

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

---

**In re:**

) **Chapter 11**

**BLITZ U.S.A., Inc., et al.,<sup>1</sup>**

) **Case No. 11-13603 (PJW)**

**Debtors.**

) **(Jointly Administered)**

) **Re: Docket No. 574 & 618**

---

**NOTICE OF FILING FORM ASSET PURCHASE  
AGREEMENT IN CONNECTION WITH PROPOSED SALE  
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

**PLEASE TAKE NOTICE THAT**, on June 29, 2012, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006 for (I) Entry of An Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to be Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances And Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 574] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801 (the “Bankruptcy Court”), whereby the Debtors requested, among other things, approval of certain bidding and auction procedures (the “Bidding Procedures”) relating to the sale of substantially all of the Debtors’ assets (collectively, the “Assets”).

**PLEASE TAKE FURTHER NOTICE THAT**, on July 17, 2012, the Bankruptcy Court entered the *Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to be Assigned; and (E) Granting Certain Related Relief* [Docket No. 618] (the “Bidding Procedures Order”), which, among other things, (i) approved the Bidding Procedures; and (ii) scheduled the date of the hearing to consider approval of the proposed sale of the Assets for September 11, 2012 at 9:30 a.m. (EDT).

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 404 26th Ave. NW Miami, OK 74354.



1113603120727000000000002

**PLEASE TAKE FURTHER NOTICE THAT**, consistent with the procedures contemplated in the Motion and the Bidding Procedures Order, the Debtors are today filing a form *Asset Purchase Agreement* (the “Form APA”, a copy of which is attached hereto as Exhibit “A”).

**PLEASE TAKE FURTHER NOTICE THAT**, a copy of the Form APA in Word format is available by contacting Debtors’ undersigned counsel.

Dated: July 27, 2012  
Wilmington, Delaware

/s/ Amanda R. Steele

Daniel J. DeFranceschi (No. 2732)

Michael J. Merchant (No. 3854)

Julie A. Finocchiaro (No. 5303)

Amanda R. Steele (No. 5530)

**RICHARDS, LAYTON & FINGER, P.A.**

One Rodney Square

920 North King Street

Wilmington, Delaware 19801

Telephone: (302) 651-7700

Facsimile: (302) 651-7701

Email: DeFranceschi@rlf.com

Merchant@rlf.com

Finocchiaro@rlf.com

Steele@rlf.com

*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Form APA**

ASSET PURCHASE AGREEMENT

BY AND AMONG

BLITZ U.S.A., INC.,

BLITZ RE HOLDINGS, LLC

AND

[PURCHASER]

\_\_\_\_\_  
Dated as of \_\_\_\_\_, 2012

## TABLE OF CONTENTS

	Page
ARTICLE I     DEFINITIONS.....	1
1.1     Certain Definitions.....	1
1.2     Terms Defined Elsewhere in this Agreement .....	9
1.3     Other Definitional and Interpretive Matters .....	10
ARTICLE II     PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES.....	11
2.1     Purchase and Sale of Assets.....	11
2.2     Excluded Assets .....	13
2.3     Assumption of Liabilities.....	14
2.4     Excluded Liabilities .....	14
2.5     Cure Amounts .....	15
2.6     Further Conveyances and Assumptions.....	16
2.7     Bulk Sales Laws.....	16
ARTICLE III     CONSIDERATION .....	16
3.1     Consideration .....	16
3.2     Purchase Price Deposit .....	16
3.3     Payment of Purchase Price.....	17
3.4     Allocation of the Purchase Price.....	17
ARTICLE IV     CLOSING AND TERMINATION.....	17
4.1     Closing Date.....	17
4.2     Deliveries by Sellers .....	17
4.3     Deliveries by Purchaser .....	18
4.4     Termination of Agreement.....	18
4.5     Procedure Upon Termination.....	19
4.6     Effect of Termination.....	19
ARTICLE V     REPRESENTATIONS AND WARRANTIES OF SELLERS.....	20
5.1     Organization and Good Standing.....	20
5.2     Authorization of Agreement .....	20
5.3     Conflicts; Consents of Third Parties. ....	21
5.4     Financial Statements .....	21

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
5.5 No Undisclosed Liabilities.....	21
5.6 Title to Purchased Assets .....	21
5.7 Taxes.....	22
5.8 Real Property .....	22
5.9 Tangible Personal Property Leases .....	22
5.10 Intellectual Property.....	22
5.11 Material Contracts.....	22
5.12 Employee Benefits .....	23
5.13 Litigation.....	23
5.14 Compliance with Laws; Permits. ....	23
5.15 Environmental Matters.....	24
5.16 Financial Advisors .....	24
5.17 No Other Representations or Warranties; Schedules.....	24
ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASER .....	25
6.1 Organization and Good Standing.....	25
6.2 Authorization of Agreement .....	25
6.3 Conflicts; Consents of Third Parties. ....	26
6.4 Litigation.....	26
6.5 Financial Advisors .....	26
6.6 Bankruptcy .....	27
6.7 Financial Capability .....	27
6.8 Condition of the Business .....	27
ARTICLE VII BANKRUPTCY COURT MATTERS .....	28
7.1 Competing Transaction.....	28
7.2 Bankruptcy Court Filings.....	28
7.3 Back-up Bidder .....	28
7.4 Expense Reimbursement.....	28
ARTICLE VIII COVENANTS .....	29
8.1 Access to Information .....	29

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
8.2 Conduct of the Business Pending the Closing .....	29
8.3 Consents .....	30
8.4 Regulatory Approvals. ....	30
8.5 Further Assurances.....	31
8.6 Confidentiality .....	31
8.7 Preservation of Records .....	31
8.8 Publicity .....	32
8.9 Supplementation and Amendment of Schedules .....	33
ARTICLE IX RESERVED .....	33
ARTICLE X CONDITIONS TO CLOSING .....	33
10.1 Conditions Precedent to Obligations of Purchaser .....	33
10.2 Conditions Precedent to Obligations of Seller.....	34
10.3 Conditions Precedent to Obligations of Purchaser and Seller .....	34
10.4 Frustration of Closing Conditions.....	35
ARTICLE XI NO SURVIVAL.....	35
11.1 No Survival of Representations and Warranties .....	35
11.2 No Consequential Damages.....	35
ARTICLE XII TAXES.....	35
12.1 Transfer Taxes .....	35
12.2 Tax Payments.....	35
12.3 Purchase Price Allocation (Federal Income Tax) .....	36
12.4 Audits, Claims and Proceedings .....	36
12.5 Cooperation.....	36
ARTICLE XIII MISCELLANEOUS .....	36
13.1 Expenses .....	36
13.2 Injunctive Relief.....	37
13.3 Governing Law .....	37
13.4 Submission to Jurisdiction; Consent to Service of Process. ....	37
13.5 WAIVER OF RIGHT TO TRIAL BY JURY.....	37

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
13.6 Entire Agreement; Amendments and Waivers .....	38
13.7 Notices. ....	38
13.8 Severability .....	39
13.9 Binding Effect; No Third-Party Beneficiaries; Assignment .....	39
13.10 Non-Recourse .....	40
13.11 Counterparts .....	40
 <u>Schedules</u>	
1.1(a) Excluded Contracts	
1.1(b) Knowledge of Sellers	
1.1(c) Purchased Contracts	
1.1(d) Permitted Exceptions	
2.2 Excluded Assets	
2.3 Assumed Liabilities	
3.4 Allocation of Purchase Price	
5.3(b) Conflicts; Consents of Third Parties	
5.7 Tax Exceptions	
5.8 Real Property	
5.9 Personal Property Leases	
5.11 Material Contracts	
5.15 Compliance with Laws; Permits	
5.15 Environmental Matters	
8.2 Exceptions to Conduct of Business	
12.3 Purchase Price Allocation (Federal Income Tax Purposes)	
 <u>Exhibits</u>	
A Bill of Sale	
B Assignment and Assumption Agreement	
C Plat of Purchased Real Property	
D Deed	



## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of [\_\_\_\_\_] , 2012 (this "Agreement"), by and among Blitz U.S.A., Inc., an Oklahoma corporation ("Blitz USA"), Blitz RE Holdings, LLC, a Delaware limited liability company ("Blitz RE" and together with Blitz USA, each, a "Seller" and jointly, "Sellers"), and [\_\_\_\_\_] , a [\_\_\_\_\_] ("Purchaser"). Sellers and Purchaser are sometimes herein referred to collectively as the "Parties" and individually as a "Party."

### WITNESSETH:

WHEREAS, on November 9, 2011 (the "Petition Date"), Sellers and certain of their affiliates filed voluntary petitions for relief (the "Bankruptcy Case") under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Sellers will continue to operate the Business (as defined below) until the Business Shutdown Effective Time as debtors in possession;

WHEREAS, each Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Seller, all of the Purchased Assets and Assumed Liabilities, all as more specifically provided herein; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

#### 1.1 Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Avoidance Actions" means any and all claims and causes of action held by the Sellers against any Employees hired by Purchaser on the Closing Date and all trade creditors of

the Sellers arising under the Bankruptcy Code, including without limitation sections 544 through 553 thereof, or any similar laws of the United States or any state, territory, or possession thereof, or the District of Columbia (including, without limitation, any preference or fraudulent conveyance actions under such laws).

