

ORIGINAL

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

In re:)	Chapter 11
)	
BLITZ U.S.A., Inc., <i>et al.</i> , ¹)	Case No. 11-13603 (PJW)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket Nos. 574, 618 and 695

**SUPPLEMENTAL ORDER TO BID PROCEDURES ORDER
APPROVING BID PROTECTIONS**

Upon consideration of 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") [Docket No. 574]; and 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]

¹ 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.



(the “Bidding Procedures Order”)² which granted the Debtors the authority to seek Bid Protections (as defined below) and a hearing for an order approving the same (the “Supplemental Bid Protections Order”) no later than seven (7) days after the execution of the Stalking Horse APA (as defined below); and as more fully described and except to the extent identified in the Stalking Horse APA (as defined below) or the asset purchase agreement of any other Successful Bidder (as defined in the Bidding Procedures), as applicable; approving the proposed bid protections, the Initial Overbid Amount (as defined in the Bidding Procedures) and the Break-Up Fee and Expense Reimbursement Amount (as defined in the Stalking Horse APA) (collectively, the “Bid Protections”), to Scepter Holdings Inc. (the “Stalking Horse Bidder”) in accordance with that certain Asset Purchase Agreement dated August 23, 2012, (the “Stalking Horse APA”) for the purchase of certain assets of Debtors Blitz U.S.A., Inc. and Blitz RE Holdings (the “Assets”) free and clear of all claims (as defined in section 101(5) of the Bankruptcy Code) and any other interests, liens, mortgages, pledges, security interests, rights of first refusal, obligations and encumbrances of any kind whatsoever (collectively, the “Interests”) as more fully described and except to the extent identified in the Stalking Horse APA; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties-in-interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Supplemental Bid Protections Order is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Supplemental Bid Protections Order and opportunity for objection having been given, with no objections having been filed, or all objections having been resolved or overruled, as the case may be; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefore, it is hereby:

² Capitalized terms used but not defined herein shall have the same meaning ascribed to them in the Motion, the Bidding Procedures Order or the Stalking Horse APA.

FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006. Venue for these cases and this Supplemental Bid Protections Order in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Notice of the entry of this Supplemental Bid Protections Order was appropriate and reasonably calculated to provide all interested parties with timely and proper notice under Bankruptcy Rules 2002, 4001, 6004 and 6006 and no other or further notice of, or hearing on, this Supplemental Bid Protections Order is required.

C. The Debtors have (a) articulated good and sufficient reasons to this Court to grant the relief requested in the Supplemental Bid Protections Order and (b) demonstrated sound business justifications to support such relief.

D. The Debtors have demonstrated a compelling and sound business justification for approving the payment of the Break-Up Fee and Expense Reimbursement Amount under the circumstances and timing set forth in the Supplemental Bid Protections Order and Stalking Horse APA.

E. The Debtors' granting of Bid Protections to the Stalking Horse Bidder is (a) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtors' estates, (c) fair, reasonable and appropriate, in light of, among other things, (i) the size and nature of the proposed Sale of the Assets, (ii) the substantial efforts that have been expended by

the Stalking Horse Bidder, and (iii) the benefits the Stalking Horse Bidder has provided to the Debtors' estates and creditors and all parties-in-interest herein.

F. Entry of this Supplemental Bid Protections Order is in the best interests of the Debtors and their respective estates and creditors, and all other parties-in-interest.

NOW THEREFORE, IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

1. The Amended Bidding Procedures, attached hereto as **Exhibit A**, are hereby APPROVED, and fully incorporated into this Bid Protections Order, and shall apply with respect to the proposed Sale of the Assets and assumption and assignment of Executory Contracts and unexpired Real Property Leases contemplated by the Motion. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Amended Bidding Procedures. The failure to specifically include or reference any particular provision, section or article of the Amended Bidding Procedures in this Supplemental Bid Protections Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Amended Bidding Procedures be authorized and approved in their entirety.

