason for the BRA - to protect VWoA from arbitrary GPB actions that serve only GPB’s interest. GPB has once again simply disregarded their contractual commitments.

20. Section 12 of the BRA further provides VWoA the following rights:

A. VWoA shall have the right to review and approve any sale, acquisition or change of ownership or voting rights of GPB Group (“Ownership Change Event”). GPB Group shall notify VWoA of any proposed Ownership Change Event at least sixty (60) days prior to the date of any Ownership Change Event.

B. If VWoA determines, in its discretion, that the Ownership Change Event would result in an entity or a natural person obtaining an ownership or voting rights interest that is incompatible with VWoA’s dealer qualification standards,

performance requirements or other VWoA interests, VWoA shall have the right to require that, within ninety (90) days of notice from VWoA invoking this provision, GPB shall (a) transfer all interest in all Dealerships to Bona Fide Transferees (subject to Section 7, above); or (b) voluntarily terminate the [Dealership Agreements] associated with each of the Dealers. For purposes of this paragraph Bona Fide Transferee shall mean an independent third party which does not include any member of the GPB Group in any ownership capacity.

In the event that VWoA triggers this 90-day divestiture period, GPB must “present to VWoA an Asset Purchase Agreement or other transfer agreement providing for the transfer of the Dealership’s ownership and assets to a Bona Fide Transferee.” Ex. 1 at, § 7E(ii). If GPB fails to divest its interests in the Dealership within 90 days:

GPB shall cause, and take all actions necessary to ensure that, the relevant Dealership’s [Dealership Agreement] is voluntarily terminated, including the execution of all of VWoA’s then-customary forms for the voluntary termination of a DA.

Ex. 1, § 7E(iv).

21. The parties further acknowledged in the BRA that any breach or failure to comply with the terms of the BRA would result in “irreparable harm and substantial injury to the non-breaching Party.” Ex. A, § 17. As a result, the non-breaching party “shall be entitled to specific performance. . . to enforce such provisions. . . .” Ex. A, § 17.

22. As part of the BRA, VWoA was provided with information regarding the ownership and control of GPB Group and its subsidiaries. Automile Parent Holdings, LLC is the owner of the Prime and Norwood Dealerships and its approved Managers are David Gentile, Manuel Vianna, James Prestiano, and David Rosenberg. Capstone Automotive Group, LLC, a GPB Group entity, is the owner of the Caprara Dealership and its approved

Managers are David Gentile, David Rosenberg, Manuel Vianna, Brian Marshall, and James Prestiano.

**C. GPB Removes Rosenberg and all approved Managers**

23. On information and belief, sometime before or on September 15, 2019, GPB removed David Gentile, Manuel Vianna, and James Prestiano from the Automile Holdings, LLC board and appointed Kevin Westfall, Jovan Sijan, Nico Gutierrez, and Mike Frost without prior notice to VWoA or with VWoA's consent.

24. On information and belief, on the morning of September 16, 2019, Rosenberg was given written notice of termination, dated September 16, 2019 and signed by Kevin Westfall. Rosenberg (not GPB) provided a copy of this notice to VWoA on the date it was received (GPB later provided a copy of the notice as well). A true and correct copy of September 16, 2019 notice of termination that Rosenberg provided to VWoA is attached as "Exhibit 3." Automile Holdings, LLC terminated David Rosenberg without notice to VWoA or with VWoA's consent.

25. Rosenberg communicated to VWoA that he had been terminated by Kevin Westfall as CEO and President of Automile Holdings, LLC, replacing him with Kevin Westfall as interim CEO. On information and belief, Kevin Westfall also replaced David Rosenberg as the CEO and President of Capstone Automotive Group, LLC. GPB notified VWoA of these events by letter stating that Rosenberg was removed as CEO and also from any other GPB officer positions. Based on GPB's September 16, 2019 letter, it is certain that Rosenberg was also removed as Manager of Capstone Automotive Group, LLC. GPB

unilaterally changed all approved managers and operators from the GPB ownership structure, in direct contravention of the terms of the BRA.

26. On information and belief, GPB named a new CEO, Todd Skelton, on January 8, 2020 with his appointment effective as of January 1, 2020. On information and belief, Todd Skelton also serves as the CEO and President of Automile Holdings, LLC and as the Manager of Capstone Automotive Group, LLC. Again, VWoA was neither provided prior written notice of the action nor did GPB obtain VWoA's consent.

**D. GPB's Failure to Divest its Ownership Interests Triggered its Obligation to Voluntarily Terminate the Dealership Agreements**

27. By letter dated October 31, 2019, VWoA provided GPB a Notice to Divest and demanded that GPB transfer all ownership interests in the Prime, Caprara, and Norwood dealerships to Bona Fide Transferees within ninety days. A true and correct copy of VWoA's Notice to Divest is attached as "Exhibit 4." The ninety days ended on or about January 29, 2020.

28. In response to the Notice to Divest, Joseph Girardot, Chief Legal Counsel of Prime Automotive Group—which is not a business entity but a business trade name—sent VWoA a letter on January 23, 2020 repudiating GPB's obligations under the BRA. The letter stated that GPB planned to divest its interest in Caprara only and would provide VWoA an asset purchase agreement with a third-party transferee. GPB further stated that it would not divest its interests in Prime and Norwood. A true and correct copy of GPB's response is attached as "Exhibit 5."

29. Although GPB stated that it would submit an asset purchase agreement to VWoA evidencing its transfer of Caprara to a third-party, it failed to do so within the 90-day period. GPB also did not provide VWoA with any asset purchase agreements regarding GPB's transfer of Prime and Norwood to a Bona Fide Transferee.

30. Instead, on or about January 28, 2020, GPB caused its Dealerships - Prime, Norwood, and Caprara - to file a non-binding arbitration demand with the American Arbitration Association against VWoA challenging VWoA's rights under the BRA (the "Arbitration Action"). A true and correct copy of the Demand for Non-Binding Arbitration and Statement of Claims (less its exhibits) is attached as "Exhibit 6." The Arbitration Action not only is a repudiation by GPB of its obligations under the BRA but also is an act in breach of the BRA.

31. In addition to the Arbitration Action repudiating the obligations of the BRA, GPB caused the Arbitration Action to be filed by the dealership entities, none of which were given notice to divest, and all of which are prevented from demanding arbitration due to the 2002 amendment to the Federal Arbitration Act as shown below. GPB Group cannot use the dealership entities as a shield for its own breach.

32. Along with other covenants set forth in the BRA as to VWoA's rights and remedies, GPB agreed that if any or all three Dealerships were terminated then neither GPB nor any of the Dealerships would file a legal protest, civil or administrative action, or any other legal proceeding to prevent or delay the effect of the termination. Ex. 1 at p. 9, ¶ 14. GPB, on behalf of itself and the Dealerships, further agreed that they shall not seek monetary damages or other legal or equitable remedy from any court or administrative

agency related to the termination. *Id.* And GPB agreed that if it or a Dealership violated the no contest covenant then GPB shall pay any and all of VWoA's attorney fees and legal costs associated with the defense of such legal, administrative or equitable action and, in addition, shall indemnify and hold VWoA harmless from any monetary damages, equitable judgments or fees and costs resulting from any legal, administrative, or equitable proceeding. *Id.*

**FIRST CLAIM FOR RELIEF:  
DECLARATORY JUDGMENT**

33. VWoA incorporates all preceding paragraphs as though set forth in full herein. GPB Capital Holdings, LLC cannot use the Dealerships to collaterally attack the BRA by requiring that VWoA submit to arbitration, whether binding or non-binding, of any dispute with GPB or the Dealerships. No agreement exists in the BRA whereby VWoA and GPB Capital Holdings, LLC agreed to arbitrate disputes.

34. Although the dealer agreements do contain an arbitration provision, those agreements are not the contractual basis for VWoA's notice to divest sent to GPB Capital Holdings, LLC. The notice to divest arises under the BRA between VWoA and GPB Capital Holdings, LLC. VWoA sent its notice to divest to GPB Capital Holdings, LLC, not to the Dealerships. GPB Capital Holdings, LLC cannot use the Dealerships to force arbitration upon VWoA.

35. Despite the arbitration provision set forth in the dealer agreement with the Dealerships, federal law controls on arbitrability of disputes between motor vehicle manufacturers and their dealers. 15 U.S.C. § 1226. The Federal Arbitration Act (9 U.S.C.

§ 1, *et seq.*) applies to the dealer agreement the Dealerships seek to use in requiring non-binding arbitration. In 2002, Congress passed the Motor Vehicle Franchise Contract Arbitration Fairness Act (the “Arbitration Fairness Act”), which provides an express *exception* to the Federal Arbitration Act (“FAA”), by making pre-dispute arbitration provisions contained in motor vehicle franchise contracts between motor vehicle manufacturers and motor vehicle dealers *unenforceable* under the FAA. Specifically, the Arbitration Fairness Act provides:

(2) **Consent required.** Notwithstanding any other provision of law, whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to such contract, arbitration may be used to settle such controversy only if *after* such controversy arises *all parties* to such controversy *consent in writing* to use arbitration to settle such controversy.

15 U.S.C. § 1226(a)(2) (emphasis added). Thus, under the Arbitration Fairness Act, an arbitration provision contained in a motor vehicle franchise contract can only be enforced if (1) *all parties* consent, (2) in writing to use arbitration, and then (3) *after* a controversy covered by the arbitration provision arises. *See id.* VWoA does not consent to arbitration.

36. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201, 2202, VWoA seeks the appropriate order, decree, or judgment that GPB Capital Holdings, LLC, whether directly or through its Dealerships, cannot unilaterally compel VWoA to arbitrate disputes, whether such disputes are with GPB Capital Holdings, LLC or with any of the Dealerships that GPB Capital Holdings, LLC owns or controls.

37. This declaratory judgment claim is presently ripe because GPB Capital Holdings, LLC has repudiated VWoA’s express remedies in the BRA and then seeks to

use the three Dealerships to collaterally attack the no contest provision in the BRA, and require that VWoA arbitrate whether the rights and remedies in the BRA are to be enforced. Thus, an actual and justiciable case or controversy presently exists and judgment will serve a useful purpose in settling the legal relations at issue and provide to VWoA relief from the insecurity and controversy giving rise to this proceeding. Such a declaration will effectively adjudicate the rights of the parties.

**SECOND CLAIM FOR RELIEF:  
DECLARATORY JUDGMENT**

38. VWoA incorporates all preceding paragraphs as though set forth in full herein. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201, 2202, VWoA seeks the appropriate order, decree, or judgment that: (1) the GPB Group's change of directors for Automile Holdings, LLC, Automile Parent Holdings, LLC, GPB Prime Holdings, LLC, and Capstone Automotive Group, LLC entitles VWoA to the remedies agreed upon by the parties in BRA; (2) regardless of the unauthorized director changes for the GPB Group entities, the removal and/or termination of David Rosenberg is an event under the BRA that entitles VWoA to the remedies set forth in the BRA; (3) GPB Capital Holdings, LLC's failure to comply with VWoA's divestiture notice entitles VWoA to the remedy of voluntary termination as set forth therein; and (4) VWoA is entitled to the remedy of termination of the Dealerships and that such termination takes effect upon entry of the appropriate court order, decree, or judgment.

39. This declaratory judgment claim is presently ripe because GPB has repudiated VWoA's express remedies in the BRA. Thus, an actual and justiciable case or

controversy presently exists and judgment will serve a useful purpose in settling the legal relations at issue and provide to VWoA relief from the insecurity and controversy giving rise to this proceeding. Such a declaration will effectively adjudicate the rights of the parties.

**THIRD CLAIM FOR RELIEF:  
SPECIFIC PERFORMANCE**

40. VWoA incorporates all preceding paragraphs as though set forth in full herein. The subject matter of the BRA between VWoA and GPB Capital Holdings, LLC is unique. Money damages can neither remedy the breach nor make VWoA whole. Only the remedy of specific performance places VWoA in the position it would have enjoyed had the contract been fully performed once GPB breached.

41. The aforementioned removal of Rosenberg constitutes an “Ownership Change Event” under the BRA. The BRA grants to VWoA the discretion to decide if such event results in an interest that is incompatible with VWoA’s interests. VWoA made such decision and triggered its right to require GPB to divest. Exhibit 4. GPB not only failed or refused to comply with the divestiture requirement but also purports to repudiate any requirement to divest the Dealerships or to bring about their voluntary termination. Exhibits 5 and 6.

42. Having failed or refused to comply with the divestiture requirement, GPB is required to cause the Dealerships to voluntarily terminate. Exhibit 1, p. 8, ¶ 12.B. Moreover, having repudiated the BRA, GPB is required to cause the Dealerships to

voluntarily terminate. *Id.* VWoA seeks an order, decree, or judgment that GPB specifically perform its obligation to cause the Dealerships to voluntarily terminate.

**FOURTH CLAIM FOR RELIEF:  
DECLARATORY JUDGMENT**

43. VWoA incorporates all preceding paragraphs as though set forth in full herein. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201, 2202, VWoA seeks the appropriate order, decree, or judgment that: (1) GPB Capital Holdings, LLC covenanted not to sue, protest or undertake any civil or administrative action or any other legal proceeding to prevent or delay the Dealerships' termination; (2) the BRA is a valid and enforceable contract between the parties; (3) GPB Capital Holdings, LLC breached the BRA by causing or permitting the Dealerships to file the Arbitration Action; (4) the Arbitration Action seeks to "prevent or delay the Dealerships' termination"; (5) GPB Capital Holdings, LLC covenanted to "pay any and all of VWoA's attorney fees and legal costs associated with the defense of such legal, administrative or equitable action, and in addition, GPB [ ] shall indemnify and hold VWoA harmless from any monetary damages, equitable judgments or fees & costs resulting from any legal, administrative or equitable proceeding ...."; and (6) VWoA is entitled to specific performance of paragraph 14 of the BRA, including performance of the indemnity, hold harmless, and recoupment of costs and fees to defend itself against the Arbitration Action and also to prosecute this action to enforce the BRA.

44. This declaratory judgment claim is presently ripe because, after VWoA exercised its rights under the BRA, GPB Capital Holdings, LLC repudiated the BRA and

caused the Dealerships to file the Arbitration Action as an effort to undermine the BRA and its enforcement against GPB Capital Holdings, LLC. Thus, there is an actual and justiciable case or controversy and judgment will serve a useful purpose in settling the legal relations at issue and provide to VWoA relief from the insecurity and controversy giving rise to this proceeding. Such a declaration will effectively adjudicate the rights of the parties.

### **REQUEST FOR RELIEF**

VWoA demands relief against GPB Capital Holdings, LLC for the following:

- A. A declaration that: (1) GPB's change of directors entitles VWoA to the remedies agreed upon by the parties in BRA; (2) GPB's removal and/or termination of David Rosenberg is an event under the BRA that enables VWoA to enforce the requirement that GPB Capital Holdings, LLC divest all ownership interests in the Dealerships; and (3) GPB Capital Holdings, LLC failed to abide by the BRA's divestiture requirement, thus entitling VWoA to enforce the termination remedy;
- B. A declaration that: (1) GPB Capital Holdings, LLC caused, directed or permitted its Dealerships to file the Arbitration Action; (2) the filing of the Arbitration Action is a breach of GPB Capital Holdings, LLC's covenant not to contest or sue; and (3) VWoA is entitled full enforcement of the BRA, including enforcement of its right to recoup all attorney fees and costs associated with the defense of this proceeding and the Arbitration Action, and that GPB Capital Holdings, LLC is required to indemnify and hold VWoA harmless from any monetary damages, equitable judgments, or fees and costs resulting from any legal, administrative, or equitable proceeding.
- C. Judgment awarding VWoA specific performance of the BRA, including ordering GPB to cause the Dealership Agreements for the Prime, Caprara, and Norwood Dealerships to be terminated;
- D. Judgment awarding VWoA relief from the Arbitration Action, including but not limited to ordering GPB Capital Holdings, LLC to cause the Dealerships to dismiss the Arbitration Action with prejudice;

- E. Judgment awarding VWoA all of its attorneys' fees and legal costs incurred in this proceeding and also in defense of VWoA's rights regarding the Arbitration Action; and
- F. All other relief, legal or equitable, that the Court deems just and proper.

Dated: New York, New York  
February 14, 2020

Respectfully submitted,

By: /s/ Matthew D. Feil  
Matthew D. Feil  
mfeil@bakerlaw.com  
BAKER HOSTETLER LLP  
45 Rockefeller Plaza  
New York, New York 10111-0100  
(212) 589-4200 (Telephone)  
(212) 589-4201 (Facsimile)

OF COUNSEL:

Billy M. Donley (*pro hac vice* pending)  
Texas Bar No. 05977085  
bdonley@bakerlaw.com  
David R. Jarrett (*pro hac vice* pending)  
Texas Bar No. 00792188  
djarrett@bakerlaw.com  
BAKER HOSTETLER LLP  
811 Main Street, Suite 1100  
Houston, Texas 77002-6111  
(713) 751-1600 (Telephone)  
(713) 751-1717 (Facsimile)

ATTORNEYS FOR VOLKSWAGEN OF  
AMERICA, INC., an operating unit of  
VOLKSWAGEN GROUP OF AMERICA,  
INC.

# Exhibit 1

## BUSINESS RELATIONSHIP AND SETTLEMENT AGREEMENT

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“VWoA”) and GPB Capital Holdings, LLC (“GPB”) and its automotive subsidiaries and affiliates (GPB and its affiliates and subsidiaries may be collectively referred to herein as “GPB Group”), (VWoA and GPB may be collectively referred to herein as the “Parties”) enter into this Business Relationship Agreement (the “Agreement”) on this 19 day of OCTOBER, 2017 (the “Effective Date”).

### RECITALS

A. WHEREAS, VWoA is a company organized and existing under the laws of the State of New Jersey, with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VWoA is the exclusive distributor of Volkswagen-brand motor vehicles, parts, and accessories (collectively, “Authorized Products”) in the United States of America.

B. WHEREAS, GPB is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 1581 Franklin Ave. Mineola, NY 11501. GPB currently maintains beneficial ownership and operational control of the Volkswagen Dealerships set forth in Exhibit A (the “Settlement Dealerships”). The Parties acknowledge that the GPB Group has or may create or structure ownership of Volkswagen dealerships through additional corporate entities which may not have been formed as of the Effective Date. Notwithstanding this fact, this Agreement and the obligations of GPB Group as set forth herein are intended to also govern the conduct of any such newly formed entities.

C. WHEREAS, VWoA currently maintains a Volkswagen Dealer Agreement (“DA”) with each of the Settlement Dealerships. The DAs are personal services agreements, and VWoA has entered into those DAs based upon the qualifications, reputation, integrity and expertise of the GPB Group, including its management team and the individual managers operating each of the Dealerships, and upon the representations, covenants and obligations set forth in those DAs.

D. WHEREAS, the GPB Group acquired an ownership interest in the Settlement Dealerships without providing prior written notice of such acquisition or obtaining VWoA’s consent. Thereafter, litigation was commenced involving VWoA, GPB and other entities that was ultimately settled. As a result, the Settlement Dealerships are the subject of negotiated settlement agreements (the “Settlement Agreements”) containing certain specified requirements and obligations of the GPB Group and other parties identified therein. Specifically, among other obligations, the GPB Group is required to in the near future divest its interest in the Settlement Dealerships or voluntarily terminate the dealer agreements with VWoA.

E. WHEREAS, the GPB Group has requested that VWoA agree to modify the Settlement Agreements so that it not have to divest of or voluntarily terminate the Settlement Dealerships and expressed a desire to continue its existing ownership and control of the Settlement Dealerships, to foster a positive relationship with VWoA, and to continue to be eligible to acquire new dealerships and be eligible for future open points.

F. WHEREAS, the GPB Group has entered into asset purchase agreements to acquire two additional Volkswagen Dealerships in Maine and New York and provided information to VWoA to review in connection with VWoA's review of the proposed transfer as VWoA has a contractual and statutory right to object to the transfer or exercise a right of first refusal. VWoA's review remains ongoing including its review of GPB performance at other dealerships and the unique proposed ownership structure of the dealerships that has led VWoA to consider rejecting the proposed transfer or exercising its right of refusal.

G. WHEREAS, the GPB Group desires that VWoA not exercise its right to reject either of the proposed transfers or exercise right of first refusal over either transfer and the GPB Group and VWoA recognize that if VWoA did so, there could be litigation challenging the exercise which would result in additional expense and risk for the Parties,

H. WHEREAS, the Parties intend and desire to enter into this Agreement for good and valuable consideration as detailed below and to establish a contractual framework that provides agreed upon parameters for continuing and future positive business relationships between the Parties.

### AGREEMENT

NOW, THEREFORE, in consideration for the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree hereto as follows:

1. Term. The term of this Agreement shall be from the effective date until terminated by the Parties as set forth below (the "Term").

2. GPB Group's Dealership Portfolio. GPB Group warrants and represents that Exhibit B (the "GPB Controlled Dealerships") is a list of all Volkswagen Dealerships in which it currently maintains any Ownership or Control or which it has entered into an agreement to acquire Ownership or Control. The Parties agree that Exhibit B to this Agreement shall be promptly amended and updated should GPB Group's Ownership or Control in a Volkswagen Dealership change for any reason. For the purposes of this Agreement, "Ownership or Control" shall mean any ownership stake in any Volkswagen Dealership, operational control of any Volkswagen Dealership or management of any Volkswagen Dealership, whether direct or indirect, including without limitation, through any subsidiary, affiliate company, officer, executive or other stakeholder of GPB Group.

3. GPB Group Settlement Dealerships. VWoA agrees to release the Settlement Dealerships from the obligations of the Settlement Agreements which required divestiture or voluntary termination of the DA of the Settlement Dealerships.

4. GPB Acquisitions of Volkswagen Dealerships in Maine and New York. Upon receipt of all requested documentation, VWoA agrees to consent to the proposed transfers of Volkswagen dealer that were presented to it in Saco, Maine and Watertown, New York.

5. Adherence to Ownership Policy. VWoA maintains an Ownership Policy, a current version of which is attached hereto as Exhibit C. The Parties understand and agree that VWoA may update this Ownership Policy from time to time in VWoA's discretion. After any update of the Ownership Policy, VWoA shall make GPB Group aware of any changes, and the Parties shall update and amend Exhibit C as necessary.

GPB Group shall comply with, and adhere to, the requirements of VWoA's then-current Ownership Policy. GPB Group further agrees that it shall not directly or indirectly, through affiliate, subsidiary or related entities or natural persons, acquire (or attempt to acquire) any Ownership or Control in any Volkswagen Dealership that would result in a violation of, or non-compliance with, VWoA's then-current Ownership Policy.

6. Sale of Dealerships by GPB Group. GPB Group covenants and agrees that it shall not sell or transfer, or attempt to sell or transfer, more than two of the Dealerships over which it maintains Ownership or Control to any single third-party entity. The Parties' intent is that no single entity (or collection of related entities) obtain ownership interest (of any sort) or operational control in more than two of the Volkswagen Dealerships listed on Exhibit B.

Notwithstanding any rights provided by the DAs or existing state and federal law, GPB Group agrees that it shall not enter into or present to VWoA for approval any transfer agreement, asset purchase agreement, memorandum of understanding or other buy-sell/transfer agreement that would violate the terms of this Agreement.

7. Performance, Capital, Facility, Management Standards, Divestiture and Voluntary Termination.

A. Minimum Required Sales Performance. At all times during the term of this Agreement, GPB Group agrees that it shall cause, and be accountable for, each of the Dealerships listed in Exhibit B to maintain a minimum sales performance level of one hundred percent (100%) average sales effectiveness as measured by VWoA in its sole discretion, a performance level currently expressed as a Dealer Sales Index ("DSI") figure, on a rolling twelve-month period basis (the "Required Sales Performance"). Sales effectiveness shall be tracked by a report substantially similar to the attached Exhibit D ("DSI Report"), which shall track each Dealership's sales performance on a rolling twelve-month basis. The sales effectiveness for the Dealerships shall be made available to GPB Group on a monthly basis.

B. Capital Requirements. GPB Group agrees to comply and maintain compliance with the minimum financial requirements established for each of the Dealerships listed in Exhibit B annually in accordance with the Operating Plan and the Operating Standards. As used herein, the term "Net Working Capital" shall mean the difference between current assets and current liabilities, and the term "Owner's Equity" shall mean the difference between total assets and total liabilities. GPB Group acknowledges and agrees that its minimum Net Working Capital and its minimum Owner's Equity are subject to review and change by VWoA from time to time, in accordance with the

terms of the Dealer Agreement. Dealer agrees to meet the requirements established by VWoA for Net Working Capital and Owner's Equity, as they may be in effect from time to time.

- C. Dealership Facilities and Volkswagen Brand Image. GPB Group agrees that it shall maintain the Dealerships in compliance with current facility requirements and recognizes that VWoA's facility requirements and brand image standards may change over time. If a Dealership is or becomes out of compliance with facility requirements or brand image standards, VWoA and GPB Group shall work in good faith to agree on an action plan to cure the non-compliance. Said action plan shall be agreed upon within one-hundred-eighty (180) days, and, absent a written agreement between the Parties to the contrary, GPB Group shall have no more than twelve (12) months to cure the non-compliance following the Parties' agreement on the action plan as described above.
- D. Approved Management. VWoA requires that a qualified operator be empowered with full operating capabilities at each of the GPB Group owned dealerships. VWoA authorizes only the listed individuals on Exhibit E (the "Approved Operators") to exercise full operational control over the applicable Dealer entity. VWoA does not approve GPB Group or any of its owners (whether direct or indirect, actual or beneficial) to exercise any operational control over Dealer. The Parties agree that the Approved Operators only shall at all times remain in full operational control of Dealer; (2) the Approved Operators shall maintain at all times full authority to vote all ownership interests in the Company that relate in any way to the operations of the applicable Dealer; (3) neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) shall ever exercise any operational control, directly or indirectly, over Dealer; and (4) neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) shall have any authority to direct or control the Approved Operators in the exercise of their duties and responsibilities in the management of Dealer.
- E. Divestiture and Voluntary Termination. If any single Dealership fails to achieve the requirements of section A, B, C or D above for a period of six (6) consecutive months in a twelve-month reporting period, or six (6) non-consecutive months of any consecutive twelve (12) month period, then VWoA shall have the right (but not the obligation) to require that the GPB Group completely divest itself of the underperforming Dealership, and transfer that Dealership's ownership, assets and control to a bona fide, unrelated, unaffiliated, qualified third-party transferee ("Bona Fide Transferee"). In the event of a divestiture required hereunder, neither GPB Group, nor any entity or natural person related to, employed by or affiliated with GPB Group may retain an ownership interest in the Dealership or any of its assets. The parameters of divestiture shall be as follows:

- i. To trigger its rights under this Section, VWoA shall provide written notice to GPB Group invoking VWoA's rights under this section ("Divestiture Notice"), and attach reports demonstrating that the Dealership at issue has failed to comply with the Required Sales Performance standard for the specified time frame.
  - ii. GPB Group shall have one-hundred-eighty (180) days from the date the Divestiture Notice was received (the "Divestiture Period") to present to VWoA an Asset Purchase Agreement or other transfer agreement ("APA") providing for the transfer of the Dealership's ownership and assets to a Bona Fide Transferee. The issuance of a Divestiture Notice shall also provide VWoA with express authorization to assist GPB Group in marketing the Dealership's assets, and to assist in locating a Bona Fide Transferee and GPB Group and the Dealership shall allow its financial information to be shared with a potential buyer provided a non-disclosure agreement is executed prior to the sharing of the information. However, the Parties agree that it shall remain GPB Group's ultimate responsibility to comply with this provision.
  - iii. VWoA shall review any APA or transfer document presented by GPB Group as provided for by the DA and by relevant state law. If VWoA does not approve the APA presented, the Divestiture Period shall be extended an additional sixty (60) days from the date of VWoA's notice that the proposed transfer was not approved ("Extension Period"). Prior to the conclusion of the Extension Period, GPB Group must provide a new APA with a different Bona Fide Transferee for VWoA's review and approval as provided for by the DA and by relevant state law. If VWoA does not approve the second APA presented, then GPB Group shall proceed with voluntary termination of the relevant Dealership as provided for by Section 7.E.iv.
  - iv. If, after the Divestiture Period or Extension Period if triggered, GPB Group fails to divest itself of the relevant Dealership and transfer that Dealership's ownership and assets to a Bona Fide Transferee, GPB Group shall cause, and take all actions necessary to ensure that, the relevant Dealership's DA is voluntarily terminated, including the execution of all of VWoA's then-customary forms for the voluntary termination of a DA.
- F. Safe Harbor Period. This Section 7 shall not apply to a Dealership until GPB Group has had Ownership or Control of said Dealership for a period of twelve (12) consecutive months ("Safe Harbor Period"). After the Safe Harbor Period, the provisions of Section 7 shall become fully applicable on a going forward basis.

8. Service, Parts and Customer Satisfaction.

- A. Dealer Service Market Share. At all times during the term of this Agreement, GPB Group agrees that it shall cause, and be accountable for, each of the Dealerships to achieve and maintain a minimum dealer service market share level of VWoA designated average performance or higher. Dealer service market share shall be measured according to the reporting metrics listed on the Volkswagen Service I.Q. Report, an example of which is attached as Exhibit F (“Service I.Q. Report”), which shall track each Dealership’s dealer service market share performance. The Service I.Q. Reports for the Dealerships shall be made available to GPB Group on a monthly basis.
- B. Volkswagen Part Sales Performance. At all times during the term of this Agreement, GPB Group agrees that it shall cause, and be accountable for, each of the Dealerships to achieve and maintain a parts sales performance, measured as a percentage achieved of monthly parts objective (“Parts Performance Bonus”). Parts sales performance shall be measured according to the reporting metrics listed on Monthly Parts Performance Bonus Report, an example of which is attached as Exhibit G (“Parts Performance Bonus Report”), which shall track each Dealership’s parts sales performance. The Parts Performance Bonus Reports for the Dealerships shall be made available to GPB Group on a monthly basis.
- C. Customer Experience Index. At all times during the term of this Agreement, GPB Group agrees that it shall cause, and be accountable for, each of the Dealerships to achieve and maintain a minimum Customer Experience Index (“CEI”) score of National average performance or higher. CEI shall be measured according to the reporting metrics listed on the Sales CEI Report, and example of which is attached as Exhibit H (“Sales CE Report”), which shall track each Dealership’s CEI performance. The Sales CE Reports for the Dealerships shall be made available to GPB Group on a monthly basis.
- D. Safe Harbor Period. This Section 8 shall not apply to a Dealership until GPB Group has had Ownership or Control of said Dealership for a period of twelve (12) consecutive months (“Service & Parts Safe Harbor Period”). After the Service & Parts Safe Harbor Period, the provisions of Section 8 shall become fully applicable on a going forward basis.

9. Exclusivity. GPB Group agrees that it shall maintain and operate all Dealerships as exclusive, brand-dedicated Volkswagen Dealerships, in compliance with VWoA’s Exclusivity Policy, which may be updated from time to time in VWoA’s discretion, a current version of which is attached hereto as Exhibit I. Any variance from the Exclusivity Policy by GPB Group shall require VWoA’s prior written approval, which shall be provided at VWoA’s sole discretion. Absent a written agreement between the Parties stating otherwise, GPB Group shall cure any noncompliance with this provision within one-hundred-eighty (180) days of being

notified by VWoA of said non-compliance. VWoA shall make GPB Group aware of any updates to the Exclusivity Policy, and the Parties shall update and amend Exhibit I as necessary.

A. White Plains site control. The GPB Group agrees to assign all leasehold interest in the property located at 376 Tarrytown Road, White Plains, NY, in the event that the Lash Auto Group ceases to operate as a Volkswagen dealer at that location.

10. Compliance with Signage Standards and Prominence of the Volkswagen Brand. GPB Group shall cause all Dealerships to all times comply with VWoA's signage requirements and Corporate Identification Standards, including, without limitation VWoA's then-current signage program (to the extent permitted by relevant local law). Further, GPB Group shall cause all Dealerships to prominently and primarily promote the Volkswagen brand. At any Dealership, GPB Group shall not cause Volkswagen's brand to be rendered secondary or subservient to GPB's brand(s) or any other brand, including, without limitation any sub-brand(s), affiliate brand(s) or subsidiary brand(s) of GPB Group.

11. Authorized Representative at Dealerships.

A. Authorized Representative. At each of the Dealerships, GPB Group shall appoint and employ an Authorized Representative ("AR") who shall work on-site, in a full-time capacity, and whose employment duties will be dedicated exclusively to Volkswagen Dealership Operations at the Dealership. Prior to appointment, each AR must be approved in writing by VWoA as set forth in Section 11.B, below, and, separately, comply with all requirements set forth by the DA.

B. Authorized Representative Candidate Program.

- i. For each of the Dealerships, GPB Group shall nominate and present to VWoA an Authorized Representative Candidate ("ARC") for review and approval.
- ii. Upon nomination, GPB Group shall complete an application provided by VWoA, which, without limitation, shall require submission of detailed information regarding the ARC's experience, past performance and other relevant metrics requested by VWoA. In addition, the GPB Group shall cause the ARC to submit to a background and credit check obtained by VWoA.
- iii. VWoA shall then have a reasonable opportunity to review the information submitted, meet with and interview the ARC. Following the review and interview described above, VWoA shall, at its discretion, approve, conditionally approve or reject the ARC. If the ARC is approved, then he or she shall immediately be approved as the AR of the relevant Dealership. If the ARC is rejected, GPB Group must nominate a new, different ARC for approval by VWoA. If the ARC is conditionally approved, the ARC shall be placed on a probationary status during which

they shall be considered acting-AR at the Dealership for a six (6) month period (“Probationary Period”). At the end of the Probationary Period, after reviewing the ARC’s performance during the Probationary Period, VWoA shall, at its discretion, approve, reject or elect to extend the Probationary Period for an additional six (6) months. Following the second Probationary Period and after reviewing the ARC’s performance, VWoA shall approve or reject the ARC. Under no circumstances shall the Probationary Period last more than one (1) year.

C. Empowerment of Authorized Representatives. GPB Group shall delegate all necessary authority and empowerment to the AR such that he or she shall have full, final executive and management authority to conduct all day-to-day Volkswagen dealership and related business operations at the Dealership, including, without limitation, executing documents and making all operational decisions concerning the Dealership.

12. Change in Ownership or Control of GPB Group.

A. VWoA shall have the right to review and approve any sale, acquisition or change of ownership or voting rights of GPB Group (“Ownership Change Event”). GPB Group shall notify VWoA of any proposed Ownership Change Event at least sixty (60) days prior to the date of any Ownership Change Event.

B. If VWoA determines, in its discretion, that the Ownership Change Event would result in an entity or a natural person obtaining an ownership or voting rights interest that is incompatible with VWoA’s dealer qualification standards, performance requirements or other VWoA interests, VWoA shall have the right to require that, within ninety (90) days of notice from VWoA invoking this provision, GPB Group shall (a) transfer all interest in all Dealerships to Bona Fide Transferees (subject to Section 7, above); or (b) voluntarily terminate the DAs associated with each of the Dealers. For purposes of this paragraph Bona Fide Transferee shall mean an independent third party which does not include any member of the GPB Group in any ownership capacity.

13. Acquisition and Open Point Eligibility.

A. GPB Group understands and agrees that they shall not be eligible for any acquisitions of Volkswagen dealerships or appointment to Volkswagen open points if they are not in compliance with all terms, conditions and provisions of this Agreement, including, without limitation, the provisions of Sections 3 through 12, above, and, accordingly, agrees not to enter into any agreements with third parties to acquire interests in Volkswagen dealerships if not in compliance.

- B. GPB Group understands and agrees that they shall not be eligible for any acquisitions of Volkswagen dealerships or appointment to Volkswagen open points if GPB Group brings a legal or equitable action of any form in contravention with, or to invalidate, the terms of this Agreement, including, without limitation, the terms of Section 14, below.
- C. GPB Group agrees that failure to comply with any material terms and conditions of this Agreement shall constitute independent and adequate good cause and justification (both factual and legal) for VWoA to deny approval or consent to any acquisition of a Volkswagen dealership under the terms of Article 12 of the Volkswagen Dealer Agreement, Standard Provisions, and any relevant state law regulating manufacturer approval of dealership transfers.

14. GPB Group's Covenant Not to Sue or Protest. If (i) a termination of a Dealership or DA ("DA Termination") or (ii) the rejection or turn-down of a proposed buy-sell, acquisition or purchase of a Volkswagen dealership ("Buy-Sell Rejection"), occurs pursuant to or as a result of the terms, conditions and provisions of this Agreement, GPB Group agrees that it shall not file a legal protest, civil or administrative action, or any other legal proceeding to prevent or delay the effect of the DA Termination or Buy-Sell Rejection at issue. GPB Group further agrees that it shall not seek monetary damages or other legal or equitable remedy, from any court or administrative agency, related to the termination of the DA Termination or Buy-Sell Rejection at issue. Should GPB Group violate this provision, GPB Group covenants and agrees that it shall pay any and all of VWoA's attorney fees and legal costs associated with defense of such legal, administrative or equitable action, and, in addition, GPB Group shall indemnify and hold VWoA harmless from any monetary damages, equitable judgments or fees & costs resulting from any legal, administrative or equitable proceeding in contravention of this provision.

15. Extension of GPB Group Market Action Agreement. GPB Group includes affiliated entity Lash Auto Group, LLC which operates a Volkswagen dealership under the dba Lash Volkswagen of White Plains ("White Plains"). White Plains is one of the Settlement Dealerships. In addition to the Volkswagen Dealer Agreement, White Plains and VWoA are parties to a Settlement Agreement effective on or about February 18, 2016 (the "WP Settlement Agreement") as well as a Transaction Assistance Agreement effective November 7, 2012 (the "WP TAA") which is attached as Exhibit J. The WP TAA includes a waiver of protest rights for the market area defined in the therein, which protest waiver was extended by the WP Settlement Agreement. GPB Group and White Plains hereby agree to extend the protest rights waiver as described in the WP TAA for an additional four years. The protest waiver shall now be valid through and including December 31, 2025. The parties to the WP TAA agree that this constitutes a written modification and amendment to the WP TAA.

16. GPB Group's Agreement to Indemnify. If (a) at the time of a proposed acquisition, GPB Group is ineligible to acquire additional Volkswagen dealerships pursuant to Section 13 of this Agreement, or VWoA elects not to approve, or states that it will not approve, a transfer presented to it pursuant to Article 12 of the Volkswagen Dealer Agreement, Standard Provisions, and any relevant state law regulating manufacturer approval of dealership transfers, then GPB Group shall indemnify and hold VWoA harmless against any legal, administrative or

equitable action, loss, liability, damage, equitable judgment, cause of action, cost, or expense of any nature whatsoever, including, without limitation, any attorney fees and legal costs associated with the defense of any such action(s), arising from any legal, administrative or equitable allegations or proceedings brought by a third-party, including, without limitation, the selling dealer or transferor, asserting that VWoA has acted, or will act, unlawfully pursuant to, or has failed to comply with, federal or state law by refusing, failing or preemptively stating that it will refuse to approve a proposed transfer dealership interest or assets.

17. Remedies. The Parties acknowledge that any breach of this Agreement or failure to comply with the terms of this Agreement would result in irreparable harm and substantial injury to the non-breaching Party, the degree of which may be difficult to ascertain. Accordingly, it is agreed that, in addition to any other remedies that may be available in law or equity upon any such violation or threatened violation, the Party alleging the breach or threatened breach hereto shall be entitled to seek specific performance or injunctive relief to enforce such provisions and the Parties hereby waive, and forever discharge, any requirement for security or posting of any bond in connection with such enforcement by specific performance or injunctive relief.

18. Separate Agreement and Not a Dealer or Franchise Agreement. The Parties understand and acknowledge that the terms, conditions, representations, warranties, obligations and rights set forth in this agreement stand separate, distinct and apart from any obligations and rights set forth in any Volkswagen Dealer Agreement. This Agreement provides for distinct obligations, rights and responsibilities, and distinct and adequate consideration including, without limitation, VWoA's agreement to waive significant rights under settlement agreements that were previously entered into with certain GPB Group entities. No part of this Agreement is intended to become a part of any Volkswagen Dealer Agreement, franchise relationship as defined by state law, or be subject to regulation by state laws regulating manufacturer-dealer relationships. GPB Group agrees, irrevocably admits and acknowledges that this Agreement is not a "dealer" or "franchise" agreement as those terms may be defined in any applicable state or federal law or regulation. Therefore, any provisions applicable to "dealer" or "franchise" agreements under the laws of any state in which GPB does business or under federal law do not apply to this Agreement, and GPB Group shall not seek to enforce any such provisions against VWoA. VWoA reserves the right to terminate and/or revoke this Agreement in the event it is recognized or determined that this Agreement is a "dealer" or "franchise" agreement.

19. Confidentiality. The Parties shall keep the existence and terms of this Agreement strictly confidential, and shall disclose such terms to third parties only if required to do so by order of court, or in response to a duly authorized subpoena, or in response to some other legal process. If any Party to this Agreement is required by law to disclose any term of this Agreement, then such Party shall, to the extent practicable, give written notice to the other Parties to this Agreement no less than two (2) weeks prior to the date on which such disclosure is required ("Disclosure Date"). If unable to give such notice, then such Party shall give as much notice in advance of the Disclosure Date as possible, in whichever way such Party reasonably deems most expeditious. Notwithstanding this Section, the Parties may disclose, in confidence, the terms of this Agreement to said Party's retained attorneys, accountants and tax professionals as deemed necessary.

20. Expenses and Fees. The Parties shall each pay their own respective expenses, including attorneys' fees, incurred in connection with this matter and with the preparation, execution, and implementation of this Agreement.

21. Equal Bargaining Power, No Rule of Strict Construction. Each Party acknowledges that it is a highly sophisticated business entity, with abundant experience, resources and access to business and legal counsel. The words used in this Agreement shall be deemed words chosen by the Parties to express their mutual intent, and no rule of strict construction against VWoA or GPB Group shall apply to any term or provision of this Agreement.

22. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof. No prior or contemporaneous agreements between the Parties, whether oral or written, concerning the subject matter of this Agreement, shall be of any force or effect.

23. Modification in Writing. This Agreement cannot be modified, altered, or amended in any respect except by the written consent of the Parties. Such consent shall be at the given Party's sole and unfettered discretion.

24. No Third-Party Beneficiaries. This Agreement does not encompass any third party beneficiaries, and is intended to benefit only the Parties.

25. Captions. The caption headings in this Agreement are for convenience purposes only and shall not be used to interpret or to define any of the terms and provisions of this Agreement.

26. No Implied Waivers. The failure of any Party, at any time, to require performance by another Party of any provision of this Agreement shall in no way affect the right of such Party to require such performance at any time thereafter. The waiver by any Party or a breach of any provision herein shall not constitute a waiver of any succeeding breach of the same or any other provision of constitute a waiver of the provision itself.

27. Choice of Law. The terms and provisions of this Agreement shall be construed according to the laws of the District of Columbia.

28. No Assignment. The obligations, promises and guarantees contemplated in this Agreement are unique and personalized in nature. As such, this Agreement may not be assigned or transferred without the express written consent of the Parties. Such consent shall be at the given Party's sole and unfettered discretion.

29. Notice. If any clause of this Agreement requires that notice be given, written notice must be sent via personal delivery or a reputable overnight delivery courier, and notice will be deemed to have been given upon receipt of the written notice by the intended Party. Notice must be sent to each Party as follows:

- (a) If to VWoA, written notice must be sent to:

Volkswagen of America, Inc.  
Attn: Office of the General Counsel  
2200 Ferdinand Porsche Drive  
Herndon, VA 20171

(b) If to GPB Group written notice must be sent to:

1581 Franklin Ave  
Mineola, NY 11501

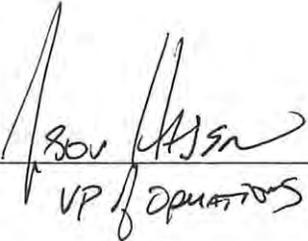
30. Counterparts. This Agreement may be executed in any number of identical counterparts, any of which may contain the signatures of less than all Parties, and all of which together shall constitute a single Agreement. A signature to this Agreement delivered by telecopy shall be deemed valid.

31. Time of the Essence. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, as of this 3<sup>rd</sup> day of October 2017, Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., and GPB Capital Holdings LLC on behalf of itself and its affiliates and subsidiaries, have each caused this Agreement to be duly executed.

**VOLKSWAGEN OF AMERICA, INC.,**  
AN OPERATING UNIT OF  
**VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: 

BY:   
VP of operations

**GPB Capital Holdings, LLC**

BY:   
David Gentile  
CEO

**Exhibit A**

**Settlement Dealerships**

#408340 Lash Auto Group, LLC d/b/a Lash Volkswagen of White Plains  
#408302 Lash Auto Group 2 LLC d/b/a Volkswagen Oneonta

**Exhibit B**

**GPB Controlled Dealerships**

#408340 Lash Auto Group, LLC d/b/a Lash Volkswagen of White Plains

#408302 Lash Auto Group 2 LLC d/b/a Volkswagen Oneonta

#401425 Saco Auto Holdings-VW, LLC d/b/a Prime Volkswagen

#408142 F.X. Caprara Car Company, Inc. d/b/a F.X. Caprara Volkswagen

## Exhibit C

### Ownership Policy

#### General Policy

Any ownership change of a Volkswagen dealer requires VWoA's prior written consent. VWoA categorizes ownership changes as either a "Major Ownership Change" or a "Minor Ownership Change."

Any proposed ownership change, whether a Major Ownership Change or a Minor Ownership Change, is subject to the requirements of all applicable VWoA policies, including this Ownership Change Policy and VWoA's Dealer Candidate Selection Policy and Dealer Change Policy, each of which are included in this manual as Policy #01 and Policy #13, respectively. For each Major Ownership Change, VWoA will provide a Conditional Approval Letter outlining the conditions that the Dealer must meet for the proposed Major Ownership Change to be deemed approved.

#### Definitions Applicable to Ownership Change Policy

The term "Control" means to have ownership of interests in a Dealer sufficient to allow the owner of the interests to control the material decisions and operations of the Dealer, which may be (a) through ownership of a majority of voting interests (i.e., more than 50%), (b) through ownership of voting interests that, while less than a majority of voting interests, in light of the facts and circumstances allows the owner to control the material decisions and operations of the Dealer, or (c) through contract or agreement, such as an owner who has been appointed as a the trustee for a voting trust.

The term "ownership" generally refers to ownership of voting and non-voting interests (unless specified otherwise), and includes the following:

- (a) Direct ownership of interests in the name of a person or entity; and
- (b) Indirect ownership of interests, such as through ownership of an entity that is the direct owner.

A "Major Ownership Change" means:

- Any transaction, including the issuance of new ownership interests, with respect to the ownership of a Dealer that results in a change in Control of the Dealer, meaning that any person or persons who had Control before the transaction no longer has or have Control of the Dealer following the transaction; or

A "Minor Ownership Change" means any change in the ownership of interests in the Dealership that is not a Major Ownership Change.

### **Facility Requirements in the Event of a Major Ownership Change**

In the case of a Major Ownership Change that results in the change of Control of Dealer, the Dealer shall be required to provide a facility that meets all of the requirements of the White Frame Design Facility Program (the "Facility Program"). The New Facility shall be located at the Dealer's Premises and shall meet the square footage requirements required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the facility. The New Facility also shall contain all applicable Volkswagen corporate identification and signage allowed by local codes and required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the facility. Facility requirements are subject to the exclusivity provisions contained in Policy 17 Dealership Exclusivity.

### **Relocation Requirement**

Any proposed relocation of an existing Dealer's Volkswagen operations to a new site must adhere to the Volkswagen Franchise Relocation Policy.

### **All Proposed Ownership Changes are Subject to VWoA's Rights**

All proposed ownership changes, whether a Major or Minor, are subject to VWoA's rights under the Dealer's Volkswagen Dealer Agreement and applicable state law.

### Exhibit D Sample Rolling-12 DSI Report

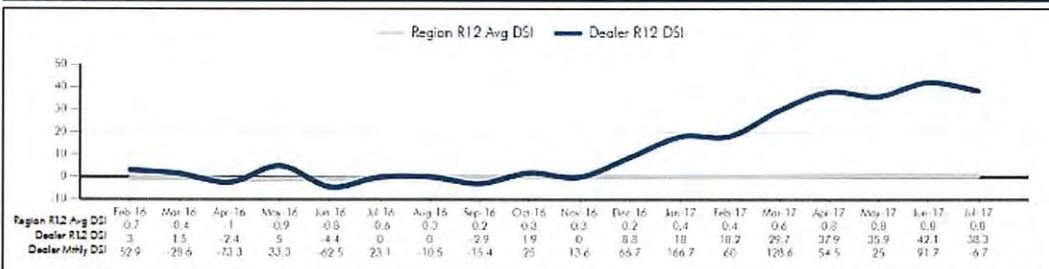
## Dealer Sales Index (DSI) Report 401425 - Prime Volkswagen 12 Month Period Ending July 2017



Model	NER VW Registrations (A)	NER Industry Registrations (B)	Expected Market Share (C = A/B)	PAI Industry Registrations (D)	Expected Sales at NER (E = C x D)	Dealer Retail Sales (F)	Gross Loss (G = E - F)
Beetle Convertible	1,039	3,050	34.1%	12	4	6	-
Eos	0	3,050	0.0%	12	0	0	-
Beetle Coupe	1,330	10,354	12.8%	25	3	9	-
Golf	3,658	47,895	7.6%	139	11	16	-
GTI	4,474	47,895	9.3%	139	13	25	-
Jetta	23,935	253,988	9.4%	691	65	101	-
Tiguan	10,004	687,046	1.5%	2,155	31	29	2
Golf Alltrack	3,420	19,912	17.2%	124	21	26	-
Golf Sportswagen	2,320	19,912	11.7%	124	14	24	-
CC	249	275,200	0.1%	612	1	1	-
Passat	11,981	275,200	4.4%	612	27	23	4
Atlas	932	264,917	0.4%	670	2	3	-
Touareg	507	89,517	0.6%	107	1	4	-
<b>Total</b>	<b>63,849</b>	<b>1,651,879</b>		<b>4,535</b>	<b>193</b>	<b>267</b>	<b>6</b>

<b>Dealer Sales Index (F/E - 1) x 100</b>	<b>38.3</b>
---	-------------

#### Sales Index Trend



\* Trending changes may be attributable to either geography or performance changes.

#### Pump-In/Pump-Out Analysis

Model	Total PAI VW Registrations (A)	Dealer PAI Sales (B)	Other Dealer Pump-In (A-B)	Dealer Sales as a % of Reg. (B/A)	Top 5 Other Dealers Selling Into PAI *	Location	Sales
Beetle Convertible	7	3	4	42.9%	401404 Marong VW	Falmouth, ME	25
Eos	0	0	0	0.0%	401106 Seacoast VW	Greenland, NH	15
Beetle Coupe	5	4	1	80.0%	401111 VW of Rochester	Rochester, NH	5
Golf	9	4	5	44.4%	401419 Marong VW	Brunswick, ME	3
GTI	20	12	8	60.0%	401420 Rowe Volkswagen	Auburn, ME	2
Jetta	57	42	15	73.7%	<b>Total Other Dealer Sales Into PAI 57</b>		
Tiguan	16	10	6	62.5%	<b>Top 5 Dealer Sales Outside of PAI</b>		
Golf Alltrack	10	7	3	70.0%	401404 Marong VW	Falmouth, ME	97
Golf Sportswagen	15	7	8	46.7%	ME Unassigned	Any City, ME	13
CC	1	1	0	100.0%	401106 Seacoast VW	Greenland, NH	11
Passat	21	14	7	66.7%	401419 Marong VW	Brunswick, ME	10
Atlas	1	1	0	100.0%	401420 Rowe Volkswagen	Auburn, ME	4
Touareg	3	3	0	100.0%	<b>Dealer's Total Sales Outside PAI 159</b>		
<b>Total</b>	<b>165</b>	<b>108</b>	<b>57</b>	<b>65.5%</b>			

Note: Reported registrations do not include new 2015 model year TDI vehicles.

\* Other dealer sales into PAI is for the full R12 data period.

Based on July 2017 VW Dealer Network and PAI Definitions

© 2017 Urban Science. All Rights Reserved.

Data Source: IHS Market and Volkswagen



**Exhibit E**

**Approved Operators**

#408340 Lash Volkswagen of White Plains – Jeff Lash

#408302 Volkswagen Oneonta – Jeff Lash

#401425 Prime Volkswagen - David Rosenberg

#408142 F.X. Caprara Volkswagen – Charles G. Caprara and/or William Caprara

## Exhibit F

### Service I.Q. Report

Prime Volkswagen  
 Dealer Code: 401425  
 Month: August, 2017

ServiceIQ



[Main Page](#)    [Market Share](#)    [Performance](#)    [Retention](#)    [Marketing](#)



#### Market Summary

Marketing List Counts  
 (only includes marketable customers)

**47.68%**  
**Market Share**  
 33.61%  
 Region Average

List	Count	Price to Mail*
Inactive	126	\$31.50
31-60 Days to Defection	25	\$6.25
61-90 Days to Defection	21	\$5.25
91-30 Days to Defection	6	\$1.50
<b>Total</b>	<b>178</b>	<b>\$41.50</b>

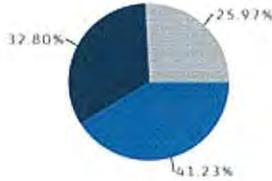
**81.17%**  
**Dealer Retention**  
 71.58%  
 Region Average

\*Assumes average mail price with 75% coupon

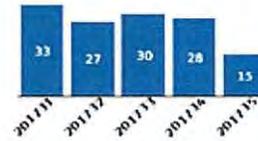
#### Repair Order Performance



CP \$ per CP RO



CP Labor Ops



Weekly RO Count

\*This program is optimized for Mozilla Firefox and Google Chrome browsers.