"Bidding Procedures Order" means an order of the Bankruptcy Court, that, among other things, establishes a date by which Competing Bids must be submitted by bidders and establishes procedures for the auction process.

"Business" means the business of the relevant Seller, as applicable, as conducted immediately prior to the Business Shutdown Effective Time.

"Business Day" means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

"Business Shutdown" means the shutting down of the Business and the cessation of all operations of the Business as of the Business Shutdown Effective Time.

"Business Shutdown Effective Time" means 11:59 p.m. on July 31, 2012.

"Cash and Cash Equivalents" means all of the Sellers' cash (including petty cash and checks and drafts received or in transit, including, without limitation, all checks and drafts that have been submitted, posted or deposited, prior to the Closing Date Effective Time), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper and government securities and other cash equivalents.

"Code" means the Internal Revenue Code of 1986, as amended.

"Contract" means any written contract, indenture, note, bond, lease or other agreement.

"Credit Agreement" means that certain First Amended and Restated Credit Agreement, dated February 4, 2011, among Blitz Acquisition, LLC and the Sellers, as borrowers, Blitz Acquisition Holdings, Inc. and MiamiOK, as guarantors, LAM 2011 Holdings, LLC (f/k/a Blitz Holdings, LLC), as parent, the Lenders party thereto (the "Prepetition Lenders") and BOKF, NA d/b/a Bank of Oklahoma, as administrative agent.

"Debtors" means LAM 2011 Holdings, LLC, Blitz Acquisition Holdings, Inc., Blitz Acquisition, LLC, Blitz RE, Blitz USA and MiamiOK.

"DIP Credit Agreement" means that certain Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement dated as of November 28, 2011, among Debtors, each as a debtor-in-possession under Chapter 11 of the Bankruptcy Code and each, jointly and severally, as the Borrower hereunder, the institutions from time to time parties hereto as lenders, whether by execution of the DIP Credit Agreement or an assignment agreement pursuant to Section 13.3

thereof, and BOKF, NA d/b/a Bank of Oklahoma, as administrative agent for itself and the other lenders.

"Documents" means all files, documents, electronically stored information in any format or in any medium or other storage device including electronically transmitted written or vocal messages, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, other data or data compilations, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials related to the Business and the Purchased Assets, in each case whether or not in electronic form.

"Effective Date" means the date of this Agreement.

"Employees" means all individuals, as of Business Shutdown Effective Time, whether or not actively at work as of the Business Shutdown Effective Time, who were employed by any Seller or in connection with the Business, together with individuals who are hired after the Business Shutdown Effective Time and prior to the Closing, if any.

"Environmental Law" means any foreign, federal, state or local statute, regulation, ordinance, or rule of common law currently in effect relating to the protection of human health and safety or the environment or natural resources including, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.), and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), and the regulations promulgated pursuant thereto.

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

"Escrow Agreement" means the Escrow Agreement, dated as of the date hereof, by and among Sellers, Purchaser and the Escrow Holder.

"Excluded Contracts" means the Contracts set forth on Schedule 1.1(a).

"Excluded Matter" means any one or more of the following: (i) the effect of any change in the United States or foreign economies or securities or financial markets in general; (ii) the effect of any change that generally affects any industry in which the Seller operates; (iii) the effect of any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof; (iv) the effect of any action taken by Purchaser or its Affiliates with respect to the Transactions

or with respect to the Seller, including its respective employees; (v) any matter of which Purchaser is aware on the date hereof; (vi) any matter disclosed on the Schedules or in any filings by the Seller with Bankruptcy Court; (vii) the effect of any changes in applicable Laws or accounting rules; (viii) any effect resulting from the public announcement of this Agreement; (ix) any effect resulting from the compliance with terms of this Agreement or the consummation of the Transactions; (x) any effect resulting from the filing of the Bankruptcy Case and reasonably anticipated effects thereof; or (xi) the Business Shutdown.

"Expense Reimbursement." means the amount of the reasonable and documented expenses of Purchaser incurred in connection with the Transactions and approved by the Bankruptcy Court up to an aggregate amount of \$100,000.

"Furniture and Equipment" means all furniture, fixtures, furnishings, equipment, vehicles, leasehold improvements, and other tangible personal property owned or used by Sellers in the conduct of the Business, including all such machines, molds, tools, artwork, desks, chairs, tables, Hardware, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies.

"GAAP" means generally accepted accounting principles in the United States as of the date hereof.

"Green Escrow" means all amounts delivered to E. Todd Tracy, counsel for the plaintiff Rene Green, in connection with Blitz USA's appeal pending before the United States Court of Appeals for the Fifth Circuit, Case No. 11-40386, of the March 1, 2011 Memorandum Opinion and Order entered by Judge T. John Ward in *Green v. Blitz U.S.A., Inc.*, Case No. 2:07-cv-00372 (E.D. Tex.).

"Governmental Body" means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Hardware" means any and all computer and computer-related hardware, including, but not limited to, computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

"Hazardous Material" means any and all materials (including substances, chemicals, compounds, mixtures, wastes, pollutants and contaminants) (i) to the extent such materials are prohibited, limited or regulated by the Environmental Laws as "hazardous" or "toxic," or (ii) petroleum products and their derivatives to the extent regulated by Environmental Laws.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person means, without duplication: (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the

payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"Intellectual Property Licenses" means (i) any grant to a third Person of any right to use any of the Purchased Intellectual Property owned by Sellers and (ii) any grant to either of the Sellers of a right to use a third Person's intellectual property rights which is necessary for the use of any Purchased Intellectual Property which is not owned by the applicable Seller.

"IRS" means the Internal Revenue Service.

"Knowledge of Seller" or "Knowledge of Sellers" means the actual knowledge of those officers and directors of Sellers identified on Schedule 1.1(b).

"Law" means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation.

"Legal Proceeding" means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

"Liability" means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

"Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance.

"Material Adverse Effect" means a material adverse effect on (i) the business, assets, properties, results of operations or financial condition of Seller or (ii) the ability of Seller to consummate the Transactions or perform its obligations under this Agreement, other than, with respect to clauses (i) and (ii), an effect resulting from an Excluded Matter.

"MiamiOK" means MiamiOK LLC (formerly known as F3 Brands LLC), a Delaware limited liability company.

"Old Republic Insurance Security Amounts" means any and all amounts drawn under any letter of credit issued by BOKF, NA (or any affiliate thereof) in favor of Old Republic

Insurance Company (or any affiliate thereof) in connection with any insurance policy issued to the Sellers or their Affiliates.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business through the Business Shutdown Effective Time consistent with past practice.

"Permits" means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body.

"Permitted Assigns" means any Person appointed (i) pursuant to a plan of reorganization or liquidation to administer and implement such plan of reorganization or liquidation, as applicable, or (ii) to facilitate the administration and closure of the Bankruptcy Case whether under Chapter 11 or Chapter 7 of the Bankruptcy Code.

"Permitted Exceptions" means: (i) all defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in policies of title insurance which have been made available to Purchaser; (ii) Liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings; (iii) mechanics', carriers', workers', warehousemens', repairers' and similar Liens arising or incurred in the Ordinary Course of Business; (iv) zoning, entitlement and other land use and environmental regulations by any Governmental Body provided that such regulations have not been violated; (v) liens securing debt as disclosed in the Financial Statements; (vi) title of a lessor under a capital or operating lease; (vii) licenses and other grants of rights to intellectual property and technology; (viii) the Warehouse Lease; (viii) all Liens set forth on Schedule 1.1(d); and (ix) such other imperfections in title, charges, easements, restrictions and encumbrances which would not be reasonably likely to result in a Material Adverse Effect.

"Person" means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

"Products" means any and all products developed, manufactured, marketed or sold by Blitz USA, whether work in progress or in final form. For the avoidance of doubt, if any, Products do not include products sold to Hopkins Manufacturing Corporation pursuant to the Asset Purchase Agreement, dated as of March 28, 2012, among MiamiOK LLC (formerly known as F3 Brands LLC), a Delaware limited liability company, Blitz USA, Blitz RE, as sellers, and Hopkins Manufacturing Corporation, a Kansas corporation, as purchaser.

"Products Liability Defense Records" shall mean any and all Documents that refer or relate to, arise from, or were produced or withheld from production (including as material subject to the attorney-client privilege, work product doctrine or any other applicable privilege) in, any action, investigation or proceeding (including, without limitation, as part of any

subpoena, court order, similar judicial process, administrative proceeding, any governmental agency or other regulatory agency or civil investigatory demand, in each case whether oral or written, or any other legal or regulatory process) arising from or related to the Debtors' testing, manufacture and/or sale of portable consumer fuel containers or the Debtors' review, consideration, investigation, defense, settlement or other disposition thereof, and any insurance-related matters associated with or deriving therefrom, in whatever form such Documents might be or become, wherever such Documents are located, whether on-site or at an off-site location, and whether within the Debtors' direct possession, custody or control or within the possession, custody or control of others (including but not limited to the Debtors' Affiliates, shareholders, directors, officers, employees and attorneys or any third-party), including but not limited to any document hosting or other service provider or agent of the Debtors.