2. All objections to the entry of this Supplemental Bid Protections Order that have not been withdrawn, waived or settled as announced at the hearing on the same, or resolved by stipulation signed by the Debtors and filed with this Court, are overruled on their merits.

THE BID PROTECTIONS

3. The Bid Protections, including the Break-Up Fee and Expense Reimbursement Amount are a reasonable inducement for the Stalking Horse Bidder's offer to purchase the Assets on the terms set forth in the Stalking Horse APA and compensation for the risks and lost opportunity costs incurred by the Stalking Horse Bidder. Solely for the purposes

of determining a Successful Bid, any overbid submitted by the Stalking Horse Bidder shall be credited for the full amount of the Break-Up Fee and Expense Reimbursement Amount potentially payable by the Debtors.

4. The payment to the Stalking Horse Bidder of the Break-Up Fee and Expense Reimbursement Amount (i) is an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code, (ii) is of substantial benefit to the Debtors' estates, (iii) is reasonable and appropriate, including in light of the size and nature of the proposed Sale of the Assets and the efforts that have been and will be expended by the Stalking Horse Bidder, notwithstanding that the proposed Sale is subject to higher or better offers for the Assets, (iv) was negotiated on an arm's-length basis and in good faith, and (v) is necessary to ensure that the Stalking Horse Bidder will continue to be bound to the offer contained in the Stalking Horse APA.

5. Pursuant to sections 105, 363, 364, 503, 506 and 507 of the Bankruptcy Code, the Debtors are hereby authorized to pay, without further order of this Court, the Break-Up Fee and Expense Reimbursement Amount pursuant to the terms and conditions set forth in the Stalking Horse APA. In connection therewith, the Debtors' obligation to pay the Break-Up Fee and Expense Reimbursement Amount, as provided by the Stalking Horse APA, shall survive termination of the Stalking Horse APA and, until paid in accordance with the Stalking Horse APA, shall constitute a superpriority administrative expense claim in favor of the Stalking Horse Bidder having superpriority, under section 364(c) of the Bankruptcy Code, payable out of the proceeds of a Competing Bid (which shall be senior to any and all liens and claims of any creditors of or holders of equity interests in the Debtors, including pre-petition and post-petition amounts owing to the Debtors' pre-petition and post-petition senior secured lenders). To the

extent that the Stalking Horse Bidder is not the Successful Bidder, the Successful Bidder is authorized and directed to pay the Break-Up Fee and Expense Reimbursement Amount directly to the Stalking Horse Bidder by wire transfer of immediately available good funds to an account specified by the Stalking Horse Bidder at the closing of any transaction involving the Assets with the Successful Bidder. To the extent for any reason the Successful Bidder fails to pay the Break-Up Fee and Expense Reimbursement Amount directly to the Stalking Horse Bidders, the Debtors are authorized and directed to pay the Break-Up Fee and Expense Reimbursement Amount to the Stalking Horse Bidder without further order of the Court, out of the proceeds received from the Competing Bid, when and as provided in Section 7.7 of the Stalking Horse APA. In the event that the Secured Lenders submit a credit bid for the Assets, the Break-Up Fee and Expense Reimbursement Amount shall be paid by the Secured Lenders, when and as provided in Section 7.7 of the Stalking Horse APA.

6. The Break-Up Fee and Expense Reimbursement Amount is hereby approved and shall be paid to the Stalking Horse Bidder as set forth in Section 7.7 of the Stalking Horse APA. The Break-Up Fee and Expense Reimbursement Amount shall be paid only if a Competing Bid occurs and closes within six (6) months of the Auction.

7. The Break-Up Fee and Expense Reimbursement Amount shall be the sole remedy of the Stalking Horse Bidder if the Stalking Horse APA is terminated under circumstances where the Break-Up Fee and Expense Reimbursement Amount is payable.