Last Update: 09/14/2017  
[Logout](#)



### Exhibit G

## Parts Performance Bonus Report

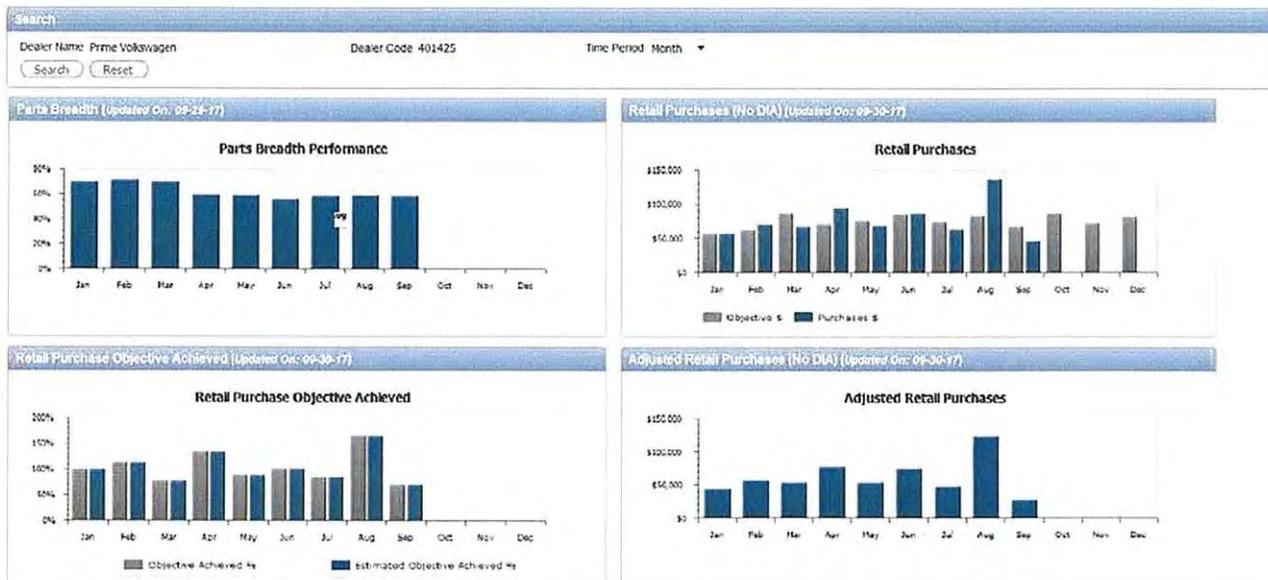


Exhibit H

Sales CE Report

 Input Area Code: <b>1N</b> Input Dealer Code: <b>401425</b> Dealer Name: <b>Prime Volkswagen</b> City/State: <b>Saco - ME</b>		Sales Scorecard						
		Month:	Aug					
		Year:	2017					
*YTD Score Green = At or above YTD Reg. AVG Red = Below YTD Reg. AVG	Dealer	MTD Email Capture	YTD Email Capture	Surveys Received	Area	Region	Nation	
	401425	80.0	79.5	135	1N	NER	USA	
**YTD Rank- Rankings reflect any dealer w/2017 data Green = Top 1/3 In Rank Black = Middle 1/3 In Rank Red = Bottom 1/3 In Rank	MTD	RTM	YTD Score*	YTD REG AVG	YTD NAT AVG	YTD RANK**		
Summary						Area:14	Region:203	Nation:651
CEI Score	97.2	96.2	97.1	95.6	95.1	1	22	48
Response Rate	68.8	75.4	80.8	61.4	59.8	4	11	30
Sales Survey Score	99.0	98.1	98.3	97.1	96.7	4	24	47
<b>Facility</b>								
Q1b. Your satisfaction with the dealership's facility, including comfort, cleanliness and amenities offered.	99.1	97.7	98.2	97.4	97.5	4	54	199
<b>Sales Consultant</b>								
Q2a.Understanding of your needs and guidance to the right Volkswagen.	100.0	99.6	99.3	98.7	98.6	3	36	106
Q2b.The level of honesty and integrity displayed throughout the purchase process.	100.0	99.2	99.5	98.4	98.2	3	17	45
Q2c.The knowledge demonstrated and quality of information provided.	100.0	99.2	98.7	98.4	98.3	4	78	216
Q2d.Your satisfaction with the quality of the test drive offered.	99.0	98.8	99.1	98.0	98.0	4	28	85
Q2e. Were you contacted to ensure you were completely satisfied with your sales experience?	100.0	100.0	100.0	96.5	96.4	1	1	1
Q2f. Consideration of your time and responsiveness to your requests.	100.0	98.5	99.0	98.2	98.0	4	43	107
Q2g. Your satisfaction with the process of coming to an agreement on pricing.	100.0	98.5	98.6	97.3	97.1	3	27	67
<b>Paperwork</b>								
Q3a. Please provide the approximate amount of time you had to wait between agreeing on a price and meeting with someone to discuss the paperwork	95.5	92.2	93.0	88.8	86.0	5	38	75
Q3b. Your satisfaction with the explanation of the terms of the sale.	100.0	97.9	98.3	97.5	97.3	4	44	134
Q3c. The level of honesty and integrity displayed by the person handling the paperwork.	100.0	98.3	98.7	97.9	97.7	5	47	134
Q3d. Consideration of your time by the person handling paperwork.	100.0	98.1	98.2	97.8	97.6	5	73	202
<b>Delivery</b>								
Q4a. Your satisfaction with the cleanliness of the vehicle inside and out.	100.0	98.8	98.7	98.5	98.4	6	87	235
Q4b. Was the vehicle free of dents, scratches and mechanical issues?	100.0	98.0	97.8	96.5	96.0	7	51	119
Q4c. Your satisfaction with the explanation of features and controls of your vehicle.	100.0	98.0	98.1	98.2	98.0	7	100	296
Q4d. Were all items such as the radio, navigation system and Bluetooth preset to your preferences?	100.0	98.0	97.7	97.8	96.9	8	110	255
Q4e. Were you provided an overview of, or introduced to someone in the service dept.?	90.0	97.6	98.1	93.1	92.3	6	19	43
Q4f. Consideration of your time during the vehicle delivery.	100.0	98.0	98.5	97.9	97.8	6	59	175
Q4g. Were you offered to schedule your first service appointment?	100.0	100.0	98.9	88.3	87.9	2	6	21

## Exhibit I

### Exclusivity Policy

#### Dealership Exclusivity

Volkswagen of America requires all dealers to operate Volkswagen operations in Facilities dedicated exclusively to the Brand, based on their projected 5-year Planning Volume (PV) and Vehicles in Operation (VIO). No other franchises or business may operate out of the same Facility as Volkswagen.

Exclusivity is defined in the following manner:

- A. Facility houses only Volkswagen-related business activities according to the guidelines found in *Form 12A- Facility Planning Guide*. All marketing materials, signage, point-of-purchase materials, etc. are Volkswagen-only.
- B. All Dealership personnel involved with vehicle and customer activities are dedicated solely to Volkswagen-related business. This involves, but is not limited to, the General Manager; New, Used, Service, and Parts managers; Technicians; and Sales Consultants.
- C. Dealer-submitted financial statements reflect Volkswagen business only; no other business is represented on submitted financial statements.

Exhibit J

WP TAA



VOLKSWAGEN  
TRANSACTION ASSISTANCE AGREEMENT

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWvA"), and Lash Auto Group LLC, doing business under the fictitious name Lash Volkswagen of White Plains, ("Dealer") (collectively, "All Parties") enter into this Transaction Assistance Agreement (the "Agreement") on this 7<sup>th</sup> day of November, 2012 (the "Effective Date").

RECITALS

- A. VWvA is a company organized and existing under the laws of the State of New Jersey, with its principal place of business at 2200 Fordham Porsche Drive, Herndon, Virginia 20171. VWvA is the distributor of Volkswagen-brand motor vehicles, parts, and accessories in the United States of America.
- B. Dealer is a corporation organized and existing under the laws of the State of New York, with its place of business at 376 Terrytown Road, Greatburgh, NY 10307 (the "Approved Location").
- C. It is critically important to VWvA, and a material obligation of this Agreement, that Dealer operates the Volkswagen dealership as an exclusive Volkswagen dealership operation, at the Approved Location.
- D. As explained in detail below, in exchange for certain long-term covenants, promises, obligations and guarantees from Dealer, ensuring that certain conditions are met and maintained, VWvA shall provide certain consideration to Dealer.

AGREEMENT

NOW, THEREFORE, in consideration for the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, All Parties agree hereto as follows:

1. Term. The term of this Agreement shall be from June 1, 2012 and for 10 years thereafter, concluding on June 1, 2022 (the "Term"). Following the conclusion of the Term, all provisions of this Agreement shall sunset with the exception of Section 6 (Confidentiality). The terms and conditions of Section 6 of this Agreement shall survive in perpetuity.
2. Obligations of Dealer. Dealer covenants, promises and agrees to provide for, comply with and maintain the following critical and material conditions continuously and throughout the term of this Agreement:



VOLKSWAGEN

- A. **Use of Approved Location and Brand Exclusivity:** Dealer covenants and promises to use the Approved Location solely for Volkswagen Dealership Operations, and Dealer shall not change the use or repurpose the Approved Location throughout the Term of this Agreement without the prior written consent of VWoA. Volkswagen Dealership Operations shall refer to Volkswagen business operations provided for in the parties' Volkswagen Dealer Agreement, dated March 8, 2010 (the "Dealer Agreement").

Without the express written permission of VWoA, Dealer shall not (1) operate any business or operation from the Approved Location other than Volkswagen Dealership Sales Operations; (2) change the use, location, or otherwise move or relocate any Volkswagen Dealership Operations away from the Approved Location and (b) that Dealer may continue to utilize any and all off-site storage capacity for storage of Volkswagen products, so long as such off-site storage is already listed in the Dealer Agreement and off-limits to customers and not used as customer touch point; or (3) subdivide, alter or change the use of the Approved Location, including, without limitation, by adding the operations of another automotive brand or other non-automotive business.

B. **Dealer Agreement:**

- i. Dealer shall remain in compliance with all terms and conditions set forth in the Dealer Agreement, including but not limited to the minimum requirements of Volkswagen Dealer Operating Standards, as may be established in writing by VWoA from time to time and provided to Dealer.
- ii. By way of the Operating Standards, Dealer shall be required to ensure that its facilities conform to then-current size and capacity requirements, as they may be updated by VWoA from time to time. Should the need arise, VWoA shall provide reasonable notice and adequate time to bring its facilities into conformity with said size and capacity requirements.

C. **Consent and Waiver of Protest Rights:**

- i. For purposes of this Agreement, the "No-Protest Zone" shall be comprised of any area or location that is over a four (4) mile radius from the Approved Location.
- ii. Dealer agrees that: (i) based on population, geography and market factors, the No-Protest Zone requires additional Volkswagen dealers to provide consumers with adequate sales and service facilities, qualified service personnel, convenient customer service, and competitive advertising of Volkswagen products; (ii) having additional Volkswagen dealers in the No-Protest Zone will ensure adequate competition, benefit the consuming public and all Volkswagen dealers, including Dealer, and thereby be in the public interest; and (iii) there is "good cause" under New York law for additional Volkswagen dealerships in the No-Protest Zone, with the location of the dealerships within the No-Protest Zone to be determined by VWoA in its sole discretion.
- iii. For three consecutive years following the Effective Date, Dealer hereby unconditionally and irrevocably consents to, and agrees not to protest or take any other action to interfere with: (i) the establishment of Volkswagen dealers from time to time anywhere in the No-Protest Zone; or (ii) the relocation of existing Volkswagen dealers from time to time to any location in the No-Protest Zone; or (iii) the relocation of Volkswagen dealers within the No-Protest Zone, at any time



## VOLKSWAGEN

and from time to time. Such consent and agreement not to protest includes, without limitation, the waiver of any right to protest under New York Vehicle and Traffic Law §§ 462, 463, and 469.

- iv. Dealer understands and agrees that a portion of the Payment being provided by VWoA is in consideration for Dealer's consent and waiver detailed in this Section. Dealer agrees that the consideration provided by VWoA is separate from any rights or benefits provided by the Volkswagen Dealer Agreement, adequate and valuable.

3. Consideration from VWoA. In consideration for the covenants, promises and guarantees provided by the Dealer, as described in Section 2, above, and subject to Dealer's execution of this Agreement, VWoA shall provide:

A. Monetary Payment: Within 30 calendar days following the execution of this agreement, VWoA shall tender by either paper check or electronic funds transfer Three Hundred Fifty Thousand U.S. dollars and zero cents (\$350,000.00) (the "Payment"), to Dealer.

B. Conditions of Payment: Dealer shall be solely responsible for any taxes, levies, transaction fees or other levies or fees, if any, imposed upon Dealer and associated with the Payment.

4. VWoA's Recovery Rights.

A. If at any time during the Term of this Agreement, Dealer breaches, defaults or otherwise fails to fulfill any of its obligations set forth in Section 2 above (with the exception of a default of obligations under Section 2.C., which is addressed separately), VWoA shall have the right to recover from Dealer a prorated amount of the Payment based on the remaining Term of the Agreement from the date the default occurs. The proration calculation is based on a ten (10) year straight line depreciation of the Payment, illustrated as follows:

Date of Recovery Event Occurrence	Payback Amount
≤ 1 Year into Term	All payments provided to Dealer under this Agreement
1 Year to ≤ 2 Years	\$315,000 (or 90% of any Payment provided under this Agreement)
2 Year to ≤ 3 Years	\$280,000 (or 80% of any Payment provided under this Agreement)
3 Year to ≤ 4 Years	\$245,000 (or 70% of any Payment provided under this Agreement)
4 Year to ≤ 5 Years	\$210,000 (or 60% of any Payment provided under this Agreement)
5 Year to ≤ 6 Years	\$175,000 (or 50% of any Payment provided under this Agreement)
6 Year to ≤ 7 Years	\$140,000 (or 40% of any Payment provided under this Agreement)
7 Year to ≤ 8 Years	\$105,000 (or 30% of any Payment provided under this Agreement)
8 Year to ≤ 9 Years	\$70,000 (or 20% of any Payment provided under this Agreement)
9 Year to ≤ 10 Years	\$35,000 (or 10% of any Payment provided under this Agreement)



## VOLKSWAGEN

With the exception of a breach, default or failure to comply with regard to Section 2.C (which shall be deemed intractable) or Section 2.B.ii (which already provides for a cure period), Dealer shall be provided with a reasonable notice and cure period (not to exceed 15 calendar days) in order to cure any said breach, default or failure prior to VVoA's exercise of its recovery rights.

- B. If, after completion of any payment obligations set forth in Section 3, Dealer breaches, fails to comply, or otherwise acts in contravention to the terms and requirements of Sections 2.C., above, then VVoA shall be entitled to recover the Payment (or any portion paid out thereof) in its entirety, if the breach is within the three year period following the Effective Date.
- C. If during the Term of this Agreement, (1) Dealer, or its beneficial ownership, sells or transfers its dealership assets to any other party, other than a current stockholder of Dealer, (2) Dealer undergoes a majority ownership change involving dealership assets, or (3) Dealer's Volkswagen Dealer Agreement is terminated (voluntarily or involuntarily) or surrendered for any reason whatsoever, then VVoA shall be entitled to recover a prorated amount of the Payments based upon the remaining term of the Agreement. As above, the prorated calculation is based on a ten (10) year straight line depreciation of the Payment.
- D. VVoA's total recovery rights under this Section 4, are limited in the aggregate to the amount of the Payment (or portion thereof tendered under Section 3). VVoA's monetary recovery rights shall be in addition to, and not in lieu of, any other rights or remedies available under other contracts, and in law and equity.
- E. To simplify recovery of the Payment, and reduce transaction costs associated with said recovery, should VVoA become entitled to recover the Payment (or any portion thereof) under this Section 4, the VVoA shall be entitled to recover by offsetting against any amounts owed by VVoA to Dealer.

5. Separate Agreement and Not a Dealer or Franchise Agreement. All Parties understand and acknowledge that the obligations and rights set forth in this agreement stand separate, distinct and apart from any obligations and rights set forth in the Dealer's Volkswagen Dealer Agreement. This agreement provides for distinct obligations, rights and responsibilities, and distinct and adequate consideration. No part of this agreement is intended to become part of the Dealer's Volkswagen Dealer Agreement or franchise relationship as defined by state law, and/or subject to regulation by state dealer franchise laws. Dealer agrees, irrevocably admits and acknowledges that this Agreement is not a "dealer" or "franchise" agreement as those terms may be defined in any applicable state or federal law or regulation. Therefore, any provisions applicable to "dealer" or "franchise" agreements under the laws of the state in which Dealer does business or under federal law do not apply to this Agreement, and Dealer shall not seek to enforce any such provisions against VVoA. VVoA reserves the right to terminate and/or revoke this Agreement in the event it is recognized or determined that this Agreement is a "dealer" or "franchise" agreement.

6. Confidentiality. All Parties shall keep the terms of this Agreement strictly confidential, and shall disclose such terms to third parties only if required to do so by order of court, or in response to a duly authorized subpoena, or in response to some other legal process. If any party to this Agreement is required by law to disclose any term of this Agreement, then such party shall, to the extent practicable, give written notice to the other party to this Agreement no less than two (2) weeks prior to the date on which such disclosure is required ("Disclosure Date"). If unable to give such notice, then such party shall give as much notice in advance of the Disclosure Date as possible, in whichever way such party reasonably deems most expeditious. Notwithstanding this Section, All Parties may disclose, in



VOLKSWAGEN

confidence, the terms of this Agreement to said party's retained attorneys, accountants and tax professionals as deemed necessary.

7. Expenses and Fees. All Parties shall each pay their own respective expenses, including attorneys' fees, incurred in connection with this matter and with the preparation, execution, and implementation of this Agreement.

8. No Rule of Strict Construction. The words used in this Agreement shall be deemed words chosen by All Parties to express their mutual intent, and no rule of strict construction against VWoA or the Dealer shall apply to any term or provision of this Agreement.

9. Entire Agreement. This Agreement constitutes the entire agreement and understanding between All Parties with respect to the subject matter hereof. No prior or contemporaneous agreements between All Parties, whether oral or written, concerning the subject matter of this Agreement, shall be of any force or effect.

10. Modification in Writing. This Agreement cannot be modified, altered, or amended in any respect except by the written consent of All Parties. Such consent shall be at the given party's sole and unfettered discretion.

11. No Third-Party Beneficiaries. This Agreement does not encompass any third party beneficiaries, and is intended to benefit only the actual parties executing this agreement.

12. Captions. The caption headings in this Agreement are for convenience purposes only and shall not be used to interpret or to define any of the terms and provisions of this Agreement.

13. Choice of Law. The terms and provisions of this Agreement shall be construed according to the laws of the District of Columbia.

14. No Assignment. The obligations, promises and guarantees contemplated in this Agreement are unique and personalized in nature. As such, this Agreement, and, without limitation, the obligations set forth in Section 2, may not be assigned or transferred without the express written consent of the Parties. Such consent shall be at the given party's sole and unfettered discretion.

15. Notice. If any clause of this Agreement requires that notice be given, written notice must be sent via certified mail or via overnight delivery with receipt signature required, and notice will be deemed to have been given upon receipt of the written notice by the intended party. Notice must be sent to each party as follows:

(i) If to VWoA, written notice must be sent to:

Volkswagen of America, Inc.  
an operating unit of Volkswagen Group of America, Inc.  
Attn: Office of the General Counsel  
2200 Ferdinand Porsche Drive  
Herndon, VA 20171

With a copy to:

Volkswagen of America, Inc.  
An operating unit of Volkswagen Group of America, Inc.  
Attn: Volkswagen Network Operations  
2200 Ferdinand Porsche Drive  
Herndon, VA 20171

VOLKSWAGEN



(b) If to Dealer, written notice must be sent to:

Jeffrey Lash -- President  
Lash Auto Group, LLC *dba* Lash Volkswagen of White Plains  
376 Tarrytown Road  
Greenburgh, NY 10807

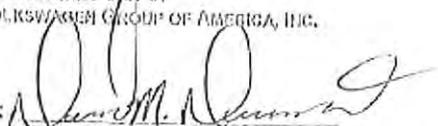
Danielle Lash, Vice President and General Counsel  
11 Brandywine Lane  
Sandy Hook, CT 06482

16. Counterparts. This Agreement may be executed in any number of identical counterparts, any of which may contain the signatures of less than all parties, and all of which together shall constitute a single Agreement. A signature to this Agreement delivered by telecopy shall be deemed valid.

17. Time of the Essence. Time is of the essence in this Agreement. All milestones, interim and final deadlines, shall be deemed critical and material to the terms of the Agreement, and the Parties' understanding, and shall be strictly adhered to and enforced.

IN WITNESS WHEREOF, as of this 7<sup>th</sup> day of November, 2012, Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., and Lash Auto Group 2, LLC, have each caused this Agreement to be duly executed.

VOLKSWAGEN OF AMERICA, INC.,  
AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:   
David Durant  
Director - Northeast Region

BY:   
Robert H. Kim  
General Manager - Network Operations

LASH AUTO GROUP, LLC:

BY:   
Jeffrey Lash -- President

# Exhibit 2

**FIRST AMENDMENT TO BUSINESS RELATIONSHIP  
AND SETTLEMENT AGREEMENT**

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") and GPB Capital Holdings, LLC ("GPB") and its automotive subsidiaries and affiliates (GPB and its affiliates and subsidiaries may be collectively referred to herein as "GPB Group"), (VWoA and GPB may be collectively referred to herein as the "Parties") entered into a Business Relationship and Settlement Agreement (the "Agreement") on October 3, 2017. This First Amendment to the Agreement is entered into and effective on the last date set forth below (the "Effective Date").

**RECITALS**

A. WHEREAS, VWoA is a company organized and existing under the laws of the State of New Jersey, with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VWoA is the exclusive distributor of Volkswagen-brand motor vehicles, parts, and accessories (collectively, "Authorized Products") in the United States of America.

B. WHEREAS, GPB is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 1581 Franklin Ave., Mineola, NY 11501. GPB is the general partner of GPB Automotive Portfolio, LP, GPB Holdings, LP, and GPB Holdings II, LP, which have either direct or indirect majority ownerships in the Volkswagen Dealerships set forth in Exhibit A (the "Dealerships"). The Parties acknowledge that the GPB Group has or may create or structure ownership of Volkswagen dealerships through additional corporate entities which may not have been formed as of the Effective Date. Notwithstanding this fact, this Amendment, the Agreement and the obligations of GPB Group as set forth herein are intended to also govern the conduct of any such newly formed entities.

C. WHEREAS, the GPB Group recently entered into an asset purchase agreement to acquire an additional Volkswagen Dealership in Massachusetts (the "Gallery Dealership"). VWoA has a contractual and statutory right to object to the transfer or exercise a right of first refusal.

D. WHEREAS, the GPB Group has requested that VWoA review and consider the asset purchase agreement.

E. WHEREAS, the GPB Group desires that VWoA review and approve the asset purchase agreement and proposed transfer, and, the GPB Group and VWoA recognize that if VWoA rejects the request there could be litigation challenging the decision which would result in additional expense and risk for the parties.

F. WHEREAS, the GPB Group has agreed to remedy outstanding ownership issues with the Dealerships, and has requested that VWoA review and consider the asset purchase agreement of the Gallery Dealership. Upon receipt of all requested documentation, VWoA will review and consider the proposed transfer of the Gallery Dealership.

G. WHEREAS, the Parties now seek to amend the Agreement to clarify the obligations of the Parties on a going forward basis and to ensure that the GPB Group understands and agrees to certain

parameters related to ownership of the Dealerships and any Volkswagen dealerships which may be acquired in the future.

#### AGREEMENT

NOW, THEREFORE, in consideration for the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 7, paragraph F of the Agreement, titled Safe Harbor Period, is deleted in its entirety and replaced by the following:

Safe Harbor Period. The performance obligations of this Section 7 shall not apply to a Dealership until GPB Group has had Ownership or Control of said Dealership for a period of twelve (12) consecutive months ("Safe Harbor Period"). After the Safe Harbor Period, the provisions of Section 7 shall become fully applicable on a going forward basis. The Safe Harbor Period is only applicable to performance obligations as described in paragraphs A., B., and C. above. Provided however that if there is a change in Approved Management as set forth in Exhibit E hereto, the GPB Group shall have ninety (90) days from the removal of any such Approved Operator to submit to VWoA another individual to serve as Approved Operator at the applicable Volkswagen dealership location, which individual is subject to VWoA approval, and the GPB Group shall not be deemed in default during said ninety (90) day period.

2. Section 13 of the Agreement, titled Acquisition and Open Point Eligibility, paragraph A. is deleted in its entirety and replaced by the following

GPB Group understands and agrees that they shall not be eligible for any acquisitions of Volkswagen dealerships or appointment to Volkswagen open points if they are not in compliance with all terms, conditions and provisions of this Agreement, including, without limitation, the provisions of Sections 3 through 12, above, and, accordingly, agrees not to enter into any agreements with third parties to acquire interests in Volkswagen dealerships if not in compliance. VWoA agrees to identify a contact person to whom the GPB Group can provide notice (on a confidential basis) that it is conducting substantive negotiations within seven (7) business days from commencement of such negotiations for any acquisition of a Volkswagen dealership. Negotiations for purposes of this paragraph shall mean exchanging financial offers and does not include general inquiries regarding the availability or desired price of a dealership (or dealership group). VWoA will not consider notice required by this paragraph to be notice for purposes of any applicable state franchise law, and agrees to keep any such notice confidential. This notice requirement shall be considered a material term of this Agreement for purposes of section 13.C below.

3. Section 13 of the Agreement, titled Acquisition and Open Point Eligibility, paragraph C. is deleted in its entirety and replaced by the following

GPB Group agrees that failure to comply with any material terms and conditions of this Agreement shall constitute independent and adequate good cause and justification (both

factual and legal) for VWoA to deny approval or consent to any acquisition of a Volkswagen dealership under the terms of Article 12 of the Volkswagen Dealer Agreement, Standard Provisions, and any relevant state law regulating manufacturer approval of dealership transfers. Further, if GPB Group fails to comply with any material term or condition of this Agreement, VWoA may demand divestiture of any or all of the GPB owned Dealerships, in VWoA's sole discretion. Any such request for divestiture will be made in accordance with section 7.E.ii-iv of the Agreement.

4. Section 14 of the Agreement, titled GPB Group's Covenant Not to Sue or Protest, is deleted in its entirety and replaced by the following:

GPB Group's Covenant Not to Sue or Protest. If (i) a termination of a Dealership or DA, including a voluntary termination which may be required under the terms of this Agreement ("DA Termination") or (ii) the rejection or turn-down of a proposed buy-sell, acquisition or purchase of a Volkswagen dealership ("Buy-Sell Rejection"), occurs pursuant to or as a result of the terms, conditions and provisions of this Agreement, GPB Group agrees that it shall not file a legal protest, civil or administrative action, or any other legal proceeding to prevent or delay the effect of the DA Termination or Buy-Sell Rejection at issue. GPB Group further agrees that it shall not seek monetary damages or other legal or equitable remedy, from any court or administrative agency, related to the termination of the DA Termination or Buy-Sell Rejection at issue. Should GPB Group violate this provision, GPB Group covenants and agrees that it shall pay any and all of VWoA's attorney fees and legal costs associated with defense of such legal, administrative or equitable action, and, in addition, GPB Group shall indemnify and hold VWoA harmless from any monetary damages, equitable judgments or fees and costs resulting from any legal, administrative or equitable proceeding in contravention of this provision.

5. Revised Exhibit E. Exhibit E is hereby deleted in its entirety and replaced with the attached Exhibit E.

6. Capitalized Terms. Capitalized terms used herein that are not otherwise defined shall have the meaning given to such terms in the Agreement.

7. To the extent that the terms in this Amendment are different from or contrary to any terms in the Agreement, the terms in this Amendment shall prevail. Except as specifically amended in this Amendment, the Agreement (as modified) remains in full force and effect and is hereby ratified and confirmed. In the event of any conflict between the Agreement and this Amendment, the terms of this Amendment shall apply and supersede the inconsistent provision in the Agreement.

8. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one single agreement. A party's facsimile signature to this Agreement delivered to the other party shall be sufficient to bind such party to this Amendment.

IN WITNESS WHEREOF, as of this 1 day of October, 2018, Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., and GPB Capital Holdings LLC on behalf of itself and its affiliates and subsidiaries, have each caused this Amendment to be duly executed.

**VOLKSWAGEN OF AMERICA, INC.,**  
AN OPERATING UNIT OF  
**VOLKSWAGEN GROUP OF AMERICA, INC.**

BY:  \_\_\_\_\_

**GPB Capital Holdings, LLC**  
BY:  \_\_\_\_\_  
David Gentile  
CEO

By:  \_\_\_\_\_  
David Rosenberg  
Automotive COO

**Exhibit A  
Dealerships**

Prime Volkswagen  
FX Caprara Volkswagen  
Lash Auto Group, LLC dba Lash Volkswagen of White Plains  
Lash Auto Group 2 LLC dba Volkswagen Oneonta

**Exhibit E**  
**Approved Operators**

#408340 Lash Volkswagen of White Plains – David Rosenberg  
#408302 Volkswagen Oneonta - David Rosenberg  
#401425 Prime Volkswagen – David Rosenberg  
#408142 FX Caprara Volkswagen – David Rosenberg

# **Exhibit 3**

PRIME AUTOMOTIVE GROUP

September 16, 2019

VIA Electronic Mail

Volkswagen of America, Inc.

Attn: Office of the General Counsel

2200 Ferdinand Porsche Drive

Herndon, VA 20171

Attn: Patrick Coyle, Brian Kelly, Mike Tocci, Blake Martini, and Morgan Filbey

Email: [patrick.coyle@vw.com](mailto:patrick.coyle@vw.com); [brian.kelly@vw.com](mailto:brian.kelly@vw.com); [michael.tocci@vw.com](mailto:michael.tocci@vw.com); [blake.martini@vw.com](mailto:blake.martini@vw.com); [morgan.filbey@vw.com](mailto:morgan.filbey@vw.com)

Re: Volkswagen dealership entities controlled by GPB Capital Holdings and affiliates (the "Companies")

Dear Gentlemen:

I am writing to inform you of a change in the senior management of the Companies. The governing bodies of the Companies determined to terminate David Rosenberg's employment as the Chief Executive Officer of the Companies (as applicable) and from any other officer positions he held and have appointed me to replace him as Interim Chief Executive Officer effective as of the date of this letter.

I have over 40 years of experience in the automotive industry, most recently as the Co-Founder and CEO of Vroom, the second largest on-line pre-owned vehicle sales organization in the country. Prior to founding Vroom, I spent 14 years at AutoNation, the largest automotive retailer in the country, as Senior Vice President of Sales where I was responsible for overseeing \$13 billion in revenue across the company's profit centers including new and used vehicle sales, service, parts, collision, finance and insurance. Enclosed please find a copy of my complete resume.

I joined the Board of Managers of Automile Holdings, LLC (d/b/a Prime Automotive Group) in May 2019 and was named Chairman of the Board shortly thereafter. Prior to joining the Prime Automotive Group, I had no prior relationship with David Gentile or GPB Capital Holdings, LLC. I have no personal involvement in any regulatory and litigation matters related to GPB Capital Holdings, LLC.

Pursuant to that certain Irrevocable Proxy to Vote Membership Interest of Automile Parent Holdings LLC (the "Proxy"), the members of Automile Parent appointed David Rosenberg as the sole and exclusive proxy of Automile Parent to vote and exercise all voting and related rights with respect to the membership interests held by Automile Parent in accordance with the terms and conditions set forth therein. According to the terms of the Proxy, upon David Rosenberg no longer holding the position of President and Chief Executive Officer of Automile Parent, David Rosenberg shall immediately cease being the Voting Representative (as defined in the Proxy) and there shall be appointed a new Voting Representative who needs to be approved by Volkswagen. Accordingly, effective as of the date of this letter, David Rosenberg was removed as Voting Representative. Furthermore, this letter shall serve as notice that Automile Parent proposes to appoint me as the new Voting Representative, subject to your approval.

I do not contemplate any changes in the on-site management of the stores owned by the Companies. I look forward to discussing this change in executive management with you in more detail at

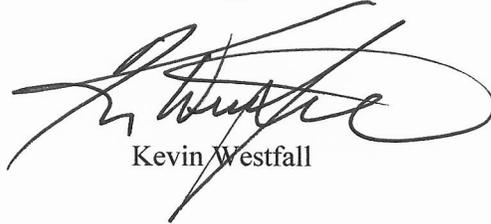
375 Providence Highway • Westwood, MA 02090 • Tel 855-Prime-10



your earliest convenience. Kindly forward all necessary documentation required to obtain your consent for my appointment as Interim Chief Executive Officer and as the new Voting Representative for Automile Parent.

Please feel free to contact me with any questions and I look forward to scheduling a meeting with you in the near future. I appreciate your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Westfall", with a large, sweeping flourish at the end.

Kevin Westfall

Enclosure

**Kevin P. Westfall**  
**kwestfall@gpb-cap.com**  
**(954) 614-1333 Cell**

**Lead an organization to achieve significant revenue and profitability growth, while creating a culture of exceptional customer and employee satisfaction.**

**AutoAmerica/VROOM, Fort Worth, TX 12/11 – 1/16**  
**CO-FOUNDER/CEO**

- Co-founded the second largest on-line pre-owned vehicle sales organization in the US.
- Implemented a customer focused sales process ensuring transparency and honesty throughout the entire sales process. (Recognized as an industry leading sales process)
- Secured floorplan financing (\$30MM) through Ally Bank, excluding any personal guaranties.
- Grew sales to over 3000 pre-owned cars and trucks monthly.
- Secured outside investors to take the company public.

**AUTONATION INC, Ft. Lauderdale, FL 3/97 – 11/11**  
**SENIOR VICE PRESIDENT – SALES**

Responsible for developing strategic direction and implementing “Best Practices” to improve the operating and financial performance for new and used vehicle sales, service, parts, collision, finance and insurance (\$13.0B total revenue). Additional responsibilities include vehicle ordering, inventory, CSI, and training for all 29,000 associates.

- Developed customer-oriented sales menu process that ensures all customers are treated with respect, values their time and provides financial data in a fully transparent manner.
- Implemented new sales forecast and vehicle order configuration tool to reduce days supply and days to turn.
- Developed and launched Vehicle Value Outlets (31) that provide a retail sales channel for high mileage, aged and pre-wholesale vehicles in an one-price non-negotiated sales environment for consumers.
- Implemented a new retail pricing model enabling stores to quickly provide meaningful vehicle prices (1st pencil, target and floor) to consumers.
- Launched a defined service process on how all service associates should interact with the consumers, including standardized pricing guides, electronic maintenance menus and multipoint inspection forms.
- Consolidated all service marketing into one program from sales to service, retention through reactivation.
- Launched a collision concierge program for all dealerships without a collision facility.
- Launched a mandatory intervention program for non-performing CSI stores.
- Created new training and performance measurement programs, for all sales departments, that require training certification and attainment of performance standards for continued employment.
- Designed and implemented customer friendly full disclosure “menu” finance process.
- Consolidated lenders among all retail locations to increase store purchasing leverage and profitability.
- Created and launched captive finance and service contract company to service all retailers.
- Leading project team to create a seamless and transparent electronic sales process by fully integrating the CRM, sales and F&I tools into the Dealer Management systems.

**EXHIBIT 3**

#### **HIGHLIGHTS**

- Implemented fully transparent “Smart Choice” customer sales menu significantly improving PVR’s and CSI.
- Reduced days supply by 11 days resulting in a \$25MM annual savings.
- Successfully implemented a retail pricing tool to all stores significantly improving PVR’s while creating visibility to loser deals.
- Increased financial performance of fixed operations and customer service retention to the highest levels since inception of company.
- Consolidated service marketing into one comprehensive program reducing expense by 40% and improving retention by 72%.
- Launched F & I “menu” process resulting in a \$685 PVR increase for new and used vehicles.
- Launched lender and protection product program generating between \$75-100MM in corporate income annually.
- Improved protection product sales (service contracts, pre-paid maintenance, etc.) from 43% to 186% annually.
- Increased both Sales and Service CSI to the highest levels in the history of the company.

#### **POSITIONS HELD**

- 3/05 to Present - SVP of Sales
- 5/03 to 3/05 – SVP Fixed Operations and Finance & Insurance
- 3/97 to 10/03 – President of AutoNation Financial Services and Finance & Insurance

#### **BMW FINANCIAL SERVICES, Woodcliff Lake, NJ 1990-3/97 FOUNDER/PRESIDENT**

- Determined strategic direction for the development and on-going operations of a captive finance company.
- Created a captive finance company from one person to a fully functional, highly service-oriented organization.
- Developed competitive customer and dealer oriented products and programs.
- Hired key managers and support staff.
- Established pricing and residual policies to increase profitability.
- Determined funding strategies in order to broaden funding capabilities and improve borrowing costs.
- Selected technology infrastructure to promote efficient transaction processing and adequate financial controls.

#### **HIGHLIGHTS**

- Directed the successful implementation of the wholly owned captive launched 1/93
- Implemented a centralized processing center in Columbus, Ohio
- Grew the company from \$0.7B to over \$7.2B from 1993 to 1997, respectively
- Managed approximately 300 employees
- Increased profitability from (\$1.1MM) in 1991 to \$78.8MM in 1997.
- Established reserve levels (Residual and Credit) to 150% of forecasted losses.
- Maintained an industry leading loss ratio of 20 BP annually while creating strong dealer acceptance.
- Established strong internal controls to ensure financial and operational control.
- Lead the entire automotive finance industry (including international) in operating efficiency as measured by total assets serviced to operating expenses.
- Established customer-oriented environment – “Service is our only business”.
- Implemented detailed workflow analysis and productivity standards and reports.
- Implemented comprehensive cross training programs.
- Lead industry in dealer and customer satisfaction as ranked by JD Powers and Associated among all banks, captive and independent finance companies.
- Implemented highly efficient and flexible client-server technology.

**CHRYSLER CREDIT CORPORATION**, Southfield, MI 1987-1990  
**MANAGER – Retail Lease Portfolio**

- Managed all aspects of the retail leasing portfolio from acquisition through disposal (\$4 Billion dollar portfolio).
- Determined market presence by developing competitive lease products and features.
- Controlled profitability through rate and residual establishment.
- Managed \$200 Million annual budget for marketing, training and incentives.

**HIGHLIGHTS**

- Developed and launched the special “Gold Key Leasing” program.
- Increased volume by 100%, reduced losses by 50% and shortened the average finance term from 58 to 36 months.

**WORLD AUTOMOTIVE IMPORTS AND LEASING**, Dublin, OH 1980 – 1987  
**PRESIDENT**

- Responsible for creating and directing a regional retail and leasing company.
- Managed 7 employees.

**HIGHLIGHTS**

- Grew sales from 2.3 Million in 1980 to \$7 Million by 1987.

**EDUCATION**

**Ohio State University** – BS Business Administration - Major – Accounting

**OTHER HIGHLIGHTS**

- **Board Member of RumbleOn – 2017 to Present**
- **Board Member of Automile (Chairman) – 2019 to Present**

# Exhibit 4

Mr. David Gentile	Brian D. Kelly	Name
Chief Executive Officer		
GPB Capital Holdings, LLC	Senior Director, Network Operations	Title
1581 Franklin Ave.		
Mineola, NY 11501	October 31, 2019	Date

Re: Notice to Divest pursuant to Business Relationship Agreement

Dear Mr. Gentile,

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and GPB Capital Holdings, LLC ("GPB") are parties to a Business Relationship and Settlement Agreement entered into on October 3, 2017, as amended by the First Amendment to Business Relationship and Settlement Agreement entered into on October 1, 2018 (collectively referred to as the "Business Relationship Agreement" or "BRA").

As has been previously conveyed via letter and other communication, GPB has breached the BRA in numerous ways. VWoA relies on all prior letters sent to you or GPB's counsel, Akerman, LLP and Rosenfeld & Kaplan, LLP, and to Mr. David Rosenberg or his counsel, Sidley Austin, LLP, since learning of Mr. Rosenberg's unilateral removal from the Board of Managers and involuntary termination from his position as Chief Executive Officer and President of Automile Holdings, LLC. Without repeating everything in our prior correspondence VWoA considers GPB to have breached the BRA based on the following:

- In section 2, the parties agreed that, for purposes of the BRA, the terms "Ownership or Control" means "any ownership stake in any Volkswagen Dealership, operational control of any Volkswagen Dealership or management of any Volkswagen Dealership, whether direct or indirect, including without limitation, through any subsidiary, affiliate company, officer, executive or other stakeholder of GPB Group."
- In section 7 D., the parties agreed that "VWoA authorizes only the listed individuals on Exhibit E (the "Approved Operators") to exercise full operational control over the applicable Dealer entity. VWoA does not approve GPB Group or any of its owners (whether direct or indirect, actual or beneficial) to exercise any operational control over Dealer.
- In section 12 A., the parties agreed that "VWoA shall have the right to review and approve any ... change of ... voting rights of GPB Group ('Ownership Change Event') [and that] GPB Group shall notify VWoA of any proposed Ownership Change Event at least sixty (60) days prior to the date of any Ownership Change Event."
- Exhibit E was amended and replaced in its entirety in the First Amendment to Business Relationship and Settlement Agreement, and the new Exhibit E named only David Rosenberg as the Approved Operator.

As a result of the breach of the BRA, and pursuant to section 12 B of the BRA, VWoA hereby demands that GPB transfer all interest in all Dealerships (as defined in the BRA) to Bona Fide Transferees (also defined in the BRA) within ninety (90) days of this notice.

For purposes of clarity, and as previously communicated, the Dealerships subject to the BRA include Saco Auto Holdings VW, LLC d/b/a Prime Volkswagen ("Prime Volkswagen"), FX Caprara VW, LLC d/b/a FX Caprara Volkswagen ("Caprara Volkswagen"), and AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood ("Volkswagen of Norwood"). Although there is no obligation to do so, VWoA can provide assistance in locating a buyer for these dealerships upon receipt of a signed seller's assist letter in the form attached hereto. Notwithstanding

**EXHIBIT 4**

this assist to sell letter, it is the responsibility of GPB to submit an asset purchase agreement to VWoA within the ninety (90) day period described above. Failure to submit an asset purchase agreement or to ultimately consummate a sale of the Volkswagen dealership assets will trigger an obligation by GPB to voluntarily terminate the applicable dealer agreements.

It is clear that there is no remedy to the breaches previously described, and that GPB has attempted a change in ownership or control of GPB Group without VWoA prior notice or consent, in direct contravention of the BRA, thus triggering the right of VWoA to demand GPB divest of all ownership of the Volkswagen dealerships. You are advised that you should immediately seek to sell the Volkswagen dealerships in order to avoid the necessity of a voluntary termination.

As with prior correspondence, and in the interest of advising all parties of the position of VWoA, VWoA will also send a copy of this letter to GPB attorneys and Mr. Rosenberg's attorneys. VWoA takes no position regarding the respective contentions of the parties and continues to rely on the signed agreements, including the BRA and the individual Dealer Agreements.

VWoA does not waive any additional breaches of the Business Relationship Agreement or any of the Dealer Agreements of the above described Volkswagen dealerships that may exist now or in the future, or its right to issue a notice of default or notice of termination pertaining to such breach or breaches at a later time.

Sincerely,

A handwritten signature in blue ink that reads "BKelly". The signature is stylized and appears to be written in a cursive or semi-cursive script.

Brian Kelly  
Senior Director, Network Operations

cc: Attorneys for David Rosenberg

Mr. Jack W. Pirozzolo, Esq.  
Sidley Austin LLP  
60 State Street 36th Floor  
Boston, MA 02109  
JPirozzolo@Sidley.com

Mr. Scott Silverman, Esq.  
Scott@SilvermanAdvisors.com

Attorneys for GPB

Mr. Brit T. Brown, Esq.  
Akerman LLP  
1300 Post Oak Blvd., Suite 2500  
Houston, Texas 77056  
brit.brown@akerman.com

Mr. Jonathan L. Awner, Esq.  
Akerman LLP  
98 Southeast Seventh Street, Suite 1100  
Miami, FL 33131  
jonathan.awner@akerman.com

Mr. Tab K. Rosenfeld, Esq.  
Rosenfeld & Kaplan, LLP  
1180 Avenue of the Americas, Suite 1920  
New York, New York 10036  
Tab@Rosenfeldlaw.com

# Exhibit 5



January 23, 2020

VIA UPS and Email

Mr. Brian D. Kelly  
Senior Director, Network Operations  
VW Group of America  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171

Re: October 31, 2019 Notice to Divest pursuant to Business Relationship Agreement

Dear Mr. Kelly:

We write in response to your respective letter dated January 21, 2020. Specifically, you have asked whether GPB Capital Holdings, LLC ("GPB") intends to transfer all interests in all Dealerships. Your October 31, 2019, correspondence ("Notice to Divest pursuant to Business Relationship Agreement" identifies the Dealerships as "Prime Volkswagen" (Saco Auto Holdings VW, LLC), "Volkswagen of Norwood" (AMR Auto Holdings-VWN, LLC), and "Caprara Volkswagen" (FX Caprara VW, LLC).

Please be advised that we are in the process of finalizing an asset purchase agreement transferring our interest in Caprara Volkswagen to a third party. Subject to our ability to finalize negotiations, we hope to submit that agreement to VWoA by January 31, 2020. In order to avoid any unnecessary dispute as to Caprara Volkswagen, and without commenting on the validity or invalidity of VWoA's demand to divest, can you please advise whether VWoA is agreeable to an extension of time of conclude this divestment?

We do not plan to divest our interest in Prime Volkswagen or Volkswagen of Norwood. It is imperative that VWoA communicate clearly on this issue, and equally imperative that VWoA open a constructive dialogue with us and the Dealerships. Both dealerships are good performers with strong sales and service volume and customer satisfaction. Volkswagen of Norwood's performance is particularly strong ranking number one in the state according to your own DSIs, and we have and are continuing to make significant investments to grow Volkswagen's future business at these locations.

You have advised that VWoA "does not waive . . . its right to issue a notice of default or notice of termination" in your October 31, 2019, correspondence and again in your January 21, 2020, correspondence. Consequently, we do not consider your letters to provide the Dealerships

**EXHIBIT 5**

Brian D. Kelly, Senior Director, Network Operations  
VW Group of America  
Page 2

with a notice of termination under the applicable state laws or the written agreements among the parties. Can you please advise if you do plan to issue a notice of termination?

As you know, VWoA has refused to communicate with Mr. Kevin Westfall, Chairman of Prime Automotive Group, and even refused to provide Mr. Westfall with application materials or consider his appointment when he was appointed as interim Chief Executive Officer. Similarly, VWoA has refused to consider or provide application materials to Mr. Todd Skelton, who has become Mr. Westfall's permanent replacement as CEO of Prime Automotive Group. In fact, VWoA has even refused to communicate with Mr. Westfall or Mr. Skelton.

Mr. Skelton is highly qualified and experienced in motor vehicle retail operations, having a proven track record of maximizing dealership performance. Mr. Skelton has had the opportunity to review operations at both Prime Volkswagen and Volkswagen of Norwood and has plans to improve these stores as well.

We again request an opportunity to meet with you to discuss these plans and Mr. Skelton's appointment, and to specifically discuss any outstanding issues between VWoA and GPB or the Dealerships. We accordingly also request this meeting under Massachusetts General Laws Chapter 93B, Section 15. VWoA has to date been unwilling to meet with us or to have any meaningful communications with us. VWoA's demand that we divest our interest in the Norwood and Saco Dealerships is unreasonable and unfair under the circumstances, and certainly not justified under the controlling agreements and law. The loss of these two Dealerships, by divestiture or termination, would be highly injurious to us particularly considering the enormous investments made in these Dealerships, as well as to Volkswagen consumers in their area of operations. Accordingly, we strongly urge you to meet and confer with us in an effort to resolve any outstanding issues.

Sincerely,



Joseph Girardot  
Chief Legal Counsel  
Prime Automotive Group

cc:

Attorneys for David Rosenberg:

Mr. Jack W. Pirozzolo, Esq. *Via* UPS and Email: [JPirozzolo@Sidley.com](mailto:JPirozzolo@Sidley.com)  
Sidley Austin LLP  
60 State Street 36<sup>th</sup> Floor  
Boston, MA 021109

**EXHIBIT 5**

Brian D. Kelly, Senior Director, Network Operations  
VW Group of America  
Page 3

Attorneys for GPB, Prime Automotive and the Dealerships:

Mr. Jonathan L. Awner, Esq.  
Akerman. LLP  
98 Southeast Seventh Street, Suite 1100  
Miami, FL 33131

Mr. Brit T. Brown, Esq.  
Akerman LLP  
1300 Post Oak Blvd. Suite 2300  
Houston, Texas 77056

**EXHIBIT 5**

# **Exhibit 6-Part 1**



For Consumer or Employment cases, please visit www.adr.org for appropriate forms.

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: VOLKSWAGEN OF AMERICA, INC.

Address: 2200 Ferdinand Porsche Drive

City: Herndon

State: Virginia

Zip Code: 20171

Phone No.: 703-364-7000

Fax No.:

Email Address:

Name of Representative (if known): Billy Donley / David Jarret

Name of Firm (if applicable): BakerHostetler

Representative's Address: 811 Main Street Suite 1100

City: Houston

State: Texas

Zip Code: 77002

Phone No.: 713-751-1600

Fax No.: 713-751-1717

Email Address: bdonley@bakerlaw.com / djarrett@bakerlaw.com

The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

Brief Description of the Dispute:

Volkswagen of America has issued a letter demanding complainants divest their interest in three franchised dealerships, including one in Maine, one in New York and one in Massachusetts, an threatened notice of termination of franchise. The complainants dispute Volkswagen's ability to require the divestiture or the threatened franchise termination.

Dollar Amount of Claim: \$ Declaratory relief only

Other Relief Sought:  Attorneys Fees  Interest  Arbitration Costs  Punitive/Exemplary

Other: none

Amount enclosed: \$ 925.00

In accordance with Fee Schedule:  Flexible Fee Schedule  Standard Fee Schedule

Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:

Absent agreement of the parties, the arbitration hearing must occur within 60 days of the demand for arbitration, and decision issued within 90 days of the demand for arbitration. Arbitrator must have the ability to accommodate this schedule absent agreement of the parties to extend the deadlines. Also absent agreement of the parties, the arbitration for each dealership must take place in the state where that dealership's operations are located. In this instance, Saco (Maine), Norwood (Massachusetts) and Caprara (New York). Filing parties will propose consolidation of all three dealership proceedings into the same proceeding as the same agreements and facts apply.



Hearing locale: Boston, Suffolk County, Massachusetts

(check one)  Requested by Claimant  Locale provision included in the contract

Estimated time needed for hearings overall:

hours or 5

days



Type of Business:		
Claimant: Dealerships		Respondent: Manufacturer
Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other? No.		
Signature (may be signed by a representative): /s/Brit T. Brown		Date: 1/28/2020
Name of Claimant: AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood; SACO Auto Holdings VW, LLC d/b/a Prime Volkswagen		
Address (to be used in connection with this case): 1280 Providence Highway		
City: Norwood	State: Massachusetts	Zip Code: 02090
Phone No.: 781-816-8989	Fax No.:	
Email Address:		
Name of Representative: Brit T. Brown / Benjamin A. Escobar		
Name of Firm (if applicable): Akerman LLP		
Representative's Address: 1300 Post Oak Blvd. Suite 2300		
City: Houston	State: Texas	Zip Code: 77056
Phone No.: 713-623-0887	Fax No.: 713-960-1527	
Email Address: brit.brown@akerman.com / benjamin.escobar@akerman.com		
To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. At the same time, send the original Demand to the Respondent.		

**AMERICAN ARBITRATION ASSOCIATION  
COMMERCIAL ARBITRATION RULES**

AMR AUTO HOLDINGS-VWN, LLC, d/b/a  
Volkswagen of Norwood; SACO AUTO HOLDINGS  
VW, LLC d/b/a Prime Volkswagen; and FX CAPRARA  
VW, LLC, d/b/a FX Caprara Volkswagen,

Claimant,

v.

VOLKSWAGEN OF AMERICA, INC.,

Respondent

DEMAND FOR NON-BINDING  
ARBITRATION AND  
STATEMENT OF CLAIMS

TO: AMERICAN ARBITRATION ASSOCIATION and the Respondent and its counsel:

Brian D. Kelly  
VOLKSWAGEN OF AMERICA, INC.  
2200 Ferdinand Porsche Drive  
Herndon, Virginia. 20171  
**RESPONDENT**

Billy Donley  
[bdonley@bakerlaw.com](mailto:bdonley@bakerlaw.com)  
David Jarret  
BAKERHOSTETLER  
[djarrett@bakerlaw.com](mailto:djarrett@bakerlaw.com)  
811 Main Street, Ste. 1100  
Houston, Texas 77002  
T (713) 751-1600  
F (713) 751-1717  
**ATTORNEYS FOR RESPONDENT**

Claimants have sent copies of the arbitration agreement and this Demand for Arbitration and Statement of Claims to the AAA with a request to commence administration of the non-binding arbitration. The respondent may file an answering statement after notice from the case administrator.

**DEMAND FOR NON-BINDING ARBITRATION**

1. AMR Auto Holdings-VWN, LLC, d/b/a Volkswagen of Norwood (“Norwood”); Saco Auto Holdings VW, LLC d/b/a Prime Volkswagen (“Saco”); and FX Caprara VW, LLC, d/b/a FX Caprara Volkswagen (“Caprara”) are franchised Volkswagen (“VW”) dealers. Volkswagen of America, Inc. (“VWoA”) has demanded that the majority owner of the dealerships sell its interest in the dealerships, reserving the right to also issue a notice of termination of the franchise agreement.

2. Under Article 13 of the Standard Provisions incorporated within the dealer agreements, the Claimants may demand non-binding arbitration of any dispute related to termination of the franchise agreement. Paragraph 1 states:

VWoA and Dealer therefore agree that the dispute resolution process outlined in this Article shall be used before seeking legal redress in a court of law or before an administrative agency, for all disputes arising under the following: Article 9(3) (Warranty Procedures), Article 12 (Succeeding Dealers), Article 14 (Termination), Article 15 (Rights and Liabilities Upon Termination) and payments to Dealer in connection with VWoA incentive programs.<sup>1</sup>

3. Paragraphs 2 and 3 of the Standard Provisions allow the franchised dealers to select between binding and nonbinding arbitration. The Claimants demand non-binding arbitration.

4. Absent mutual consent of the parties, the hearing in this proceeding must be conducted not more than 60 days after the written demand and notice of arbitration, and the decision must be rendered not more than 90 days after the written demand to arbitrate. *See* Standard Provisions Article 13 (5).

---

<sup>1</sup> A copy of each dealer agreement is attached as Exhibits A-C and the Standard Provisions, which are incorporated within the terms of the dealer agreements, are attached as Exhibit D.

5. All applicable statutes of limitation and/or defenses based upon passage of time are tolled pursuant to Standard Provisions Article 13 (7).

#### STATEMENT OF CLAIMS

6. Norwood's principal place of business is located at **1280 Providence Highway, Norwood, Massachusetts 02090**. The contract and franchise relationship between Norwood and VWoA are subject to Massachusetts' franchise law. *See* Mass. Gen. Laws Ann. Ch. 93B, § 1, *et seq.*

7. Saco's principal place of business is located at **784 Portland Road, Saco, Maine 04072**. The contract and franchise relationship between Saco and VWoA are subject to Maine's franchise law. *See* Me. Rev. Stat. tit. 10, § 1178.

8. Caprara's principal place of business is located at **18493 US Route 11, Watertown, New York 13601**. The contract and franchise relationship between Saco and VWoA are subject to New York's Franchised Motor Vehicle Dealer Act ("NY Dealer Act"). N.Y. Veh. & Traf. Law § 461 (McKinney).

9. Automile Parent Holdings, LLC ("Automile") owns 100% of Automile Holdings, LLC, which in turn owns Norwood and Saco and other franchised dealerships in Massachusetts, Maine, New Hampshire and Vermont, which represent and sell most motor vehicle brands available in the United States.

10. Capstone Automotive Group, LLC ("Capstone") owns Caprara and other franchised dealerships of various motor brands in New York, Pennsylvania and Texas, and Capstone also owns the majority ownership interest in Automile.

11. GPB Capital Holdings, LLC (“GPB”), a private equity fund, indirectly owns all of the voting interests in Capstone, and through Capstone, Caprara. GPB also indirectly owns 76.25% of the voting interest in Automile and, through Automile, Norwood and Saco.

12. David Rosenberg and affiliated trusts own the remaining 23.75% voting interest in Automile.

### **I. GPB’s Automile Purchase**

13. GPB bought its interest in Automile in 2017. At that time, a third party, Abrams Auto Holdings, LLC (“AMR”), owned the majority of Automile’s voting interest and had decided to sell it to GPB. AMR and GPB closed the sale after most distributors approved the sale (the “AMR transfer”).

14. VWoA refused to approve the sale and demanded divestiture or termination of Automile’s VW franchised stores. Regardless of which option GPB accepted, GPB would lose its franchise with VWoA; in other words, VWoA threatened to terminate the VW dealers’ franchises if it did not have its way.

15. Although GPB believed it would prevail in litigation over VWoA’s refusal to approve the AMR transfer, GPB agreed with VWoA to sell the stores in exchange for more time to find a suitable buyer and avoid a costly proceeding to contest VWoA’s threat of termination. GPB did not want to lose value through a fire sale or engage in crippling protracted and costly litigation.