"Purchased Contracts" means all outstanding purchase orders relating to the sale of Products or the provision of services by Sellers and the Contracts set forth on Schedule 1.1(c), including any Contracts added to Schedule 1.1(c) by Purchaser by notice delivered to the Seller at any time during the period from and after the date hereof until the third (3rd) Business Day prior to the Closing Date; provided that Purchaser shall not be permitted to add any Contracts previously rejected in the Bankruptcy Case.

"Purchased Intellectual Property" means all intellectual property rights owned by Sellers and used by it and arising from or in respect of the following: (i) all patents and applications therefor, including continuations, divisionals, continuations-in-part, or reissues of patent applications and patents issuing thereon, (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, Internet domain names and corporate names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof (collectively, "Marks"), (iii) copyrights and registrations and applications therefor, works of authorship, and mask work rights, in each case used primarily in connection with the Business and (iv) trade secrets.

"Purchased Real Property" means generally that certain Owned Real Property set forth as highlighted on the plat attached hereto as Exhibit C, provided, that as of the Closing Date, the Purchased Real Property shall be described by the final metes and bounds legal description that will be established after the Effective Date. The Purchased Real Property includes the land together with any and all improvements, tenements, hereditaments and appurtenances belonging or in any way pertaining thereto, including but not limited to fixtures (to the extent either Seller owns or has rights in such fixtures) and easements for ingress and egress, storm water drainage or otherwise over adjoining property, if any.

"Real Property" means the Owned Real Property and any other property subject to the Real Property Leases.

"Release" means any spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, or leaching into the environment, but excludes (i) any release which results in exposure to persons solely within a workplace, (ii) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine, (iii) the normal application of fertilizer, and (iv) any discharge in compliance with a Permit.

"Remedial Action" means all actions to (i) clean up, remove, treat or in any other way address any Release of a Hazardous Material into the environment, (ii) prevent or minimize the Release of any Hazardous Material so it does not migrate to cause substantial danger to public health or welfare or the indoor or outdoor environment, or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care.

"RLI Insurance Company Bond Security Amounts" means all amounts due or that become due to Sellers from, or in connection with the bond (RSB4174412 or as amended or replaced) issued by Blitz USA for the benefit of David Calder in connection with the appeal of *Calder v. Blitz U.S.A., Inc.*, Case No. 2:07-cv-387 (D. Utah) to the Court of Appeals for the Tenth Circuit, Case No. 11-4039, and/or the letter of credit issued by BOKF, NA in favor of RLI Insurance Company (BOK11SDF06550 or as amended or replaced) in the amount of \$1,216,684.26.

"Sale Motion" means the motion or motions of Sellers seeking approval and entry of the Bidding Procedures Order and Sale Order.

"Sale Order" shall be an order or orders of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser and Sellers approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Sellers to consummate the Transactions.

"Schedules" means the Schedules prepared in connection with this Agreement.

"Stalking Horse APA" has the meaning ascribed to such term in the Bidding Procedures Order.

"Stalking Horse Purchaser" has the meaning ascribed to such term in the Bidding Procedures Order.

"Supplemental Notice Parties" means counsel and financial advisors to the Official Committee of Unsecured Creditors of Blitz USA, Inc., *et al.*

"Tax Return" means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes.

"Taxes" means (i) all federal, state, local or foreign taxes, charges or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed in connection with any item described in clause (i).

"Transactions" means the transactions contemplated by this Agreement.

"TSA" means that certain Transaction Services Agreement, dated as of April 3, 2012, among MiamiOK, Blitz USA and Hopkins Manufacturing Corporation.



"Warehouse Lease" means the Warehouse Lease Agreement, dated April 3, 2012, between Blitz RE, as lessor, and Hopkins Manufacturing Corporation, as lessee.

"Wal-Mart" means Wal-Mart Stores, Inc. and its Affiliates.

"Wal-Mart Adequate Protection" means the outstanding postpetition payables balance of Wal-Mart in an amount of approximately of \$1.54 million on account of purchases made by Wal-Mart after the Petition Date of portable gas containers from Blitz USA which Wal-Mart has been authorized by the Bankruptcy Court to maintain as adequate protection for Wal-Mart's asserted secured claim and in preservation of its offset and recoupment rights, if any, against Blitz USA for certain indemnification obligations under supplier agreements between Wal-Mart and Blitz USA entered into prior to the Petition Date.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the Sections indicated:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Antitrust Division	8.4(a)
Antitrust Laws	8.4(b)
Asset Acquisition Statement	12.3
Assumed Liabilities	2.3
Auction	7.3
Balance Sheet	5.4
Balance Sheet Date	5.4
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Blitz RE	Recitals
Blitz USA	Recitals
Closing	4.1
Closing Date	4.1
Closing Date Effective Time	4.1
Competing Bid	7.1
Confidentiality Agreement	8.6
Deed	4.2
Escrow Holder	3.2
Escrowed Funds	3.2
Excluded Assets	2.2
Excluded Liabilities	2.4
Financial Statements	5.4
FTC	8.4(a)
Marks	1.1 (in Purchased Intellectual Property definition)
Material Contracts	5.11
Noticing Party	8.7

<u>Term</u>	<u>Section</u>
Original Notice	8.7
Owned Real Property	5.8
Party or Parties	Preamble
Personal Property Leases	5.9
Petition Date	Recitals
Privileged Confidential Information	2.1(i)
Purchase Price	3.1
Purchased Assets	2.1
Purchaser	Preamble
Purchaser Documents	6.2
Real Property Lease	5.8
Revised Statements	12.3
Seller / Sellers	Preamble
Seller Documents	5.2
Tax Claim	12.4
Termination Date	4.4(a)
Transfer Taxes	12.1

### 1.3 Other Definitional and Interpretive Matters

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

All references in this Agreement to any "Article" or "Section" are to the corresponding Article or Section of this Agreement unless otherwise specified.

Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

## ARTICLE II

### PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, all of Sellers' right, title and interest in, to and under the Purchased Assets. "Purchased Assets" shall mean the following assets of Sellers (but excluding Excluded Assets) as of the Closing related to the Business:

(a) all inventory used in connection with the Business other than finished goods inventory;

(b) all deposits (including customer deposits and security deposits for rent, electricity, telephone or otherwise) and prepaid charges and expenses of Sellers other than any deposits or prepaid charges and expenses paid in connection with or relating to any Excluded Assets;

(c) all of the Purchased Real Property and the Real Property Leases which are Purchased Contracts, together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof;

(d) the Furniture and Equipment;

(e) the Purchased Intellectual Property;

(f) the Purchased Contracts, including the Warehouse Lease and the TSA;

(g) all Documents that are used in, held for use in or intended to be used in, or that arise primarily out of, the Business, including any Documents relating to Products, services,

marketing, advertising, promotional materials, Purchased Intellectual Property, all files, customer files and documents (including credit information), supplier lists, records, literature and correspondence, whether or not physically located on any of the premises referred to in clause (d) above, but excluding (i) personnel files for Employees, (ii) such files as may be required under applicable Law regarding privacy, (iii) Documents which Sellers are not permitted to transfer pursuant to any contractual confidentiality obligation owed to any third party, (iv) any Documents primarily related to, or are required to realize the benefits, if any, of any Excluded Assets or Excluded Liabilities, and (v) Documents that are Products Liability Defense Records; provided that Sellers shall have continued access to such Documents as is necessary to administer the Bankruptcy Case or to defend themselves in any Legal Proceeding and Sellers may retain copies of such Documents, and provided that to the extent that any such Documents may include material subject to the attorney-client privilege, work product doctrine or any other applicable privilege including concerning pending or threatened legal proceedings or governmental investigations (the "Privileged Confidential Information"), the Parties hereby agree (a) that the disclosure, receipt and/or review of such Privileged Confidential Information is entirely inadvertent and shall not waive, modify, limit or impair in any form or fashion the protected nature of the Privileged Confidential Information, (b) it is their desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, work product doctrine or other applicable privilege, (c) that any Documents delivered to Purchaser as contemplated by the Transactions and that is entitled to protection under the attorney-client privilege, work product doctrine or other applicable privilege shall remain entitled to such protection under any and all applicable privileges, immunities and/or agreements, and (d) that, to the extent any Documents include material subject to the attorney-client privilege, work product doctrine or any other applicable privilege, Sellers shall have the right in their sole discretion and at any time to identify such Documents as Privileged Confidential Information and to require their return and/or destruction;

(h) all Permits used by Sellers in the Business to the extent assignable;

(i) all supplies owned by Sellers and used in connection with the Business;

(j) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees and agents of Sellers or with third parties to the extent relating to the Business or the Purchased Assets (or any portion thereof) other than non-disclosure or confidentiality agreements entered into by Sellers in connection with the proposed sale of all or a portion of its assets contemplated by the Bidding Procedures Order;

(k) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to Products sold, or services provided, to any Sellers or to the extent affecting any Purchased Assets, to the extent assignable, other than any warranties, representations and guarantees pertaining to any Excluded Assets or rights and defenses pertaining to any Excluded Liabilities;

(l) all Avoidance Actions; provided, however, that Purchaser hereby covenants not to commence any Legal Proceedings to recover on any of the Avoidance Actions

and effective as of the Closing, hereby forever releases the parties against whom the Purchaser may pursue Avoidance Actions from any and all liability related to such Avoidance Actions; and

(m) goodwill and other intangible assets associated with the Business, including customer and supplier lists and the goodwill associated with the Marks included in the Purchased Intellectual Property.