ADDITIONAL NOTICE PROVISIONS

8. The Debtors shall serve this Supplemental Bid Protections Order by first class mail within two (2) business days following entry of this Supplemental Bid Protections Order upon (a) the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) counsel to the agent for the Debtors' prepetition and post-petition secured lender;

(d) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (e) each of the Debtors' landlords and each of the notice parties identified in the real property leases, to the extent possible; (f) various federal, state, county and city tax and regulatory authorities, including the IRS and any Governmental Body that collects property Taxes; (g) all entities known to have expressed an interest in a transaction with respect to the Assets or that have been indentified by the Debtors or their advisors as a potential purchaser of the Assets; (h) all parties requesting notice pursuant to Bankruptcy Rule 2002; (i) all counterparties to any Executory Contracts and Real Property Leases that may be assumed and assigned in connection with the Sale; (j) all parties with Liens and Claims on or against any of the Assets; (k) all insurers of any Sellers and (l) all persons who have asserted that they have been injured by a product manufactured by any Seller.

ADDITIONAL PROVISIONS

9. The Debtors are authorized and empowered to take such actions as may be necessary to implement and effect the terms and requirements established under this Supplemental Bid Protections Order.

10. A Sale Hearing to approve the sale of substantially all of the Assets to any Successful Bidder and authorizing the assumption and assignment of certain executory contracts and unexpired leases shall be held on September 11, 2012 at 9:30 a.m. (prevailing Eastern Time), unless otherwise continued upon request by the Debtors.

11. Any and all objections, if any, to any Sale, including objections to the Auction and the selection of any Successful Bidder or Successful Bidders, must be filed by September 10, 2012 at 12:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline"). Any and all Sale Objections must be served on (i) counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, (Attn:

Daniel J. DeFranceschi, Esq.); (ii) the Debtors, Blitz U.S.A., Inc., 404 26th Ave. NW Miami, OK 74354 (Attn: Rocky Flick); (iii) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, NJ 07068 (Attn: Jeffrey Prol, Esq. and Mary Seymour, Esq.) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Francis A. Monaco, Jr., Esq.); (iv) counsel for the Secured Lenders, Frederic Dorwart, Lawyers, Old City Hall, 124 East Fourth Street, Tulsa, OK 74103-5027 (Attn: Samuel S. Ory, Esq.) and Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, DE 19801-3062 (Attn: Meg Manning, Esq.); (v) counsel to the Stalking Horse Bidder, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, Delaware 19801 (Attn: David M. Fournier); and (vi) all other parties that have requested notice in these cases.

12. This Supplemental Bid Protections Order shall be binding on and inure to the benefit of the Debtors, without limitation, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

13. This Supplemental Bid Protections Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

14. To the extent this Supplemental Bid Protections Order or Amended Bidding Procedures are inconsistent with any prior order or pleading with respect to the Motion or the Bidding Procedures Order in these cases, the terms of this Supplemental Bid Protections Order and the Amended Bidding Procedures shall govern.

15. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, this Court, for good cause shown, orders that the terms and

conditions of this Supplemental Bid Protections Order shall be immediately effective and enforceable upon its entry.

16. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Supplemental Bid Protections Order and the Amended Bidding Procedures, including, but not limited to, any matter, claim or dispute arising from or relating to the Bid Protections or the Stalking Horse APA and the implementation of this Supplemental Bid Protections Order and the Amended Bidding Procedures.

Dated: August 30, 2012
Wilmington, Delaware



THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Bidding Procedures

On November 9, 2011, Blitz U.S.A, Inc. ("Blitz"), and 5 of its affiliates (collectively, the "Debtors") filed voluntary petitions under chapter 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Debtors' cases are jointly administered for procedural purposes under Case No. 11-13603 (PJW). As more fully described in the Stalking Horse APA (as defined below), Debtors Blitz U.S.A., Inc. and Blitz RE Holdings, LLC seek to sell certain assets (collectively, the "Assets") pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Sale").