16. Unable to structure a suitable sale, GPB asked VWoA to reconsider its demand that GPB sell the stores or terminate the franchise. VWoA responded by proposing that GPB accept onerous limitations requiring that it relinquish control of the business to a single person acceptable to VWoA with no right of oversight. VWoA required GPB to sign a Business Relationship and

Settlement Agreement (“BRA”) binding it and its automotive affiliates to avoid a crippling and costly proceeding to contest VWoA’s threat of termination. GPB signed the BRA on October 3, 2017.<sup>2</sup>

17. Paragraph 7.D of the BRA restricted Automile and VW dealerships’ right to change their management, stating:

Approved Management. VWoA requires that a qualified operator be **empowered with full operating capabilities** at each of the GPB Group owned dealerships. VWoA authorizes **only** the listed individuals on Exhibit E (the “Approved Operators”) to exercise full operational control over the applicable Dealer entity. VWoA does not approve GPB Group or any of its owners (whether direct or indirect, actual or beneficial) to exercise any operational control over Dealer. The Parties agree that the Approved Operators only shall at all times remain **in full operational control of Dealer**; (2) the Approved Operators shall maintain at all times **full authority to vote all ownership interests** in the Company that relate in any way to the operations of the applicable Dealer; (3) neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) **shall ever exercise any operational control**, directly or indirectly, over Dealer; and (4) **neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) shall have any authority** to direct or control the Approved Operators in the exercise of their duties and responsibilities in the management of Dealer.

18. GPB signed the BRA because VWoA stated it would insist on the sale or termination of the Volkswagen stores if GPB did not sign the BRA. GPB considered the conditions unreasonable and oppressive but did not want to lose its VW stores.

## II. GPB’s Purchase from the Gallery Automotive Group

19. In 2019, GPB purchased several automotive dealerships from the Gallery Automotive Group (“Gallery”). Gallery’s assets included a Volkswagen dealership. VWoA unreasonably refused to approve the sale, which was constructively a threat of termination. Wanting a change in Automile’s management, VWoA demanded that GPB appoint an Approved

---

<sup>2</sup> A copy of the BRA is attached as Exhibit E.

Operator over all the VW stores, and approved David Rosenberg as the Approved Operator. GPB agreed to amend the BRA to avoid a costly and crippling litigation otherwise necessary to avoid the forced divestiture or termination of the VW store it bought from Gallery. GPB signed the amendment on October 1, 2018 (the “Amended BRA”). The Amended BRA assigned all management authority in all of GPB’s VW stores to Rosenberg and made GPB, the 76.25% owner, a passive investor.

20. VWoA and its affiliate, Audi of America (“AoA”), leveraged their market power and the threat of termination to require GPB to assign its shareholder rights to Rosenberg through an irrevocable proxy, which assigned GPB voting interest in Automile to Rosenberg. VWoA, thus, took control of the VW stores by selecting the Approved Operator and requiring GPB to surrender its shareholder rights to him under threat of termination, which would have resulted in costly litigation.

### **III. Rosenberg’s Misconduct and VWoA’s Notice of Termination**

21. GPB financial resources support the lending agreements Automile and its dealerships use to run their business. GPB is a debtor or guarantor in several of Automile’s and its franchised dealers’ credit agreements. The floor plans are one category of lending instruments the franchised dealers use to run the business. A floor plan is a material requirement of all franchise agreements, and manufacturers often issue a notice of termination when a dealer loses its floor plan.

22. GPB needs access to the financial records to prepare and submit audited financial statements to the SEC and GPB’s lenders. Submission of the financial statements is a material term of the lending agreements. The financial statements are due after the close of each quarter

and at year-end, and GPB's auditors need to review Automile's and its dealers' financial records to prepare the financial statements.

23. In 2019, Rosenberg misused his position and authority as Automile's CEO to hamper Automile's business. As the Approved Operator, Rosenberg had complete control over access to Automile's and the individual franchised stores' financial records, DMS systems and bank accounts. Rosenberg refused to provide GPB and its auditors "read-only" access to the automotive business's financial records, DMS systems and bank accounts.

24. Despite GPB's repeated requests for "read-only" access, Rosenberg refused to cooperate. Claiming authority as Automile's CEO and Approved Operator, Rosenberg denied GPB "read-only" access to Automile's or its affiliates' financial records. His refusal was not limited to the VW stores. Rosenberg denied GPB access to the records of any of Automile's franchised dealers.

25. Facing the risk of a serious and potentially fatal business disruption, a requisite majority of Automile's Board of Managers passed a resolution on August 28, 2019, directing Rosenberg to allow its auditors to review Automile's financial and other records. Rosenberg disregarded the resolution—a direct order from the Board—and reaffirmed his refusal to allow GPB's auditors access to any financial records. His conduct jeopardized Automile's lines of credit, and its ability to buy inventory. On September 16, 2019, Automile's Board of Managers terminated Rosenberg for cause and appointed Kevin Westfall as Automile's interim CEO.

26. Automile notified all its franchisors that it had terminated Rosenberg's employment and appointed Westfall as its *interim* CEO. Specifically, Westfall sent VWoA notice of the

management change by letter dated September 16, 2019.<sup>3</sup> In the letter to VWoA, Westfall asked for VWoA's approval to serve as the Approved Operator, enclosed a copy of his curriculum vitae, and asked for any application forms required for VWoA's evaluation of his qualifications.

27. Westfall was more than qualified, having held various executive positions in Autonation and AutoAmerica/Vroom, and senior management positions with BMW Financial Services and Chrysler Credit Corporation. Despite his qualifications, VWoA refused to even provide Westfall with application forms and has given his request no consideration. Todd Skelton has now been appointed CEO. Again, despite Skelton's clear qualifications VWoA refuses to even consider a replacement to Rosenberg.

28. VWoA demanded an explanation for Rosenberg's termination. In fact, VWoA's counsel advised GPB and Automile that it would not accept any direct communication from Westfall, instructing that all communication be made through counsel:

From his inception to present, our Client only recognizes Mr. David Rosenberg as Dealer Principal, President, Manager, and Chief Executive Officer of the VWoA and AoA dealerships of which he is named in the applicable contracts as such, including but not limited to the VWoA and AoA Dealer Agreement and all attachments, exhibits, and addenda thereto. ***Because our client does not recognize Mr. Westfall in the capacities he purports to represent, he is not to contact VWoA or AoA directly but, instead, is to contact us through his attorney(s).***<sup>4</sup>

29. GPB wrote to VWoA and explained the problems caused by Rosenberg's refusal to cooperate with the audit and the risk it presented to the business. VWoA did not accept Automile and GPB's explanation for its need to terminate Rosenberg's employment. On October

---

<sup>3</sup> A copy of the September 16, 2019, letter and Westfall's resume that was enclosed with the letter is attached as Exhibit F.

<sup>4</sup> A copy of Baker & Hostetler's letter of September 19, 2016 is attached as Exhibit G.

31, 2019, VWoA demanded that Automile conduct a fire sale of VW dealerships within 90 days or force the threat of franchise termination:

As a result of the breach of the BRA, and pursuant to section 12 B of the BRA, VWoA hereby demands that GPB transfer all interest in all Dealerships (as defined in the BRA) to Bona Fide Transferees (also defined in the BRA) within ninety (90) days of this notice.

For purposes of clarity, and as previously communicated, the Dealerships subject to the BRA include Saco Auto Holdings VW, LLC d/b/a Prime Volkswagen (“Prime Volkswagen”), FX Caprara VW, LLC d/b/a FX Caprara Volkswagen (“Caprara Volkswagen”), and AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood (“Volkswagen of Norwood”). Although there is no obligation to do so, VWoA can provide assistance in locating a buyer for these dealerships upon receipt of a signed seller’s assist letter in the form attached hereto. Notwithstanding this assist to sell letter, it is the responsibility of GPB to submit an asset purchase agreement to VWoA within the ninety (90) day period described above. ***Failure to submit an asset purchase agreement or to ultimately consummate a sale of the Volkswagen dealership assets will trigger an obligation by GPB to voluntarily terminate the applicable dealer agreements.***<sup>5</sup>

30. Contrary to VWoA contention that Automile and GPB could not terminate Rosenberg’s employment, the Amended BRA specifically recognizes the potential need to replace an Approved Operator without obtaining prior consent; and thus, Paragraph 7.F of the Amended BRA provides GPB the right to terminate Rosenberg first and then seek approval for Rosenberg’s replacement, in that order:

Provided however that if there is a change in Approved Management as set forth in Exhibit E hereto, the GPB Group shall have ninety (90) days from the removal of any such Approved Operator to submit to VWoA another individual to serve as Approved Operator at the applicable Volkswagen dealership location, which individual is subject to VWoA approval, and the GPB Group shall not be deemed in default during said ninety (90) day period.<sup>6</sup>

---

<sup>5</sup> A copy of the October 31, 2019, demand to divest is attached as Exhibit H.

<sup>6</sup> See Exhibit I, ¶7 (First Amendment to the Business Relationship and Settlement Agreement). VWoA and GPB amended several provisions in the BRA. As related to Paragraph 7, the parties included a right to terminate the Approved Operator and seek VWoA’s approval of a replacement within 90 days. A copy of the First Amendment to the Business Relationship and Settlement Agreement is attached as Exhibit I.

31. Automile terminated Rosenberg's employment on September 16, 2019. The ninety-day period under Section 7.F of the Amended BRA expired on December 15, 2019. VWoA breached its contractual obligations and duty of good faith by refusing to cooperate or even consider any replacement proposed by Automile and GPB.

#### **IV. VWoA Breached the Amended BRA.**

32. VWoA claims the right to demand divestiture or termination of the VW stores under Paragraph 12.B of the BRA. Paragraph 12.B states:

If VWoA determines, in its discretion, that the Ownership Change Event would result in an entity or a natural person obtaining an ownership or voting rights interest that is incompatible with VWoA's dealer qualification standards, performance requirements or other VWoA interests, VWoA shall have the right to require that, within ninety (90) days of notice from VWoA invoking this provision, GPB Group shall (a) transfer all interest in all Dealerships to Bona Fide Transferees (subject to Section 7, above); or (b) voluntarily terminate the DAs associated with each of the Dealers. For purposes of this paragraph Bona Fide Transferee shall mean an independent third party which does not include any member of the GPB Group in any ownership capacity.

33. VWoA may not terminate or demand divestiture of a franchise under the Amended BRA, in part because VWoA did not comply with Section 7.F, as amended. VWoA incorporated its Ownership Policy in the Amended BRA through Paragraph 5 of the BRA. The policy obligates VWoA to "provide a Conditional Approval Letter outlining the conditions that the Dealer must meet for the proposed Major Ownership Change to be deemed approved."<sup>7</sup> VWoA refused to provide that letter required by its own Ownership Policy and the BRA. Besides breaching the Amended BRA in refusing to consider anyone other than Rosenberg, VWoA's conduct also breached the duty of good faith and fair dealing.

---

<sup>7</sup> The Ownership Policy is attached to the BRA at pages 15-16.

34. VWoA's conduct was a material breach of the Amended BRA. Having breached a material term of the Amended BRA, VWoA has no right to terminate the franchises or demand divestiture of the VW stores.

**V. New York Law Does Not Allow Termination of Caprara's Franchise.**

35. The BRA is between VWoA and "GPB Capital Holdings, LLC ("GPB") and its automotive subsidiaries." Accordingly, the BRA and the dealer agreements are controlled by the NY Dealer Act.<sup>8</sup>

36. VWoA's BRA is a clear, wrongful attempt to avoid the application of state franchise laws, including the NY Dealer Act. The BRA includes a provision releasing, waiving, and assigning to VWoA all rights and remedies which GPB and its affiliates have under the Act.<sup>9</sup> VWoA also included a choice of law provision for application of the laws of the District of Columbia.<sup>10</sup>

37. Neither provision, however, prevents application of the NY Dealer Act. Section 463.2(l) prohibits a franchisor from obligating a dealer to waive, release, or assign its rights under the NY Dealer Act, and Section 463.2(k) prohibits a franchisor from requiring application of another state's laws to determine any dispute related to the franchise.

38. Under Section 463.2(b), a franchisor acts unlawfully when it directly or indirectly coerces a dealer to sign an agreement or to undertake any other act prejudicial to the dealer's interest by threatening termination.<sup>11</sup> GPB signed the BRA because VWoA threatened to drag it

---

<sup>8</sup> See e.g., N.Y. Veh. & Traf. Law §§ 463 and 466 (McKinney). The NY Dealer Act does not permit terminations, except in compliance with the procedural and substantive provisions of the Act. Nor does the Act allow unreasonable restrictions on a dealer, including limitations on its legal and equitable rights.

<sup>9</sup> See N.Y. Veh. & Traf. Law § 463.2(l) (prohibiting prospective waiver of rights under the Act).

<sup>10</sup> See N.Y. Veh. & Traf. Law § 463.2(t) (requiring application of the Dealer Act).

<sup>11</sup> The threat of termination itself is an act of coercion because the cost of protesting a termination attempt can be prohibitively costly in time and money.

into costly litigation over threatened termination and the agreement is highly prejudicial to the dealerships' rights to structure and manage their business. Consequently, the BRA is void or unenforceable.

39. The NY Dealer Act does not allow a franchisor to impose unreasonable restrictions on a dealer and states:

It shall be unlawful for a franchisor ***directly or indirectly to impose unreasonable restrictions*** on the franchised motor vehicle dealer relative to transfer, sale, right to renew or termination of a franchise, discipline, noncompetition covenants, site-control (whether by sublease, collateral pledge of lease or otherwise), right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights with respect to its franchise or dealership.<sup>12</sup>

40. VWoA's application of the BRA purports to prevent a change in management under any circumstances, including exigent circumstances, without its approval. VWoA unreasonably restricts management of the dealerships to one individual, with a minority interest in the dealerships. The restriction in BRA article 7.D is unenforceable or void under Section 466.1 of the NY Dealer Act and is not a permissible basis for terminating the franchise of Automile's dealerships or requiring GPB and its affiliates to divest themselves of the dealerships.

41. Section 466.2(d)(1) does not allow a franchisor to terminate a franchised dealer without due cause and good faith.

42. Section 466.2(e)(2) sets forth VWoA's burden:

The determination of due cause shall be that there exists a material breach by a new motor vehicle dealer of a reasonable and necessary provision of a franchise if the breach is not cured within a reasonable time after written notice of the breach has been received from the manufacturer or distributor.

---

<sup>12</sup> See N.Y. Veh. & Traf. Law §466.1.

43. To establish due cause VWoA must demonstrate: (1) advance notice of the management change was a contractual requirement; (2) the provision was reasonable; (3) the promise was material; (4) the dealer breached the provision; and (4) the dealer did not reasonably cure the breach after receiving notice.

44. VWoA cannot sustain its burden. Under the Amended BRA, as explained hereinabove, GPB and its automotive affiliates may notify VWoA of management changes and seek approval after the change. Thus, not providing advance notice or seeking prior written consent did not materially breach the Amended BRA, even had it been reasonably feasible to provide advanced notice and secure prior written consent.

#### **VI. Massachusetts Law Does Not Permit Termination of Norwood's Franchise.**

45. The relationship between GPB and its automotive affiliates and VWoA is subject to Chapter 93 of Massachusetts General Laws:

*This chapter shall apply to all actions* by a manufacturer or distributor which relate to the franchise relationship and which *arise under any written or oral agreement* between the manufacturer or distributor with a motor vehicle dealer <sup>13</sup>...

Despite statements in the Amended BRA that it is not a franchise agreement, Chapter 93B applies to VWoA's attempt to force the sale of Automile's VW stores, as well as any attempt to terminate a franchise agreement. Section 11 of Chapter 93B also negates VWoA's choice of law clause.

46. Chapter 93B, Section 4(c), states:

*It shall be deemed a violation* of subsection (a) of section 3 for a manufacturer, distributor or franchisor representative:

...

(4) *to coerce* any motor vehicle dealer to enter into any agreement with the manufacturer, distributor or franchisor representative, or to do any other act

---

<sup>13</sup> Massachusetts General Laws Ch. 93B, §11 (emphasis added).

prejudicial to the dealer, *by threatening to terminate any franchise agreement*; but, notice in good faith, including notice of termination or nonrenewal, to any motor vehicle dealer based on the dealer's violation of any terms or provisions of its franchise agreement or of any law or regulation applicable to the conduct of a motor vehicle dealership, or petitioning any court for a declaration that the notice is issued for good cause, shall not constitute a violation of this chapter.<sup>14</sup>

47. GPB signed the BRA because VWoA threatened termination and, as an alternative, demand sale of Automile's VW franchises. The Amended BRA is not a lawful basis to terminate the franchise or force divestiture of the stores because VWoA obtained the BRA in violation of Chapter 93B, Section 4(c), and so, the BRA is void or unenforceable.

48. Chapter 93B, Section 4(c)(11), does not allow a franchisor to coerce a dealer to release or waive its rights under Chapter 93B prospectively. VWoA wrongfully obtained a waiver of rights under threat of termination proceedings. Consequently, the prospective release is void and unenforceable.

49. Chapter 93B, Section 4(c)(8)(ii), prohibits a franchisor from unreasonably withholding consent to a change in management. VWoA's refusal to cooperate or consider anyone other than Rosenberg to serve as the Approved Operator is unreasonable and violates Chapter 93B. The conduct is arbitrary and in bad faith, particularly when considering VWoA's obligation under Paragraph 7F of the Amended BRA.

50. Chapter 93B, Section 4(c)(8), prohibited VWoA from imposing unreasonable restrictions on the structure and use of the dealership, "or upon the ability of an individual, proprietor or stockholder to use, sell or transfer any interest in the dealership." Paragraphs 7.D and 12 of the Amended BRA are unenforceable and void because they require Automile to vest all management authority in a single person with no oversight.

---

<sup>14</sup> Massachusetts General Laws Ch. 93B, § 3(a) (emphasis added).

51. Chapter 93B, Section 5(h), obligates VWoA to provide Automile and GPB a reasonable opportunity to cure any breach of the franchise agreement. VWoA violated Sections 5(h) and (j) by refusing to consider and approve Westfall or anyone else as the Approved Operator, thereby intentionally frustrating the statutory intent.

52. VWoA's notice provides Automile with an unenforceable choice: sell the dealerships or force the threat of the franchise termination. Both options would have resulted in an involuntary termination of the franchise agreements between Automile's dealerships and VWoA.

53. Chapter 93B, Section 5, does not allow VWoA to terminate the dealerships unless it demonstrates good cause. VWoA cannot prove good cause because:

- a. Neither GPB nor its automotive affiliates breached the franchise agreement;
- b. Automile has invested in the stores and met or exceeded VWoA's performance standards; and
- c. The public interest is not served by terminating or selling the dealerships.

54. Massachusetts law requires parties to a contract to perform and enforce a contract in good faith. VWoA breached the obligation in refusing to consider a replacement for Rosenberg.

55. VWoA acted arbitrarily and in bad faith. Its actions violated Section 4(a) of Chapter 93B and were unfair trade practices unlawful under Section 3. VWoA's breach of its duty of good faith and fair dealing was a material breach of the parties' franchise agreements. As the breaching party, VWoA cannot use the franchise agreement as grounds to terminate or force divestiture of the dealerships.

## **VII. Maine Law Does Not Allow Termination of Saco's Franchise.**

56. Maine regulates the relationship between motor vehicle dealers and their franchisors through statutory enactments in the Maine Revised Statutes ("M.R.S."). *See* Me. Rev.

Stat. tit. 10, § 1171, et seq. All agreements between a franchisor and the dealer are subject to the M.R.S. See Me. Rev. Stat. tit. 10, § 1178.

57. The M.R.S. states:

The following acts shall be deemed unfair methods of competition and unfair and deceptive practices. It shall be unlawful for any:

...

**3. Certain interference in dealer's business.** Manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof:

...

**To coerce, or attempt to coerce,** a motor vehicle dealer to enter into an agreement with that manufacturer, distributor, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof,<sup>15</sup> ...

VWoA coerced GPB to enter into the BRA under threat it would pursue protracted, costly and crippling termination proceedings. The BRA and Amended BRA are, therefore, void and unenforceable. They do not provide VWoA a legal basis to terminate the franchise or for the forced sale of the Volkswagen store.

58. Maine prohibits franchisors from imposing unreasonable restrictions on the “dealer or franchisee *relative to transfer*, sale, right to renew, termination, discipline, noncompetition covenants, site-contract whether by sublease, collateral pledge of lease, *or otherwise*, right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.”<sup>16</sup> The BRA and Amended BRA impose unreasonable restrictions on GPB

---

<sup>15</sup> Me. Rev. Stat. tit. 10, § 1174. (emphasis added).

<sup>16</sup> *Id.* at § 1177(emphasis added).

and its automotive affiliates to manage their stores. Consequently, VWoA does not have a legal basis for terminating the franchise or requiring its sale.

59. A franchisor may not terminate the franchise without good cause.<sup>17</sup> The franchisor must prove breach of a provision that is (a) reasonable and (b) material to the franchise relationship to establish good cause.<sup>18</sup> VWoA cannot show good cause. Its basis for termination or forced sale is Sections 7.D and 12.B of the BRA. The sections are void and unenforceable under the M.R.S. Also, VWoA has not complied with its obligation under Section 7.E of the Amended BRA.

#### REQUESTED RELIEF

60. The claimants request advisory relief that:

- a. Paragraphs 7.D and 12.B of the BRA are void and unenforceable under applicable law;
- b. VWoA does not have good cause or due cause under applicable law to terminate the claimants' franchises or require the sale of the franchised stores;
- c. VWoA breached 7.F of the Amended BRA, the breach was material and relieves claimants of their obligations, if any, under Sections 7.D and 12 of the BRA and Amended BRA; and
- d. VWoA breached the franchise laws of the states of Massachusetts, New York, and Maine in bad faith.

61. All applicable statutory of limitation and defenses based upon passage of time are tolled pursuant to Standard Provisions Article 13 (7).

---

<sup>17</sup> *Id. at* § 1174(O).

<sup>18</sup> *Id. at* § 1174(P)(1).

Respectfully submitted,

**AKERMAN LLP**

By: */s/ Brit T. Brown*

---

Brit T. Brown

[brit.brown@akerman.com](mailto:brit.brown@akerman.com)

State Bar No. 03094550

Benjamin A. Escobar, Jr.

[benjamin.escobar@akerman.com](mailto:benjamin.escobar@akerman.com)

State Bar No. 00787440

1300 Post Oak Blvd., Suite 2500

Houston, Texas 77056

Tel: 713-623-0887

Fax: 713-960-1527

**ATTORNEYS FOR CLAIMANTS**

# EXHIBIT A

VOLKSWAGEN of America, Inc.



# **Volkswagen Dealer Agreement**

# VOLKSWAGEN

## DEALER AGREEMENT



1. **APPOINTMENT.** Volkswagen of America, Inc. ("VWoA"), having a place of business at 3800 Hamlin Road, Auburn Hills, MI 48326, appoints **Saco Auto Holdings-VW, LLC** ("Dealer"), doing business under the fictitious name **Prime Volkswagen**, having its place of business at **784 Portland Road, Saco, ME 04072**, as an authorized dealer in Volkswagen brand motor vehicles and genuine parts and accessories therefor. Accordingly, the parties agree as follows:

2. **STANDARD PROVISIONS.** The Dealer Agreement Standard Provisions (the "Standard Provisions") (Form No. 97vwstdp), the Dealer Operating Plan (the "Operating Plan") and the Volkswagen Dealer Operating Standards (the "Operating Standards") are part of this Agreement. Any term not defined in this Agreement has the meaning given such term in the Standard Provisions.

3. **OWNERSHIP AND MANAGEMENT.** To induce VWoA to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Exhibit A, are Dealer's Owners and Executives. VWoA is entering into this Agreement in reliance upon these representations, and upon the continued provision by such persons of their personal services in fulfillment of Dealer's obligations under this Agreement. Accordingly, Dealer agrees there will be no change in Dealer's Owners without VWoA's prior written consent, and no change in Dealer's Executives without prior notice to VWoA.

4. **MINIMUM FINANCIAL REQUIREMENTS.** Dealer agrees to comply and maintain compliance with the minimum financial requirements established for Dealer annually in accordance with the Operating Plan and the Operating Standards. Throughout the term of this Agreement those minimum financial requirements are subject to revision by VWoA, after review with Dealer, in light of operating conditions and the development of Dealer's business and business potential.

5. **DEALER'S PREMISES.** VWoA has approved the location of Dealer's Premises as specified in the Dealer Premises Addendum, attached as Exhibit B. Dealer agrees that, without VWoA's prior written consent, it will not (a) make any major structural change in any of Dealer's Premises, (b) change the location of any of Dealer's Premises or (c) establish any additional premises for Dealer's Operations.

**VOLKSWAGEN**



6. **EXCLUSION OF WARRANTIES.** EXCEPT FOR DISTRIBUTOR'S WARRANTIES, AND EXCEPT AS PROVIDED IN ARTICLE 9(1) OF THE STANDARD PROVISIONS, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR OBLIGATIONS OF THE MANUFACTURER OR DISTRIBUTOR AS TO THE QUALITY OR CONDITION OF AUTHORIZED PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF AUTHORIZED PRODUCTS.

7. **TERM.** The term of this Agreement begins on the date of its delivery to Dealer or on January 1, 1997, whichever is later. This Agreement shall continue in effect until terminated by either party or superseded by a new Dealer Agreement with VWoA, whichever is earlier.

8. **GOVERNING LAW.** This Agreement will be construed in accordance with the laws of the State of **Maine** . Should the performance of any obligation under this Agreement violate any valid law of such jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

9. **ADDITIONAL TERMS AND CONDITIONS.** The Addenda attached hereto as Exhibits A through **C** are part of this Agreement, and are incorporated into this Agreement by this reference. Each may be canceled or superseded at any time by mutual agreement of Dealer and VWoA, through the later execution by both parties of a replacement, which then shall be deemed part of this Agreement.

DATED: 1/2, 2008.

**VOLKSWAGEN OF AMERICA, INC.**

BY: [Signature]  
Werner Mersch  
Region Director

BY: [Signature]  
Michael Rueckert  
Network Development Manager

**DEALER**  
BY: [Signature]  
David Rosenberg  
President

**VOLKSWAGEN**

**EXHIBIT A  
TO DEALER AGREEMENT DATED**



\_\_\_\_\_

**STATEMENT OF OWNERSHIP AND MANAGEMENT**

1. Dealer firm name:  
**Saco Auto Holdings-VW, LLC d/b/a Prime Volkswagen.**

2. Principal place of business:  
**784 Portland Road, Saco, ME 04072.**

3. Dealer is a  proprietorship  
 partnership  
 limited liability company  
 corporation, incorporated on \_\_\_\_\_ under the laws  
of the State of \_\_\_\_\_

4. The following persons are the beneficial and record owners of Dealer:

Name and Address of Each Record and Beneficial Owner of Dealer	If a Corporation, Number and Class of Shares Number Class	Percentage of Ownership of Record in Dealer
Saco Auto Holdings, LLC 12 Foster Street Marblehead, MA 01945		100.0%

See Exhibit A1 for additional information.

# VOLKSWAGEN



5. The following persons are Dealer's Officers:

**Name and Address**

**Title**

David Rosenberg  
12 Foster Street  
Marblehead, MA 01945

President

6. The following person is the Authorized Representative of Dealer. As such, this person is an agent of Dealer, and VWoA is entitled to rely on this person's authority to make all decisions on behalf of Dealer with respect to Dealer's Operations.

**Name and Address**

**Title**

Thomas G. Santospago

General Manager

Dealer hereby certifies that the foregoing information is true and complete as of the date below. VWoA has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by, the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.

Dated: 1/2, 2008.

**VOLKSWAGEN OF AMERICA, INC.**

By: [Signature]  
Werner Mersch  
Region Director

By: [Signature]  
Michael Rueckert  
Network Development Manager

**DEALER**

By: [Signature]  
David Rosenberg  
President

**VOLKSWAGEN**

**EXHIBIT B  
TO DEALER AGREEMENT DATED**



**DEALER PREMISES ADDENDUM**

1. Dealer firm name:  
**Saco Auto Holdings-VW, LLC d/b/a Prime Volkswagen.**
2. VWoA has approved the location of the following premises, and no others, for Dealer's Operations:
  - a. Sales Facilities:  
**784 Portland Road, Saco, ME 04072**
  - b. Authorized Automobile Storage Facilities:  
**784 Portland Road, Saco, ME 04072**
  - c. Service Facilities:  
**784 Portland Road, Saco, ME 04072**
  - d. Genuine Parts Storage Facilities:  
**784 Portland Road, Saco, ME 04072**
  - e. Used Car Lot:  
**784 Portland Road, Saco, ME 04072**

Dealer hereby certifies that the foregoing information is true and complete as of the date below.

This Exhibit cancels any prior Dealer Premises Addendum.

Dated: 11/2, 2008.

**VOLKSWAGEN OF AMERICA, INC.**

By: [Signature]  
Werner Mersch  
Region Director

By: [Signature]  
Michael Rueckert  
Network Development Manager

**DEALER**

By: [Signature]  
David Rosenberg  
President

Form 97VWXB:h\logc\97d\ragr

EXHIBIT C  
TO DEALER AGREEMENT DATED  
\_\_\_\_\_, 20\_\_\_\_

**ADDITIONAL TERMS AND CONDITIONS ADDENDUM**

Limited Liability Company Shareholder Agreement

1. In order to induce Volkswagen of America, Inc. ("VWoA") to enter into this Agreement, Dealer represents as follows:

a. DEALER'S OWNER

The following limited liability company ("Dealer's Owner") is the beneficial and record owner of Dealer:

<u>Name and Address</u>	<u>Percentage of Ownership of Record in Dealer</u>
Saco Auto Holdings, LLC 12 Foster Street Marblehead, MA 01945	100.0%

b. MEMBERS OF DEALER'S OWNER

The following persons ("Members of Dealer's Owner") are the beneficial and record owners of Dealer's Owner:

<u>Name and Address of Each Record and Beneficial Owner of Dealer's Owner</u>	<u>Number and Class of Shares</u>	<u>Percentage of Ownership of Record in Dealer's Owner</u>
David Rosenberg 12 Foster Street Marblehead, MA 01945		20.0%
Abrams Auto Holdings, LLC 222 Berkeley Street, 22 <sup>nd</sup> Floor Boston, MA 02116		80.0%
Abrams Auto Holdings, LLC Owned by:		
Abrams Capital Ptrs. II, LP	44.30%	
Riva Capital Ptrs., LP	43.86%	
Whitecrest Partners, LLC	7.89%	
Abrams Capital Ptrs. I, LLC	3.95%	

- 2 -

VWoA has entered into this Agreement in reliance upon these representations, and upon the qualifications and continued performance of personal services in the ownership and management of Dealer, by the Members of Dealer's Owner. Accordingly, Dealer agrees there will be no change in Dealer's Owner or the Members of Dealer's Owner without VWoA's prior consent. Dealer agrees that VWoA has the right to terminate this Agreement with immediate effect in the event of any such change without prior written consent.

2. Article 10(2) of the Standard Provisions is amended by adding at the end thereof the following sentence:

“Upon VWoA's written request, Dealer will also cause Dealer's Owner to submit to VWoA a financial and operating statement reflecting the consolidated operations of Dealer's Owner for the preceding month and from the beginning of the calendar year to the end of the preceding month.”

3. Articles 12(4), 12(4)(a) and 12(4)(b) of the Standard Provisions are amended in their entirety to read as follows:

“(4) Article 14(1)(a) notwithstanding, in the event of the death of any Members of Dealer's Owner, VWoA will not terminate this Agreement by reason of such death if:

“(a) The Member's interest in Dealer passes directly as specified in any Successor Addendum to this Agreement; or”

“(b) The Member's interest in Dealer passes directly to his or her surviving spouse or children, or any of them, and (i) Dealer's Authorized Representative remains as stated in the Statement of Ownership and Management or (ii) within 90 days after the death of such owner Dealer appoints another qualified individual as Dealer's Authorized Representative; provided however, that in this event VWoA will evaluate Dealer's performance during the 12 months following the owner's death. After the expiration of this 12-month period, VWoA will review with Dealer the changes, if any, in the management or equity interests of Dealer required by VWoA as a condition of extending this Dealer Agreement with Dealer. Any new Dealer Agreement entered into pursuant to this paragraph will be in substantially the same form as the Dealer Agreements then currently offered by VWoA to its dealers in Authorized Automobiles generally.”

4. Articles 14(1)(a) and (b) of the Standard Provisions are hereby amended in their entirety to read as follows:

“(a) Death of any Members of Dealer’s Owner or any change, whether voluntary or by operation of law, in the record or beneficial ownership of Dealer or Dealer’s Owner without VWoA’s prior written consent; any change in Dealer’s Executives without prior notice to VWoA; or the failure of Dealer’s Executives to continue to manage Dealer’s Operations (unless, in any of these cases, the provisions of Article 12(4) above have been satisfied);”

“(b) Dissolution or liquidation of Dealer or Dealer’s Owner; if a partnership or corporation;”.

5. Article 14(1)(h) of the Standard Provisions is hereby amended in its entirety to read as follows:

“(h) Conviction of Dealer, Dealer’s Owner, any of Dealer’s Executives, any executive of Dealer’s Owner or any Members of Dealer’s Owner of a felony or any misdemeanor involving fraud, deceit or an unfair business practice, if in VWoA’s opinion such conviction may adversely affect the conduct of Dealer’s business, or be harmful to the good will of the Manufacturer or VWoA or to the reputation and marketing of Authorized Products;”.

6. Article 14(1)(i) of the Standard Provisions is hereby amended in its entirety to read as follows:

“(i) any material misrepresentation by Dealer’s Owner, Dealer’s Executives, any executive of Dealer’s Owner or any Members of Dealer’s Owner as to any fact relied upon by VWoA in entering into this Agreement.

7. Article 14(1)(k) of the Standard Provisions is hereby amended by adding the following phrase to the end thereof:

“or Dealer’s Owner.”

8. Article 14(2)(a) of the Standard Provisions is hereby amended in its entirety to read as follows:

“(a) Any disagreement or personal difficulties among Dealer’s Owner, any of Dealer’s Executives, any executive of Dealer’s Owner or any Members of Dealer’s Owner, which in VWoA’s opinion may adversely affect the conduct of Dealer’s business, or the presence in the management of Dealer of any person who in VWoA’s opinion does not have appropriate qualifications for their position;”.

9. Article 14(2)(b) of the Standard Provisions is hereby amended in its entirety to read as follows:

“(b) Impairment of the reputation or financial standing of Dealer, Dealer’s Owner, any of Dealer’s Executives, any executive of Dealer’s Owner or any Members of Dealer’s Owner, or ascertainment by VWoA of any fact existing which tends to impair such reputation or financial standing; or”.

10. Article 14(3) of the Standard Provisions is hereby amended in its entirety to read as follows:

“(3) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 90 days’ notice in the event of the breach by Dealer, Dealer’s Owner, or any Members of Dealer’s Owner of any obligation of Dealer, Dealer’s Owner or any Members of Dealer’s Owner pursuant to this Agreement or any other agreement between VWoA or any of its subsidiaries or affiliates and Dealer, Dealer’s Owner or any Members of Dealer’s Owner, other than those enumerated in Articles 14(1) or 14(2) above.”

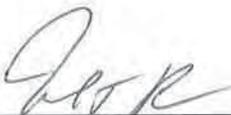
11. Article 16 of the Standard Provisions is hereby amended by adding at the end thereof the following:

“(20) ‘Members of Dealer’s Owner’ includes all the persons named in Paragraph 1(b) of the Additional Terms and Conditions Addendum which is attached to this Agreement as Exhibit C as beneficial or record owners of Dealer’s Owner, as well as any other person who acquires or succeeds to any such beneficial interest or record ownership in accordance with the terms of this Agreement.”

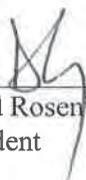
Dated: 1/2, 2008

VOLKSWAGEN OF AMERICA, INC.

By:   
Werner Mersch  
Region Director

By:   
Michael Rueckert  
Network Development Manager

DEALER

By:   
David Rosenberg  
President

**VOLKSWAGEN**



November 19, 2007

Mr. David Rosenberg, President  
Saco Auto Holdings-VW, LLC  
Prime Volkswagen  
784 Portland Road  
Saco, ME 04072

Dear Mr. Rosenberg:

We are pleased to advise you that Volkswagen AG has authorized your use of the word "Volkswagen" in the business name(s) "Prime Volkswagen" for your dealership.

This authorization is limited to the business or corporate name stated in the preceding paragraph and does not cover any other business or corporate name containing the word "Volkswagen" which you may wish to adopt in the future. Moreover, the present authorization is limited to your present firm or corporation. It does not extend to any subsidiary or affiliate of your firm or corporation, and it is not transferable.

The authorization granted in this letter shall automatically terminate in the event that you cease to be a franchised Volkswagen dealer and also in the event of a sale of your business, a merger of your corporation, the liquidation or bankruptcy of your firm or an assignment of assets of your firm to an assignee for the benefit of creditors.

Moreover, Volkswagen AG reserves the absolute and unqualified right to revoke the authorization at any time, in its sole and absolute discretion, with or without cause, by mailing or causing Volkswagen of America, Inc., to mail written notice of such revocation to you.

Upon termination of this authorization by reason of any of the events described, as well as upon receipt of the written revocation referred to, you shall (a) take all necessary steps to forthwith effect a legal change of your business or corporate name eliminating the word "Volkswagen" therefrom and (b) thereafter immediately discontinue the use of the word "Volkswagen" in your business or corporate name.

**VOLKSWAGEN**



- 2 -

You shall not be entitled to any compensation whatsoever in the event of termination or revocation of this authorization.

This authorization is subject to all applicable provisions of your present and future Volkswagen dealer agreements.

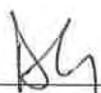
Please sign the enclosed copy of this agreement for consent and return it to us. The authorization contained herein will be effective only after we shall have received the said copy duly signed by you.

Regards,

A handwritten signature in blue ink, appearing to read 'Ron Takashima', is written over a horizontal line.

Ron Takashima  
Dealer Franchising

Signed in agreement with and in acceptance of the above terms.

By:  \_\_\_\_\_  
David Rosenberg, President  
Saco Auto Holdings-VW, LLC  
Prime Volkswagen



**VOLKSWAGEN**

**EXHIBIT A  
TO DEALER AGREEMENT DATE  
JANUARY 2, 2008**

**STATEMENT OF OWNERSHIP AND MANAGEMENT**

1. Dealer entity name:  
**Saco Auto Holdings-VW, LLC d/b/a Prime Volkswagen**

2. Principal place of business:  
**784 Portland Road, Saco, ME 04072**

3. Dealer is a  Limited Partnership  
 Limited Liability Company  
 Formed on **July 3, 2007** under the laws  
 of the State of **Delaware**  
 Corporation

4. The following persons are the beneficial and record owners of Dealer:

<u>Name and Address of Each Record and Beneficial Owner of Dealer</u>	<u>Number and Class of Shares Number Class</u>	<u>Percentage of Ownership of Record in Dealer</u>
Saco Auto Holdings, LLC 857 Portland Road Saco, ME 04072		100.00%

5. The following persons are Dealer's Officers:

<u>Name and Address</u>	<u>Title</u>
David Rosenberg 133 Foster Street Marblehead, MA 01945	President

6. The following person is the Authorized Representative of Dealer. As such, this person is an agent of Dealer, and VWoA is entitled to rely on this person's authority to make all decisions on behalf of Dealer with respect to Dealer's Operations.

<u>Name</u>	<u>Title</u>
Freemont L. Bickford III	General Manager



Volkswagen

# VOLKSWAGEN

7. Article 16(9) of the Standard Provisions is hereby amended in its entirety to read as follows:

"(9) 'Dealer's Owners' means all the persons (natural or otherwise) who are beneficial or record owners of Dealer, or are beneficial or record owners of any entity or trust having beneficial or record ownership in Dealer, as well as any other person (natural or otherwise) who acquires or succeeds to any beneficial interest or record ownership in Dealer, or who acquires or succeeds to any beneficial or record ownership in any entity or trust having beneficial or record ownership in Dealer, in accordance with the provisions of this Agreement, including, without limitation, the following:

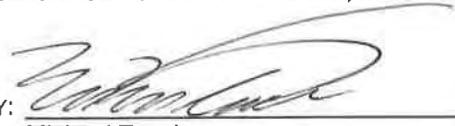
- (i) All persons (natural or otherwise) named in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement); and
- (ii) All persons (natural or otherwise) named in Paragraph 2 of the Corporate Shareholder Addendum (Exhibit C to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 2 of the Corporate Shareholder Addendum (Exhibit C to this Agreement).

Dealer hereby certifies that the foregoing information is true and complete as of the date below. VWoA has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by, the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.

DATED: SEPTEMBER 30, 2016

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

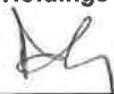
BY: 

Michael Tocci  
Vice President – Northeast Region

BY: 

Brian D. Kelly  
Sr. Director – Network Operations  
Assistant Secretary

**DEALER:  
Saco Auto Holdings-VW, LLC d/b/a Prime Volkswagen**

BY: 

David Rosenberg  
President

# **EXHIBIT B**



Volkswagen

# VOLKSWAGEN

## DEALER AGREEMENT

1. **APPOINTMENT.** Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), having a place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171 appoints **FX Caprara VW, LLC**, doing business under the fictitious name, **FX Caprara Volkswagen**, having its place of business at **18493 US Route 11, Watertown, NY 13601**, as an authorized dealer in Volkswagen brand motor vehicles and genuine parts and accessories therefore. Accordingly, the parties agree as follows:

2. **STANDARD PROVISIONS.** The Dealer Agreement Standard Provisions (the "Standard Provisions"), the Dealer Operating Plan (the "Operating Plan") and the Volkswagen Dealer Operating Standards (the "Operating Standards") are part of this Agreement. Any term not defined in this Agreement has the meaning given such term in the Standard Provisions.

3. **OWNERSHIP AND MANAGEMENT.** To induce VWoA to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Exhibit A, are Dealer's Owners and Executives. VWoA is entering into this Agreement in reliance upon these representations, and upon the continued provision by such persons of their personal services in fulfillment of Dealer's obligations under this Agreement. Accordingly, Dealer agrees there will be no change in Dealer's Owners without VWoA's prior written consent, and no change in Dealer's Executives without prior notice to VWoA.

4. **MINIMUM FINANCIAL REQUIREMENTS.** Dealer agrees to comply and maintain compliance with the minimum financial requirements established for Dealer annually in accordance with the Operating Plan and the Operating Standards. Throughout the term of this Agreement those minimum financial requirements are subject to revision by VWoA, after review with Dealer, in light of operating conditions and the development of Dealer's business and business potential.

5. **DEALER'S PREMISES.** VWoA has approved the location of Dealer's Premises as specified in the Dealer Premises Addendum, attached as Exhibit B. Dealer agrees that, without VWoA's prior written consent, it will not (a) make any major structural change in any of Dealer's Premises, (b) change the location of any of Dealer's Premises or (c) establish any additional premises for Dealer's Operations.



Volkswagen

# VOLKSWAGEN

6. **EXCLUSION OF WARRANTIES.** EXCEPT FOR DISTRIBUTOR'S WARRANTIES, AND EXCEPT AS PROVIDED IN ARTICLE 9(1) OF THE STANDARD PROVISIONS, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR OBLIGATIONS OF THE MANUFACTURER OR DISTRIBUTOR AS TO THE QUALITY OR CONDITION OF AUTHORIZED PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF AUTHORIZED PRODUCTS.

7. **TERM.** The term of this Agreement begins on the date of its delivery to Dealer or on January 1, 1997, whichever is later. This Agreement shall continue in effect until terminated by either party or superseded by a new Dealer Agreement with VWoA, whichever is earlier.

8. **GOVERNING LAW.** This Agreement will be construed in accordance with the laws of the State of **New York**. Should the performance of any obligation under this Agreement violate any valid law of such jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

9. **ADDITIONAL TERMS AND CONDITIONS.** The Addenda attached hereto as Exhibits **A** through **C** are part of this Agreement, and are incorporated into this Agreement by this reference. Each may be canceled or superseded at any time by mutual agreement of Dealer and VWoA, through the later execution by both parties of a replacement, which then shall be deemed part of this Agreement.

DATED: \_\_\_\_\_, 2018

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: \_\_\_\_\_  
Michael Tocci  
Region Vice President

BY: \_\_\_\_\_  
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
FX Caprara VW, LLC d/b/a FX Caprara Volkswagen**

BY: \_\_\_\_\_  
William Caprara  
Manager





Volkswagen

# VOLKSWAGEN

7. Article 16 of the Standard Provisions is hereby amended in its entirety to read as follows:

"(9) 'Dealer's Owners' means all the persons (natural or otherwise) who are beneficial or record owners of Dealer, or are beneficial or record owners of any entity or trust having beneficial or record ownership in Dealer, as well as any other person (natural or otherwise) who acquires or succeeds to any beneficial interest or record ownership in Dealer, or who acquires or succeeds to any beneficial or record ownership in any entity or trust having beneficial or record ownership in Dealer, in accordance with the provisions of this Agreement, including, without limitation, the following:

- (i) All persons (natural or otherwise) named in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement); and
- (ii) All persons (natural or otherwise) named in Paragraph 1 of the Corporate Shareholder Addendum (Exhibit C to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 1 of the Corporate Shareholder Addendum (Exhibit C to this Agreement).

Dealer hereby certifies that the foregoing information is true and complete as of the date below. VWoA has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by, the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.

DATED: \_\_\_\_\_, 2018

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: \_\_\_\_\_  
Michael Tocci  
Region Vice President

BY: \_\_\_\_\_  
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
FX Caprara VW, LLC d/b/a FX Caprara Volkswagen**

BY:   
William Caprara  
Manager



Volkswagen

# VOLKSWAGEN

## DEALER PREMISES ADDENDUM

### EXHIBIT B TO DEALER AGREEMENT DATED \_\_\_\_\_, 2018

1. Dealer entity name:  
**FX Caprara VW, LLC d/b/a FX Caprara Volkswagen.**
2. VWoA has approved the location of the following premises, and no others, for Dealer's Operations:
  - a. Sales Facilities:  
**18493 US Route 11, Watertown, NY 13601**
  - b. Authorized Automobile Storage Facilities:  
**18493 US Route 11, Watertown, NY 13601**
  - c. Service Facilities:  
**18493 US Route 11, Watertown, NY 13601**
  - d. Genuine Parts Storage Facilities:  
**18493 US Route 11, Watertown, NY 13601**
  - e. Used Car Lot:  
**18493 US Route 11, Watertown, NY 13601**

Dealer hereby certifies that the foregoing information is true and complete as of the date below.

This Exhibit cancels any prior Dealer Premises Addendum.

DATED: \_\_\_\_\_, 2018

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: \_\_\_\_\_  
Michael Tocci  
Region Vice President

BY: \_\_\_\_\_  
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
FX Caprara VW, LLC d/b/a FX Caprara Volkswagen**

BY: \_\_\_\_\_  
William Caprara  
Manager



Volkswagen

# VOLKSWAGEN

## CORPORATE SHAREHOLDER ADDENDUM

### EXHIBIT C

### TO VOLKSWAGEN DEALER AGREEMENT

\_\_\_\_\_, 2018

1. Dealer entity name:

**FX Caprara VW, LLC d/b/a FX Caprara Volkswagen**

2. In order to induce Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") to enter into this Volkswagen Dealer Agreement (including, without limitation, the Volkswagen Dealer Agreement Standard Provisions, the "Agreement"), Dealer represents as follows:

a. **DEALER'S OWNERS**

The following Limited Liability Companies ("Dealer's Owner") are the Members of **FX Caprara VW, LLC**:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer</u>
Capstone Automotive Group, LLC 1581 Franklin Ave Mineola, NY 11501	85.0%
FX Caprara Car Company, Inc. 18493 US Route 11 Watertown, NY 13601	15.0%

The following persons are the Managers of FX Caprara VW, LLC:

<u>Name</u>	<u>Title</u>
Brian Brown	Manager
William Caprara	Manager
Neal Tyrrell	Manager

b. **MEMBERS of Capstone Automotive Group, LLC**

The following Limited Partner and individual ("Members of Dealer's Owner") are the Members of Capstone Automotive Group, LLC:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Capstone Automotive Group, LLC</u>
GPB Automotive Portfolio, LP 1581 Franklin Ave. Mineola, NY 11501	85.00%
Jeffrey Lash 6620 Glen Arbor Way Naples, FL 34119	15.00%

The following persons are the Managers of Capstone Automotive Group, LLC:

<u>Name</u>	<u>Title</u>
David Gentile	Manager
Jeffrey Lash	Manager
Brian Marshall	Manager
James Prestiano	Manager

**VOLKSWAGEN**

Volkswagen

c. **Owners of FX Caprara Car Company, Inc.**

The following individuals ("Owners of Dealer's Owner") are the Beneficial and Record Owners of FX Caprara Car Company, Inc.:

<u>Name and Address</u>	<u>Percentage of Ownership of Record in FX Caprara Car Company, Inc.</u>
William Caprara 18493 US Route 11 Watertown, NY 13601	50.0%
Charles Caprara 18493 US Route 11 Watertown, NY 13601	50.0%

The following persons are the Directors of FX Caprara Car Company, Inc.:

<u>Name</u>	<u>Title</u>
William Caprara	Director
Charles Caprara	Director

d. **PARTNERS of GPB Automotive Portfolio, LP**

The following Limited Liability Company ("Members of Dealer's Owner") is the General Partner of Dealer's Owner:

<u>Name</u>	<u>Title</u>
GPB Capital Holdings, LLC 1581 Franklin Ave. Mineola, NY 11501	General Partner

The following person is the Officer of GPB Automotive Portfolio, LP:

<u>Name</u>	<u>Title</u>
David Gentile	CEO

e. **PARTNERS of GPB Capital Holdings, LLC**

The following persons ("Members of Dealer's Owner") are the beneficial and record members of all the outstanding interest of Dealer's Owner:

<u>Name</u>	<u>Percentage of Member Interest of Record in GPB Capital Holdings, LLC</u>
David Gentile 1581 Franklin Ave. Mineola, NY 11501	100%

The following person is the Officer of GPB Capital Holdings, LP:

<u>Name</u>	<u>Title</u>
David Gentile	Manager

**EXHIBIT 6**

# VOLKSWAGEN



Volkswagen

VWoA has entered into this Agreement in reliance upon these representations, and upon the qualifications and continued performance of personal services in the ownership and management of Dealer, by any Shareholder, who is also one of Dealer's Executives. Accordingly, Dealer agrees there will be no change in Dealer's Owners, or any Shareholder, without VWoA's prior consent. Dealer agrees that VWoA has the right to terminate this Agreement with immediate effect in the event of any such change without prior written consent.

This Exhibit cancels any prior Corporate Shareholder Addendum.

DATED: \_\_\_\_\_, 2018

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: \_\_\_\_\_  
Michael Tocci  
Region Vice President

BY: \_\_\_\_\_  
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
FX Caprara VW, LLC D/B/A FX Caprara Volkswagen**

BY:   
William Caprara  
Manager



Volkswagen

# VOLKSWAGEN

## HOLD HARMLESS AGREEMENT AND COVENANT NOT TO SUE

AGREEMENT (the "Agreement") by and among Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and **FX Caprara VW, LLC d/b/a FX Caprara Volkswagen**, ("Dealer").

WHEREAS, at the request of Dealer and Member(s), VWoA has agreed to enter into a Volkswagen Dealer Agreement (the "Dealer Agreement") with Dealer;

WHEREAS Dealer and Member(s) fully recognize the financial risks they are taking in establishing an automobile dealership and Dealer and Member(s) understand that there is no assurance that such dealership will be successful or profitable; and

WHEREAS with the knowledge that VWoA is expressly reserving all its rights under the provisions of the Dealer Agreement with respect to the operations of Dealer, Dealer and Member(s) have requested that VWoA issue the Dealer Agreement to Dealer.

NOW, THEREFORE, to induce VWoA to enter into a Dealer Agreement with Dealer and for other valuable consideration, Dealer and Member(s), jointly and severally, hereby agree as follows:

1. Dealer and Member(s), jointly and severally, shall save harmless and indemnify VWoA, its agents, employees, officers, directors, parents, subsidiaries, successors and assigns (hereinafter collectively referred to as "VWoA and its Employees"), from any and all losses, damages, claims, actions, costs, expenses or judgments, of any kind of nature, regardless of source or cause, arising out of or resulting from any losses incurred in the operations of Dealer, excepting only losses or damages caused directly by a violation of applicable law by VWoA, or breach by VWoA of its contractual responsibilities provided in the Standard Provisions of the Volkswagen Dealer Agreement.
2. Dealer and Member(s), jointly and severally, hereby covenant and agree not to sue VWoA and its Employees or any of them with respect to any matter, cause or thing of any nature or description arising out of or resulting from the operations of Dealer, if the allegations of said suit or action relate in any manner to losses sustained by Dealer or Member(s) because of the operations of Dealer, excepting only matters involving debits and credits between VWoA and Dealer (such as warranty claims) matters involving losses caused directly by a violation of applicable law by VWoA; and matters involving losses caused directly by a breach by VWoA of its contractual responsibilities as provided in the Standard Provisions of the Volkswagen Dealer Agreement.
3. In the event that at any time hereafter Dealer or Member(s) file any action or administration proceeding against VWoA and its Employees or any of them demanding relief for any alleged losses or damages hereafter sustained by Dealer or Member(s) arising out of or resulting from the operations of Dealer, and excepting only the matters set forth in Paragraphs 1, 2 and 5 of this Agreement, then and in that event this Agreement shall be complete defense to any such action or administrative proceeding; (a) Dealer and Member(s) jointly and severally, shall, upon request by VWoA, immediately pay VWoA the amount of any money judgment entered against VWoA and its Employees or any of them, together with all court costs imposed and reasonable attorneys' fees expended by VWoA in the defense of such action or administrative proceeding; and (b) neither Dealer nor Member(s) shall attack the legal validity or the sufficiency of this Agreement or any provision hereof in any manner or in any court, the parties hereto hereby agreeing and intending that this Agreement shall be valid and binding on each of them and their heirs, executors, administrators, successors and assigns in all respects.
4. The failure of Member(s) to sign this Agreement or the release here from of Member(s) by VWoA shall not release those other parties who have executed this Agreement from their obligation and duties set forth herein.



Volkswagen

# VOLKSWAGEN

- 5. This Agreement shall not be construed to release any claims which any party may have against VWoA or any other party with respect to any product liability matters.
- 6. This Agreement shall be construed under the laws of the State of New York. In the event any provision hereof is held to be unenforceable or invalid by any court of competent jurisdiction, such provision shall be deemed severed from the remaining provisions, which shall remain in full force and effect.
- 7. This Agreement shall not be integrated into the Volkswagen Dealer Agreement, and shall survive the integration provision in Article 17(4) of the Volkswagen Dealer Agreement Standard Provisions.

In witness whereof, the parties have executed this Agreement.

DATED: \_\_\_\_\_, 2018

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: \_\_\_\_\_  
Michael Tocci  
Region Vice President

BY: \_\_\_\_\_  
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER:  
FX CAPRARA VW, LLC D/B/A FX CAPRARA VOLKSWAGEN**

BY: \_\_\_\_\_  
William Caprara  
Manager

**MEMBER(S):  
CAPSTONE AUTOMOTIVE GROUP, LLC**

**FX CAPRARA GAR COMPANY, INC.**

By: \_\_\_\_\_  
David Gentile

By: \_\_\_\_\_  
William Caprara



Volkswagen

# VOLKSWAGEN

## GUARANTY

Network Development Department  
Volkswagen of America, Inc.  
an operating unit of Volkswagen Group of America, Inc.  
2200 Ferdinand Porsche Drive  
Herndon, VA 20171

To Whom It May Concern:

In consideration of Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") granting credit to **FX Caprara VW, LLC** ("Dealer"), a **Delaware Limited Liability Company, Capstone Automotive Group, LLC** ("Guarantor"), a Delaware limited liability company and **FX Caprara Car Company, Inc.** ("Guarantor"), a New York corporation, hereby guaranties to VWoA the payment of all indebtedness of Dealer to VWoA now in existence or hereafter arising out of the Volkswagen Dealer Agreement between Dealer and VWoA.