2.2 Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean all assets, properties, interests and rights of Sellers other than the Purchased Assets, including each of the following assets:

(a) all Cash and Cash Equivalents, bank deposits or similar cash items of Sellers;

(b) all accounts receivable of Sellers;

(c) the Wal-Mart Adequate Protection;

(d) all finished goods inventory;

(e) the Excluded Contracts, including any accounts receivable arising out of or in connection with any Excluded Contract;

(f) all deposits or prepaid charges and expenses of any Seller paid in connection with or relating to any Excluded Assets;

(g) any (i) other books and records that any Seller is required by Law to retain or that any Seller determines are necessary or advisable to retain, including Tax Returns, financial statements, and corporate or other entity filings; provided, however, that Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the Business or any of the Purchased Assets to the extent either Seller is not required by Law to keep such retained books and records confidential or private, (ii) minute books, stock ledgers and stock certificates of Sellers, (iii) documents relating to proposals to acquire the Business by Persons other than Purchaser (including non-disclosure or confidentiality agreements entered into by Sellers in connection with the proposed sale of all or a portion of its assets contemplated by the Bidding Procedures Order), and (iv) the Documents excluded under Section 2.1(g)(i) through (v) hereof (including the Products Liability Defense Records);

(h) any claim, right or interest of any Sellers in or to any refund, rebate, abatement or other recovery for Taxes other than Transfer Taxes, together with any interest due thereon or penalty rebate arising therefrom, for any Tax period (or portion thereof);

(i) all insurance policies or rights to proceeds thereof relating to the assets, properties, business or operations of Sellers;

(j) any rights, claims or causes of action of any Seller against third parties relating to assets, properties, business or operations of Sellers arising out of events occurring on or prior to the Closing Date that are not Purchased Assets;

(k) all ownership interests in MiamiOK;

(l) all rights and/or claims of the Sellers arising out of this Agreement and any other agreement entered into pursuant to this Agreement;

(m) the Green Escrow;

(n) RLI Insurance Company Bond Security Amounts;

(o) Old Republic Insurance Security Amounts; and

(p) those assets listed on Schedule 2.2.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume, effective as of the Closing Date, and shall timely perform and discharge in accordance with their respective terms, the following Liabilities of Sellers existing as of immediately prior to the Closing (collectively, the "Assumed Liabilities");

(a) all Liabilities of Sellers under the Purchased Contracts arising on or after the Petition Date;

(b) all accounts payable incurred in the Ordinary Course of Business arising on or after the Petition Date, other than those under Contracts that are not Purchased Contracts;

(c) all cure amounts that Purchaser is required to pay pursuant to Section 2.5;

(d) all Transfer Taxes applicable to the transfer of the Purchased Assets pursuant to this Agreement;

(e) pursuant to Section 12.2, all real and personal property Taxes or similar ad valorem obligations relating to the Purchased Assets;

(f) all other Liabilities with respect to the Business or the Purchased Assets arising after the Closing;

(g) those Liabilities listed on Schedule 2.3; and

(h) all Liabilities relating to amounts required to be paid by Purchaser hereunder.

2.4 Excluded Liabilities. Purchaser shall not assume and shall be deemed not to have assumed, and Sellers shall be solely and exclusively liable with respect to, any Liabilities of

Sellers other than the Assumed Liabilities (collectively, the "Excluded Liabilities"). For the avoidance of doubt, the Excluded Liabilities include the following:

(a) all Liabilities arising out of Excluded Assets, including Contracts that are not Purchased Contracts;

(b) except as otherwise provided in Section 2.3(d), all Liabilities arising from the sale, manufacture or distribution of Products or the provision of services in the Ordinary Course of Business, including all Liabilities pursuant to product warranties, product returns and rebates;

(c) except as otherwise provided in Sections 2.3(d) and 2.3(e), all Liabilities for Taxes of Seller relating to the Purchased Assets for any Tax periods (or portions thereof) ending before the Closing Date;

(d) all Liabilities of Sellers under the Credit Agreement;

(e) all Liabilities relating to amounts required to be paid by Sellers hereunder;  
and

(f) all Liabilities arising out of, relating to or with respect to the employment or performance of services, or termination of employment or services by Sellers of any individual on or before the Closing Date.

2.5 Cure Amounts. At Closing and pursuant to Section 365 of the Bankruptcy Code and the Sale Order, Sellers shall assume and assign to Purchaser, and Purchaser shall assume from Sellers, the Purchased Contracts, Personal Property Leases and Real Property Leases. The cure amounts, as determined by the Bankruptcy Court, if any, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Purchased Contracts, Personal Property Leases and Real Property Leases (collectively, the "Cure Amounts"), shall be paid by Purchaser, on or before Closing, and not by either Seller, and no Seller shall have any liability therefor.

2.6 Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Seller Documents and to assure fully to Seller and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, the Purchaser Documents and the Seller Documents, and to otherwise make effective the transactions contemplated hereby and thereby. Notwithstanding the foregoing, nothing in this section or this Agreement shall require Sellers to remain validly existing entities beyond the Closing Date or to take any action, perform any obligations, or comply with any terms or covenants set forth in this Section after the Closing Date if the Sellers' corporate or limited liability company existence, as applicable, has ceased or has been cancelled.

2.7 Bulk Sales Laws. Purchaser hereby waives compliance by each Seller with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Purchased Assets to Purchaser.

### ARTICLE III

#### CONSIDERATION

3.1 Consideration. The aggregate consideration for the Purchased Assets shall be (a) an amount in cash equal to \$[\_\_\_\_\_] (the "Purchase Price") and (b) the assumption of the Assumed Liabilities.

3.2 Purchase Price Deposit. Upon the execution of this Agreement, pursuant to the terms of the Escrow Agreement, Purchaser shall immediately deposit with Richards, Layton & Finger, P.A., in its capacity as escrow holder (the "Escrow Holder"), [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_] )<sup>1</sup> by wire transfer of immediately available funds (the "Escrowed Funds"), to be released by the Escrow Holder and delivered to either Purchaser or the Seller, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrowed Funds (together with all accrued investment income thereon) shall be distributed as follows:

(a) if the Closing shall occur, the Escrowed Funds and all accrued investment income thereon shall be applied towards the Purchase Price payable by Purchaser to Sellers under Section 3.3;

(b) if this Agreement is terminated by Sellers pursuant to Section 4.4(f), the Escrowed Funds, together with all accrued investment income thereon, shall be delivered to Sellers; or

---

<sup>1</sup> Note to Draft: Amount deposited shall equal 10% of Purchase Price.



(c) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 4.4(f), the Escrowed Funds, together with all accrued investment income thereon, shall in each case be returned to Purchaser.

3.3 Payment of Purchase Price. On the Closing Date, Purchaser shall pay the Purchase Price (less the Escrowed Funds, which shall be released to Sellers by the Escrow Holder) to Sellers, which shall be paid by wire transfer of immediately available funds into one or more accounts designated by Sellers.

3.4 Allocation of the Purchase Price. For the purpose of evaluating a Competing Bid, Purchaser has allocated the Purchase Price among the Purchased Assets as set forth on Schedule 3.4.

## ARTICLE IV

### CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the "Closing") shall take place at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (or at such other place as the Seller and Purchaser may designate in writing) at 10:00 a.m. (eastern time) on the date that is one (1) Business Day following the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by Sellers and Purchaser. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by Sellers and Purchaser in writing, the Closing shall be deemed effective and all right, title and interest of Sellers to be acquired by Purchaser hereunder shall be considered to have passed to Purchaser as of 12:00 a.m. (eastern time) on the Closing Date (the "Closing Date Effective Time").

4.2 Deliveries by Sellers. At the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser:

(a) a duly executed bill of sale in the form of Exhibit A;

(b) (i) a duly executed assignment and assumption agreement in the form of Exhibit B, and (ii) duly executed assignments of Purchased Intellectual Property, in forms suitable for recording in the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, and duly executed general assignments of all other Purchased Intellectual Property, if any;

(c) a quit claim deed duly executed and acknowledged by Blitz RE in a form recordable in with the County Clerk of Ottawa County, State of Oklahoma (the "Deed");

(d) in connection with the Real Property, any sales disclosure, transfer, environmental disclosure, or similar documents required under local Law;

(e) the officer's certificate required to be delivered pursuant to Sections 10.1(a) and 10.1(b); and

(f) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Sellers and Purchaser, as may be necessary to convey the Purchased Assets to Purchaser.