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed in connection with an auction (the "Auction") for the Sale. At a hearing following the Auction (the "Sale Hearing"), the Debtors will seek entry of an order (the "Sale Order") from the Bankruptcy Court authorizing and approving the Sale to the Qualified Bidder (as defined below) that the Debtors determine to have made the highest or otherwise best bid for the Assets (the "Successful Bidder").

The Debtors, after consultation with the official committee of unsecured creditors (the "Committee") and BOKF, NA d/b/a Bank of Oklahoma, as the agent for the Debtors' pre- and postpetition secured lenders (the "Secured Lenders"), have entered into an asset purchase agreement (the "Stalking Horse APA") with Scepter Holdings Inc. (the "Stalking Horse Bidder") to establish a minimum bidding price for the Debtors' Assets.

On June 29, 2012, the Debtors filed the *Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365 and Fed. R. Bankr. P. 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 Approving 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* (the "Bidding Procedures and Sale Motion"). On July 17, 2012, the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the "Original Bidding Procedures Order"). The Original Bidding Procedures Order also set September 11, 2012 as the date the Bankruptcy Court will conduct the Sale Hearing. On August __, 2012, the Bankruptcy Court entered the Supplemental Order to Bid Procedures Order Approving Bid Protections (the "Bidding Protection Order") approving the Bid Protections (as defined in the Bidding Protection Order) and these amended Bidding Procedures. At the Sale Hearing, the Debtors shall seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets of the Debtors to the Stalking Horse Bidder or the Successful Bidder at the Auction.

Assets to be Sold

The Debtors are offering for sale the Assets and Potential Bidders (as defined below) may submit bids for all or substantially all of the Assets. The Debtors shall retain all rights to the Assets that are not subject to a bid accepted by the Debtors and approved by the Bankruptcy Court at the Sale Hearing. The Debtors also reserve the right to consider bids for less than all of the Assets and, as necessary, combine bids for subsets of the Debtors' assets.

Communication with the Debtors

Any party desiring to obtain a copy of the Original Bidding Procedures Order or the Bid Protections Order approving these bidding procedures may do so by contacting the Debtors' counsel at Richards, Layton & Finger, PA, 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi, Esq. at (302) 651-7700 or by accessing the Debtors' claims, noticing and solicitation agent's website, Kurtzman Carson Consultants LLC at <http://www.kccllc.net/Blitz>.

Requests for additional information and due diligence access from Potential Bidders (as defined below) should be addressed to the Debtors' investment banker, SSG Capital Advisors, LLC ("SSG").

J. Scott Victor
SSG Capital Advisors
Five Tower Bridge
300 Barr Harbor Drive, Suite 420
610-940-5802
jsvictor@ssgca.com

Michael J. Gorman
SSG Capital Advisors
Five Tower Bridge
300 Barr Harbor Drive, Suite 420
610-940-3615
mgorman@ssgca.com

The Bidding Process

The Debtors and their advisors, in consultation with the Committee and the Secured Lenders, shall (i) coordinate the efforts of Potential Bidders in conducting their due diligence investigations and receive offers from Potential Bidders, and (ii) negotiate and evaluate any offers made to purchase all or substantially all of the Assets (collectively, the "Bidding Process"). The Debtors, after consultation with the Committee and the Secured Lenders, shall have the right, in the exercise of their fiduciary duties, to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better promote the goals of the Bidding Process; *provided, however*, that such other rules are not inconsistent with (i) the provisions of the Stalking Horse APA (including the deadlines therein), (ii) the Bid Deposit Requirement (as defined below), (iii) the Initial Overbid Amount (as defined below) and (iv) the Break-Up Fee and Expense Reimbursement Amount (as defined below) granted to the Stalking Horse Bidder herein.

Participation and Qualified Bid Requirements and Bid Deadline

The Stalking Horse Bidder is a Qualified Bidder and entitled to participate in the Bidding Process. Any other person that wishes to participate in the Bidding Process (a "Potential

Bidder") must become a "Qualified Bidder." As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver no later than 5:00 p.m. (Eastern Time) on September 4, 2012 (the "Bid Deadline"), its bid and the information and documents identified in subparagraphs i. - x. below (the "Required Bid Materials") to the investment bankers to the Debtors, SSG. SSG will promptly deliver each Potential Bidder's Required Bid Materials to: (i) the Debtors, Blitz U.S.A., Inc., 404 26th Ave. NW Miami, OK 74354 (Attn: Rocky Flick); (ii) counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Daniel J. DeFranceschi, Esq.); (iii) counsel to the agent for the Debtors' Secured Lenders, Frederick Dorwart Lawyers, Old City Hall, 124 East Fourth Street, Tulsa, OK 74103-5027 (Attn: Samuel S. Ory, Esq.) and Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, DE 19801 (Attn: Margaret M. Manning, Esq.); and (iv) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, NJ 07068 (Attn: Jeffrey Prol, Esq. and Mary Seymour, Esq.) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Francis A. Monaco, Jr., Esq.). The Required Bid Materials are:

- i. Identification of Potential Bidder. Identification of the Potential Bidder and any equity holders, in the case of a Potential Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction; and
- ii. Marked Agreement: An executed copy of a purchase agreement and a redline of a Potential Bidder's proposed purchase agreement reflecting variations from the Stalking Horse APA or the Form APA, as may be applicable (the "Marked Agreement"). All Qualified Bids must provide (a) a commitment to close within seven (7) calendar days upon the entry of the Sale Order and (b) the identity of and contact information for the bidder and full disclosure of any affiliates and any debt or equity financing sources involved in such bid.
- iii. Financing Sources: Sufficient information, as may be requested by the Debtors, to allow the Debtors to determine that the bidder has the financial wherewithal to close a sale of the Assets, including, but not limited to:
 - (a) a signed commitment for any debt or equity financing;
 - (b) a bank account statement showing the ability of a Potential Bidder to pay cash for the Assets;
 - (c) contact names and numbers for verification of financing sources; and
 - (d) current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Debtors) of the Potential Bidder or those entities that will guarantee in full the payment obligations of the Potential Bidder.

- iv. Minimum Bid Amount: Total consideration with a value equal to or greater than the amount in the Stalking Horse APA plus the amount of the Break-Up Fees and Expenses Reimbursement plus amounts necessary to meet the Initial Overbid Amount (as defined below) (collectively, the "Minimum Bid Amount").
- v. Irrevocability of Bid: A letter stating that the bidder's offer is irrevocable until the first business day after the Assets for which the Potential Bidder is submitting a bid have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court.
- vi. Bid Deposit: A cash deposit in the amount of 10% of the total consideration offered in the bid in the form of a wire transfer, certified check or such other form acceptable to the Debtors (the "Bid Deposit") which shall be placed into escrow with Richards, Layton & Finger, P.A. (in such capacity (the "Escrow Agent"). The Bid Deposits shall not be subject to the claims, liens, security interests, or encumbrances of the Debtors' creditors, including those creditors serving as debtor in possession or cash collateral lenders to the Debtors, and funds shall be disbursed by the Escrow Agent only as follows: (i) if the Potential Bidder becomes the Successful Bidder, its Bid Deposit will be used to satisfy the Break-Up Fee and Expense Reimbursement Amount to which the Stalking Horse Bidder is entitled hereunder by reason of it not being the Successful Bidder, with the balance, if any, to be released to the Debtors, and (ii) if such Potential Bidder is not the Successful Bidder at the Auction, then its Bid Deposit shall be returned to it as set forth herein (subject to the other provisions of these Bidding Procedures and the terms of its asset purchase agreement with the Debtors). The Successful Bidder's Bid Deposit will be credited to the ultimate purchase price paid by the Successful Bidder.
- vii. Identification of Executory Contracts and Unexpired Real Property Leases: The bid shall identify with particularity the Debtors' executory contracts and unexpired leases with respect to which the bidder seeks to receive an assignment and any designation rights it seeks.
- viii. No Financing or Diligence Constituencies: The bid shall not contain any due diligence, financing or regulatory contingencies of any kind, though the bid may be subject to the satisfaction of specific conditions in all material respects at closing.
- ix. Consent to Jurisdiction: The bid shall state that the offering party consents to the jurisdiction of the Bankruptcy Court.
- x. Corporate Authority: The bid shall include evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted purchase agreement of the bidder.