This is an absolute and continuing guaranty, intended to cover all indebtedness and any number of service and sales transactions between VWoA and Dealer, and all indebtedness arising as a result thereof, and shall continue in force notwithstanding any change or changes in the form of the Dealer Agreement, any increase in said indebtedness, any further extension or extensions of credit granted by VWoA or any acceptance, sale, exchange or release of any security that may be given to VWoA by Dealer or the Guarantor.

In the event Dealer shall fail to pay all or any part of indebtedness when due, whether by acceleration or otherwise, the Guarantor will pay to VWoA the amount due and unpaid by Dealer, in like manner as if such amount constituted the direct and primary obligation of the Guarantor. VWoA shall not be required, prior to any demand on or payment by the Guarantor, to make any demand upon or pursue or exhaust any of VWoA's rights or remedies with respect to any part of any security given to VWoA by Dealer or the Guarantor.

VWoA is authorized, without notice to the Guarantor, to make sales in any amount, to make any change or changes in the form of the Dealer Agreement and in the form of such indebtedness; to grant any extensions of time and changes in the terms of payment of such indebtedness; to give Dealer at any time and in any form, any renewals or extensions of credit; to accept security for such indebtedness, credit or extensions thereof; and to sell, lease or exchange any security that may be given. The Guarantor acknowledges that whether such indebtedness, credits or extensions thereof are now or hereafter evidenced by open account or other evidence of debt, this Guaranty shall include a guaranty of such open account or other evidence of debt and of the terms and provisions thereof, and the Guarantor hereby waives any notice, demand, presentment, and notice of dishonor of any such evidence of debt, and also hereby waive notice of the acceptance of this Guaranty.

For so long as this Guaranty is in effect, and in the event of a request from VWoA, Guarantor agrees to provide VWoA a copy of its most recent year-end financial statement.

The obligations of the parties signing this Guaranty shall be joint and several, and the discontinuance, discharge, or release for any reason of all or any part of the obligation of any one or more of the undersigned, or the waiver or condemnation by VWoA of any breach or default of Dealer, or the failure of any other person to sign this Guaranty shall not release or affect the liability of any signer hereof.



Volkswagen

# VOLKSWAGEN

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**WITNESS:**

\_\_\_\_\_

Brian Brown

Brian Brown

**GUARANTOR(S):**

**Capstone Automotive Group, LLC**

\_\_\_\_\_  
David Gentile, Manager

**FX Car Company, Inc.**

\_\_\_\_\_  
William Caprara, Manager

\_\_\_\_\_  
William Caprara, Individually



Volkswagen

# VOLKSWAGEN

## AUTHORIZATION LETTER

February 2, 2018

**William Caprara - Manager**  
**FX Caprara VW, LLC d/b/a FX Caprara Volkswagen**  
**18493 US Route 11, Watertown, NY 13601**

Dear Mr. William Caprara:

We are pleased to advise you that Volkswagen AG has authorized your use of the word "**Volkswagen**" in the business name "**FX Caprara Volkswagen**" for your dealership.

This authorization is limited to the business name stated in the preceding paragraph and does not cover any other business or corporate name containing the word "**Volkswagen**" which you may wish to adopt in the future. Moreover, the present authorization is limited to your present firm or corporation. It does not extend to any subsidiary or affiliate of your firm or corporation, and it is not transferable.

The authorization granted in this letter shall automatically terminate in the event that you cease to be a franchised Volkswagen dealer and also in the event of a sale of your business, a merger of your corporation, the liquidation or bankruptcy of your firm or an assignment of assets of your firm to an assignee for the benefit of creditors.

Moreover, Volkswagen AG reserves the absolute and unqualified right to revoke the authorization at any time, in its sole and absolute discretion, with or without cause, by mailing or causing Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., to mail written notice of such revocation to you.

Upon termination of this authorization by reason of any of the events described, as well as upon receipt of the written revocation referred to, you shall (a) take all necessary steps to forthwith effect a legal change of your business or corporate name eliminating the word "**Volkswagen**" therefrom and (b) thereafter immediately discontinue the use of the word "**Volkswagen**" in your business or corporate name.

You shall not be entitled to any compensation whatsoever in the event of termination or revocation of this authorization.

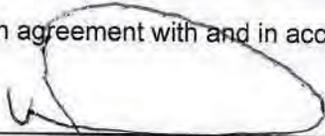
This authorization is subject to all applicable provisions of your present and future Volkswagen dealer agreements.

Please sign the enclosed copy of this agreement for consent and return it to us. The authorization contained herein will be effective only after we have received the copy duly signed by you.

Regards,

Bryan D. Connor  
Authorized Representative for Volkswagen AG

Signed in agreement with and in acceptance of the above terms:

By:   
William Caprara - Manager  
FX Caprara VW, LLC d/b/a FX Caprara Volkswagen

# EXHIBIT C



Volkswagen

**VOLKSWAGEN**

Brian D. Kelly	Name
Senior Director - Network Operations	Title
February 14, 2019	Date

David Rosenberg  
1280 Providence Hwy  
Norwood, MA 02062

Dear Mr. Rosenberg,

It is my pleasure to welcome you as a member of the Volkswagen of America Dealer Network. This is a momentous time for the brand and for the network as we drive our growth strategy in the United States market by continuing to offer a product portfolio of vehicles that feature technologically advanced products that are fun to drive.

Founded in 1955, Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. (VWoA) is headquartered in Herndon, Virginia. It is a subsidiary of Volkswagen AG, headquartered in Wolfsburg, Germany. VWoA's operations in the United States include research and development, parts and vehicle processing, parts distribution centers, sales, marketing and service offices, financial service centers, and a state-of-the-art manufacturing facility in Chattanooga, Tennessee.

Volkswagen of America is proud of its import brand history whose tenure is one of the lengthiest in the United States import industry. Our recent multi billion investment in North America underscores the value we place in our more than 64-year relationship with the American consumer and shows how focused we are in achieving our goal to become a leading player in the United States and in your specific market.

Beyond our commitment to product, the selection of Dealer candidates is one of the critical elements to the long-term success of the Volkswagen of America Network and the Volkswagen brand. We are dedicated to building a world-class Dealer Network. One that continually strives to exceed monthly sales objectives, aftersales objectives, and customer satisfaction objectives.

On behalf of Volkswagen of America, I want to extend a sincere welcome to you and your Volkswagen dealership operation to the Volkswagen team. Should you have any questions regarding the content of this binder, please feel free to contact Thomas Andreuzzi, Senior Manager, Region Network Development in the Northeast Region.

Sincerely yours,

Brian D. Kelly  
Senior Director - Network Operations



Volkswagen

# **VOLKSWAGEN**

## **DEALER AGREEMENT**

1. **APPOINTMENT.** Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), having a place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171 appoints **AMR Auto Holdings-VWN, LLC**, doing business under the fictitious name, **Volkswagen of Norwood**, having its place of business at 1280 Providence Highway, Norwood, Massachusetts, 02062, as an authorized dealer in Volkswagen brand motor vehicles and genuine parts and accessories therefore. Accordingly, the parties agree as follows:

2. **STANDARD PROVISIONS.** The Dealer Agreement Standard Provisions (the "Standard Provisions"), the Dealer Operating Plan (the "Operating Plan") and the Volkswagen Dealer Operating Standards (the "Operating Standards") are part of this Agreement. Any term not defined in this Agreement has the meaning given such term in the Standard Provisions.

3. **OWNERSHIP AND MANAGEMENT.** To induce VWoA to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Exhibit A, are Dealer's Owners and Executives. VWoA is entering into this Agreement in reliance upon these representations, and upon the continued provision by such persons of their personal services in fulfillment of Dealer's obligations under this Agreement. Accordingly, Dealer agrees there will be no change in Dealer's Owners without VWoA's prior written consent, and no change in Dealer's Executives without prior notice to VWoA.

4. **MINIMUM FINANCIAL REQUIREMENTS.** Dealer agrees to comply and maintain compliance with the minimum financial requirements established for Dealer annually in accordance with the Operating Plan and the Operating Standards. Throughout the term of this Agreement those minimum financial requirements are subject to revision by VWoA, after review with Dealer, in light of operating conditions and the development of Dealer's business and business potential.

5. **DEALER'S PREMISES.** VWoA has approved the location of Dealer's Premises as specified in the Dealer Premises Addendum, attached as Exhibit B. Dealer agrees that, without VWoA's prior written consent, it will not (a) make any major structural change in any of Dealer's Premises, (b) change the location of any of Dealer's Premises or (c) establish any additional premises for Dealer's Operations.

6. **EXCLUSION OF WARRANTIES.** EXCEPT FOR DISTRIBUTOR'S WARRANTIES, AND EXCEPT AS PROVIDED IN ARTICLE 9(1) OF THE STANDARD PROVISIONS, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR OBLIGATIONS OF THE MANUFACTURER OR DISTRIBUTOR AS TO THE QUALITY OR CONDITION OF AUTHORIZED PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF AUTHORIZED PRODUCTS.



Volkswagen

# VOLKSWAGEN

7. **TERM.** The term of this Agreement begins on the date of its delivery to Dealer or on January 1, 1997, whichever is later. This Agreement shall continue in effect until terminated by either party or superseded by a new Dealer Agreement with VWoA, whichever is earlier.

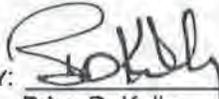
8. **GOVERNING LAW.** This Agreement will be construed in accordance with the laws of the State of Massachusetts. Should the performance of any obligation under this Agreement violate any valid law of such jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

9. **ADDITIONAL TERMS AND CONDITIONS.** The Addenda attached hereto as Exhibits A through E are part of this Agreement, and are incorporated into this Agreement by this reference. Each may be canceled or superseded at any time by mutual agreement of Dealer and VWoA, through the later execution by both parties of a replacement, which then shall be deemed part of this Agreement.

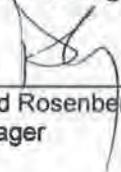
DATED: FEBRUARY 14, 2019

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY:   
Michael Tocci  
Region Vice President

BY:   
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood**

BY:   
David Rosenberg  
Manager



Volkswagen

# VOLKSWAGEN

## STATEMENT OF OWNERSHIP AND MANAGEMENT

### EXHIBIT A

#### TO DEALER AGREEMENT DATED

2/14, 2019

1. Dealer entity name:  
**AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood**
2. Principal place of business:  
**1280 Providence Highway, Norwood, Massachusetts, 02062**
3. Dealer is a
  - Proprietorship
  - Partnership
  - Limited Liability Company  
Formed on June 11, 2018 under the laws of the State of Delaware

4. The following persons are the beneficial and record owners of Dealer:

<u>Name and Address of Each Record and Beneficial Owner of Dealer</u>	<u>Number and Class of Shares</u>	<u>Percentage of Ownership of Record in Dealer</u>
	<u>Number</u>	<u>Class</u>
Automile Holdings, LLC 375 Providence Highway Westwood, MA 02090		100 %

5. The following persons are Dealer's Officers:

<u>Name and Address</u>	<u>Title</u>
David Rosenberg 375 Providence Highway Westwood, MA 02090	Manager

6. The following person is the Authorized Representative of Dealer. As such, this person is an agent of Dealer, and VWoA is entitled to rely on this person's authority to make all decisions on behalf of Dealer with respect to Dealer's Operations.

<u>Name and Address</u>	<u>Title</u>
Ray Hovsepian	General Manager

7. Article 16 of the Standard Provisions is hereby amended in its entirety to read as follows:

"(9) 'Dealer's Owners' means all the persons (natural or otherwise) who are beneficial or record owners of Dealer, or are beneficial or record owners of any entity or trust having beneficial or record ownership in Dealer, as well as any other person (natural or otherwise) who acquires or succeeds to any beneficial interest or record ownership in Dealer, or who acquires or succeeds to any beneficial or record ownership in any entity or trust having beneficial or record ownership in Dealer, in accordance with the provisions of this Agreement, including, without limitation, the following:

- (i) All persons (natural or otherwise) named in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity



Volkswagen

# VOLKSWAGEN

or trust identified in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement); and

- (ii) All persons (natural or otherwise) named in Paragraph 2 of the Corporate Shareholder Addendum (Exhibit C to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 2 of the Corporate Shareholder Addendum (Exhibit C to this Agreement); and
- (iii) All persons (natural or otherwise) named in Paragraph 2 of the Ownership by Trust Addendum (Exhibit D to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 2 of the Ownership by Trust Addendum (Exhibit D to this Agreement).

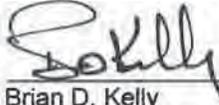
Dealer hereby certifies that the foregoing information is true and complete as of the date below. VWoA has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by, the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.

DATED: FEBRUARY 14, 2019

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY:   
Michael Tocci  
Region Vice President

BY:   
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood**

BY:   
David Rosenberg  
Manager



Volkswagen

# VOLKSWAGEN DEALER PREMISES ADDENDUM

EXHIBIT B  
TO DEALER AGREEMENT DATED  
2/14, 2019

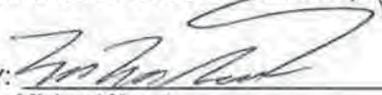
1. Dealer entity name:  
**AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood.**
2. VWoA has approved the location of the following premises, and no others, for Dealer's Operations:
  - a. Sales Facilities:  
**1280 Providence Highway, Norwood, Massachusetts, 02062**
  - b. Authorized Automobile Storage Facilities:  
**1280 Providence Highway, Norwood, Massachusetts, 02062**
  - c. Service Facilities:  
**1280 Providence Highway, Norwood, Massachusetts, 02062**
  - d. Genuine Parts Storage Facilities:  
**1280 Providence Highway, Norwood, Massachusetts, 02062**
  - e. Used Car Lot:  
**1280 Providence Highway, Norwood, Massachusetts, 02062**

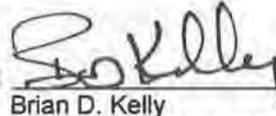
Dealer hereby certifies that the foregoing information is true and complete as of the date below.

This Exhibit cancels any prior Dealer Premises Addendum.

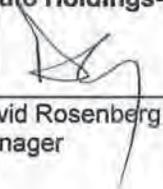
DATED: FEBRUARY 14, 2019

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:   
Michael Tocci  
Region Vice President

BY:   
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

DEALER  
AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood,

BY:   
David Rosenberg  
Manager



Volkswagen

# VOLKSWAGEN

## CORPORATE SHAREHOLDER ADDENDUM

**EXHIBIT C**  
**TO VOLKSWAGEN DEALER AGREEMENT**  
 DATED 2/14, 2018

1. Dealer entity name:

**AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood**

2. In order to induce Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") to enter into this Volkswagen Dealer Agreement (including, without limitation, the Volkswagen Dealer Agreement Standard Provisions, the "Agreement"), Dealer represents as follows:

a. **DEALER'S OWNER**

The following corporation ("Dealer's Owner") is the beneficial and record owner of Dealer:

<u>Name and Address</u>	<u>Percentage of Ownership of Record in Dealer</u>
Automile Holdings, LLC 375 Providence Highway Westwood, MA 02090	100 %

The following person(s) are the Managers of AMR Auto Holdings-VWN, LLC:

<u>Name</u>	<u>Title</u>
David Rosenberg	Manager

b. **MEMBERS of AUTOMILE HOLDINGS, LLC**

The following Limited Liability Company ("Dealer's Owner") is the sole Member of Automile Holdings, LLC:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer's Owner</u>
Automile Parent Holdings, LLC 375 Providence Highway Westwood, MA 02090	100%

The following person(s) are the Managers of Automile Holdings, LLC:

<u>Name</u>	<u>Title</u>
David Gentile	Manager
Manuel Vianna	Manager
James Prestiano	Manager
David Rosenberg	Manager

c. **MEMBERS of AUTOMILE PARENT HOLDINGS, LLC**



Volkswagen

# VOLKSWAGEN

The following Limited Liability Company and other individuals ("Members of Dealer's Owner") are the Members of Automile Parent Holdings, LLC:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer's Owner</u>
GPB Prime Holdings, LLC 1581 Franklin Ave Mineola, NY 11501	76.25%
David Rosenberg 425 Providence Highway Westwood, MA 02090	12.99%
Rosenberg Family Nominee Trust 133 Front Street Marblehead, MA 01907	7.49%
Rosenberg Family Nominee Trust/ Sawdran 133 Front Street Marblehead, MA 01907	3.27%

The following persons are the Managers of Automile Parent Holdings, LLC:

<u>Name</u>	<u>Title</u>
David Gentile	Manager
Manuel Vianna	Manager
James Prestiano	Manager
David Rosenberg	Manager

#### d. MEMBERS of GPB PRIME HOLDINGS, LLC

The following Limited Liability Companies ("Members of Dealer's Owner") are the Members of GPB Prime Holdings, LLC:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer's Owner</u>
Capstone Automotive Group, LLC 1581 Franklin Ave Mineola, NY 11501	55.0%
Capstone Automotive Group II, LLC 1581 Franklin Ave Mineola, NY 11501	45.0%

The following persons are the Managers of GPB Prime Holdings, LLC:

<u>Name</u>	<u>Title</u>
David Gentile	Manager
Manuel Vianna	Manager
James Prestiano	Manager



Volkswagen

# VOLKSWAGEN

David Rosenberg

Manager

## e. MEMBER of CAPSTONE AUTOMOTIVE GROUP, LLC

The following Limited Partnership ("Members of Dealer's Owner") is the sole Member of Capstone Automotive Group, LLC:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer's Owner</u>
GPB Automotive Portfolio, LP 1581 Franklin Ave Mineola, NY 11501	100%

The following persons are the Managers of Capstone Automotive Group, LLC:

<u>Name</u>	<u>Title</u>
David Gentile	Manager
Brian Marshall	Manager
David Rosenberg	Manager
Manuel Vianna	Manager
James Prestiano	Manager

## f. MEMBER OF CAPSTONE AUTOMOTIVE GROUP II, LLC

The following Limited Partnership ("Members of Dealer's Owner") is the sole Member of Capstone Automotive Group II, LLC:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer's Owner</u>
GPB Holdings II, LP 1581 Franklin Ave Mineola, NY 11501	100%

The following persons are the Managers of Capstone Automotive Group II, LLC:

<u>Name</u>	<u>Title</u>
David Gentile	Manager
David Rosenberg	Manager
Brian Marshall	Manager
James Prestiano	Manager
Manuel Vianna	Manager

## g. PARTNERS of GPB AUTOMOTIVE PORTFOLIO, LP

The following Limited Liability Company ("Members of Dealer's Owner") is the General Partner of Dealer's Owner:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer's Owner</u>
GPB Capital Holdings, LLC 1581 Franklin Ave Mineola, NY 11501	100%

The following person is the General Partner of GPB Automotive Portfolio, LP:



Volkswagen

## VOLKSWAGEN

<u>Name</u>	<u>Title</u>
David Gentile	Manager*
*Mr. Gentile is the manager of GPB Capital Holdings, LLC, the GP of GBP Automotive Portfolio, LP	

### h. PARTNER of GPB HOLDINGS II, LP

The following Limited Liability Company ("Members of Dealer's Owner") is the General Partner of Dealer's Owner:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer's Owner</u>
GPB Capital Holdings, LLC 1581 Franklin Ave Mineola, NY 11501	100%

The following person is the Officer of GPB Holdings II, LP:

<u>Name</u>	<u>Title</u>
David Gentile	Manager*
*Mr. Gentile is the manager of GPB Capital Holdings, LLC, the GP of GBP Automotive Portfolio, LP	

### i. MEMBER of GPB CAPITAL HOLDINGS, LLC

The following person ("Members of Dealer's Owner") is the beneficial and record member of all the outstanding interest of Dealer's Owner:

<u>Name and Address</u>	<u>Percentage of Member Interest of Record in Dealer's Owner</u>
David Gentile 1581 Franklin Ave Mineola, NY 11501	100%

The following person is the Officer of GPB Capital Holdings, LP:

<u>Name</u>	<u>Title</u>
David Gentile	Manager

VWoA has entered into this Agreement in reliance upon these representations, and upon the qualifications and continued performance of personal services in the ownership and management of Dealer, by any Shareholder, who is also one of Dealer's Executives. Accordingly, Dealer agrees there will be no change in Dealer's Owners, or any Shareholder, without VWoA's prior consent. Dealer agrees that VWoA has the right to terminate this Agreement with immediate effect in the event of any such change without prior written consent.



Volkswagen

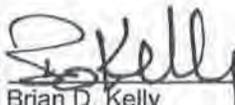
# VOLKSWAGEN

This Exhibit cancels any prior Corporate Shareholder Addendum.

DATED: FEBRUARY 14, 2019

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY:   
\_\_\_\_\_  
Michael Tocci  
Region Vice President

BY:   
\_\_\_\_\_  
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
AMR AUTO HOLDINGS-VWN, LLC D/B/A VOLKSWAGEN OF NORWOOD**

BY:   
\_\_\_\_\_  
David Rosenberg  
Manager



Volkswagen

# VOLKSWAGEN

## OWNERSHIP BY TRUST ADDENDUM

### EXHIBIT D TO DEALER AGREEMENT DATED

2/14, 2019

1. Dealer entity name:

**AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood**

2. In order to induce Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") to enter into this Volkswagen Dealer Agreement (including, without limitation, the Volkswagen Dealer Agreement Standard Provisions, the "Agreement"), Dealer represents as follows:

3. a. OWNERSHIP BY TRUSTS

The following trusts (collectively referred herein as the "Trusts") are record owners of Dealer:

<u>NAME OF TRUST</u>	<u>PERCENTAGE OF OWNERSHIP OF AUTOMILE PARENT HOLDINGS, LLC</u>
Rosenberg Family Nominee Trust 133 Front Street Marblehead, MA 01945	7.49 %
Rosenberg Family Nominee Trust/ Sawdran 133 Front Street Marblehead, MA 01945	3.27 %

b. TRUSTEES OF TRUSTS

The following persons are the trustees of the Trusts (collectively referred herein as the "Trustees"):

<u>NAME OF TRUSTEE</u>	<u>TRUST NAME</u>
Karen S. Rosenberg 133 Front Street Marblehead, MA 01945	Rosenberg Family Nominee Trust Rosenberg Family Nominee Trust/Sawdran

VWoA has entered into this Agreement in reliance upon the terms of each of the Trusts (the "Trust Agreements"), including the designation of Karen S. Rosenberg as trustee of the Trusts. Notwithstanding any provision of the Trust Agreements to the contrary, in connection with any interest, direct or indirect, in Dealer held by the Trusts, Dealer and the Trustee expressly agree that they shall in all respects be bound by and comply fully with the terms, conditions and requirements of the Agreement and VWoA's policies. All references to the Dealer's Owners in the Agreement are expressly amended to include the Trusts and Trustee.

Notwithstanding any provision of the Trust Agreement and without limitation of any provision of the Agreement, Dealer expressly agrees that: (i) the Trust Agreement may not be amended, modified or terminated in any manner that could impact the management, control or ownership of the Trust's interest in Dealer without the prior written consent of VWoA; (ii) the Trustees may not be changed nor may any additional, replacement or successor trustee(s) be named, whether or not appointed pursuant to the Trust Agreement without the prior written consent of VWoA; (iii) no portion of the Trust's ownership interest in Dealer may be transferred, disposed of or distributed, including distribution to any beneficiary



Volkswagen

# VOLKSWAGEN

under the Trust, whether or not pursuant to the Trust Agreement terms, without VVoA's prior written consent; (iv) no other amendments, modifications or other changes may be made to or in connection with the Trust that would impact the ownership, management or operation of Dealer or the voting of any of the ownership interests in Dealer without the prior written consent of VVoA; and (v) Dealer and Trustees shall execute and deliver any and all further instruments and assurances and perform any act that VVoA may reasonably request for the purpose of giving full force and effect to the provisions of the Agreement and VVoA policies.

Any changes in ownership or trustees, whether or not pursuant to the Trust Agreement, without the prior written consent of VVoA, will void the Agreement.

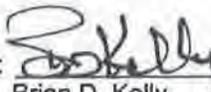
This Exhibit cancels any prior Ownership By Trust Addendum

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers on the day and year written below.

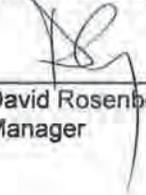
DATED: FEBRUARY 14, 2019

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

By:   
Michael Tocci  
Region Vice President

By:   
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood**

By:   
David Rosenberg  
Manager



Volkswagen

# VOLKSWAGEN

## FACILITIES ADDENDUM - RENOVATION

### EXHIBIT E TO DEALER AGREEMENT DATED 2/14, 2019

This Facility Renovation Addendum (Exhibit E) (the "Facility Addendum") is an integral part of the Volkswagen Dealer Agreement dated FEBRUARY 14, 2019 (the "Dealer Agreement") by and between Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and **AMR Auto Holdings-VWN, LLC, d/b/a Volkswagen of Norwood** ("Dealer").

1. Both parties acknowledge that the Dealer's Premises does not contain a sales, service, and parts facility that meets all of the requirements of the **Marketplace Facility Transition Program** (the "Facility Program"). In order to induce VWoA to enter into this Facility Addendum, and the Dealer Agreement of which it is part with the Dealer, Dealer represents that Dealer will renovate, at the Dealer's Premises, an exclusive Volkswagen Marketplace Facility Transition (the "New Facility") which will be dedicated exclusively for the use of Dealer's Volkswagen operations.

2. Dealer shall construct the sales, service, and parts facilities at the Dealer's Premises to meet all of the requirements of the Facility Program. The New Facility shall be located at the Dealer's Premises and shall meet the requirements of the Facility Program and Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the New Facility. The New Facility also shall contain all applicable Volkswagen corporate identification and signage allowed by local codes and required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the New Facility.

3. Dealer agrees to adhere to the timetables set forth below for completion of the respective actions described below:

- a. On or before **April 1, 2019**, you and/or Dealer shall cause a survey for the New Facility, which survey shall determine the required design and renovation specifications;
- b. On or before **July 1, 2019**, you and/or Dealer shall agree to a DCD for the New Facility that is prepared and submitted to it by VWoA;
- c. On or before **October 1, 2019**, you and/or Dealer shall complete and submit to VWoA for its review and approval **100-percent** complete set of renovation drawings for the New Facility. In the event VWoA submits comments, Dealer shall revise such drawings in accordance with VWoA's recommendations, and shall submit revised drawings incorporating VWoA's comments to VWoA not later than ten (10) business days after Dealer receives VWoA's comments;
- d. Within ten (10) business days after Dealer's receipt of VWoA's approval of its 100 percent complete set of renovation drawings or revised renovation drawings, Dealer shall submit such drawings, together with any and all other necessary documents, to the appropriate entities of the appropriate local authority in order to obtain all necessary building permits for the renovation of the New Facility. Dealer shall comply promptly with each requirement of each such entity;
- e. Within five (5) business days of Dealer's receipt of the building permits for the New Facility, but no later than **December 1, 2019**, Dealer shall provide evidence of such permits to VWoA and Dealer must begin renovation of the New Facility;
- f. On or before **December 1, 2020**, (the "Completion Date"), Dealer shall complete renovation of the New Facility in accordance with the renovation drawings or revised



Volkswagen

## VOLKSWAGEN

renovation drawings Approved by VVoA, and shall occupy the New Facility and commence all dealership operations at the New Facility.

4. Commencing in **October 2019**, Dealer, on the fifteenth (15<sup>th</sup>) day of each month, shall provide VVoA with a monthly report on the status of Dealer's compliance with the terms and conditions of this Facility Addendum, including, when it can be estimated, the expected date on which renovation of the New Facility will be completed.

5. No later than 30 calendar days prior to the scheduled opening of the New Facility, you must supply VVoA with an executed lease, a deed to the dealership property, or other documentation, demonstrating to VVoA's satisfaction that the Dealer may possess and use the New Facility as an Volkswagen dealership for no less than ten (10) years.

6. If Dealer shall, without written approval from VVoA, fail to comply timely with any provisions of this Facility Addendum, or if Dealer shall fail to comply timely with any of VVoA's requirements at the Site, then Dealer agrees that, regardless of the weight or magnitude of, or reason for, such failure, VVoA may, at its option, terminate the Dealer Agreement of which this Facility Addendum is a part, and shall be under no obligation to offer to enter into any subsequent Dealer Agreement with Dealer. Dealer acknowledges that, in that event, such failure would constitute a breach of a material and substantial term of the Dealer Agreement and VVoA would have good cause for terminating or refusing to renew the Dealer Agreement and VVoA would be acting in good faith terminating the dealership pursuant to MASS. GEN. LAWS ch. 93B, § 5. If Dealer shall fail for any reason whatsoever to satisfy any of the terms and conditions set forth in the Dealer Agreement, including this Facility Addendum, neither Dealer, its beneficial owners, nor any other person, shall make any claim or demand in any court or before any administrative body against or upon VVoA for reimbursement of any funds expended by them or any of them, or for damages arising out of any termination of or refusal to renew the Dealer Agreement or out of the transactions contemplated by this Facility Addendum.

7. If Dealer anticipates that it will fail to meet any deadline specified in this Addendum due to delays wholly or partially within Dealer's control, and despite Dealer's best efforts to meet the deadline, then Dealer may petition VVoA for an extension of the deadline. To do so, Dealer shall, no later than twenty (20) business days prior to any deadline that it anticipates will be missed, notify VVoA in writing of the specific reasons for noncompliance and a proposed new date or dates for compliance. VVoA may review Dealer's reasons for failing to meet the deadline, in its sole and unfettered discretion, may approve or disapprove any requested extension to the deadline. Such approval or extension must be provided in writing pursuant to Article 17(3) of this Dealer Agreement governing amendments. If VVoA does not respond to Dealer's petition within 15 days, the written and agreed upon deadline set forth in this Addendum will remain in effect unchanged.

8. If a condition of force majeure, defined as a condition causing delay that is wholly outside the control of Dealer (or a Dealer-affiliated entity) that could not reasonably be foreseen, such as an Act of God, strike, work stoppage, riot, terrorist acts or curtailment of transportation facilities, occurs during the process described above, Dealer is required to give VVoA written notice within three business days, and to resume the process and/or construction in a diligent and continuous fashion as soon as the condition of force majeure resolves. Dealer is obligated to pursue all available commercially reasonable options and opportunities to resolve the condition of force majeure as quickly as possible. If the condition of force majeure continues for a total period of 90 calendar days for any single event or series of events, Dealer acknowledges and agrees that VVoA is under no obligation to continue to extend any deadlines beyond that period. As such, regardless of the status of Dealer's compliance with the terms of the applicable Dealer Agreement (or any other agreement), VVoA shall have "good cause" for terminating or refusing to renew the Dealer Agreement and would be acting "in good faith" in doing so, pursuant to MASS. GEN. LAWS ch. 93B, § 5.

9. Dealer acknowledges that VVoA has made no representations, promises or warranties other than as expressly provided in writing within this Agreement, including, without limitation, regarding VVoA's future network plans, or that Dealer's Operations will be financially successful in either the short-term or long-term. Dealer further understands and acknowledges that its construction of the New Facility will not deprive VVoA of its rights under this Facility Addendum or the Dealer Agreement or any subsequent



Volkswagen

# VOLKSWAGEN

Dealer Agreement to terminate or fail to renew any such agreement pursuant to the provisions thereof and applicable law.

10. The various provisions of this Facility Addendum are intended to be severable. If any provision of this Facility Addendum is determined to be invalid or unenforceable, in whole or in part, such provision or part shall not affect or impair the validity of any other provision or part and shall be modified to the minimum extent necessary to permit enforcement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers on the day and year written below.

DATED: FEBRUARY 14, 2019

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY:   
\_\_\_\_\_  
Michael Tocci  
Region Vice President

BY:   
\_\_\_\_\_  
Brian D. Kelly  
Senior Director – Network Operations  
Assistant Secretary

**DEALER  
AMR Auto Holdings-VWN, LLC, d/b/a Volkswagen of Norwood**

BY:   
\_\_\_\_\_  
David Rosenberg  
Manager



Volkswagen

# VOLKSWAGEN

## HOLD HARMLESS AGREEMENT AND COVENANT NOT TO SUE

AGREEMENT (the "Agreement") by and among Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and **AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood**, ("Dealer").

WHEREAS, at the request of Dealer and Member(s), VWoA has agreed to enter into a Volkswagen Dealer Agreement (the "Dealer Agreement") with Dealer;

WHEREAS Dealer and Member(s) fully recognize the financial risks they are taking in establishing an automobile dealership and Dealer and Member(s) understand that there is no assurance that such dealership will be successful or profitable; and

WHEREAS with the knowledge that VWoA is expressly reserving all its rights under the provisions of the Dealer Agreement with respect to the operations of Dealer, Dealer and Member(s) have requested that VWoA issue the Dealer Agreement to Dealer.

NOW, THEREFORE, to induce VWoA to enter into a Dealer Agreement with Dealer and for other valuable consideration, Dealer and Member(s), jointly and severally, hereby agree as follows:

1. Dealer and Member(s), jointly and severally, shall save harmless and indemnify VWoA, its agents, employees, officers, directors, parents, subsidiaries, successors and assigns (hereinafter collectively referred to as "VWoA and its Employees"), from any and all losses, damages, claims, actions, costs, expenses or judgments, of any kind of nature, regardless of source or cause, arising out of or resulting from any losses incurred in the operations of Dealer, excepting only losses or damages caused directly by a violation of applicable law by VWoA, or breach by VWoA of its contractual responsibilities provided in the Standard Provisions of the Volkswagen Dealer Agreement.
2. Dealer and Member(s), jointly and severally, hereby covenant and agree not to sue VWoA and its Employees or any of them with respect to any matter, cause or thing of any nature or description arising out of or resulting from the operations of Dealer, if the allegations of said suit or action relate in any manner to losses sustained by Dealer or Member(s) because of the operations of Dealer, excepting only matters involving debits and credits between VWoA and Dealer (such as warranty claims) matters involving losses caused directly by a violation of applicable law by VWoA; and matters involving losses caused directly by a breach by VWoA of its contractual responsibilities as provided in the Standard Provisions of the Volkswagen Dealer Agreement.
3. In the event that at any time hereafter Dealer or Member(s) file any action or administration proceeding against VWoA and its Employees or any of them demanding relief for any alleged losses or damages hereafter sustained by Dealer or Member(s) arising out of or resulting from the operations of Dealer, and excepting only the matters set forth in Paragraphs 1, 2 and 5 of this Agreement, then and in that event this Agreement shall be complete defense to any such action or administrative proceeding; (a) Dealer and Member(s) jointly and severally, shall, upon request by VWoA, immediately pay VWoA the amount of any money judgment entered against VWoA and its Employees or any of them, together with all court costs imposed and reasonable attorneys' fees expended by VWoA in the defense of such action or administrative proceeding; and (b) neither Dealer nor Member(s) shall attack the legal validity or the sufficiency of this Agreement or any provision hereof in any manner or in any court, the parties hereto hereby agreeing and intending that this Agreement shall be valid and binding on each of them and their heirs, executors, administrators, successors and assigns in all respects.



Volkswagen

# VOLKSWAGEN

4. The failure of Member(s) to sign this Agreement or the release here from of Member(s) by VVoA shall not release those other parties who have executed this Agreement from their obligation and duties set forth herein.
5. This Agreement shall not be construed to release any claims which any party may have against VVoA or any other party with respect to any product liability matters.
6. This Agreement shall be construed under the laws of the State of Massachusetts. In the event any provision hereof is held to be unenforceable or invalid by any court of competent jurisdiction, such provision shall be deemed severed from the remaining provisions, which shall remain in full force and effect.
7. This Agreement shall not be integrated into the Volkswagen Dealer Agreement, and shall survive the integration provision in Article 17(4) of the Volkswagen Dealer Agreement Standard Provisions.

In witness whereof, the parties have executed this Agreement.

DATED: FEBRUARY 14, 2019

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY:   
 Michael Tocci  
 Region Vice President

BY:   
 Brian D. Kelly  
 Senior Director – Network Operations  
 Assistant Secretary

**DEALER  
AMR AUTO HOLDINGS-VWN, LLC D/B/A VOLKSWAGEN OF NORWOOD**

BY:   
 David Rosenberg  
 Manager

**MEMBER**  
 By:   
 David Rosenberg, Manager  
 Automile Gallery Holdings, LLC



# VOLKSWAGEN

## GUARANTY

Network Development Department  
Volkswagen of America, Inc.  
an operating unit of Volkswagen Group of America, Inc.  
2200 Ferdinand Porsche Drive  
Herndon, VA 20171

To Whom It May Concern:

In consideration of Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") granting credit to **AMR Auto Holdings-VWN, LLC**, d/b/a **VOLKSWAGEN OF NORWOOD**, a Delaware limited liability company ("Dealer"), **Automile Holdings, LLC**, a Delaware limited liability company ("Guarantor") hereby guaranties to VWoA the payment of all indebtedness of Dealer to VWoA now in existence or hereafter arising out of the Volkswagen Dealer Agreement between Dealer and VWoA.

This is an absolute and continuing guaranty, intended to cover all indebtedness and any number of service and sales transactions between VWoA and Dealer, and all indebtedness arising as a result thereof, and shall continue in force notwithstanding any change or changes in the form of the Dealer Agreement, any increase in said indebtedness, any further extension or extensions of credit granted by VWoA or any acceptance, sale, exchange or release of any security that may be given to VWoA by Dealer or the Guarantor.

In the event Dealer shall fail to pay all or any part of indebtedness when due, whether by acceleration or otherwise, the Guarantor will pay to VWoA the amount due and unpaid by Dealer, in like manner as if such amount constituted the direct and primary obligation of the Guarantor. VWoA shall not be required, prior to any demand on or payment by the Guarantor, to make any demand upon or pursue or exhaust any of VWoA's rights or remedies with respect to any part of any security given to VWoA by Dealer or the Guarantor.

VWoA is authorized, without notice to the Guarantor, to make sales in any amount, to make any change or changes in the form of the Dealer Agreement and in the form of such indebtedness; to grant any extensions of time and changes in the terms of payment of such indebtedness; to give Dealer at any time and in any form, any renewals or extensions of credit; to accept security for such indebtedness, credit or extensions thereof; and to sell, lease or exchange any security that may be given. The Guarantor acknowledges that whether such indebtedness, credits or extensions thereof are now or hereafter evidenced by open account or other evidence of debt, this Guaranty shall include a guaranty of such open account or other evidence of debt and of the terms and provisions thereof, and the Guarantor hereby waives any notice, demand, presentment, and notice of dishonor of any such evidence of debt, and also hereby waive notice of the acceptance of this Guaranty.

For so long as this Guaranty is in effect, and in the event of a request from VWoA, Guarantor agrees to provide VWoA a copy of its most recent year-end financial statement.

The obligations of the parties signing this Guaranty shall be joint and several, and the discontinuance, discharge, or release for any reason of all or any part of the obligation of any one or more of the undersigned, or the waiver or condemnation by VWoA of any breach or default of Dealer, or the failure of any other person to sign this Guaranty shall not release or affect the liability of any signer hereof.



Volkswagen

# VOLKSWAGEN

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 14<sup>th</sup> day of FEBRUARY, 2019.

**GUARANTOR:**  
**Automile Holdings, LLC**

  
\_\_\_\_\_  
David Rosenberg  
Manager



Volkswagen

# VOLKSWAGEN

## AUTHORIZATION LETTER

February 1, 2019

David Rosenberg - Manager  
AMR Auto Holdings-VWN, LLC  
d/b/a Volkswagen of Norwood  
1280 Providence Highway  
Norwood, Massachusetts 02062

Dear Mr. Rosenberg:

We are pleased to advise you that Volkswagen AG has authorized your use of the word "Volkswagen" in the business name "Volkswagen of Norwood" for your dealership.

This authorization is limited to the business name stated in the preceding paragraph and does not cover any other business or corporate name containing the word "Volkswagen" which you may wish to adopt in the future. Moreover, the present authorization is limited to your present firm or corporation. It does not extend to any subsidiary or affiliate of your firm or corporation, and it is not transferable.

The authorization granted in this letter shall automatically terminate in the event that you cease to be a franchised Volkswagen dealer and also in the event of a sale of your business, a merger of your corporation, the liquidation or bankruptcy of your firm or an assignment of assets of your firm to an assignee for the benefit of creditors.

Moreover, Volkswagen AG reserves the absolute and unqualified right to revoke the authorization at any time, in its sole and absolute discretion, with or without cause, by mailing or causing Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., to mail written notice of such revocation to you.

Upon termination of this authorization by reason of any of the events described, as well as upon receipt of the written revocation referred to, you shall (a) take all necessary steps to forthwith effect a legal change of your business or corporate name eliminating the word "Volkswagen" therefrom and (b) thereafter immediately discontinue the use of the word "Volkswagen" in your business or corporate name.

You shall not be entitled to any compensation whatsoever in the event of termination or revocation of this authorization.

This authorization is subject to all applicable provisions of your present and future Volkswagen dealer agreements.

Please sign the enclosed copy of this agreement for consent and return it to us. The authorization contained herein will be effective only after we have received the copy duly signed by you.

Regards,

R. Erik Peterson  
Authorized Representative for Volkswagen AG

Signed in agreement with and in acceptance of the above terms:

By: \_\_\_\_\_

David Rosenberg - Manager  
AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood

## VOLKSWAGEN EXTERNAL PARTS WAREHOUSE AGREEMENT

This Volkswagen External Parts Warehouse Agreement (this "Agreement") is made on the 14<sup>th</sup> day of FEBRUARY, 2019 by and between AMR Auto Holdings-VWN, LLC dba Volkswagen of Norwood, a Delaware Limited Liability Company located at 1280 Providence Highway, Norwood, MA 02062 hereafter referred to as "Dealer"), and Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., a company organized and existing under the laws of the State of New Jersey, with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171 (hereafter referred to as "VWoA").

### RECITALS

A. Dealer wishes to operate a facility for the sole purpose of warehousing Genuine Parts (as defined below), at a location approved by VWoA in its sole discretion, but separate and apart from Dealer's current authorized Volkswagen dealership premises.

B. Dealer currently holds a Volkswagen Dealer Agreement ("Dealer Agreement") authorizing Dealer to act as a dealer for the sale and servicing of new Volkswagen vehicles at the address set forth above. The Dealer Agreement requires that Dealer's Volkswagen dealership operations be conducted only from the locations set forth in the Dealer Agreement, and at no other location.

C. VWoA maintains a Volkswagen External Parts Warehouse Program (the "Program") and wishes to allow Dealer to operate a separate warehouse facility under the Program for the storage of Genuine Parts without otherwise altering the obligations of VWoA or Dealer under the Dealer Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration for the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Dealer and VWoA agree as follows:

1. Approved Warehouse Location. Dealer is hereby authorized by VWoA to conduct the warehousing and storage of Genuine Parts at the following location: 101 Morgan Drive, Norwood, MA 02062 (hereafter referred to as the "**Approved Warehouse Location**").

Dealer agrees that the Approved Warehouse Location shall be used for the warehousing and storage of Genuine Parts only and it shall not conduct or allow new or used vehicle display, sales or service, or the sale of any Genuine Parts or other parts and accessories, at the Approved Warehouse Location, but shall conduct those activities solely from Dealer's sales and service location authorized by the Dealer Agreement. The Approved Warehouse Location will not provide any retail customer access.

In addition, Dealer will not store or permit to be stored at the Authorized Warehouse Location any parts other than Genuine Parts. Dealer further agrees that it shall not relocate the Approved Warehouse Location from the location identified in this Section 1 without VWoA's prior written consent.

For purposes of this Agreement, "**Genuine Parts**" shall mean all Volkswagen brand parts sold by VWoA to Dealer, all VWoA-authorized remanufactured parts purchased by Dealer through VWoA's authorized remanufactured parts program, and all Volkswagen brand parts purchased by Dealer from other authorized Volkswagen dealers.

2. No Signage. Dealer will not display any exterior signs at the Approved Warehouse Location or on any building, billboard, sign pole or pylon located on, at, or in the vicinity of the Approved Warehouse Location that bears the trade name "Volkswagen" or any other trademark or logo of VWoA or any other motor vehicle manufacturer, unless such usage has been approved in writing by VWoA.

3. Term. The initial term of this Agreement ("**Initial Term**") shall begin as of the date set forth above and shall continue for a period of one (1) year unless and until sooner terminated as provided in Section 4. Upon expiration of the Initial Term, this Agreement shall automatically renew for additional successive one (1) year terms unless either party provides written notice of nonrenewal at least ninety (90) days prior to the end of the then-current term (each, a "**Renewal Term**", and together with the Initial Term, the "**Term**"), or unless sooner terminated as provided in Section 4. If the Term is renewed for any Renewal Terms pursuant to this Section 3, then, except as otherwise provided herein, the terms and conditions of this Agreement during each Renewal Term shall be the same as the terms and conditions in effect immediately prior to the renewal. If either party provides the requisite notice of its intent not to renew this Agreement, then, unless otherwise sooner terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term.

4. Termination of Agreement.

a. Termination without Cause. This Agreement may be terminated at any time by mutual consent of the parties, or by either party without cause, upon not less than ninety (90) days' prior written notice to the other party. Dealer shall notify VWoA if it is no longer using the Approved Warehouse Location for the warehousing of Genuine Parts.

b. Termination with Cause. VWoA shall have the right to terminate this Agreement immediately upon written notice to Dealer, (i) upon the occurrence of a breach of this Agreement by Dealer, which breach is not cured by Dealer within thirty (30) days' prior written notice from VWoA, or (ii) upon the termination of the Dealer Agreement for any reason.

c. Effect of Termination. Dealer shall immediately discontinue the use of the Approved Warehouse Location for the storage of Genuine Parts. It is agreed and understood by Dealer and VWoA that the termination of this Agreement shall be conclusively presumed not to be the termination of a dealer agreement between Dealer and VWoA, and shall not give rise to any right of protest, or any action under any provision of state law respecting or regulating the relationship between manufacturers and dealers, or under the provisions of the Federal Dealer Day in Court Act, 15 U.S.C. 1221, *et. seq.* VWoA shall have no obligation for any assistance or compensation upon termination either of this Agreement or upon the termination of the Dealer Agreement, because of Dealer's use of the Approved Warehouse Location. Without limiting the foregoing, Dealer understands and agrees that VWoA shall have no obligation to repurchase any Genuine Parts or any equipment, furnishings or other items owned by Dealer and stored or used at the Approved Warehouse Location.

5. Not a Part of Dealer's Premises. VWoA and Dealer hereby agree that the Approved Warehouse Location is not to be considered part of "Dealer's Premises" within the meaning of Article 16 Paragraph 10 of the Volkswagen Dealer Agreement Standard Provisions. Additionally, Dealer and VWoA agree that the Approved Warehouse Location shall be conclusively presumed not to be a dealership facility within the meaning of any statute regulating the relationship between manufacturers and dealers.

6. Separate Agreement and Not a Dealer or Franchise Agreement. All Parties understand and acknowledge that the obligations and rights set forth in this Agreement stand separate, distinct and apart from any obligations and rights set forth in the Dealer Agreement. This Agreement provides for distinct obligations, rights and responsibilities, and distinct and adequate consideration. No part of this Agreement is intended to become part of the Dealer Agreement or franchise relationship as defined by state law, and/or subject to regulation by state dealer franchise laws. Dealers agree that this Agreement is not a "dealer" or "franchise" agreement as those terms may be defined in any applicable state or federal law or regulation. Therefore, any provisions applicable to "dealer" or "franchise" agreements under the laws of the state in which Dealer does business or under federal law do not apply to this Agreement, and Dealers shall not seek to enforce any such provisions against VWoA. VWoA reserves the right to terminate and/or revoke this Agreement in the event it is recognized or determined that this Agreement is a "dealer" or "franchise" agreement.

7. Volkswagen External Warehouse Program. This Agreement and the Approved Warehouse Location shall be subject to the terms and conditions of the Program in all respects. Dealer

understands and agrees that VWoA may modify, amend or terminate the Program at any time and from time to time in VWoA's discretion.

8. Assignment. Dealer may not assign or transfer this Agreement, or any part hereof, or delegate any duties or obligations under this Agreement, without the prior written consent of VWoA.

9. Choice of Law. The terms and provisions of this Agreement shall be construed according to the laws of the District of Columbia.

10. Notice. If any clause of this Agreement requires that notice be given, written notice must be sent via certified mail or via overnight delivery with receipt signature required, and notice will be deemed to have been given upon receipt of the written notice by the intended party. Notice must be sent to each party at the address set forth above.

11. Counterparts. This Agreement may be executed in any number of identical counterparts, any of which may contain the signatures of less than all parties, and all of which together shall constitute a single Agreement. A signature to this Agreement delivered by telecopy shall be deemed valid.

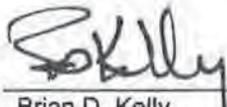
**IN WITNESS WHEREOF**, as of this date first set forth above, the parties have each caused this Agreement to be duly executed.

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF VOLKSWAGEN GROUP OF AMERICA, INC.**

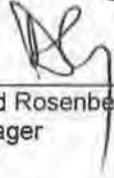
By:   
John Peterson  
Director Region Fixed Operations

By: \_\_\_\_\_  
Daniel Ducharme  
Senior Manager, After Sales Wholesale Parts

By:   
Rich Regan  
Director – Parts and Accessories

By:   
Brian D. Kelly  
Senior Director – Network Operations

**AMR Auto Holdings-VWN, LLC dba Volkswagen of Norwood**

By:   
David Rosenberg  
Manager

understands and agrees that VWoA may modify, amend or terminate the Program at any time and from time to time in VWoA's discretion.

8. Assignment. Dealer may not assign or transfer this Agreement, or any part hereof, or delegate any duties or obligations under this Agreement, without the prior written consent of VWoA.

9. Choice of Law. The terms and provisions of this Agreement shall be construed according to the laws of the District of Columbia.

10. Notice. If any clause of this Agreement requires that notice be given, written notice must be sent via certified mail or via overnight delivery with receipt signature required, and notice will be deemed to have been given upon receipt of the written notice by the intended party. Notice must be sent to each party at the address set forth above.

11. Counterparts. This Agreement may be executed in any number of identical counterparts, any of which may contain the signatures of less than all parties, and all of which together shall constitute a single Agreement. A signature to this Agreement delivered by telecopy shall be deemed valid.

**IN WITNESS WHEREOF**, as of this date first set forth above, the parties have each caused this Agreement to be duly executed.

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF VOLKSWAGEN GROUP OF AMERICA, INC.**

BY:   
John Peterson  
Director Region Fixed Operations

BY: **Dan DuCharme**  
Daniel Ducharme  
Senior Manager, After Sales Wholesale Parts

Digitally signed by Dan DuCharme  
DN: cn=Dan DuCharme, o=Volkswagen of America, Inc., ou=Senior Manager Wholesale Parts, email=dan.ducharme@vw.com, c=US  
Date: 2019.02.12 14:59:16 -05'00'

By: \_\_\_\_\_  
Rich Regan  
Director – Parts and Accessories

By: \_\_\_\_\_  
Brian D. Kelly  
Senior Director – Network Operations

**AMR Auto Holdings-VWN, LLC dba Volkswagen of Norwood**

BY:   
David Rosenberg  
Manager



**2007 VOLKSWAGEN OPERATING STANDARDS**

**VOLKSWAGEN OF AMERICA, INC.**



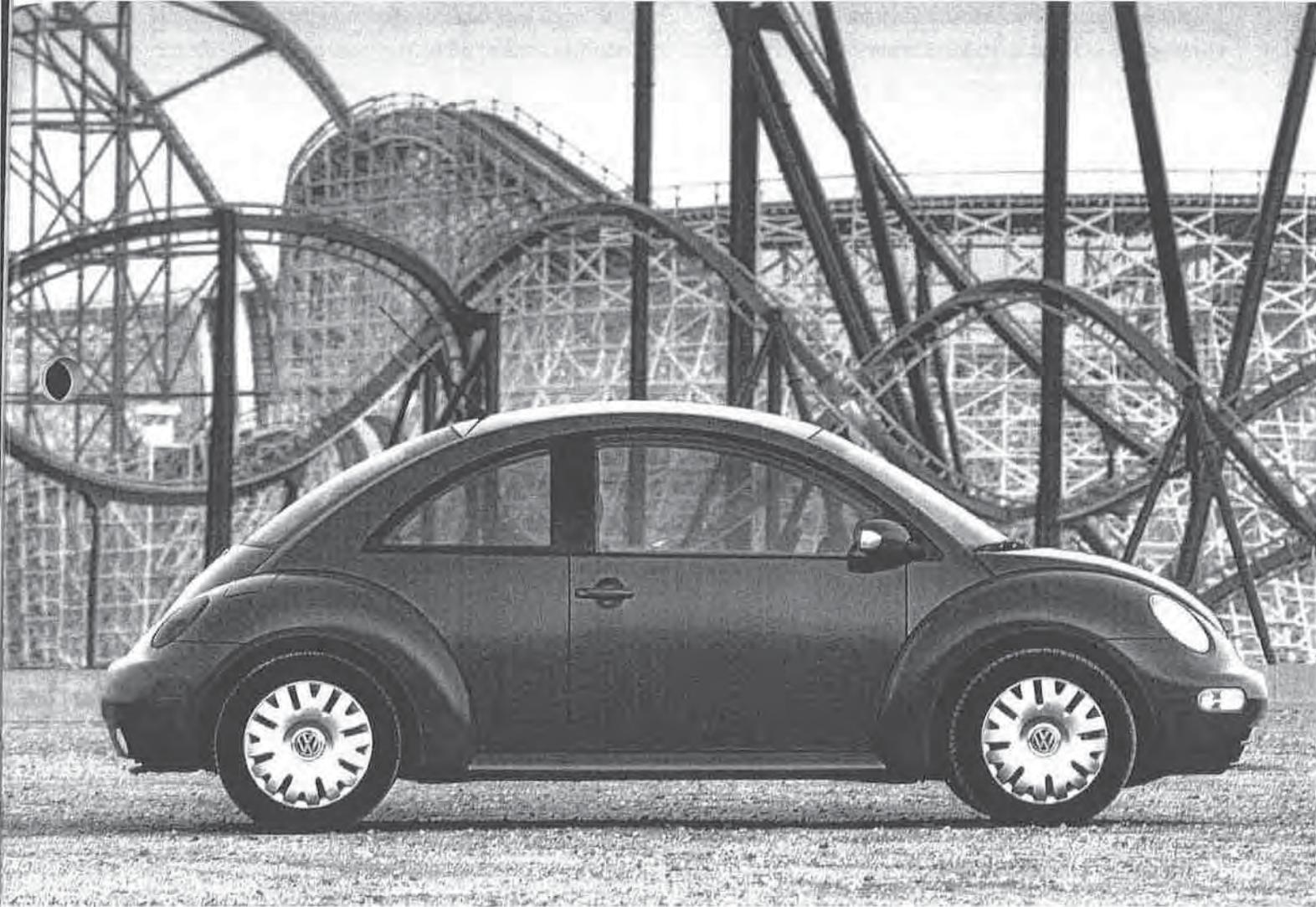
**TABLE OF CONTENTS**

**2007 Volkswagen Operating Standards**

Introduction/Legal Effect/New Facilities ..... 4  
Dealer Operating Standards/Customer Loyalty ..... 5

**Appendix**

Financial Requirements ..... 12  
Facilities Checklist ..... 14  
Corporate Identification and Trademark Checklist ..... 16



2007 VOLKSWAGEN OPERATING STANDARDS

## Legal Effect

The Volkswagen Dealer Agreement (the "Agreement") incorporates by reference the Volkswagen Dealer Operating Standards (the "Operating Standards"). The Operating Standards incorporate by reference the Volkswagen Facility Supplement (the "Facility Supplement") and the Volkswagen Corporate Identification and Trademark Supplement (the "Corporate Identification and Trademark Supplement"). Adherence to the Operating Standards by every Volkswagen Dealer is required. Failure to comply with the Operating Standards is a material breach of the Agreement and is cause for termination of the Agreement in accordance with its terms and those of applicable law. Compliance with the Operating Standards by any Dealer will determine the extent to which Dealer will be entitled to participate in any discretionary program offered by VWoA.