4.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver, or cause to be delivered, to Sellers:

(a) the Purchase Price (less the Escrowed Funds), in immediately available funds, as set forth in Section 3.3;

(b) a duly executed assignment and assumption agreement in the form attached hereto as Exhibit B;

(c) the officer's certificate required to be delivered pursuant to Sections 10.2(a) and 10.2(b); and

(d) such other documents, instruments and certificates as Sellers may reasonably request.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by the Seller or Purchaser, if the Closing shall not have occurred by the close of business on September 19, 2012 (the "Termination Date"); provided, however, that, if the Closing shall not have occurred due to the failure of the Bankruptcy Court to enter the Sale Order or the condition to Closing set forth in Section 10.3(d), if applicable, remains unsatisfied or not waived and if all other conditions to the respective obligations of the Parties to close hereunder that are capable of being fulfilled by the Termination Date shall have been so fulfilled or waived, then no Party may terminate this Agreement prior to September 30, 2012; provided, further, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or either Seller, then the breaching Party (Sellers, in the event of such a breach by a Seller) may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of Sellers and Purchaser;

(c) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Sections 10.1 and 10.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;

(d) by Sellers, if any condition to the obligations of Sellers set forth in Sections 10.2 and 10.3 shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by the Sellers;

(e) by Purchaser, if there shall be a breach by either Seller of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Sections 10.1 or 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Purchaser to Sellers of such breach and (ii) the Termination Date;

(f) by Sellers, if there shall be a breach by Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Sections 10.2 or 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Sellers to Purchaser of such breach and (ii) the Termination Date;

(g) by Sellers or Purchaser, if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; or

(h) by Sellers or Purchaser, if (i) Sellers enters into a definitive agreement with respect to a Competing Bid and the Bankruptcy Court enters an order approving a Competing Bid or (ii) the Bankruptcy Court enters an order that otherwise precludes the consummation of the Transactions on the terms and conditions set forth in this Agreement, subject to any limitations set forth in the Bidding Procedures Order and Section 7.3 hereof.

4.5 Procedure Upon Termination. In the event of termination by Purchaser or Sellers, or both, pursuant to Section 4.4, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Purchaser or Sellers. If this Agreement is terminated as provided herein, each Party shall redeliver all documents, work papers and other material of any other Party relating to the Transactions, whether so obtained before or after the execution hereof, to the Party furnishing the same.

#### 4.6 Effect of Termination.

(a) In the event that this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or Seller; provided, however, that the obligations of the Parties set forth in Section 3.2, Section 7.3 and Article XIII shall survive any such termination and shall be enforceable hereunder.

(b) Nothing in this Section 4.6 shall relieve Purchaser or Sellers of any liability for a breach of this Agreement prior to the date of termination; provided that Sellers' liability hereunder for any and all such breaches shall be capped at the Expense Reimbursement.

The damages recoverable by the non-breaching Party shall include all attorneys' fees reasonably incurred by such Party in connection with the Transactions, provided that in no event shall Purchaser be entitled to recover damages (including any attorneys' fees reasonably incurred by Purchaser) in excess of the Expense Reimbursement.

(c) The Confidentiality Agreement shall survive any termination of this Agreement and nothing in this Section 4.6 shall relieve Purchaser or Seller of their obligations under the Confidentiality Agreement.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represents and warrants to Purchaser that, except as set forth in the Schedules:

5.1 Organization and Good Standing. Each Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Each Seller is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which it owns or leases real property or in which the conduct of its business or the ownership of its properties requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not be reasonably likely to result in a Material Adverse Effect.

5.2 Authorization of Agreement. Except for such authorization as is required by the Bankruptcy Court (as hereinafter provided for), each Seller has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to which it is a party or to be executed by either Seller in connection with the consummation of the Transactions (the "Seller Documents"), to perform its obligations hereunder and thereunder and to consummate the transaction contemplated hereby and thereby. The execution, delivery and performance by each Seller of this Agreement and the Seller Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or limited liability company action on the part of each Seller. This Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by the relevant Seller and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order and the entry of the Bidding Procedures Order) this Agreement constitutes, and the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of the applicable Sellers, enforceable against Sellers to the extent party thereto in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

### 5.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Sellers of this Agreement or the Seller Documents, the consummation of the transaction contemplated hereby or thereby, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Sellers; (ii) subject to entry of the Sale Order, any Contract or Permit to which either Seller is a party or by which either Seller or any of its properties or assets is bound; (iii) subject to entry of the Sale Order, any Order of any Governmental Body applicable to either Seller or any of the properties or assets of either Seller as of the date hereof; or (iv) subject to entry of the Sale Order, any applicable Law, other than, in the case of clauses (ii), (iii) and (iv), such conflicts, violations, defaults, terminations or cancellations that would not be reasonably likely to result in a Material Adverse Effect.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of either Seller in connection with the execution and delivery of this Agreement or the Seller Documents, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Sellers or of any other action contemplated hereby or thereby, except for (i) compliance with the applicable requirements of the HSR Act or other Antitrust Laws, (ii) the entry of the Sale Order, (iii) the entry of the Bidding Procedures Order, and (iv) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not be reasonably likely to result in a Material Adverse Effect.

5.4 Financial Statements. Blitz USA has delivered to Purchaser copies of the unaudited consolidated balance sheet of Sellers as at May 31, 2012 and the related consolidated statement of income and cash flows of Sellers for the six (6) month period then ended (such audited and unaudited statements, including the related notes and schedules thereto, are referred to herein as the "Financial Statements"). For the purposes hereof, the unaudited consolidated balance sheet of Sellers as at May 31, 2012 is referred to as the "Balance Sheet" and May 31, 2012 is referred to as the "Balance Sheet Date."

5.5 No Undisclosed Liabilities. To the Knowledge of either Seller, no Seller has incurred any Indebtedness, obligations or Liabilities of any kind that would have been required to be reflected in, reserved against or otherwise described in the Balance Sheet or the notes thereto in accordance with GAAP, other than Liabilities incurred in the Ordinary Course of Business since the Balance Sheet Date, Liabilities under this Agreement, Excluded Liabilities, Liabilities incurred in connection with the Business Shutdown, Liabilities related to products liability related legal proceedings, and Liabilities that would not be reasonably likely to result in a Material Adverse Effect.

5.6 Title to Purchased Assets. Other than the real property subject to the Real Property Leases, intellectual property licensed to either Seller and the personal property subject to the Personal Property Leases, the relevant Seller owns the Purchased Assets, and Purchaser

will be vested with good title to such Purchased Assets, free and clear of all Liens, other than Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

#### 5.7 Taxes.

(a) Except for matters that would not be reasonably likely to result in a Material Adverse Effect, (i) each Seller has timely filed all Tax Returns required to be filed with the appropriate Tax Authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of either Seller); and (ii) all Taxes shown as due on such Tax Returns have been paid.

(b) No Seller is a foreign person within the meaning of Section 1445 of the Code.

5.8 Real Property. Schedule 5.8 sets forth a complete list of (a) all material real property and interests in real property owned in fee by either Seller (individually, an "Owned Real Property" and collectively, the "Owned Real Properties"), and (b) all material real property and interests in real property leased by either Seller, as lessee (individually, a "Real Property Lease" and collectively, the "Real Property Leases"). The relevant Seller has good and valid fee title to all Owned Real Property, free and clear of all Liens of any nature whatsoever except for Permitted Exceptions. To the Knowledge of Sellers, no Seller has received any written notice of any default or event that with notice or lapse of time, or both, would constitute a material default by either Seller under any of the Real Property Leases.

5.9 Tangible Personal Property Leases. Schedule 5.9 sets forth all leases of personal property ("Personal Property Leases") involving annual payments in excess of \$100,000 relating to personal property used by Sellers in the Business or to which either Seller is a party or by which the properties or assets of any Seller is bound. To the Knowledge of Sellers, no Seller has received any written notice of any default or event that with notice or lapse of time or both would constitute a default by any Seller under any of the Personal Property Leases.

5.10 Intellectual Property. To the Knowledge of Sellers, the relevant Seller owns or has rights to use all material Purchased Intellectual Property used by it in the Ordinary Course of Business, except to the extent the failure to be the owner or to have such rights would not be reasonably likely to result in a Material Adverse Effect. To the Knowledge of Sellers, (a) the material Purchased Intellectual Property used by the relevant Seller is not the subject of any challenge received by the relevant Seller in writing and (b) no Seller has received any written notice of any default or any event that with notice or lapse of time, or both, would constitute a default under any Intellectual Property License to which either Seller is a party.

#### 5.11 Material Contracts.

(a) Schedule 5.11 sets forth all of the following Contracts to which either Seller is a party or by which either Seller is bound and that are primarily related to the Business or by which the Purchased Assets may be bound or affected (collectively, the "Material Contracts"):

(i) Contracts with any Affiliate or current or former officer or director of any Seller (other than Contracts made in the Ordinary Course of Business on terms generally available to similarly situated non-affiliated parties);

(ii) Contracts with any labor union or association representing any Employees of Sellers;

(iii) Contracts for the sale of any of the assets of the Business, other than in the Ordinary Course of Business;

(iv) Contracts relating to the acquisition by Sellers of any operating business or the capital stock of any other Person;

(v) Contracts for the employment of any individual involving annual aggregate compensation in excess of \$100,000;

(vi) Contracts relating to incurrence of Indebtedness or the making of any loans, in each case involving amounts in excess of \$100,000, other than the Credit Agreement and the DIP Credit Agreement;

(vii) Contracts which involve the expenditure of more than \$50,000 in the aggregate or require performance by any party more than one (1) year from the date hereof that, in either case, are not terminable by Sellers without penalty on less than one hundred eighty (180) days' notice; or

(viii) Contracts with any customers of either Seller for the sale of Products or the provision of services, in each case involving amounts in excess of \$50,000 per year.