A "Qualified Bidder" is a Potential Bidder that delivers the Required Bid Materials described in subparagraphs (i)-(x) above, and that the Debtors, in consultation with the Committee and the Secured Lenders, determine is reasonably likely (based on financial information submitted by the Potential Bidder, the availability of financing, experience and other consideration deemed relevant by the Debtors), to be able to consummate a sale if selected as the Successful Bidder (as defined below). Promptly, after a Potential Bidder delivers all of the Required Bid Materials required by subparagraphs (i)-(x) above, the Debtors shall determine, in consultation with the Committee and the Secured Lenders, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder also is a Qualified Bidder. A bid from a Qualified Bidder is a "Qualified Bid."

All bids, other than the Stalking Horse Bid, must include (unless such requirement is waived by the Debtors) the Required Bid Materials.

The Debtors, in consultation with the Committee and the Secured Lenders, reserve the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the highest or best offer. Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid. The Debtors shall notify the Stalking Horse Bidder as soon as practicable if one or more Qualified Bids are received, and shall identify which Potential Bidders have been deemed Qualified Bidders.

Access to Due Diligence Materials

Only the Stalking Horse Bidder and Potential Bidders who have executed a confidentiality and non-disclosure agreement in form and substance acceptable to the Debtors are eligible to receive due diligence access or additional non-public information. If the Debtors determine that a Potential Bidder that has executed such a confidentiality and non-disclosure agreement does not constitute a Qualified Bidder, then such Potential Bidder's right to receive due diligence access or additional non-public information shall terminate. As noted above, the Debtors have designated SSG to coordinate all reasonable requests for additional information and due diligence access from the Potential Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined below). Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors or professionals are responsible for, and shall bear no liability with respect to, any information obtained by Potential Bidders in connection with the sale of the Assets. If the Debtors furnish any material information related to the Debtors not theretofore given to other Potential Bidders, then the Debtors shall promptly place it in the designated data room for availability to the Stalking Horse Bidder and the Qualified Bidder(s), if any, and provide notice thereof to same.

Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets that are the subject of the Auction prior to the Bid Deadline; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the

Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures.

Due Diligence From Bidders

Each Potential Bidder and Qualified Bidder (collectively, a "Bidder") shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding each such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with the requests for additional information and due diligence access shall be a basis for the Debtors to determine that such Potential Bidder is not a Qualified Bidder. Failure by a Potential or Qualified Bidder to comply with requests for additional information and due diligence access shall be a basis for the Debtors to determine that a Bid made by such Potential or Qualified Bidder (other than the Stalking Horse Bidder) is not a Qualified Bid.

"As Is, With All Faults"

The sale of the Assets shall be on an "as is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Debtors, their agents, their representatives or their estates, except as otherwise provided in a definitive purchase agreement with the Debtors. By submitting a bid, each Potential Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Debtors.

Free of Any and All Interests

Except as otherwise provided in the Stalking Horse APA or another Successful Bidder's purchase agreement, all of the Debtors' right, title and interest in and to the Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the "Interests") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Interests applied against the Assets.

The Auction and Auction Procedures

If a Qualified Bid, other than that submitted by the Stalking Horse Bidder, has been received by the Debtors, the Debtors may conduct an auction (the "Auction") with respect to all or some of the Assets. The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (the "Auction Site") at 10:00 a.m. (prevailing Eastern time) on September 6, 2012 (the "Auction Date"), or such other place and time as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. Prior to moving the Auction Date, the Debtors shall consult with the Stalking Horse Bidder, the Secured Lenders, and the Committee. No less than twenty-four (24) hours before commencement of the Auction, the Debtors shall provide each Qualified Bidder (including the Stalking Horse Bidder) with a copy of the Marked Agreement submitted by each of the other Qualified Bidders.

Except as otherwise provided herein or as restricted by the Stalking Horse APA, based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtors determine is relevant, the Debtors, in consultation with the Committee and the Secured Lenders, may conduct the Auction in any manner that they determine will achieve the maximum value for the Assets. Bidding at the Auction shall be transcribed or videotaped. The Debtors thereafter, in consultation with the Committee and the Secured Lenders, may offer the Assets in such successive rounds as the Debtors, in consultation with the Committee and the Secured Lenders, determine to be appropriate so as to obtain the highest or otherwise best bid for the Assets. The Debtors, in consultation with the Committee and the Secured Lenders, also may set opening bid amounts in each round of bidding as the Debtors determine to be appropriate.

If Qualified Bidders submit Qualified Bids, then the Debtors, in consultation with the Committee and the Secured Lenders, shall (i) promptly following the Bid Deadline, review each Qualified Bid on the basis of the financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale, and (ii) as soon as practicable after the conclusion of the Auction, identify the highest or otherwise best offer for the Assets (to the extent any such bid is acceptable to the Debtors, in consultation with the Committee and the Secured Lenders, a "Successful Bid") and the Qualified Bidder submitting the Successful Bid, the "Successful Bidder"). At the Sale Hearing, the Debtors, after consultation with the Committee and the Secured Lenders, may present the Successful Bid to the Bankruptcy Court for approval. The Debtors reserve all rights not to submit any bid (other than the Stalking Horse Bid subject to the terms of the Stalking Horse APA) which is not acceptable to the Debtors for approval by the Bankruptcy Court. The Debtors acknowledge that the Stalking Horse Bid is a Qualified Bid and shall be submitted to the Bankruptcy Court for approval in the event that there are no other Successful Bids. Except as otherwise provided herein or as restricted by the Stalking Horse APA, the Debtors, in the exercise of their fiduciary duties, may adopt rules for bidding at the Auction that, in their business judgment, will better promote the goals of the Bidding Process, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection herewith.

If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline or the Auction Date, then the Debtors shall cancel the Auction and accept the Stalking Horse Bid (in which case, the Successful Bid shall be the Stalking Horse Bid, and the Successful Bidder shall be the Stalking Horse Bidder).

Break-Up Fee and Expense Reimbursement Amount

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary and entering into the Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent Bidding Process, the Debtors have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse APA, a break-up fee and expense reimbursement in the amount of \$285,000.00 (the "Break-Up Fee and Expense Reimbursement Amount"). The Debtors will take into account the Break-Up Fee and Expense Reimbursement Amount in each round of bidding.

The Break-Up Fee and Expense Reimbursement Amount was a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse APA. The Break-Up Fee and Expense Reimbursement Amount shall be payable as set forth herein and in the Bidding Protections Order and Section 7.7 of the Stalking Horse APA.

Overbid Amount; Minimum Bid Increment

There shall be an overbid amount that a Potential Bidder must bid to exceed the Stalking Horse Bid ("Initial Overbid Amount") in order to be deemed a Qualified Bidder, and that amount shall be at least the purchase price under the Stalking Horse APA, plus the amount of the Break-Up Fee and Expense Reimbursement Amount, plus \$100,000. For example, if the Stalking Horse APA provides a purchase price of \$13,000,000 and an Break-Up Fee and Expense Reimbursement Amount equal \$300,000, a Potential Bidder would need to bid \$13,400,000 in order to be deemed a qualified bidder for the purposes of participating in the Auction. Subsequent bids shall not be less than \$100,000 in total consideration in excess of the preceding bid (less an amount equal to the Break-Up Fee and Expense Reimbursement Amount where such subsequent bid is made by the Stalking Horse Bidder) subject to the Debtors' ability to adjust the bidding increments in accordance with the Bidding Procedures. The Debtors will take into account the Break-Up Fee and Expense Reimbursement Amount in each round of bidding.

Acceptance of Qualified Bids

The Debtors shall sell the Assets to any Successful Bidder only upon the approval of a Successful Bid by the Bankruptcy Court after the Sale Hearing. The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of the bid. The Debtors will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

Return of Bid Deposit

The Bid Deposit of the Successful Bidder shall be applied to the Purchase Price. The Bid Deposit of the Back-up Bidder (as defined below) shall be held by the Escrow Agent in an escrow account until (a) the earlier of five (5) days following September 28, 2012 (the "Termination Date") or two (2) business days after the closing of the transaction contemplated by the Successful Bid, or (b) such other time as may be agreed to by the Debtors and the Back-Up Bidder or as ordered by the Court, and thereafter returned to the Back-up Bidder. Bid Deposits of all other Qualified Bidders shall be held in an escrow account until no later than the earlier of fifteen (15) days following the Auction or two (2) business days after the Sale Hearing, and thereafter returned to the respective bidders.

Sale Hearing

A Sale Hearing is scheduled for September 11, 2012 at 9:30 a.m. (prevailing Eastern Time) in the Bankruptcy Court with objections, if any, to the Sale to be filed on or before September 10, 2012 at 12:00 p.m. (prevailing Eastern Time). Following the approval of the Sale of all or substantially all of the Assets to any Successful Bidder at the Sale Hearing, if the Successful Bidder fails to consummate an approved Sale with the Successful Bidder, the Debtors shall be authorized to, but not required, to deem the next highest or otherwise best Qualified Bid (the "Back-Up Bid" and the party submitting the Back-Up Bid, the "Back-Up Bidder"), as disclosed at the Sale Hearing as the Successful Bid. The Debtors, in consultation with the Committee and the Secured Lenders, shall be authorized, but not required, to consummate the sale with the Back-Up Bidder submitting such bid without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until: (a) the earlier of five (5) days following the Termination Date or the two (2) business days following after the closing of the transaction contemplated by the Successful Bid, or (b) such other time as may be agreed to by the Debtors and the Back-Up Bidder or as ordered by the Court. The Debtors, in the exercise of their business judgment, in consultation with the Secured Lenders and the Committee, reserve their right, to the extent consistent with any Stalking Horse APA, if any, to change the date of the Sale Hearing in order to achieve the maximum value for the Assets.

Credit Bid

Notwithstanding anything to the contrary in the Bidding Procedures, the Sale Motion, the Original Bidding Procedures Order, these Bidding Procedures or the Bidding Protections Order, the Secured Lenders reserve the right, to the extent permitted by Section 363(K) of the Bankruptcy Code, to submit a credit bid for the Assets. Notwithstanding any credit bid by the Secured Lenders, such credit bid shall not prejudice or impair the rights granted to the Official Committee of Unsecured Creditors in the Final Order Under 11 U.S.C. §§ 105(a), 361, 363 and 364 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors to Incur Postpetition Secured Indebtedness, (II) Granting Security Interests and Superpriority Claims, and (III) Approving the Use of Cash Collateral entered on December 12, 2011 [Docket No. 132] (the "Final DIP Order"), including any modifications or amendments thereto.

Modifications

The Debtors, in consultation with the Committee and the Secured Lenders, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtors, their estates and creditors.

Miscellaneous

The Auction and Bidding Procedures are solely for the benefit of the Debtors and nothing contained in the Original Bidding Procedures Order, the Bidding Protections Order, or Bidding Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than rights specifically inuring to the benefit of the Stalking Horse Bidder.

Except as provided in the Original Bidding Procedures Order, the Bidding Protections Order and Bidding Procedures, the Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Original Bidding Procedures Order, Bidding Protections Order and Bidding Procedures.