In the case of any conflict between the Operating Standards, the Facility Supplement, the Corporate Identification and Trademark Supplement and the Agreement, the terms of the Agreement shall control.

## NEW FACILITIES, RELOCATIONS, CHANGES OF OWNERSHIP & RENOVATIONS

All new facilities and relocations shall conform in all respects to the Operating Standards, including the Volkswagen Marketplace concept and minimum facility guidelines as specifically detailed in Appendix A of the Facility Supplement.

In the case of a change of majority ownership of Dealer, the new Dealer will be required to conform in all respects to the Operating Standards, including the Volkswagen Marketplace concept and minimum facility guidelines as specifically detailed in Appendix A of the Facility Supplement.

All facility renovations shall conform in all respects to the Operating Standards, including the minimum exterior and interior Corporate Identity elements of the Volkswagen Marketplace concept as outlined in these standards and as specifically detailed in Appendix A of the Facility Supplement.

#### **DEALER OPERATING STANDARDS BUSINESS PLAN**

The Operating Standards recognize that there are six basic inputs that Dealers can apply toward achieving the desired levels of customer loyalty: General Management, Facility, Sales, Service, Parts and Continuous Improvement. Accordingly, the Operating Standards are organized to describe Dealers' obligations as to each of those inputs.

The Dealer and the Area Team will, not less frequently than annually, cooperate to prepare an Operating Standards Business Plan (the "Operating Plan") in the form currently used by VWoA. The Operating Plan will be reviewed with the Dealer from time to time. Through these reviews of the Operating Plan, Dealer and the Area Team, working together, can quantify Dealer's success in meeting certain performance requirements and develop an action plan for resolving any deficiency.

#### **CUSTOMER LOYALTY**

With the guidance and assistance of VWoA representatives, Dealer will take such steps as are necessary to ensure that all customers are treated courteously, efficiently and responsibly. Dealer will act with the clear intent and belief that increasing customer loyalty is fundamental to ensuring repeat and referral business and our mutual long-term future. Dealer will be notified from time to time of VWoA's customer loyalty measurement process and required levels of performance.

2007 VOLKSWAGEN OPERATING STANDARDS

### **General Management: Financials**

- 1 Dealer meets 100 percent of the required Net Working Capital as defined in Dealer's Operating Standards Business Plan.
- 2 Dealer meets 100 percent of the required Owner's Equity as defined in Dealer's Operating Standards Business Plan.
- 3 Dealer meets 100 percent of the required Wholesale Line of Credit as defined in Dealer's Operating Standards Business Plan and has a letter on file with Volkswagen stating that Dealer meets the required amount and has an open and unrestricted wholesale line of credit.

### **General Management: Inventory**

- 4 Dealer stocks a minimum of 45 days' inventory of Genuine Parts and Accessories as defined in Dealer's Operating Standards Business Plan.
- 5 Dealer stocks and displays a representation of the full model range of Authorized Vehicles, subject to availability, on premises and conforms to 60-days' inventory from port stock to in-dealer stock as defined in Dealer's Operating Standards Business Plan.
- 6 Dealer stocks a minimum of three CPO vehicles at all times and prominently displays a minimum of one CPO vehicle in either the new or used car display area.
- 7 Demonstrator cars are clean, in good condition and well cared for.

### **General Management: Training**

- 8 Dealer's personnel meet the training requirements (Retail Readiness Requirements) established in Dealer's current year Volkswagen Operating Standards Business Plan.
- 9 Volkswagen Sales Consultants are knowledgeable about Volkswagen-advertised financing, leasing, marketing programs and product information and can communicate effectively with all shoppers, including Internet shoppers.
- 10 MAX is accessible by all employees in a designated training or employee area on- or off-site.

## General Management: Human Resources

- 11 A General Manager, approved by VWoA, is required.
- 12 Dealer has such staff as to meet or exceed customer expectations as defined in Dealer's Operating Standards Business Plan.
- 13 All customer contact personnel are dressed in accordance with Dealer's dress code.

## General Management: Technology

- 14 Dealer is required to meet VWoA IT/Internet Standards as published from time to time in the Technology Requirement and Guideline book, published on *vwhub.com*. At Operating Standards, this includes, but is not limited to, persistent Internet access with firewalls on at least one computer in each department (Sales, F&I, Service and Parts), and ALL access must be high-speed.
- 15 Dealer has a Volkswagen-sponsored Web site that is linked to *vw.com* and conforms to Corporate Identity Standards as defined in the Corporate Identification and Trademark Supplement.
- 16 Dealer displays through *vw.com* a selection of new and used authorized Volkswagen automobiles.
- 17 Dealer has at least two extranet administrators registered for *vwhub.com* at all times.
- 18 Dealer utilizes a Volkswagen Certified Lead Management tool for all Volkswagen-program leads.

## Facility

- 19 Dealer complies with the facility requirements as defined in the Volkswagen Facility Supplement. Marketplace Dealers must also comply with additional components specific to their Marketplace level.
- 20 All primary and secondary signs have been installed and conform to Volkswagen's Corporate Identity and Trademark Requirements as defined in the Volkswagen Corporate Identification and Trademark Supplement.
- 21 Authorized Volkswagen trademarks, including the distinctive logo, will be used exclusively for the identification, advertising and promotion of Volkswagen products and services as defined in the Volkswagen Corporate Identification and Trademark Supplement.
- 22 Dealer's hours of operation for Sales, Service and Parts meet or exceed competitive market average as determined by Dealer and Region Team.
- 23 Dealer utilizes either a live or electronic answering service that directs customers to requested department/person in a timely manner.

2007 VOLKSWAGEN OPERATING STANDARDS

## Sales

- 24 Dealer has a documented Sales process for Internet Inquiry, Meet & Greet, Needs Discovery, Product Presentation, Negotiation, Delivery and Follow-up that includes, but is not limited to:
- a. Responding to all Internet sales inquiries.
  - b. Greeting customers courteously and promptly.
  - c. Discovering and understanding customer needs and preferences.
  - d. Customizing product presentations to fit each customer's needs.
  - e. Offering all qualified customers a test-drive.
  - f. Utilizing a consistent negotiation process.
  - g. Explaining the trade-in process and criteria for arriving at a fair trade-in value.
  - h. Explaining all F&I options (credit applications and contracts) by a qualified employee.
  - i. Providing customer a detailed car that is clean, inside and out, and free of problems at time of delivery.
  - j. Discussing all limited warranties, roadside assistance, service and maintenance intervals with customer at time of delivery.
  - k. Completing a Volkswagen Perfect Delivery Checklist (all three sections completed), including signatures, with a copy given to the customer at time of delivery.
  - l. Following up with all customers (sold and prospects) in a timely manner.

## Service

- 25** Dealer has a documented Service process for Internet Inquiry, Service Appointment, Meet & Greet, Service Write-up, Customer Communication during repair, Service Dispatch, Vehicle Diagnosis & Repair, Quality Check, Delivery and Follow-up that includes, but is not limited to:
- a. Responding to all Internet service inquiries.
  - b. Answering all calls to the service department promptly and courteously.
  - c. Utilizing a formal appointment scheduling process that includes appointments throughout the day (paper or electronic) and scheduling of all maintenance and repair appointments within one week of customer's request.
  - d. Greeting all customers arriving for service promptly and courteously.
  - e. Effectively questioning customers by Service Advisor to ensure understanding of the required repair by customer and Technician.
  - f. Proactively informing the customer of status during repair process.
  - g. Utilizing a formalized paper or electronic dispatching process.
  - h. Testing by Technicians and using proper tools and procedures to complete repairs as listed on the R.O.
  - i. Utilizing a formal quality check process.
  - j. Reviewing the invoice prior to or at time of delivery with all customers by a knowledgeable person.
  - k. Utilizing a formalized follow-up process.
- 26** All Service, Parts and Warranty literature is complete and up to date, and Technicians have access to all electronic technical information.
- 27** Service department is equipped with all the minimum required tools as defined by VWoA from time to time.
- 28** Service Manager conducts an annual tool inventory and has a process in place to ensure regular maintenance is conducted on tools and equipment.

2007 VOLKSWAGEN OPERATING STANDARDS

## Parts

- 29** Dealer has a documented Parts process for Meet & Greet, Provide and/or Order Parts, Parts Receiving & Stocking and Technician/Wholesale/Retail Customer Follow-up that includes, but is not limited to:
- a. Greeting and handling retail counter customers in a prompt and courteous manner.
  - b. Utilizing a formal ordering process, including special orders.
  - c. Making customers aware of applicable limited warranties for all parts purchased.
  - d. Ensuring timely delivery of parts to Technicians with appropriately completed paperwork.
  - e. Ensuring parts are inspected before issuing to Technicians and counter customers.
  - f. Communicating parts receipt to Technicians and wholesale and retail customers.
  - g. Communicating to customers when special-order parts have been received.
  - h. Noting parts from external sources on customer invoices.
- 30** Dealer updates Parts literature electronically as required by VWoA.

## Continuous Improvement

- 31** Dealer will be notified from time to time of VWoA's Customer Loyalty Measurement process and required levels of performance.
- 32** Dealer has a greeting process in place that includes escorting customers to appropriate areas and departments.



APPENDIX

**EXHIBIT 6**

## APPENDIX

**Facility Checklist**

The following is a list of items that are inherent in Operating Standard #19. All Volkswagen Dealers must meet each element in order to be compliant with Operating Standards. Details of the items below can be found in the Facility Supplement.

**OPERATING STANDARD #19**

All Dealers will comply with the facility requirements as indicated in the Volkswagen Facility Supplement. Marketplace Dealers must also comply with additional components specific to their Marketplace level. See Appendix A in the Volkswagen Facility Supplement for specific details on Marketplace versus non-Marketplace requirements.

**In order to meet this Standard, every Dealer must meet all of the following criteria:**

- Dealer's Premises are clean and maintained at all times.
- On-site parking and customer access areas are properly graded, hard-surfaced, lined and identified. Ample parking is available to accommodate Sales, Service and Parts customers as identified in the Facility Supplement.
- Dealer's Premises are clearly identifiable at night as a Volkswagen Dealership (as permitted by local codes).
- Dealer's hours of operation for all departments and the roadside assistance number are clearly posted at main customer entrances and on Dealer's VWoA-sponsored Web site and meet the guidelines as detailed in the Volkswagen Corporate Identification and Trademark Supplement. Brushed aluminum sign required on Marketplace Portal.
- The main entrance to Dealer's Premise is easily accessible by all customers.
- Dealer's Premises prominently displays Volkswagen branding elements as outlined in the Facility Supplement.
- Dealer provides an enclosed showroom or Volkswagen-approved new-vehicle display area, in each case having space dedicated to Volkswagen products. Such area is of sufficient size to display the number of models in the Volkswagen vehicle line as outlined in Appendix A.

- Dealer provides a storage area as identified in the Facility Supplement. All off-site storage sites must be approved by VWoA and may only display signage approved by VWoA.
- Used vehicle display space is sufficient to display a 30-day supply of used vehicles based on Dealer's annual used-vehicle sales objective as identified in the Dealer's annual Operating Standards Business Plan.
- Separate used-vehicle facilities meet the color and material guidelines as detailed in the Facility Supplement.
- Dealer's Premises have a designated customer waiting area that reasonably and professionally accommodates the needs of customers who choose to remain at the facility while their vehicle is serviced.
- The VW Service Reception and Write-up areas are clearly identified and readily apparent to the customer. Service Reception is sized and designed to permit customers to conveniently leave vehicles on the premises for service, without the need to search for a parking place.
- Dealer utilizes the Volkswagen literature/brochure display rack to display up-to-date Volkswagen product brochures and promotional materials as provided by VWoA.
- Promotional displays are updated as new materials are provided by VWoA and outdated materials have been removed.
- Dealer meets the service capacity requirements as defined in the Operating Standards Business Plan.
- Dealer has a retail parts counter, separate from that used by the Service Department, and has a retail accessory display area.
- Interior windows are free from writing, logos, etc. Frosted tape (without logos) may be installed as a safety feature.

## APPENDIX

## Corporate Identification and Trademark Checklist

The following is a list of items that are inherent in Operating Standards #20 and #21. All Volkswagen Dealers must meet each element in order to be compliant with Operating Standards. Details of the items below can be found in the Corporate Identification and Trademark Supplement.

### Operating Standard #20

All primary and secondary signs will conform to Volkswagen's Corporate Identity and Trademark Requirements as defined in the Volkswagen Corporate Identification and Trademark Supplement.

### Operating Standard #21

Authorized Volkswagen trademarks, including the distinctive logo, will be used exclusively for the identification, advertising and promotion of Volkswagen products and services as defined in the Volkswagen Corporate Identification and Trademark Supplement.

**In order to meet Operating Standards #20 and #21, all Dealers must meet each of the following criteria:**

- The minimum VVoA exterior corporate identity elements consist of the Ground Sign, Dealer signs, Dealer Nameplate and building fascia Clip as well as approved building colors, subject to local sign restrictions.
- VVoA corporate components cannot be used in conjunction with unauthorized identification elements, including but not limited to, Dealer Nameplates, Dealer-specific Symbols and Logos. Dealer will observe this restriction with respect to all Dealer product advertising (new, used, service, parts), Dealer's stationery and forms and in such other documents as VVoA may direct. Such use will at all times be in accordance with the Volkswagen Corporate Identification and Trademark Supplement.
- Dealer must not display any unauthorized Volkswagen logos.
- Dealer must not display any unauthorized banners, bunting, streamers, window painting, painted wall signs or balloons.
- All signs displayed are in accordance with the Volkswagen Corporate Identification and Trademark Supplement.
- As needed, interior signage clearly directs customers to Dealership Sales, Service and Parts departments and to key customer amenities, such as the service reception, waiting areas, children's play area and restrooms.

## SHOWROOM SPACE ANALYSIS

New Vehicle Sales Objective	Units	Display (Sq. Ft.)	Marketplace Participation Level (Facility Type)	Marketplace Participation Level Intercorporate Dual
< 200	4	1200	D	Dual D
200 - 349	4	1800	C	Dual D
350 - 499	5	2250	C	Dual C
500 - 599	5	2250	A or B	Dual C
600 - 699	6	2700	A or B	Dual C
700 - 999	7	3150	A	Dual C
> 1000	8	3600	A	Dual C

- Minimum indoor display requirement is four cars and 1,200 square feet.
- Minimum display square footage requirement is for display area only. Offices and sales areas are not included.
- New points must construct, at a minimum, a Type "C" facility up to a 500 PV, a Type "B" for BPVs of 500 to 700, and a type "A" for BPVs above 700.
- Marketplace Participation Level and Display area requirements are for new construction and relocations, and are guidelines for renovations of existing buildings. Dealers who are renovating their current, approved facility must at a minimum meet "D" level requirements. (Four cars, 1,200 square feet is a minimum for all dealership facilities.) Incoming Dealers who agree to remain at an approved facility location which at the time of purchase does not meet Marketplace participation level and display area requirements must, at a minimum, renovate to a "D" level.

Incoming Dealers who relocate from the approved facility location must meet the Marketplace participation level and display area requirements as set forth above.

- < 100 PV: Physical separation in the showroom. Minimum display space requirements remain. No portal or focal wall.

All requirements are subject to approval from local municipalities.

**VOLKSWAGEN of America, Inc.**



**Volkswagen**

**Volkswagen  
Dealer  
Agreement  
Standard  
Provisions**

**STANDARD PROVISIONS**

---

**ARTICLE 1**

<b>BASIC OBLIGATIONS OF VWOA.....</b>	<b>1</b>
Supply of Authorized Products.....	1
Assistance .....	1
Compliance with Ethical Standards.....	1

---

**ARTICLE 2**

<b>BASIC OBLIGATIONS OF DEALER .....</b>	<b>1</b>
Sales, Service, and Parts Supply.....	1
Compliance with Ethical Standards.....	2
Operating Standards and Operating Plan.....	2
Disclaimer of Further Liability by VWOA.....	2

---

**ARTICLE 3**

<b>GENERAL MANAGER AND FACILITY REQUIREMENTS.....</b>	<b>2</b>
Dealer's General Management.....	2
Dealer's Premises.....	2

---

**ARTICLE 4**

<b>IDENTIFICATION; ADVERTISING.....</b>	<b>3</b>
Use of Authorized Trademarks.....	3
Signs.....	3
Stationary.....	3
Advertising.....	3

---

**ARTICLE 5**

<b>SALES.....</b>	<b>4</b>
Sales Promotion .....	4
Sales Performance .....	4
Sales Outside Area.....	4
Defective or Damaged Authorized Products.....	4
Changes by Dealer to Authorized Products.....	5
Product Changes by Dealer Neither Requested by VWOA nor Required by Law.....	5
Used Car Operations.....	5

---

**STANDARD PROVISIONS**

---

**ARTICLE 6**

<b>PARTS</b> .....	<b>5</b>
Parts Promotion.....	5
Parts Department .....	6
Sales of Non-genuine Parts.....	6
Parts Inventory.....	6

---

**ARTICLE 7**

<b>SERVICE</b> .....	<b>6</b>
Quality and Promotion of Service.....	6
Tools and Equipment.....	6
Use of Non-genuine Parts.....	6
Owner's Documents.....	7
Maintenance and Other Services without Customer Charge.....	7
Repeated Repairs.....	7

---

**ARTICLE 8**

<b>DEALER'S PURCHASES AND INVENTORIES</b> .....	<b>7</b>
Purchase Prices.....	7
Orders and Acceptance.....	8
Inventories.....	8
Product Allocation.....	8
Taxes.....	8
Payments to Dealer or Dealer's Personnel.....	8
Payment by Dealer.....	9
Passing of Title; Security Interest.....	9
Passing of Risks.....	9
Responsibility for Defects and Damage.....	9
Claims for Incomplete Delivery.....	9
Changes of Specifications.....	10
Failure of or Delay in Delivery by VWoA.....	10
Return or Diversion on Dealer's Failure to Accept.....	10

---

**ARTICLE 9**

<b>WARRANTY TO CUSTOMERS</b> .....	<b>10</b>
WVoA's Warranties.....	10
Incorporation of VWoA's Warranties in Dealer's Sales.....	10
Warranty Procedures.....	10

---

**STANDARD PROVISIONS**

---

**ARTICLE 10**

<b>DEALER'S RECORD KEEPING AND REPORTS; INSPECTION OF DEALER'S OPERATIONS .....</b>	<b>11</b>
Dealer's Forms, Business Machines, Office Equipment and Bookkeeping.....	11
Financial Statements to be Supplied by Dealer.....	11
Reports to be Supplied by Dealer.....	11
Inspection of Dealer's Operations and Records.....	12

---

**ARTICLE 11**

<b>DEALER PERFORMANCE REVIEW .....</b>	<b>12</b>
Evaluation and Assistance.....	12
Evaluation of Dealer's Vehicle Sales, Service, and Parts Performance.....	12
Evaluation of Dealer's Premises.....	12
Dealer's Evaluation of VWoA.....	12

---

**ARTICLE 12**

<b>SUCCEEDING DEALERS .....</b>	<b>13</b>
Procedure.....	13
Approvals.....	13
Right of First Refusal.....	13
Succession.....	14
Modification of Terms of Payment.....	15

---

**ARTICLE 13**

<b>DISPUTE RESOLUTION .....</b>	<b>15</b>
General Policy.....	15
Involuntary Non-Binding Arbitration.....	15
Voluntary Binding Arbitration.....	15
Rules of Conduct.....	15
Time for Decision.....	16
Provisional Remedies.....	16
Tolling Statue of Limitations.....	16
Performance to Continue.....	16

---

**STANDARD PROVISIONS****ARTICLE 14**

<b>TERMINATION .....</b>	<b>17</b>
Immediate Termination by VWoA.....	17
Termination of VWoA on 30 Days' Notice.....	18
Termination of VWoA on 90 Days' Notice.....	18
Discussion with Dealer.....	18
Modification of Terms of Payment.....	18
No Waiver by Failure to Terminate.....	18
Termination by Dealer.....	19
Continuation of Business Relations after Termination.....	19
Superseding Agreements.....	19
Agreements with Affiliates.....	19

**ARTICLE 15**

<b>RIGHTS AND LIABILITIES .....</b>	<b>19</b>
VWoA's Obligations.....	19
New Authorized Automobile Inventory.....	20
New Genuine Parts Inventory.....	20
Tools and Equipment.....	20
Authorized Signs.....	20
Terms of Sale.....	21
Pending Orders and Dealer's Obligations.....	21
Removal of Authorized Trademarks.....	21
Orders and Files.....	21
Customer Lists.....	22
Literature.....	22
Direct Sales by Dealer.....	22
Specific Performance.....	22

**ARTICLE 16**

<b>DEFINITIONS .....</b>	<b>22</b>
Authorized Automobiles.....	22
Authorized Products.....	22
Authorized Representative.....	23
Authorized Signs.....	23
Authorized Trademarks.....	23
Dealer's Area.....	23
Dealer's Executives.....	23
Dealer's Operations.....	23
Dealer's Owners.....	23
Dealer's Premises.....	23
Genuine Parts.....	24
Manufacturer.....	24
Net Working Capital, Owner's Equity and Wholesale Credit.....	24
Operating Plan.....	24
Operating Standards.....	24

**STANDARD PROVISIONS**

---

Owner's Documents.....	24
Recommendations.....	24
VWoA.....	24
VWoA's Warranties.....	25

---

**ARTICLE 17**

<b>GENERAL PROVISIONS .....</b>	<b>25</b>
Dealer Not an Agent.....	25
Authority to Sign.....	25
Variations: Modifications; Amendments.....	25
Entire Agreement.....	25
Release of Claims under Prior Agreement.....	25
Agreement Non-transferable.....	25
Defense and Indemnification.....	26
Notices.....	26
Waiver.....	26
Titles.....	26

## **ARTICLE 1**

### **BASIC OBLIGATIONS OF VWoA**

#### **Supply of Authorized Products**

- (1) VWoA will sell and deliver Authorized Products to Dealer in accordance with this Agreement.

#### **Assistance**

- (2) VWoA will actively assist Dealer in all aspects of Dealer's Operations through such means as VWoA considers appropriate, including:
- (a) Annual reviews of Dealer's compliance with this Agreement, the Operating Standards;
  - (b) Recommendations; and
  - (c) Schools, special training and meetings for Dealer's personnel.

#### **Compliance with Ethical Standards**

- (3) In the conduct of its business, VWoA will:
- (a) Safeguard and promote the reputation of Authorized Products and the Manufacturer;
  - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
  - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.
- 

## **ARTICLE 2**

### **BASIC OBLIGATIONS OF DEALER**

#### **Sales, Service and Parts Supply**

- (1) Dealer assumes the responsibility in Dealer's Area for the promotion and sale of Authorized Products and for the supply of Genuine Parts and customer service for Authorized Products. This Agreement does not give Dealer any exclusive right to sell or service Authorized Products in any area or territory.

**STANDARD PROVISIONS**

---

**Compliance with Ethical Standards**

- (2) In the conduct of its business, Dealer will:
  - (a) Safeguard and promote the reputation of Authorized Products, the Manufacturer and VWoA;
  - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
  - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.

**Operating Standards and Operating Plan**

- (3) The Operating Standards and Operating Plan are part of this Agreement and are incorporated herein by this reference.

**Disclaimer of Further Liability by VWoA**

- (4) Except as expressly provided in this Agreement, VWoA is not liable for any expenditure made or liability incurred by Dealer in connection with Dealer's performance of its obligations under this Agreement.
- 

**ARTICLE 3**

**GENERAL MANAGEMENT AND FACILITY REQUIREMENTS**

**Dealer's General Management**

- (1) In the conduct of its business, Dealer will have the following minimum staff:
  - (a) A qualified representative whose full-time professional efforts are devoted to the conduct of Dealer's Operations and who is authorized to make all operational decisions on behalf of the Dealer (provided, that such authorized representative may be one of Dealer's Owners); and
  - (b) Such additional department managers and other employees as set forth in the Operating Standards and the Operating Plan.

**Dealer's Premises**

- (2) Dealer's Premises, in sales, service and parts, will conform to the requirements of this Agreement, the Operating Standards, the Operating Plan and such other reasonable standards as VWoA may prescribe from time to time, after review with Dealer.
  - (3) Unless otherwise agreed by VWoA in writing, Dealer will operate Dealer's Premises during the customary business hours of the trade in Dealer's Area.
-

**STANDARD PROVISIONS**

---

**ARTICLE 4**

**IDENTIFICATION; ADVERTISING**

**Use of Authorized Trademarks**

- (1) VWoA will supply Dealer, from time to time, with trademark standards to assist Dealer in the proper usage of Authorized Trademarks. Dealer will use Authorized Trademarks only in connection with the promotion and sale of new Authorized Products and customer service for Authorized Products pursuant to this Agreement, and only in the manner and for the purposes VWoA specifies. Dealer will not use any Authorized Trademark as part of its corporate or business name without the prior written consent of VWoA. Dealer also may use Authorized Trademarks in connection with the sale of used automobiles if Dealer complies fully with VWoA's requirements relating to used car sales under the Authorized Trademarks. If Dealer does not comply fully with these requirements, Dealer may not use any Authorized Trademarks in connection with its used car sales, except that Dealer may use the word "Volkswagen" to describe Authorized Automobiles, if this word appears in characters and colors different from those usually employed by the Manufacturer, VWoA and authorized dealers of VWoA. This Agreement does not grant Dealer any license or permission to use Authorized Trademarks except as mentioned herein, and Dealer has no right to grant any such permission or interest.

**Signs**

- (2) Dealer will display conspicuously at Dealer's Premises such Authorized Signs at such locations as VWoA reasonably may require. Dealer will use its best efforts to obtain all governmental approvals necessary for such display. If Dealer transfers any of Dealer's Premises to another location, Dealer immediately will remove all Authorized Signs and other references to Authorized Products displayed at or around the prior location.

**Stationery**

- (3) All stationery and business forms used in Dealer's Operations will be prepared in accordance with Recommendations. Dealer's use of Authorized Trademarks on stationery and business forms will be in accordance with trademark standards supplied by VWoA.

**Advertising**

- (4) Dealer will advertise Authorized Products and customer service for Authorized Products only in accordance with reasonable guidelines and policies established by VWoA. Dealer will refrain from all false, deceptive, misleading or unlawful advertising. Dealer's advertising will include, among other things, a listing in a principal local classified telephone directory in Dealer's Area. Authorized Trademarks will be used for identification in all product and customer service advertising, in accordance with the provisions of this Agreement. VWoA will provide or sell to Dealer sufficient quantities of all legally required brochures, as well as all current sales, service and parts literature and promotional materials, and Dealer shall prominently display them and make them readily available.

## **STANDARD PROVISIONS**

---

### **ARTICLE 5**

#### **SALES**

##### **Sales Promotion**

- (1) Dealer will use its best efforts to promote the sale of Authorized Automobiles in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting, and follow-up programs; and through such means and at such levels as may be indicated from time to time by the Operating Standards, Operating Plan and Recommendations.

##### **Sales Performance**

- (2) Dealer will achieve the best sales performance possible in Dealer's Area for each model and type of Authorized Automobile. The measurement for Dealer's yearly sales performance will be the objective established in the applicable annual Operating Plan.

##### **Sales Outside Area**

- (3) Subject to Dealer's performance of its obligations under Article 5(2), VWoA does not restrict Dealer's sale of Authorized Products within the 50 United States. VWoA hereby informs Dealer, however, that VWoA has no authority to sell any products for distribution outside the United States, and it is VWoA's policy not to do so. Dealer acknowledges its understanding that this is intended to preserve the integrity of the orderly worldwide distribution network for the products supplied to VWoA, and to maximize customer satisfaction by ensuring that Authorized Products meet the certification and operational standards to which they were designed. Dealer therefore is authorized to sell new Authorized Products only in the 50 United States, and is not authorized to, and agrees it will not, sell any new Authorized Product for sale or use elsewhere.

##### **Defective or Damaged Authorized Products**

- (4) If any Authorized Product sold by VWoA to Dealer should become defective or damaged prior to its delivery by Dealer to a customer, Dealer agrees to repair such defect or damage so that such Authorized Product is placed in first-class salable condition prior to such delivery. Dealer immediately will notify VWoA of any substantial defects or damage and will follow such procedures for making damage claims as VWoA may establish from time to time. VWoA shall have the option to repurchase any Authorized Products with substantial defects or damage at the price at which they were originally sold by VWoA, less any prior refunds or allowances made by VWoA and less any insurance proceeds received by Dealer in respect of such defect or damage. VWoA will make an equitable adjustment with respect to damage which Dealer can demonstrate occurred prior to the time of delivery to Dealer. VWoA will disclose to Dealer as may be required any damage which VWoA repaired before delivering an Authorized Automobile to Dealer. Dealer will properly disclose such repair prior to delivering such Authorized Automobile to a customer, and will hold VWoA harmless from any claims that required disclosure was not made.

## STANDARD PROVISIONS

---

### Changes by Dealer to Authorized Products

- (5) VVoA may request Dealer to make changes, or not to make changes, to Authorized Products, and Dealer agrees to comply promptly with such requests. Dealer also agrees to take such steps as VVoA may direct it to take to comply with any law or regulation pertaining to safety, emissions, noise, fuel economy or vehicle labeling. VVoA will reimburse Dealer at the then-current rate of reimbursement specified by VVoA for Dealer for Genuine Parts and for labor which may be used by Dealer in making such required changes on Authorized Products. Parts and other materials necessary to make such changes may be shipped to Dealer without Dealer's authorization and Dealer will accept them. Dealer will receive credit for parts so shipped which prove unnecessary, provided they are returned or disposed of in accordance with VVoA's instructions. If the laws of the state in which Dealer is located or a vehicle is to be registered require motor vehicles to carry equipment not installed or supplied as standard equipment by the Manufacturer or VVoA, upon VVoA's request Dealer will, prior to selling any Authorized Automobiles on which such installation is required, properly install at its own or its customers' expense equipment conforming to such laws and to VVoA's standards. Dealer agrees to indemnify the Manufacturer and VVoA and hold them harmless against and from any and all liabilities that may arise out of Dealer's failure or alleged failure to comply with any obligation assumed by Dealer in this paragraph.

### Product Changes by Dealer Neither Requested by VVoA nor Required by Law

- (6) If Dealer installs on a new Authorized Automobile any equipment, accessory or part other than a Genuine Part; sells any new Authorized Automobile which has been modified; or sells in conjunction with a new Authorized Automobile a service contract not offered or specifically endorsed in writing by VVoA, then Dealer will advise the customer of the identity of the warrantor of such modification, equipment, accessory or part, or, in the case of a service contract, of the identity of the provider of its coverage. Dealer will indemnify VVoA against claims that may be asserted against VVoA in any action by reason of such modification, equipment, accessory, part or service contract. **ANY UNAUTHORIZED MODIFICATION TO AUTHORIZED PRODUCTS BY DEALER WHICH ADVERSELY AFFECTS THE SAFETY OR EMISSIONS OF AN AUTHORIZED AUTOMOBILE WILL BE A VIOLATION OF THIS AGREEMENT AND CAUSE FOR TERMINATION PURSUANT TO ARTICLE 14(2).**

### Used Car Operations

- (7) Dealer will use its best efforts to acquire, promote, and sell at retail used Authorized Automobiles and other used automobiles. Dealer's used car operations will conform to the requirements of the Operating Standards, Operating Plan, Recommendations and such other reasonable standards as VVoA may prescribe, after review with Dealer.

---

## ARTICLE 6

### PARTS

#### Parts Promotion

- (1) Dealer will use its best efforts to promote the sale of Genuine Parts in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting and follow-up programs; and through such means as may be indicated from time to time by Recommendations.

## STANDARD PROVISIONS

---

### Parts Department

- (2) Dealer's parts department will conform to the requirements of the Operating Standards, the Operating Plan and such other reasonable standards as VWoA may prescribe, after review with Dealer.

### Sale of Non-genuine Parts

- (3) Dealer will not sell any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of Authorized Automobiles. Dealer will not represent as new Genuine Parts any parts which are not new Genuine Parts. If Dealer sells a part or accessory which is not a Genuine Part, Dealer will advise the customer of the identity of the warrantor of such part or accessory.

### Parts Inventory

- (4) Dealer will maintain an inventory of Genuine Parts which is sufficient to perform reasonably anticipated warranty service and wholesale trade requirements in Dealer's Area for Genuine Parts. VWoA will make Recommendations for Dealer's inventory of Genuine Parts based on particular conditions in Dealer's Area, and Dealer will give due consideration to such Recommendations.
- 

## ARTICLE 7

### SERVICE

#### Quality and Promotion of Service

- (1) Dealer will provide the best possible customer service for all owners of Authorized Automobiles and automobiles of the same make formerly sold by VWoA, and will use its best efforts to promote its customer service. Dealer's service facilities, equipment, and personnel will conform to the requirements of the Operating Standards, Operating Plan and such other reasonable standards as VWoA may prescribe, after review with Dealer.

#### Tools and Equipment

- (2) Special tools and general workshop equipment meeting VWoA's standards shall be available at Dealer's Premises in working condition. VWoA's minimum standards shall be found in the Operating Standards and the Operating Plan, which will be updated from time to time.

#### Use of Non-genuine Parts

- (3) Dealer will not use in the repair or servicing of Authorized Automobiles any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of such Authorized Automobiles. **DEALER WILL USE ONLY GENUINE PARTS IN PERFORMING WARRANTY SERVICE ON AUTHORIZED AUTOMOBILES. DEALER WILL NOT REPRESENT AS NEW GENUINE PARTS ANY PARTS USED BY IT IN THE REPAIR OR SERVICING OF AUTHORIZED AUTOMOBILES WHICH ARE NOT NEW GENUINE PARTS.**

## STANDARD PROVISIONS

---

### Owner's Documents

- (4) Upon delivering a new Authorized Automobile to a customer, Dealer will provide the Owner's Documents supplied by VWoA for such Authorized Automobile, properly completed by Dealer. Dealer will take all steps required prior to delivery of the Authorized Automobile, and, in particular, will perform properly the pre-delivery services specified by VWoA.

### Maintenance and Other Services Without Customer Charge

- (5) In accordance with bulletins issued from time to time by VWoA and VWoA's Warranties, certain maintenance services and other repairs following delivery of a new Authorized Automobile may be free of charge to the customer. Upon presentation of an appropriate Owner's Document, Dealer will perform properly the services required, whether or not the Authorized Automobile to be serviced was sold by Dealer. Upon the submission of appropriate claims, VWoA will reimburse Dealer for performing such services at the then-current rate of reimbursement specified by VWoA for Dealer. VWoA will establish procedures for submitting and processing such claims and transmitting reimbursements to Dealer. Dealer agrees to comply with these procedures.

### Repeated Repairs

- (6) Dealer will notify VWoA in writing or by electronic mail of repairs to Authorized Automobiles pursuant to VWoA's Warranties under each of the following circumstances:
  - (a) The Authorized Automobile has been brought to Dealer a specified number of times for the same complaint; or
  - (b) The Authorized Automobile has been in Dealer's custody for all repairs pursuant to VWoA's Warranties a specified number of days.

Such notification shall be made at the times and by the means VWoA may have instructed in any then-current dealer warranty manual issued by VWoA.

---

## ARTICLE 8

### DEALER'S PURCHASES AND INVENTORIES

#### Purchase Prices

- (1) VWoA will sell Authorized Products to Dealer at prices and upon terms established by VWoA from time to time. If VWoA increases its established prices, Dealer may cancel all orders for Authorized Products affected by the increase which are unfilled at the time Dealer receives notice of the increase, by giving VWoA written notice of cancellation within ten days from the time Dealer receives notice of the price increase.

# **Exhibit 6-Part 2**

**STANDARD PROVISIONS**

---

**Orders and Acceptance**

- (2) Dealer will transmit orders for Authorized Products to VWoA electronically, at the times and for the periods, that VWoA reasonably requires. With each order, Dealer represents that it is solvent. VWoA may accept orders in whole or in part. Except as otherwise expressly provided in Article 8(1), all orders of Dealer will be binding upon it until they are rejected in writing by VWoA; however, in the event of a partial acceptance by VWoA, Dealer will not be bound by the portion of the order not accepted.

**Inventories**

- (3) Dealer will maintain in inventory at all times the assortment and quantity of Authorized Products required by the Operating Standards, Operating Plan or Recommendations.

**Product Allocation**

- (4) Dealer recognizes that certain Authorized Products may not be available in sufficient supply from time to time because of factors such as product importation, consumer demand, component shortages, manufacturing constraints, governmental regulations, or other causes. VWoA will endeavor to make a fair and equitable allocation and distribution of the Authorized Products available to it.

**Taxes**

- (5) Dealer is responsible for any and all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges imposed, levied, or based upon the sale of Authorized Products by VWoA to Dealer. Dealer represents and warrants, as of the date of the purchase of each Authorized Product, that all Authorized Products purchased from VWoA are purchased by Dealer for resale in the ordinary course of Dealer's business and that Dealer has complied with all laws relating to the collection and payment of all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges applicable to the purchase of such products and will furnish evidence thereof upon request. If any Authorized Products are put to taxable use by Dealer, or are purchased by Dealer for purposes other than resale in the ordinary course of Dealer's business, Dealer will make timely return and payment to the appropriate taxing authorities of all applicable taxes and other governmental charges imposed, levied, or based upon the sale of such Authorized Products by VWoA to Dealer and will hold VWoA harmless with respect thereto.

**Payments to Dealer or Dealer's Personnel**

- (6) From time to time, VWoA may conduct incentive programs which involve payments to Dealer or to Dealer's personnel. Dealer acknowledges that regardless of the nature of such programs or payments, Dealer's personnel are not employees, contractors or agents of VWoA. All matters relating to the employment or retention of Dealer's personnel are solely Dealer's responsibility. In the case of payments by VWoA to Dealer, Dealer alone will be responsible for the payment of any and all applicable taxes. In the case of payments to Dealer's personnel, VWoA will make appropriate information or other returns to appropriate taxing authorities. In the event Dealer does not want VWoA to make direct payments to Dealer's personnel, Dealer will notify VWoA to that effect in writing. After receiving such written notice, VWoA will pay directly to Dealer any subsequent payments coming due Dealer's personnel. Dealer represents and warrants that it will pass such payments directly through to Dealer's personnel as intended; that it will make any necessary returns to any taxing authority; and that it will hold VWoA harmless from any claims whatsoever that such payments were not received by the intended recipients or that appropriate withholdings were not made. In the event it is determined by any taxing authority that VWoA should not have made payments to Dealer's personnel or that VWoA should have collected taxes in respect of such payments, then VWoA will be responsible for such taxes.

**STANDARD PROVISIONS**

---

**Payment by Dealer**

- (7) Dealer will pay for Authorized Products in the manner, at the time, and upon the conditions specified in the terms of payment established from time to time by VVoA. Delivery of instruments of payment other than cash will not constitute payment until VVoA has collected the full amount in cash. Dealer will pay all collection charges, including reasonable attorney's fees, and costs of exchange, if any, incurred in connection with its payments.

**Passing of Title; Security Interest**

- (8) Title to Authorized Products will remain with VVoA until VVoA has collected their full purchase price in cash. Dealer will execute and deliver, and VVoA is authorized to execute and deliver on behalf of Dealer or, to the extent permitted by law, to file without the signature of Dealer, all financing statements and other instruments which VVoA may deem necessary to evidence its ownership of such Authorized Products. Dealer hereby grants VVoA a purchase money security interest in all Authorized Products for which VVoA has not collected in full, authorizes VVoA to take such steps as VVoA deems necessary to perfect such security interests, and agrees to cooperate fully with VVoA in connection therewith. VVoA may take possession at any time of Authorized Products to which it has title.

**Passing of Risks**

- (9) Authorized Products will be at Dealer's risk and peril from the time of their delivery to Dealer or Dealer's agent. It will be up to Dealer to insure such risks for its benefit and at its expense.

**Responsibility for Defects and Damage**

- (10) VVoA assumes responsibility for the quality and condition of Authorized Products, to the extent of (a) defects caused by its own negligence and (b) damage caused or repaired prior to delivery of the Authorized Products to Dealer or Dealer's agent. VVoA will make any required disclosure thereof to Dealer. If VVoA has insured against such defects in or damage to Authorized Products, VVoA's liability to Dealer for such damage will be limited to the amount actually paid by the insurance carrier to VVoA by reason of such defect of damage, together with any deductible amount applicable to such claim. Dealer may decline to accept any Authorized Products delivered to Dealer in damaged condition or with respect to which VVoA has notified Dealer that VVoA has repaired damage; however, should Dealer accept such Authorized Product Dealer will, subject to the provisions of Article 5(5), repair all such defects and damage fully as required by VVoA before any defective or damaged Authorized Product is delivered to a customer. Dealer will make any required disclosure to Dealer's customers of damage or repairs, and will hold VVoA harmless with respect thereto. VVoA will notify Dealer promptly of the amount thereof, or any other amount due from VVoA pursuant to this paragraph, following Dealer's submission of such proof of repair as VVoA may require.

**Claims for Incomplete Delivery**

- (11) Dealer will make all claims for incomplete delivery of Authorized Products (including the delivery of Authorized Products with damage) in writing not later than three business days after Dealer's receipt of shipment; **provided, however**, that Dealer will make claims as to Genuine Parts within the period specified in policies established by VVoA from time to time; and **provided, further**, that Dealer will note claims for visible damage to Authorized Automobiles on the delivery receipt.

## **STANDARD PROVISIONS**

---

### **Changes of Specifications**

- (12) VWoA will deliver Authorized Products to Dealer in accordance with specifications applicable at the time of their manufacture. In the event of any change or modification with respect to any Authorized Products, Dealer will not be entitled to have such change or modification made to any Authorized Products manufactured prior to the introduction of such change or modification. VWoA expressly reserves, and Dealer acknowledges, the right to make such changes and modifications, and Dealer's only right in such event shall be the cancellation of any orders for Authorized Products affected by the change or modification and not yet accepted by VWoA.

### **Failure of or Delay in Delivery by VWoA**

- (13) VWoA will not be liable to Dealer for failure of or delay in delivery under orders of Dealer accepted by VWoA, other than failure or delay resulting from willful misconduct or gross negligence of VWoA.

### **Return or Diversion on Dealer's Failure to Accept**

- (14) If Dealer fails or refuses for any reason to accept delivery of any Authorized Products ordered by Dealer (except as permitted under Article 8(11)), Dealer will be liable to VWoA for all expenses incurred as a result of such failure or refusal, and will store such Authorized Products at no charge to VWoA until VWoA can arrange for their removal. Dealer's liability pursuant to this paragraph will be in addition to, and not in lieu of, any other liabilities which may arise from Dealer's failure or refusal to accept delivery.

---

## **ARTICLE 9**

### **WARRANTY TO CUSTOMERS**

#### **VWoA's Warranties**

- (1) VWoA warrants each new Authorized Product as set forth in VWoA's Warranties.

#### **Incorporation of VWoA's Warranties in Dealer's Sales**

- (2) Dealer will make all sales of Authorized Automobiles and Genuine Parts in such a way that its customers acquire all rights in accordance with VWoA's Warranties and, to the extent permitted by law, no other express or implied warranties. Dealer will make the text of VWoA's Warranties part of its contracts for the sale of Authorized Products and will display the text of the warranties of all products it sells in customer contact areas where Authorized Products are offered.

#### **Warranty Procedures**

- (3) Dealer agrees to comply with the provisions of the various dealer warranty manuals which VWoA may issue from time to time, and will follow the procedures established by VWoA for processing warranty claims and returning and disposing of defective Genuine Parts. Dealer will also comply with all requests of VWoA for the performance of services pursuant to warranty claims and will maintain detailed records of time and parts consumption and any other records used as the basis for submitting warranty claims. Dealer will submit warranty claims to VWoA electronically, and in accordance with procedures established by VWoA. Upon Dealer's compliance with such requests and maintenance of such records, VWoA will reimburse Dealer within a reasonable time for warranty claims at the then-current rate of reimbursement specified

**STANDARD PROVISIONS**

---

by VVoA for Dealer. Strict adherence to the procedures and means established for processing warranty claims is necessary for VVoA to process such claims fairly and expeditiously. VVoA will be under no obligation with respect to warranty claims not submitted electronically and not made strictly in accordance with such procedures.

---

**ARTICLE 10****DEALER'S RECORD KEEPING AND REPORTS; INSPECTION OF DEALER'S OPERATIONS****Dealer's Forms, Business Machines, Office Equipment and Bookkeeping**

- (1) Dealer will use accounting, sales, bookkeeping and service workshop forms; business machines; data processing and transmission equipment; and other office equipment which meets specifications, and which enables Dealer and VVoA to communicate electronically for all purposes and which otherwise provides information and functions in the manner prescribed by VVoA and its affiliates in the Operating Standards, the Operating Plan and by other means. VVoA will advise Dealer, or ensure that suppliers to VVoA advise Dealer, periodically of the hardware and software requirements, communications protocols, and other specifications which Dealer's data processing and transmission equipment must meet in order to satisfy the requirements of this paragraph, and Dealer will timely adhere to such requirements, protocols and specifications. Dealer will keep accurate and current records in accordance with VVoA's uniform accounting system and with accounting practices and procedures reasonably satisfactory to VVoA, in order to enable VVoA to develop comparative data and to furnish Dealer business management assistance.

**Financial Statements to be Supplied by Dealer**

- (2) Dealer will transmit to VVoA (a) on or before the tenth day of each calendar month, in such form and by such methods as VVoA reasonably may require, a financial and operating statement reflecting the consolidated operations of Dealer for the preceding month and from the beginning of the calendar year to the end of the preceding month and (b) within three and one-half months after the close of Dealer's fiscal or calendar year, a consolidated balance sheet and profit and loss statement of Dealer, which documents shall be certified by a certified public accountant if so requested by VVoA at least 30 days prior to the close of Dealer's fiscal or calendar year. DEALER'S FAILURE TO PROVIDE FINANCIAL AND OPERATING STATEMENTS IN THE FORMAT AND BY THE METHOD REQUIRED BY VVoA MAY RESULT IN THE REVOCATION OF DEALER'S OPEN PARTS AND ACCESSORIES ACCOUNT.

**Reports to be Supplied by Dealer**

- (3) Dealer will furnish to VVoA, on such forms and by such methods as VVoA reasonably may require, accurate timely reports of dealer's sales and transfers of new Authorized Automobiles. Dealer also will furnish to VVoA, on a timely and accurate basis, such other reports and financial statements as VVoA reasonably may require.

## **STANDARD PROVISIONS**

---

### **Inspection of Dealer's Operations and Records**

- (4) Until the expiration or termination of this Agreement, and thereafter until consummation of all transactions referred to in Article 15, VWoA, through its employees and other designees, at all reasonable times during regular business hours, may inspect Dealer's Operations, Dealer's Premises and the methods, records and accounts of Dealer relating to Dealer's Operations.
- 

## **ARTICLE 11**

### **DEALER PERFORMANCE REVIEW**

#### **Evaluation and Assistance**

- (1) Each year, VWoA will prepare objectives for Dealer and will use them as a basis for evaluating Dealer's performance of its obligations in each of the areas described in this Article 11 and in the Operating Standards and the Operating Plan. VWoA may evaluate Dealer's performance during the year through periodic reviews. VWoA's evaluations of Dealer shall take place at least annually. VWoA will review its evaluations with Dealer, so that Dealer may take prompt action, if necessary, to improve its performance to such levels as VWoA reasonably may require. Any written comments received from Dealer on VWoA's evaluation of Dealer will become a part of such evaluation.

#### **Evaluation of Dealer's Vehicle Sales, Service and Parts Performance**

- (2) VWoA will evaluate the effectiveness of Dealer's vehicle sales, service and parts performance in accordance with factors and measures set forth in the Operating Standards, the Operating Plan and Recommendations.

#### **Evaluation of Dealer's Premises**

- (3) VWoA will evaluate Dealer's performance of its responsibilities pertaining to Dealer's Premises, analyzing both separately and collectively Dealer's sales facilities, service facilities, parts facilities, administrative offices, storage, parking and signage. In making such evaluation, VWoA will consider the factors set forth in the Operating Standards, the Operating Plan and Recommendations.

#### **Evaluation of Dealer's Customer Satisfaction**

- (4) VWoA will evaluate Dealer's performance of its responsibilities pertaining to customer satisfaction, analyzing both separately and collectively the satisfaction of customers with Dealer's sales activities and service activities. In making such evaluation, VWoA will utilize a uniform measure of customer satisfaction, which will be disclosed to Dealer, and will consider the factors set forth in the Operating Standards, the Operating Plan and Recommendations.

#### **Dealer's Evaluation of VWoA**

- (5) VWoA will implement measures by which Dealer may periodically evaluate the performance of VWoA, and in particular the performance of those VWoA employees who are responsible for administering VWoA's relationship with Dealer.
-

## ARTICLE 12

### SUCCEEDING DEALERS

#### Procedure

- (1) If Dealer chooses to transfer its principal assets or change owners, VWoA has the right to approve the proposed transferees, the new owners and executives and, if different from Dealer's, their premises. VWoA will consider in good faith any such proposal Dealer may submit to it during the term of this Agreement. In determining whether the proposal is acceptable to it, VWoA will take into account factors such as the personal, business and financial qualifications of the proposed new owners and executives as well as the proposal's effect on competition. In such evaluation, VWoA may consult with the proposed new owners and executives on any aspect of the transaction of their proposed dealership operations. Notwithstanding anything set forth in this paragraph to the contrary, VWoA shall not be obligated to consider such proposal if it previously had notified Dealer in writing that it would not appoint a succeeding dealer in Dealer's Area; **provided, however**, that such notice shall be given only if there is good cause for discontinuing representation of Authorized Automobiles in Dealer's Area.

#### Approvals

- (2) VWoA will notify Dealer in writing of the approval or disapproval of a proposal by Dealer for transfer of principal assets or change of owners within 45 business days, or the exercise by VWoA of its right of first refusal under Article 12(3) within 30 calendar days, after Dealer has furnished to VWoA all applications and information reasonably requested by VWoA to evaluate such proposal. If VWoA approves Dealer's proposal, VWoA shall be obligated to grant the proposed transferees only a Dealer Agreement in substantially the same form as this Agreement. If VWoA had previously notified Dealer in writing that VWoA would not appoint a succeeding dealer in Dealer's Premises, then VWoA's approval of Dealer's proposal may be conditioned on the proposed transferees agreeing to provide different facilities for their dealership operations. Upon the consummation of Dealer's approved proposal, Dealer will deliver to VWoA a voluntary termination of this Agreement, a general release in favor of VWoA and payment in full for any net balance then owing from Dealer to VWoA.

#### Right of First Refusal

- (3) Whenever Dealer proposes to transfer its principal assets or change owners of a majority interest, VWoA shall have the right to purchase such assets or ownership interest, as follows:
  - (a) VWoA may elect to exercise its purchase right by written notice to Dealer within 30 calendar days after Dealer has furnished to VWoA all applications and information reasonably requested by VWoA to evaluate Dealer's proposal.
  - (b) If Dealer's proposed sale or transfer was to a successor approved in advance by VWoA, to any of Dealer's Owners, to Dealer's employees as a group or to Dealer's spouse, children or heirs, then Dealer may withdraw its proposal within 30 calendar days following receipt of VWoA's notice of election of its purchase right.

## STANDARD PROVISIONS

---

- (c) VWoA's right under this Article 12(3) shall be a right of first refusal, permitting VWoA to:
  - (i) assume the proposed transferee's rights and obligations under its agreement with Dealer; and
  - (ii) cancel this Agreement and all rights granted Dealer hereunder.

Except to the extent specifically inconsistent with the terms of this Agreement, the price and all other terms of VWoA's purchase shall be as set forth in any bona fide written purchase and sale agreement between Dealer and its proposed transferee and in any related documents.

- (d) Dealer shall furnish to VWoA copies of all applicable liens, mortgages, encumbrances, leases, easements, licenses or other documents affecting any of the property to be transferred, and shall assign to VWoA any permits or licenses necessary for the continued conduct of Dealer's Operations.
- (e) VWoA may assign its right of first refusal to any party it chooses, but in that event VWoA will remain primarily liable for payment of the purchase price to Dealer.
- (f) If VWoA exercises its purchase right, VWoA will reimburse Dealer's proposed transferee for reasonable documented actual expenses which such proposed transferee incurred through the date of such exercise which are directly and solely attributable to the transaction Dealer proposed.
- (g) Nothing contained in this Article 12(3) shall require VWoA to exercise its right of first refusal in any case, nor restrict any right VWoA may have to refuse to approve Dealer's proposed transfer.

### Succession

- (4) Article 14(1)(a) notwithstanding, in the event of the death of any of Dealer's Owners, VWoA will not terminate this Agreement by reason of such death if:
  - (a) The owner's interest in Dealer passes directly as specified in any Successor Addendum to this Agreement; or
  - (b) The owner's interest in Dealer passes directly to his or her surviving spouse or children, or any of them, and (i) Dealer's authorized representative remains as stated in the Statement of Ownership and Management or (ii) within 90 days after the death of such owner Dealer appoints another qualified individual as Dealer's authorized representative; *provided, however*, that in this event VWoA will evaluate Dealer's performance during the 12 months following the owner's death. After the expiration of this 12-month period and VWoA's evaluation of the performance of Dealer's management during such period, VWoA will review with Dealer the changes, if any, in the management or equity interests of Dealer required by VWoA as a condition of extending this Dealer Agreement with Dealer. Any new Dealer Agreement entered into pursuant to this paragraph will be in substantially the same form as the Dealer Agreements then currently offered by VWoA to its dealers in Authorized Automobiles generally.

### **Modification of Terms of Payment**

- (5) Upon receipt of an application for a replacement dealer agreement, VWoA may modify its terms of payment with respect to Dealer to the extent VWoA deems appropriate, irrespective of Dealer's credit standing or payment history.
- 

## **ARTICLE 13**

### **DISPUTE RESOLUTION**

#### **General Policy**

- (1) VWoA and Dealer agree as a general matter to work together to minimize disputes between them. **While understanding that certain Federal and state courts and agencies may be available to resolve any disputes, VWoA and Dealer agree that it is in their mutual best interests to attempt to resolve certain controversies first through arbitration. VWoA and Dealer therefore agree that the dispute resolution process outlined in this Article shall be used before seeking legal redress in a court of law or before an administrative agency, for all disputes arising under the following: Article 9(3) (Warranty Procedures), Article 12 (Succeeding Dealers), Article 14 (Termination), Article 15 (Rights and Liabilities Upon Termination) and payments to Dealer in connection with VWoA incentive programs.** In the event that a dispute arises in connection with any other provision of this Agreement, VWoA and Dealer may mutually agree to first submit the dispute to arbitration, in accordance with the provisions of this Article. Both VWoA and Dealer agree that the ultimate mutual goal of arbitration is to obtain a fair hearing and prompt decision of the dispute, in an efficient and cost-effective manner, and both agree to work toward that goal at all times hereunder.