(b) No Seller has received any written notice of any default or event that with notice or lapse of time or both would constitute a default by either Seller under any Material Contract that is a Purchased Contract, except for defaults that would not be reasonably likely to result in a Material Adverse Effect.

5.12 Employee Benefits. Sellers do not have, or do not participate in, as applicable, a (a) "Defined Benefit Plan" (as defined in Section 414(l) of the Code); (b) a "Multiemployer Plan" (as defined in Section 3(37) of ERISA); or (c) a plan subject to Title IV of ERISA.

5.13 Litigation. Except for the Bankruptcy Case, there are no legal proceedings pending or, to the Knowledge of Sellers, threatened against Sellers before any Governmental Body, which, if adversely determined, would be reasonably likely to adversely and materially affect the Purchased Assets.

5.14 Compliance with Laws; Permits.

(a) Immediately prior to the Business Shutdown Effective Time, Sellers were in compliance with all Laws applicable to their respective assets or the Business, except where

the failure to be in compliance would not be reasonably likely to result in a Material Adverse Effect. No Seller had received any written notice of or been charged with the violation of any Laws, except where such violation would not be reasonably likely to result in a Material Adverse Effect.

(b) Immediately prior to the Business Shutdown Effective Time, each Seller had (i) all Permits which were required for the operation of the Business, and (ii) all Permits which were required for the Purchased Assets, except in each case where the absence of which would not be reasonably likely to result in a Material Adverse Effect. Immediately prior to the Business Shutdown Effective Time, no Seller was in default or violation (and no event had occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which it is a party, except where such default or violation would not be reasonably likely to result in a Material Adverse Effect.

5.15 Environmental Matters. The representations and warranties contained in this Section 5.15 are the sole and exclusive representations and warranties of any Seller pertaining or relating to any environmental, health or safety matters, including any arising under any Environmental Laws. Except as would not be reasonably likely to result in a Material Adverse Effect, in connection with the Purchased Real Property:

(a) Each Seller is in compliance with all applicable Environmental Laws and all Permits issued pursuant to Environmental Laws;

(b) Each Seller has obtained all Permits required under all applicable Environmental Laws necessary for the Purchased Real Property;

(c) No Seller is the subject of any outstanding Order or Contract with any Governmental Body respecting Environmental Laws, including any Remedial Action or any Release or threatened Release of a Hazardous Material;

(d) No Seller has received any written communication alleging either or both that (i) either Seller may be in violation of any Environmental Law, or any Permit issued pursuant to Environmental Law, or (ii) either Seller may have any liability under any Environmental Law; and

(e) to the Knowledge of Sellers, there are no investigations of the Purchased Real Property pending or threatened which would reasonably be expected to result in the imposition of any material liability pursuant to any Environmental Law.

5.16 Financial Advisors. Except for SSG Capital Advisors, LLC and Zolfo Cooper, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the Transactions and no Person is entitled to any fee or commission or like payment from Purchaser in respect thereof.

5.17 No Other Representations or Warranties; Schedules. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SCHEDULES), SELLERS DO NOT MAKE ANY OTHER EXPRESS



OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, THE BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR THE TRANSACTIONS, AND EACH SELLER DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY EITHER SELLER, ANY AFFILIATE OF EITHER SELLER OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SCHEDULES), EACH SELLER (I) EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT COMMON LAW, BY STATUTE, OR OTHERWISE, RELATING TO THE CONDITION OF THE PURCHASED ASSETS (INCLUDING ANY IMPLIED OR EXPRESSED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS) AND (II) DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT, OR REPRESENTATIVE OF SELLERS OR ANY OF THEIR AFFILIATES). NO SELLER MAKES ANY REPRESENTATIONS OR WARRANTIES TO PURCHASER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS. THE DISCLOSURE OF ANY MATTER OR ITEM IN ANY SCHEDULE SHALL NOT BE DEEMED TO CONSTITUTE AN ACKNOWLEDGMENT THAT ANY SUCH MATTER IS REQUIRED TO BE DISCLOSED OR IS MATERIAL OR THAT SUCH MATTER WOULD BE REASONABLY LIKELY TO RESULT IN A MATERIAL ADVERSE EFFECT.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers that:

6.1 Organization and Good Standing. Purchaser is a [\_\_\_\_\_] duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_] and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

6.2 Authorization of Agreement. Purchaser has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the Transactions (the "Purchaser Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and the Purchaser Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary [corporate] action on behalf of

Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

### 6.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Purchaser of this Agreement or the Purchaser Documents, the consummation of the transactions contemplated hereby or thereby, or the compliance by Purchaser with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Purchaser, (ii) any Contract or Permit to which Purchaser is a party or by which Purchaser or its properties or assets is bound or (iii) any Order of any Governmental Body applicable to Purchaser or any of its properties or assets or (iv) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement or the Purchaser Documents, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Purchaser of any other action contemplated hereby or thereby, or for Purchaser to conduct the Business, except for compliance with the applicable requirements of [the HSR Act,] the Sale Order and the Bidding Procedures Order.

6.4 Litigation. There are no legal proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser, or to which Purchaser is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or to consummate the Transactions. Purchaser is not subject to any Order of any Governmental Body except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or to consummate the Transactions.

6.5 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the Transactions and no Person is entitled to any fee or commission or like payment in respect thereof.

6.6 Bankruptcy. There are no bankruptcy, reorganization or insolvency proceedings pending against, being contemplated by or, to the knowledge of Purchaser, threatened against, Purchaser.

6.7 Financial Capability. Purchaser (a) has, and at the Closing will have, sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price and any expenses incurred by Purchaser in connection with the Transactions, (b) has, and at the Closing will have, the resources and capabilities (financial or otherwise) to perform its obligations hereunder, and (c) has not incurred any obligation, commitment, restriction or Liability of any kind, which would impair or adversely affect such resources and capabilities.<sup>2</sup>

6.8 Condition of the Business. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, PURCHASER ACKNOWLEDGES AND AGREES THAT NO SELLER IS MAKING ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, BEYOND THOSE EXPRESSLY GIVEN BY SELLER IN ARTICLE V (AS MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED), AND PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE V, THE PURCHASED ASSETS ARE BEING TRANSFERRED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS AND WITHOUT REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESSLY IMPLIED OR STATUTORY, WRITTEN OR ORAL, OF ANY KIND, NATURE OR DESCRIPTION, BY THE SELLERS, THEIR AGENTS, THEIR REPRESENTATIVES OR THEIR ESTATES. Any claims Purchaser may have for breach of representation or warranty shall be based solely on the representations and warranties of Sellers set forth in Article V (as modified by the Schedules, as supplemented or amended). Purchaser further represents that neither Seller nor any of its Affiliates nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding Sellers, the Business or the Transactions not expressly set forth in this Agreement, and no Seller, nor any of its Affiliates or any other Person will have or be subject to any liability to Purchaser or any other Person resulting from the distribution to Purchaser or its representatives or Purchaser's use of, any such information, including any confidential memoranda distributed on behalf of Sellers relating to the Business or the Purchased Assets or other publications or data room information provided to Purchaser or its representatives, or any other document or information in any form provided to Purchaser or its representatives in connection with the sale of the Business, the Purchased Assets and the Transactions. Purchaser acknowledges that it has conducted to its satisfaction, its own independent investigation of the Business and the Purchased Assets and, in making the determination to proceed with the Transactions, Purchaser has relied on the results of its own independent investigation. In addition, Purchaser understands that the Sellers have ceased operating the Business as of the Business Shutdown Effective Time.

---

<sup>2</sup> Note to Draft: Sellers reserve the right to request a guaranty depending on financial status of Purchaser.

## ARTICLE VII

### BANKRUPTCY COURT MATTERS

7.1 Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Sellers of higher or better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the Transactions are consummated, Seller is permitted to cause its representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates, agents and representatives) in connection with any sale or other disposition of the Purchased Assets. In addition, Sellers may respond to any inquiries or offers to purchase all or any part of the Purchased Assets and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law, including supplying information relating to the Business and the assets of any Seller to prospective purchasers.

7.2 Bankruptcy Court Filings. Sellers have filed with the Bankruptcy Court the Sale Motion seeking entry of the Sale Order and the Bidding Procedures Order. Purchaser agrees that it will promptly take such actions as are reasonably requested by a Seller to assist in obtaining entry of the Sale Order and an amended Bidding Procedures Order approving the Stalking Horse APA and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. Purchaser shall not, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Purchased Assets hereunder. In the event the entry of the Sale Order or the Bidding Procedures Order shall be appealed, Sellers and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

7.3 Back-up Bidder. Sellers and Purchaser agree that, in the event that Purchaser is not the winning bidder at the auction undertaken pursuant to the Bidding Procedures Order (the "Auction"), if and only if Purchaser submits the next highest or otherwise best bid at the Auction, as contemplated by the Bidding Procedures Order, Purchaser shall promptly consummate the Transactions upon the terms and conditions as set forth herein, including the Purchase Price, as the same may modified by Purchaser at the Auction.

