

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

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**In re:**

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

**Debtors.**

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) **Chapter 11**  
)  
) **Case No. 11-13603 (PJW)**  
)  
) **(Jointly Administered)**  
)  
) **Objection Deadline: February 16, 2012 at 4:00 p.m. (EST)**  
) **Hearing Date: February 23, 2012 at 9:30 a.m. (EST)**

**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 CERTAIN 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 CERTAIN 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 above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move this Court (the "Motion") for entry of an order (the "Bidding Procedures Order"), substantially in the form attached hereto as Exhibit A, (A) establishing bidding and auction procedures (the "Bidding Procedures") in connection with the sale of the Debtors' F3 Brands LLC ("F3 Brands") business division assets (the "Assets"), free and clear of all claims (as defined by 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"), except to the extent identified in a Successful Bidder's

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<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 F3 Brands LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW Miami, OK 74354.



(as defined below) asset purchase agreement; (B) establishing procedures for approval of bid protections, if any, (the “Bid Protections”); (C) scheduling an auction (the “Auction”) and setting a date and time for a sale hearing (the “Sale Hearing”) for the sale of Assets (the “Sale”), and approving the form and manner of notice thereof; (D) establishing procedures for noticing and determining cure amounts for executory contracts (“Executory Contracts”) and unexpired nonresidential real property leases (“Real Property Leases”) to be assigned (the “Cure Procedures”); and (E) granting certain related relief. The Debtors further request that at the Sale Hearing, subject to the results of the Auction, consistent with the Bidding Procedures set forth herein, this Court enter an order (the “Sale Order”), substantially in the form attached hereto as Exhibit C, (A) approving and authorizing the Sale, free and clear of all Interests, except to the extent set forth in the Successful Bidder’s (as defined below) asset purchase agreement; and (B) authorizing the assumption and assignment of certain Executory Contracts and Real Property Leases. In support hereof, the Debtors respectfully represent:

### **JURISDICTION**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## **BACKGROUND**

### **A. Overview of the Debtors' Business**

1. On November 9, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned chapter 11 cases (the "Chapter 11 Cases"). The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been appointed in the Chapter 11 Cases. On November 21, 2011, the Office of United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") in the Chapter 11 Cases. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. In 2009, in an effort to expand and diversify its product line, Blitz USA, Inc. ("Blitz") acquired the rights to a line of organization and lawn and garden products under the brand name "2x4 Basics." In early 2011, Blitz began contemplating a spinoff of its non-gas can product lines, which included the 2x4 Basics products, as well as certain other automotive maintenance products produced by Blitz. In October 2011, Blitz formally spun off these additional product lines into F3 Brands, which is now a wholly-owned subsidiary of Blitz and one of the Debtors in these Chapter 11 Cases. In accordance with the requirements under their DIP Credit Agreement (as defined below), the Debtors have decided to sell substantially all of the assets of F3 Brands pursuant to a sales process to be conducted under section 363 of the Bankruptcy Code.

**B. The Debtors' Capital and Debt Structure**

3. As of the Petition Date, the Debtors had outstanding debt obligations in the aggregate principal amount of approximately \$66.5 million, consisting primarily of approximately (a) \$41 million in senior debt under the senior secured credit facility, (b) \$22 million in unsecured subordinated promissory notes and (c) \$3.5 million of other debt.

**i. Prepetition Senior Secured Credit Facility.**

4. The Debtors' first lien secured debt obligations arise under that certain First Amended and Restated Credit Agreement, dated February 4, 2011, among Blitz Acquisition, LLC, Blitz U.S.A., Inc. and Blitz RE Holdings, LLC as borrowers (collectively, the "Prepetition Borrowers"), Blitz Acquisition Holdings, Inc. as guarantor (the "Prepetition Guarantor"), F3 Brands LLC as guarantor (the "Additional Guarantor" and together with the Prepetition Guarantor, the "Prepetition 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 ("BOK") (as amended, supplemented, restated or otherwise modified from time to time, collectively "Prepetition Credit Facility"). The Prepetition Credit Facility consists of approximately \$22 million outstanding under a prepetition term loan facility (including outstanding letters of credit) (the "Prepetition Term Loan") and approximately \$19 million outstanding under a prepetition revolver facility (the "Prepetition Revolver"). All obligations under the Prepetition Credit Facility were secured by a first priority security interest in substantially all of the Prepetition Borrowers' and Prepetition Guarantors' assets. Absent acceleration, amounts due under the Prepetition Term Loan and Prepetition Revolver are due by February 4, 2016, while portions of the Prepetition Term Loan are due in 2013 and the remainder in 2014.

**ii. DIP Credit Facility**

5. On December 12, 2011, the Court authorized the Debtors to obtain up to \$5,000,000.00 in principal amount of postpetition financing under a revolving credit facility (the “DIP Credit Facility”), on the terms and conditions set forth in the Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of November 28, 2011 (as amended, supplemented or otherwise modified, the “DIP Credit Agreement”) among the Debtors, BOK, as agent (the “DIP Agent”), and the lenders identified therein (the “DIP Lenders”). The DIP Credit Facility was intended to provide the Debtors with sufficient liquidity to meet their obligations as same came due and to pay certain prepetition obligations which they were authorized to pay pursuant to Court order.

**BACKGROUND ON THE SALE**

**A. The Debtors’ Marketing and Sales Efforts**

6. As discussed above, in October 2011, Blitz formally spun off its non-gas can product lines into F3 Brands. F3 Brands is a leading designer, manufacturer and marketer of Do-It-Yourself (“DIY”) branded automotive maintenance, storage and outdoor products sold through retail channels. F3 Brands is the undisputed U.S. market leader in automotive oil change accessories.

7. The Debtors have determined that it is in the best interest of their estates to sell the F3 Brands Assets. The F3 Brands sale proceeds will allow the Debtors to pay down the secured debt obligations. Additionally, certain benchmark requirements in the DIP Credit Agreement require the Debtors to complete a sale of F3 Brands on or before March 16, 2012.<sup>2</sup> Failure to meet the benchmark requirements regarding sale of F3 Brands is an event of default

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<sup>2</sup> As noted above, the DIP Credit Agreement provides that failure to complete the sale of F3 Brands by March 16, 2012 is a Default. The Debtors have requested that the DIP Lenders extend the March 16, 2012 deadline for completing the sale through and including March 31, 2012. The Debtors and the DIP Lenders reserve all rights and do not waive any rights regarding the requirements of the DIP Credit Agreement.

under the DIP Credit Agreement. The Debtors believe the sale of F3 Brands will preserve and maximize the value of their estates and, accordingly, is in the best interests of the their estates and creditors.

8. In December 2011, the Debtors engaged Capstone Financial Group, Inc. ("Capstone") as investment banker to assist in the marketing and sale of F3 Brands. During the course of the marketing effort to date, Capstone contacted approximately 685 prospective parties to solicit interest in the purchase of F3 Brands, including financial and strategic purchasers, 94 of which to date have negotiated confidentiality agreements and received a Confidential Information Memorandum. To facilitate the due diligence process, Capstone has prepared an electronic dataroom with information related to F3 Brands business operations (the "Dataroom"). Currently, two (2) of the prospective purchasers are actively conducting due diligence and utilizing the Dataroom.

9. In addition, Capstone will distribute a form Stalking Horse Asset Purchase Agreement for the sale of F3 Brands to prospective purchasers who designate their interest in being a Stalking Horse Bidder. Capstone expects to circulate the form agreement on or before February 13, 2012.

10. On or before February 20, 2012, Stalking Horse Bidders are required to return the Stalking Horse Asset Purchase Agreement and their respective bids (as described in more detail below). On or before February 27, 2012, F3 Brands intends to execute a Stalking Horse Asset Purchase Agreement with the party presenting the most favorable offer. Following the execution of the Stalking Horse Asset Purchase Agreement, other Acceptable Bidders may continue to perform detailed due diligence.

11. On March 23, 2012, F3 Brands intends to conduct a public auction for the purposes of selling the assets of F3 Brands to the highest bidder. Qualified Bidders, as defined in the Bidding Procedures, may participate in the Auction.

**B. Proposed Timeline for Sale of Assets**

12. Accordingly, the Debtors have proposed the following timeline for the Sale of the Assets:<sup>3</sup>

<u>Action</u>	<u>Deadline</u>
Bidding Procedures Hearing	February 23, 2012
Submission Deadline for Proposed Stalking Horse Agreements	February 20, 2012
Selection of Stalking Horse Agreement	February 27, 2012
Submission of Qualified Bids	March 21, 2012
Auction	March 23, 2012
Sale Hearing	March 28, 2012
Consummation of Sale	March 30, 2012 <sup>4</sup>

**C. The Asset Purchase Agreement**

13. The Debtors will distribute a form asset purchase agreement (the “APA”) to all parties who designate their interest in being a stalking horse bidder for the Assets. Potential stalking horse bidders will be required to submit a revised APA to the Debtors on or before February 20, 2012. The Debtors will select a stalking horse bidder (the “Stalking Horse Bidder”) as soon as practicable after submissions of the proposed APA’s but no later than February 27, 2012. Upon selection of the Stalking Horse Bidder, the Debtors will provide notice (the “Notice”) of same to all parties in interest and will file and serve the Stalking Horse Bidder APA on all interested parties. The Notice will provide a summary of the principal terms of the APA, including, but not limited to, the purchase price, deposit amount, acquired assets, assumed

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<sup>3</sup> The Debtors, in the exercise of their business judgment and with the consent of the DIP Lenders, reserve the right to change these sale-related dates in order to achieve the maximum value for the Assets. Any change will comply with the terms of any Stalking Horse Asset Purchase Agreement.

<sup>4</sup> This date may be extended by agreement of the parties with the consent of the DIP Lenders.

liabilities, and proposed bid protections, if any.

### **RELIEF REQUESTED**

14. The Debtors have determined that given their liquidity and current market conditions, a prompt Sale of the Assets is the best way to maximize the value of the Assets for their respective estates and creditors.

15. Accordingly, by this Motion, the Debtors seek entry of the Bidding Procedures Order: (A) approving the Bidding Procedures; (B) establishing procedures for the approval of any bid protections (the “Bid Protections”); (C) scheduling the Auction and a Sale Hearing with respect to any bid accepted by the Debtors, and approving the form and manner of notice thereof; and (D) establishing the Cure Procedures.

16. The Debtors also request that this Court set a Sale Hearing on or about March 28, 2012. At the Sale Hearing, pending the outcome of the Auction, consistent with the Bidding Procedures, the Debtors intend to seek entry of a Sale Order (A) approving the Sale, free and clear of all Interests; and (B) authorizing the assumption and assignment of certain Executory Contracts and Real Property Leases.

### **BASIS FOR RELIEF**

#### **A. Necessity for Sale**

17. As set forth above, the Debtors presently face the possibility of continued liquidity problems. Additionally, the Debtors are required by the terms of the DIP Credit Agreement to sell the F3 Brands Assets. Accordingly, the Debtors have decided to pursue the Sale of the Assets and believe that they must be permitted to conduct the process in the manner and on the timetable set forth herein and in the Bidding Procedures.



**B. The Bidding Procedures**<sup>5</sup>

18. In order to maximize the value of the Assets for the benefit of the Debtors' estates and their respective creditors, the Debtors seek to implement a competitive bidding process that is designed to generate maximum recovery. As described more fully in the Bidding Procedures, attached as Exhibit 1 to the Bidding Procedures Order attached hereto as Exhibit A, the Debtors may sell all of the Assets to a Qualified Bidder that makes the highest or otherwise best offer for the Assets.

19. As described more fully in the Bidding Procedures, the Debtors propose that competing bids for the Assets be governed by the following:<sup>6</sup>

- Submission of Proposed Stalking Horse APA. Potentially interested purchasers must submit a proposed asset purchase agreement ("APA") to the Debtors on or before February 20, 2012. As soon as practicable after submission of any stalking horse APA's, but no later than February 27, 2012, the Debtors will select the Stalking Horse APA that, in the Debtors' business judgment, is the highest and otherwise best offer for the Assets. After selection of the Stalking Horse, the Debtors will provide notice of same to all parties in interest, including other potentially interested purchasers, and will file and serve the Stalking Horse APA on all interested parties.
- Due Diligence. Potential Bidders who were not selected as the Stalking Horse may continue to conduct due diligence through and including March 21, 2012.
- Bid Deadline. A Potential Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Materials not later than 5:00 p.m. (prevailing Eastern time) on March 21, 2012 (the "Bid Deadline").
- Required Bid Materials. All bids, other than the Stalking Horse Bid, must include, among other things:

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<sup>5</sup> Terms used but not otherwise defined in this section of this Motion shall have the meanings ascribed to them in the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order.

<sup>6</sup> The following description of the Bidding Procedures is only a summary of the terms set forth in the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. The following summary is qualified in its entirety by reference to the provisions of the Bidding Procedures. In the event of any inconsistencies between the provisions of the Bidding Procedures and the terms herein, the terms of the Bidding Procedures shall control.

- (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;
- (ii) an executed copy of a purchase agreement and a redline of a Qualified Bidder's proposed purchase agreement reflecting variations from the proposed Stalking Horse Asset Purchase Agreement (the "Marked Agreements");
- (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 (the "Minimum Bid Amount") plus amounts necessary to meet the Initial Overbid Amount (as defined below).
- (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 Qualified 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 (the "Bid Deposit") (as set forth in the Bidding Procedures).
- (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.

- (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.

In addition, the bid must satisfy the other requirements set forth under "Bid Requirements" in the Bidding Procedures.

A "Qualified Bidder" is a potential bidder (a "Potential Bidder") that delivers the documents described in subparagraphs (i)-(x) above, and that the Debtors, in consultation with the Committee and the DIP 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. Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder. Not later than one (1) business day after a Potential Bidder delivers all of the materials required by subparagraph (i) - (x) above, the Debtors shall determine, in consultation with the Committee and the DIP Lenders, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder.

- Initial Overbid Amount. There shall be an initial 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 eligible to participate in the Auction. The Initial Overbid Amount shall be at least the amount of consideration provided for in the Stalking Horse APA plus the amount necessary to pay any Court approved Bid Protections plus \$100,000. For example, if the Stalking Horse APA provides for a purchase price of \$13,000,000 and the Court approves a break-up fee and expense reimbursement totaling \$300,000, a Potential Bidder must submit a bid of at least \$13,400,00 (the \$13,000,000 purchase price, plus the \$300,000 bid protection fee, plus the \$100,000 overbid amount) in order to be a Qualified Bidder and participate in the Auction.

- Auction. 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 the Assets. The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, 3rd Floor, Wilmington, Delaware 19801 (the “Auction Site”) at 10:00 a.m. (prevailing Eastern time) on March 23, 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. Bidding at the Auction shall be transcribed or videotaped.
- Minimum Bid Increment. Once the Auction is commenced, subsequent bids shall not provide consideration of less than \$100,000 in total consideration in excess of the announced highest and best bid, subject to the Debtors ability to adjust the bidding increments in accordance with the Bidding Procedures. The Debtors will take into account any Court approved bid protection fees in each round of bidding.

**C. Stalking Horse Asset Purchase Agreement and Break-Up Fee**

20. In order to provide an incentive and to compensate a potential Stalking Horse Bidder for entering into a Stalking Horse APA, the Debtors may need to seek approval of bid protections, including a break-up fee (“Break-Up Fee”) and expense reimbursement (“Expense Reimbursement”) and together with the Break-Up Fee, the “Bid Protections”). In the event the Debtors find it necessary to seek approval of Bid Protections, no later than three (3) days after selection of the Stalking Horse APA, the Debtors will file and serve notice of the proposed Bid Protections on all interested parties. The notice shall include the amount of any Break-Up Fee and Expense Reimbursement and in no event shall the aggregate amount of the Bid Protections exceed three (3) percent of the cash purchase price for the Assets. The Debtors will request the Court set a hearing to approve the Bid Protections no later than seven (7) days after the execution of the Stalking Horse APA. The Debtors will file and serve notice of such hearing on all interested parties.

21. The Debtors believe that offering Bid Protections in the range customarily acceptable in this jurisdiction to a Stalking Horse Bidder may benefit the Debtors’ estates by

establishing a floor for the Assets and promoting more competitive bidding. The Bid Protections, if necessary in order to provide the Stalking Horse Bidder with some assurance that it will be compensated for the time and expense it spends putting together its offer for the Assets and the risk that arises from participating in the bidding and subsequent Auction process, will only be allowed upon further order of the Court in accordance with the procedures set forth herein.

**D. Notice of Bidding Procedures, Auction and Sale**

22. Notice of Sale Hearing. The Debtors (or their agents) shall serve notice of this Motion by first-class mail, postage prepaid, upon (a) the United States Trustee for the District of Delaware; (b) counsel for the Committee; (c) counsel for the agent for the Debtors' prepetition and post-petition secured lenders; (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, if any, for nonresidential real property leases related the F3 Brands business; (f) various federal, state, county and city tax and regulatory authorities; (g) all entities known to have expressed an interest in a transaction with respect to the Assets or that have been identified by the Debtors or their advisors as a potential purchaser of the Assets; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

23. Sale Notice. Within two (2) business days of the entry of the Bidding Procedures Order (the "Mailing Date") or as soon thereafter as practicable, the Debtors (or their agents) shall serve by first-class mail, postage prepaid, a sale notice (the "Sale Notice") setting forth the dates established for submission of Qualified Bids, the Auction and the Sale Hearing, substantially in the form attached hereto as Exhibit B, and the Bidding Procedures Order upon the Sale Notice Parties.

24. Post Auction Notice. As soon as possible after the conclusion of the Auction the Debtors shall file, but not serve, a notice (the “Post Auction Notice”) identifying any successful bidder (the “Successful Bidder”).

**E. The Cure Notice Procedures**

25. The Debtors propose the following procedures for notifying counterparties to Executory Contracts and Real Property Leases of potential Cure Amounts (as defined below) with respect to those Executory Contracts and Real Property Leases that the Debtors may seek to assume and assign on the Closing Date.

26. Within five (5) business days of the filing of this Motion, the Debtors will file a notice identifying all Executory Contracts and Real Property Leases that may be assumed and assigned in connection with the Sale (the “Cure Notice”), and serve the Cure Notice on all non-debtor parties to the Executory Contracts and Real Property Leases (the “Contract Notice Parties”).

27. The Cure Notice shall state the cure amounts that the Debtors believe are necessary to assume such Executory Contracts and Real Property Leases pursuant to section 365 of the Bankruptcy Code (the “Cure Amount”) and notify the non-debtor party that such party’s Executory Contract or Real Property Lease may be assumed and assigned to a purchaser of the Assets to be identified at the conclusion of the Auction.<sup>7</sup> The Cure Notice shall set a deadline by which the non-debtor party may file an objection to the Cure Amount. The Debtors request that this Court set the deadline to object to any Cure Amount as fourteen (14) days after service of the Cure Notice. The Debtors propose that if they file an amended Cure Notice setting forth

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<sup>7</sup> In the event a Stalking Horse Bidder is selected, no later than five (5) business days after selection the Debtors shall provide notice to all Contract Notice Parties regarding such Stalking Horse Bidder’s proposed adequate assurance of future performance and information regarding how a non-debtor party to an Executory Contract or Real Property Lease may obtain additional information regarding the Stalking Horse Bidder (the “Stalking Horse Adequate Assurance Information”). The notice shall set the deadline for filing any objections to the adequate assurance information.

amended Cure Amounts, any parties affected by the amendment shall have until the earlier of (i) fourteen (14) days after service of the amended Cure Notice or (ii) two business days before the Sale Hearing to object to the amended Cure Amount. The Cure Notice shall also provide that objections to any Cure Amount will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors in consultation with the Court.

28. At the Sale Hearing, the Debtors shall (i) present evidence necessary to demonstrate adequate assurance of future performance by any Successful Bidder and (ii) request entry of an order requesting approval of the assumption and assignment of any or all Executory Contracts and Real Property Leases to be assumed and assigned on the Closing Date to any Successful Bidder. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of all parties-in-interest.

29. As soon as possible after the Closing Date, the Debtors shall file with this Court a post-closing notice that identifies the Executory Contracts and Real Property Leases which were assumed and assigned to the Successful Bidder as of the Closing Date.

#### **APPLICABLE AUTHORITY**

30. “Under Delaware law, the business judgment rule operates as a presumption ‘that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation’s best interest.’” Continuing Creditors’ Committee of Star Telecomms., Inc. v. Edgecomb, 385 F. Supp. 2d 449, 462 (D. Del. 2004) (quoting Grobow v. Perot, 539 A.2d 180, 187 (Del. 1988)); see also Ad Hoc Committee of Equity Holders of Tectonic Network, Inc. v. Wolford, 554 F. Supp. 2d 538, 555 n.111 (D. Del. 2008). Thus, this Court should grant the relief requested in this Motion if the Debtors demonstrate a sound business justification therefore. See In re Delaware Hudson Ry.

Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

31. The Debtors have sound business justifications for selling the Assets at this time. As set forth above, failure to sell the Assets is an event of default under the DIP Credit Agreement. Accordingly, the Debtors have determined that the best option for maximizing the value of their estates for the benefit of their creditors is through a Sale of the Assets.

**A. The Bidding Procedures are Fair and Are Designed to Maximize the Value Received for the Assets**

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32. Section 363(b)(1) of the Bankruptcy Code provides that “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The Debtors believe that the Bidding Procedures are appropriate under sections 105 and 363 of the Bankruptcy Code to ensure that the bidding process is fair and reasonable and will yield the maximum value for their estates and creditors. The Bidding Procedures proposed herein are designed to maximize the value received for the Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids. The Bidding Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. At the same time, the Bidding Procedures provide the Debtors with the opportunity to consider all competing offers and to select the highest and best offer for the sale of the Assets as determined by the Debtors, in consultation with the Committee and the DIP Lenders.

33. The Debtors request this Court’s approval of the Bidding Procedures, including the dates established thereby for an Auction and a Sale Hearing. The Bidding Procedures will serve to ensure a fair process and are supported by the sound business judgment of the Debtor.

**B. Bid Protections may be Necessary to Preserve the Value of the Debtors’ Estates**



34. Pursuant to Bankruptcy Rule 6004(f)(1), a sale of property outside the ordinary course of business may be by private sale or by public auction. The Debtors believe that having the ability to offer Bid Protections to the Stalking Horse Bidder may maximize the realizable value of the Assets for the benefit of the Debtors' estates, creditors and other parties-in-interest.

35. The Third Circuit has identified at least two instances in which bidding incentives may benefit the estate. First, a break-up fee or expense reimbursement may be necessary to preserve the value of the estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 181 F.3d 527, 537 (3d Cir. 1999) (hereinafter, "O'Brien"); Reliant Energy Channelview LP v. Kelson Channelview LLC, 594 F.3d 200, 206-07 (3d Cir. 2010) (hereinafter, "Reliant"). Second, if the availability of break-up fees and expenses were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. Reliant, 594 F.3d at 206-07; O'Brien, 181 F.3d at 537.

36. In O'Brien, the court reviewed the nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee. Such factors are as follows:

- A. the presence of self-dealing or manipulation in negotiating the break-up fee;
- B. whether the fee harms, rather than encourages, bidding;
- C. the reasonableness of the break-up fee relative to the purchase price;
- D. whether the unsuccessful bidder placed the estate property in a "sales configuration, mode" to attract other bidders to the auction;

- E. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;
- F. the correlation of the fee to a maximum of value of the debtor's estate;
- G. the support of the principal secured creditors and creditors committees of the break-up fee;
- H. the benefits of the safeguards to the debtor's estate; and
- I. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See O'Brien, 181 F.3d at 536.

37. Bid Protections may enable the Debtors to secure an adequate floor for the Assets and, thus, insist that competing bids be materially higher or otherwise better than the Stalking Horse APA — a clear benefit to the Debtors' estates. Moreover, the Stalking Horse Bidder may not agree to act as a stalking horse without Bid Protections and the Debtors might lose the opportunity to obtain the highest or best offer for the Assets and would certainly lose the downside protection that could be afforded by the existence of a Stalking Horse Bidder.

38. Moreover, payment of any Bid Protections will not diminish the Debtors' estates. The Bid Protections will only be payable if a Sale to a higher or better bidder is consummated.

39. "The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable." The Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 660 (S.D.N.Y. 1992). As is customary, the Bid Protections serve as compensation for a stalking horse bidder's investment of considerable time and expense in negotiating and entering into a stalking horse asset purchase agreement. The Debtors believe that, should an auction be held, the Bid Protections may be necessary to encourage bidding by serving "any of three possible useful functions: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders

to follow; or (3) to attract additional bidders.” *Id.* at 662. If the Assets are sold to a competing bidder, the sale likely will be the result of a Stalking Horse Bidder’s crucial role as an initial bidder generating interest in the assets and establishing a minimum acceptable price and offer against which other parties can bid.

40. In addition, “[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder’s efforts and to the magnitude of the transaction, break-up fees are generally permissible.” *Id.* The Debtors will not agree to Bid Protections in excess of three percent (3%) of the cash purchase price, an amount within the range of break-up fees typically paid in sales transactions that have been approved by this Court. *See, e.g., In re Maxide Acquisition, Inc.*, No. 05-10429 (MFW) (Bankr. D. Del. Mar. 15, 2005) (approving break-up fee of 3%, or \$2.5 million, in connection with a \$75 million sale); *In re Ameriserve Food Distrib., Inc.*, No. 00-00358 (PJW) (Bankr. D. Del. June 15, 2000) (approving break-up fee of 3.6%, or \$4 million, in connection with \$110 million sale). The Debtors reserve the right to seek Bid Protections in accordance with the procedures outlined herein.

**C. Approval of the Sale is Warranted Under Bankruptcy Code 363(b)**

41. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts in this district and elsewhere have found that a debtor’s sale or use of assets outside the ordinary course of business should be approved if the debtor can

demonstrate a sound business justification for the proposed transaction. See, e.g., In re Eagle Picher Holdings, Inc., 2005 Bankr. LEXIS 2894, at ¶ 3 (Bankr. S.D. Ohio 2005); In re Martin, 91 F.3d 389, 395 (3d Cir. 1996); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983). Once the Debtors articulate a valid business justification, “[t]he business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” In re S.N.A. Nut Co., 186 B.R. 98 (Bankr. N.D. Ill. 1995); see also In re Integrated Res., Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a Debtor’s management decisions”).

42. The sale of a debtor’s assets is appropriate where there are sound business reasons behind such a determination. See Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (Bankr. D. Del. 1999); In re Del. & Hudson Ry. Co., 124 B.R. 169, 176 (D.D.C. 1991); Stephens Indus., Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986) (sale of substantially all assets of estate authorized where “a sound business purpose dictates such action”). The Debtors have a sound business justification for selling the Assets at this time. Based on careful consideration of the Debtors’ liquidity constraints and their ongoing and future business prospects, the Debtors’ management and team of financial advisors have concluded that a Sale of the Assets in accordance with the procedures set forth in the Bidding Procedures is the best method to maximize recoveries to the estates. Maximization of the Assets’ value is a sound business purpose warranting authorization of any proposed Sale. Absent an ability to auction the Assets in accordance with the Bidding Procedures and related

timeline, the Debtors may default under the DIP Credit Agreement and be forced to liquidate all their assets, thereby jeopardizing their ability to reorganize and destroying any going concern value of the Assets that could be obtained for the benefit of creditors.

43. The Debtors have proposed a fair and open process for achieving the objective of obtaining the highest or best offer for the Assets for the benefit of the Debtors' estates and their creditors. The Sale of the Assets will be subject to competing bids, enhancing the Debtors' ability to receive the highest or otherwise best value for the Assets. Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

44. In addition, all creditors and parties-in-interest will receive adequate notice of the Bidding Procedures and Sale Hearing as set forth above. Such notice is reasonably calculated to provide timely and adequate notice to the Debtors' major creditor constituencies, those parties most interested in these chapter 11 cases, those parties potentially interested in bidding on the Assets and others whose interests are potentially implicated by a proposed Sale. Accordingly, consummating the Sale on the proposed timeline is in the best interests of the Debtors and their creditors and parties-in-interest.

**D. The Proposed Sale Satisfies the Requirements of Section 363(f) for a Sale Free and Clear of Interests**

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45. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to section 363(b), it is only necessary to meet

one of the five conditions of section 363(f). Citicorp Homeowners Servs., Inc. v. Elliot, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988); (stating that section 363(f) of the Bankruptcy Code is written in the disjunctive; holding that if any of the five conditions of section 363(f) are met, the trustee has the authority to conduct the sale free and clear of all liens). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

46. The Debtors believe that the DIP Lenders' will consent to the sale free and clear under section 363(f)(2). In the event they do not, a sale free and clear can proceed pursuant to section 363(f)(5) of the Bankruptcy Code because the DIP Lenders will be paid from the proceeds of the Sale and the Debtors will establish at the Sale Hearing that the DIP Lenders can be compelled to accept a monetary satisfaction of their claims.

47. The Debtors propose that any bona fide and allowed Interests shall attach to the Sale proceeds with the same force, validity, effect, priority and enforceability as such Interests had in the Assets prior to such Sale.

**E. A Successful Bidder Should be Entitled to the Protections of Section 363(m)**

48. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. See In re Abbotts Dairies, 788 F.2d at 147; In re Mark Bell Furniture Warehouse, Inc., 992 F.2d 7, 9 (1st Cir. 1993); In re Willemain V. Kivitz, 764 F.2d 1019, 1023 (4th Cir. 1985).

49. It is the Debtors' expectation that any Stalking Horse APA will be negotiated at arm's length, with both parties represented by their own counsel. Additionally, the Debtors will adduce facts at the Sale Hearing demonstrating same.

50. Accordingly, the Sale Order will include a provision that the Successful Bidder for the Assets, is a "good faith" purchaser within the meaning of section 363(m) of the

Bankruptcy Code. The Debtors believe that providing any Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Assets and that closing of the sale will occur promptly.

**F. The Assumption and Assignment of Executory Contracts and Unexpired Leases**

51. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. See e.g., In re Stable Mews Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). If the debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. See Group of Institutional Investors v. Chicago M. St. P. & P.R.R. Co., 318 U.S. 523 (1943); Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3rd. Cir. 1989). The business judgment test “requires only that the trustee [or debtor-in-possession] demonstrate that [assumption or] rejection of the contract will benefit the estate.” Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting In re Stable Mews Assoc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984)). Any more exacting scrutiny would slow the administration of a debtors’ estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten this Court’s ability to control a case impartially. See Richmond Leasing Co. v. Capital Bank, NA., 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the

debtor will promptly cure,” any default, including compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

52. Once an executory contract is assumed, the trustee or debtor-in-possession may elect to assign such contract. See In re Rickel Home Center, Inc., 209 F.3d 291, 299 (3d Cir. 2000) (“[t]he Code generally favors free assignability as a means to maximize the value of the debtor’s estate”); see also In re Headquarters Doge, Inc., 13 F.3d 674, 682 (3d Cir. 1994) (noting purpose of section 365(f) is to assist trustee in realizing the full value of the debtor’s assets).

53. Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B. R. 524, 538 (Bankr. D.N.J. 1989); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. Accord In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when a prospective assignee of a lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

54. Information will be included in the Stalking Horse Adequate Assurance Information, which will include contact information on where additional adequate assurance information can be obtained. Adequate assurance of future performance with respect to any



Successful Bidder who is not the Stalking Horse Bidder shall be presented at the Sale Hearing. The Debtors will adduce facts at the hearing demonstrating the financial wherewithal of any Successful Bidder, and their willingness and ability to perform under the Executory Contracts and Real Property Leases to be assumed and assigned to them. The Sale Hearing therefore will provide this Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of any Successful Bidder to provide adequate assurance of future performance under the Executory Contracts and Real Property Leases that it seeks to assume.

55. Accordingly, the Debtors respectfully submit that the procedures proposed herein for Executory Contracts and Real Property Leases being assumed and assigned on the Closing Date are appropriate and reasonably tailored to provide Contract Notice Parties with adequate notice.

56. Furthermore, to the extent that any defaults exist under any Executory Contract or Real Property Lease that is to be assumed and assigned in connection with the Sale of the Assets, the Debtors will cure any such default contemporaneously with or as soon as practicable after consummation of an assumption and assignment of such Executory Contract or Real Property Lease.

57. Accordingly, this Court should have a sufficient basis to authorize the Debtors to assume and assign Executory Contracts and Real Property Leases as may be set forth in any Successful Bidder's asset purchase agreement.

**G. Relief Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate**

58. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale or lease of property... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Additionally, Bankruptcy Rule 6006(d) provides that an "order authorizing

the trustee to assign an executory contract or unexpired lease... is stayed until the expiration of the 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request that any Sale Order be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

### **NOTICE**

59. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors served notice of this Motion by first class mail upon: (a) the United States Trustee for the District of Delaware; (b) counsel for the Committee; (c) counsel for the agent for the Debtors’ prepetition and post-petition secured lenders; (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 for any nonresidential real property leases related to the F3 Brands business; (f) various federal, state, county and city tax and regulatory authorities; (g) all entities known to have expressed an interest in a transaction with respect to the Assets or that has been indentified by the Debtors or their advisors as a potential purchaser of the Assets; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

### **NO PRIOR REQUEST**

60. No prior motion for the relief requested herein has been made to this Court or any other Court.

*[Remainder of page intentionally left blank.]*

WHEREFORE, the Debtors respectfully request that this Court enter the Bidding Procedures Order, substantially in the form attached hereto, (A) approving the Bidding Procedures; (B) establishing procedures for approval of the Bid Protections; (C) scheduling an Auction and a Sale Hearing to approve such sale, and approving the form and manner of notice thereof; (D) approving the Cure Procedures; and (E) granting such other and further relief as this Court deems appropriate. Additionally, the Debtors request that at the Sale Hearing this Court enter a Sale Order subject to the result of the Auction, consistent with the Bidding Procedures, (A) approving and authorizing the Sale; and (B) authorizing the assumption and assignment of certain Executory Contracts and Real Property Leases and granting such other and further relief as this Court deems appropriate.

Dated: February 7, 2012  
Wilmington, Delaware



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Daniel J. DeFranceschi (No. 2732)  
Paul N. Heath (No. 3704)  
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

*Counsel to the Debtors and  
Debtors in Possession*

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

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**In re:**

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

**Debtors.**

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)

) **Chapter 11**

)

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

)

) **(Jointly Administered)**

)

) **Objection Deadline: February 16, 2012 at 4:00 p.m. (EST)**

) **Hearing Date: February 23, 2012 at 9:30 a.m. (EST)**

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**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that, on February 7, 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 Certain 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 Certain 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 “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

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<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 F3 Brands LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 404 26th Ave. NW Miami, OK 74354.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the proposed undersigned counsel for the Debtors on or before **February 16, 2012 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise resolved, a hearing to consider such objection and the Motion will be held before The Honorable Peter J. Walsh at the Bankruptcy Court, 824 Market Street, 6<sup>th</sup> Floor, Courtroom 2, Wilmington, Delaware 19801 on **February 23, 2012 at 9:30 a.m. (Eastern Standard Time)**.

**IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: February 7, 2012  
Wilmington, Delaware

/s/ Amanda R. Steele  
Daniel J. DeFranceschi (No. 2732)  
Paul N. Heath (No. 3704)  
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  
Heath@rlf.com  
Finocchiaro@rlf.com  
Steele@rlf.com

*Counsel to the Debtors and Debtors in Possession*

# **Exhibit A**

## **Form of Bidding Procedures Order**

**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. \_\_**

**ORDER (A) ESTABLISHING BIDDING AND AUCTION PROCEDURES  
RELATED TO THE SALE OF CERTAIN OF THE DEBTORS' ASSETS;  
(B) ESTABLISHING PROCEDURES FOR APPROVAL OF RELATED BID  
PROTECTIONS; (C) SCHEDULING AN AUCTION AND SALE HEARING;  
(D) ESTABLISHING CERTAIN NOTICE PROCEDURES FOR DETERMINING  
CURE AMOUNTS FOR EXECUTORY CONTRACTS AND LEASES TO BE  
ASSIGNED; AND (E) GRANTING CERTAIN RELATED RELIEF**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an order (the "Bidding Procedures Order") (A) establishing bidding and auction procedures (the "Bidding Procedures"), substantially in the form attached hereto as Exhibit 1, in connection with the sale (the "Sale") of the Debtors' F3 Brands LLC business division assets (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 any Stalking Horse APA or the asset purchase agreement of any other Successful Bidder (as defined in the Bidding Procedures), as applicable; (B) establishing procedures for approval of bid protections, if any; (C) scheduling an auction (the "Auction") and

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<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 F3 Brands LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW Miami, OK 74354.

<sup>2</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

sale hearing (the “Sale Hearing”) for the Sale of the Assets and approving the form and manner of notice thereof; (D) establishing certain notice procedures for determining cure amounts (the “Cure Amounts”) for executory contracts (the “Executory Contracts”) and unexpired nonresidential real property leases (the “Real Property Leases”) that may be assigned (the “Cure Procedures”); and (E) granting certain related relief; 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 Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been given, with no objections having been filed, or all objections having been 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:

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 Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Notice of the Motion, including the proposed entry of the Bidding Procedures Order, the Bidding Procedures, the Cure Procedures, and the hearing to consider entry of this Bidding Procedures Order (the “Bidding Procedures Hearing”) has been provided as set forth in the Motion. The Debtors’ notice of the Motion, the proposed entry of the Bidding Procedures Order, the Bidding Procedures, the Cure Procedures, and Bidding Procedures Hearing is 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, the Motion or this Bidding Procedures Order is required.

C. The Debtors' proposed notices of (i) the proposed Sale of the Assets, (ii) the assumption and assignment of Executory Contracts and Real Property Leases, (iii) the Stalking Horse APA, (iv) the Bid Protections; (v) the Cure Procedures, and (vi) the Bidding Procedures are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of each, and no further notice of, or hearing on, each is necessary or required.

D. The Bidding Procedures and the Cure Procedures substantially in the form set forth in the Motion are fair, reasonable, and appropriate and are designed to maximize the value of the Debtors' estates.

E. The Debtors have (a) articulated good and sufficient reasons to this Court to grant the relief requested in the Motion and (b) demonstrated sound business justifications to support such relief.

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

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

1. The (i) Bidding Procedures and (ii) Cure Procedures, are hereby APPROVED, and fully incorporated into this Bidding Procedures 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 Bidding Procedures.

2. All objections to the relief requested in the Motion with respect to (i) the Bidding Procedures and (ii) the Cure Procedures that have not been withdrawn, waived or settled as announced at the Bidding Procedures Hearing, or resolved by stipulation signed by the Debtors and filed with this Court, are overruled on their merits.

### **AUCTION AND BIDDING PROCEDURES**

3. The Debtors are authorized to conduct the Auction. The Auction, if any, shall be conducted at 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 March 23, 2012 (the “Auction Date”), or at such other place and time or later date as determined by the Debtors. The Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth in the Bidding Procedures. The Debtors are authorized, subject to the terms of this Bidding Procedures Order, to take all actions necessary, in the discretion of the Debtors, to conduct and implement such Auction.

4. The Debtors, in consultation with BOKF, N.A. d/b/a Bank of Oklahoma (the “DIP Lenders”) and the official committee of unsecured creditors (the “Committee”) may (i) select, in their business judgment, pursuant to the Bidding Procedures the highest or otherwise best offer(s) and the Successful Bidder or Bidders, and (ii) reject any bid that, in the Debtors’ business judgment, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules or the Bidding Procedures, or (c) contrary to the best interests of the Debtors and their estates, creditors, interest holders or parties-in-interest.

5. The failure to specifically include or reference any particular provision, section or article of the Bidding Procedures in this Bidding Procedures Order shall not diminish

or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

6. Any Stalking Horse Bidder selected in accordance with the Bid Procedures will be deemed a Qualified Bidder, and such Stalking Horse Bidder's bid for the Assets will be deemed a Qualified Bid. In the event there are no other Qualifying Bids, the Debtors shall accept such Stalking Horse Bid and the Stalking Horse Bidder shall be the Successful Bidder.

### **THE PROTECTIONS PROCEDURES**

7. In the event the Debtors find it necessary to seek approval of Bid Protections, including a break-up fee and expense reimbursement, within three (3) days after the selection of the Stalking Horse Bidder, the Debtors shall serve notice of the proposed Bid Protections on all interested parties. The notice shall include the amount of any Break-Up Fee and Expense Reimbursement and in no event shall the aggregate amount of the Bid Protections exceed three (3) percent of the cash purchase price for the Assets. The Debtors shall request the Court set a hearing to approve the Bid Protections no later than seven (7) days after the execution of the Stalking Horse APA. The Debtors shall file and serve notice of such hearing on all interested parties.

### **ADDITIONAL NOTICE PROVISIONS**

8. Within two (2) days after the entry of this Bidding Procedures Order (the "Mailing Date") or as soon thereafter as practicable, the Debtors (or their agents) shall serve the Sale Notice and a copy of this Bidding Procedures Order by first-class mail, postage prepaid, 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; (e) all parties

asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (f) each of the Debtors' landlords and each of the notice parties identified in the real property leases, to the extent possible; (i) various federal, state, county and city tax and regulatory authorities; (j) all entities known to have expressed an interest in a transaction with respect to the Assets or that has been indentified by the Debtors or their advisors as a potential purchaser of the Assets; and (k) all parties requesting notice pursuant to Bankruptcy Rule 2002.

### **CURE PROCEDURES**

9. The Cure Procedures are approved.

10. On February \_\_, 2012, the Debtors filed a notice identifying all Executory Contracts and Real Property Leases that may be assumed and assigned in connection with the Sale (the "Cure Notice"), substantially in the form attached hereto as Exhibit 2, with this Court and served the Cure Notice on all non-debtor parties to any Executory Contracts and Real Property Leases (the "Contract Notice Parties") that may be assumed by the Debtors and assigned to the Successful Bidder; *provided, however*, that the presence of an Executory Contract or Real Property Lease listed on Exhibit 2 does not constitute an admission that such Executory Contract or Real Property Lease is an executory contract or unexpired lease. The Debtors reserve all of their rights, claims and causes of action with respect to the Executory Contracts and Real Property Leases listed on Exhibit 2.

11. The Cure Notice stated the Cure Amounts that the Debtors believe are necessary to assume such Executory Contracts and Real Property Leases pursuant to section 365 of the Bankruptcy Code and notified the non-debtor party that such party's Executory Contract or Real Property Lease may be assumed and assigned to a purchaser of the Assets to be identified at the conclusion of the Auction. The Cure Notice also provided that objections to any

Cure Amount will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors.

12. All objections by non-debtor parties to the Cure Amount, must be filed within fourteen (14) days after service of the Cure Notice (the “Cure Objection Deadline”) and served on (i) the Debtors’ counsel by mail, Richards Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, (Attn: Daniel J. DeFranceschi, Esq. and Paul N. Heath, Esq.); and (ii) the Debtors by mail, Blitz U.S.A., Inc., 404 26th Ave. NW Miami, OK 74354 (Attn: Rocky Flick) (the “Cure Objection Notice Parties”).

13. The Debtors may amend the Cure Notice with respect to any Cure Amount. If the Debtors amend the Cure Notice, any non-debtor parties affected by the amendment must file any objection to the amended Cure Amount by the earlier of (i) fourteen (14) days after service of the amended Cure Notice or (ii) two days before the Sale Hearing and serve such objection on the Cure Objection Notice Parties.

14. Unless a non-debtor party to any Executory Contract or Real Property Lease files an objection to the Cure Amount by the Cure Objection Deadline, then such counterparty shall be (i) forever barred from objecting to the Cure Amount; and (ii) forever barred and estopped from asserting or claiming any Cure Amount against the Debtors, any Successful Bidder or any other assignee of the relevant Executory Contract or Real Property Lease.

15. All timely filed objections to any Cure Amount must set forth (i) the basis for the objection, (ii) the exact amount the party asserts as the Cure Amount, and (iii) sufficient documentation to support the Cure Amount alleged.

16. Hearings on objections to any Cure Amount may be held at the Sale Hearing or upon such other date as this Court may designate upon request by Debtors with prior consent of the Successful Bidder.

17. As soon as possible after the Closing Date, the Debtors shall file with this Court a post-closing notice that identifies the Executory Contracts and Real Property Leases which were assumed and assigned to the Successful Bidder as of the Closing Date.

### **ADDITIONAL PROVISIONS**

18. 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 Bidding Procedures Order.

19. 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 March \_\_, 2012 at \_\_: \_\_ .m. (prevailing Eastern Time), unless otherwise continued upon request by the Debtors.

20. Objections, if any, to any Sale must be filed by March \_\_, 2012 at 4:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline") and 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. and Paul N. Heath, 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: Kenneth A. Rosen and Sharon L. Levin) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn:

Francis A. Monaco, Jr.); and (iv) counsel to any Stalking Horse Bidder; and (v) all other parties that have requested notice in these cases.

21. This Bidding Procedures Order shall be binding on and inure to the benefit of the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

22. This Bidding Procedures Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

23. To the extent this Bidding Procedures Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Bidding Procedures Order shall govern.

24. 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 Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

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

Dated: February \_\_, 2012  
Wilmington, Delaware

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THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit 1**

## **Bid Procedures**



### **Assets to be Sold**

The Debtors are offering for sale substantially all of the Assets and Potential Bidders (as defined below) may submit bids only 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.

### **Communication with the Debtors**

Any party desiring to obtain a copy of the Bidding Procedures 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. and Paul N. Heath, Esq. or (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 Capstone Financial Group, Inc., 11 Palmetto Parkway, Suite 104, Hilton Head Island, South Carolina 29926 or (843) 689-6450 (Attn: Dan Smith).

### **The Bidding Process**

The Debtors and their advisors, in consultation with the official committee of unsecured creditors (the "Committee") and BOKF, NA d/b/a Bank of Oklahoma, as the Debtors' pre- and postpetition secured lender (the "DIP 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 DIP 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 any of (i) the provisions of any Stalking Horse Asset Purchase Agreement (including the deadlines therein), (ii) the Bid Deposit Requirement (as defined below), and (iii) any bid protections granted to the Stalking Horse Bidder herein.

### **Participation and Qualified Bid Requirements and Bid Deadline**

Any 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 (unless previously delivered) 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. and Paul N. Heath, Esq.); (iii) investment bankers to the Debtors, Capstone Financial Group, Inc., 11 Palmetto Parkway, Suite 104, Hilton Head Island, South Carolina 29926 (Attn: Dan Smith); (iv) counsel to the agent for the Debtors' prepetition lenders and post-petition lenders, Frederick Dorwart Lawyers, Old City Hall, 124 East Fourth Street, Tulsa, OK 74103-5027 (Attn: Samuel S. Ory) and Klehr Harrison Harvey Branzburg LLP, 919

Market Street, Suite 1000, Wilmington, DE 19801 (Attn: Margaret M. Manning); and (v) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, NJ 07068 (Attn: Kenneth A. Rosen and Sharon L. Levin) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Francis A. Monaco, Jr.); (vi) counsel to the Stalking Horse Bidder, if any, (provided however that confidential information with respect to Financing Sources need not be provided to the Stalking Horse Bidder) not later than 5:00 p.m. on March 21, 2012, its bid and the following information and documents (the “Required Bid Materials”):

- 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 and/or agency agreement reflecting variations from the Purchase Agreement and/or Agency Agreement (the “Marked Agreement”). All Qualified Bids must provide (a) a commitment to close immediately 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 “Minimum Bid Amount”) plus amounts necessary to meet the Initial Overbid Amount (as defined below).
- 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 any Bid Protections 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 Bid Procedures and the terms of its asset purchase agreement with the Debtors).
- 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 DIP 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). Not later than one (1) business day 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 DIP Lenders, and shall notify the Potential Bidder, if such Potential Bidder 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 DIP 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.

#### Access to Due Diligence Materials

Only Potential Bidders who have executed a confidentiality 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 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 Capstone Financial Group, Inc. 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.

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 making any such bids; 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 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 any 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 March 23, 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 DIP Lenders, and the Committee.

Except as otherwise provided herein, 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 DIP 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 DIP Lenders, may offer the Assets in such successive rounds as the Debtors, in consultation with the Committee and the DIP 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 DIP 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 DIP 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 DIP Lenders, a “Successful Bid”). At the Sale Hearing, the Debtors, after consultation with the Committee and the DIP Lenders, may present the Successful Bid to the Bankruptcy Court for approval. The Debtors reserve all rights not to submit any bid 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).

### **Bid Protections**

To provide an incentive and to compensate a Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary to enter into the Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors, may seek approval of certain bid protections (the “Bid Protections”). The Debtor shall seek approval of any Bid Protections in accordance with the procedures established in the Bidding Procedures Order. The Debtors will take into account any Bid Protections in each round of bidding.

Any Bid Protections shall be payable as set forth in any Court order approving the same.

### **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 any Bid Protections, plus \$100,000. For example, if the Stalking Horse APA provides a purchase price of \$13,000,000 and the Bid Protections 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 subject to the Debtors' ability to adjust the bidding increments in accordance with the Bidding Procedures. The Debtors will take into account any Bid Protections 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 shall be held in an escrow account until two (2) business days after the Closing of the transaction contemplated by the Successful Bid, 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 two (2) business days after the Sale Hearing, and thereafter returned to the respective bidders.

### **Sale Hearing**

A Sale Hearing is scheduled for March 28, 2012 at \_\_:00 \_\_.m. (prevailing Eastern Time) in the Bankruptcy Court with Objections to the Sale to be filed on or before March 26, 2012 at 10:00 a.m. 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, 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, the Successful Bid, and the Debtors in consultation with the Committee and the DIP 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 the first business day following the consummation of a Sale of the Assets to the Successful Bidder. The Debtors, in the exercise of their business judgment, in consultation with the DIP Lenders and the Committee, reserve their right to the extent consistent with the Stalking Horse Asset Purchase Agreement to change the date of the Sale Hearing in order to achieve the maximum value for the Assets.

### **Modifications**

The Debtors, in consultation with the Committee and the DIP 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 Bid Procedures are solely for the benefit of the Debtors and nothing contained in the Bidding Procedures Order or Bid Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise).

Except as provided in the Bidding Procedures 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 Bidding Procedures Order.



## **Exhibit 2**

**Cure Notice  
(TO BE FILED)**

## **Exhibit B**

### **Sale Notice (Mailing Version)**

**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)**

**NOTICE OF SALE OF CERTAIN ASSETS FREE AND CLEAR  
OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS**

1. On November 9, 2011, each of the above captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). Pursuant to the *Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Certain 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* (the “Bidding Procedures Order”) entered by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on February 23, 2012, the Debtors are selling certain assets, specifically the Debtors’ F3 Brands LLC business division assets (the “Assets”) free and clear of all liens, claims and encumbrances and interests to the fullest extent allowable under the Bankruptcy Code and assuming and assigning certain executory contracts and unexpired leases. Capitalized terms not otherwise defined herein shall have the meaning given to them in the bidding procedures approved as part of the Bidding Procedures Order.

2. All documents filed with the Bankruptcy Court in connection with these chapter 11 cases and the proposed Sale, including the Bidding Procedures Order, the terms and conditions of the proposed Sale and the date, time and place of the Auction, are available by accessing the Court’s docket, <https://ecf.deb.uscourts.gov>, or by accessing the website of the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC at <http://www.kccllc.net/Blitz>.

3. Any person that wishes to participate in the bidding process must deliver (unless previously delivered) the Required Bid Materials set forth in the Bidding Procedures to the Debtors at the following addresses: (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. and Paul N. Heath, Esq.); (iii) investment bankers to the Debtors, Capstone Financial Group, Inc., 11 Palmetto Parkway, Suite 104, Hilton Head Island, South Carolina 29926 (Attn: Dan Smith); (iv) counsel to the agent for the Debtors’ prepetition lenders and post-petition lenders, Frederick Dorwart Lawyers, Old City Hall, 124 East Fourth Street, Tulsa, OK 74103-5027 (Attn: Samuel S. Ory) and Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801 (Attn: Margaret M. Manning); and (v) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, NJ 07068 (Attn: Kenneth A. Rosen and Sharon L. Levin) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, Delaware 19801 (Attn: Francis A. Monaco, Jr.); (vi) counsel to the Stalking Horse Bidder, if any, not later than 5:00 p.m. (prevailing Eastern Time) on March 21, 2012 (the “Bid Deadline”).

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<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 F3 Brands LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 404 26th Ave. NW Miami, OK 74354.

4. 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 at 10:00 a.m. (prevailing Eastern time) on March 23, 2012, 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.

5. A hearing to approve the Sale (the "Sale Hearing") to any Successful Bidder will be held at \_\_:\_\_.m. (prevailing Eastern time) on March 28, 2012 unless otherwise continued pursuant to the terms of the Bidding Procedures. The Sale Hearing will be held before the Honorable Peter J. Walsh, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6<sup>th</sup> Floor, Courtroom 2, Wilmington, Delaware 19801. Objections, if any, to any Sale must be filed by March 26, 2012 at 10:00 a.m. (prevailing Eastern time) (the "Sale Objection Deadline"). At the same time, you must also serve a copy of the objection, so as to be received by the Sale Objection Deadline, 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. and Paul N. Heath, 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: Kenneth A. Rosen and Sharon L. Levin) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Francis A. Monaco, Jr.); and (iv) counsel to any Stalking Horse Bidder.

6. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING. Only those objections made in writing, timely filed, and served in accordance with the above procedures will be considered at the Sale Hearing.

Daniel J. DeFranceschi (No. 2732)  
Paul N. Heath (No. 3704)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
*Counsel to the Debtors and  
Debtors in Possession*

## **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). One of the Debtors, F3 Brands LLC seeks to sell all or substantially all of its assets (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 expect to enter into an asset purchase agreement (the “Purchase Agreement”) with a stalking horse bidder (the “Stalking Horse Bidder”) on or before February 27, 2012.

On February 7, 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 Certain of the Debtors’ Assets; (B) Establishing Procedures for Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain 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 Certain 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 February 23, 2012, the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the “Bidding Procedures Order”). The Bidding Procedures Order also set March 28, 2012 as the date the Bankruptcy Court will conduct the Sale Hearing. 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.

## **Exhibit C**

### **Proposed Sale Order**

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

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<b>In re:</b>	)	
	)	<b>Chapter 11</b>
	)	
<b>BLITZ U.S.A., Inc., <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 11-13603 (PJW)</b>
	)	
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>
	)	
	)	<b>Re: Docket No. ____</b>

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**ORDER (A) APPROVING THE SALE OF CERTAIN 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**

Upon the motion, dated February 7, 2012 (the "Motion"), of Blitz U.S.A, Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors"), pursuant to sections 105(a), 363, and 365 of chapter 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for (I) Entry of an Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Certain 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 Certain 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; after holding a hearing on February 23, 2012 (the "Procedures Hearing") this

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<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 F3 Brands LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW Miami, OK 74354.

Court entered an Order dated February \_\_, 2012 (the “Procedures Order”), (A) Establishing Bidding and Auction Procedures Related to the Sale of Certain of the Debtors’ Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing for the Sale of the Debtors’ Assets; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases To Be Assigned; and (E) Granting Certain Related Relief; and an auction having been held on March 23, 2012 (the “Auction”) for the consideration of Qualified Bids and the selection of a Successful Bidder (each as defined in the Procedures Order) and [\_\_\_\_\_] (the “Purchaser”) having been selected as the Successful Bidder; and upon the Purchaser and the Debtors having entered into that certain Asset Purchase Agreement, dated as of \_\_\_\_\_, 2012 (attached hereto as **Exhibit A**, and as may be amended, supplemented or restated, the “Purchase Agreement”) pursuant to which the Purchaser shall acquire the Debtors’ F3 Brands business division assets (the “Assets”) as a going concern; and the Bankruptcy Court having conducted a hearing on the Motion on March [\_\_\_], 2012 (the “Sale Approval Hearing”); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Purchase Agreement; and the Bankruptcy Court having reviewed and considered the Motion and all objections thereto (such filed objections, if any, being referred to as the “Filed Objections”), and the arguments of counsel made, and the evidence adduced, at the Procedures Hearing and the Sale Approval Hearing; and upon the record of the Procedures Hearing and the Sale Approval Hearing and these chapter 11 cases and proceedings, and after due deliberation thereon, and good cause appearing therefor;

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:**

**A.     Jurisdiction and Venue.** This Court has jurisdiction over the Motion and the transactions contemplated therein (the “Transactions”), including but not limited to the sale of



substantially all of the Assets free and clear of all liens, claims, encumbrances and interests. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

**B. Statutory Predicates.** The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006 and the applicable Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

**C. Sale Notice.** As evidenced by the affidavits of service filed with this Court and based upon the representations of counsel at the Sale Approval Hearing and as approved under the Procedures Order: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Approval Hearing and the Transactions contemplated therein has been provided to all parties in interest; (ii) such notice was and is good, sufficient and appropriate under the circumstances of the Debtors’ chapter 11 cases and was provided in accordance with sections 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006 and 9007 and the Local Rules; and (iii) no other or further notice of the Motion, the Auction, the Sale Approval Hearing, the Transactions contemplated therein or of the entry of this Sale Order is necessary or shall be required.

**D. Cure Notices.** Cure notices of assignment (the “Cure Notices”) and cure amounts (the “Cure Amounts”) have been provided to all of the counterparties to executory contracts and unexpired leases of personal property (the “Contracts”), as well as to all of the counterparties to unexpired leases of non-residential real property (the “Real Property Leases”). Such Cure Notices were adequate and sufficient for the assumption and assignment of Contracts and Real Property Leases all in accordance with and as provided by the Procedures Order.

**E. Opportunity To Object.** A reasonable opportunity to object and to be heard with respect to the sale of the Purchased Assets, the assumption and assignment of the Contracts and Real Property Leases and the defaults and Cure Amounts related thereto, if any, the Motion and the relief requested therein, the Auction, the Purchase Agreement and the entry of this Sale Order has been given to all interested persons and entities, including, without limitation, the following: (a) the United States Trustee for the District of Delaware; (b) counsel for the agent for the Debtors' prepetition and post-petition secured lenders (the "DIP Lenders"); (d) counsel for the official committee of unsecured creditors (the "Committee"); (e) counsel to the Stalking Horse Bidder; (f) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (g) each of the Debtors' landlords and each of the notice parties identified in the Real Property Leases, to the extent possible; (j) various federal, state, county and city tax and regulatory authorities; (k) all entities known to have expressed an interest in a transaction with respect to the Assets; and (l) all parties requesting notice pursuant to Bankruptcy Rule 2002.

**F. Auction.** Potential bidders had the full and fair opportunity to submit bids and participate in the Auction on the terms set forth in the Procedures Order. The Auction was conducted fairly and in good faith, without collusion and in accordance with the Procedures Order. At the Auction, the Purchaser was selected as the Successful Bidder. The Agreement constitutes the highest and best offer for the Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Agreement constitutes the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

**G. Purchased Assets.** The Assets constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The Debtors have all right, title, and interest in the Assets required to transfer and convey the Assets as contemplated by the Purchase Agreement.

**H. Business Justification.** The Debtors have demonstrated both (i) good, sufficient and sound business purposes and justifications for, and (ii) compelling circumstances to, consummate the Transactions contemplated by the Purchase Agreement other than in the ordinary course of business under section 363(b) of the Bankruptcy Code and before, and outside of, a plan of reorganization, and such action is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates and their creditors. Such business reasons include, but are not limited to, the facts that: (i) there is substantial risk of default under the Debtors' post-petition secured credit facility if the sale is not consummated quickly; (ii) the Purchase Agreement constitutes the highest or best offer for the Assets; (iii) the Purchase Agreement and the Closing will present the best opportunity to realize the value of the Debtors on a going concern basis and avoid decline and devaluation of the Debtors' businesses; and (iv) unless the sale is concluded expeditiously as provided for in the Motion and pursuant to the Purchase Agreement, potential creditor recoveries may be substantially diminished. Time is of the essence in consummating the Purchase Agreement.

(A) The Debtors and their professionals marketed the Assets to all potential purchasers, as set forth in the Motion and in accordance with the Procedures Order. The bidding and Auction process set forth in the Procedures Order afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase the Assets. Based upon the record

of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Assets.

(B) No other person or entity or group of persons or entities has offered to purchase the Assets for an amount that would give equal or greater economic value to the Debtors than the value being provided by the Purchaser pursuant to the Purchase Agreement. Among other things, the Transactions are the best alternative available to the Debtors to maximize the return to their creditors and limit the losses to counterparties to Contracts and Real Property Leases. Approval of the Motion and the Purchase Agreement by this Court on the terms of this Sale Order is in the best interests of the Debtors, their creditors and all other parties in interest and is the reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties. No alternative to the Transactions exists that would provide a greater value to the Debtors, their creditors, or other parties in interest.

**I. Sale Order Required by the Purchaser.** Entry of an order approving the Purchase Agreement, and all the provisions thereof, on the terms requested in the Motion and set forth in the form and substance of this Sale Order, is a necessary and appropriate condition precedent to the Purchaser's consummation of the Transactions. The Debtors' ability to obtain the accommodations extended to them by the Purchaser under the Purchase Agreement is vital to the Debtors' estates and their creditors, so that the Debtors may maximize the value for their estates. The Debtors and their estates have benefited, and will continue to benefit, from the accommodations provided and to be provided under the Purchase Agreement. Without the relief contained in this Sale Order, the Debtors' estates will be immediately and irreparably harmed. Immediate assumption of the Purchase Agreement is therefore justified pursuant to section 365

of the Bankruptcy Code and approval of the sale of the Assets in accordance with the Purchase Agreement is justified pursuant to section 363 of the Bankruptcy Code.

**J. Consideration.** The total consideration provided by the Purchase Agreement is the highest and best offer received by the Debtors, and the consideration thereunder constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia.

**K. Arm's-Length.** The Purchase Agreement and other documents and instruments related to and connected with the Transactions (collectively, the "Ancillary Documents") and the consummation thereof were negotiated, proposed and entered into by the Debtors and the Purchaser without collusion, in good faith and from arm's-length bargaining positions. Neither the Purchaser, nor any of its affiliates, partners, principals, or shareholders or their respective representatives is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. Neither the Debtors, the Purchaser, or their respective affiliates, partners, principals, or shareholders or their representatives, has engaged in any conduct that would cause or permit the Purchase Agreement or the Ancillary Documents and the consummation thereof to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code, or has acted in bad faith or in any improper or collusive manner with any person. The terms and conditions of the Purchase Agreement and the Ancillary Documents and the consummation thereof, and the Transactions themselves, including without limitation the consideration provided in respect thereof, are fair and reasonable, and the Transactions are not avoidable and shall not be avoided under section 363(n) of the Bankruptcy Code.

**L. Good Faith Purchaser.** The Purchaser and its respective affiliates, partners, principals, shareholders and representatives have proceeded in good faith and without collusion in all respects in connection with this proceeding. Such persons are therefore entitled to all of the benefits and protections under section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transactions shall not affect the validity of the Transactions (including, without limitation, the Ancillary Documents). The Purchase Agreement was negotiated in good faith and at arm's length between the Debtors and the Purchaser, without collusion or fraud. Neither the Debtors nor the Purchaser have engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code to the Purchase Agreement or to the consummation of the Transactions contemplated thereby. No stay pending appeal of this Sale Order has been requested, and the stay contained in Bankruptcy Rule 6004(h) has been and hereby is expressly and irrevocably waived as set forth below.

**M. Corporate Authority.** Subject to the entry of this Sale Order, the Debtors (i) have full corporate power and authority to perform all of their obligations under the Purchase Agreement and the Ancillary Documents and the consummation thereof, and the Debtors' prior execution and delivery of, and performance of obligations under, the Purchase Agreement and the Ancillary Documents is hereby ratified, (ii) have all of the corporate power and authority necessary to consummate the Transactions, (iii) have taken all corporate action necessary to authorize, approve, execute and deliver the Purchase Agreement and the Ancillary Documents and the consummation thereof and the Transactions themselves, and (iv) no consents or approvals are required to consummate Transactions or otherwise perform obligations under the

Purchase Agreement or the Ancillary Documents, except for the closing conditions expressly agreed to therein.

N. **Cure/Adequate Assurance.** The process for assuming and assigning the Contracts and Real Property Leases is integral to the Purchase Agreement, does not constitute unfair discrimination, and is in the best interests of the Debtors and their estates, creditors and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors. The Debtors have or will have as of the assumption and assignment of any Contract (as assumed, an “Assumed Contract”) or Real Property Lease (as assumed, an “Assumed Real Property Lease”) to the Purchaser: (i) to the extent necessary, cured or provided adequate assurance of cure, of any default with respect to the Assumed Contracts and Assumed Real Property Leases, within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code; and (ii) to the extent necessary, provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default with respect to the Assumed Contracts and Assumed Real Property Leases. The Purchaser’s promise to perform the obligations under the Assumed Contracts and Assumed Real Property Leases after their assumption and assignment shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Assumed Contracts and Assumed Real Property Leases. Any objections to any Cure Amount or defaults under any Contracts or Real Property Leases, or the assumption and assignment of any of the Assumed Contracts and Assumed Real Property Leases to the Purchaser, including without limitation the Filed Objections, are hereby overruled, withdrawn or otherwise treated as set forth in Paragraph 2 below.

**O. Contract and Lease Assignments in Best Interests.** The Debtors have demonstrated that assuming and assigning the Assumed Contracts and Assumed Real Property Leases in connection with the Transactions is an exercise of their sound business judgment, and that such assumption and assignment is in the best interests of the Debtors' estates, for the reasons set forth in the Motion and on the record at the Sale Approval Hearing, including, without limitation, because the assumption and assignment of the Assumed Contracts and Assumed Real Property Leases in connection with the Transactions will maintain the ongoing business of the Debtors, limit the losses of counterparties to Assumed Contracts and Assumed Real Property Leases, and maximize the distribution to creditors of the Debtors.

**P. Free and Clear.** The transfer of the Assets to the Purchaser will be a legal, valid, and effective transfer, and will vest at the Closing the Purchaser with all right, title, and interest of the Debtors to the Assets free and clear of all of the following (collectively, "Interests") liens, claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, or interests of any kind or nature (including, without limitation, all "claims" within the meaning of section 101(5) of the Bankruptcy Code) whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to: (i) those Interests that purport to give to any party a right or option to effect a setoff against or any forfeiture, modification or termination of the Debtors' interests in the Purchased Assets, or any similar rights, if any; (ii) those Interests arising under all mortgages,



deeds of trust, security interests, conditional sale or other title retention agreements, pledges, hypothecations, liens, judgments, demands, encumbrances, rights of first refusal or charges of any land or nature, if any; (iii) those Interests that are Excluded Liabilities set forth in the Purchase Agreement; and (iv) those Interests arising in connection with any agreements, acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors, affiliates, or representatives including, but not limited to, Interests arising under any doctrines of successor liability or similar theories under applicable state or federal law or otherwise. For the avoidance of doubt, without limiting the effect of the foregoing, the assumption and assignment of any Assumed Contracts and Assumed Real Property Leases is free and clear of all Interests. All such Interests to attach to the consideration to be received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as of the date hereof; provided, however, that nothing in this paragraph shall relieve the Purchaser of its obligations with respect to the payment of Cure Amounts hereunder and under the Purchase Agreement.

**Q.     Free and Clear Findings Required by the Purchaser.** The Purchaser would not have entered into the Purchase Agreement and would not have consummated the Transactions, thus adversely affecting the Debtors, their estates and their creditors, if the sale of the Assets to the Purchaser, and the assumption and assignment or transfer of the Assumed Contracts and Assumed Real Property Leases to the Purchaser, were not free and clear of all Interests of any kind or nature whatsoever, as set forth in this Sale Order, or if the Purchaser would, or in the future could, be liable for any of the Interests. A sale of the Assets other than one free and clear of all Interests would adversely impact the Debtors' estates, and would yield substantially less value for the Debtors' estates, with less certainty than the sale contemplated by the Purchase

Agreement. Therefore, the sale contemplated by the Purchase Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

**R. Satisfaction of Section 363(f) Standards.** The Debtors may sell the Assets free and clear of any Interests of any kind or nature whatsoever because one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object to or who withdrew their objections to the Motion and the sale of the Assets, the Transactions or the Cure Notices are deemed to have consented to the Motion and sale and assignment of the Assets to the Purchaser pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests attach to the net proceeds ultimately attributable to the Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, except for any security interests granted herein, which such Interests now have against the Assets or their proceeds, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

**S. No Fraudulent Transfer.** The Purchase Agreement was not entered into, and the Transactions will not be consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchaser has entered into the Purchase Agreement or are consummating the Transactions with any fraudulent or otherwise improper purpose. The consideration that is set forth in the Purchase Agreement is at least reasonably equivalent value for the Assets and for the Transactions.

**T. Excluded Liabilities.** Except for the Assumed Liabilities set forth in the Purchase Agreement, the transfer of the Assets to the Purchaser under the Purchase Agreement shall not result in the Purchaser having any liability or responsibility for, or any Assets being recourse for, (i) any Interest asserted against the Debtors or against an insider of Debtors or against any of the Assets or any other assets of the Debtors, or (ii) the satisfaction in any manner, whether at law or in equity, whether by payment, setoff, recoupment, or otherwise, directly or indirectly, and whether from the Assets or otherwise, of any Interest or Excluded Liability, or (iii) otherwise to third parties or the Debtors, except, with respect to the Debtors, as is expressly set forth in the Agreements. The Debtors will release and forever discharge the Purchaser and its successors and assigns from any and all claims, causes of action, obligations, liabilities, demands, losses, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, relating to the sale and assignment of the Assets, except for the Assumed Liabilities and the other obligations under the Purchase Agreement.

**U. No Successor Liability.** Without limiting the effect or scope of the foregoing, neither the transfer of the Assets from the Debtors to the Purchaser nor any of the Transactions shall or will subject the Purchaser or its affiliates, successors or assigns or respective properties (including the Assets) to any liability for Interests against the Debtors or the Debtors' Interests in such Assets by reason of such transfer or otherwise under the laws of the United States or any state, territory, possession thereof, or the District of Columbia applicable to such Transaction, including, without limitation, any successor liability or similar theories. The Transactions contemplated by the Agreements do not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors, there is no common identity between the Debtors and the

Purchaser, the Purchaser is not a mere continuation of the Debtors or their estates, and the Purchaser does not constitute a successor to the Debtors or their estates.

V. **Prompt Consummation.** The Transactions must be approved by the Court and consummated promptly in order to preserve the viability of the business subject to the sale as a going concern, and to thereby maximize the value of the Debtors' estates, for the reasons set forth in the Motion and on the record at the Sale Approval Hearing. For those reasons, time is of the essence in consummating the sale. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rule 6004 with regards to the transactions contemplated by this Sale Order.

W. **Sale in Best Interests.** Good and sufficient reasons for approval of the Agreements, and the Transactions have been articulated to the Court in the Motion and on the record at the Sale Approval Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. **Motion Is Granted.** The Motion and the relief requested therein is **GRANTED** and **APPROVED** as set forth herein.

2. **Objections Overruled.** The Filed Objections and any other objections to the entry of this Sale Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice. No appeal, motion to reconsider, or similar pleading has been filed with respect to the Procedures Order, and the Procedures Order is a final order of the Bankruptcy Court, has not been vacated, withdrawn, rescinded, or amended, and remains in full force and effect.

3. **Approval.** The Purchase Agreement and the Ancillary Documents and the consummation thereof, and all of the terms and conditions thereto are hereby approved. Pursuant to section 365 of the Bankruptcy Code, assumption by the Debtors of the Purchase Agreement is hereby directed, authorized and approved as a valid exercise of the Debtors' business judgment. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized to continue performance under and make all payments required by the Purchase Agreement as and when due thereunder without further order of this Court. The Debtors, the Purchaser and each of their respective officers, employees and agents be, and they hereby are authorized to: (i) execute the Purchase Agreement and the Ancillary Documents that may be reasonably necessary or appropriate to implement the Purchase Agreement, and any prior execution of such agreements, documents, and instruments, including the Ancillary Documents, is hereby ratified; (ii) perform all obligations under the Purchase Agreement and the Ancillary Documents and consummate each of the foregoing, including but not limited to deeds, assignments and other instruments of transfer, and consummate the Transactions, and any prior performance of such obligations and any prior consummation of such Transactions is hereby ratified; (iii) undertake the process of assuming and assigning the Contracts and the Real Property Leases to the Purchaser under the Procedures Order; and (iv) take all other and further actions as may be reasonably necessary to consummate and implement the Transactions and perform all obligations under the Purchase Agreement and the Ancillary Documents and the consummation thereof, without any further corporate action or orders of the Bankruptcy Court. The Purchaser shall not have any obligation to proceed with the Closing under the Purchase Agreement generally until all conditions precedent to their obligations to do so have been met, satisfied or waived.

4. **Valid Transfer.** As of the Closing, the consummation of the Transactions shall effect a legal, valid, enforceable and effective sale and transfer of the Assets, and shall be conducted free and clear of all Interests of any kind whatsoever. The Purchase Agreement and the Ancillary Documents and the consummation thereof, and the Transactions themselves shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor trustee appointed with respect thereto, and each other person and entity.

5. **Free and Clear.** Except as expressly provided for in the Purchase Agreement or this Sale Order, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Assets to the Purchaser and the Purchaser shall take title to and possession of the Assets, upon the Closing, free and clear of all Interests of any kind or name whatsoever, with all such Interests to attach to the proceeds ultimately attributable to the Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto. The provisions of this Sale Order authorizing the sale and assignment of the Assets free and clear of Interests shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Sale Order.

6. **Injunction.** Except as expressly permitted by the Purchase Agreement as to Assumed Liabilities, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, contract counterparties, customers, landlords, licensors, employees, litigation claimants

and other persons, holding Interests or Claims of any land or nature whatsoever against or in the Debtors or the Debtors' interests in the Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the operation of the Debtors' businesses before the Closing or the transfer of the Debtors' interests in the Assets to the Purchaser, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing Interests against the Purchaser, and its property, successors and assigns, or any of its affiliates, partners, principals, or shareholders or the interests of the Debtors in such Assets. Following the Closing, no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Debtors' interests in the Assets shall be, and hereby are transferred and attached to the proceeds from the Transactions in the order of their priority, with the same validity, force and effect which they have against such Assets as of the Closing, subject to any rights, claims and defenses that the Debtors' estates and Debtors, as applicable, may possess with respect thereto.

7. **General Assignment.** As of the Closing or, with respect to the Assumed Contracts and Assumed Real Property Leases on the date which the Debtor assigns such Assumed Contract or Assumed Real Property Lease to the Purchaser, as applicable, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Assets and/or a bill of sale or assignment transferring indefeasible title and interest in the Assets, including the Assumed Contracts and Assumed Real Property Leases, to the Purchaser. Each and every federal, state, and local governmental agency

or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Transactions and to reflect the effectiveness of the Transactions.

8. **No Successor Liability.** Neither the Purchaser nor its affiliates, successors or assigns shall, as a result of the consummation of the Transactions: (i) be a successor to the Debtors or the Debtors' estates; (ii) have, *de facto* or otherwise, merged or consolidated with or into the Debtors or the Debtors' estates; or (iii) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors. The Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law. Except for the Assumed Liabilities, the transfer of the Assets to the Purchaser under the Purchase Agreement shall not result in (i) the Purchaser, its affiliates, partners, principals or shareholders, or the Assets having any liability or responsibility for any Interest against the Debtors or against an insider of the Debtors, (ii) the Purchaser, its affiliates, partners, principals or shareholders, or the Assets having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interest or Excluded Liability, or (iii) the Purchaser, its affiliates, partners, principals or shareholders, or the Assets, having any liability or responsibility to the Debtors except as is expressly set forth in the Agreements.

9. **Examples of No Successor Liability.** Without limiting the generality, effect, or scope of the foregoing, as a result of and following the Closing of the Sale, the Purchaser, except as expressly assumed under the Purchase Agreement, shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, federal, state or other tax liabilities, United States or foreign pension liabilities, or liabilities based on any theory of



antitrust, environmental, labor or employment or benefits law, alter ego, veil piercing, escheat, continuity of enterprise, mere continuation, product line, *de facto* merger or substantial continuity, whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity or otherwise with respect to the Debtors or any obligations of the Debtors, including, but not limited to, liabilities arising, accruing or payable under, out of, in connection with, or in any way relating to or calculated or determined with respect to or based in whole or in any part upon the operation of the Assets prior to the Closing, or any taxes in connection with, or in any way relating to the cancellation of debt of the Debtors or their affiliates

10. **Cure Notices.** The Debtors served the Cure Notice by first class mail on all non-debtor counterparties to Contracts and Real Property Leases. The Cure Notice informed each recipient that its respective Contract and/or Real Property Lease assumed and assigned, and, to the extent applicable (i) the title of Contract or Real Property Lease, (ii) the name of the counterparty to the Contract or Real Property Lease, (iii) the Cure Amounts, and (iv) the deadline by which any such Contract or Real Property Lease counterparty needed to file an objection (the “Objection”) to the proposed assumption and assignment and/or cure, and the procedures relating thereto.

11. **Cure Notice Objections Overruled.** Any Objections to the Cure Notices that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.

12. **Determination of Cure Amounts.** Except as provided in the Procedures Order, the Cure Amounts set forth on the applicable Cure Notice shall constitute findings of the Bankruptcy Court and shall be final and binding on parties to such Contracts and Real Property Leases and their successors and designees upon the Closing and shall not be subject to further dispute or audit based on performance prior to the time of assumption and assignment and assignment, irrespective of the terms and conditions of such Contracts and Real Property Leases. Cure Amounts shall otherwise be those determined by the Bankruptcy Court after notice and a hearing. Each counterparty to an Assumed Contract or Assumed Real Property Lease, whether entered before or after the Petition Date, is hereby forever barred, estopped, and permanently enjoined from (i) asserting against the Purchaser or its Property (including without limitation the Purchased Assets), any default arising prior to or existing as of Closing, or any counterclaim, defense, recoupment, setoff or any other Interest asserted or assertable against the Debtors; and (ii) imposing or charging against the Purchaser or its affiliates, any accelerations, assignment fees, increases or any other fees as a result of the Debtors' assumption and assignment or assumption and sublease to the Purchaser of the Assumed Contract or Assumed Real Property Lease. To the extent that any counterparty was notified of Cure Amounts or defaults (or the absence thereof), in accordance with the Procedures Order, and failed to file an Objection to such Cure Amounts or defaults (or the absence thereof) with respect to an Assumed Contract or Assumed Real Property Lease, such counterparty is deemed to have consented to such Cure Amounts or defaults (or the absence thereof) and is deemed to have waived any right to assert or collect any Cure Amounts or enforce any defaults that may arise or have arisen prior to or as of the Designation Deadline.

13. **Payment of Cure Amounts.** With respect to the Assumed Contracts and Assumed Real Property Leases, to the extent there are any Cure Amounts unpaid as of the closing on the Sale, the Purchaser is and shall be obligated, and is hereby directed, to pay or cause to be paid such Cure Amounts in accordance with the Purchase Agreement. The Purchaser's obligation to pay the Cure Amounts and the Purchaser's performance of its obligations under the Assumed Contracts and Assumed Real Property Leases after the Closing shall constitute adequate assurance of future performance within the meaning of sections § 365(b)(1) and 365(f)(2)(B) of the Bankruptcy Code.

14. **Ipsa Facto Clauses Ineffective.** Upon the Debtors' assignment of the Assumed Contracts and Assumed Real Property Leases to the Purchaser under the provisions of this Sale Order and Purchaser's payment of the Cure Amounts in accordance with this Order and the Purchase Agreement, no default shall exist under any Assumed Contract or Assumed Real Property Lease and no counterparty to any such Assumed Contract or Assumed Real Property Lease shall be permitted to declare or enforce a default by the Debtor or the Purchaser thereunder or otherwise take action against the Purchaser as a result of any Debtor's financial condition, change in control, bankruptcy or failure to perform any of its obligations under the relevant Contract. Any provision in an Assumed Contract or Assumed Real Property Lease that prohibits or conditions the assignment of such Assumed Contract or Assumed Real Property Lease (including without limitation, the granting of a lien therein) or allows the counterparty thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force and effect. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract or Assumed Real

Property Lease shall not be a waiver of such terms or conditions, or of the Debtors' and the Purchaser's rights to enforce every term and condition of the Assumed Contract or Assumed Real Property Lease.

15. **Binding Effect of Order.** This Sale Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets. The terms and provisions of the Purchase Agreement, the Ancillary Documents and the consummation thereof, the Transactions themselves, the Procedures Order, and this Sale Order shall be binding in all respects upon the Debtors, the Debtors' estates, all creditors thereof (whether known or unknown), all holders of equity interests in any of the Debtors, the Purchaser, and its respective affiliates, successors and assigns, and any and all third parties, notwithstanding any subsequent appointment of any trustee of the Debtors under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

16. **Release of Interests.** This Sale Order (i) shall be effective as a determination that, on the Closing, all Interests of any kind or nature whatsoever existing as to the Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative

agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets. On the Closing, the Debtors and persons holding an Interest in the Assets as of the Closing are authorized to execute such documents and take all other actions as may be reasonably necessary to release their Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist.

17. **Proceeds.** Any and all valid and perfected Interests in the Assets of the Debtors shall attach to any proceeds of such Assets immediately upon receipt of such proceeds by the Debtors (or any party acting on any Debtors' behalf) in the order of priority, and with the same validity, force and effect which they now have against such Assets.

18. **No Material Modifications.** The Purchase Agreement and the Ancillary Documents may be modified, amended or supplemented by the Debtors and the Purchaser, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided, however, that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates and has been agreed to between the Debtors and the Purchaser, as applicable. Any material modification, amendment, or supplement to the Purchase Agreement and the Ancillary Documents must be approved by Order of the Bankruptcy Court following a motion on notice to all interested parties.

19. **Subsequent Orders and Plan Provisions.** Nothing contained in any subsequent order of this Court or any court of competent jurisdiction in these or other chapter 11 cases (including without limitation, an order authorizing the sale of assets pursuant to sections 363,

365 or any other provision of the Bankruptcy Code or any order entered after any conversion of a chapter 11 case of the Debtors to a case under chapter 7 of the Bankruptcy Code) or any chapter 11 plan confirmed in any Debtors' bankruptcy cases or any order confirming any such plan shall nullify, alter, conflict with, or in any manner derogate from the provisions of this Sale Order, and the provisions of this Sale Order shall survive and remain in full force and effect.

20. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Purchase Agreement or Agency Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agreements be authorized and approved in its entirety.

#### **General Provisions**

21. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules, this Sale Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not apply. Time is of the essence in approving the Transactions, and the Debtors and the Purchaser intend to close the Transactions as soon as practicable. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to Closing, or risk its appeal will be foreclosed as moot.

22. **Closing Conditions and Termination Rights.** Nothing in this Sale Order shall modify or waive any closing conditions or termination rights in the Purchase Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

23. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Paragraph.

24. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

25. To the extent, if any, anything contained in this Sale Order conflicts with a provision in the Purchase Agreement, this Sale Order shall govern and control.

26. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order, all amendments thereto and any waivers and consents thereunder.

Dated: \_\_\_\_\_, 2012  
Wilmington, Delaware

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THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit A**

## **PURCHASE AGREEMENT (TO BE FILED)**