#### **Involuntary Non-Binding Arbitration**

- (2) Upon the written request of either VWoA or Dealer, a dispute arising in connection with this Agreement may be submitted to non-binding arbitration.

#### **Voluntary Binding Arbitration**

- (3) As an alternative to Article 13(2) above, upon the written request of Dealer, a dispute arising in connection with this Agreement will be submitted to binding arbitration.

#### **Rules of Conduct**

- (4) Arbitrations will be adjudicated under the auspices and in accordance with the rules of the American Arbitration Association or another mutually acceptable arbitration service, as well as the following provisions:
  - (a) Written requests for arbitration shall set forth a clear and complete statement of the nature of the claim and its basis; the amount involved, if any; and the remedy sought.
  - (b) The place of arbitration shall be the state in which Dealer's Premises are located, or such other place as may be agreed upon by the parties.

**STANDARD PROVISIONS**

---

- (c) Both parties shall make every reasonable attempt to agree upon one arbitrator, but if they are unable to agree each shall appoint an arbitrator and these two shall appoint a third arbitrator.
- (d) Expenses of arbitration shall be divided equally between the parties. The prevailing party shall not be entitled to reasonable attorneys fees.
- (e) The arbitrator(s) shall pass finally upon all questions, both of law and fact, and his or her (or their) findings shall be conclusive.
- (f) Pre-arbitration discovery shall be available to both parties and shall be governed by the Federal Rules of Civil Procedure. Information obtained by either party during the course of discovery shall be kept confidential, shall not be disclosed to any third party, shall not be used except in connection with the arbitration proceeding, and at the conclusion of the proceeding, shall be returned to the other party. Both Dealer and VWoA shall make their agents and employees available upon reasonable times and places for pre-trial depositions without the necessity of subpoenas or other court orders. Such discovery may be used as evidence in the arbitration proceeding to the same extent as if it were a court proceeding.

**Time for Decision**

- (5) Unless VWoA and Dealer specifically agree to the contrary, and subject to the rules and procedures of the arbitration service chosen, the arbitration hearing shall be concluded not more than 60 days after the date of the written request to arbitrate, and the arbitration decision shall be rendered not more than 90 days after the written request to arbitrate.

**Provisional Remedies**

- (6) Either VWoA or Dealer may, without prejudice to the above procedures, file a complaint if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action the parties will continue to participate in good faith in the procedures specified in this Article 13.

**Tolling Statute of Limitations**

- (7) All applicable statutes of limitation and defenses based upon passage of time shall be tolled while the procedures specified in this Article 13 are pending. The parties will take such action, if any, required to effectuate such tolling.

**Performance to Continue**

- (8) VWoA and Dealer agree to continue to perform their respective obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.
-

## **ARTICLE 14**

### **TERMINATION**

#### **Immediate Termination by VWoA**

- (1) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement for cause, with immediate effect, by sending notice of termination to Dealer, if any of the following should occur:
  - (a) Death of any of Dealer's Owners or any change, whether voluntary or by operation of law, in the record or beneficial ownership of Dealer without VWoA's prior written consent; any change in Dealer's Executives without prior notice to VWoA; or the failure of Dealer's Executives to continue to manage Dealer's Operations (unless, in any of these cases, the provisions of Article 12(4) above have been satisfied);
  - (b) Dissolution or liquidation of Dealer, if a partnership or corporation;
  - (c) Insolvency of Dealer or voluntary institution by Dealer of any proceeding under the Bankruptcy Act or state insolvency law; or the involuntary institution against Dealer of any proceeding under the Bankruptcy Act or state insolvency law which is not vacated within ten days from the institution thereof; or the appointment of a receiver or other officer having similar powers for Dealer or Dealer's business who is not removed within ten days of his appointment; or any levy under attachment, execution or similar process which is not within ten days vacated or removed by payment or bonding.
  - (d) Any attempted transfer of this Agreement by Dealer, in whole or in part, without VWoA's prior written consent;
  - (e) Any change in the location of any of Dealer's Premises or the establishment of any additional premises for Dealer's Operations without VWoA's prior written consent;
  - (f) Failure of Dealer to continue to operate any of Dealer's Premises in the usual manner for a period of five consecutive business days, unless caused by an Act of God, war, riot, strike, lockout, fire, explosion or similar event;
  - (g) Dealer's failure, for a period of ten consecutive business days, to have any license necessary for the conduct of Dealer's Operations;
  - (h) Conviction of Dealer or any of Dealer's Owners or Executives of a felony or any misdemeanor involving fraud, deceit or an unfair business practice, if in VWoA's opinion such conviction may adversely affect the conduct of Dealer's business, or be harmful to the good will of the Manufacturer or VWoA or to the reputation and marketing of Authorized Products;
  - (i) Any material misrepresentation by any of Dealer's Owners or Executives as to any fact relied upon by VWoA in entering into this Agreement;
  - (j) Submission by Dealer of fraudulent or knowingly false report or statement or claim for reimbursement, refund or credit; or
  - (k) Failure or refusal of Dealer or Dealer's owners, executives, agents or employees to provide VWoA, upon request, with access to and the opportunity to inspect and copy all books, papers, instruments, certificates or other documents evidencing the record or beneficial ownership of Dealer.

## **STANDARD PROVISIONS**

---

### **Termination by VWoA on 30 Days' Notice**

- (2) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 30 days' notice if any of the following shall occur:
  - (a) Any disagreement or personal difficulties of Dealer's Owners or Executives which in VWoA's opinion may adversely affect the conduct of Dealer's business, or the presence in the management of Dealer of any person who in VWoA's opinion does not have appropriate qualifications for their position;
  - (b) Impairment of the reputation or financial standing of Dealer or any of Dealer's Owners or Executives or ascertainment by VWoA of any fact existing at or prior to the time of execution of this Agreement which tends to impair such reputation or financial standing; or
  - (c) The failure of Dealer to meet its minimum customer satisfaction requirements, including, but not necessarily limited to, measures for sales satisfaction and service satisfaction, as established by VWoA for its dealers generally, from time to time, and as set forth in then-current Operating Standards issued by VWoA to its dealers generally, within 180 days after notice by VWoA to Dealer that Dealer has not met such requirements.

### **Termination by VWoA on 90 Days' Notice**

- (3) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 90 days' notice in the event of the breach by Dealer of any obligation of Dealer pursuant to this Agreement or any other agreement between VWoA or any of its subsidiaries or affiliates and Dealer, other than those enumerated in Articles 14(1) or 14(2) above.

### **Discussions with Dealer**

- (4) Upon learning that any event or situation which would give VWoA grounds to terminate this Agreement has occurred, VWoA will endeavor to discuss such event or situation with Dealer. Thereafter, VWoA may give Dealer written notice of termination.

### **Modification of Terms of Payment**

- (5) During the period a situation specified in Article 14(1), 14(2) or 14(3) continues to exist, VWoA may modify its terms of payment with respect to Dealer to such extent as VWoA may consider appropriate, irrespective of Dealer's credit standing or payment record.

### **No Waiver by Failure to Terminate**

- (6) Should VWoA be entitled to terminate this Agreement but fail to do so, such failure shall not be considered a waiver of VWoA's right to terminate this Agreement unless the situation entitling VWoA to terminate this Agreement has ceased to exist and (a) six months have elapsed from the time VWoA obtained knowledge of such situation or (b) VWoA has entered into a subsequent written agreement with Dealer superseding this Agreement. Nevertheless, any situation entitling VWoA to terminate this Agreement may be considered at any subsequent time together with any subsequent events in determining VWoA's right to terminate this Agreement.

#### **Termination by Dealer**

- (7) Dealer has the right to terminate this Agreement without cause by VWoA giving 60 days' written notice of such termination. Upon receipt of Dealer's notice of termination, VWoA may, at VWoA's option, waive in writing the 60 day notice period. In the event Dealer, in connection with its termination of this Agreement, also wishes to terminate any other agreement between Dealer and VWoA or any of VWoA's subsidiaries or affiliates, Dealer must do so separately and subject to the provisions of Article 14(10) below.

#### **Continuation of Business Relations after Termination**

- (8) Any business relations between VWoA and Dealer after the termination of this Agreement without a written extension or renewal or a new written dealer agreement will not operate as an extension or renewal of this Agreement or as a new dealer agreement. Nevertheless, all such business relations, so long as they are continued, will be governed by terms identical with the provisions of this Agreement.

#### **Superseding Agreements**

- (9) If any superseding form of Dealer Agreement is offered by VWoA to its authorized dealers generally at any time, VWoA may, by written notice to Dealer, terminate this Agreement and replace it with a Dealer Agreement in the superseding form.

#### **Agreements with Affiliates of VWoA**

- (10) The termination of this Agreement by either party does not necessarily waive or terminate any other agreement between Dealer and VWoA or any of its subsidiaries or affiliates. Such other agreements may be terminated only in accordance with their terms, and the parties' respective obligations under any such other agreements will continue in accordance with their terms until terminated.

---

### **ARTICLE 15**

#### **RIGHTS AND LIABILITIES UPON TERMINATION**

##### **VWoA's Obligations**

- (1) Within 90 days after the termination of this Agreement pursuant to Article 14, VWoA will purchase from Dealer and (subject to the provisions of Article 15(4) below) Dealer will sell to VWoA all the following:

**STANDARD PROVISIONS**

---

**New Authorized Automobile Inventory**

- (a) All new, undamaged current model year Authorized Automobiles (introduced in the United States no earlier than 12 months prior to the date of such expiration or termination and not superseded by a later model year) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition, provided they (i) have 200 or fewer actual miles; (ii) were sold by VWoA and purchased by Dealer from VWoA (or in the ordinary course of business from other dealers of Authorized Automobiles appointed by VWoA) and (iii) have never been sold by Dealer. The price for such Authorized Automobiles will be the price at which they were originally sold by VWoA, less all prior refunds or allowances made by VWoA, if any.

**New Genuine Parts Inventory**

- (b) All the following new, unused and undamaged articles listed in VWoA's current Genuine Parts Price List (other than articles listed as obsolete) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition and complete, provided they were purchased by Dealer from VWoA and never sold by Dealer:
  - (i) New parts and new factory remanufactured replacement parts supplied by VWoA for Authorized Automobiles;
  - (ii) accessories considered by VWoA to be suitable for installation in the current model year Authorized Automobiles specified in Article 15(1)(a); and
  - (iii) other accessories, provided that VWoA has made sales of identical articles during six of the last twelve full calendar months immediately preceding such expiration or termination.

The price for all such articles will be the price then last established by VWoA for the sale of identical articles, less a handling charge equal to ten percent of such amount and less all prior refunds or allowances made by VWoA;

**Tools and Equipment**

- (c) All special tools and equipment for servicing Authorized Automobiles owned by Dealer on the date of expiration or termination which are in operating condition and complete, provided they were purchased by Dealer from VWoA or pursuant to written requests of VWoA. The price for such tools and equipment will be the fair market value thereof; and

**Authorized Signs**

- (d) All Authorized Signs which Dealer displayed publicly or at Dealer's Premises. The price for such Authorized Signs will be the fair market value thereof.

### **Terms of Sale**

- (2) Any and all items to be sold by Dealer to VWoA pursuant to this paragraph will be delivered by Dealer to VWoA at Dealer's place of business suitably packed for transportation. For such periods of time as VWoA reasonably may determine, VWoA may enter Dealer's Premises for the purpose of taking an inventory of all or any part of Dealer's stock of Authorized Products and special tools and equipment. At the request of VWoA, Dealer will comply in all respects with the provisions of all applicable bulk sales acts or similar statutes protecting a transferee of personal property with respect to liabilities of the transferor. Promptly following performance by Dealer of all its obligations pursuant to this Article 15, the completion by VWoA of all steps required to obtain possession of such items and the delivery to VWoA of a bill of sale, documents of title and a general release of VWoA and the Manufacturer from Dealer and Dealer's Owners, all in form satisfactory to VWoA, VWoA will pay Dealer the specified prices for the said items, less all amounts owed by Dealer to VWoA, its subsidiaries or affiliates. VWoA will not be required to purchase any item from Dealer pursuant to this paragraph unless Dealer is able to convey to VWoA, within such 90-day period, title to such item free and clear of all liens, claims, encumbrances and security interests.

### **Pending Orders and Dealer's Obligations**

- (3) Upon the expiration or termination of this Agreement, all pending orders of Dealer for Authorized Products previously accepted by VWoA will be canceled and Dealer immediately will:

### **Removal of Authorized Signs**

- (a) Remove at its own expense all Authorized Signs which it displayed publicly or at its premises;

### **Authorized Trademarks**

- (b) Cease all usage of the Authorized Trademarks, cease to hold itself out as an authorized dealer in Authorized Automobiles, destroy all stationery and other printed material bearing any Authorized Trademark, and, if its corporate or business name contains any Authorized Trademark, take all steps to remove the same therefrom;

### **Orders and Files**

- (c) Transfer to VWoA
- (i) all orders for sale by Dealer of Authorized Products then pending with Dealer,
  - (ii) all deposits made thereon, whether in cash or property;
  - (iii) all Dealer's warranty records for Authorized Products or complete copies of all such records and files; and
  - (iv) all Dealer's customer service files. Upon the written request of Dealer, VWoA will return such customer service files to Dealer after VWoA has made copies of such files at VWoA's expense;

## STANDARD PROVISIONS

---

### Customer Lists

- (d) Make available to VWoA in writing the names and addresses of all its service customers and prospective customers for Authorized Products; and

### Literature

- (e) Deliver to VWoA at Dealer's place of business, free of charge, all technical or service literature, advertising and other printed material relating to Authorized Products, including sales instruction manuals or promotional material, then in Dealer's possession and which were acquired by Dealer from VWoA.

None of the foregoing will result in any liability of VWoA to Dealer for damages, commissions, loss of profits or compensation for services, or in any other liability of VWoA to Dealer of any kind of nature whatsoever.

### Direct Sales by Dealer

- (4) Upon Dealer's written request, VWoA may waive Dealer's obligation to sell certain assets to VWoA and will consent to Dealer's sale of any of or all its assets to any party of Dealer's choosing; *provided, however*, that Dealer may not sell any new Authorized Automobile, Authorized Sign nor any new Genuine Parts to any person or entity other than another dealer in the same line-make authorized by VWoA.

### Specific Performance

- (5) Since Dealer's obligations under this Article 15 are of such a nature that it is impossible to measure in money the damages which will be suffered by VWoA if Dealer should fail to perform any of them, Dealer agrees that, in the event of any such failure of performance on its part, VWoA will be entitled to maintain an action to compel the specific performance by Dealer of these obligations and Dealer agrees not to assert in any such action the defense that VWoA has an adequate remedy at law.

---

## ARTICLE 16

### DEFINITIONS

Throughout this Agreement various abbreviations and abbreviated phrases have been used. Their meanings are:

#### Authorized Automobiles

- (1) "Authorized Automobiles" means motor vehicles of the Volkswagen brand and comprising such models and types as may be supplied by VWoA during the term of this Agreement.

#### Authorized Products

- (2) "Authorized Products" means Authorized Automobiles and Genuine Parts.

**STANDARD PROVISIONS**

---

**Authorized Representative**

- (3) "Authorized Representative" means a qualified representative of Dealer whose full-time professional efforts are devoted to the conduct of Dealer's Operations and who is authorized on behalf of Dealer to execute documents, make all operational decisions with respect to Dealer's Operations, and on whose authority VWoA is entitled to rely.

**Authorized Signs**

- (4) "Authorized Signs" means displays of any Authorized Trademark, in such material, type, presentation and colors as VWoA may prescribe from time to time.

**Authorized Trademarks**

- (5) "Authorized Trademarks" means any trademark, service mark or trade name now or any other time hereafter used or claimed by the Manufacturer or VWoA.

**Dealer's Area**

- (6) "Dealer's Area" means the area designated by VWoA in the Operating Plan for Dealer's Operations, corresponding to U.S. census tract information.

**Dealer's Executives**

- (7) "Dealer's Executives" means all the persons named in Paragraphs 5 and 6 of the Statement of Ownership and Management as officers or the Authorized Representative of Dealer, as well as any other person who succeeds to any position in Dealer referred to in such paragraphs in accordance with the provisions of this Agreement.

**Dealer's Operations**

- (8) "Dealer's Operations" means all activities of Dealer relating to the promotion and sale of Authorized Products, the supply of Genuine Parts, customer service for Authorized Products and all other activities of Dealer pursuant to this Agreement.

**Dealer's Owners**

- (9) "Dealer's Owners" means all the persons named in Paragraph 4 of the Statement of Ownership and Management as beneficial or record owners of Dealer, as well as any other person who acquires or succeeds to any beneficial interest or record ownership in Dealer in accordance with the provisions of this Agreement.

**Dealer's Premises**

- (10) "Dealer's Premises" means all premises referred to in the Dealer Premises Addendum and used by Dealer for or in connection with Dealer's Operations, including sales facilities, service workshops, offices, facilities for storage of Authorized Automobiles and Genuine Parts, used car sales facilities and parking facilities.

## **STANDARD PROVISIONS**

---

### **Genuine Parts**

- (11) "Genuine Parts" means new and factory rebuilt replacement parts, accessories and optional equipment for Authorized Automobiles if such parts, accessories and optional equipment are supplied by VWoA.

### **Manufacturer**

- (12) "Manufacturer" means any supplier of Authorized Products to VWoA, including as appropriate, but not limited to, Audi AG, a German corporation, and Volkswagen AG, a German corporation.

### **Net Working Capital, Owner's Equity and Wholesale Credit**

- (13) "Net Working Capital," "Owner's Equity" and "Wholesale Credit" shall have the meanings set forth in the Operating Standards, the Operating Plan and in accordance with generally accepted accounting principles.

### **Operating Plan**

- (14) "Operating Plan" means the Dealer Operating Plan then-currently established by VWoA for Dealer, determined in cooperation with Dealer and of Authorized Products, as well as any amendments thereof or additions thereto by VWoA during the term of this Agreement.

### **Operating Standards**

- (15) "Operating Standards" means the Volkswagen Dealer Operating Standards issued by VWoA to its Volkswagen dealers, including any amendments, revisions or additions, from time to time during the term of this Agreement.

### **Owner's Documents**

- (16) "Owner's Documents" means all the documents which are supplied by VWoA in respect of each Authorized Automobile and which are intended for the customer, including, but not limited to, the Owner's Manual, Warranty Booklet and Maintenance Booklet.

### **Recommendations**

- (17) "Recommendations" means written suggestions provided by VWoA to Dealer from time to time during the term of this Agreement, as well as all currently applicable written suggestions previously provided by VWoA.

### **VWoA**

- (18) "VWoA" means Volkswagen of America, Inc. a New Jersey corporation, and includes, as appropriate, all divisions of that corporation.

**STANDARD PROVISIONS**

---

**VWoA's Warranties**

- (19) "VWoA's Warranties" means, with respect to each Authorized Product, those express written warranties provided with such product or as set forth in the Dealer Warranty Manual for Authorized Products in effect at the time such product is first sold at retail, as well as any express written warranties which VWoA may issue with respect to any product during the course of its service life.
- 

**ARTICLE 17**

**GENERAL PROVISIONS**

**Dealer Not an Agent**

- (1) Dealer will conduct all Dealer's Operations on its own behalf and for its own account. Dealer has no power or authority to act for the Manufacturer or VWoA.

**Authority to Sign**

- (2) Dealer acknowledges that only an Area Executive is authorized on behalf of VWoA to execute this Agreement or to agree to any variation, modification or amendment of any of its provisions or to sign any notice of termination, and that such Agreement, variation, modification, amendment or notice of termination must be countersigned by the President, a Vice President, the Secretary, an Assistant Secretary or a Regional Team Leader of VWoA.

**Variations; Modifications; Amendments**

- (3) This Agreement may not be varied, modified or amended except by an express instrument in writing to that effect signed on behalf of both VWoA and Dealer.

**Entire Agreement**

- (4) This instrument contains the entire agreement between the parties. No representations or statements other than those expressly set forth or referred to herein were made or relied upon in entering into this Agreement.

**Release of Claims under Prior Agreement**

- (5) This Agreement terminates and supersedes all prior agreements with respect to Authorized Products between the parties, if any. The parties hereby waive, abandon and relinquish any and all claims of any kind and nature arising out of or in connection with any such prior agreement, except for any accounts payable by one party to the other as a result of the purchase of any Authorized Products, audit adjustments or reimbursement for any services.

**Agreement Non-transferable**

- (6) No part of this Agreement nor any interest in this Agreement may be transferred by Dealer without the prior written consent of VWoA.

## STANDARD PROVISIONS

---

### Defense and Indemnification

- (7) VWoA will, upon Dealer's written request:
- (a) Defend Dealer against any and all claims for breach of VWoA's Warranties, bodily injury or death, or for physical damage to or destruction of property, that, during the term of this Agreement, may be asserted against Dealer in any action solely by reason of a manufacturing defect or design deficiency in
    - (i) an Authorized Product; or
    - (ii) a product of the same line-make formerly supplied by VWoA pursuant to a former dealer agreement; and
  - (b) Hold Dealer harmless from any and all settlements made and final judgments rendered with respect to such claims;

*provided*, that in each case Dealer promptly notifies VWoA in writing of the commencement of such action against Dealer and cooperates fully in the defense of such action in such manner and to such extent as VWoA may require. However, such defense and indemnification by VWoA will not be required if any fact indicates that any negligence, error, omission, act, failure, breach, statement or representation of Dealer may have caused or contributed to the claim asserted against Dealer or if VWoA determines that such action seeks recovery for allegations other than those described in Article 17(7)(a).

### Notices

- (8) Any notices under or pursuant to the provisions of this Agreement will be directed to the respective addresses of the parties stated herein, or, if either party shall have specified another address by notice in writing to the other party, to the address thus last specified. Unless otherwise provided herein, notices shall be deemed effective if sent by certified mail with return receipt requested; by overnight service having a reliable means of confirming delivery; or by personal delivery to any of Dealer's Owners or Executives. Notices shall be deemed effective when received.

### Waivers

- (9) The waiver by either party of any breach or violation of or default under any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation thereof or default thereunder. The failure or refusal of VWoA to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any such right or remedy.

### Titles

- (10) The titles appearing in this Agreement have been inserted for convenient reference only and do not in any way affect the construction, interpretation or meaning of the text.
-

# EXHIBIT D

**STANDARD PROVISIONS**

---

**ARTICLE 1**

**BASIC OBLIGATIONS OF VWoA..... 1**

    Supply of Authorized Products..... 1

    Assistance ..... 1

    Compliance with Ethical Standards..... 1

---

**ARTICLE 2**

**BASIC OBLIGATIONS OF DEALER ..... 1**

    Sales, Service, and Parts Supply..... 1

    Compliance with Ethical Standards..... 2

    Operating Standards and Operating Plan..... 2

    Disclaimer of Further Liability by VWoA..... 2

---

**ARTICLE 3**

**GENERAL MANAGER AND FACILITY REQUIREMENTS..... 2**

    Dealer’s General Management..... 2

    Dealer’s Premises..... 2

---

**ARTICLE 4**

**IDENTIFICATION; ADVERTISING..... 3**

    Use of Authorized Trademarks..... 3

    Signs..... 3

    Stationary..... 3

    Advertising..... 3

---

**ARTICLE 5**

**SALES..... 4**

    Sales Promotion ..... 4

    Sales Performance ..... 4

    Sales Outside Area..... 4

    Defective or Damaged Authorized Products..... 4

    Changes by Dealer to Authorized Products..... 5

    Product Changes by Dealer Neither Requested by VWoA nor Required by Law..... 5

    Used Car Operations..... 5

---

**STANDARD PROVISIONS**

---

**ARTICLE 6**

<b>PARTS.....</b>	<b>5</b>
Parts Promotion.....	5
Parts Department .....	6
Sales of Non-genuine Parts.....	6
Parts Inventory.....	6

---

**ARTICLE 7**

<b>SERVICE.....</b>	<b>6</b>
Quality and Promotion of Service.....	6
Tools and Equipment.....	6
Use of Non-genuine Parts.....	6
Owner’s Documents.....	7
Maintenance and Other Services without Customer Charge.....	7
Repeated Repairs.....	7

---

**ARTICLE 8**

<b>DEALER’S PURCHASES AND INVENTORIES .....</b>	<b>7</b>
Purchase Prices.....	7
Orders and Acceptance.....	8
Inventories.....	8
Product Allocation.....	8
Taxes.....	8
Payments to Dealer or Dealer’s Personnel.....	8
Payment by Dealer.....	9
Passing of Title; Security Interest.....	9
Passing of Risks.....	9
Responsibility for Defects and Damage.....	9
Claims for Incomplete Delivery.....	9
Changes of Specifications.....	10
Failure of or Delay in Delivery by VWoA.....	10
Return or Diversion on Dealer’s Failure to Accept.....	10

---

**ARTICLE 9**

<b>WARRANTY TO CUSTOMERS.....</b>	<b>10</b>
WVoA’s Warranties.....	10
Incorporation of VWoA’s Warranties in Dealer’s Sales.....	10
Warranty Procedures.....	10

---

**STANDARD PROVISIONS**

---

**ARTICLE 10**

**DEALER’S RECORD KEEPING AND REPORTS; INSPECTION OF DEALER’S OPERATIONS ..... 11**

Dealer’s Forms, Business Machines, Office Equipment and Bookkeeping..... 11

Financial Statements to be Supplied by Dealer..... 11

Reports to be Supplied by Dealer..... 11

Inspection of Dealer’s Operations and Records..... 12

---

**ARTICLE 11**

**DEALER PERFORMANCE REVIEW ..... 12**

Evaluation and Assistance..... 12

Evaluation of Dealer’s Vehicle Sales, Service, and Parts Performance..... 12

Evaluation of Dealer’s Premises..... 12

Dealer’s Evaluation of VWoA..... 12

---

**ARTICLE 12**

**SUCCEEDING DEALERS ..... 13**

Procedure..... 13

Approvals..... 13

Right of First Refusal..... 13

Succession..... 14

Modification of Terms of Payment..... 15

---

**ARTICLE 13**

**DISPUTE RESOLUTION ..... 15**

General Policy..... 15

Involuntary Non-Binding Arbitration..... 15

Voluntary Binding Arbitration..... 15

Rules of Conduct..... 15

Time for Decision..... 16

Provisional Remedies..... 16

Tolling Statue of Limitations..... 16

Performance to Continue..... 16

---

**STANDARD PROVISIONS**

---

**ARTICLE 14**

<b>TERMINATION .....</b>	<b>17</b>
Immediate Termination by VWoA.....	17
Termination of VWoA on 30 Days' Notice.....	18
Termination of VWoA on 90 Days' Notice.....	18
Discussion with Dealer.....	18
Modification of Terms of Payment.....	18
No Waiver by Failure to Terminate.....	18
Termination by Dealer.....	19
Continuation of Business Relations after Termination.....	19
Superseding Agreements.....	19
Agreements with Affiliates.....	19

**ARTICLE 15**

<b>RIGHTS AND LIABILITIES .....</b>	<b>19</b>
VWoA's Obligations.....	19
New Authorized Automobile Inventory.....	20
New Genuine Parts Inventory.....	20
Tools and Equipment.....	20
Authorized Signs.....	20
Terms of Sale.....	21
Pending Orders and Dealer's Obligations.....	21
Removal of Authorized Trademarks.....	21
Orders and Files.....	21
Customer Lists.....	22
Literature.....	22
Direct Sales by Dealer.....	22
Specific Performance.....	22

**ARTICLE 16**

<b>DEFINITIONS .....</b>	<b>22</b>
Authorized Automobiles.....	22
Authorized Products.....	22
Authorized Representative.....	23
Authorized Signs.....	23
Authorized Trademarks.....	23
Dealer's Area.....	23
Dealer's Executives.....	23
Dealer's Operations.....	23
Dealer's Owners.....	23
Dealer's Premises.....	23
Genuine Parts.....	24
Manufacturer.....	24
Net Working Capital, Owner's Equity and Wholesale Credit.....	24
Operating Plan.....	24
Operating Standards.....	24

**STANDARD PROVISIONS**

---

Owner’s Documents..... 24  
Recommendations..... 24  
VWoA..... 24  
VWoA’s Warranties..... 25

---

**ARTICLE 17**

**GENERAL PROVISIONS ..... 25**

Dealer Not an Agent..... 25  
Authority to Sign..... 25  
Variations: Modifications; Amendments..... 25  
Entire Agreement..... 25  
Release of Claims under Prior Agreement..... 25  
Agreement Non-transferable..... 25  
Defense and Indemnification..... 26  
Notices..... 26  
Waiver..... 26  
Titles..... 26



## **STANDARD PROVISIONS**

---

### **ARTICLE 1**

#### **BASIC OBLIGATIONS OF VWoA**

##### **Supply of Authorized Products**

- (1) VWoA will sell and deliver Authorized Products to Dealer in accordance with this Agreement.

##### **Assistance**

- (2) VWoA will actively assist Dealer in all aspects of Dealer's Operations through such means as VWoA considers appropriate, including:
  - (a) Annual reviews of Dealer's compliance with this Agreement, the Operating Standards;
  - (b) Recommendations; and
  - (c) Schools, special training and meetings for Dealer's personnel.

##### **Compliance with Ethical Standards**

- (3) In the conduct of its business, VWoA will:
    - (a) Safeguard and promote the reputation of Authorized Products and the Manufacturer;
    - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
    - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.
- 

### **ARTICLE 2**

#### **BASIC OBLIGATIONS OF DEALER**

##### **Sales, Service and Parts Supply**

- (1) Dealer assumes the responsibility in Dealer's Area for the promotion and sale of Authorized Products and for the supply of Genuine Parts and customer service for Authorized Products. This Agreement does not give Dealer any exclusive right to sell or service Authorized Products in any area or territory.

## **STANDARD PROVISIONS**

---

### **Compliance with Ethical Standards**

- (2) In the conduct of its business, Dealer will:
  - (a) Safeguard and promote the reputation of Authorized Products, the Manufacturer and VWoA;
  - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
  - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.

### **Operating Standards and Operating Plan**

- (3) The Operating Standards and Operating Plan are part of this Agreement and are incorporated herein by this reference.

### **Disclaimer of Further Liability by VWoA**

- (4) Except as expressly provided in this Agreement, VWoA is not liable for any expenditure made or liability incurred by Dealer in connection with Dealer's performance of its obligations under this Agreement.
- 

## **ARTICLE 3**

### **GENERAL MANAGEMENT AND FACILITY REQUIREMENTS**

#### **Dealer's General Management**

- (1) In the conduct of its business, Dealer will have the following minimum staff:
  - (a) A qualified representative whose full-time professional efforts are devoted to the conduct of Dealer's Operations and who is authorized to make all operational decisions on behalf of the Dealer (provided, that such authorized representative may be one of Dealer's Owners); and
  - (b) Such additional department managers and other employees as set forth in the Operating Standards and the Operating Plan.

#### **Dealer's Premises**

- (2) Dealer's Premises, in sales, service and parts, will conform to the requirements of this Agreement, the Operating Standards, the Operating Plan and such other reasonable standards as VWoA may prescribe from time to time, after review with Dealer.
  - (3) Unless otherwise agreed by VWoA in writing, Dealer will operate Dealer's Premises during the customary business hours of the trade in Dealer's Area.
-

## **STANDARD PROVISIONS**

---

### **ARTICLE 4**

#### **IDENTIFICATION; ADVERTISING**

##### **Use of Authorized Trademarks**

- (1) VWoA will supply Dealer, from time to time, with trademark standards to assist Dealer in the proper usage of Authorized Trademarks. Dealer will use Authorized Trademarks only in connection with the promotion and sale of new Authorized Products and customer service for Authorized Products pursuant to this Agreement, and only in the manner and for the purposes VWoA specifies. Dealer will not use any Authorized Trademark as part of its corporate or business name without the prior written consent of VWoA. Dealer also may use Authorized Trademarks in connection with the sale of used automobiles if Dealer complies fully with VWoA's requirements relating to used car sales under the Authorized Trademarks. If Dealer does not comply fully with these requirements, Dealer may not use any Authorized Trademarks in connection with its used car sales, except that Dealer may use the word "Volkswagen" to describe Authorized Automobiles, if this word appears in characters and colors different from those usually employed by the Manufacturer, VWoA and authorized dealers of VWoA. This Agreement does not grant Dealer any license or permission to use Authorized Trademarks except as mentioned herein, and Dealer has no right to grant any such permission or interest.

##### **Signs**

- (2) Dealer will display conspicuously at Dealer's Premises such Authorized Signs at such locations as VWoA reasonably may require. Dealer will use its best efforts to obtain all governmental approvals necessary for such display. If Dealer transfers any of Dealer's Premises to another location, Dealer immediately will remove all Authorized Signs and other references to Authorized Products displayed at or around the prior location.

##### **Stationery**

- (3) All stationery and business forms used in Dealer's Operations will be prepared in accordance with Recommendations. Dealer's use of Authorized Trademarks on stationery and business forms will be in accordance with trademark standards supplied by VWoA.

##### **Advertising**

- (4) Dealer will advertise Authorized Products and customer service for Authorized Products only in accordance with reasonable guidelines and policies established by VWoA. Dealer will refrain from all false, deceptive, misleading or unlawful advertising. Dealer's advertising will include, among other things, a listing in a principal local classified telephone directory in Dealer's Area. Authorized Trademarks will be used for identification in all product and customer service advertising, in accordance with the provisions of this Agreement. VWoA will provide or sell to Dealer sufficient quantities of all legally required brochures, as well as all current sales, service and parts literature and promotional materials, and Dealer shall prominently display them and make them readily available.
-

## **STANDARD PROVISIONS**

---

### **ARTICLE 5**

#### **SALES**

##### **Sales Promotion**

- (1) Dealer will use its best efforts to promote the sale of Authorized Automobiles in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting, and follow-up programs; and through such means and at such levels as may be indicated from time to time by the Operating Standards, Operating Plan and Recommendations.

##### **Sales Performance**

- (2) Dealer will achieve the best sales performance possible in Dealer's Area for each model and type of Authorized Automobile. The measurement for Dealer's yearly sales performance will be the objective established in the applicable annual Operating Plan.

##### **Sales Outside Area**

- (3) Subject to Dealer's performance of its obligations under Article 5(2), VWoA does not restrict Dealer's sale of Authorized Products within the 50 United States. VWoA hereby informs Dealer, however, that VWoA has no authority to sell any products for distribution outside the United States, and it is VWoA's policy not to do so. Dealer acknowledges its understanding that this is intended to preserve the integrity of the orderly worldwide distribution network for the products supplied to VWoA, and to maximize customer satisfaction by ensuring that Authorized Products meet the certification and operational standards to which they were designed. Dealer therefore is authorized to sell new Authorized Products only in the 50 United States, and is not authorized to, and agrees it will not, sell any new Authorized Product for sale or use elsewhere.

##### **Defective or Damaged Authorized Products**

- (4) If any Authorized Product sold by VWoA to Dealer should become defective or damaged prior to its delivery by Dealer to a customer, Dealer agrees to repair such defect or damage so that such Authorized Product is placed in first-class salable condition prior to such delivery. Dealer immediately will notify VWoA of any substantial defects or damage and will follow such procedures for making damage claims as VWoA may establish from time to time. VWoA shall have the option to repurchase any Authorized Products with substantial defects or damage at the price at which they were originally sold by VWoA, less any prior refunds or allowances made by VWoA and less any insurance proceeds received by Dealer in respect of such defect or damage. VWoA will make an equitable adjustment with respect to damage which Dealer can demonstrate occurred prior to the time of delivery to Dealer. VWoA will disclose to Dealer as may be required any damage which VWoA repaired before delivering an Authorized Automobile to Dealer. Dealer will properly disclose such repair prior to delivering such Authorized Automobile to a customer, and will hold VWoA harmless from any claims that required disclosure was not made.

## **STANDARD PROVISIONS**

---

### **Changes by Dealer to Authorized Products**

- (5) VVoA may request Dealer to make changes, or not to make changes, to Authorized Products, and Dealer agrees to comply promptly with such requests. Dealer also agrees to take such steps as VVoA may direct it to take to comply with any law or regulation pertaining to safety, emissions, noise, fuel economy or vehicle labeling. VVoA will reimburse Dealer at the then-current rate of reimbursement specified by VVoA for Dealer for Genuine Parts and for labor which may be used by Dealer in making such required changes on Authorized Products. Parts and other materials necessary to make such changes may be shipped to Dealer without Dealer's authorization and Dealer will accept them. Dealer will receive credit for parts so shipped which prove unnecessary, provided they are returned or disposed of in accordance with VVoA's instructions. If the laws of the state in which Dealer is located or a vehicle is to be registered require motor vehicles to carry equipment not installed or supplied as standard equipment by the Manufacturer or VVoA, upon VVoA's request Dealer will, prior to selling any Authorized Automobiles on which such installation is required, properly install at its own or its customers' expense equipment conforming to such laws and to VVoA's standards. Dealer agrees to indemnify the Manufacturer and VVoA and hold them harmless against and from any and all liabilities that may arise out of Dealer's failure or alleged failure to comply with any obligation assumed by Dealer in this paragraph.

### **Product Changes by Dealer Neither Requested by VVoA nor Required by Law**

- (6) If Dealer installs on a new Authorized Automobile any equipment, accessory or part other than a Genuine Part; sells any new Authorized Automobile which has been modified; or sells in conjunction with a new Authorized Automobile a service contract not offered or specifically endorsed in writing by VVoA, then Dealer will advise the customer of the identity of the warrantor of such modification, equipment, accessory or part, or, in the case of a service contract, of the identity of the provider of its coverage. Dealer will indemnify VVoA against claims that may be asserted against VVoA in any action by reason of such modification, equipment, accessory, part or service contract. **ANY UNAUTHORIZED MODIFICATION TO AUTHORIZED PRODUCTS BY DEALER WHICH ADVERSELY AFFECTS THE SAFETY OR EMISSIONS OF AN AUTHORIZED AUTOMOBILE WILL BE A VIOLATION OF THIS AGREEMENT AND CAUSE FOR TERMINATION PURSUANT TO ARTICLE 14(2).**

### **Used Car Operations**

- (7) Dealer will use its best efforts to acquire, promote, and sell at retail used Authorized Automobiles and other used automobiles. Dealer's used car operations will conform to the requirements of the Operating Standards, Operating Plan, Recommendations and such other reasonable standards as VVoA may prescribe, after review with Dealer.

---

## **ARTICLE 6**

### **PARTS**

#### **Parts Promotion**

- (1) Dealer will use its best efforts to promote the sale of Genuine Parts in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting and follow-up programs; and through such means as may be indicated from time to time by Recommendations.

## STANDARD PROVISIONS

---

### Parts Department

- (2) Dealer's parts department will conform to the requirements of the Operating Standards, the Operating Plan and such other reasonable standards as VWoA may prescribe, after review with Dealer.

### Sale of Non-genuine Parts

- (3) Dealer will not sell any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of Authorized Automobiles. Dealer will not represent as new Genuine Parts any parts which are not new Genuine Parts. If Dealer sells a part or accessory which is not a Genuine Part, Dealer will advise the customer of the identity of the warrantor of such part or accessory.

### Parts Inventory

- (4) Dealer will maintain an inventory of Genuine Parts which is sufficient to perform reasonably anticipated warranty service and wholesale trade requirements in Dealer's Area for Genuine Parts. VWoA will make Recommendations for Dealer's inventory of Genuine Parts based on particular conditions in Dealer's Area, and Dealer will give due consideration to such Recommendations.
- 

## ARTICLE 7

### SERVICE

#### Quality and Promotion of Service

- (1) Dealer will provide the best possible customer service for all owners of Authorized Automobiles and automobiles of the same make formerly sold by VWoA, and will use its best efforts to promote its customer service. Dealer's service facilities, equipment, and personnel will conform to the requirements of the Operating Standards, Operating Plan and such other reasonable standards as VWoA may prescribe, after review with Dealer.

#### Tools and Equipment

- (2) Special tools and general workshop equipment meeting VWoA's standards shall be available at Dealer's Premises in working condition. VWoA's minimum standards shall be found in the Operating Standards and the Operating Plan, which will be updated from time to time.

#### Use of Non-genuine Parts

- (3) Dealer will not use in the repair or servicing of Authorized Automobiles any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of such Authorized Automobiles. **DEALER WILL USE ONLY GENUINE PARTS IN PERFORMING WARRANTY SERVICE ON AUTHORIZED AUTOMOBILES. DEALER WILL NOT REPRESENT AS NEW GENUINE PARTS ANY PARTS USED BY IT IN THE REPAIR OR SERVICING OF AUTHORIZED AUTOMOBILES WHICH ARE NOT NEW GENUINE PARTS.**

## **STANDARD PROVISIONS**

---

### **Owner's Documents**

- (4) Upon delivering a new Authorized Automobile to a customer, Dealer will provide the Owner's Documents supplied by VWoA for such Authorized Automobile, properly completed by Dealer. Dealer will take all steps required prior to delivery of the Authorized Automobile, and, in particular, will perform properly the pre-delivery services specified by VWoA.

### **Maintenance and Other Services Without Customer Charge**

- (5) In accordance with bulletins issued from time to time by VWoA and VWoA's Warranties, certain maintenance services and other repairs following delivery of a new Authorized Automobile may be free of charge to the customer. Upon presentation of an appropriate Owner's Document, Dealer will perform properly the services required, whether or not the Authorized Automobile to be serviced was sold by Dealer. Upon the submission of appropriate claims, VWoA will reimburse Dealer for performing such services at the then-current rate of reimbursement specified by VWoA for Dealer. VWoA will establish procedures for submitting and processing such claims and transmitting reimbursements to Dealer. Dealer agrees to comply with these procedures.

### **Repeated Repairs**

- (6) Dealer will notify VWoA in writing or by electronic mail of repairs to Authorized Automobiles pursuant to VWoA's Warranties under each of the following circumstances:
  - (a) The Authorized Automobile has been brought to Dealer a specified number of times for the same complaint; or
  - (b) The Authorized Automobile has been in Dealer's custody for all repairs pursuant to VWoA's Warranties a specified number of days.

Such notification shall be made at the times and by the means VWoA may have instructed in any then-current dealer warranty manual issued by VWoA.

---

## **ARTICLE 8**

### **DEALER'S PURCHASES AND INVENTORIES**

#### **Purchase Prices**

- (1) VWoA will sell Authorized Products to Dealer at prices and upon terms established by VWoA from time to time. If VWoA increases its established prices, Dealer may cancel all orders for Authorized Products affected by the increase which are unfilled at the time Dealer receives notice of the increase, by giving VWoA written notice of cancellation within ten days from the time Dealer receives notice of the price increase.

## **STANDARD PROVISIONS**

---

### **Orders and Acceptance**

- (2) Dealer will transmit orders for Authorized Products to VWoA electronically, at the times and for the periods, that VWoA reasonably requires. With each order, Dealer represents that it is solvent. VWoA may accept orders in whole or in part. Except as otherwise expressly provided in Article 8(1), all orders of Dealer will be binding upon it until they are rejected in writing by VWoA; however, in the event of a partial acceptance by VWoA, Dealer will not be bound by the portion of the order not accepted.

### **Inventories**

- (3) Dealer will maintain in inventory at all times the assortment and quantity of Authorized Products required by the Operating Standards, Operating Plan or Recommendations.

### **Product Allocation**

- (4) Dealer recognizes that certain Authorized Products may not be available in sufficient supply from time to time because of factors such as product importation, consumer demand, component shortages, manufacturing constraints, governmental regulations, or other causes. VWoA will endeavor to make a fair and equitable allocation and distribution of the Authorized Products available to it.

### **Taxes**

- (5) Dealer is responsible for any and all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges imposed, levied, or based upon the sale of Authorized Products by VWoA to Dealer. Dealer represents and warrants, as of the date of the purchase of each Authorized Product, that all Authorized Products purchased from VWoA are purchased by Dealer for resale in the ordinary course of Dealer's business and that Dealer has complied with all laws relating to the collection and payment of all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges applicable to the purchase of such products and will furnish evidence thereof upon request. If any Authorized Products are put to taxable use by Dealer, or are purchased by Dealer for purposes other than resale in the ordinary course of Dealer's business, Dealer will make timely return and payment to the appropriate taxing authorities of all applicable taxes and other governmental charges imposed, levied, or based upon the sale of such Authorized Products by VWoA to Dealer and will hold VWoA harmless with respect thereto.

### **Payments to Dealer or Dealer's Personnel**

- (6) From time to time, VWoA may conduct incentive programs which involve payments to Dealer or to Dealer's personnel. Dealer acknowledges that regardless of the nature of such programs or payments, Dealer's personnel are not employees, contractors or agents of VWoA. All matters relating to the employment or retention of Dealer's personnel are solely Dealer's responsibility. In the case of payments by VWoA to Dealer, Dealer alone will be responsible for the payment of any and all applicable taxes. In the case of payments to Dealer's personnel, VWoA will make appropriate information or other returns to appropriate taxing authorities. In the event Dealer does not want VWoA to make direct payments to Dealer's personnel, Dealer will notify VWoA to that effect in writing. After receiving such written notice, VWoA will pay directly to Dealer any subsequent payments coming due Dealer's personnel. Dealer represents and warrants that it will pass such payments directly through to Dealer's personnel as intended; that it will make any necessary returns to any taxing authority; and that it will hold VWoA harmless from any claims whatsoever that such payments were not received by the intended recipients or that appropriate withholdings were not made. In the event it is determined by any taxing authority that VWoA should not have made payments to Dealer's personnel or that VWoA should have collected taxes in respect of such payments, then VWoA will be responsible for such taxes.

## STANDARD PROVISIONS

---

### Payment by Dealer

- (7) Dealer will pay for Authorized Products in the manner, at the time, and upon the conditions specified in the terms of payment established from time to time by VWoA. Delivery of instruments of payment other than cash will not constitute payment until VWoA has collected the full amount in cash. Dealer will pay all collection charges, including reasonable attorney's fees, and costs of exchange, if any, incurred in connection with its payments.

### Passing of Title; Security Interest

- (8) Title to Authorized Products will remain with VWoA until VWoA has collected their full purchase price in cash. Dealer will execute and deliver, and VWoA is authorized to execute and deliver on behalf of Dealer or, to the extent permitted by law, to file without the signature of Dealer, all financing statements and other instruments which VWoA may deem necessary to evidence its ownership of such Authorized Products. Dealer hereby grants VWoA a purchase money security interest in all Authorized Products for which VWoA has not collected in full, authorizes VWoA to take such steps as VWoA deems necessary to perfect such security interests, and agrees to cooperate fully with VWoA in connection therewith. VWoA may take possession at any time of Authorized Products to which it has title.

### Passing of Risks

- (9) Authorized Products will be at Dealer's risk and peril from the time of their delivery to Dealer or Dealer's agent. It will be up to Dealer to insure such risks for its benefit and at its expense.

### Responsibility for Defects and Damage

- (10) VWoA assumes responsibility for the quality and condition of Authorized Products, to the extent of (a) defects caused by its own negligence and (b) damage caused or repaired prior to delivery of the Authorized Products to Dealer or Dealer's agent. VWoA will make any required disclosure thereof to Dealer. If VWoA has insured against such defects in or damage to Authorized Products, VWoA's liability to Dealer for such damage will be limited to the amount actually paid by the insurance carrier to VWoA by reason of such defect of damage, together with any deductible amount applicable to such claim. Dealer may decline to accept any Authorized Products delivered to Dealer in damaged condition or with respect to which VWoA has notified Dealer that VWoA has repaired damage; however, should Dealer accept such Authorized Product Dealer will, subject to the provisions of Article 5(5), repair all such defects and damage fully as required by VWoA before any defective or damaged Authorized Product is delivered to a customer. Dealer will make any required disclosure to Dealer's customers of damage or repairs, and will hold VWoA harmless with respect thereto. VWoA will notify Dealer promptly of the amount thereof, or any other amount due from VWoA pursuant to this paragraph, following Dealer's submission of such proof of repair as VWoA may require.

### Claims for Incomplete Delivery

- (11) Dealer will make all claims for incomplete delivery of Authorized Products (including the delivery of Authorized Products with damage) in writing not later than three business days after Dealer's receipt of shipment; **provided, however**, that Dealer will make claims as to Genuine Parts within the period specified in policies established by VWoA from time to time; and **provided, further**, that Dealer will note claims for visible damage to Authorized Automobiles on the delivery receipt.

## **STANDARD PROVISIONS**

---

### **Changes of Specifications**

- (12) VWoA will deliver Authorized Products to Dealer in accordance with specifications applicable at the time of their manufacture. In the event of any change or modification with respect to any Authorized Products, Dealer will not be entitled to have such change or modification made to any Authorized Products manufactured prior to the introduction of such change or modification. VWoA expressly reserves, and Dealer acknowledges, the right to make such changes and modifications, and Dealer's only right in such event shall be the cancellation of any orders for Authorized Products affected by the change or modification and not yet accepted by VWoA.

### **Failure of or Delay in Delivery by VWoA**

- (13) VWoA will not be liable to Dealer for failure of or delay in delivery under orders of Dealer accepted by VWoA, other than failure or delay resulting from willful misconduct or gross negligence of VWoA.

### **Return or Diversion on Dealer's Failure to Accept**

- (14) If Dealer fails or refuses for any reason to accept delivery of any Authorized Products ordered by Dealer (except as permitted under Article 8(11)), Dealer will be liable to VWoA for all expenses incurred as a result of such failure or refusal, and will store such Authorized Products at no charge to VWoA until VWoA can arrange for their removal. Dealer's liability pursuant to this paragraph will be in addition to, and not in lieu of, any other liabilities which may arise from Dealer's failure or refusal to accept delivery.
- 

## **ARTICLE 9**

### **WARRANTY TO CUSTOMERS**

#### **VWoA's Warranties**

- (1) VWoA warrants each new Authorized Product as set forth in VWoA's Warranties.

#### **Incorporation of VWoA's Warranties in Dealer's Sales**

- (2) Dealer will make all sales of Authorized Automobiles and Genuine Parts in such a way that its customers acquire all rights in accordance with VWoA's Warranties and, to the extent permitted by law, no other express or implied warranties. Dealer will make the text of VWoA's Warranties part of its contracts for the sale of Authorized Products and will display the text of the warranties of all products it sells in customer contact areas where Authorized Products are offered.

#### **Warranty Procedures**

- (3) Dealer agrees to comply with the provisions of the various dealer warranty manuals which VWoA may issue from time to time, and will follow the procedures established by VWoA for processing warranty claims and returning and disposing of defective Genuine Parts. Dealer will also comply with all requests of VWoA for the performance of services pursuant to warranty claims and will maintain detailed records of time and parts consumption and any other records used as the basis for submitting warranty claims. Dealer will submit warranty claims to VWoA electronically, and in accordance with procedures established by VWoA. Upon Dealer's compliance with such requests and maintenance of such records, VWoA will reimburse Dealer within a reasonable time for warranty claims at the then-current rate of reimbursement specified

## **STANDARD PROVISIONS**

---

by VWoA for Dealer. Strict adherence to the procedures and means established for processing warranty claims is necessary for VWoA to process such claims fairly and expeditiously. VWoA will be under no obligation with respect to warranty claims not submitted electronically and not made strictly in accordance with such procedures.

---

### **ARTICLE 10**

#### **DEALER'S RECORD KEEPING AND REPORTS; INSPECTION OF DEALER'S OPERATIONS**

##### **Dealer's Forms, Business Machines, Office Equipment and Bookkeeping**

- (1) Dealer will use accounting, sales, bookkeeping and service workshop forms; business machines; data processing and transmission equipment; and other office equipment which meets specifications, and which enables Dealer and VWoA to communicate electronically for all purposes and which otherwise provides information and functions in the manner prescribed by VWoA and its affiliates in the Operating Standards, the Operating Plan and by other means. VWoA will advise Dealer, or ensure that suppliers to VWoA advise Dealer, periodically of the hardware and software requirements, communications protocols, and other specifications which Dealer's data processing and transmission equipment must meet in order to satisfy the requirements of this paragraph, and Dealer will timely adhere to such requirements, protocols and specifications. Dealer will keep accurate and current records in accordance with VWoA's uniform accounting system and with accounting practices and procedures reasonably satisfactory to VWoA, in order to enable VWoA to develop comparative data and to furnish Dealer business management assistance.

##### **Financial Statements to be Supplied by Dealer**

- (2) Dealer will transmit to VWoA (a) on or before the tenth day of each calendar month, in such form and by such methods as VWoA reasonably may require, a financial and operating statement reflecting the consolidated operations of Dealer for the preceding month and from the beginning of the calendar year to the end of the preceding month and (b) within three and one-half months after the close of Dealer's fiscal or calendar year, a consolidated balance sheet and profit and loss statement of Dealer, which documents shall be certified by a certified public accountant if so requested by VWoA at least 30 days prior to the close of Dealer's fiscal or calendar year. **DEALER'S FAILURE TO PROVIDE FINANCIAL AND OPERATING STATEMENTS IN THE FORMAT AND BY THE METHOD REQUIRED BY VWoA MAY RESULT IN THE REVOCATION OF DEALER'S OPEN PARTS AND ACCESSORIES ACCOUNT.**

##### **Reports to be Supplied by Dealer**

- (3) Dealer will furnish to VWoA, on such forms and by such methods as VWoA reasonably may require, accurate timely reports of dealer's sales and transfers of new Authorized Automobiles. Dealer also will furnish to VWoA, on a timely and accurate basis, such other reports and financial statements as VWoA reasonably may require.

## **STANDARD PROVISIONS**

---

### **Inspection of Dealer's Operations and Records**

- (4) Until the expiration or termination of this Agreement, and thereafter until consummation of all transactions referred to in Article 15, VWoA, through its employees and other designees, at all reasonable times during regular business hours, may inspect Dealer's Operations, Dealer's Premises and the methods, records and accounts of Dealer relating to Dealer's Operations.
- 

## **ARTICLE 11**

### **DEALER PERFORMANCE REVIEW**

#### **Evaluation and Assistance**

- (1) Each year, VWoA will prepare objectives for Dealer and will use them as a basis for evaluating Dealer's performance of its obligations in each of the areas described in this Article 11 and in the Operating Standards and the Operating Plan. VWoA may evaluate Dealer's performance during the year through periodic reviews. VWoA's evaluations of Dealer shall take place at least annually. VWoA will review its evaluations with Dealer, so that Dealer may take prompt action, if necessary, to improve its performance to such levels as VWoA reasonably may require. Any written comments received from Dealer on VWoA's evaluation of Dealer will become a part of such evaluation.

#### **Evaluation of Dealer's Vehicle Sales, Service and Parts Performance**

- (2) VWoA will evaluate the effectiveness of Dealer's vehicle sales, service and parts performance in accordance with factors and measures set forth in the Operating Standards, the Operating Plan and Recommendations.

#### **Evaluation of Dealer's Premises**

- (3) VWoA will evaluate Dealer's performance of its responsibilities pertaining to Dealer's Premises, analyzing both separately and collectively Dealer's sales facilities, service facilities, parts facilities, administrative offices, storage, parking and signage. In making such evaluation, VWoA will consider the factors set forth in the Operating Standards, the Operating Plan and Recommendations.

#### **Evaluation of Dealer's Customer Satisfaction**

- (4) VWoA will evaluate Dealer's performance of its responsibilities pertaining to customer satisfaction, analyzing both separately and collectively the satisfaction of customers with Dealer's sales activities and service activities. In making such evaluation, VWoA will utilize a uniform measure of customer satisfaction, which will be disclosed to Dealer, and will consider the factors set forth in the Operating Standards, the Operating Plan and Recommendations.