7.4 Expense Reimbursement. In consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Seller, Seller shall pay Purchaser the Expense Reimbursement in accordance with the terms hereof and the Bidding Procedures Order and only upon the Bankruptcy Court having approved the Expense Reimbursement. The Expense Reimbursement shall be paid on the first Business Day following the date of consummation of a Competing Bid if no material breach by Purchaser of this Agreement has occurred. Sellers shall file with and seek the approval of the Bankruptcy Court of the Sale Motion, including the Expense Reimbursement, and the entry by the Bankruptcy Court of an

amended Bidding Procedures Order approving the payment of the Expense Reimbursement. For the avoidance of doubt, the Expense Reimbursement provided for hereunder shall only be paid to the Purchaser if the Purchaser is the Stalking Horse Purchaser, this Agreement is the Stalking Horse Agreement as provided for in the Bidding Procedures Order and the Bankruptcy Court approves the Expense Reimbursement.

## ARTICLE VIII

### COVENANTS

8.1 Access to Information. Each Seller agrees that, prior to the Closing Date, Purchaser shall be entitled, through its officers, employees and representatives (including its legal advisors and accountants), to make such investigation of the properties, businesses and operations of the Business and such examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities as it reasonably requests and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. Sellers shall cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of Sellers to cooperate with Purchaser and Purchaser's representatives in connection with such investigation and examination, and Purchaser and its representatives shall cooperate with Sellers and their representatives and shall use their reasonable efforts to minimize any disruption to the Business. Notwithstanding anything herein to the contrary, for the avoidance of doubt, if any, the Transactions and the provisions of this Section are subject to the Confidentiality Agreement, and no such investigation or examination shall be permitted to the extent that it would require Sellers to disclose information (i) subject to attorney-client privilege work product doctrine or any other applicable privilege or (ii) that would conflict with any confidentiality obligations to which Sellers are bound.

8.2 Conduct of the Business Pending the Closing. Except (1) as set forth on Schedule 8.2, (2) as required by applicable Law or by order of the Bankruptcy Court, (3) as otherwise contemplated by this Agreement or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), Sellers shall not, solely as it relates to the Business:

- (i) subject any of the Purchased Assets to any Lien, except for Permitted Exceptions and any Lien securing any debtor in possession loan facility;
- (ii) sell, assign, license, transfer, convey, lease or otherwise dispose of any of the Purchased Assets (except pursuant to an existing Contract in the Ordinary Course of Business or for the purpose of disposing of obsolete or worthless assets);

(iii) cancel or compromise any material debt or claim or waive or release any material right of Sellers that constitutes a Purchased Asset except in the Ordinary Course of Business; and

(iv) enter into any commitment for capital expenditures in excess of \$50,000.

8.3 Consents. Each Seller shall use its commercially reasonable efforts, and Purchaser shall cooperate with Seller, to obtain at the earliest practicable date all consents and approvals required to consummate the Transactions, including the consents and approvals referred to in Section 5.3(b); provided, however, that no Seller shall be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or legal proceedings to obtain any such consent or approval.

8.4 Regulatory Approvals.

(a) If necessary, Purchaser and any relevant Seller shall (i) make or cause to be made all filings required of each of them or any of their respective Affiliates under the HSR Act or other Antitrust Laws with respect to the Transactions as promptly as practicable and, in any event, within (----) (----) Business Days after the date of this Agreement in the case of all filings required under the HSR Act and within (----) (----) in the case of all other filings required by other Antitrust Laws, (ii) comply at the earliest practicable date with any request under the HSR Act or other Antitrust Laws for additional information, documents, or other materials received by each of them or any of their respective Subsidiaries from the Federal Trade Commission (the "FTC"), the Antitrust Division of the United States Department of Justice (the "Antitrust Division") or any other Governmental Body in respect of such filings or such Transactions, and (iii) cooperate with each other in connection with any such filing (including, to the extent permitted by applicable law, providing copies of all such documents to the non-filing Parties prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the FTC, the Antitrust Division or other Governmental Body under any Antitrust Laws with respect to any such filing or the Transactions. Each such Party shall furnish to each other such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of any application or other filing to be made pursuant to any applicable Law in connection with the Transactions. Each Party shall promptly inform the other Parties of any oral communication with, and provide copies of written communications with, any Governmental Body regarding any such filings or the Transactions. No Party shall independently participate in any formal meeting relating to the Antitrust Laws with any Governmental Body in respect of any such filings, investigation, or other inquiry without giving the other Parties prior notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity to attend and/or participate. Subject to applicable Law, the Parties will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any Party relating to proceedings under the HSR Act or other Antitrust Laws.

(b) Purchaser and Sellers shall use their commercially reasonable efforts to resolve such objections, if any, as may be asserted by any Governmental Body with respect to the Transactions under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other United States federal or state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, the "Antitrust Laws"). In connection therewith, if any Legal Proceeding is instituted (or threatened to be instituted) challenging any of the Transactions as being in violation of any Antitrust Law, at the request of the relevant Seller, Purchaser shall cooperate with such Seller and use its commercially reasonable efforts to contest and resist any such Legal Proceeding, and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction or other order whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents, or restricts consummation of the Transactions.

(c) Purchaser and Sellers shall use their commercially reasonable efforts to take such action as may be required to cause the expiration of the notice periods under the HSR Act or other Antitrust Laws with respect to the Transactions as promptly as possible after the execution of this Agreement. In furtherance and not in limitation of the covenants of the parties contained in this Section 8.4, each of the Parties shall use its commercially reasonable efforts to resolve such objections, if any, as may be asserted by a Governmental Body or other Person with respect to the Transactions so as to enable the Parties to close the Transactions as expeditiously as possible.

8.5 Further Assurances. Seller and Purchaser shall use their commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the Transactions and (b) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions.

8.6 Confidentiality. Purchaser acknowledges that the Confidential Information (as defined in the Confidentiality Agreement) provided to it in connection with this Agreement, including under Section 8.1, and the consummation of the Transactions, is subject to the terms of the confidentiality agreement between Purchaser and Sellers, dated [\_\_\_\_\_, 2012] (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference.

8.7 Preservation of Records.

(a) Each of the Sellers and Purchaser agree to preserve and keep the records, or in the case of the Sellers, arrange for the preservation and keeping of the records, held by it or their Affiliates relating to the Business for a period of six (6) years from the Closing Date and shall make such records and personnel available to the other Party as may be reasonably required by such Party in connection with, among other things, any insurance claims, legal proceedings or Tax audits against or governmental investigations of Sellers or Purchaser or any of their Affiliates or in order to enable Sellers or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby.

(b) Notwithstanding Section 8.7(a), in the event Sellers wish or Purchaser wishes to destroy records subject to the preservation requirements of Section 8.7(a), such Party (the "Noticing Party") shall be entitled to destroy such records by (i) giving ninety (90) days prior written notice (the "Original Notice") to the other Party and such other Party shall have the right at its option and expense, upon prior written notice given to the Noticing Party within such ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of the Original Notice, or (ii) seeking and obtaining an order of the Bankruptcy Court approving the destruction of such records and complying with such order of the Bankruptcy Court.

(c) If Sellers provide Purchaser an Original Notice as provided for in Section 8.7(b)(i) hereof and the Official Committee of Unsecured Creditors of Blitz USA, Inc., *et al.* remains constituted and has not been disbanded or dissolved, Sellers shall provide to the Supplemental Notice Parties, by one of the notice methods provided for in Section 13.7 hereof, a copy of such Original Notice at the following address:

Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Attention: Jeffrey A. Prol, Esq., Counsel to the Official Committee of  
Unsecured Creditors of Blitz USA, Inc., *et al.*  
Facsimile: (973) 597-2490  
email: jprol@lowenstein.com

-and-

Womble Carlyle Sandridge & Rice, PLLC  
222 Delaware Avenue, Suite 1501  
Wilmington, Delaware 19801  
Attention: Frank Monaco, Esq., Counsel to the Official Committee of  
Unsecured Creditors of Blitz USA, Inc., *et al.*  
Facsimile: (302) 661-7730  
email: fmonaco@wcsr.com

Notwithstanding the foregoing, absent an order of the Bankruptcy Court or an agreement of the Parties and the Official Committee of Unsecured Creditors of Blitz USA, Inc., *et al.*, nothing in this Agreement shall confer upon the Supplemental Notice Parties or the Official Committee of Unsecured Creditors of Blitz USA, Inc., *et al.* the right to take possession of records to be destroyed pursuant to this Section 8.7.

8.8 Publicity. Neither Seller nor Purchaser shall issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the judgment of Purchaser or Seller, disclosure is otherwise required by applicable Law or by order of the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement; provided that the Party intending to make such release shall use



its commercially reasonable efforts consistent with such applicable Law or order of the Bankruptcy Court to consult with the other Party (Sellers, in the case of approval from Sellers) with respect to the text thereof.

8.9 Supplementation and Amendment of Schedules. Seller may, at its option, include in the Schedules items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to Dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in the Schedules shall constitute a disclosure for all purposes under this Agreement notwithstanding any reference to a specific section, and all such information shall be deemed to qualify the entire Agreement and not just such section. From time to time prior to the Closing, Sellers shall have the right to supplement or amend the Schedules with respect to any matter hereafter arising or discovered after the delivery of the Schedules pursuant to this Agreement. No such supplement or amendment shall have any effect on the satisfaction of the condition to closing set forth in Section 10.1(a); provided, however, if the Closing shall occur, then Purchaser shall be deemed to have waived any right or claim pursuant to the terms of this Agreement or otherwise with respect to any and all matters disclosed pursuant to any such supplement or amendment at or prior to the Closing.