#### **Dealer's Evaluation of VWoA**

- (5) VWoA will implement measures by which Dealer may periodically evaluate the performance of VWoA, and in particular the performance of those VWoA employees who are responsible for administering VWoA's relationship with Dealer.
-

## STANDARD PROVISIONS

---

### ARTICLE 12

#### SUCCEEDING DEALERS

##### Procedure

- (1) If Dealer chooses to transfer its principal assets or change owners, VWoA has the right to approve the proposed transferees, the new owners and executives and, if different from Dealer's, their premises. VWoA will consider in good faith any such proposal Dealer may submit to it during the term of this Agreement. In determining whether the proposal is acceptable to it, VWoA will take into account factors such as the personal, business and financial qualifications of the proposed new owners and executives as well as the proposal's effect on competition. In such evaluation, VWoA may consult with the proposed new owners and executives on any aspect of the transaction of their proposed dealership operations. Notwithstanding anything set forth in this paragraph to the contrary, VWoA shall not be obligated to consider such proposal if it previously had notified Dealer in writing that it would not appoint a succeeding dealer in Dealer's Area; **provided, however**, that such notice shall be given only if there is good cause for discontinuing representation of Authorized Automobiles in Dealer's Area.

##### Approvals

- (2) VWoA will notify Dealer in writing of the approval or disapproval of a proposal by Dealer for transfer of principal assets or change of owners within 45 business days, or the exercise by VWoA of its right of first refusal under Article 12(3) within 30 calendar days, after Dealer has furnished to VWoA all applications and information reasonably requested by VWoA to evaluate such proposal. If VWoA approves Dealer's proposal, VWoA shall be obligated to grant the proposed transferees only a Dealer Agreement in substantially the same form as this Agreement. If VWoA had previously notified Dealer in writing that VWoA would not appoint a succeeding dealer in Dealer's Premises, then VWoA's approval of Dealer's proposal may be conditioned on the proposed transferees agreeing to provide different facilities for their dealership operations. Upon the consummation of Dealer's approved proposal, Dealer will deliver to VWoA a voluntary termination of this Agreement, a general release in favor of VWoA and payment in full for any net balance then owing from Dealer to VWoA.

##### Right of First Refusal

- (3) Whenever Dealer proposes to transfer its principal assets or change owners of a majority interest, VWoA shall have the right to purchase such assets or ownership interest, as follows:
  - (a) VWoA may elect to exercise its purchase right by written notice to Dealer within 30 calendar days after Dealer has furnished to VWoA all applications and information reasonably requested by VWoA to evaluate Dealer's proposal.
  - (b) If Dealer's proposed sale or transfer was to a successor approved in advance by VWoA, to any of Dealer's Owners, to Dealer's employees as a group or to Dealer's spouse, children or heirs, then Dealer may withdraw its proposal within 30 calendar days following receipt of VWoA's notice of election of its purchase right.

## STANDARD PROVISIONS

---

- (c) VWoA's right under this Article 12(3) shall be a right of first refusal, permitting VWoA to:
  - (i) assume the proposed transferee's rights and obligations under its agreement with Dealer; and
  - (ii) cancel this Agreement and all rights granted Dealer hereunder.

Except to the extent specifically inconsistent with the terms of this Agreement, the price and all other terms of VWoA's purchase shall be as set forth in any bona fide written purchase and sale agreement between Dealer and its proposed transferee and in any related documents.

- (d) Dealer shall furnish to VWoA copies of all applicable liens, mortgages, encumbrances, leases, easements, licenses or other documents affecting any of the property to be transferred, and shall assign to VWoA any permits or licenses necessary for the continued conduct of Dealer's Operations.
- (e) VWoA may assign its right of first refusal to any party it chooses, but in that event VWoA will remain primarily liable for payment of the purchase price to Dealer.
- (f) If VWoA exercises its purchase right, VWoA will reimburse Dealer's proposed transferee for reasonable documented actual expenses which such proposed transferee incurred through the date of such exercise which are directly and solely attributable to the transaction Dealer proposed.
- (g) Nothing contained in this Article 12(3) shall require VWoA to exercise its right of first refusal in any case, nor restrict any right VWoA may have to refuse to approve Dealer's proposed transfer.

### Succession

- (4) Article 14(1)(a) notwithstanding, in the event of the death of any of Dealer's Owners, VWoA will not terminate this Agreement by reason of such death if:
  - (a) The owner's interest in Dealer passes directly as specified in any Successor Addendum to this Agreement; or
  - (b) The owner's interest in Dealer passes directly to his or her surviving spouse or children, or any of them, and (i) Dealer's authorized representative remains as stated in the Statement of Ownership and Management or (ii) within 90 days after the death of such owner Dealer appoints another qualified individual as Dealer's authorized representative; **provided, however**, that in this event VWoA will evaluate Dealer's performance during the 12 months following the owner's death. After the expiration of this 12-month period and VWoA's evaluation of the performance of Dealer's management during such period, VWoA will review with Dealer the changes, if any, in the management or equity interests of Dealer required by VWoA as a condition of extending this Dealer Agreement with Dealer. Any new Dealer Agreement entered into pursuant to this paragraph will be in substantially the same form as the Dealer Agreements then currently offered by VWoA to its dealers in Authorized Automobiles generally.

## STANDARD PROVISIONS

---

### Modification of Terms of Payment

- (5) Upon receipt of an application for a replacement dealer agreement, VWoA may modify its terms of payment with respect to Dealer to the extent VWoA deems appropriate, irrespective of Dealer's credit standing or payment history.
- 

## ARTICLE 13

### DISPUTE RESOLUTION

#### General Policy

- (1) VWoA and Dealer agree as a general matter to work together to minimize disputes between them. **While understanding that certain Federal and state courts and agencies may be available to resolve any disputes, VWoA and Dealer agree that it is in their mutual best interests to attempt to resolve certain controversies first through arbitration. VWoA and Dealer therefore agree that the dispute resolution process outlined in this Article shall be used before seeking legal redress in a court of law or before an administrative agency, for all disputes arising under the following: Article 9(3) (Warranty Procedures), Article 12 (Succeeding Dealers), Article 14 (Termination), Article 15 (Rights and Liabilities Upon Termination) and payments to Dealer in connection with VWoA incentive programs.** In the event that a dispute arises in connection with any other provision of this Agreement, VWoA and Dealer may mutually agree to first submit the dispute to arbitration, in accordance with the provisions of this Article. Both VWoA and Dealer agree that the ultimate mutual goal of arbitration is to obtain a fair hearing and prompt decision of the dispute, in an efficient and cost-effective manner, and both agree to work toward that goal at all times hereunder.

#### Involuntary Non-Binding Arbitration

- (2) Upon the written request of either VWoA or Dealer, a dispute arising in connection with this Agreement may be submitted to non-binding arbitration.

#### Voluntary Binding Arbitration

- (3) As an alternative to Article 13(2) above, upon the written request of Dealer, a dispute arising in connection with this Agreement will be submitted to binding arbitration.

#### Rules of Conduct

- (4) Arbitrations will be adjudicated under the auspices and in accordance with the rules of the American Arbitration Association or another mutually acceptable arbitration service, as well as the following provisions:
  - (a) Written requests for arbitration shall set forth a clear and complete statement of the nature of the claim and its basis; the amount involved, if any; and the remedy sought.
  - (b) The place of arbitration shall be the state in which Dealer's Premises are located, or such other place as may be agreed upon by the parties.

## **STANDARD PROVISIONS**

---

- (c) Both parties shall make every reasonable attempt to agree upon one arbitrator, but if they are unable to agree each shall appoint an arbitrator and these two shall appoint a third arbitrator.
- (d) Expenses of arbitration shall be divided equally between the parties. The prevailing party shall not be entitled to reasonable attorneys fees.
- (e) The arbitrator(s) shall pass finally upon all questions, both of law and fact, and his or her (or their) findings shall be conclusive.
- (f) Pre-arbitration discovery shall be available to both parties and shall be governed by the Federal Rules of Civil Procedure. Information obtained by either party during the course of discovery shall be kept confidential, shall not be disclosed to any third party, shall not be used except in connection with the arbitration proceeding, and at the conclusion of the proceeding, shall be returned to the other party. Both Dealer and VWoA shall make their agents and employees available upon reasonable times and places for pre-trial depositions without the necessity of subpoenas or other court orders. Such discovery may be used as evidence in the arbitration proceeding to the same extent as if it were a court proceeding.

### **Time for Decision**

- (5) Unless VWoA and Dealer specifically agree to the contrary, and subject to the rules and procedures of the arbitration service chosen, the arbitration hearing shall be concluded not more than 60 days after the date of the written request to arbitrate, and the arbitration decision shall be rendered not more than 90 days after the written request to arbitrate.

### **Provisional Remedies**

- (6) Either VWoA or Dealer may, without prejudice to the above procedures, file a complaint if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action the parties will continue to participate in good faith in the procedures specified in this Article 13.

### **Tolling Statute of Limitations**

- (7) All applicable statutes of limitation and defenses based upon passage of time shall be tolled while the procedures specified in this Article 13 are pending. The parties will take such action, if any, required to effectuate such tolling.

### **Performance to Continue**

- (8) VWoA and Dealer agree to continue to perform their respective obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.
-

## **STANDARD PROVISIONS**

---

### **ARTICLE 14**

#### **TERMINATION**

##### **Immediate Termination by VWoA**

- (1) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement for cause, with immediate effect, by sending notice of termination to Dealer, if any of the following should occur:
  - (a) Death of any of Dealer's Owners or any change, whether voluntary or by operation of law, in the record or beneficial ownership of Dealer without VWoA's prior written consent; any change in Dealer's Executives without prior notice to VWoA; or the failure of Dealer's Executives to continue to manage Dealer's Operations (unless, in any of these cases, the provisions of Article 12(4) above have been satisfied);
  - (b) Dissolution or liquidation of Dealer, if a partnership or corporation;
  - (c) Insolvency of Dealer or voluntary institution by Dealer of any proceeding under the Bankruptcy Act or state insolvency law; or the involuntary institution against Dealer of any proceeding under the Bankruptcy Act or state insolvency law which is not vacated within ten days from the institution thereof; or the appointment of a receiver or other officer having similar powers for Dealer or Dealer's business who is not removed within ten days of his appointment; or any levy under attachment, execution or similar process which is not within ten days vacated or removed by payment or bonding.
  - (d) Any attempted transfer of this Agreement by Dealer, in whole or in part, without VWoA's prior written consent;
  - (e) Any change in the location of any of Dealer's Premises or the establishment of any additional premises for Dealer's Operations without VWoA's prior written consent;
  - (f) Failure of Dealer to continue to operate any of Dealer's Premises in the usual manner for a period of five consecutive business days, unless caused by an Act of God, war, riot, strike, lockout, fire, explosion or similar event;
  - (g) Dealer's failure, for a period of ten consecutive business days, to have any license necessary for the conduct of Dealer's Operations;
  - (h) Conviction of Dealer or any of Dealer's Owners or Executives of a felony or any misdemeanor involving fraud, deceit or an unfair business practice, if in VWoA's opinion such conviction may adversely affect the conduct of Dealer's business, or be harmful to the good will of the Manufacturer or VWoA or to the reputation and marketing of Authorized Products;
  - (i) Any material misrepresentation by any of Dealer's Owners or Executives as to any fact relied upon by VWoA in entering into this Agreement;
  - (j) Submission by Dealer of fraudulent or knowingly false report or statement or claim for reimbursement, refund or credit; or
  - (k) Failure or refusal of Dealer or Dealer's owners, executives, agents or employees to provide VWoA, upon request, with access to and the opportunity to inspect and copy all books, papers, instruments, certificates or other documents evidencing the record or beneficial ownership of Dealer.

## **STANDARD PROVISIONS**

---

### **Termination by VWoA on 30 Days' Notice**

- (2) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 30 days' notice if any of the following shall occur:
  - (a) Any disagreement or personal difficulties of Dealer's Owners or Executives which in VWoA's opinion may adversely affect the conduct of Dealer's business, or the presence in the management of Dealer of any person who in VWoA's opinion does not have appropriate qualifications for their position;
  - (b) Impairment of the reputation or financial standing of Dealer or any of Dealer's Owners or Executives or ascertainment by VWoA of any fact existing at or prior to the time of execution of this Agreement which tends to impair such reputation or financial standing; or
  - (c) The failure of Dealer to meet its minimum customer satisfaction requirements, including, but not necessarily limited to, measures for sales satisfaction and service satisfaction, as established by VWoA for its dealers generally, from time to time, and as set forth in then-current Operating Standards issued by VWoA to its dealers generally, within 180 days after notice by VWoA to Dealer that Dealer has not met such requirements.

### **Termination by VWoA on 90 Days' Notice**

- (3) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 90 days' notice in the event of the breach by Dealer of any obligation of Dealer pursuant to this Agreement or any other agreement between VWoA or any of its subsidiaries or affiliates and Dealer, other than those enumerated in Articles 14(1) or 14(2) above.

### **Discussions with Dealer**

- (4) Upon learning that any event or situation which would give VWoA grounds to terminate this Agreement has occurred, VWoA will endeavor to discuss such event or situation with Dealer. Thereafter, VWoA may give Dealer written notice of termination.

### **Modification of Terms of Payment**

- (5) During the period a situation specified in Article 14(1), 14(2) or 14(3) continues to exist, VWoA may modify its terms of payment with respect to Dealer to such extent as VWoA may consider appropriate, irrespective of Dealer's credit standing or payment record.

### **No Waiver by Failure to Terminate**

- (6) Should VWoA be entitled to terminate this Agreement but fail to do so, such failure shall not be considered a waiver of VWoA's right to terminate this Agreement unless the situation entitling VWoA to terminate this Agreement has ceased to exist and (a) six months have elapsed from the time VWoA obtained knowledge of such situation or (b) VWoA has entered into a subsequent written agreement with Dealer superseding this Agreement. Nevertheless, any situation entitling VWoA to terminate this Agreement may be considered at any subsequent time together with any subsequent events in determining VWoA's right to terminate this Agreement.

## **STANDARD PROVISIONS**

---

### **Termination by Dealer**

- (7) Dealer has the right to terminate this Agreement without cause by VWoA giving 60 days' written notice of such termination. Upon receipt of Dealer's notice of termination, VWoA may, at VWoA's option, waive in writing the 60 day notice period. In the event Dealer, in connection with its termination of this Agreement, also wishes to terminate any other agreement between Dealer and VWoA or any of VWoA's subsidiaries or affiliates, Dealer must do so separately and subject to the provisions of Article 14(10) below.

### **Continuation of Business Relations after Termination**

- (8) Any business relations between VWoA and Dealer after the termination of this Agreement without a written extension or renewal or a new written dealer agreement will not operate as an extension or renewal of this Agreement or as a new dealer agreement. Nevertheless, all such business relations, so long as they are continued, will be governed by terms identical with the provisions of this Agreement.

### **Superseding Agreements**

- (9) If any superseding form of Dealer Agreement is offered by VWoA to its authorized dealers generally at any time, VWoA may, by written notice to Dealer, terminate this Agreement and replace it with a Dealer Agreement in the superseding form.

### **Agreements with Affiliates of VWoA**

- (10) The termination of this Agreement by either party does not necessarily waive or terminate any other agreement between Dealer and VWoA or any of its subsidiaries or affiliates. Such other agreements may be terminated only in accordance with their terms, and the parties' respective obligations under any such other agreements will continue in accordance with their terms until terminated.

---

## **ARTICLE 15**

### **RIGHTS AND LIABILITIES UPON TERMINATION**

#### **VWoA's Obligations**

- (1) Within 90 days after the termination of this Agreement pursuant to Article 14, VWoA will purchase from Dealer and (subject to the provisions of Article 15(4) below) Dealer will sell to VWoA all the following:

## **STANDARD PROVISIONS**

---

### **New Authorized Automobile Inventory**

- (a) All new, undamaged current model year Authorized Automobiles (introduced in the United States no earlier than 12 months prior to the date of such expiration or termination and not superseded by a later model year) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition, provided they (i) have 200 or fewer actual miles; (ii) were sold by VWoA and purchased by Dealer from VWoA (or in the ordinary course of business from other dealers of Authorized Automobiles appointed by VWoA) and (iii) have never been sold by Dealer. The price for such Authorized Automobiles will be the price at which they were originally sold by VWoA, less all prior refunds or allowances made by VWoA, if any.

### **New Genuine Parts Inventory**

- (b) All the following new, unused and undamaged articles listed in VWoA's current Genuine Parts Price List (other than articles listed as obsolete) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition and complete, provided they were purchased by Dealer from VWoA and never sold by Dealer:
  - (i) New parts and new factory remanufactured replacement parts supplied by VWoA for Authorized Automobiles;
  - (ii) accessories considered by VWoA to be suitable for installation in the current model year Authorized Automobiles specified in Article 15(1)(a); and
  - (iii) other accessories, provided that VWoA has made sales of identical articles during six of the last twelve full calendar months immediately preceding such expiration or termination.

The price for all such articles will be the price then last established by VWoA for the sale of identical articles, less a handling charge equal to ten percent of such amount and less all prior refunds or allowances made by VWoA;

### **Tools and Equipment**

- (c) All special tools and equipment for servicing Authorized Automobiles owned by Dealer on the date of expiration or termination which are in operating condition and complete, provided they were purchased by Dealer from VWoA or pursuant to written requests of VWoA. The price for such tools and equipment will be the fair market value thereof; and

### **Authorized Signs**

- (d) All Authorized Signs which Dealer displayed publicly or at Dealer's Premises. The price for such Authorized Signs will be the fair market value thereof.

## **STANDARD PROVISIONS**

---

### **Terms of Sale**

- (2) Any and all items to be sold by Dealer to VWoA pursuant to this paragraph will be delivered by Dealer to VWoA at Dealer's place of business suitably packed for transportation. For such periods of time as VWoA reasonably may determine, VWoA may enter Dealer's Premises for the purpose of taking an inventory of all or any part of Dealer's stock of Authorized Products and special tools and equipment. At the request of VWoA, Dealer will comply in all respects with the provisions of all applicable bulk sales acts or similar statutes protecting a transferee of personal property with respect to liabilities of the transferor. Promptly following performance by Dealer of all its obligations pursuant to this Article 15, the completion by VWoA of all steps required to obtain possession of such items and the delivery to VWoA of a bill of sale, documents of title and a general release of VWoA and the Manufacturer from Dealer and Dealer's Owners, all in form satisfactory to VWoA, VWoA will pay Dealer the specified prices for the said items, less all amounts owed by Dealer to VWoA, its subsidiaries or affiliates. VWoA will not be required to purchase any item from Dealer pursuant to this paragraph unless Dealer is able to convey to VWoA, within such 90-day period, title to such item free and clear of all liens, claims, encumbrances and security interests.

### **Pending Orders and Dealer's Obligations**

- (3) Upon the expiration or termination of this Agreement, all pending orders of Dealer for Authorized Products previously accepted by VWoA will be canceled and Dealer immediately will:

#### **Removal of Authorized Signs**

- (a) Remove at its own expense all Authorized Signs which it displayed publicly or at its premises;

#### **Authorized Trademarks**

- (b) Cease all usage of the Authorized Trademarks, cease to hold itself out as an authorized dealer in Authorized Automobiles, destroy all stationery and other printed material bearing any Authorized Trademark, and, if its corporate or business name contains any Authorized Trademark, take all steps to remove the same therefrom;

#### **Orders and Files**

- (c) Transfer to VWoA
- (i) all orders for sale by Dealer of Authorized Products then pending with Dealer,
  - (ii) all deposits made thereon, whether in cash or property;
  - (iii) all Dealer's warranty records for Authorized Products or complete copies of all such records and files; and
  - (iv) all Dealer's customer service files. Upon the written request of Dealer, VWoA will return such customer service files to Dealer after VWoA has made copies of such files at VWoA's expense;

## STANDARD PROVISIONS

---

### Customer Lists

- (d) Make available to VWoA in writing the names and addresses of all its service customers and prospective customers for Authorized Products; and

### Literature

- (e) Deliver to VWoA at Dealer's place of business, free of charge, all technical or service literature, advertising and other printed material relating to Authorized Products, including sales instruction manuals or promotional material, then in Dealer's possession and which were acquired by Dealer from VWoA.

None of the foregoing will result in any liability of VWoA to Dealer for damages, commissions, loss of profits or compensation for services, or in any other liability of VWoA to Dealer of any kind of nature whatsoever.

### Direct Sales by Dealer

- (4) Upon Dealer's written request, VWoA may waive Dealer's obligation to sell certain assets to VWoA and will consent to Dealer's sale of any of or all its assets to any party of Dealer's choosing; **provided, however**, that Dealer may not sell any new Authorized Automobile, Authorized Sign nor any new Genuine Parts to any person or entity other than another dealer in the same line-make authorized by VWoA.

### Specific Performance

- (5) Since Dealer's obligations under this Article 15 are of such a nature that it is impossible to measure in money the damages which will be suffered by VWoA if Dealer should fail to perform any of them, Dealer agrees that, in the event of any such failure of performance on its part, VWoA will be entitled to maintain an action to compel the specific performance by Dealer of these obligations and Dealer agrees not to assert in any such action the defense that VWoA has an adequate remedy at law.

---

## ARTICLE 16

### DEFINITIONS

Throughout this Agreement various abbreviations and abbreviated phrases have been used. Their meanings are:

#### Authorized Automobiles

- (1) "Authorized Automobiles" means motor vehicles of the Volkswagen brand and comprising such models and types as may be supplied by VWoA during the term of this Agreement.

#### Authorized Products

- (2) "Authorized Products" means Authorized Automobiles and Genuine Parts.

## **STANDARD PROVISIONS**

---

### **Authorized Representative**

- (3) “Authorized Representative” means a qualified representative of Dealer whose full-time professional efforts are devoted to the conduct of Dealer’s Operations and who is authorized on behalf of Dealer to execute documents, make all operational decisions with respect to Dealer’s Operations, and on whose authority VWoA is entitled to rely.

### **Authorized Signs**

- (4) “Authorized Signs” means displays of any Authorized Trademark, in such material, type, presentation and colors as VWoA may prescribe from time to time.

### **Authorized Trademarks**

- (5) “Authorized Trademarks” means any trademark, service mark or trade name now or any other time hereafter used or claimed by the Manufacturer or VWoA.

### **Dealer’s Area**

- (6) “Dealer’s Area” means the area designated by VWoA in the Operating Plan for Dealer’s Operations, corresponding to U.S. census tract information.

### **Dealer’s Executives**

- (7) “Dealer’s Executives” means all the persons named in Paragraphs 5 and 6 of the Statement of Ownership and Management as officers or the Authorized Representative of Dealer, as well as any other person who succeeds to any position in Dealer referred to in such paragraphs in accordance with the provisions of this Agreement.

### **Dealer’s Operations**

- (8) “Dealer’s Operations” means all activities of Dealer relating to the promotion and sale of Authorized Products, the supply of Genuine Parts, customer service for Authorized Products and all other activities of Dealer pursuant to this Agreement.

### **Dealer’s Owners**

- (9) “Dealer’s Owners” means all the persons named in Paragraph 4 of the Statement of Ownership and Management as beneficial or record owners of Dealer, as well as any other person who acquires or succeeds to any beneficial interest or record ownership in Dealer in accordance with the provisions of this Agreement.

### **Dealer’s Premises**

- (10) “Dealer’s Premises” means all premises referred to in the Dealer Premises Addendum and used by Dealer for or in connection with Dealer’s Operations, including sales facilities, service workshops, offices, facilities for storage of Authorized Automobiles and Genuine Parts, used car sales facilities and parking facilities.

## **STANDARD PROVISIONS**

---

### **Genuine Parts**

- (11) "Genuine Parts" means new and factory rebuilt replacement parts, accessories and optional equipment for Authorized Automobiles if such parts, accessories and optional equipment are supplied by VWoA.

### **Manufacturer**

- (12) "Manufacturer" means any supplier of Authorized Products to VWoA, including as appropriate, but not limited to, Audi AG, a German corporation, and Volkswagen AG, a German corporation.

### **Net Working Capital, Owner's Equity and Wholesale Credit**

- (13) "Net Working Capital," "Owner's Equity" and "Wholesale Credit" shall have the meanings set forth in the Operating Standards, the Operating Plan and in accordance with generally accepted accounting principles.

### **Operating Plan**

- (14) "Operating Plan" means the Dealer Operating Plan then-currently established by VWoA for Dealer, determined in cooperation with Dealer and of Authorized Products, as well as any amendments thereof or additions thereto by VWoA during the term of this Agreement.

### **Operating Standards**

- (15) "Operating Standards" means the Volkswagen Dealer Operating Standards issued by VWoA to its Volkswagen dealers, including any amendments, revisions or additions, from time to time during the term of this Agreement.

### **Owner's Documents**

- (16) "Owner's Documents" means all the documents which are supplied by VWoA in respect of each Authorized Automobile and which are intended for the customer, including, but not limited to, the Owner's Manual, Warranty Booklet and Maintenance Booklet.

### **Recommendations**

- (17) "Recommendations" means written suggestions provided by VWoA to Dealer from time to time during the term of this Agreement, as well as all currently applicable written suggestions previously provided by VWoA.

### **VWoA**

- (18) "VWoA" means Volkswagen of America, Inc. a New Jersey corporation, and includes, as appropriate, all divisions of that corporation.

## **STANDARD PROVISIONS**

---

### **VWoA's Warranties**

- (19) "VWoA's Warranties" means, with respect to each Authorized Product, those express written warranties provided with such product or as set forth in the Dealer Warranty Manual for Authorized Products in effect at the time such product is first sold at retail, as well as any express written warranties which VWoA may issue with respect to any product during the course of its service life.
- 

## **ARTICLE 17**

### **GENERAL PROVISIONS**

#### **Dealer Not an Agent**

- (1) Dealer will conduct all Dealer's Operations on its own behalf and for its own account. Dealer has no power or authority to act for the Manufacturer or VWoA.

#### **Authority to Sign**

- (2) Dealer acknowledges that only an Area Executive is authorized on behalf of VWoA to execute this Agreement or to agree to any variation, modification or amendment of any of its provisions or to sign any notice of termination, and that such Agreement, variation, modification, amendment or notice of termination must be countersigned by the President, a Vice President, the Secretary, an Assistant Secretary or a Regional Team Leader of VWoA.

#### **Variations; Modifications; Amendments**

- (3) This Agreement may not be varied, modified or amended except by an express instrument in writing to that effect signed on behalf of both VWoA and Dealer.

#### **Entire Agreement**

- (4) This instrument contains the entire agreement between the parties. No representations or statements other than those expressly set forth or referred to herein were made or relied upon in entering into this Agreement.

#### **Release of Claims under Prior Agreement**

- (5) This Agreement terminates and supersedes all prior agreements with respect to Authorized Products between the parties, if any. The parties hereby waive, abandon and relinquish any and all claims of any kind and nature arising out of or in connection with any such prior agreement, except for any accounts payable by one party to the other as a result of the purchase of any Authorized Products, audit adjustments or reimbursement for any services.

#### **Agreement Non-transferable**

- (6) No part of this Agreement nor any interest in this Agreement may be transferred by Dealer without the prior written consent of VWoA.

## STANDARD PROVISIONS

---

### Defense and Indemnification

- (7) VWoA will, upon Dealer's written request:
- (a) Defend Dealer against any and all claims for breach of VWoA's Warranties, bodily injury or death, or for physical damage to or destruction of property, that, during the term of this Agreement, may be asserted against Dealer in any action solely by reason of a manufacturing defect or design deficiency in
    - (i) an Authorized Product; or
    - (ii) a product of the same line-make formerly supplied by VWoA pursuant to a former dealer agreement; and
  - (b) Hold Dealer harmless from any and all settlements made and final judgments rendered with respect to such claims;

**provided**, that in each case Dealer promptly notifies VWoA in writing of the commencement of such action against Dealer and cooperates fully in the defense of such action in such manner and to such extent as VWoA may require. However, such defense and indemnification by VWoA will not be required if any fact indicates that any negligence, error, omission, act, failure, breach, statement or representation of Dealer may have caused or contributed to the claim asserted against Dealer or if VWoA determines that such action seeks recovery for allegations other than those described in Article 17(7)(a).

### Notices

- (8) Any notices under or pursuant to the provisions of this Agreement will be directed to the respective addresses of the parties stated herein, or, if either party shall have specified another address by notice in writing to the other party, to the address thus last specified. Unless otherwise provided herein, notices shall be deemed effective if sent by certified mail with return receipt requested; by overnight service having a reliable means of confirming delivery; or by personal delivery to any of Dealer's Owners or Executives. Notices shall be deemed effective when received.

### Waivers

- (9) The waiver by either party of any breach or violation of or default under any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation thereof or default thereunder. The failure or refusal of VWoA to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any such right or remedy.

### Titles

- (10) The titles appearing in this Agreement have been inserted for convenient reference only and do not in any way affect the construction, interpretation or meaning of the text.
-



# **EXHIBIT E**

## **BUSINESS RELATIONSHIP AND SETTLEMENT AGREEMENT**

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“VWoA”) and GPB Capital Holdings, LLC (“GPB”) and its automotive subsidiaries and affiliates (GPB and its affiliates and subsidiaries may be collectively referred to herein as “GPB Group”), (VWoA and GPB may be collectively referred to herein as the “Parties”) enter into this Business Relationship Agreement (the “Agreement”) on this \_\_\_\_ day of \_\_\_\_\_, 2017 (the “Effective Date”).

### **RECITALS**

A. WHEREAS, VWoA is a company organized and existing under the laws of the State of New Jersey, with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VWoA is the exclusive distributor of Volkswagen-brand motor vehicles, parts, and accessories (collectively, “Authorized Products”) in the United States of America.

B. WHEREAS, GPB is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 1581 Franklin Ave. Mineola, NY 11501. GPB currently maintains beneficial ownership and operational control of the Volkswagen Dealerships set forth in Exhibit A (the “Settlement Dealerships”). The Parties acknowledge that the GPB Group has or may create or structure ownership of Volkswagen dealerships through additional corporate entities which may not have been formed as of the Effective Date. Notwithstanding this fact, this Agreement and the obligations of GPB Group as set forth herein are intended to also govern the conduct of any such newly formed entities.

C. WHEREAS, VWoA currently maintains a Volkswagen Dealer Agreement (“DA”) with each of the Settlement Dealerships. The DAs are personal services agreements, and VWoA has entered into those DAs based upon the qualifications, reputation, integrity and expertise of the GPB Group, including its management team and the individual managers operating each of the Dealerships, and upon the representations, covenants and obligations set forth in those DAs.

D. WHEREAS, the GPB Group acquired an ownership interest in the Settlement Dealerships without providing prior written notice of such acquisition or obtaining VWoA’s consent. Thereafter, litigation was commenced involving VWoA, GPB and other entities that was ultimately settled. As a result, the Settlement Dealerships are the subject of negotiated settlement agreements (the “Settlement Agreements”) containing certain specified requirements and obligations of the GPB Group and other parties identified therein. Specifically, among other obligations, the GPB Group is required to in the near future divest its interest in the Settlement Dealerships or voluntarily terminate the dealer agreements with VWoA.

E. WHEREAS, the GPB Group has requested that VWoA agree to modify the Settlement Agreements so that it not have to divest of or voluntarily terminate the Settlement Dealerships and expressed a desire to continue its existing ownership and control of the Settlement Dealerships, to foster a positive relationship with VWoA, and to continue to be eligible to acquire new dealerships and be eligible for future open points.

F. WHEREAS, the GPB Group has entered into asset purchase agreements to acquire two additional Volkswagen Dealerships in Maine and New York and provided information to VWoA to review in connection with VWoA's review of the proposed transfer as VWoA has a contractual and statutory right to object to the transfer or exercise a right of first refusal. VWoA's review remains ongoing including its review of GPB performance at other dealerships and the unique proposed ownership structure of the dealerships that has led VWoA to consider rejecting the proposed transfer or exercising its right of refusal.

G. WHEREAS, the GPB Group desires that VWoA not exercise its right to reject either of the proposed transfers or exercise right of first refusal over either transfer and the GPB Group and VWoA recognize that if VWoA did so, there could be litigation challenging the exercise which would result in additional expense and risk for the Parties,

H. WHEREAS, the Parties intend and desire to enter into this Agreement for good and valuable consideration as detailed below and to establish a contractual framework that provides agreed upon parameters for continuing and future positive business relationships between the Parties.

### **AGREEMENT**

NOW, THEREFORE, in consideration for the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree hereto as follows:

1. Term. The term of this Agreement shall be from the effective date until terminated by the Parties as set forth below (the "Term").

2. GPB Group's Dealership Portfolio. GPB Group warrants and represents that Exhibit B (the "GPB Controlled Dealerships") is a list of all Volkswagen Dealerships in which it currently maintains any Ownership or Control or which it has entered into an agreement to acquire Ownership or Control. The Parties agree that Exhibit B to this Agreement shall be promptly amended and updated should GPB Group's Ownership or Control in a Volkswagen Dealership change for any reason. For the purposes of this Agreement, "Ownership or Control" shall mean any ownership stake in any Volkswagen Dealership, operational control of any Volkswagen Dealership or management of any Volkswagen Dealership, whether direct or indirect, including without limitation, through any subsidiary, affiliate company, officer, executive or other stakeholder of GPB Group.

3. GPB Group Settlement Dealerships. VWoA agrees to release the Settlement Dealerships from the obligations of the Settlement Agreements which required divestiture or voluntary termination of the DA of the Settlement Dealerships.

4. GPB Acquisitions of Volkswagen Dealerships in Maine and New York. Upon receipt of all requested documentation, VWoA agrees to consent to the proposed transfers of Volkswagen dealer that were presented to it in Saco, Maine and Watertown, New York.

5. Adherence to Ownership Policy. VWoA maintains an Ownership Policy, a current version of which is attached hereto as Exhibit C. The Parties understand and agree that VWoA may update this Ownership Policy from time to time in VWoA's discretion. After any update of the Ownership Policy, VWoA shall make GPB Group aware of any changes, and the Parties shall update and amend Exhibit C as necessary.

GPB Group shall comply with, and adhere to, the requirements of VWoA's then-current Ownership Policy. GPB Group further agrees that it shall not directly or indirectly, through affiliate, subsidiary or related entities or natural persons, acquire (or attempt to acquire) any Ownership or Control in any Volkswagen Dealership that would result in a violation of, or non-compliance with, VWoA's then-current Ownership Policy.

6. Sale of Dealerships by GPB Group. GPB Group covenants and agrees that it shall not sell or transfer, or attempt to sell or transfer, more than two of the Dealerships over which it maintains Ownership or Control to any single third-party entity. The Parties' intent is that no single entity (or collection of related entities) obtain ownership interest (of any sort) or operational control in more than two of the Volkswagen Dealerships listed on Exhibit B.

Notwithstanding any rights provided by the DAs or existing state and federal law, GPB Group agrees that it shall not enter into or present to VWoA for approval any transfer agreement, asset purchase agreement, memorandum of understanding or other buy-sell/transfer agreement that would violate the terms of this Agreement.

7. Performance, Capital, Facility, Management Standards, Divestiture and Voluntary Termination.

- A. Minimum Required Sales Performance. At all times during the term of this Agreement, GPB Group agrees that it shall cause, and be accountable for, each of the Dealerships listed in Exhibit B to maintain a minimum sales performance level of one hundred percent (100%) average sales effectiveness as measured by VWoA in its sole discretion, a performance level currently expressed as a Dealer Sales Index ("DSI") figure, on a rolling twelve-month period basis (the "Required Sales Performance"). Sales effectiveness shall be tracked by a report substantially similar to the attached Exhibit D ("DSI Report"), which shall track each Dealership's sales performance on a rolling twelve-month basis. The sales effectiveness for the Dealerships shall be made available to GPB Group on a monthly basis.
- B. Capital Requirements. GPB Group agrees to comply and maintain compliance with the minimum financial requirements established for each of the Dealerships listed in Exhibit B annually in accordance with the Operating Plan and the Operating Standards. As used herein, the term "Net Working Capital" shall mean the difference between current assets and current liabilities, and the term "Owner's Equity" shall mean the difference between total assets and total liabilities. GPB Group acknowledges and agrees that its minimum Net Working Capital and its minimum Owner's Equity are subject to review and change by VWoA from time to time, in accordance with the

terms of the Dealer Agreement. Dealer agrees to meet the requirements established by VWoA for Net Working Capital and Owner's Equity, as they may be in effect from time to time.

- C. Dealership Facilities and Volkswagen Brand Image. GPB Group agrees that it shall maintain the Dealerships in compliance with current facility requirements and recognizes that VWoA's facility requirements and brand image standards may change over time. If a Dealership is or becomes out of compliance with facility requirements or brand image standards, VWoA and GPB Group shall work in good faith to agree on an action plan to cure the non-compliance. Said action plan shall be agreed upon within one-hundred-eighty (180) days, and, absent a written agreement between the Parties to the contrary, GPB Group shall have no more than twelve (12) months to cure the non-compliance following the Parties' agreement on the action plan as described above.
- D. Approved Management. VWoA requires that a qualified operator be empowered with full operating capabilities at each of the GPB Group owned dealerships. VWoA authorizes only the listed individuals on Exhibit E (the "Approved Operators") to exercise full operational control over the applicable Dealer entity. VWoA does not approve GPB Group or any of its owners (whether direct or indirect, actual or beneficial) to exercise any operational control over Dealer. The Parties agree that the Approved Operators only shall at all times remain in full operational control of Dealer; (2) the Approved Operators shall maintain at all times full authority to vote all ownership interests in the Company that relate in any way to the operations of the applicable Dealer; (3) neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) shall ever exercise any operational control, directly or indirectly, over Dealer; and (4) neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) shall have any authority to direct or control the Approved Operators in the exercise of their duties and responsibilities in the management of Dealer.
- E. Divestiture and Voluntary Termination. If any single Dealership fails to achieve the requirements of section A, B, C or D above for a period of six (6) consecutive months in a twelve-month reporting period, or six (6) non-consecutive months of any consecutive twelve (12) month period, then VWoA shall have the right (but not the obligation) to require that the GPB Group completely divest itself of the underperforming Dealership, and transfer that Dealership's ownership, assets and control to a bona fide, unrelated, unaffiliated, qualified third-party transferee ("Bona Fide Transferee"). In the event of a divestiture required hereunder, neither GPB Group, nor any entity or natural person related to, employed by or affiliated with GPB Group may retain an ownership interest in the Dealership or any of its assets. The parameters of divestiture shall be as follows:

- i. To trigger its rights under this Section, VWoA shall provide written notice to GPB Group invoking VWoA's rights under this section ("Divestiture Notice"), and attach reports demonstrating that the Dealership at issue has failed to comply with the Required Sales Performance standard for the specified time frame.
  - ii. GPB Group shall have one-hundred-eighty (180) days from the date the Divestiture Notice was received (the "Divestiture Period") to present to VWoA an Asset Purchase Agreement or other transfer agreement ("APA") providing for the transfer of the Dealership's ownership and assets to a Bona Fide Transferee. The issuance of a Divestiture Notice shall also provide VWoA with express authorization to assist GPB Group in marketing the Dealership's assets, and to assist in locating a Bona Fide Transferee and GPB Group and the Dealership shall allow its financial information to be shared with a potential buyer provided a non-disclosure agreement is executed prior to the sharing of the information. However, the Parties agree that it shall remain GPB Group's ultimate responsibility to comply with this provision.
  - iii. VWoA shall review any APA or transfer document presented by GPB Group as provided for by the DA and by relevant state law. If VWoA does not approve the APA presented, the Divestiture Period shall be extended an additional sixty (60) days from the date of VWoA's notice that the proposed transfer was not approved ("Extension Period"). Prior to the conclusion of the Extension Period, GPB Group must provide a new APA with a different Bona Fide Transferee for VWoA's review and approval as provided for by the DA and by relevant state law. If VWoA does not approve the second APA presented, then GPB Group shall proceed with voluntary termination of the relevant Dealership as provided for by Section 7.E.iv.
  - iv. If, after the Divestiture Period or Extension Period if triggered, GPB Group fails to divest itself of the relevant Dealership and transfer that Dealership's ownership and assets to a Bona Fide Transferee, GPB Group shall cause, and take all actions necessary to ensure that, the relevant Dealership's DA is voluntarily terminated, including the execution of all of VWoA's then-customary forms for the voluntary termination of a DA.
- F. Safe Harbor Period. This Section 7 shall not apply to a Dealership until GPB Group has had Ownership or Control of said Dealership for a period of twelve (12) consecutive months ("Safe Harbor Period"). After the Safe Harbor Period, the provisions of Section 7 shall become fully applicable on a going forward basis.

8. Service, Parts and Customer Satisfaction.

- A. Dealer Service Market Share. At all times during the term of this Agreement, GPB Group agrees that it shall cause, and be accountable for, each of the Dealerships to achieve and maintain a minimum dealer service market share level of VWoA designated average performance or higher. Dealer service market share shall be measured according to the reporting metrics listed on the Volkswagen Service I.Q. Report, an example of which is attached as Exhibit F (“Service I.Q. Report”), which shall track each Dealership’s dealer service market share performance. The Service I.Q. Reports for the Dealerships shall be made available to GPB Group on a monthly basis.
- B. Volkswagen Part Sales Performance. At all times during the term of this Agreement, GPB Group agrees that it shall cause, and be accountable for, each of the Dealerships to achieve and maintain a parts sales performance, measured as a percentage achieved of monthly parts objective (“Parts Performance Bonus”). Parts sales performance shall be measured according to the reporting metrics listed on Monthly Parts Performance Bonus Report, an example of which is attached as Exhibit G (“Parts Performance Bonus Report”), which shall track each Dealership’s parts sales performance. The Parts Performance Bonus Reports for the Dealerships shall be made available to GPB Group on a monthly basis.
- C. Customer Experience Index. At all times during the term of this Agreement, GPB Group agrees that it shall cause, and be accountable for, each of the Dealerships to achieve and maintain a minimum Customer Experience Index (“CEI”) score of National average performance or higher. CEI shall be measured according to the reporting metrics listed on the Sales CEI Report, and example of which is attached as Exhibit H (“Sales CE Report”), which shall track each Dealership’s CEI performance. The Sales CE Reports for the Dealerships shall be made available to GPB Group on a monthly basis.
- D. Safe Harbor Period. This Section 8 shall not apply to a Dealership until GPB Group has had Ownership or Control of said Dealership for a period of twelve (12) consecutive months (“Service & Parts Safe Harbor Period”). After the Service & Parts Safe Harbor Period, the provisions of Section 8 shall become fully applicable on a going forward basis.

9. Exclusivity. GPB Group agrees that it shall maintain and operate all Dealerships as exclusive, brand-dedicated Volkswagen Dealerships, in compliance with VWoA’s Exclusivity Policy, which may be updated from time to time in VWoA’s discretion, a current version of which is attached hereto as Exhibit I. Any variance from the Exclusivity Policy by GPB Group shall require VWoA’s prior written approval, which shall be provided at VWoA’s sole discretion. Absent a written agreement between the Parties stating otherwise, GPB Group shall cure any noncompliance with this provision within one-hundred-eighty (180) days of being

notified by VWoA of said non-compliance. VWoA shall make GPB Group aware of any updates to the Exclusivity Policy, and the Parties shall update and amend Exhibit I as necessary.

A. White Plains site control. The GPB Group agrees to assign all leasehold interest in the property located at 376 Tarrytown Road, White Plains, NY, in the event that the Lash Auto Group ceases to operate as a Volkswagen dealer at that location.

10. Compliance with Signage Standards and Prominence of the Volkswagen Brand. GPB Group shall cause all Dealerships to all times comply with VWoA's signage requirements and Corporate Identification Standards, including, without limitation VWoA's then-current signage program (to the extent permitted by relevant local law). Further, GPB Group shall cause all Dealerships to prominently and primarily promote the Volkswagen brand. At any Dealership, GPB Group shall not cause Volkswagen's brand to be rendered secondary or subservient to GPB's brand(s) or any other brand, including, without limitation any sub-brand(s), affiliate brand(s) or subsidiary brand(s) of GPB Group.

11. Authorized Representative at Dealerships.

A. Authorized Representative. At each of the Dealerships, GPB Group shall appoint and employ an Authorized Representative ("AR") who shall work on-site, in a full-time capacity, and whose employment duties will be dedicated exclusively to Volkswagen Dealership Operations at the Dealership. Prior to appointment, each AR must be approved in writing by VWoA as set forth in Section 11.B, below, and, separately, comply with all requirements set forth by the DA.

B. Authorized Representative Candidate Program.

- i. For each of the Dealerships, GPB Group shall nominate and present to VWoA an Authorized Representative Candidate ("ARC") for review and approval.
- ii. Upon nomination, GPB Group shall complete an application provided by VWoA, which, without limitation, shall require submission of detailed information regarding the ARC's experience, past performance and other relevant metrics requested by VWoA. In addition, the GPB Group shall cause the ARC to submit to a background and credit check obtained by VWoA.
- iii. VWoA shall then have a reasonable opportunity to review the information submitted, meet with and interview the ARC. Following the review and interview described above, VWoA shall, at its discretion, approve, conditionally approve or reject the ARC. If the ARC is approved, then he or she shall immediately be approved as the AR of the relevant Dealership. If the ARC is rejected, GPB Group must nominate a new, different ARC for approval by VWoA. If the ARC is conditionally approved, the ARC shall be placed on a probationary status during which

they shall be considered acting-AR at the Dealership for a six (6) month period (“Probationary Period”). At the end of the Probationary Period, after reviewing the ARC’s performance during the Probationary Period, VWoA shall, at its discretion, approve, reject or elect to extend the Probationary Period for an additional six (6) months. Following the second Probationary Period and after reviewing the ARC’s performance, VWoA shall approve or reject the ARC. Under no circumstances shall the Probationary Period last more than one (1) year.

- C. Empowerment of Authorized Representatives. GPB Group shall delegate all necessary authority and empowerment to the AR such that he or she shall have full, final executive and management authority to conduct all day-to-day Volkswagen dealership and related business operations at the Dealership, including, without limitation, executing documents and making all operational decisions concerning the Dealership.

12. Change in Ownership or Control of GPB Group.

- A. VWoA shall have the right to review and approve any sale, acquisition or change of ownership or voting rights of GPB Group (“Ownership Change Event”). GPB Group shall notify VWoA of any proposed Ownership Change Event at least sixty (60) days prior to the date of any Ownership Change Event.
- B. If VWoA determines, in its discretion, that the Ownership Change Event would result in an entity or a natural person obtaining an ownership or voting rights interest that is incompatible with VWoA’s dealer qualification standards, performance requirements or other VWoA interests, VWoA shall have the right to require that, within ninety (90) days of notice from VWoA invoking this provision, GPB Group shall (a) transfer all interest in all Dealerships to Bona Fide Transferees (subject to Section 7, above); or (b) voluntarily terminate the DAs associated with each of the Dealers. For purposes of this paragraph Bona Fide Transferee shall mean an independent third party which does not include any member of the GPB Group in any ownership capacity.

13. Acquisition and Open Point Eligibility.

- A. GPB Group understands and agrees that they shall not be eligible for any acquisitions of Volkswagen dealerships or appointment to Volkswagen open points if they are not in compliance with all terms, conditions and provisions of this Agreement, including, without limitation, the provisions of Sections 3 through 12, above, and, accordingly, agrees not to enter into any agreements with third parties to acquire interests in Volkswagen dealerships if not in compliance.

- B. GPB Group understands and agrees that they shall not be eligible for any acquisitions of Volkswagen dealerships or appointment to Volkswagen open points if GPB Group brings a legal or equitable action of any form in contravention with, or to invalidate, the terms of this Agreement, including, without limitation, the terms of Section 14, below.
- C. GPB Group agrees that failure to comply with any material terms and conditions of this Agreement shall constitute independent and adequate good cause and justification (both factual and legal) for VWoA to deny approval or consent to any acquisition of a Volkswagen dealership under the terms of Article 12 of the Volkswagen Dealer Agreement, Standard Provisions, and any relevant state law regulating manufacturer approval of dealership transfers.

14. GPB Group's Covenant Not to Sue or Protest. If (i) a termination of a Dealership or DA ("DA Termination") or (ii) the rejection or turn-down of a proposed buy-sell, acquisition or purchase of a Volkswagen dealership ("Buy-Sell Rejection"), occurs pursuant to or as a result of the terms, conditions and provisions of this Agreement, GPB Group agrees that it shall not file a legal protest, civil or administrative action, or any other legal proceeding to prevent or delay the effect of the DA Termination or Buy-Sell Rejection at issue. GPB Group further agrees that it shall not seek monetary damages or other legal or equitable remedy, from any court or administrative agency, related to the termination of the DA Termination or Buy-Sell Rejection at issue. Should GPB Group violate this provision, GPB Group covenants and agrees that it shall pay any and all of VWoA's attorney fees and legal costs associated with defense of such legal, administrative or equitable action, and, in addition, GPB Group shall indemnify and hold VWoA harmless from any monetary damages, equitable judgments or fees & costs resulting from any legal, administrative or equitable proceeding in contravention of this provision.

15. Extension of GPB Group Market Action Agreement. GPB Group includes affiliated entity Lash Auto Group, LLC which operates a Volkswagen dealership under the dba Lash Volkswagen of White Plains ("White Plains"). White Plains is one of the Settlement Dealerships. In addition to the Volkswagen Dealer Agreement, White Plains and VWoA are parties to a Settlement Agreement effective on or about February 18, 2016 (the "WP Settlement Agreement") as well as a Transaction Assistance Agreement effective November 7, 2012 (the "WP TAA") which is attached as Exhibit J. The WP TAA includes a waiver of protest rights for the market area defined in the therein, which protest waiver was extended by the WP Settlement Agreement. GPB Group and White Plains hereby agree to extend the protest rights waiver as described in the WP TAA for an additional four years. The protest waiver shall now be valid through and including December 31, 2025. The parties to the WP TAA agree that this constitutes a written modification and amendment to the WP TAA.

16. GPB Group's Agreement to Indemnify. If (a) at the time of a proposed acquisition, GPB Group is ineligible to acquire additional Volkswagen dealerships pursuant to Section 13 of this Agreement, or VWoA elects not to approve, or states that it will not approve, a transfer presented to it pursuant to Article 12 of the Volkswagen Dealer Agreement, Standard Provisions, and any relevant state law regulating manufacturer approval of dealership transfers, then GPB Group shall indemnify and hold VWoA harmless against any legal, administrative or

equitable action, loss, liability, damage, equitable judgment, cause of action, cost, or expense of any nature whatsoever, including, without limitation, any attorney fees and legal costs associated with the defense of any such action(s), arising from any legal, administrative or equitable allegations or proceedings brought by a third-party, including, without limitation, the selling dealer or transferor, asserting that VWoA has acted, or will act, unlawfully pursuant to, or has failed to comply with, federal or state law by refusing, failing or preemptively stating that it will refuse to approve a proposed transfer dealership interest or assets.

17. Remedies. The Parties acknowledge that any breach of this Agreement or failure to comply with the terms of this Agreement would result in irreparable harm and substantial injury to the non-breaching Party, the degree of which may be difficult to ascertain. Accordingly, it is agreed that, in addition to any other remedies that may be available in law or equity upon any such violation or threatened violation, the Party alleging the breach or threatened breach hereto shall be entitled to seek specific performance or injunctive relief to enforce such provisions and the Parties hereby waive, and forever discharge, any requirement for security or posting of any bond in connection with such enforcement by specific performance or injunctive relief.

18. Separate Agreement and Not a Dealer or Franchise Agreement. The Parties understand and acknowledge that the terms, conditions, representations, warranties, obligations and rights set forth in this agreement stand separate, distinct and apart from any obligations and rights set forth in any Volkswagen Dealer Agreement. This Agreement provides for distinct obligations, rights and responsibilities, and distinct and adequate consideration including, without limitation, VWoA's agreement to waive significant rights under settlement agreements that were previously entered into with certain GPB Group entities. No part of this Agreement is intended to become a part of any Volkswagen Dealer Agreement, franchise relationship as defined by state law, or be subject to regulation by state laws regulating manufacturer-dealer relationships. GPB Group agrees, irrevocably admits and acknowledges that this Agreement is not a "dealer" or "franchise" agreement as those terms may be defined in any applicable state or federal law or regulation. Therefore, any provisions applicable to "dealer" or "franchise" agreements under the laws of any state in which GPB does business or under federal law do not apply to this Agreement, and GPB Group shall not seek to enforce any such provisions against VWoA. VWoA reserves the right to terminate and/or revoke this Agreement in the event it is recognized or determined that this Agreement is a "dealer" or "franchise" agreement.

19. Confidentiality. The Parties shall keep the existence and terms of this Agreement strictly confidential, and shall disclose such terms to third parties only if required to do so by order of court, or in response to a duly authorized subpoena, or in response to some other legal process. If any Party to this Agreement is required by law to disclose any term of this Agreement, then such Party shall, to the extent practicable, give written notice to the other Parties to this Agreement no less than two (2) weeks prior to the date on which such disclosure is required ("Disclosure Date"). If unable to give such notice, then such Party shall give as much notice in advance of the Disclosure Date as possible, in whichever way such Party reasonably deems most expeditious. Notwithstanding this Section, the Parties may disclose, in confidence, the terms of this Agreement to said Party's retained attorneys, accountants and tax professionals as deemed necessary.

20. Expenses and Fees. The Parties shall each pay their own respective expenses, including attorneys' fees, incurred in connection with this matter and with the preparation, execution, and implementation of this Agreement.

21. Equal Bargaining Power, No Rule of Strict Construction. Each Party acknowledges that it is a highly sophisticated business entity, with abundant experience, resources and access to business and legal counsel. The words used in this Agreement shall be deemed words chosen by the Parties to express their mutual intent, and no rule of strict construction against VWoA or GPB Group shall apply to any term or provision of this Agreement.

22. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof. No prior or contemporaneous agreements between the Parties, whether oral or written, concerning the subject matter of this Agreement, shall be of any force or effect.

23. Modification in Writing. This Agreement cannot be modified, altered, or amended in any respect except by the written consent of the Parties. Such consent shall be at the given Party's sole and unfettered discretion.

24. No Third-Party Beneficiaries. This Agreement does not encompass any third party beneficiaries, and is intended to benefit only the Parties.

25. Captions. The caption headings in this Agreement are for convenience purposes only and shall not be used to interpret or to define any of the terms and provisions of this Agreement.

26. No Implied Waivers. The failure of any Party, at any time, to require performance by another Party of any provision of this Agreement shall in no way affect the right of such Party to require such performance at any time thereafter. The waiver by any Party or a breach of any provision herein shall not constitute a waiver of any succeeding breach of the same or any other provision of constitute a waiver of the provision itself.

27. Choice of Law. The terms and provisions of this Agreement shall be construed according to the laws of the District of Columbia.

28. No Assignment. The obligations, promises and guarantees contemplated in this Agreement are unique and personalized in nature. As such, this Agreement may not be assigned or transferred without the express written consent of the Parties. Such consent shall be at the given Party's sole and unfettered discretion.

29. Notice. If any clause of this Agreement requires that notice be given, written notice must be sent via personal delivery or a reputable overnight delivery courier, and notice will be deemed to have been given upon receipt of the written notice by the intended Party. Notice must be sent to each Party as follows:

- (a) If to VWoA, written notice must be sent to:

Volkswagen of America, Inc.  
Attn: Office of the General Counsel  
2200 Ferdinand Porsche Drive  
Herndon, VA 20171

(b) If to GPB Group written notice must be sent to:

1581 Franklin Ave  
Mineola, NY 11501

30. Counterparts. This Agreement may be executed in any number of identical counterparts, any of which may contain the signatures of less than all Parties, and all of which together shall constitute a single Agreement. A signature to this Agreement delivered by telecopy shall be deemed valid.

31. Time of the Essence. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, as of this \_\_\_\_ day of \_\_\_\_\_, Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., and GPB Capital Holdings LLC on behalf of itself and its affiliates and subsidiaries, have each caused this Agreement to be duly executed.

**VOLKSWAGEN OF AMERICA, INC.,**  
**AN OPERATING UNIT OF**  
**VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

**GPB Capital Holdings, LLC**

BY: \_\_\_\_\_  
David Gentile  
CEO

**Exhibit A**

**Settlement Dealerships**

#408340 Lash Auto Group, LLC d/b/a Lash Volkswagen of White Plains  
#408302 Lash Auto Group 2 LLC d/b/a Volkswagen Oneonta

**Exhibit B**

**GPB Controlled Dealerships**

#408340 Lash Auto Group, LLC d/b/a Lash Volkswagen of White Plains  
#408302 Lash Auto Group 2 LLC d/b/a Volkswagen Oneonta  
#401425 Saco Auto Holdings-VW, LLC d/b/a Prime Volkswagen  
#408142 F.X. Caprara Car Company, Inc. d/b/a F.X. Caprara Volkswagen

## Exhibit C

### Ownership Policy

#### General Policy

Any ownership change of a Volkswagen dealer requires VWoA's prior written consent. VWoA categorizes ownership changes as either a "Major Ownership Change" or a "Minor Ownership Change."

Any proposed ownership change, whether a Major Ownership Change or a Minor Ownership Change, is subject to the requirements of all applicable VWoA policies, including this Ownership Change Policy and VWoA's Dealer Candidate Selection Policy and Dealer Change Policy, each of which are included in this manual as Policy #01 and Policy #13, respectively.

For each Major Ownership Change, VWoA will provide a Conditional Approval Letter outlining the conditions that the Dealer must meet for the proposed Major Ownership Change to be deemed approved.

#### Definitions Applicable to Ownership Change Policy

The term "Control" means to have ownership of interests in a Dealer sufficient to allow the owner of the interests to control the material decisions and operations of the Dealer, which may be (a) through ownership of a majority of voting interests (i.e., more than 50%), (b) through ownership of voting interests that, while less than a majority of voting interests, in light of the facts and circumstances allows the owner to control the material decisions and operations of the Dealer, or (c) through contract or agreement, such as an owner who has been appointed as a the trustee for a voting trust.

The term "ownership" generally refers to ownership of voting and non-voting interests (unless specified otherwise), and includes the following:

- (a) Direct ownership of interests in the name of a person or entity; and
- (b) Indirect ownership of interests, such as through ownership of an entity that is the direct owner.

A "Major Ownership Change" means:

- Any transaction, including the issuance of new ownership interests, with respect to the ownership of a Dealer that results in a change in Control of the Dealer, meaning that any person or persons who had Control before the transaction no longer has or have Control of the Dealer following the transaction; or

A "Minor Ownership Change" means any change in the ownership of interests in the Dealership that is not a Major Ownership Change.

### **Facility Requirements in the Event of a Major Ownership Change**

In the case of a Major Ownership Change that results in the change of Control of Dealer, the Dealer shall be required to provide a facility that meets all of the requirements of the White Frame Design Facility Program (the "Facility Program"). The New Facility shall be located at the Dealer's Premises and shall meet the square footage requirements required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the facility. The New Facility also shall contain all applicable Volkswagen corporate identification and signage allowed by local codes and required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the facility. Facility requirements are subject to the exclusivity provisions contained in Policy 17 Dealership Exclusivity.

### **Relocation Requirement**

Any proposed relocation of an existing Dealer's Volkswagen operations to a new site must adhere to the Volkswagen Franchise Relocation Policy.

### **All Proposed Ownership Changes are Subject to VWoA's Rights**

All proposed ownership changes, whether a Major or Minor, are subject to VWoA's rights under the Dealer's Volkswagen Dealer Agreement and applicable state law.

### Exhibit D Sample Rolling-12 DSI Report

## Dealer Sales Index (DSI) Report 401425 - Prime Volkswagen 12 Month Period Ending July 2017



Model	NER VW Registrations (A)	NER Industry Registrations (B)	Expected Market Share (C = A/B)	PAI Industry Registrations (D)	Expected Sales at NER (E = C x D)	Dealer Retail Sales (F)	Gross Loss (G = E - F)
Beetle Convertible	1,039	3,050	34.1%	12	4	6	-
Eos	0	3,050	0.0%	12	0	0	-
Beetle Coupe	1,330	10,354	12.8%	25	3	9	-
Golf	3,658	47,895	7.6%	139	11	16	-
GTI	4,474	47,895	9.3%	139	13	25	-
Jetta	23,935	253,988	9.4%	691	65	101	-
Tiguan	10,004	687,046	1.5%	2,155	31	29	2
Golf Alltrack	3,420	19,912	17.2%	124	21	26	-
Golf Sportwagen	2,320	19,912	11.7%	124	14	24	-
CC	249	275,200	0.1%	612	1	1	-
Passat	11,981	275,200	4.4%	612	27	23	4
Atlas	932	264,917	0.4%	670	2	3	-
Touareg	507	89,517	0.6%	107	1	4	-
<b>Total</b>	<b>63,849</b>	<b>1,651,879</b>		<b>4,535</b>	<b>193</b>	<b>267</b>	<b>6</b>

Dealer Sales Index (F/E - 1) x 100	<b>38.3</b>
------------------------------------	-------------

#### Sales Index Trend



\* Trending changes may be attributable to either geography or performance changes.

#### Pump-In/Pump-Out Analysis

Model	Total PAI VW Registrations (A)	Dealer PAI Sales (B)	Other Dealer Pump-In (A-B)	Dealer Sales as a % of Reg. (B/A)	Top 5 Other Dealers Selling Into PAI *	Location	Sales
Beetle Convertible	7	3	4	42.9%	401404 Marong VW	Falmouth, ME	25
Eos	0	0	0	0.0%	401106 Seacoast VW	Greenland, NH	15
Beetle Coupe	5	4	1	80.0%	401111 VW of Rochester	Rochester, NH	5
Golf	9	4	5	44.4%	401419 Marong VW	Brunswick, ME	3
GTI	20	12	8	60.0%	401420 Rowe Volkswagen	Auburn, ME	2
Jetta	57	42	15	73.7%	<b>Total Other Dealer Sales Into PAI 57</b>		
Tiguan	16	10	6	62.5%	<b>Top 5 Dealer Sales Outside of PAI</b>		
Golf Alltrack	10	7	3	70.0%	401404 Marong VW	Falmouth, ME	97
Golf Sportwagen	15	7	8	46.7%	ME Unassigned	Any City, ME	13
CC	1	1	0	100.0%	401106 Seacoast VW	Greenland, NH	11
Passat	21	14	7	66.7%	401419 Marong VW	Brunswick, ME	10
Atlas	1	1	0	100.0%	401420 Rowe Volkswagen	Auburn, ME	4
Touareg	3	3	0	100.0%	<b>Dealer's Total Sales Outside PAI 159</b>		
<b>Total</b>	<b>165</b>	<b>108</b>	<b>57</b>	<b>65.5%</b>			

Note: Reported registrations do not include new 2015 model-year TDI vehicles.

\* Other dealer sales into PAI is for the full R12 data period.

Based on July 2017 VW Dealer Network and PAI Definitions

Data Source: IHS Markit and Volkswagen

© 2017 Urban Science. All Rights Reserved.



**Exhibit E**

**Approved Operators**

#408340 Lash Volkswagen of White Plains – Jeff Lash

#408302 Volkswagen Oneonta – Jeff Lash

#401425 Prime Volkswagen - David Rosenberg

#408142 F.X. Caprara Volkswagen – Charles G. Caprara and/or William Caprara

## Exhibit F

### Service I.Q. Report

Prime Volkswagen  
 Dealer Code: 401425  
 Month: August, 2017

ServiceIQ



[Main Page](#)   [Market Share](#)   [Performance](#)   [Retention](#)   [Marketing](#)



#### Market Summary

Marketing List Counts  
(only includes marketable customers)

List	Count	Price to Mail*
Inactive	126	\$31.50
31-60 Days to Defection	25	\$6.25
61-90 Days to Defection	21	\$5.25
0-30 Days to Defection	6	\$1.50
<b>Total</b>	<b>178</b>	<b>\$44.50</b>

\*Assumes average mail price with 75% co-op

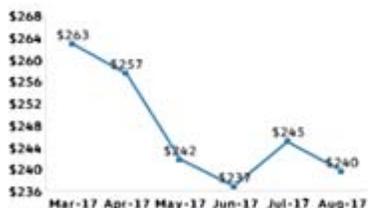
**47.68%**  
**Market Share**

33.41%  
 Region Average

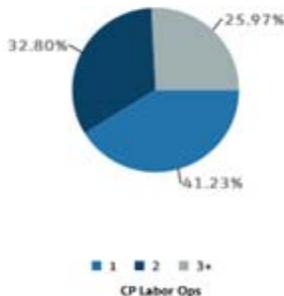
**81.17%**  
**Dealer Retention**

71.58%  
 Region Average

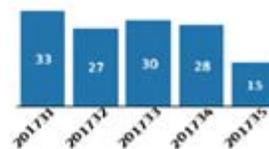
#### Repair Order Performance



CP \$ per CP RD



CP Labor Ops



Weekly RD Count

\*This program is optimized for Mozilla Firefox and Google Chrome browsers.

Last Update: 09/14/2017  
[Logout](#)



## Exhibit G

### Parts Performance Bonus Report



Exhibit H

Sales CE Report

	Input Area Code:	<b>1N</b>	<b>Sales Scorecard</b>					
	Input Dealer Code:	<b>401425</b>						
Dealer Name: <b>Prime Volkswagen</b>			Month: <b>Aug</b>		Year: <b>2017</b>			
City/State: <b>Saco - ME</b>								
*YTD Score Green = At or above YTD Reg. AVG Red = Below YTD Reg. AVG	Dealer	MTD Email Capture	YTD Email Capture	Surveys Received	Area	Region	Nation	
	401425	80.0	79.5	135	1N	NER	USA	
**YTD Rank- Rankings reflect any dealer w/2017 data Green = Top 1/3 In Rank Black = Middle 1/3 In Rank Red = Bottom 1/3 In Rank	MTD	RTM	YTD Score*	YTD REG AVG	YTD NAT AVG	YTD RANK**		
Summary						Area:14	Region:203	Nation:651
CEI Score	97.2	96.2	97.1	95.6	95.1	1	22	48
Response Rate	68.8	75.4	80.8	61.4	59.8	4	11	30
Sales Survey Score	99.0	98.1	98.3	97.1	96.7	4	24	47
<b>Facility</b>								
Q1b. Your satisfaction with the dealership's facility, including comfort, cleanliness and amenities offered.	99.1	97.7	98.2	97.4	97.5	4	54	199
<b>Sales Consultant</b>								
Q2a. Understanding of your needs and guidance to the right Volkswagen.	100.0	99.6	99.3	98.7	98.6	3	36	106
Q2b. The level of honesty and integrity displayed throughout the purchase process.	100.0	99.2	99.5	98.4	98.2	3	17	45
Q2c. The knowledge demonstrated and quality of information provided.	100.0	99.2	98.7	98.4	98.3	4	78	216
Q2d. Your satisfaction with the quality of the test drive offered.	99.0	98.8	99.1	98.0	98.0	4	28	85
Q2e. Were you contacted to ensure you were completely satisfied with your sales experience?	100.0	100.0	100.0	96.5	96.4	1	1	1
Q2f. Consideration of your time and responsiveness to your requests.	100.0	98.5	99.0	98.2	98.0	4	43	107
Q2g. Your satisfaction with the process of coming to an agreement on pricing.	100.0	98.5	98.6	97.3	97.1	3	27	67
<b>Paperwork</b>								
Q3a. Please provide the approximate amount of time you had to wait between agreeing on a price and meeting with someone to discuss the paperwork	95.5	92.2	93.0	88.8	86.0	5	38	75
Q3b. Your satisfaction with the explanation of the terms of the sale.	100.0	97.9	98.3	97.5	97.3	4	44	134
Q3c. The level of honesty and integrity displayed by the person handling the paperwork.	100.0	98.3	98.7	97.9	97.7	5	47	134
Q3d. Consideration of your time by the person handling paperwork.	100.0	98.1	98.2	97.8	97.6	5	73	202
<b>Delivery</b>								
Q4a. Your satisfaction with the cleanliness of the vehicle inside and out.	100.0	98.8	98.7	98.5	98.4	6	87	235
Q4b. Was the vehicle free of dents, scratches and mechanical issues?	100.0	98.0	97.8	96.5	96.0	7	51	119
Q4c. Your satisfaction with the explanation of features and controls of your vehicle.	100.0	98.0	98.1	98.2	98.0	7	100	296
Q4d. Were all items such as the radio, navigation system and Bluetooth preset to your preferences?	100.0	98.0	97.7	97.8	96.9	8	110	255
Q4e. Were you provided an overview of, or introduced to someone in the service dept.?	90.0	97.6	98.1	93.1	92.3	6	19	43
Q4f. Consideration of your time during the vehicle delivery.	100.0	98.0	98.5	97.9	97.8	6	59	175
Q4g. Were you offered to schedule your first service appointment?	100.0	100.0	98.9	88.3	87.9	2	6	21

## **Exhibit I**

### **Exclusivity Policy**

#### **Dealership Exclusivity**

Volkswagen of America requires all dealers to operate Volkswagen operations in Facilities dedicated exclusively to the Brand, based on their projected 5-year Planning Volume (PV) and Vehicles in Operation (VIO). No other franchises or business may operate out of the same Facility as Volkswagen.

Exclusivity is defined in the following manner:

- A. Facility houses only Volkswagen-related business activities according to the guidelines found in *Form 12A- Facility Planning Guide*. All marketing materials, signage, point-of-purchase materials, etc. are Volkswagen-only.
- B. All Dealership personnel involved with vehicle and customer activities are dedicated solely to Volkswagen-related business. This involves, but is not limited to, the General Manager; New, Used, Service, and Parts managers; Technicians; and Sales Consultants.
- C. Dealer-submitted financial statements reflect Volkswagen business only; no other business is represented on submitted financial statements.

**Exhibit J**

**WP TAA**



**VOLKSWAGEN  
TRANSACTION ASSISTANCE AGREEMENT**

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and Lash Auto Group LLC, doing business under the fictitious name Lash Volkswagen of White Plains, ("Dealer") (collectively, "All Parties") enter into this Transaction Assistance Agreement (the "Agreement") on this 7<sup>th</sup> day of November, 2012 (the "Effective Date").

RECITALS

A. VWoA is a company organized and existing under the laws of the State of New Jersey, with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VWoA is the distributor of Volkswagen-brand motor vehicles, parts, and accessories in the United States of America.

B. Dealer is a corporation organized and existing under the laws of the State of New York, with its place of business at 376 Tarrytown Road, Greenburgh, NY 10607 (the "Approved Location").

C. It is critically important to VWoA, and a material obligation of this Agreement, that Dealer operates the Volkswagen dealership as an exclusive Volkswagen dealership operation, at the Approved Location.

D. As explained in detail below, in exchange for certain long-term covenants, promises, obligations and guarantees from Dealer, ensuring that certain conditions are met and maintained, VWoA shall provide certain consideration to Dealer.

AGREEMENT

NOW, THEREFORE, in consideration for the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, All Parties agree hereto as follows:

1. Term. The term of this Agreement shall be from June 1, 2012 and for 10 years thereafter, concluding on June 1, 2022 (the "Term"). Following the conclusion of the Term, all provisions of this Agreement shall sunset with the exception of Section 8 (Confidentiality). The terms and conditions of Section 8 of this Agreement shall survive in perpetuity.

2. Obligations of Dealer. Dealer covenants, promises and agrees to provide for, comply with and maintain the following critical and material conditions continuously and throughout the term of this Agreement:



## VOLKSWAGEN

- A. **Use of Approved Location and Brand Exclusivity:** Dealer covenants and promises to use the Approved Location solely for Volkswagen Dealership Operations, and Dealer shall not change the use or repurpose the Approved Location throughout the Term of this Agreement without the prior written consent of VWoA. Volkswagen Dealership Operations shall refer to Volkswagen business operations provided for in the parties' Volkswagen Dealer Agreement, dated March 8, 2010 (the "Dealer Agreement").

Without the express written permission of VWoA, Dealer shall not (1) operate any business or operation from the Approved Location other than Volkswagen Dealership Sales Operations; (2) change the use, location, or otherwise move or relocate any Volkswagen Dealership Operations away from the Approved Location and (b) that Dealer may continue to utilize any and all off-site storage capacity for storage of Volkswagen products, so long as such off-site storage is already listed in the Dealer Agreement and off-limits to customers and not used as customer touch point; or (3) subdivide, alter or change the use of the Approved Location, including, without limitation, by adding the operations of another automotive brand or other non-automotive business.

B. **Dealer Agreement:**

- i. Dealer shall remain in compliance with all terms and conditions set forth in the Dealer Agreement, including but not limited to the minimum requirements of Volkswagen Dealer Operating Standards, as may be established in writing by VWoA from time to time and provided to Dealer.
- ii. By way of the Operating Standards, Dealer shall be required to ensure that its facilities conform to then-current size and capacity requirements, as they may be updated by VWoA from time to time. Should the need arise, VWoA shall provide reasonable notice and adequate time to bring its facilities into conformity with said size and capacity requirements.

C. **Consent and Waiver of Protest Rights:**

- i. For purposes of this Agreement, the "No-Protest Zone" shall be comprised of any area or location that is over a four (4) mile radius from the Approved Location.
- ii. Dealer agrees that: (i) based on population, geography and market factors, the No-Protest Zone requires additional Volkswagen dealers to provide consumers with adequate sales and service facilities, qualified service personnel, convenient customer service, and competitive advertising of Volkswagen products; (ii) having additional Volkswagen dealers in the No-Protest Zone will ensure adequate competition, benefit the consuming public and all Volkswagen dealers, including Dealer, and thereby be in the public interest; and (iii) there is "good cause" under New York law for additional Volkswagen dealerships in the No-Protest Zone, with the location of the dealerships within the No-Protest Zone to be determined by VWoA in its sole discretion.
- iii. For three consecutive years following the Effective Date, Dealer hereby unconditionally and irrevocably consents to, and agrees not to protest or take any other action to interfere with: (i) the establishment of Volkswagen dealers from time to time anywhere in the No-Protest Zone; or (ii) the relocation of existing Volkswagen dealers from time to time to any location in the No-Protest Zone; or (iii) the relocation of Volkswagen dealers within the No-Protest Zone, at any time



## VOLKSWAGEN

and from time to time. Such consent and agreement not to protest includes, without limitation, the waiver of any right to protest under New York Vehicle and Traffic Law §§ 462, 463, and 469.

- iv. Dealer understands and agrees that a portion of the Payment being provided by VVoA is in consideration for Dealer's consent and waiver detailed in this Section. Dealer agrees that the consideration provided by VVoA is separate from any rights or benefits provided by the Volkswagen Dealer Agreement, adequate and valuable.

3. Consideration from VVoA. In consideration for the covenants, promises and guarantees provided by the Dealer, as described in Section 2, above, and subject to Dealer's execution of this Agreement, VVoA shall provide:

- A. Monetary Payment: Within 30 calendar days following the execution of this agreement, VVoA shall tender by either paper check or electronic funds transfer Three Hundred Fifty Thousand U.S. dollars and zero cents (\$350,000.00) (the "Payment"), to Dealer.
- B. Conditions of Payment: Dealer shall be solely responsible for any taxes, levies, transaction fees or other levies or fees, if any, imposed upon Dealer and associated with the Payment.

4. VVoA's Recovery Rights.

- A. If at any time during the Term of this Agreement, Dealer breaches, defaults or otherwise fails to fulfill any of its obligations set forth in Section 2 above (with the exception of a default of obligations under Section 2.C., which is addressed separately), VVoA shall have the right to recover from Dealer a prorated amount of the Payment based on the remaining Term of the Agreement from the date the default occurs. The proration calculation is based on a ten (10) year straight line depreciation of the Payment, illustrated as follows:

Date of Recovery Event Occurrence	Payback Amount
≤ 1 Year into Term	All payments provided to Dealer under this Agreement
1 Year to ≤ 2 Years	\$315,000 (or 90% of any Payment provided under this Agreement)
2 Year to ≤ 3 Years	\$280,000 (or 80% of any Payment provided under this Agreement)
3 Year to ≤ 4 Years	\$245,000 (or 70% of any Payment provided under this Agreement)
4 Year to ≤ 5 Years	\$210,000 (or 60% of any Payment provided under this Agreement)
5 Year to ≤ 6 Years	\$175,000 (or 50% of any Payment provided under this Agreement)
6 Year to ≤ 7 Years	\$140,000 (or 40% of any Payment provided under this Agreement)
7 Year to ≤ 8 Years	\$105,000 (or 30% of any Payment provided under this Agreement)
8 Year to ≤ 9 Years	\$70,000 (or 20% of any Payment provided under this Agreement)
9 Year to ≤ 10 Years	\$35,000 (or 10% of any Payment provided under this Agreement)



## VOLKSWAGEN

With the exception of a breach, default or failure to comply with regard to Section 2.C (which shall be deemed Incurable) or Section 2.B.ii (which already provides for a cure period), Dealer shall be provided with a reasonable notice and cure period (not to exceed 15 calendar days) in order to cure any said breach, default or failure prior to VVoA's exercise of its recovery rights.

- B. If, after completion of any payment obligations set forth in Section 3, Dealer breaches, fails to comply, or otherwise acts in contravention to the terms and requirements of Sections 2.C., above, then VVoA shall be entitled to recover the Payment (or any portion paid out thereof) in its entirety, if the breach is within the three year period following the Effective Date.
- C. If during the Term of this Agreement, (1) Dealer, or its beneficial ownership, sells or transfers its dealership assets to any other party, other than a current stockholder of Dealer, (2) Dealer undergoes a majority ownership change involving dealership assets, or (3) Dealer's Volkswagen Dealer Agreement is terminated (voluntarily or involuntarily) or surrendered for any reason whatsoever, then VVoA shall be entitled to recover a prorated amount of the Payments based upon the remaining term of the Agreement. As above, the proration calculation is based on a ten (10) year straight line depreciation of the Payment.
- D. VVoA's total recovery rights under this Section 4, are limited in the aggregate to the amount of the Payment (or portion thereof tendered under Section 3). VVoA's monetary recovery rights shall be in addition to, and not in lieu of, any other rights or remedies available under other contracts, and in law and equity.
- E. To simplify recovery of the Payment, and reduce transaction costs associated with said recovery, should VVoA become entitled to recover the Payment (or any portion thereof) under this Section 4, the VVoA shall be entitled to recover by offsetting against any amounts owed by VVoA to Dealer.

5. Separate Agreement and Not a Dealer or Franchise Agreement. All Parties understand and acknowledge that the obligations and rights set forth in this agreement stand separate, distinct and apart from any obligations and rights set forth in the Dealer's Volkswagen Dealer Agreement. This agreement provides for distinct obligations, rights and responsibilities, and distinct and adequate consideration. No part of this agreement is intended to become part of the Dealer's Volkswagen Dealer Agreement or franchise relationship as defined by state law, and/or subject to regulation by state dealer franchise laws. Dealer agrees, irrevocably admits and acknowledges that this Agreement is not a "dealer" or "franchise" agreement as those terms may be defined in any applicable state or federal law or regulation. Therefore, any provisions applicable to "dealer" or "franchise" agreements under the laws of the state in which Dealer does business or under federal law do not apply to this Agreement, and Dealer shall not seek to enforce any such provisions against VVoA. VVoA reserves the right to terminate and/or revoke this Agreement in the event it is recognized or determined that this Agreement is a "dealer" or "franchise" agreement.

6. Confidentiality. All Parties shall keep the terms of this Agreement strictly confidential, and shall disclose such terms to third parties only if required to do so by order of court, or in response to a duly authorized subpoena, or in response to some other legal process. If any party to this Agreement is required by law to disclose any term of this Agreement, then such party shall, to the extent practicable, give written notice to the other party to this Agreement no less than two (2) weeks prior to the date on which such disclosure is required ("Disclosure Date"). If unable to give such notice, then such party shall give as much notice in advance of the Disclosure Date as possible, in whichever way such party reasonably deems most expeditious. Notwithstanding this Section, All Parties may disclose, in



## VOLKSWAGEN

confidence, the terms of this Agreement to said party's retained attorneys, accountants and tax professionals as deemed necessary.

7. Expenses and Fees. All Parties shall each pay their own respective expenses, including attorneys' fees, incurred in connection with this matter and with the preparation, execution, and implementation of this Agreement.

8. No Rule of Strict Construction. The words used in this Agreement shall be deemed words chosen by All Parties to express their mutual intent, and no rule of strict construction against VVoA or the Dealer shall apply to any term or provision of this Agreement.

9. Entire Agreement. This Agreement constitutes the entire agreement and understanding between All Parties with respect to the subject matter hereof. No prior or contemporaneous agreements between All Parties, whether oral or written, concerning the subject matter of this Agreement, shall be of any force or effect.

10. Modification in Writing. This Agreement cannot be modified, altered, or amended in any respect except by the written consent of All Parties. Such consent shall be at the given party's sole and unfettered discretion.

11. No Third-Party Beneficiaries. This Agreement does not encompass any third party beneficiaries, and is intended to benefit only the actual parties executing this agreement.

12. Captions. The caption headings in this Agreement are for convenience purposes only and shall not be used to interpret or to define any of the terms and provisions of this Agreement.

13. Choice of Law. The terms and provisions of this Agreement shall be construed according to the laws of the District of Columbia.

14. No Assignment. The obligations, promises and guarantees contemplated in this Agreement are unique and personalized in nature. As such, this Agreement, and, without limitation, the obligations set forth in Section 2, may not be assigned or transferred without the express written consent of the Parties. Such consent shall be at the given party's sole and unfettered discretion.

15. Notice. If any clause of this Agreement requires that notice be given, written notice must be sent via certified mail or via overnight delivery with receipt signature required, and notice will be deemed to have been given upon receipt of the written notice by the intended party. Notice must be sent to each party as follows:

(a) if to VVoA, written notice must be sent to:

Volkswagen of America, Inc.  
an operating unit of Volkswagen Group of America, Inc.  
Attn: Office of the General Counsel  
2200 Ferdinand Porsche Drive  
Herndon, VA 20171

With a copy to:

Volkswagen of America, Inc.  
An operating unit of Volkswagen Group of America, Inc.  
Attn: Volkswagen Network Operations  
2200 Ferdinand Porsche Drive  
Herndon, VA 20171

VOLKSWAGEN



(b) If to Dealer, written notice must be sent to:

Jeffrey Lash -- President  
Lash Auto Group, LLC d/b/a Lash Volkswagen of White Plains  
376 Tarrytown Road  
Greenburgh, NY 10607

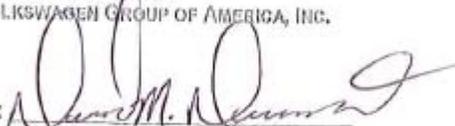
Danielle Lash, Vice President and General Counsel  
18 Brandywine Lane  
Sandy Hook, CT 06482

16. Counterparts. This Agreement may be executed in any number of identical counterparts, any of which may contain the signatures of less than all parties, and all of which together shall constitute a single Agreement. A signature to this Agreement delivered by telecopy shall be deemed valid.

17. Time of the Essence. Time is of the essence in this Agreement. All milestones, interim and final deadlines, shall be deemed critical and material to the terms of the Agreement, and the Parties' understanding, and shall be strictly adhered to and enforced.

IN WITNESS WHEREOF, as of this 7<sup>th</sup> day of November, 2012, Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., and Lash Auto Group 2, LLC, have each caused this Agreement to be duly executed.

VOLKSWAGEN OF AMERICA, INC.,  
AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:   
David Durant  
Director -- Northeast Region

BY:   
Robert H. Kim  
General Manager - Network Operations

LASH AUTO GROUP, LLC

BY:   
Jeffrey Lash -- President

# EXHIBIT F

PRIME AUTOMOTIVE GROUP

September 16, 2019

VIA Electronic Mail

Volkswagen of America, Inc.

Attn: Office of the General Counsel

2200 Ferdinand Porsche Drive

Herndon, VA 20171

Attn: Patrick Coyle, Brian Kelly, Mike Tocci, Blake Martini, and Morgan Filbey

Email: patrick.coyle@vw.com; brian.kelly@vw.com; michael.tocci@vw.com; blake.martini@vw.com; morgan.filbey@vw.com

Re: Volkswagen dealership entities controlled by GPB Capital Holdings and affiliates (the "Companies")

Dear Gentlemen:

I am writing to inform you of a change in the senior management of the Companies. The governing bodies of the Companies determined to terminate David Rosenberg's employment as the Chief Executive Officer of the Companies (as applicable) and from any other officer positions he held and have appointed me to replace him as Interim Chief Executive Officer effective as of the date of this letter.

I have over 40 years of experience in the automotive industry, most recently as the Co-Founder and CEO of Vroom, the second largest on-line pre-owned vehicle sales organization in the country. Prior to founding Vroom, I spent 14 years at AutoNation, the largest automotive retailer in the country, as Senior Vice President of Sales where I was responsible for overseeing \$13 billion in revenue across the company's profit centers including new and used vehicle sales, service, parts, collision, finance and insurance. Enclosed please find a copy of my complete resume.

I joined the Board of Managers of Automile Holdings, LLC (d/b/a Prime Automotive Group) in May 2019 and was named Chairman of the Board shortly thereafter. Prior to joining the Prime Automotive Group, I had no prior relationship with David Gentile or GPB Capital Holdings, LLC. I have no personal involvement in any regulatory and litigation matters related to GPB Capital Holdings, LLC.

Pursuant to that certain Irrevocable Proxy to Vote Membership Interest of Automile Parent Holdings LLC (the "Proxy"), the members of Automile Parent appointed David Rosenberg as the sole and exclusive proxy of Automile Parent to vote and exercise all voting and related rights with respect to the membership interests held by Automile Parent in accordance with the terms and conditions set forth therein. According to the terms of the Proxy, upon David Rosenberg no longer holding the position of President and Chief Executive Officer of Automile Parent, David Rosenberg shall immediately cease being the Voting Representative (as defined in the Proxy) and there shall be appointed a new Voting Representative who needs to be approved by Volkswagen. Accordingly, effective as of the date of this letter, David Rosenberg was removed as Voting Representative. Furthermore, this letter shall serve as notice that Automile Parent proposes to appoint me as the new Voting Representative, subject to your approval.

I do not contemplate any changes in the on-site management of the stores owned by the Companies. I look forward to discussing this change in executive management with you in more detail at

375 Providence Highway • Westwood, MA 02090 • Tel 855-Prime-10



your earliest convenience. Kindly forward all necessary documentation required to obtain your consent for my appointment as Interim Chief Executive Officer and as the new Voting Representative for Automile Parent.

Please feel free to contact me with any questions and I look forward to scheduling a meeting with you in the near future. I appreciate your prompt attention to this matter.

Sincerely,



Kevin Westfall

Enclosure

---

375 Providence Highway • Westwood, MA 02090 • Tel 855-Prime-10

driveprime.com

**Kevin P. Westfall**  
**kwestfall@gpb-cap.com**  
**(954) 614-1333 Cell**

**Lead an organization to achieve significant revenue and profitability growth, while creating a culture of exceptional customer and employee satisfaction.**

**AutoAmerica/VROOM, Fort Worth, TX 12/11 – 1/16**  
**CO-FOUNDER/CEO**

- Co-founded the second largest on-line pre-owned vehicle sales organization in the US.
- Implemented a customer focused sales process ensuring transparency and honesty throughout the entire sales process. (Recognized as an industry leading sales process)
- Secured floorplan financing (\$30MM) through Ally Bank, excluding any personal guaranties.
- Grew sales to over 3000 pre-owned cars and trucks monthly.
- Secured outside investors to take the company public.

**AUTONATION INC, Ft. Lauderdale, FL 3/97 – 11/11**  
**SENIOR VICE PRESIDENT – SALES**

Responsible for developing strategic direction and implementing “Best Practices” to improve the operating and financial performance for new and used vehicle sales, service, parts, collision, finance and insurance (\$13.0B total revenue). Additional responsibilities include vehicle ordering, inventory, CSI, and training for all 29,000 associates.

- Developed customer-oriented sales menu process that ensures all customers are treated with respect, values their time and provides financial data in a fully transparent manner.
- Implemented new sales forecast and vehicle order configuration tool to reduce days supply and days to turn.
- Developed and launched Vehicle Value Outlets (31) that provide a retail sales channel for high mileage, aged and pre-wholesale vehicles in an one-price non-negotiated sales environment for consumers.
- Implemented a new retail pricing model enabling stores to quickly provide meaningful vehicle prices (1st pencil, target and floor) to consumers.
- Launched a defined service process on how all service associates should interact with the consumers, including standardized pricing guides, electronic maintenance menus and multipoint inspection forms.
- Consolidated all service marketing into one program from sales to service, retention through reactivation.
- Launched a collision concierge program for all dealerships without a collision facility.
- Launched a mandatory intervention program for non-performing CSI stores.
- Created new training and performance measurement programs, for all sales departments, that require training certification and attainment of performance standards for continued employment.
- Designed and implemented customer friendly full disclosure “menu” finance process.
- Consolidated lenders among all retail locations to increase store purchasing leverage and profitability.
- Created and launched captive finance and service contract company to service all retailers.
- Leading project team to create a seamless and transparent electronic sales process by fully integrating the CRM, sales and F&I tools into the Dealer Management systems.

#### **HIGHLIGHTS**

- Implemented fully transparent “Smart Choice” customer sales menu significantly improving PVR’s and CSI.
- Reduced days supply by 11 days resulting in a \$25MM annual savings.
- Successfully implemented a retail pricing tool to all stores significantly improving PVR’s while creating visibility to loser deals.
- Increased financial performance of fixed operations and customer service retention to the highest levels since inception of company.
- Consolidated service marketing into one comprehensive program reducing expense by 40% and improving retention by 72%.
- Launched F & I “menu” process resulting in a \$685 PVR increase for new and used vehicles.
- Launched lender and protection product program generating between \$75-100MM in corporate income annually.
- Improved protection product sales (service contracts, pre-paid maintenance, etc.) from 43% to 186% annually.
- Increased both Sales and Service CSI to the highest levels in the history of the company.

#### **POSITIONS HELD**

- 3/05 to Present - SVP of Sales
- 5/03 to 3/05 – SVP Fixed Operations and Finance & Insurance
- 3/97 to 10/03 – President of AutoNation Financial Services and Finance & Insurance

#### **BMW FINANCIAL SERVICES, Woodcliff Lake, NJ 1990-3/97 FOUNDER/PRESIDENT**

- Determined strategic direction for the development and on-going operations of a captive finance company.
- Created a captive finance company from one person to a fully functional, highly service-oriented organization.
- Developed competitive customer and dealer oriented products and programs.
- Hired key managers and support staff.
- Established pricing and residual policies to increase profitability.
- Determined funding strategies in order to broaden funding capabilities and improve borrowing costs.
- Selected technology infrastructure to promote efficient transaction processing and adequate financial controls.

#### **HIGHLIGHTS**

- Directed the successful implementation of the wholly owned captive launched 1/93
- Implemented a centralized processing center in Columbus, Ohio
- Grew the company from \$0.7B to over \$7.2B from 1993 to 1997, respectively
- Managed approximately 300 employees
- Increased profitability from (\$1.1MM) in 1991 to \$78.8MM in 1997.
- Established reserve levels (Residual and Credit) to 150% of forecasted losses.
- Maintained an industry leading loss ratio of 20 BP annually while creating strong dealer acceptance.
- Established strong internal controls to ensure financial and operational control.
- Lead the entire automotive finance industry (including international) in operating efficiency as measured by total assets serviced to operating expenses.
- Established customer-oriented environment – “Service is our only business”.
- Implemented detailed workflow analysis and productivity standards and reports.
- Implemented comprehensive cross training programs.
- Lead industry in dealer and customer satisfaction as ranked by JD Powers and Associated among all banks, captive and independent finance companies.
- Implemented highly efficient and flexible client-server technology.

**CHRYSLER CREDIT CORPORATION**, Southfield, MI 1987-1990  
**MANAGER – Retail Lease Portfolio**

- Managed all aspects of the retail leasing portfolio from acquisition through disposal (\$4 Billion dollar portfolio).
- Determined market presence by developing competitive lease products and features.
- Controlled profitability through rate and residual establishment.
- Managed \$200 Million annual budget for marketing, training and incentives.

**HIGHLIGHTS**

- Developed and launched the special “Gold Key Leasing” program.
- Increased volume by 100%, reduced losses by 50% and shortened the average finance term from 58 to 36 months.

**WORLD AUTOMOTIVE IMPORTS AND LEASING**, Dublin, OH 1980 – 1987  
**PRESIDENT**

- Responsible for creating and directing a regional retail and leasing company.
- Managed 7 employees.

**HIGHLIGHTS**

- Grew sales from 2.3 Million in 1980 to \$7 Million by 1987.

**EDUCATION**

**Ohio State University** – BS Business Administration - Major – Accounting

**OTHER HIGHLIGHTS**

- **Board Member of RumbleOn – 2017 to Present**
- **Board Member of Automile (Chairman) – 2019 to Present**

# EXHIBIT G

# BakerHostetler

## Baker&Hostetler LLP

811 Main Street  
Suite 1100  
Houston, TX 77002-6111

T 713.751.1600  
F 713.751.1717  
www.bakerlaw.com

David R. Jarrett  
direct dial: 713.646.1347  
djarrett@Bakerlaw.com

September 19, 2019

**Via Registered Email and  
UPS overnight # 1Z X65 5R8 A2 9617 4712**

Mr. Jonathan L. Awner, Esq.  
Akerman LLP  
98 Southeast Seventh Street, Suite 1100  
Miami, FL 33131  
jonathan.awner@akerman.com

Mr. Awner,

Baker & Hostetler, LLP serves as outside counsel to Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“VWoA”) and also to Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. (“AoA”). Unless identified separately, we will refer to VWoA and AoA as our “Client” for simplicity. Should you desire to contact us about Mr. Westfall’s correspondence to our Client, please do so. I, along with Billy M. Donley, represent our Client. Mr. Donley serves as lead counsel to our Client. He can be reached by phone at (713) 646-1382 and by email at bdonley@bakerlaw.com

Our Client informed us of an email communication it received from you that attached correspondence, dated September 16, 2019, from Mr. Kevin Westfall. Among other representations contained in his correspondence, Mr. Westfall purports to have joined the Board of Managers for Automile Holdings, LLC in May of 2019 and was made Chairman of the Board shortly thereafter. His correspondence also stated that Mr. David Rosenberg no longer holds the position of Chief Executive Officer and President of Automile Parent Holdings, LLC, and that David Rosenberg was removed as the Voting Representative named under the Irrevocable Proxy To Vote All Membership Interests of AMR Auto Holdings-PA, LLC, executed on October 4, 2017.

Our Client sent separate written notifications to Mr. Rosenberg in his capacity as Dealer-Principal, President, Manager, and Chief Executive Officer of the various GPB-owned dealerships, and to Mr. David Gentile, in his capacity as Chief Executive Officer of GPB Capital Holdings, LLC. In total, five letters were sent and a copy of each is attached. Our Client provided up to two weeks from receipt of the letters for Messrs. Rosenberg and Gentile to respond. Our Client will allow them time to answer before responding to Mr. Westfall’s correspondence.

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver  
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

**EXHIBIT 6**

Please advise Mr. Westfall that our Client neither has granted Mr. Westfall permission to serve in the capacities he purports to have nor has our Client recognized him as the proper person to possess or exercise full operational control over the VWoA or AoA dealerships formerly controlled and operated by Mr. Rosenberg. From his inception to present, our Client only recognizes Mr. David Rosenberg as Dealer Principal, President, Manager, and Chief Executive Officer of the VWoA and AoA dealerships of which he is named in the applicable contracts as such, including but not limited to the VWoA and AoA Dealer Agreement and all attachments, exhibits, and addenda thereto. Because our client does not recognize Mr. Westfall in the capacities he purports to represent, he is not to contact VWoA or AoA directly but, instead, is to contact us through his attorney(s). Additionally, our Client makes no representation that it will consider Mr. Westfall as a successor Voting Representative. As you likely know, under the Irrevocable Proxy, AoA possesses sole discretion to consider any successor Voting Representative that is proposed in place of Mr. David Rosenberg. Furthermore, VWoA, under the Business Relationship and Settlement Agreement (“BRA”), required that David Rosenberg, and only David Rosenberg, exercise full operational control over the applicable dealer entities. The BRA clearly stated that not only does VWoA not approve GPB Group or any of its owners (whether direct or indirect, actual or beneficial) to exercise any operational control over the dealerships to which the BRA applies, but neither GPB Group nor any of its owners (whether direct or indirect, actual or beneficial) shall ever exercise any operational control, directly or indirectly, over the dealerships to which the BRA applies.

Our Client trusts that each dealership will continue to operate as before and that all day-to-day matters will be handled by and through the personnel that our Client is accustomed to dealing with. If this has changed, our Client expects an immediate response be made to us so it can assess what action is necessary and appropriate. Because, as I previously mentioned, our Client only recognizes Mr. David Rosenberg as Dealer Principal, President, Manager, and Chief Executive Officer, a copy of this letter (without the attachments) has been sent to Mr. Rosenberg’s counsel.

Finally, our Client does not waive or abandon any rights each possesses or may possess in the future pertaining to the applicable contracts with the GPB-related entities and managers, or the applicable dealer agreement each has with a GPB-owned dealership. This includes our respective Client’s right to issue a notice of default, notice of breach, notice of election on the right to buy, the right to initiate divestiture, the right to issue notice of termination, and/or the right to demand that the GPB entities pay any and all attorney fees and legal costs associated with the defense of their respective legal rights and remedies.

Sincerely,



David R. Jarrett

cc: Via mail and email  
Mr. Jack W. Pirrozzolo, Esq.  
Sidley Austin LLP  
60 State Street  
36th Floor  
Boston, MA 02109  
JPirrozzolo@Sidley.com

Via email only  
Mr. Scott Silverman, Esq.  
General Counsel  
Prime Motor Group  
Scott@SilvermanAdvisors.com

# EXHIBIT H



Volkswagen

VOLKSWAGEN

Mr. David Gentile	Brian D. Kelly	Name
Chief Executive Officer		
GPB Capital Holdings, LLC	Senior Director, Network Operations	Title
1581 Franklin Ave.		
Mineola, NY 11501	October 31, 2019	Date

Re: Notice to Divest pursuant to Business Relationship Agreement

Dear Mr. Gentile,

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and GPB Capital Holdings, LLC ("GPB") are parties to a Business Relationship and Settlement Agreement entered into on October 3, 2017, as amended by the First Amendment to Business Relationship and Settlement Agreement entered into on October 1, 2018 (collectively referred to as the "Business Relationship Agreement" or "BRA").

As has been previously conveyed via letter and other communication, GPB has breached the BRA in numerous ways. VWoA relies on all prior letters sent to you or GPB's counsel, Akerman, LLP and Rosenfeld & Kaplan, LLP, and to Mr. David Rosenberg or his counsel, Sidley Austin, LLP, since learning of Mr. Rosenberg's unilateral removal from the Board of Managers and involuntary termination from his position as Chief Executive Officer and President of Automile Holdings, LLC. Without repeating everything in our prior correspondence VWoA considers GPB to have breached the BRA based on the following:

- In section 2, the parties agreed that, for purposes of the BRA, the terms "Ownership or Control" means "any ownership stake in any Volkswagen Dealership, operational control of any Volkswagen Dealership or management of any Volkswagen Dealership, whether direct or indirect, including without limitation, through any subsidiary, affiliate company, officer, executive or other stakeholder of GPB Group."
- In section 7 D., the parties agreed that "VWoA authorizes only the listed individuals on Exhibit E (the "Approved Operators") to exercise full operational control over the applicable Dealer entity. VWoA does not approve GPB Group or any of its owners (whether direct or indirect, actual or beneficial) to exercise any operational control over Dealer.
- In section 12 A., the parties agreed that "VWoA shall have the right to review and approve any ... change of ... voting rights of GPB Group ('Ownership Change Event') [and that] GPB Group shall notify VWoA of any proposed Ownership Change Event at least sixty (60) days prior to the date of any Ownership Change Event."
- Exhibit E was amended and replaced in its entirety in the First Amendment to Business Relationship and Settlement Agreement, and the new Exhibit E named only David Rosenberg as the Approved Operator.

As a result of the breach of the BRA, and pursuant to section 12 B of the BRA, VWoA hereby demands that GPB transfer all interest in all Dealerships (as defined in the BRA) to Bona Fide Transferees (also defined in the BRA) within ninety (90) days of this notice.

For purposes of clarity, and as previously communicated, the Dealerships subject to the BRA include Saco Auto Holdings VW, LLC d/b/a Prime Volkswagen ("Prime Volkswagen"), FX Caprara VW, LLC d/b/a FX Caprara Volkswagen ("Caprara Volkswagen"), and AMR Auto Holdings-VWN, LLC d/b/a Volkswagen of Norwood ("Volkswagen of Norwood"). Although there is no obligation to do so, VWoA can provide assistance in locating a buyer for these dealerships upon receipt of a signed seller's assist letter in the form attached hereto. Notwithstanding

**EXHIBIT 6**



Volkswagen

# VOLKSWAGEN

this assist to sell letter, it is the responsibility of GPB to submit an asset purchase agreement to VWoA within the ninety (90) day period described above. Failure to submit an asset purchase agreement or to ultimately consummate a sale of the Volkswagen dealership assets will trigger an obligation by GPB to voluntarily terminate the applicable dealer agreements.

It is clear that there is no remedy to the breaches previously described, and that GPB has attempted a change in ownership or control of GPB Group without VWoA prior notice or consent, in direct contravention of the BRA, thus triggering the right of VWoA to demand GPB divest of all ownership of the Volkswagen dealerships. You are advised that you should immediately seek to sell the Volkswagen dealerships in order to avoid the necessity of a voluntary termination.

As with prior correspondence, and in the interest of advising all parties of the position of VWoA, VWoA will also send a copy of this letter to GPB attorneys and Mr. Rosenberg's attorneys. VWoA takes no position regarding the respective contentions of the parties and continues to rely on the signed agreements, including the BRA and the individual Dealer Agreements.

VWoA does not waive any additional breaches of the Business Relationship Agreement or any of the Dealer Agreements of the above described Volkswagen dealerships that may exist now or in the future, or its right to issue a notice of default or notice of termination pertaining to such breach or breaches at a later time.

Sincerely,

A handwritten signature in blue ink that reads "BKelly".

Brian Kelly  
Senior Director, Network Operations

cc: Attorneys for David Rosenberg

Mr. Jack W. Pirozzolo, Esq.  
Sidley Austin LLP  
60 State Street 36th Floor  
Boston, MA 02109  
JPirozzolo@Sidley.com

Mr. Scott Silverman, Esq.  
Scott@SilvermanAdvisors.com

Attorneys for GPB

Mr. Brit T. Brown, Esq.  
Akerman LLP  
1300 Post Oak Blvd., Suite 2500  
Houston, Texas 77056  
brit.brown@akerman.com

Mr. Jonathan L. Awner, Esq.  
Akerman LLP  
98 Southeast Seventh Street, Suite 1100  
Miami, FL 33131  
jonathan.awner@akerman.com



Volkswagen

# VOLKSWAGEN

Mr. Tab K. Rosenfeld, Esq.  
Rosenfeld & Kaplan, LLP  
1180 Avenue of the Americas, Suite 1920  
New York, New York 10036  
Tab@Rosenfeldlaw.com

# EXHIBIT I

**FIRST AMENDMENT TO BUSINESS RELATIONSHIP  
AND SETTLEMENT AGREEMENT**

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") and GPB Capital Holdings, LLC ("GPB") and its automotive subsidiaries and affiliates (GPB and its affiliates and subsidiaries may be collectively referred to herein as "GPB Group"), (VWoA and GPB may be collectively referred to herein as the "Parties") entered into a Business Relationship and Settlement Agreement (the "Agreement") on October 3, 2017. This First Amendment to the Agreement is entered into and effective on the last date set forth below (the "Effective Date").

**RECITALS**

A. WHEREAS, VWoA is a company organized and existing under the laws of the State of New Jersey, with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VWoA is the exclusive distributor of Volkswagen-brand motor vehicles, parts, and accessories (collectively, "Authorized Products") in the United States of America.

B. WHEREAS, GPB is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 1581 Franklin Ave., Mineola, NY 11501. GPB is the general partner of GPB Automotive Portfolio, LP, GPB Holdings, LP, and GPB Holdings II, LP, which have either direct or indirect majority ownerships in the Volkswagen Dealerships set forth in Exhibit A (the "Dealerships"). The Parties acknowledge that the GPB Group has or may create or structure ownership of Volkswagen dealerships through additional corporate entities which may not have been formed as of the Effective Date. Notwithstanding this fact, this Amendment, the Agreement and the obligations of GPB Group as set forth herein are intended to also govern the conduct of any such newly formed entities.

C. WHEREAS, the GPB Group recently entered into an asset purchase agreement to acquire an additional Volkswagen Dealership in Massachusetts (the "Gallery Dealership"). VWoA has a contractual and statutory right to object to the transfer or exercise a right of first refusal.

D. WHEREAS, the GPB Group has requested that VWoA review and consider the asset purchase agreement.

E. WHEREAS, the GPB Group desires that VWoA review and approve the asset purchase agreement and proposed transfer, and, the GPB Group and VWoA recognize that if VWoA rejects the request there could be litigation challenging the decision which would result in additional expense and risk for the parties.

F. WHEREAS, the GPB Group has agreed to remedy outstanding ownership issues with the Dealerships, and has requested that VWoA review and consider the asset purchase agreement of the Gallery Dealership. Upon receipt of all requested documentation, VWoA will review and consider the proposed transfer of the Gallery Dealership.

G. WHEREAS, the Parties now seek to amend the Agreement to clarify the obligations of the Parties on a going forward basis and to ensure that the GPB Group understands and agrees to certain

parameters related to ownership of the Dealerships and any Volkswagen dealerships which may be acquired in the future.

#### **AGREEMENT**

NOW, THEREFORE, in consideration for the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 7, paragraph F of the Agreement, titled Safe Harbor Period, is deleted in its entirety and replaced by the following:

Safe Harbor Period. The performance obligations of this Section 7 shall not apply to a Dealership until GPB Group has had Ownership or Control of said Dealership for a period of twelve (12) consecutive months ("Safe Harbor Period"). After the Safe Harbor Period, the provisions of Section 7 shall become fully applicable on a going forward basis. The Safe Harbor Period is only applicable to performance obligations as described in paragraphs A., B., and C. above. Provided however that if there is a change in Approved Management as set forth in Exhibit E hereto, the GPB Group shall have ninety (90) days from the removal of any such Approved Operator to submit to VWoA another individual to serve as Approved Operator at the applicable Volkswagen dealership location, which individual is subject to VWoA approval, and the GPB Group shall not be deemed in default during said ninety (90) day period.

2. Section 13 of the Agreement, titled Acquisition and Open Point Eligibility, paragraph A. is deleted in its entirety and replaced by the following

GPB Group understands and agrees that they shall not be eligible for any acquisitions of Volkswagen dealerships or appointment to Volkswagen open points if they are not in compliance with all terms, conditions and provisions of this Agreement, including, without limitation, the provisions of Sections 3 through 12, above, and, accordingly, agrees not to enter into any agreements with third parties to acquire interests in Volkswagen dealerships if not in compliance. VWoA agrees to identify a contact person to whom the GPB Group can provide notice (on a confidential basis) that it is conducting substantive negotiations within seven (7) business days from commencement of such negotiations for any acquisition of a Volkswagen dealership. Negotiations for purposes of this paragraph shall mean exchanging financial offers and does not include general inquiries regarding the availability or desired price of a dealership (or dealership group). VWoA will not consider notice required by this paragraph to be notice for purposes of any applicable state franchise law, and agrees to keep any such notice confidential. This notice requirement shall be considered a material term of this Agreement for purposes of section 13.C below.

3. Section 13 of the Agreement, titled Acquisition and Open Point Eligibility, paragraph C. is deleted in its entirety and replaced by the following

GPB Group agrees that failure to comply with any material terms and conditions of this Agreement shall constitute independent and adequate good cause and justification (both

factual and legal) for VWoA to deny approval or consent to any acquisition of a Volkswagen dealership under the terms of Article 12 of the Volkswagen Dealer Agreement, Standard Provisions, and any relevant state law regulating manufacturer approval of dealership transfers. Further, if GPB Group fails to comply with any material term or condition of this Agreement, VWoA may demand divestiture of any or all of the GPB owned Dealerships, in VWoA's sole discretion. Any such request for divestiture will be made in accordance with section 7.E.ii-iv of the Agreement.

4. Section 14 of the Agreement, titled GPB Group's Covenant Not to Sue or Protest, is deleted in its entirety and replaced by the following:

GPB Group's Covenant Not to Sue or Protest. If (i) a termination of a Dealership or DA, including a voluntary termination which may be required under the terms of this Agreement ("DA Termination") or (ii) the rejection or turn-down of a proposed buy-sell, acquisition or purchase of a Volkswagen dealership ("Buy-Sell Rejection"), occurs pursuant to or as a result of the terms, conditions and provisions of this Agreement, GPB Group agrees that it shall not file a legal protest, civil or administrative action, or any other legal proceeding to prevent or delay the effect of the DA Termination or Buy-Sell Rejection at issue. GPB Group further agrees that it shall not seek monetary damages or other legal or equitable remedy, from any court or administrative agency, related to the termination of the DA Termination or Buy-Sell Rejection at issue. Should GPB Group violate this provision, GPB Group covenants and agrees that it shall pay any and all of VWoA's attorney fees and legal costs associated with defense of such legal, administrative or equitable action, and, in addition, GPB Group shall indemnify and hold VWoA harmless from any monetary damages, equitable judgments or fees and costs resulting from any legal, administrative or equitable proceeding in contravention of this provision.

5. Revised Exhibit E. Exhibit E is hereby deleted in its entirety and replaced with the attached Exhibit E.

6. Capitalized Terms. Capitalized terms used herein that are not otherwise defined shall have the meaning given to such terms in the Agreement.

7. To the extent that the terms in this Amendment are different from or contrary to any terms in the Agreement, the terms in this Amendment shall prevail. Except as specifically amended in this Amendment, the Agreement (as modified) remains in full force and effect and is hereby ratified and confirmed. In the event of any conflict between the Agreement and this Amendment, the terms of this Amendment shall apply and supersede the inconsistent provision in the Agreement.

8. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one single agreement. A party's facsimile signature to this Agreement delivered to the other party shall be sufficient to bind such party to this Amendment.

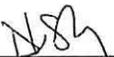
IN WITNESS WHEREOF, as of this 1 day of October, 2018, Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., and GPB Capital Holdings LLC on behalf of itself and its affiliates and subsidiaries, have each caused this Amendment to be duly executed.

**VOLKSWAGEN OF AMERICA, INC.,  
AN OPERATING UNIT OF  
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY:  \_\_\_\_\_

**GPB Capital Holdings, LLC**

BY:  \_\_\_\_\_  
David Gentile  
CEO

By:  \_\_\_\_\_  
David Rosenberg  
Automotive COO

**Exhibit A  
Dealerships**

Prime Volkswagen  
FX Caprara Volkswagen  
Lash Auto Group, LLC dba Lash Volkswagen of White Plains  
Lash Auto Group 2 LLC dba Volkswagen Oneonta

**Exhibit E**  
**Approved Operators**

#408340 Lash Volkswagen of White Plains – David Rosenberg

#408302 Volkswagen Oneonta - David Rosenberg

#401425 Prime Volkswagen – David Rosenberg

#408142 FX Caprara Volkswagen – David Rosenberg