## ARTICLE IX

### RESERVED

## ARTICLE X

### CONDITIONS TO CLOSING

10.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Sellers set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall be true and correct at and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date), except for such failures to be true and correct that, (i) individually and in the aggregate, would not be reasonably likely to result in a Material Adverse Effect or (ii) are as a result of the Business Shutdown. Purchaser shall have received a certificate signed by an authorized signatory of Sellers, dated the Closing Date, to the foregoing effect;

(b) Sellers shall have performed and complied with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date; provided that the condition set forth in this Section 10.1(b) shall be deemed satisfied unless such failures to so perform or comply taken together would be reasonably likely

to result in a Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized signatory of Sellers, dated the Closing Date, to the foregoing effect; and

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2.

10.2 Conditions Precedent to Obligations of Seller. The obligation of Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by the Seller in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, in each case, on and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date). The Seller shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect; and

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 4.3.

10.3 Conditions Precedent to Obligations of Purchaser and Seller. The respective obligations of Purchaser and Sellers to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Sellers in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order;

(c) the Bankruptcy Court shall have entered the Sale Order and any stay period applicable to the Sale Order shall have expired or shall have been waived by the Bankruptcy Court; and

(d) the waiting period applicable to the Transactions under the HSR Act or other applicable Antitrust Laws shall have expired or early termination shall have been granted.

10.4 Frustration of Closing Conditions. Neither Purchaser nor Sellers may rely on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

## ARTICLE XI

### NO SURVIVAL

11.1 No Survival of Representations and Warranties. The Parties agree that the representations and warranties contained in this Agreement shall not survive the Closing, and none of the Parties shall have any Liability to each other after the Closing for any breach thereof. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing, and each Party shall be liable to the other after the Closing for any breach thereof.

11.2 No Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, NO PARTY SHALL, IN ANY EVENT, BE LIABLE TO ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF SUCH OTHER PERSON, INCLUDING LOSS OF FUTURE REVENUE, INCOME OR PROFITS, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH HEREOF (PROVIDED THAT SUCH LIMITATION WITH RESPECT TO LOST PROFITS SHALL NOT LIMIT ANY SELLER'S RIGHT TO RECOVER CONTRACT DAMAGES IN CONNECTION WITH PURCHASER'S FAILURE TO CLOSE IN VIOLATION OF THIS AGREEMENT).

## ARTICLE XII

### TAXES

12.1 Transfer Taxes. Purchaser shall be responsible for (and shall indemnify and hold harmless Sellers and its directors, members, officers, employees, Affiliates, agents, successors and permitted assigns against) any sales, use, stamp, documentary, filing, recording, transfer or similar fees or Taxes or governmental charges (including any real property transfer Taxes, UCC-3 filing fees, real estate, aircraft and motor vehicle registration, title recording or filing fees and other amounts payable in respect of transfer filings, and including any interest and penalty thereon) payable in connection with the Transactions ("Transfer Taxes"). To the extent that any Transfer Taxes are required to be paid by a Seller (or such Transfer Taxes are assessed against a Seller), Purchaser shall promptly reimburse such Seller, as applicable, for such Transfer Taxes. Sellers and Purchaser shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes. Sellers and Purchaser shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for Transfer Taxes.

12.2 Tax Payments. Beginning as of 12:01 a.m. (eastern time) on the Closing Date, Purchaser shall be responsible for and shall pay all real and personal property Taxes or similar ad

valorem obligations payable with respect to the Purchased Assets, regardless of the taxable period to which such Taxes are attributable.

12.3 Purchase Price Allocation (Federal Income Tax). Sellers and Purchaser shall allocate the purchase price (including the Assumed Liabilities) among the Purchased Assets as specified in Schedule 12.3 and, in accordance with such allocation, Purchaser shall prepare and deliver to Sellers copies of Form 8594 and any required exhibits thereto (the "Asset Acquisition Statement"). Purchaser shall prepare and deliver to Seller from time to time revised copies of the Asset Acquisition Statement (the "Revised Statements") so as to report any matters on the Asset Acquisition Statement that need updating (including purchase price adjustments, if any) consistent with the agreed upon allocation. The purchase price for the Purchased Assets shall be allocated in accordance with the Asset Acquisition Statement or, if applicable, the last Revised Statements, provided by Purchaser to Sellers, and all income Tax Returns and reports filed by Purchaser and Sellers shall be prepared consistently with such allocation, except as provided by a change in applicable Tax Law or the good faith resolution of a Tax contest.

12.4 Audits, Claims and Proceedings. Sellers shall have the right to control the conduct of the defense of any audit, claim, proceeding, investigation, or other controversy relating to Taxes ("Tax Claim") of any Seller for any taxable period ending on or prior to, or including, the Closing Date; provided that any Seller will not have the right to settle any such Tax Claim if the resolution or determination of such Tax Claim is reasonably likely to materially adversely affect Purchaser without first obtaining Purchaser's written consent, such consent to not be unreasonably withheld, conditioned or delayed.

12.5 Cooperation. Sellers, on the one hand, and Purchaser, on the other hand, will provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return, amended Tax Return or claim for refund, determining a Liability for Taxes or a right to a refund of Taxes, or participating in or conducting any audit or other proceeding in respect of Taxes. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings and other determinations by Tax Authorities. Any information obtained under this Section 12.5 shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting any audit or other proceeding.

## ARTICLE XIII

### MISCELLANEOUS

13.1 Expenses. Except as otherwise provided in this Agreement, Sellers and Purchaser shall bear their own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby; provided that Purchaser shall be responsible for and shall indemnify Sellers for any governmental charges relating to HSR Act filing fees, UCC-3 filing fees, FAA, ICC, DOT, real estate and motor

vehicle registration, title recording or filing fees and other amounts payable in respect of transfer filings in connection with the Transactions.

13.2 Injunctive Relief. Damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party shall be entitled to injunctive relief with respect to any such breach, including specific performance of such covenants, promises or agreements or an order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 13.2 shall be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

13.3 Governing Law. This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement (including the Exhibits and Schedules), or the negotiation, execution, termination, performance or nonperformance of this Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in such State, without regard to any conflict of laws principles thereof.

13.4 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 13.7; provided, however, that if the Bankruptcy Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in New Castle County or the courts of the State of Delaware sitting in New Castle County and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the Parties hereby consents to process being served by any Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 13.7.

13.5 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING BASED UPON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT,

ANY PROVISION HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

13.6 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits), the Confidentiality Agreement and the Escrow Agreement represent the entire understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

13.7 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) when sent by facsimile (with written confirmation of transmission), (c) five (5) days after being deposited with the United States Post Office, by registered or certified mail, postage prepaid, (d) one (1) business day following the day sent by overnight courier (with written confirmation of receipt), or (e) when sent by electronic mail (with acknowledgment received), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Blitz USA, to:

Blitz U.S.A., Inc.  
404 26<sup>th</sup> Ave. NW  
Miami, OK 74354  
Attention: Rocky Flick  
Facsimile: (918) 542-7842  
email: rflick@blitzusa.com

With a copy (which shall not constitute notice) to:

Richards, Layton & Finger  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801

Attention: Daniel J. DeFranceschi  
Facsimile: (302) 651-7701  
email: defranceschi@rlf.com

If to Blitz RE, to:

Blitz RE Holdings, LLC  
404 26<sup>th</sup> Ave. NW  
Miami, OK 74354  
Attention: Rocky Flick  
Facsimile: (918) 542-7842  
email: rflick@blitzusa.com

With a copy (which shall not constitute notice) to:

Richards, Layton & Finger  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Attention: Daniel J. DeFranceschi  
Facsimile: (302) 651-7701  
email: defranceschi@rlf.com

If to Purchaser, to:

Attention: [\_\_\_\_\_]   
Facsimile: [\_\_\_\_\_]   
email: [\_\_\_\_\_]

With a copy to:

Attention: [\_\_\_\_\_]   
Facsimile: [\_\_\_\_\_]   
email: [\_\_\_\_\_]

13.8 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

13.9 Binding Effect; No Third-Party Beneficiaries; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party

beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties (by the Seller, in the case of a proposed assignment by Purchaser) and any attempted assignment without the required consents shall be void, provided, however, notwithstanding the foregoing, Sellers are hereby authorized to assign this Agreement or of any their rights or obligations hereunder to any Permitted Assigns without the consent of Purchaser. No assignment of any obligations hereunder shall relieve the Parties of any such obligations. Upon any permitted assignment by Purchaser, as assignor, the references in this Agreement to Purchaser shall also apply to the assignee of Purchaser's rights or obligations unless the context otherwise requires. Upon any permitted assignment by a Seller, as assignor, the references in this Agreement to a Seller shall also apply to any assignee of such Seller's rights or obligations unless the context otherwise requires.

13.10 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner, agent or equityholder of any Seller shall have any liability for any obligations or liabilities of Sellers under this Agreement or the Seller Documents of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

13.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signature Page Follows]



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**SELLER**

BLITZ USA, INC.

By: \_\_\_\_\_  
Name:  
Title:

BLITZ RE HOLDINGS, LLC

By: \_\_\_\_\_  
Name:  
Title:

**PURCHASER**

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title: