

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. 230 & 275

**NOTICE OF SELECTION OF "STALKING HORSE" BIDDER AND HEARING  
TO APPROVE (I) PROPOSED BIDDING PROTECTIONS WITH RESPECT  
TO THE STALKING HORSE BIDDER; AND (II) A PROPOSED AMENDED  
BIDDING PROCEDURES ORDER AND RELATED BIDDING PROCEDURES  
IN CONNECTION WITH THE SALE OF CERTAIN OF THE DEBTORS'  
ASSETS PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

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* [Docket No. 230] (as supplemented by the Debtors on March 15, 2012, the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801 (the "Court"), whereby the Debtors requested, among other things, approval of certain bidding and auction procedures (the "Bidding Procedures") relating to the sale free and clear of all liens, claims, encumbrances and other interests of the Debtors' F3 Brands LLC business division assets and certain real property owned by Blitz RE Holdings, LLC (collectively, the "Assets").

PLEASE TAKE FURTHER NOTICE THAT, on February 24, 2012, the Court entered 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)*

<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.



1113603120315000000000004

*Granting Certain Related Relief* [Docket No. 275] (the “Original Bidding Procedures Order”), which, among other things, approved the Bidding Procedures.

**PLEASE TAKE FURTHER NOTICE THAT**, consistent with the procedures contemplated in the Motion and the Original Bidding Procedures Order, the Debtors have selected Scepter Holdings Inc. to serve as the stalking horse bidder (the “Stalking Horse Bidder”) under the Bidding Procedures, and have negotiated with the Stalking Horse Bidder the terms of an Asset Purchase Agreement (the “Stalking Horse APA”, a copy of the substantially final agreement is attached hereto as Exhibit “A”), which shall establish a minimum bidding price for the Assets and be subject to higher and better offers to be submitted in connection with the Bidding Procedures.

**PLEASE TAKE FURTHER NOTICE THAT**, in selecting the Stalking Horse Bidder and in negotiating the Stalking Horse APA, the Debtors have agreed to certain modifications to the Original Bidding Procedures Order and the Bidding Procedures, which are reflected in the amended version of the Original Bidding Procedures Order (the “Amended Bidding Procedures Order”) and Bidding Procedures (the “Amended Bidding Procedures”) that are attached hereto as Exhibit “B”. A blackline comparison of the Original Bidding Procedures Order and the Bidding Procedures and the Amended Bidding Procedures Order and Amended Bidding Procedures is attached hereto as Exhibit “C”.

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to Section 9.4 of the Stalking Horse APA, to provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary and entering into the Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed to pay the Stalking Horse Bidder, under the conditions outlined in the Stalking Horse APA, a break-up fee in the amount of \$438,500.00 (the “Break-Up Fee”). The Amended Bidding Procedures Order and Amended Bidding Procedures provide for the approval and consideration of the Break-Up Fee and certain additional bid protections (collectively, the “Bid Protections”).

**PLEASE TAKE FURTHER NOTICE THAT**, a hearing is scheduled for **March 21, 2012 at 11:30 a.m. (Eastern Time)** (the “Hearing”) to consider (i) approval of the Bid Protections and (ii) entry of the Amended Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE THAT, objections, if any, to the relief to be considered at the Hearing must be in writing and filed with the Court on or before **March 20, 2012 at 12:00 p.m. (Eastern Time)** (the "Objection Deadline") and served so as to be received by the following parties on or before the Objection Deadline: (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) 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); (v) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, NJ 07068 (Attn: Kenneth A. Rosen and Jeffrey Prol) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Francis A. Monaco, Jr.) and (vi) counsel to the Stalking Horse Bidder, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, DE 19801 (Attn: David M. Fournier).

Dated: March 15, 2012  
Wilmington, Delaware



Daniel J. DeFranceschi (No. 2732)

Michael J. Merchant (No. 3854)

Julie A. Finocchiaro (No. 5303)

Amanda R. Steele (No. 5530)

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

One Rodney Square

920 North King Street

Wilmington, Delaware 19801

Telephone: (302) 651-7700

Facsimile: (302) 651-7701

Email: DeFranceschi@rlf.com

Merchant@rlf.com

Finocchiaro@rlf.com

Steele@rlf.com

*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Stalking Horse APA**

ASSET PURCHASE AGREEMENT

BY AND AMONG

F3 BRANDS LLC,

BLITZ U.S.A., INC.,

BLITZ RE HOLDINGS, LLC

AND

SCEPTER HOLDINGS INC.

DATED AS OF MARCH 15, 2012

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS .....	2
1.1.    Certain Definitions.....	2
1.2.    Terms Defined Elsewhere in this Agreement. ....	10
1.3.    Other Definitional and Interpretive Matters .....	12
ARTICLE II PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES .....	13
2.1.    Purchase and Sale of Assets.....	13
2.2.    Excluded Assets.....	15
2.3.    Assumption of Liabilities.....	16
2.4.    Excluded Liabilities. ....	17
2.5.    Cure Amounts. ....	18
2.6.    Further Conveyances and Assumptions.....	18
2.7.    Bulk Sales Laws.....	19
ARTICLE III CONSIDERATION .....	19
3.1.    Consideration. ....	19
3.2.    Purchase Price Deposit. ....	19
3.3.    Escrow Arrangements.....	20
3.4.    Payments by Purchaser at Closing.....	20
3.5.    Purchase Price Adjustments.....	20
ARTICLE IV CLOSING AND TERMINATION.....	22
4.1.    Closing Date.....	22
4.2.    Deliveries by the Sellers. ....	22
4.3.    Deliveries by Purchaser. ....	24
4.4.    Termination of Agreement.....	24
4.5.    Procedure Upon Termination.....	25
4.6.    Effect of Termination.....	25
ARTICLE V REPRESENTATIONS AND WARRANTIES OF F3 BRANDS .....	26
5.1.    Organization and Good Standing.....	26
5.2.    Authorization of Agreement. ....	26
5.3.    Conflicts; Consents of Third Parties.....	27
5.4.    Financial Statements.....	27
5.5.    No Undisclosed Liabilities.....	27
5.6.    Title to Purchased Assets. ....	28
5.7.    Taxes. ....	28
5.8.    Real Property. ....	29
5.9.    Tangible Personal Property Leases.....	29

5.10.	Intellectual Property.....	30
5.11.	Top Customers and Suppliers. ....	31
5.12.	Material Contracts.....	31
5.13.	Employee Benefits.....	32
5.14.	Labor.....	34
5.15.	Litigation.....	35
5.16.	Compliance with Laws; Permits. ....	35
5.17.	Environmental Matters.....	35
5.18.	Financial Advisors. ....	36
5.19.	No Other Representations or Warranties; Schedules.....	36
ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PARENT.....		37
6.1.	Organization and Good Standing.....	37
6.2.	Authorization of Agreement. ....	37
6.3.	Conflicts; Consents of Third Parties.....	37
6.4.	Litigation.....	38
6.5.	Intellectual Property.....	38
6.6.	No Other Representations or Warranties; Schedules.....	39
ARTICLE VII REPRESENTATIONS AND WARRANTIES OF BLITZ RE.....		39
7.1.	Organization and Good Standing.....	39
7.2.	Authorization of Agreement. ....	40
7.3.	Conflicts; Consents of Third Parties.....	40
7.4.	Real Property. ....	41
7.5.	Environmental Matters.....	43
7.6.	No Other Representations or Warranties; Schedules.....	43
ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF PURCHASER.....		44
8.1.	Organization and Good Standing.....	44
8.2.	Authorization of Agreement. ....	44
8.3.	Conflicts; Consents of Third Parties.....	44
8.4.	Litigation.....	45
8.5.	Financial Advisors. ....	45
8.6.	Bankruptcy.....	45
8.7.	Financing.....	45
8.8.	No Other Representations or Warranties. ....	45
8.9.	No Reliance.....	46
ARTICLE IX BANKRUPTCY COURT MATTERS.....		46
9.1.	Competing Transaction.....	46
9.2.	Bidding Procedures Order.....	47
9.3.	Cooperation in Bankruptcy Court Matters.....	47
9.4.	Break-Up Fee.....	48
9.5.	Sale Order. ....	48

	<u>Page</u>
9.6. Notice to the Notice Parties .....	50
ARTICLE X COVENANTS.....	50
10.1. Access to Information. ....	50
10.2. Environmental Investigations. ....	51
10.3. Conduct of the Business Pending the Closing. ....	52
10.4. Consents.....	53
10.5. Use of Certain Names. ....	53
10.6. Change of Corporate Name. ....	53
10.7. Parent Assignment of Rights. ....	54
10.8. Purchased Real Property. ....	54
10.9. Further Assurances.....	54
10.10. Confidentiality. ....	55
10.11. Preservation of Records. ....	55
10.12. Publicity. ....	55
10.13. Supplementation, Amendment of Seller Disclosure Schedules, Update Information. ....	55
10.14. Forwarding of Collected Payments.....	56
10.15. Lease of Warehouse.....	56
10.16. Title Insurance. ....	56
ARTICLE XI EMPLOYEES AND EMPLOYEE BENEFITS .....	57
11.1. Employment.....	57
11.2. Employee Benefits.....	58
ARTICLE XII CONDITIONS TO CLOSING .....	59
12.1. Conditions Precedent to Obligations of Purchaser. ....	59
12.2. Conditions Precedent to Obligations of the Sellers. ....	60
12.3. Conditions Precedent to Obligations of Purchaser and the Sellers.....	61
12.4. Frustration of Closing Conditions.....	61
ARTICLE XIII NO SURVIVAL.....	61
13.1. No Survival of Representations and Warranties.....	61
13.2. No Consequential Damages.....	61
ARTICLE XIV TAXES.....	62
14.1. Transfer Taxes. ....	62
14.2. Purchase Price Allocation.....	62
14.3. Cooperation.....	62
ARTICLE XV MISCELLANEOUS.....	62
15.1. Expenses. ....	62



15.2.	Injunctive Relief.....	63
15.3.	Governing Law. ....	63
15.4.	Submission to Jurisdiction; Consent to Service of Process. ....	63
15.5.	WAIVER OF RIGHT TO TRIAL BY JURY.....	64
15.6.	Entire Agreement; Amendments and Waivers. ....	64
15.7.	Notices. ....	64
15.8.	Severability. ....	66
15.9.	Binding Effect; No Third-Party Beneficiaries; Assignment. ....	66
15.10.	Non-Recourse. ....	67
15.11.	Counterparts.....	67

## Schedules

1.1(a)	Assumed Leases
1.1(b)	Excluded Contracts
1.1(c)	Knowledge of Sellers
1.1(d)	Existing Liens
1.1(e)	Purchased Contracts
2.1(a)(v)	Parent Purchased Intellectual Property
2.2(k)	Excluded Assets
3.5(a)	Form of Working Capital Statement
4.2(d)	Key Employees
10.1(b)	Customer Calls
10.3(a)	Exceptions to Conduct of Business
10.3(b)	Exceptions to Negative Covenants
14.2	Purchase Price Allocation

## Seller Disclosure Schedules

5.3(b)	Consents
5.4	Financial Statements
5.6	Assets Excluded from Material Assets
5.7(a)	Tax Returns
5.8(b)	Real Property Leases
5.9	Personal Property Leases
5.10(c)	Intellectual Property Liens
5.11	Top Customers and Suppliers
5.12(a)	Material Contracts
5.13(a)	Employee Benefit Plans
5.14(c)	Collective Bargaining Agreements
5.14(d)	
5.14(e)	
5.14(f)	Employee Information
5.15	Litigation
5.16(a)	Compliance With Laws
5.16(b)	Permits
5.17	Environmental Matters
6.3(a)	Conflicts
6.3(b)	Consents
6.4	Parent Litigation
7.5	Blitz RE Environmental Matters

## Exhibits

A	Schedule of Products
B	Bidding Procedure Order
C	Sale Order
D	Form of Escrow Agreement
E	Form of Transition Services Agreement
F	Form of Noncompetition and Nonsolicitation Agreement
G	Patent and Trademark Assignments
H-1	Form of Deed
H-2	Purchaser Real Property Map

## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of March 15, 2012 (the "Effective Date"), by and among F3 BRANDS LLC, a Delaware limited liability company ("F3 Brands"), BLITZ U.S.A., INC., an Oklahoma corporation ("Parent"), BLITZ RE HOLDINGS, LLC, a Delaware limited liability company ("Blitz RE" and together with F3 Brands and Parent, the "Sellers" and each sometimes referred to as a "Seller"), and SCEPTER HOLDINGS INC. a Canadian corporation ("Purchaser"). F3 Brands, Parent, Blitz RE and Purchaser are sometimes herein referred to collectively as the "Parties" and individually as a "Party." Capitalized terms used herein and not otherwise defined in context are defined in Section 1.1.

### WITNESSETH:

WHEREAS, the Sellers and certain of their affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") on November 9, 2011 (the "Petition Date"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), and their chapter 11 cases are being jointly administered under Case No. 11-13603 (PJW) (the "Bankruptcy Cases");

WHEREAS, on or about February 24, 2012, the Bankruptcy Court entered 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 Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to be Assigned; and (E) Granting Certain Related Relief (Docket No. 275);

WHEREAS, F3 Brands continues to operate its business as a debtor in possession;

WHEREAS, on or about October 1, 2011, Parent transferred and assigned to its wholly-owned subsidiary, F3 Brands (the "Parent Transfer"), substantially all of the rights, title and interest in, and all Liabilities and obligations relating to and comprising the Business;

WHEREAS, Purchaser desires to purchase and assume from the Sellers the Purchased Assets and Assumed Liabilities, and the Sellers desire to sell, transfer and assign to Purchaser the Purchased Assets and Assumed Liabilities, in each case on the terms and subject to the conditions set forth herein; and

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

## ARTICLE I DEFINITIONS

### 1.1. Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified or referred to in this Section 1.1. Unless the context otherwise requires, such terms shall be equally applicable to both the singular and plural forms.

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

“Assumed Leases” means all Personal Property Leases and Real Property Leases of F3 Brands set forth in Schedule 1.1(a) or to be set forth thereon at the sole option of Purchaser, as such schedule may be amended from time to time by Purchaser, in its sole discretion, up to the Closing Date, in order to add or remove leases listed thereon, that F3 Brands shall, pursuant to the Sale Order, assume and assign to Purchaser on the Closing Date.

“Auction” means the auction undertaken pursuant to the Bidding Procedures Order.

“Avoidance Actions” means any causes of action arising under Chapter 5 of the Bankruptcy Code (11 U.S.C. Section 501 *et seq.*) and primarily related to the Business or any Purchased Asset.

“Bankruptcy Rules” means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as now in effect or hereafter amended.

“Bidding Procedures Order” means an order of the Bankruptcy Court, in a form reasonably acceptable to the Parties, that, among other things, establishes a date by which Competing Transactions must be submitted by bidders, establishes procedures for the auction process and approves the Break-Up Fee.

“Business” means the entirety of the business and operations of F3 Brands, including, without limitations, the do-it-yourself automotive maintenance, storage and outdoor products business conducted under the RhinoGear™ and 2x4basics™ brands.

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

“Claims” all known and unknown, liquidated or unliquidated, contingent or fixed, claims (including any and all “claims” as defined in section 101(5) of the Bankruptcy Code), rights or causes of action which a Person may have.

“Code” means the Internal Revenue Code of 1986, as amended.

“commercially reasonable” and “commercially reasonable efforts” or words of similar effect in the Agreement shall require the Sellers to use their business judgment that is reasonably prudent, but in no event shall the Sellers be required to take any action, or refrain from any action, that would result in a violation of Law.

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

“Credit Agreement” means that certain First Amended and Restated Credit Agreement, dated February 4, 2011, among Blitz Acquisition, LLC, Parent and Blitz RE as borrowers, Blitz Acquisition Holdings, Inc. and F3 Brands as guarantors, LAM 2011 Holdings, LLC (f/k/a Blitz Holdings, LLC) as parent, the Lenders party thereto (the “Prepetition Lenders”) and BOKF, NA d/b/a Bank of Oklahoma as administrative agent.

“DIP Credit Agreement” means that certain Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement dated as of November 28, 2011 is entered into among Parent, LAM 2011 Holdings, LLC, Blitz Acquisition Holdings, Inc., Blitz Acquisition, LLC, Blitz RE and F3 Brands, each as a debtor-in-possession under Chapter 11 of the Bankruptcy Code and each, jointly and severally, as the Borrower hereunder, the institutions from time to time parties hereto as lenders, whether by execution of this Agreement or an assignment agreement pursuant to Section 13.3 thereof (the “DIP Lenders”), and BOKF, NA d/b/a Bank of Oklahoma, as administrative agent for itself and the other lenders.

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

“Earnout Agreement” means that certain Asset Purchase Agreement by and among Finley Products Incorporated, Howard F. Livingston, Howard F. Livingston, Jr. and Parent, dated as of October 2, 2009.

“Employees” means all individuals, as of the Effective Date, whether or not actively at work as of the Effective Date, who are employed by F3 Brands or in connection with the Business, together with individuals who are hired in respect of the Business after the Effective Date and prior to the Closing.

“Environmental Law” means all applicable Laws pertaining or relating to: (i) pollution or pollution control; (ii) protection of human health from exposure to regulated substances; (iii) protection of the environment and/or natural resources; (iv) employee safety in the workplace; (v) the presence, use, management, generation, manufacture, processing, extraction, treatment, recycling, refining, reclamation, labeling, packaging, sale, transport,

storage, collection, distribution, disposal or release or threat of release of regulated substances; (vi) the protection of endangered or threatened species; and (vii) the protection of environmentally sensitive areas.

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

“ERISA Affiliate” means any corporation or trade or business (whether or not incorporated) which is treated with F3 Brands as a single employer within the meaning of Section 414 of the Code.

“Escrow Account” means the account into which the Escrowed Funds and the Working Capital Escrow Amount is deposited with Escrow Agent and held by it.

“Escrow Agreement” means the Escrow Agreement, dated as of the Effective Date, by and among the Sellers, Purchaser and the Escrow Agent in the form attached hereto as Exhibit D.

“Excluded Contracts” means the Contracts set forth on Schedule 1.1(b), including any Contracts added to Schedule 1.1(b) by Purchaser by notice delivered to F3 Brands at any time prior to Closing

“Existing Liens” means: (i) all defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in policies of title insurance which have been made available to Purchaser; (ii) Liens for current Taxes, assessments or other governmental charges not yet delinquent; (iii) mechanics’, carriers’, workers’, warehousemens’, repairers’ and similar Liens arising or incurred in the Ordinary Course of Business; (iv) zoning, entitlement and other land use and environmental regulations by any Governmental Body provided that such regulations have not been violated; (v) Liens securing debt as disclosed in the Financial Statements; (vi) title of a lessor under an operating lease; (vii) all Liens set forth on Schedule 1.1(d); and (ix) such other imperfections in title, charges, easements, restrictions and encumbrances which would not be reasonably likely to result in a Material Adverse Effect.

“Furniture and Equipment” means all furniture, fixtures, furnishings, molds, tools, equipment, machinery, railcars, rolling stock, vehicles, leasehold improvements, and other tangible personal property primarily related to the Business, including all such artwork, desks, chairs, tables, Hardware, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies.

“GAAP” means generally accepted accounting principles as in effect in the United States as of the Effective Date.

“Governmental Body” means any foreign, United States, state or local government, governmental department, court, arbitrator (public or private), commission, board, bureau, agency, instrumentality, regulatory body, or political subdivision thereof (including the U.S. Department of Homeland Security, U.S. Department of Transportation, U.S. Department of Justice, state departments of motor vehicles or any similar authority), or any agency, entity or

officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, court or arbitrator.

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

“Hazardous Material” means any and all materials (including substances, chemicals, compounds, mixtures, wastes, pollutants and contaminants) (i) to the extent such materials are regulated under Environmental Laws as being hazardous, acutely hazardous or toxic, or that are known or considered to be harmful, hazardous or injurious to the health or safety of occupants or users of a facility and; or (ii) any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, polychlorinated biphenyls, urea-formaldehyde insulation, or asbestos.

“Indebtedness” means, without duplication, (i) all outstanding obligations of the Sellers for borrowed money (including all outstanding obligations for principal, interest, premiums, penalties, fees, expenses and breakage costs), (ii) all outstanding obligations of the Sellers evidenced by any note, bond, debenture or other debt security, (iii) all interest expenses accrued but unpaid on or relating to any such obligations described in clauses (i) and (ii) above, (iv) all outstanding obligations of the Sellers for or on account of capitalized leases, (v) all obligations of the Sellers for the deferred purchase price, or purchase price adjustment (including any working capital adjustment), relating to the purchase of assets or property, or to the purchase of services rendered prior to the Closing Date, (vi) all Liabilities of the Sellers under any sale and leaseback transaction, any synthetic lease or tax ownership operating lease transaction and all obligations arising with respect to any transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet, (vii) all outstanding obligations of a Person other than the Sellers secured by a Lien against any of the assets of the Sellers, (viii) all outstanding obligations of the Sellers for the reimbursement of letters of credit, bankers’ acceptance or similar credit transactions, (ix) all fees, prepayment or redemption premiums or penalties, breakage costs, unpaid fees or expenses and other monetary obligations associated with the repayment of the types of obligations described in clauses (i) through (viii) above, and (x) all outstanding obligations of the types described in clauses (i) through (ix) above of any Person other than the Sellers, the payment for which the Sellers are responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations. Notwithstanding the foregoing, any obligations included in the Total Post-Petition Liabilities line item of the Form of Working Capital Statement and taken into account in the calculation of Final Working Capital shall not be considered Indebtedness for the purposes of calculating the Purchase Price under this Agreement.

“Intellectual Property Licenses” means (i) any grant to a third party of any right to (including any title to or interest in) the use of any of the Purchased Intellectual Property owned by F3 Brands and (ii) any grant to F3 Brands of a right to (including any title to or interest in) the use of a third ‘party’s intellectual property rights which is necessary for the use of any Purchased Intellectual Property which is not owned by F3 Brands.



“Inventory” means all raw materials, in process goods, finished goods and products and all other materials and supplies used by the Business or consumed by F3 Brands in the production of the Products, wherever located.

“IRS” means the Internal Revenue Service of the U. S. Department of Treasury.

“Knowledge” means the knowledge, after reasonable inquiry, of those officers and directors of the Sellers identified on Schedule 1.1(c).

“Law” means any federal, state, local, municipal, foreign or international, multinational or other law, statute, code, ordinance, administrative pronouncement, rule or regulation enacted, adopted or otherwise put into effect by or under the authority of any Governmental Body.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits (whether in contract or tort or otherwise), proceedings (public or private), investigations, hearings, litigation (whether at law or in equity, whether civil or criminal) or claims or any proceedings by or before a Governmental Body.

“Liability” means any liability or obligation of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, determined, determinable or otherwise, and whether or not the same are required to be accrued on the financial statements of such Person, whenever arising, and including those arising under any Law, rule, regulation, action, threatened or contemplated action (including the costs and expenses of demands, assessments, judgments, settlements and compromises relating thereto and attorneys’ fees and any and all costs and expenses, whatsoever reasonably incurred in investigating, preparing or defending against any such actions or threatened or contemplated actions), order or consent decree of any Governmental Body or any award of any arbitrator or mediator of any kind, and those arising under any contract, commitment or undertaking.

“Liens” means any consensual or non-consensual lien, encumbrance, pledge, mortgage, deed of trust, security interest, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement, or other interest.

“Local Bankruptcy Rules” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware applicable to all cases in such district governed by the Bankruptcy Code.

“Loss” means, with respect to any Person, any damage, Liability, cost, penalty, fine or other loss or expense, including all interest, penalties, reasonable attorneys’ fees and expenses and all amounts paid or incurred in connection with any action, demand, proceeding, investigation or claim by any third party (including any Governmental Body or any department, agency or political subdivision thereof) against or affecting such Person or which, if determined adversely to such Person, would give rise to, evidence the existence of, or relate to, any other Loss and the investigation, defense or settlement of any of the foregoing.

“Material Adverse Effect” means any event, change, occurrence, fact, circumstance, development, effect or condition that, individually or together with any other event, change, occurrence, fact, circumstance, development, effect or condition, when considered on either a long-term basis or a short-term basis (a) has or is reasonably expected to result in a material adverse change to the Business, the Purchased Assets, the Assumed Liabilities, properties, financial condition or results of operations of the Business, taken as a whole, or (b) would or could reasonably be expected to prevent or materially delay the ability of the Sellers to perform their obligations hereunder, including to consummate the transactions contemplated by this Agreement and the related transaction documents; provided, however, that none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: (i) the effect of any change that is generally applicable to the industry or the markets in which the Business operates, (ii) the effect of any change that is generally applicable to the United States economy or the world economy, (iii) the effect of any change arising in connection with earthquakes, acts of war, sabotage or terrorism or military actions, or the escalation thereof, (iv) the effect of any change in GAAP or applicable regulations; provided that the changes and effects in this sentence do not disproportionately affect the Business in any material respect, (v) any effect resulting from the public announcement of this Agreement, compliance with terms of this Agreement or the consummation of the Transactions, (vi) any matter disclosed on the Schedules hereto or in any filings by the Sellers with the Bankruptcy Court prior to the Effective Date, or (viii) a material adverse effect resulting from the act of filing or pendency of the Bankruptcy Case.

“Mediator” means PricewaterhouseCoopers LLP or, if such firm shall decline or is unable to act, the Mediator shall be another independent accounting firm of international reputation mutually acceptable to Purchaser and F3 Brands.

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

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business consistent with past practice.

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

“Permitted Exceptions” means: (i) the exceptions listed in Schedule B of the Owner’s Policy of Title Insurance (Policy No. 27-31-92-477384 dated September 24, 2007) that affect Tracts 1 through 5, except those relating to Indebtedness (including 1, 17, 18) or the Real Property Lease (19), (ii) the exceptions that become Permitted Exceptions with respect to the Purchased Real Property pursuant to Section 10.16(c), (iii) zoning, entitlement and other land use and environmental regulations by any Governmental Body provided that such regulations have not been violated; and (iv) title of a lessor under an operating lease

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

“Prime Rate” means the prime rate as published by the *Wall Street Journal*, eastern edition, on the Closing Date.

“Products” means any and all products developed, manufactured, marketed or sold by F3 Brands, including as set forth on Exhibit A, whether work in progress or in final form.

“Purchased Contracts” means all outstanding purchase orders relating to the sale of Products or the provision of services by F3 Brands, and the Contracts set forth on Schedule 1.1(e), including any Contracts added to Schedule 1.1(e) by Purchaser, and excluding any Contracts removed from Schedule 1.1(e) by Purchaser, by notice delivered to F3 Brands at any time during the period from and after the Effective Date until the Closing Date; provided that Purchaser shall not be permitted to add any Contracts previously rejected in the Bankruptcy Case.

“Purchased Contracts and Leases” means the Purchased Contracts and the Assumed Leases.

“Purchased Intellectual Property” means all intellectual property rights owned by F3 Brands or used by it and arising from or in respect of the following: (i) all issued patents and applications therefor, including continuations, divisionals, continuations-in-part, or reissues of patent applications and patents issuing thereon, (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, design rights, Internet domain names and corporate names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof (collectively, “Marks”), (iii) copyrights and registrations and applications therefor, works of authorship, and mask work rights, in each case used primarily in connection with the Business, (iv) computer software licenses to the extent that either the licensor has not timely filed in the Bankruptcy Case an objection to the transactions contemplated by this Agreement or such license is otherwise transferable without consent of the other party to such license, and either F3 Brands is the only licensee under such license or such license is only used by F3 Brands, and (v) trade secrets, know how, and/or other confidential proprietary information. Notwithstanding the foregoing, and for the avoidance of doubt, Purchased Intellectual Property shall not include the Marks using the name Blitz or any variation thereof.

“Purchased Real Property” means generally that certain Real Property set forth as highlighted on the plat attached hereto as Exhibit H-2, provided, that as of the Closing Date, the Purchased Real Property shall be described by the final metes and bounds legal description that will be established after the Effective Date, consisting of Tracts 1 through 5, except a portion of Tract 2 where a parking lot is located as indicated on Exhibit H-2. The Purchased Real Property includes the land together with any and all improvements, tenements, hereditaments and appurtenances belonging or in any way pertaining thereto, including but not limited to fixtures (to the extent Blitz RE and F3 Brands own or have rights in such fixtures) and easements for ingress and egress, storm water drainage or otherwise over adjoining property, if any.

“Qualified Bid” shall have the meaning ascribed to it in the Bidding Procedures Order. This Agreement shall constitute a Qualified Bid.

“Real Property” means the Purchased Real Property and the property leased pursuant to the Real Property Lease.

“Release” means any spill, emission, leaking, pumping, pouring, emptying, escaping, injection, deposit, disposal, discharge, dispersal, or leaching of Hazardous Material into the environment but excludes: (i) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine; (ii) the appropriate application of fertilizer and pesticide; and (iii) any discharges in compliance with permits issued under, or authorized by, Environmental Laws.

“Remedial Action” means all actions to clean up, remove, treat, contain, isolate, or destruct any Release of a Hazardous Material into the environment, monitoring, maintenance, or taking of other actions that may be necessary to prevent, mitigate or minimize injury to the public health, safety, or welfare or to the indoor or outdoor environment.

“Retained Real Property” means all Real Property owned by Blitz RE other than the Purchased Real Property.

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

“Sale Order” shall be an order or orders of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser and the Sellers, and substantially in the form attached as Exhibit C to this Agreement, approving this Agreement and all of the terms and conditions hereof, and approving and authorizing the Sellers to consummate the Transaction.

“Seller Disclosure Schedules” means the disclosure schedules delivered by the Sellers to Purchaser in connection with this Agreement.

“SPIP” means the severance plan and incentive plans for certain Employees as approved by the Bankruptcy Court.

“Successful Bidder” means any party who acquires all or substantially all of the Purchased Assets (in a single transaction or a series of transactions) or all or substantially all of the equity interests (in a single transaction or a series of transactions) of F3 Brands or any of its successors by reason of having submitted the successful bid at the Auction in a manner consistent with and authorized by the Bidding Procedures Order, regardless of whether such party has acquired such assets or equity interests for investment, strategic operation, liquidation or other purpose.

“Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof, and including Form TD F 90-22.1.

“Taxes” means (i) all federal, state, local, or foreign net or gross income, gross receipts, net proceeds, sales, use, ad valorem, value added, franchise, bank shares, withholding, payroll, employment, excise, property, deed, stamp, alternative or add-on minimum, environmental, profits, windfall profits, transaction, license, lease, service, use, occupation,

severance, energy, unemployment, social security, worker's compensation, capital, premium, or other taxes, assessments, customs, duties, fees, levies, or other governmental charges of any nature whatever, whether disputed or not, together with any interest, penalties, additions to tax, or additional amounts with respect thereto, (ii) any Liability for any item set forth in clause (i) as transferee, successor, by Contract, pursuant to Law (including Treas. Reg. Section 1.1502-6) or otherwise.

"Transaction" means the transaction contemplated by this Agreement.

"Transaction Documents" means the F3 Brands Documents, the Parent Documents, the Blitz RE Documents, and the Purchaser Documents.

"WARN Laws" means Worker Adjustment and Retaining Notification Act, 29 U.S.C. Section 21.01 *et seq.*, and any other similar provision of Law governing plant closings or mass layoffs.

"Working Capital Escrow Amount" means an amount equal to Six Hundred Thousand Dollars (\$600,000).

#### 1.2. Terms Defined Elsewhere in this Agreement.

For purposes of this Agreement, the following terms have meanings set forth in the Sections indicated:

<u>Term</u>	<u>Section</u>
ALTA	10.16(a)
Asset Acquisition Statement	14.2
Assumed Liabilities	2.3
Authorized Items	10.16(d)
Balance Sheet	5.4
Balance Sheet Date	5.4
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Blitz RE Documents	7.2
Break-Up Fee	9.4(a)
Closing	4.1
Closing Cash Payment	3.4(a)
Closing Date	4.1
Closing Working Capital	3.5(a)
COBRA	5.13(j)
Collective Bargaining Agreement	5.14(a)
Commitment	10.16(a)
Competing Transaction	9.1(a)
Confidentiality Agreement	10.10
Cure Amounts	2.5
Deed	4.2(k)

<b><u>Term</u></b>	<b><u>Section</u></b>
DIP Lenders	1.1 (in DIP Credit Agreement definition)
Draft Transaction Filings	9.3(a)
Effective Date	Preamble
Employee Benefit Plans	5.13(a)
Escrow Agent	3.2
Escrowed Funds	3.2
Estimated Working Capital	3.5(b)
Excluded Assets	2.2
Excluded Liabilities	2.4
F3 Brands	Preamble
F3 Brands Documents	5.2
F3 Brands' Objection Notice	3.5(c)
Final Working Capital	3.5(d)
Financial Statements	5.4
Finished Goods Space	10.15
Form of Working Capital Statement	3.5(a)
Initial Calculations	3.5(c)
Key Employees	4.2(d)
Landlord Real Property Leases	5.8(b)
Marks	1.1 (in Purchased Intellectual Property definition)
Material Contracts	5.12(a)
Names	10.5
New Warehouse	10.15
Noncompetition and Nonsolicitation Agreement	4.2(e)
Notice Parties	9.6
Parcel Split	10.8(b)
Parent	Recitals
Parent Documents	6.2
Parent Transfer	Recitals
Parent Transferred Intellectual Property	10.7(b)
Party	Preamble
Personal Property Leases	5.9
Petition Date	Preamble
Prepetition Lenders	1.1 (in Credit Agreement definition)
Purchase Price	3.1
Purchased Assets	2.1
Purchaser	Recitals
Purchaser Documents	8.2
Purchaser Plans	11.2(a)
Qualified Plans	11.2(c)
Real Property Lease	5.8(b)
Revised Statements	14.2
Seller	Preamble

<u>Term</u>	<u>Section</u>
Standard Exceptions	10.16(b)
Termination Date	4.4(a)
Top Customers	5.11
Top Suppliers	5.11
Transfer Taxes	14.1
Transferred Employees	11.1(a)
Transition Services Agreement	4.2(c)
Warehouse Lease	10.15
Working Capital	3.5(a)
Working Capital Target	3.5(a)

### 1.3. Other Definitional and Interpretive Matters

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

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

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

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

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

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Article" or "Section" are to the corresponding Article or Section of this Agreement unless otherwise specified.

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

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

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

## **ARTICLE II**

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

#### **2.1. Purchase and Sale of Assets.**

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, F3 Brands hereby sells, transfers, assigns, conveys and delivers or shall cause the same to be delivered to Purchaser, and Purchaser purchases and accepts from F3 Brands, free and clear of all Liens and Claims pursuant to the Sale Order, except Permitted Exceptions, all right, title and interest of F3 Brands, to and under the Purchased Assets. “Purchased Assets” shall mean, those assets and properties transferred by Parent pursuant to Section 2.1(b), the Purchased Real Property as conveyed pursuant to Section 2.1(c) hereof, and, without duplication, the following assets of the Business, whether personal, tangible, intangible or mixed, whether accrued, contingent or otherwise useful for or otherwise used in the Business (other than the Excluded Assets) as of the Closing:

- (i) all accounts receivable primarily related to the Business;
- (ii) all Inventory;
- (iii) all deposits (including customer deposits and security deposits for rent, electricity, telephone or otherwise) , costs in excess of billings, advance payments and prepaid items, charges and expenses of the Business other than (A) prepaid income Taxes and insurance, if any), and (B) any deposits or prepaid charges and expenses paid in connection with any Excluded Assets;
- (iv) the Furniture and Equipment;
- (v) the Purchased Intellectual Property, which shall include the intellectual property listed on Schedule 2.1(a)(v);
- (vi) the Purchased Contracts and Leases;
- (vii) the Purchased Real Property;
- (viii) the Avoidance Actions;



(ix) all Documents that are used in, held for use in or intended to be used in, or that arise primarily out of, the Business, including Documents relating to Products, services, marketing, advertising, promotional materials, Purchased Intellectual Property, personnel files for Transferred Employees and all files, customer files and documents (including credit information), supplier lists, books and records, literature and correspondence, whether or not physically located at any of the premises of the Sellers, but excluding (A) personnel files for Employees of the Sellers who are not Transferred Employees, (B) such files as may be required under applicable Law regarding privacy, (C) Documents which the Sellers are not permitted to transfer pursuant to any contractual confidentiality obligation owed to any third party, and (D) any Documents exclusively related to or are required to release the benefits of any Excluded Assets; provided, that the Sellers shall have continued access to such Documents as are necessary to administer the Bankruptcy Case and the Sellers may retain copies of any Documents; and provided, further, that any Documents or other electronic transmissions or communications (including emails) delivered to Purchaser in connection with this Agreement, including pursuant to this Section 2.1(a)(ix) and Section 10.1, which results in the disclosure of privileged information, including information subject to attorney-client, work product or any other privilege recognized by state or federal law, shall be deemed an inadvertent and unintentional disclosure of such information, any privilege will remain intact and such privilege Documents or other electronic transmissions or communications (including emails), as applicable, shall, upon the request of the Sellers, be immediately returned to the Sellers;

(x) all Permits primarily related to the Business to the extent assignable pursuant to applicable Law;

(xi) all rights of the Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees and agents of the Sellers or with third parties to the extent relating to the Business or the Purchased Assets (or any portion thereof);

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

(xiii) all known and unknown, liquidated or unliquidated, contingent or fixed, claims, rights and causes of action which the Sellers have or may have against any third party and primarily related to the Business or any Purchased Assets and all such rights which the Sellers have or may have in or to any asset or property and primarily related to the Business or any Purchased Assets, other than such claims, rights or causes of action that relate solely and exclusively to the Excluded Assets or Excluded Liabilities;

(xiv) all rights to insurance proceeds primarily related to the Purchased Assets;

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

(xvi) all other assets, properties, interests and rights of any kind or nature primarily related to the Business, other than Excluded Assets.

(b) In connection with any assets or property of Parent's estate primarily related to the Business and held by Parent, if any, Parent shall be deemed to be a seller for all purposes of this Agreement notwithstanding anything contained in this Agreement to the contrary, and shall execute and deliver such other documents, instruments and certificates as Purchaser may reasonably request, at or any time after the Closing, in order to transfer, assign, convey and deliver such assets or properties to Purchaser.

(c) On the terms and subject to the conditions set forth in this Agreement, at and as of the Closing, Blitz RE hereby sells, transfers, assigns, conveys and delivers to Purchaser, and Purchaser purchases and accepts from Blitz RE, free and clear of all Liens and Claims pursuant to the Sale Order, except Permitted Exceptions, all right, title and interest of Blitz RE, to and under:

(i) the Purchased Real Property, together with related rights, if any, including but not limited to all utility deposits and all Documents relating primarily to the Purchased Real Property;

(ii) all Permits related to the Purchased Real Property to the extent assignable pursuant to applicable Law;

(iii) all rights of Blitz RE under or pursuant to all warranties, representations, indemnities and guarantees made by suppliers, manufacturers and contractors to the extent primarily relating to the Purchased Real Property, or services provided, to the extent affecting the Purchased Real Property, to the extent assignable, other than any warranties, representations, indemnities and guarantees pertaining to any Retained Real Property;

(iv) all known and unknown, liquidated or unliquidated, contingent or fixed, claims, rights and causes of action which Blitz RE has or may have against any third party and primarily related to the Purchased Real Property and all such rights which Blitz RE has or may have in or to any asset or property and primarily related to the Purchased Real Property, other than such claims, rights or causes of action that relate solely and exclusively to the Retained Real Property; and

(v) all rights to insurance proceeds related to the Purchased Real Property.

## 2.2. Excluded Assets.

Notwithstanding Section 2.1, the Sellers shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean all of the following assets, properties, interests and rights related to the Business:

- (a) the Purchase Price;
- (b) the Sellers' certificates of formation, certificates of incorporation, bylaws, operating agreement, records, books and other records having exclusively to do with the organization and capitalization of the Sellers;
- (c) all deposits or prepaid charges and expenses of the Sellers paid in connection with or relating to any Excluded Assets;
- (d) all rights and/or claims of the Sellers arising out of this Agreement and any other agreement entered into pursuant to this Agreement;
- (e) the Excluded Contracts;
- (f) any (i) other books and records that F3 Brands is required by Law to retain or that the Sellers determines are necessary or advisable to retain, including Tax Returns, financial statements, and corporate or other entity filings; provided, however, that Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the Business or any of the Purchased Assets to the extent the Sellers are not required by Law to keep such retained books and records confidential or private, (ii) minute books, stock ledgers and stock certificates of the Sellers and (iii) documents relating to proposals to acquire the Business by Persons other than Purchaser;
- (g) any claim, right, interest or cause of action of the Sellers in or to any refund, rebate, abatement or other recovery for Taxes that are Excluded Liabilities;
- (h) all insurance policies, and all rights to proceeds thereof primarily related to any of the Excluded Assets;
- (i) any rights, claims or causes of action of the Sellers against third parties arising out of events occurring on or prior to the Closing Date that are not Purchased Assets;
- (j) all ownership interests in the Sellers; and
- (k) those assets listed on Schedule 2.2(k).

### 2.3. Assumption of Liabilities.

On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, only the following Liabilities of the Sellers (collectively, the "Assumed Liabilities") and no other Liabilities:

- (a) all Liabilities of F3 Brands under the Purchased Contracts and Leases (i) first arising after the Closing Date, or (ii) for product warranties, returns and rebates related to Products sold by F3 Brands in the Ordinary Course of Business pursuant to product warranties, product returns and rebates;

(b) all accounts payable incurred by F3 Brands in the Ordinary Course of Business, not to exceed \$360,000, in the amounts reflected in the calculation of the Final Working Capital on the “*Post-Petition Accounts Payable*” line item;

(c) all Liabilities specifically assumed by Purchaser pursuant to Article XI;  
and

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

#### 2.4. Excluded Liabilities.

Except for the Assumed Liabilities, Purchaser shall not assume and shall be deemed not to have assumed, and the Sellers or their Affiliates, as the case may be, shall be solely and exclusively liable with respect to, any and all Liabilities of the Sellers, their Affiliates and the Business (collectively, the “Excluded Liabilities”). For the avoidance of doubt, the Excluded Liabilities include, without limitation, the following:

(a) all Liabilities arising out of Excluded Assets, including Excluded Contracts;

(b) all Liabilities for Taxes (i) of the Sellers or any of their Affiliates, or (ii) with respect to the Purchased Assets or the Business for any Tax periods (or portions thereof) ending on or before the Closing Date (for this purpose, Taxes for a period that straddles the Closing Date shall be allocated (i) to the extent not based on receipts or expenses, ratably on a daily basis (provided that Blitz RE shall pay ad valorem Taxes with respect to the Purchased Real Property for all prior years, and the current year's ad valorem taxes shall be prorated based upon the prior year's assessment) and (ii) to the extent based on receipts or expenses, based on a closing of the books method as of the close of business on the Closing Date);

(c) all Liabilities under the Credit Agreement;

(d) all Liabilities under the DIP Credit Agreement;

(e) all Liabilities of the Sellers under the Earnout Agreement, if any;

(f) all Cure Amounts under Purchased Contracts and Leases;

(g) all Liabilities under any Qualified Plan;

(h) all Liabilities relating to amounts required to be paid by the Sellers hereunder;

(i) all Liabilities relating to the Tax disclosures on Schedule 5.7(a) of the Seller Disclosure Schedules;

(j) other than as provided for in Section 2.3(a) hereof, all Liabilities of the Sellers arising from any Legal Proceeding, including the Legal Proceedings resulting from the matters described in Schedule 5.15 of the Seller Disclosure Schedules;

(k) except to the extent specifically provided in Section 2.3(c), all Liabilities arising out of, relating to or with respect to the employment or performance of services, compensation or employee benefits of any nature (including, but not limited to any liabilities or obligations under the Employee Benefit Plans) or termination of employment, owed to any current or former employee, officer, director or independent contractor of the Sellers or any of its Affiliates (or the beneficiary of any such employee, officer, director or independent contractor) whether or not such employee, officer, director or independent contractor becomes a Transferred Employee at or after the Closing, that arises out of or relates to the employment or service provider relationship between the Sellers or any of its respective Affiliates and any such employee, officer, director or independent contractor or the termination of such relationship. Without limiting the foregoing, the Sellers shall be responsible for the payment of any severance, change in control payment, payment under the SPIP or transaction bonus that becomes due to any current or former employee, officer, director or independent contractor as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby; and

(l) all Liabilities pursuant to Environmental Law arising out of, or relating to any condition at, on, in, under, or emanating from any Real Property on or before the Closing Date, and any action of the Sellers, or a party for which the Sellers are legally responsible, including but not limited to, any offsite disposal of Hazardous Materials, on or before the Closing Date.

## 2.5. Cure Amounts.

At Closing and pursuant to Section 365 of the Bankruptcy Code and the Sale Order, F3 Brands (and Parent, to the extent it holds any rights, title or interest in any Purchased Contracts and Leases) shall assume and assign to Purchaser, and Purchaser shall assume from F3 Brands (or Parent, as applicable), the Purchased Contracts and Leases. The cure amounts shall be as determined by the Bankruptcy Court, pursuant to Section 365 of the Bankruptcy Code with respect to the Purchased Contracts and Leases (collectively, the "Cure Amounts"), and shall be paid by F3 Brands, on or before Closing, and not by Purchaser, and Purchaser shall not have any liability therefor.

## 2.6. Further Conveyances and Assumptions.

(a) From time to time following the Closing, F3 Brands shall, or shall cause its Affiliates to, make available to Purchaser such non-confidential data in personnel records of Transferred Employees as is reasonably necessary for Purchaser to transition such Employees into Purchaser's records.

(b) From time to time following the Closing, the Sellers and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its

successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Transaction Documents and to assure fully to the Sellers and their Affiliates and their successors and assigns, the assumption of the liabilities and obligations expressly assumed by Purchaser under this Agreement and Transaction Documents, and to otherwise make effective the transactions contemplated hereby and the thereby.

2.7. Bulk Sales Laws.

Any Sale Order shall waive compliance by the Sellers with the requirements and provisions of any “bulk-transfer” Laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Purchased Assets to Purchaser. Pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any and all Liens and Claims, whether arising prior to or subsequent to the Petition Date, including any Liens and Claims arising out of the “bulk-transfer” Laws.

**ARTICLE III  
CONSIDERATION**

3.1. Consideration.

The “Purchase Price” to be paid by Purchaser at Closing shall mean an amount in cash equal to Fourteen Million Five Hundred Thousand Dollars (\$14,500,000) either (i) *decreased* by the absolute amount by which the Estimated Working Capital (as established pursuant to Section 3.5(b)) is less than the Working Capital Target, or (ii) *increased* by the absolute amount by which the Estimated Working Capital is greater than the Working Capital Target.

3.2. Purchase Price Deposit.

Upon the execution of this Agreement, pursuant to the terms of the Escrow Agreement, Purchaser shall immediately deposit with Wells Fargo Bank, N.A., in its capacity as escrow agent (the “Escrow Agent”) the sum of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000) by wire transfer of immediately available funds (the “Escrowed Funds”), to be released by the Escrow Agent and delivered to Purchaser or the Sellers, or to the order of either Purchaser or the Sellers, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrowed Funds (together with all accrued investment income thereon) shall be distributed as follows:

(a) if the Closing shall occur, the Escrowed Funds shall be applied towards the Purchase Price payable by Purchaser to the Sellers or to the order of the Sellers under Section 3.1 and all accrued investment income thereon shall be delivered to Purchaser at the Closing;

(b) if this Agreement is terminated by F3 Brands pursuant to Section 4.4(f), the Escrowed Funds, together with all accrued investment income thereon, shall be delivered to or to the order of F3 Brands; or

(c) if this Agreement is terminated for any reason other than by F3 Brands pursuant to Section 4.4(f), the Escrowed Funds, together with all accrued investment income thereon, shall in each case be returned to Purchaser.

### 3.3. Escrow Arrangements.

At the Effective Date, Purchaser and the Sellers shall enter into the Escrow Agreement with the Escrow Agent pursuant to which it will serve as the escrow agent under the Escrow Agreement. The Escrow Account shall be governed by the terms and conditions of this Agreement and the Escrow Agreement.

### 3.4. Payments by Purchaser at Closing.

(a) At Closing, Purchaser shall pay, pursuant to written instructions provided by the Sellers two (2) days prior to Closing, by wire transfer of immediately available funds to the Sellers or to the order of the Sellers an amount equal to the sum of (i) the Purchase Price, (ii) *minus* the Escrowed Funds, and (iii) *minus* the Working Capital Escrow Amount (the sum of such amounts, the "Closing Cash Payment").

(b) At Closing, Purchaser and the Sellers shall provide joint written instructions to the Escrow Agent to release the Escrowed Funds to the Sellers or to the order of the Sellers.

(c) At Closing, Purchaser shall pay, by wire transfer of immediately available funds to the Escrow Agent the Working Capital Escrow Amount for deposit into the Escrow Account.

### 3.5. Purchase Price Adjustments.

(a) The Parties agree that the Working Capital of the Business at Closing (the "Closing Working Capital"), as calculated in accordance with the procedures set forth on the statement of Working Capital attached hereto as Schedule 3.5(a) (the "Form of Working Capital Statement") and this Section 3.5(a) will be Seven Million Six Hundred Fifty Thousand Three Hundred Thirty Three Dollars (\$7,650,333) (the "Working Capital Target"). "Working Capital" means the amount (positive or negative) equal to (x) the sum of amounts shown in the line items from the Form of Working Capital Statement under "Total Current Assets" *less* (y) the sum of the amounts shown in the line items from the Form of Working Capital Statement under "Total Post-Petition Liabilities." For purposes of this Section 3.5 the Parties acknowledge and agree that each of Working Capital, Estimated Working Capital and Closing Working Capital shall (i) be calculated in accordance with procedures set forth on the Form of Working Capital Statement and with GAAP applied using the same accounting methods, policies, practices and procedures as are consistent with F3 Brands' past practices, and (ii) not include the F3 Brands' accounts receivable owed from Parent to F3 Brands, which, as of January 31, 2012, was in the amount of Six Hundred Seventy Six Thousand Three Hundred Fifty Nine Dollars (\$676,359).

(b) No later than three (3) Business Days prior to the Closing Date, F3 Brands shall deliver to Purchaser a good faith estimate of the Working Capital as of the Closing Date ("Estimated Working Capital"). In preparing such Estimated Working Capital, F3 Brands shall

permit Purchaser to participate and shall comply with reasonable requests of Purchaser for information related thereto.

(c) No later than sixty (60) Business Days following the Closing Date, Purchaser shall prepare and deliver to F3 Brands its calculation of the Closing Working Capital (the “Initial Calculations”) accompanied by reasonable supporting documentation and data used by Purchaser to calculate the Closing Working Capital as may be reasonably appropriate to support such calculations. If F3 Brands objects to all or part of the Initial Calculations, F3 Brands must deliver to Purchaser written notice of such objections (the “F3 Brands’ Objection Notice”) not more than thirty (30) days after the date F3 Brands receives such Initial Calculations and the supporting work papers and back-up materials from Purchaser. Any F3 Brands’ Objection Notice shall specify in reasonable detail the nature and amount of any and all items in dispute, the amounts of any proposed adjustments and the basis for F3 Brands’s proposed adjustments. If F3 Brands does not deliver a F3 Brands’ Objection Notice to Purchaser within such thirty (30) day period, F3 Brands shall be deemed to have accepted the Initial Calculations.

(d) If F3 Brands timely delivers a F3 Brands’ Objection Notice to Purchaser, Purchaser and F3 Brands shall use commercially reasonable efforts to resolve all objections relating to the Initial Calculations. If Purchaser and F3 Brands do not reach a final resolution of all such objections within thirty (30) days after delivery of the F3 Brands’ Objection Notice, Purchaser and F3 Brands shall submit all unresolved objections to the Mediator for resolution. F3 Brands and Purchaser each agree to sign a customary engagement letter with the Mediator. The Mediator shall determine only the remaining accounting related differences so submitted by Purchaser to F3 Brands (and not by independent review). Any documents submitted by either Purchaser or F3 Brands to the Mediator, either unilaterally or at the Mediator’s request, shall be simultaneously submitted to the other Party. The determination of the Closing Working Capital amount by the Mediator shall be set forth in writing and shall be conclusive and binding upon Purchaser and F3 Brands. “Final Working Capital” shall mean the amount (i) of the Initial Calculations if F3 Brands does not deliver a timely F3 Brands’ Objection Notice to Purchaser as described in Section 3.5(c), (ii) as agreed upon by Purchaser and F3 Brands within thirty (30) days after delivery of the F3 Brands’ Objection Notice as described in this Section 3.5(d), or (iii) equal to the Closing Working Capital amount as determined by the Mediator pursuant to this Section 3.5(d). Purchaser and F3 Brands shall share equal responsibility for the fees and expenses of the Mediator.

(i) If the Final Working Capital is greater than the Estimated Working Capital, then Purchaser shall pay to F3 Brands an amount equal to the difference between the Final Working Capital and the Estimated Working Capital (together with interest at the Prime Rate on such amount from the Closing Date to the date of payment).

(ii) If the Final Working Capital is less than the Estimated Working Capital, then F3 Brands and Purchaser shall deliver joint written instructions to the Escrow Agent to deliver from the Escrow Account to Purchaser, an amount equal to the difference between the Final Working Capital and the Estimated Working Capital (together with interest at the Prime Rate on such amount from the Closing Date to the date of payment).



(e) Any amount payable to F3 Brands pursuant to Section 3.5(d)(i) shall be paid within five (5) Business Days after determination of the Final Working Capital.

(f) In the event that there is an amount payable to Purchaser pursuant to Section 3.5(d)(ii), F3 Brands and Purchaser shall deliver the joint written instruction described in such subsection within five (5) Business Days after the determination of the Final Working Capital.

(g) Payments pursuant to this Section 3.5 shall be deemed adjustments to the Purchase Price. For purposes of this Section 3.5, except to the extent provided otherwise in the Escrow Agreement and applicable to payments from the Escrow Account, all computations of interest shall be made on the basis of a year of 365 days, in each case for the actual number of days (including the first day but excluding the last day) elapsed in the period for which such interest is payable.

#### **ARTICLE IV CLOSING AND TERMINATION**

##### **4.1. Closing Date.**

Subject to the satisfaction of the conditions set forth in Sections 12.1, 12.2 and 12.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the “Closing”) shall take place at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (or at such other place as F3 Brands and Purchaser may designate in writing) at 10:00 a.m. (eastern time) on the date that is one (1) Business Day following the satisfaction or waiver of the conditions set forth in Article XII (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by F3 Brands and Purchaser. The date on which the Closing shall be held is referred to in this Agreement as the “Closing Date.” Unless otherwise agreed by F3 Brands and Purchaser in writing, the Closing shall be deemed effective and all right, title and interest in and to the Purchased Assets and the Business to be acquired by Purchaser hereunder shall be considered to have passed to Purchaser as of 11:59 p.m. (Eastern Time) on the Closing Date.

##### **4.2. Deliveries by the Sellers.**

At the Closing, the Sellers shall deliver, or cause to be delivered, to Purchaser:

(a) a duly executed bill of sale in a form reasonably acceptable to Purchaser, F3 Brands and Parent;

(b) duly executed assignment and assumption agreement in a form reasonably acceptable to Purchaser, F3 Brands and Parent and duly executed assignments of all patent and trademark registrations and applications included in the Purchased Intellectual Property, in a form suitable for recording in the U.S. Patent and Trademark Office, Mexican Institute of Industrial Property, Canadian Intellectual Property Office, and/or any other national or

international patent or trademark office, and general assignments of all other Purchased Intellectual Property;

(c) executed Transition Services Agreement (“Transition Services Agreement”) substantially in the form attached as Exhibit E hereto with such final terms agreed to by the parties thereto before the day of the Auction;

(d) Employment Agreements executed by each individual listed on Schedule 4.2(d) (the “Key Employees”) and in a form reasonably acceptable to Purchaser;

(e) Noncompetition and Nonsolicitation Agreements (“Noncompetition and Nonsolicitation Agreement”) executed by each Seller and their Affiliates substantially in the form attached as Exhibit F hereto with such final terms agreed to by the parties thereto before the day of the Auction;

(f) the officer’s certificate required to be delivered pursuant to Sections 12.1(a) and 12.1(b); and

(g) the consents, waivers and approvals, Orders, Permits, authorizations, declarations, filings and notifications set forth in Schedule 5.3(b);

(h) a certified copy of the Sale Order;

(i) a certification, in a form reasonably acceptable to Purchaser and Parent, pursuant to Section 1.1445-2(b)(2)(iv)(B) of the Treasury regulations certifying that Parent is not a foreign Person;

(j) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Purchaser, as may be necessary to convey the Purchased Assets and the Assumed Liabilities to Purchaser;

(k) a general warranty deed duly executed and acknowledged by Blitz RE in the form attached as Exhibit H hereto that is in recordable form (the “Deed”);

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

(m) a completed certification of non-foreign status pursuant to Section 1.1445-2(b)(2) of the Treasury regulations duly executed by Blitz RE; and

(n) a fee owner’s title insurance policy as provided pursuant to Section 10.16 hereof, and such other documents, instruments and certificates as may be reasonably requested for the issuance of the title policy; and

(o) a duly executed Warehouse Lease.

4.3. Deliveries by Purchaser.

At the Closing, Purchaser shall deliver, or cause to be delivered, to the Sellers:

- (a) the Closing Cash Payment;
- (b) a duly executed Assignment and Assumption Agreement in a form reasonably acceptable to Purchaser, F3 Brands and Parent;
- (c) duly executed Transition Services Agreement substantially in the form attached as Exhibit E hereto with such final terms agreed to by the parties thereto before the day of the Auction;
- (d) the officer's certificate required to be delivered pursuant to Sections 12.2(a) and 12.2(b);
- (e) a duly executed Warehouse Lease; and
- (f) such other documents, instruments and certificates as F3 Brands may reasonably request.

4.4. Termination of Agreement.

This Agreement may be terminated prior to the Closing as follows:

- (a) by F3 Brands or Purchaser, if the Closing shall not have occurred by the close of business on May 15, 2012 (the "Termination Date"); provided, however, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or the Sellers, then the breaching Party (Parent or Blitz, in the event of such a breach by F3 Brands) may not terminate this Agreement pursuant to this Section 4.4(a);
- (b) by mutual written consent of F3 Brands and Purchaser;
- (c) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Sections 12.1 and 12.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;
- (d) by F3 Brands, if any condition to the obligations of F3 Brands set forth in Section 12.3 shall have become incapable of fulfillment other than as a result of a breach by F3 Brands of any covenant or agreement contained in this Agreement, and such condition is not waived by F3 Brands;
- (e) by Purchaser, if there shall be a breach by F3 Brands of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Sections 12.1 or 12.3 and which breach cannot be cured or has

not been cured by the earlier of (i) twenty (20) Business Days after the giving of written notice by Purchaser to F3 Brands of such breach and (ii) the Termination Date;

(f) by F3 Brands, if there shall be a breach by Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Sections 12.2 or 12.3 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) Business Days after the giving of written notice by F3 Brands to Purchaser of such breach and (ii) the Termination Date;

(g) by F3 Brands or Purchaser, if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(h) by F3 Brands or Purchaser, if (i) F3 Brands enters into a definitive agreement with respect to a Competing Transaction and the Bankruptcy Court enters an order approving a Competing Transaction or (ii) the Bankruptcy Court enters an order that otherwise precludes the consummation of the Transactions on the terms and conditions set forth in this Agreement, subject to any limitations set forth in the Bidding Procedures Order;

(i) by Purchaser, if the Bidding Procedures Order shall not have been entered by March 21, 2012;

(j) by Purchaser, if the Bankruptcy Court has not entered an Order, in form and content acceptable to Purchaser, approving the Break-Up Fee by March 21, 2012; or

(k) by Purchaser, if the Bankruptcy Court has not entered the Sale Order by April 15, 2012 (or such later date as Purchaser may have designated in writing to F3 Brands); or by Purchaser, if the Bankruptcy Case shall be converted into a case under Chapter 7 of the Bankruptcy Code or dismissed, or if a trustee is appointed in the Bankruptcy Case.

#### 4.5. Procedure Upon Termination.

In the event of termination by Purchaser or F3 Brands, or both, pursuant to Section 4.4, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Purchaser or the Sellers. If this Agreement is terminated as provided herein, each Party shall redeliver all documents, work papers and other material of any other Party relating to the Transactions, whether so obtained before or after the execution hereof, to the Party furnishing the same.

#### 4.6. Effect of Termination.

(a) In the event that this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or the Sellers; provided, however, that the obligations of the Parties set forth in Article XIII and Article XV, and the obligations of the Sellers under Section 9.4, shall survive any such

termination and shall be enforceable in accordance with and subject to the provisions of such Articles and Section.

(b) Nothing in this Section 4.6 shall relieve Purchaser or the Sellers of any liability for a breach of this Agreement prior to the date of termination; provided that the Sellers' liability hereunder for any and all such breaches resulting in termination of this Agreement shall be limited to the Break-up Fee in accordance with the provisions of Section 9.4. The damages recoverable by the non-breaching Party shall include all attorneys' fees reasonably incurred by such Party in connection with the Transactions.

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

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF F3 BRANDS**

F3 Brands hereby represents and warrants to Purchaser that, except as set forth in the Seller Disclosure Schedules:

### **5.1. Organization and Good Standing.**

F3 Brands is duly formed, validly existing and in good standing under the Laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now conducted.

### **5.2. Authorization of Agreement.**

Except for such authorization as is required by the Bankruptcy Court (as hereinafter provided for), F3 Brands has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to which it is a party or to be executed by F3 Brands in connection with the consummation of the Transaction (the "F3 Brands Documents"), to perform its obligations hereunder and thereunder and to consummate the transaction contemplated hereby and thereby. The execution, delivery and performance by F3 Brands of this Agreement and F3 Brands Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or limited liability company action on the part of F3 Brands. This Agreement has been, and each of F3 Brands Documents will be at or prior to the Closing, duly and validly executed and delivered by F3 Brands and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order and, with respect to F3 Brands' obligations under Section 9.2, the entry of the Bidding Procedures Order) this Agreement constitutes, and F3 Brands Documents when so executed and delivered will constitute, legal, valid and binding obligations of F3 Brands, enforceable against F3 Brands to the extent a party thereto in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith

and fair dealing (regardless of whether enforcement is sought in a proceeding at Law or in equity).

5.3. Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by F3 Brands of this Agreement or F3 Brands Documents, the consummation of the transaction contemplated hereby or thereby, or compliance by F3 Brands with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of F3 Brands; (ii) subject to entry of the Sale Order, any Contract or Permit to which F3 Brands is a party or by which F3 Brands or any of its properties or assets is bound; (iii) subject to entry of the Sale Order, any Order of any Governmental Body applicable to F3 Brands or any of the properties or assets of F3 Brands as of the Effective Date; or (iv) subject to entry of the Sale Order, any applicable Law, other than, in the case of clauses (ii), (iii) and (iv), such conflicts, violations, defaults, terminations or cancellations that would not be reasonably likely to result in a Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of F3 Brands in connection with the execution and delivery of this Agreement or F3 Brands Documents, the compliance by F3 Brands with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by F3 Brands or of any other action contemplated hereby or thereby, except for (i) the entry of the Sale Order, (ii) the entry of the Bidding Procedures Order with respect to F3 Brands' obligations under Section 9.2, and (iii) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not be reasonably likely to result in a Material Adverse Effect.

5.4. Financial Statements.

Schedule 5.4 of the Seller Disclosure Schedule contains (a) the unaudited balance sheet of F3 Brands (the "Balance Sheet") at January 31, 2012 (the "Balance Sheet Date") and (b) the related unaudited statements of income for the four (4) month period then ended (together with the Balance Sheet, the "Financial Statements"). The Balance Sheet and unaudited statements of income for the four (4) month period then ended present fairly, in all material respects, the financial condition of the Business and its results of operations at the dates or for the respective periods then ended, as applicable, and have been prepared in accordance with GAAP on a consistent basis. As soon as practicable after the Effective Date, F3 Brands will provide (y) the unaudited balance sheet of F3 Brands at February 29, 2012 and (z) the related unaudited statements of income for the five (5) month period then ended, which shall thereafter be incorporated into this Agreement as if provided as of the Effective Date.

5.5. No Undisclosed Liabilities.

F3 Brands has no Indebtedness, obligations or Liabilities of any kind that would have been required to be reflected in, reserved against or otherwise described in the Balance

Sheet in accordance with GAAP, other than Liabilities incurred in the Ordinary Course of Business since the Balance Sheet Date, Liabilities under this Agreement, the Excluded Liabilities and Liabilities that, individually or in the aggregate, would not be reasonably likely to result in a Material Adverse Effect.

5.6. Title to Purchased Assets.

Other than the real property subject to the Real Property Leases, intellectual property licensed to F3 Brands and the personal property subject to the Personal Property Leases, F3 Brands has good and marketable title in and to the tangible Purchased Assets, free and clear of all Liens and Claims other than Existing Liens, and, as of the Closing, Purchaser will be vested with good and marketable title in and to tangible Purchased Assets, free and clear of all Liens and Claims pursuant to the Sale Order, other than Permitted Exceptions. The Purchased Assets constitute all of the material assets and properties which are necessary for the operation of the Business as conducted since October 1, 2011, except as contemplated in the Transition Services Agreement and as set forth on Schedule 5.6 of the Seller Disclosure Schedules.

5.7. Taxes.

(a) Except as set forth on Schedule 5.7(a), all Tax Returns required to have been filed by or with respect to the Sellers have been duly and timely filed (taking into account any extensions of time to file granted or obtained on behalf of the Seller) and each such Tax Return correctly and completely reflects Liability for Taxes and in all material respects, all other information required to be reported thereon. All Taxes owed by the Sellers (whether or not shown on any Tax Return) have been timely paid. The Sellers have adequately provided for, in their books of account and related records, Liability for all unpaid Taxes, being current Taxes not yet due and payable. None of the Sellers have been a member of a consolidated, combined, unitary or similar group other than such a group of which Parent is the common parent.

(b) There is no action, dispute, Claim or audit now pending or, to the Knowledge of the Sellers, proposed or threatened against, or with respect to, the Sellers in respect of any Taxes. No Claim has been made by an authority in a jurisdiction where any of the Sellers does not file Tax Returns that any of them is or may be subject to taxation by that jurisdiction. There are no Liens or Claims (other than Liens or Claims for current Taxes not yet delinquent) on any of the Purchased Assets with respect to Taxes.

(c) The Sellers have withheld and timely paid all Taxes required to have been withheld and paid and have complied with all information reporting and backup withholding requirements.

(d) None of the Sellers is subject to a waiver of any statute of limitations in respect of Taxes or any extension of time with respect to a Tax assessment or deficiency.

(e) Parent is not a "foreign person" within the meaning of Section 1445 of the Code. None of the Sellers is subject to any private ruling from any taxing authority or any agreement with any taxing authority. Since its inception, each of F3 Brands and Blitz RE has been validly treated as a disregarded entity for income Tax purposes.

(f) None of the Sellers is a party to any Tax allocation or sharing agreement. None of the Sellers has any Liability for the Taxes of any Person other than itself (i) as a transferee or successor, (ii) by Contract, (iii) under Section 1.1502-6 of the Treasury regulations (or any similar provision of applicable Law), or (iv) otherwise. Neither F3 Brands nor Blitz RE owns a debt or equity interest in any Person.

#### 5.8. Real Property.

(a) F3 Brands does not (i) own, nor has ever owned any real property, (ii) lease any real property as the landlord or sublandlord under a lease or similar agreement, (iii) sublease any real property as a subtenant, or (iv) use any real property in connection with the operation of its business except all or a portion of the real property subject to the Real Property Lease.

(b) Schedule 5.8(b) of the Seller Disclosure Schedules sets forth a complete list of all real property leased by F3 Brands as a tenant (individually, a “Real Property Lease” and collectively, the “Real Property Leases”) or any portion of the Purchased Real Property leased by Blitz RE as a landlord (individually a “Landlord Real Property Lease” and collectively, the “Landlord Real Property Leases”). All Real Property Leases are in full force and effect, are valid and effective in accordance with their respective terms, and there is not, under any of the Real Property Leases, any default by Seller or, to Seller’s Knowledge, by the other party to such lease.

(c) The uses for which the buildings, facilities and other improvements located on the Real Property are zoned do not restrict, or impair, the use of the Real Property for purposes of the Business.

(d) No Governmental Body having the power of eminent domain over the Real Property has commenced or, to the Knowledge of F3 Brands, intends to exercise the power of eminent domain or a similar power with respect to all or any part of the Real Property. There are no pending or, to the Knowledge of F3 Brands, threatened condemnation, fire, health, safety, building, zoning or other land use regulatory proceedings, lawsuits or administrative actions relating to any portion of the Real Property or any other matters which do or may adversely affect the current use, occupancy or value thereof. F3 Brands has received notice of any pending or threatened special assessment proceedings affecting any portion of the Real Property.

(e) The Real Property and all present uses and operations of the Real Property comply with all Laws, covenants, conditions, restrictions, easements, disposition agreements and similar matters affecting the Real Property. The Real Property and its continued use, occupancy and operation as used, occupied and operated in the conduct of the Business do not constitute a non-conforming use and is not the subject of a special use permit under any Law.

#### 5.9. Tangible Personal Property Leases.

Schedule 5.9 of the Seller Disclosure Schedules sets forth all leases of personal property (“Personal Property Leases”) relating to personal property used in the Business or to which F3 Brands is a party or by which the properties or assets of F3 Brands is bound. To the Knowledge of F3 Brands, F3 Brands has not received any notice of any default or event that with



notice or lapse of time or both would constitute a default by F3 Brands under any of the Personal Property Leases. All Personal Property Leases are in full force and effect, are valid and effective in accordance with their terms, and there is not, under any Personal Property Lease, any default by F3 Brands or, to F3 Brands' Knowledge, by the other party to such lease.

5.10. Intellectual Property.

(a) F3 Brands owns or has valid, exclusive and enforceable rights to use and to assign to Purchaser all material Purchased Intellectual Property and material Intellectual Property Licenses used for or in connection with the Business.

(b) The Purchased Intellectual Property owned and/or used by F3 Brands is not the subject of any challenge, claims, or demands received by or known to F3 Brands from any third party and/or governmental entity as to validity of ownership and/or infringement of third party rights.

(c) Except as set forth on Schedule 5.10(c) of the Seller Disclosure Schedules, the Purchased Intellectual Property is not the subject of any opinion issued to F3 Brands that any of the Purchased Intellectual Property is invalid, unenforceable and/or infringes the right of any third party.

(d) As of the Closing Date, the Purchased Intellectual Property will not be the subject of any Liens and Claims.

(e) To Knowledge of F3 Brands, all royalties, fees and other charges with respect to the Purchased Intellectual Property are current.

(f) To the Knowledge of F3 Brands, the Purchased Intellectual Property is not being used, offered, and/or marketed/advertised by F3 Brands in violation of any applicable Law.

(g) To the Knowledge of F3 Brands, the Purchased Intellectual Property is not the subject of any license (including by grant or consent) by and/or given to any other rightful owner thereof.

(h) F3 Brands has not received any written notice of any default, breach, or any event that with notice or lapse of time, or both, would constitute a default or breach under any Intellectual Property License to which F3 Brands is a party.

(i) To the Knowledge of F3 Brands, no employee, agent, consultant and contractor of F3 Brands or its Affiliates who has contributed to or participated in the creation or development of any Purchased Intellectual Property owned by F3 Brands holds any rights or title in the Purchased Intellectual Property exclusive of F3 Brands, nor has any person, to the extent requested by F3 Brands or Parent, refused to sign (i) a "work-made-for-hire" agreement, disclaiming original owner/authorship of any proprietary rights therein; or (ii) an assignment or an agreement to irrevocably assign in favor of F3 Brands all of such employee's, agent's, consultant's or contractor's right, title and interest in the Purchased Intellectual Property. F3 Brands has taken all commercially reasonable means to establish and preserve its ownership of, and rights in, all of the Purchased Intellectual Property. Without limiting the foregoing, F3

Brands has not made any of its trade secrets, know how, or other confidential or proprietary information that it intended to maintain as confidential available to any other Person except pursuant to written agreements requiring such Person to maintain the secrecy and/or confidentiality of such information.

5.11. Top Customers and Suppliers.

Schedule 5.11 of the Seller Disclosure Schedules sets forth (a) the names of the top twenty (20) customers of the Business (collectively, the “Top Customers”) who contributed the most revenue to F3 Brands (measured in terms of total revenue recorded for the period beginning October 1, 2011 and ending December 31, 2011) and the total revenue recorded for each Top Customer by F3 Brands and (b) the names of the top twenty (20) suppliers of products or services to the Business, who were paid the most by the F3 Brands (measured in terms of total dollars spent on suppliers for the period beginning October 1, 2011 and ending December 31, 2011) and all critical vendors (determined consistent with the critical vendor motion filed by Parent with the Bankruptcy Court) (collectively, the “Top Suppliers”) and the total amount paid during such period for each Top Supplier by F3 Brands. None of the Top Customers or Top Suppliers have ceased or materially reduced their business with F3 Brands nor has F3 Brands received any written notice or, to the Knowledge of F3 Brands, any other communication that any Top Customers or Top Suppliers intends to cease or materially reduce its business with F3 Brands other than as set forth on Schedule 5.11 of the Seller Disclosure Schedules.

5.12. Material Contracts.

(a) Schedule 5.12(a) of the Seller Disclosure Schedules sets forth all of the following Contracts to which F3 Brands is a party or by which it is bound and that are primarily related to the Business or by which the Purchased Assets may be bound or affected (collectively, the “Material Contracts”):

(i) Contracts with any Affiliate or current or former officer or director of F3 Brands (other than Contracts made in the Ordinary Course of Business on terms generally available to similarly situated non-affiliated parties);

(ii) Contracts with the Top Customers and Top Suppliers;

(iii) Contracts with any labor union or association representing any Employees of F3 Brands;

(iv) Contracts for the sale of any of the assets of the Business, other than in the Ordinary Course of Business and this Agreement and the Earnout Agreement;

(v) Contracts relating to the acquisition by F3 Brands of any operating business or the capital stock of any other Person;

(vi) Contracts for the employment of any individual involving annual aggregate compensation in excess of \$50,000;

(vii) other than the Credit Agreement and the DIP Credit Agreement, Contracts relating to incurrence of Indebtedness or the making of any loans, in each case involving amounts in excess of \$50,000;

(viii) Contracts which involve the expenditure of more than \$50,000 in the aggregate or require performance by any party more than one (1) year from the Effective Date that, in either case, are not terminable by F3 Brands without penalty on less than one hundred eighty (180) days' notice; or

(ix) Contracts with any customers of F3 Brands or any of its Subsidiaries for the sale of Products or the provision of services, in each case involving amounts in excess of \$100,000 per year.

(b) F3 Brands has not received any written notice of any default or event that with notice or lapse of time or both would constitute a default by F3 Brands under any Material Contract, except for defaults that would not be reasonably likely to result in a Material Adverse Effect.

#### 5.13. Employee Benefits.

(a) Schedule 5.13(a) of the Seller Disclosure Schedules lists each (i) "employee benefit plan" as defined in Section 3(3) of ERISA and other pension, retirement, supplemental retirement, deferred compensation, excess benefit, profit sharing, bonus, incentive, stock purchase, stock ownership, stock option, stock appreciation right, profits interest, employment, severance, salary continuation, termination, change-of-control, health, life, disability, group insurance, vacation, holiday and fringe benefit plan, program, contract, or arrangement maintained, contributed to, or required to be contributed to, by F3 Brands or any ERISA Affiliate for the benefit of any current or former employee, director, officer or independent contractor of F3 Brands or under which F3 Brands or any ERISA Affiliate has any liability with respect to any current or former employee, director, officer or independent contractor of F3 Brands (the "Employee Benefit Plans").

(b) True, correct and complete copies of the following documents, with respect to each of the Employee Benefit Plans (as applicable), have been made available to Purchaser: (i) any plans and related trust documents, and all amendments thereto; (ii) the most recent Form 5500 and schedules thereto; (iii) the most recent financial statement and actuarial valuation; (iv) the most recent IRS determination letter; (v) the most recent summary plan description (including letters or other documents updating such description) and (vi) all records, notices and filings concerning IRS or Department of Labor audits or investigations, and/or "prohibited transactions" within the meaning of Section 406 of ERISA or Section 4975 of the Code.

(c) F3 Brands and each ERISA Affiliate are in compliance in all material respects with the provisions of ERISA, the Code and other Laws applicable to the Employee Benefit Plans. Each Employee Benefit Plan has been maintained, operated and administered in compliance in all material respects with its terms and any related documents or agreements and the applicable provisions of ERISA, the Code and other Laws.

(d) Each Employee Benefit Plan which is an “employee pension benefit plan” within the meaning of Section 3(2) of ERISA and which is intended to meet the qualification requirements of Section 401(a) of the Code has received a determination letter from the IRS to the effect that such plan is qualified and exempt from federal income taxes under Sections 401(a) and 501(a) of the Code, respectively, and at all times since its inception each such plan has met the requirements for such qualification and exemption, and the related trusts are now, and at all times since their inception have been, exempt from taxation under Section 501(a) of the Code.

(e) No Employee Benefit Plan is now or at any time has been subject to Part 3, Subtitle B of Title I of ERISA or Title IV of ERISA.

(f) All contributions to, and payments from, any Employee Benefit Plan which may have been required in accordance with the terms of such Employee Benefit Plan or any related document have been timely made or have been properly accrued in accordance with GAAP.

(g) Neither F3 Brands nor any ERISA Affiliate has ever contributed to, or been required to contribute to any “Multiemployer Plan” (within the meaning of Section 3(37) of ERISA) and neither F3 Brands nor any ERISA Affiliate has any liability (contingent or otherwise) relating to the withdrawal or partial withdrawal from a Multiemployer Plan.

(h) There are no pending audits or investigations by any governmental agency involving any Employee Benefit Plan, and no pending or, to the Knowledge of F3 Brands, no threatened claims (except for individual claims for benefits payable in the normal operation of the Employee Benefit Plans), suits or proceedings involving any Employee Benefit Plan, any fiduciary thereof or service provider thereto, nor to the Knowledge of F3 Brands is there any reasonable basis for any such claim, suit or proceeding.

(i) None of F3 Brands, any ERISA Affiliate, or to the Knowledge of F3 Brands, any fiduciary, trustee or administrator of any Employee Benefit Plan, has engaged in or, in connection with the transactions contemplated by this Agreement, will engage in, any transaction with respect to any Employee Benefit Plan which would subject any such Employee Benefit Plan, F3 Brands, any ERISA Affiliate or Purchaser to a tax, penalty or liability for a “prohibited transaction” under Section 406 of ERISA or Section 4975 of the Code.

(j) F3 Brands and each ERISA Affiliate have complied with the notice and continuation coverage requirements of Section 4980B of the Code (“COBRA”) and the regulations thereunder with respect to each Employee Benefit Plan that is a group health plan within the meaning of Section 5000(b)(1) of the Code.

(k) No Employee Benefit Plan provides benefits, including, without limitation, death or medical benefits, beyond termination of service or retirement other than coverage mandated by COBRA. No such plan provided such benefits to retirees on November 8, 2010 or any time thereafter.

(l) No payment which is or may be made by, from or with respect to any Employee Benefit Plan, to any Employee, former employee, director, officer or independent contractor of F3 Brands or any Affiliate of F3 Brands, either alone or in conjunction with any

other payment, event or occurrence, will or could reasonably be characterized as an “excess parachute payment” under Section 280G of the Code.

(m) Each Employee Benefit Plan that constitutes a “non-qualified deferred compensation plan” within the meaning of Section 409A of the Code, complies in both form and operation with the requirements of Section 409A of the Code so that no amounts paid or payable pursuant to any such Employee Benefit Plan is subject to tax under Section 409A of the Code.

(n) No asset of F3 Brands or any ERISA Affiliate which is to be acquired by Purchaser pursuant to this Agreement is subject to any lien under the Code or ERISA.

(o) F3 Brands and each ERISA Affiliate has, for purposes of each Employee Benefit Plan and, to the Knowledge of F3 Brands, for the purposes of any required tax withholding, correctly classified all individuals performing services for F3 Brands as common law employees, leased employees, independent contractors or agents, as applicable.

(p) None of the Employee Benefit Plans are maintained, contributed to or required to be contributed to outside the United States.

#### 5.14. Labor.

(a) F3 Brands is not a party to any labor or collective bargaining agreement, works council or similar agreement (the “Collective Bargaining Agreements”).

(b) There are no (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the Knowledge of F3 Brands, threatened against or involving F3 Brands, or (ii) unfair labor practice charges, grievances or complaints pending or, to the Knowledge of F3 Brands, threatened by or on behalf of any employee or group of employees of F3 Brands, except in each case as would not be reasonably likely to result in a Material Adverse Effect. There have not been any “plant closings” or “mass layoffs” (as those terms are defined in the WARN Act, or any local or state Law) by F3 Brands or Parent in the past twelve (12) months.

(c) Except as set forth on Schedule 5.14(c) of the Seller Disclosure Schedules, F3 Brands is in compliance, in all material respects, with all Laws respecting employment, employment practices, terms and conditions of employment, wages and hours, classification of employees and former employees as exempt or non-exempt, safety and health, plant closings, labor practices, equal employment opportunity, affirmative action, and, if applicable, collective bargaining agreements.

(d) Except as set forth on Schedule 5.14(d) of the Seller Disclosure Schedules, to the Knowledge of F3 Brands, there are no complaints, charges or disputes pending or to F3 Brands’ Knowledge threatened before any Governmental Body, between F3 Brands and any of its employees or former employees.

(e) Except as set forth on Schedule 5.14(e) of the Seller Disclosure Schedules, F3 Brands has not received written notice from any Governmental Body, or to the Knowledge of F3 Brands, any other communication, relating to any labor or employee-related complaint,

charge or investigation involving F3 Brands which would constitute a violation of any applicable labor or employment related Laws.

(f) Schedule 5.14(f) of the Seller Disclosure Schedules, contains a complete and accurate list of the following information for each employee of F3 Brands as of the Effective Date, including each employee on leave of absence: employer, name, job title, date of hiring or engagement, annual salary or hourly wage, as applicable, total compensation (including bonus), and sick and vacation leave that is accrued but unused.

(g) F3 Brands has paid all salaries, wages and bonuses, including vacation and sick pay, payment of which has become due; and has accrued all such payments not yet due to be paid and which are required to be accrued under GAAP.

#### 5.15. Litigation.

Except for the Bankruptcy Case and as set forth on Schedule 5.15, there are no Legal Proceedings pending or, to the Knowledge of F3 Brands, threatened against F3 Brands before any Governmental Body, which, if adversely determined, would be reasonably likely to result in a Material Adverse Effect. To the Knowledge of F3 Brands, with respect to the Purchased Contracts and Leases, no facts or circumstances exist that would reasonably be expected to give rise to any threatened or actual Legal Proceeding.

#### 5.16. Compliance with Laws; Permits.

(a) Except as set forth on Schedule 5.16(a) of the Seller Disclosure Schedules, to the Knowledge of the F3 Brands, F3 Brands is in compliance, in all material respects, with all Laws applicable to the operations of the Business and the Purchased Assets and F3 Brands has not received any written notice of or been charged with any material violation of any Laws.

(b) Except as set forth on Schedule 5.16(b) of the Seller Disclosure Schedules to the Knowledge of the F3 Brands, F3 Brands currently has all material Permits which are required for the operation of the Business as presently conducted and for the ownership and the use of the Purchased Assets. Except as set forth on Schedule 5.16(b) of the Seller Disclosure Schedules, F3 Brands is not in default or material violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or material violation) of any term, condition or provision of any such Permit to which it is a party.

#### 5.17. Environmental Matters.

The representations and warranties contained in this Section 5.17 are the sole and exclusive representations and warranties of F3 Brands pertaining or relating to any environmental, health or safety matters, including any arising under any Environmental Laws. Except as set forth on Schedule 5.17 of the Seller Disclosure Schedules:

(a) F3 Brands and the operations of F3 Brands and the Purchased Real Property are in material compliance with all applicable Environmental Laws and all Permits issued pursuant to Environmental Laws or otherwise;

(b) F3 Brands has obtained all Permits required under all applicable Environmental Laws necessary to operate its Business or to use the Purchased Real Property, all Permits are in good standing and are in full force and effect, no Permit is threatened to be revoked, revised, modified or not renewed;

(c) F3 Brands is not the subject of any outstanding Order or Contract with any Governmental Body or any other third party respecting Environmental Laws, including any Remedial Action or any Release or threatened Release of a Hazardous Material;

(d) F3 Brands has not received any written communication alleging either or both that (i) F3 Brands may be in violation of any Environmental Law, or any Permit issued pursuant to Environmental Law, or (ii) F3 Brands may have any liability under any Environmental Law;

(e) to the Knowledge of F3 Brands, there is no threatened or pending investigation of or liability associated with, the Business, or currently or previously owned, operated or leased property of F3 Brands (including the Purchased Real Property and the Real Property Leases) which would reasonably be expected to result in the imposition of any liability pursuant to any Environmental Law;

(f) Hazardous Materials are not present at, on, under, in, or about the Purchased Real Property or any real property which is the subject of any of the Real Property Leases, or at any other location (including, without limitation, any location to which Hazardous Materials have been sent by F3 Brands for re-use or recycling or for treatment, storage, or disposal) (i) in violation of Environmental Law; (ii) which could reasonably be expected to give rise to liability under any applicable Environmental Law, materially interfere with the continued operations of the Business, or impair the value of the Purchased Real Property or any Real Property Leases; or (iii) reasonably be expected to require Remedial Action.

#### 5.18. Financial Advisors.

Except for Capstone Financial Group, Inc., no Person has acted, directly or indirectly, as a broker, finder or financial advisor for the Sellers in connection with the Transactions and no Person is entitled to any fee or commission or like payment from Purchaser in respect thereof.

#### 5.19. No Other Representations or Warranties; Schedules.

Except for the representations and warranties contained in this Agreement and the F3 Brands Documents, F3 Brands (i) expressly disclaims any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials), the Business, the Assumed Liabilities or the Transaction, and (ii) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any director, officer, employee, agent, consultant, or representative of F3 Brands or any of

their Affiliates). The disclosure of any matter or item in the Seller Disclosure Schedules shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would be reasonably likely to result in a Material Adverse Effect.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PARENT**

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

### **6.1. Organization and Good Standing.**

Parent is duly organized, validly existing and in good standing under the Laws of the State of Oklahoma and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted.

### **6.2. Authorization of Agreement.**

Parent has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Parent in connection with the consummation of the Transactions (the "Parent Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Parent of this Agreement and Parent Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on behalf of Parent. This Agreement has been, and each Parent Document will be at or prior to the Closing, duly executed and delivered by Parent and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Parent Document when so executed and delivered will constitute, legal, valid and binding obligations of Parent, enforceable against Parent in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at Law or in equity).

### **6.3. Conflicts; Consents of Third Parties**

(a) Except as set forth in Schedule 6.3(a), none of the execution and delivery by Parent of this Agreement or the Parent Documents, the consummation of the transactions contemplated hereby or thereby, or the compliance by Parent with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Parent, (ii) subject to the entry of the Sale Order, any Contract or Permit to which Parent is a party or by which Parent or its properties or assets is bound or (iii) subject to the entry of the Sale Order, any Order of any Governmental Body applicable to Parent or any of its properties or assets or (iv) subject to the entry of the Sale Order,



any applicable Law other than, in the case of clauses (ii), (iii) and (iv), such conflicts, violations, defaults, terminations or cancellations that would not be reasonably likely to result in a Material Adverse Effect.

(b) Except as set forth in Schedule 6.3(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Parent in connection with the execution and delivery of this Agreement or the Parent Documents, the compliance by Parent with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Parent of any other action contemplated hereby or thereby, or for Purchaser to conduct any part or portion of the Business, except for (i) the entry of the Sale Order, and (ii) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not be reasonably likely to result in a Material Adverse Effect.

#### 6.4. Litigation.

Except for the Bankruptcy Case and as set forth on Schedule 6.4 of the Seller Disclosure Schedules, there are no Legal Proceedings pending or, to the knowledge of Parent, threatened against Parent, or to which Parent is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of Parent to perform its obligations under this Agreement.

#### 6.5. Intellectual Property.

(a) To the extent any Purchased Intellectual Property has not been transferred or assigned by Parent to F3 Brands, Parent owns and has the right to assign to F3 Brands all Parent Transferred Intellectual Property.

(b) The Parent Transferred Intellectual Property is not the subject of any challenge, claims, or demands received by or known to Parent from any third party and/or governmental entity as to validity of ownership and/or infringement of third party rights.

(c) The Parent Transferred Intellectual Property is not the subject of any opinion issued to Parent that any of the Parent Transferred Intellectual Property are invalid, unenforceable and/or infringes the right of any third party.

(d) As of the Closing Date, the Parent Transferred Intellectual Property will not be the subject of any Liens and Claims.

(e) To the Knowledge of Parent, all royalties, fees and other charges with respect to the Parent Transferred Intellectual Property are current.

(f) To the Knowledge of Parent, the Parent Transferred Intellectual Property is not being used, offered, and/or marketed/advertised by Parent in violation of any Law.

(g) To the Knowledge of Parent, the Parent Transferred Intellectual Property is not the subject of any license (including by grant or consent) by and/or given to any other rightful owner thereof.

(h) To the Knowledge of Parent, no employee, agent, consultant and contractor of Parent or its Affiliates who has contributed to or participated in the creation or development of any Parent Transferred Intellectual Property owned by Parent holds any rights or title in the Parent Transferred Intellectual Property exclusive of Parent, nor has any person, to the extent requested by Parent, refused to sign (i) a “work-made-for-hire” agreement, disclaiming original owner/authorship of any proprietary rights therein; or (ii) an assignment or an agreement to irrevocably assign in favor of Parent all of such employee’s, agent’s, consultant’s or contractor’s right, title and interest in the Parent Transferred Intellectual Property. Parent has taken all commercially reasonable means to establish and preserve its ownership of, and rights in, all of the Parent Transferred Intellectual Property. Without limiting the foregoing, Parent has not made any of its trade secrets, know how, or other confidential or proprietary information that it intended to maintain as confidential available to any other Person except pursuant to written agreements requiring such Person to maintain the secrecy and/or confidentiality of such information.

6.6. No Other Representations or Warranties; Schedules.

Except for the representations and warranties contained in this Agreement and the Parent Documents, Parent (i) expressly disclaims any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials), the Business, the Assumed Liabilities or the Transaction, and (ii) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any director, officer, employee, agent, consultant, or representative of Parent or any of their Affiliates). The disclosure of any matter or item in the Seller Disclosure Schedules shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would be reasonably likely to result in a Material Adverse Effect.

**ARTICLE VII  
REPRESENTATIONS AND WARRANTIES OF BLITZ RE**

Blitz RE hereby represents and warrants to Purchaser that, except as set forth in the Seller Disclosure Schedules:

7.1. Organization and Good Standing.

Blitz RE is duly formed, validly existing and in good standing under the Laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now conducted.

## 7.2. Authorization of Agreement.

Except for such authorization as is required by the Bankruptcy Court (as hereinafter provided for), Blitz RE has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to which it is a party or to be executed by Blitz RE in connection with the consummation of the Transaction (the "Blitz RE Documents"), to perform its obligations hereunder and thereunder and to consummate the transaction contemplated hereby and thereby. The execution, delivery and performance by Blitz RE of this Agreement and Blitz RE Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or limited liability company action on the part of Blitz RE. This Agreement has been, and each of Blitz RE Documents will be at or prior to the Closing, duly and validly executed and delivered by Blitz RE and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order and, with respect to Blitz RE's obligations under Section 9.2, the entry of the Bidding Procedures Order) this Agreement constitutes, and Blitz RE Documents when so executed and delivered will constitute, legal, valid and binding obligations of Blitz RE, enforceable against Blitz RE to the extent a party thereto in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at Law or in equity).

## 7.3. Conflicts; Consents of Third Parties.

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

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Blitz RE in connection with the execution and delivery of this Agreement or Blitz RE Documents, the compliance by Blitz RE with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Blitz RE or of any other action contemplated hereby or thereby, except for (i) the entry of the Sale Order, (ii) the entry of the Bidding Procedures Order with respect to Blitz RE's obligations under Section 9.2, and (iii) such other consents, waivers, approvals, Orders, Permits, authorizations,

declarations, filings and notifications, the failure of which to obtain or make would not be reasonably likely to result in a Material Adverse Effect.

#### 7.4. Real Property.

(a) Blitz RE does not (i) own, nor has ever owned any real property other than the Purchased Real Property and the Retained Real Property, (ii) lease any real property as the landlord or sublandlord under a lease or similar agreement except the Real Property Lease and a lease of the Retained Real Property to Parent as set forth on Schedule 5.8(b), (iii) sublease any real property as a subtenant, or (iv) use any real property in connection with the operation of its business except the Purchased Real Property and the Retained Real Property.

(b) All Real Property Leases are in full force and effect, are valid and effective in accordance with their respective terms, and there is not, under any of the Real Property Leases, any default by Blitz RE or, to Blitz RE's Knowledge, by the other party to such lease. All Landlord Real Property Leases will either be terminated at Closing or do not affect the Purchased Real Property or other Purchased Assets.

(c) With respect to the Purchased Real Property:

(i) Blitz RE (A) has good and marketable title to the Purchased Real Property free and clear of all Liens and Claims except for Existing Liens, and (B) as of Closing, will have good and marketable title to the Purchased Real Property, free and clear of all Liens and Claims pursuant to the Sale Order, except Permitted Exceptions and Standard Exceptions, none of which impairs the current or proposed use of such Purchased Real Property.

(ii) On the Closing Date, the legal description for the Purchased Real Property contained in the deed thereof describes the property fully and accurately. All buildings, structures and facilities located on, and improvements to, such parcel of Purchased Real Property are located within the boundary lines of such Purchased Real Property and do not encroach on any easement, right of way or other encumbrance which burdens any portion of the Purchased Real Property. No structures, facilities or other improvements on any parcel adjacent to the Real Property encroach onto any portion of the Purchased Real Property.

(iii) Blitz RE has provided to Purchaser (A) copies of the deeds and other instruments (as recorded) by which Blitz RE acquired the Purchased Real Property, (B) copies of all title insurance policies, opinions, abstracts and surveys in the possession of the Sellers with respect to such parcel, and (C) copies of exception documents identified in any such policies, opinions, or abstracts.

(iv) Other than the option purchase in favor of F3 Brands (which is set forth in the Real Property Lease and will be terminated at Closing), there are no outstanding options or rights of first refusal to purchase such parcel of Purchased Real Property, or any portion thereof or interest therein.

(d) The uses for which the buildings, facilities and other improvements located on the Real Property are zoned do not restrict, or impair, the use of the Real Property for purposes of the Business.

(e) No Governmental Body having the power of eminent domain over the Real Property has commenced or, to the Knowledge of Blitz RE, intends to exercise the power of eminent domain or a similar power with respect to all or any part of the Real Property. There are no pending or, to the Knowledge of Blitz RE, threatened condemnation, fire, health, safety, building, zoning or other land use regulatory proceedings, lawsuits or administrative actions relating to any portion of the Real Property or any other matters which do or may adversely affect the current use, occupancy or value thereof. The Sellers have not received notice of any pending or threatened special assessment proceedings affecting any portion of the Real Property.

(f) The Real Property and all present uses and operations of the Real Property comply with all Laws, covenants, conditions, restrictions, easements, disposition agreements and similar matters affecting the Real Property. The Real Property and its continued use, occupancy and operation as used, occupied and operated in the conduct of the Business do not constitute a non-conforming use and is not the subject of a special use permit under any Law.

(g) The Real Property is in suitable condition for the conduct of the Business as currently conducted and as proposed to be conducted. Blitz RE has good and valid rights of ingress and egress to and from all Real Property from and to the public street systems for all usual street, road and utility purposes.

(h) No Person other than Blitz RE is in possession of any of the Real Property or any portion thereof, and there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any Person other than another Seller the right of use or occupancy of the Real Property or any portion thereof. No easement, utility transmission line or water main located on the Real Property adversely affects the use of the Real Property or any improvement on the Real Property.

(i) All water, sewer, gas, electric, telephone, rail spurs and drainage facilities, and all other utilities required by any Law or by the use and operation of the Real Property in the conduct of the Business are installed to the property lines of the Real Property, are connected pursuant to valid permits to municipal or public utility services or proper drainage facilities, are fully operable and are adequate to service the Real Property in the operation of the Business and to permit compliance with the requirements of all Laws in the operation thereof. No fact or condition exists which could result in the termination or material reduction of the current access from the Real Property to existing roads or to sewer or other utility services presently serving the Real Property.

(j) To the Knowledge of Blitz RE, the surveys delivered to Purchaser pursuant to Section 10.8(a) do not contain any inaccuracies; however, Blitz RE makes no representations, warranties, or guarantees regarding the boundary lines of the Purchased Real Property relative to the existing fences or other improvements, nor regarding the number of acres contained in the Purchased Real Property.

#### 7.5. Environmental Matters.

The representations and warranties contained in this Section 7.5 are the sole and exclusive representations and warranties of Blitz RE pertaining or relating to any environmental, health or safety matters, including any arising under any Environmental Laws. Except as set forth on Schedule 7.5 of the Seller Disclosure Schedules:

(a) Blitz RE and the operations of Blitz RE and the Purchased Real Property are in material compliance with all applicable Environmental Laws and all Permits issued pursuant to Environmental Laws or otherwise;

(b) to the Knowledge of Blitz RE, it has obtained all Permits required under all applicable Environmental Laws necessary for the ownership of the Purchased Real Property, all Permits are in good standing and are in full force and effect, no Permit is threatened to be revoked, revised, modified or not renewed;

(c) Blitz RE is not the subject of any outstanding Order or Contract with any Governmental Body or any other third party respecting Environmental Laws, including any Remedial Action or any Release or threatened Release of a Hazardous Material;

(d) Blitz RE has not received any written communication alleging either or both that (i) Blitz RE may be in violation of any Environmental Law, or any Permit issued pursuant to Environmental Law, or (ii) Blitz RE may have any liability under any Environmental Law;

(e) to the Knowledge of Blitz RE, there is no threatened or pending investigation of or liability associated with, the Business, or currently or previously owned, operated or leased property of Blitz RE (including the Purchased Real Property) which would reasonably be expected to result in the imposition of any liability pursuant to any Environmental Law;

(f) Hazardous Materials are not present at, on, under, in, or about the Purchased Real Property or any real property which is the subject of any of the Real Property Leases, or at any other location (including, without limitation, any location to which Hazardous Materials have been sent by Blitz RE for re-use or recycling or for treatment, storage, or disposal) (i) in violation of Environmental Law; (ii) which could reasonably be expected to give rise to liability under any applicable Environmental Law, materially interfere with the continued operations of the Business, or impair the value of the Purchased Real Property or any Real Property Leases; or (iii) reasonably be expected to require Remedial Action.

#### 7.6. No Other Representations or Warranties; Schedules.

Except for the representations and warranties contained in this Agreement and the Blitz RE Documents, Blitz RE (i) expressly disclaims any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials), the Business, the Assumed Liabilities or the Transaction, and (ii) disclaims all liability and responsibility for any

representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any director, officer, employee, agent, consultant, or representative of Blitz RE or any of their Affiliates). The disclosure of any matter or item in the Seller Disclosure Schedules shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would be reasonably likely to result in a Material Adverse Effect.

## **ARTICLE VIII**

### **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to the Sellers that:

8.1. Organization and Good Standing.

Purchaser is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted.

8.2. Authorization of Agreement.

Purchaser has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the Transactions (the "Purchaser Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and Purchaser Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on behalf of Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at Law or in equity).

8.3. Conflicts; Consents of Third Parties.

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

Purchaser or its properties or assets is bound or (iii) any Order of any Governmental Body applicable to Purchaser or any of its properties or assets or (iv) any applicable Law.

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

#### 8.4. Litigation.

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

#### 8.5. Financial Advisors.

Except for KPMG Corporate Finance Inc., no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the Transactions and no Person is entitled to any fee or commission or like payment in respect thereof.

#### 8.6. Bankruptcy.

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

#### 8.7. Financing.

Purchaser has, and on the Closing Date, will have, sufficient funds or availability to sufficient funds, to consummate the Transactions, including payment of the Purchase Price and assumption of the Assumed Liabilities.

#### 8.8. No Other Representations or Warranties.

Except for the representations and warranties contained in this Agreement, the Purchaser Documents and the Deed, Purchaser (i) expressly disclaims any representation or warranty, expressed or implied, at common law, by statute, or otherwise, with respect to any other information provided to the Sellers by or on behalf of Purchaser in connection with the transactions contemplated hereby and (ii) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or



furnished (orally or in writing) to the Sellers or their Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to the Sellers or their Affiliates by any director, officer, employee, agent, consultant, or representative of Purchaser or any of their Affiliates).

8.9. No Reliance.

Purchaser is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder and the application thereof to the Business. Purchaser has undertaken such investigations and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. PURCHASER ACKNOWLEDGES AND AGREES THAT THE PURCHASED ASSETS ARE SOLD "AS IS, WHERE IS" WITH ALL FAULTS WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS AND WITHOUT ANY RECOURSE TO SELLER OR PARENT, OTHER THAN FOR FRAUD OR AS OTHERWISE EXPRESSLY PROVIDED HEREIN. PURCHASER AGREES TO ACCEPT THE PURCHASED ASSETS AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON ITS OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO SELLER OR PARENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE DEED.

**ARTICLE IX  
BANKRUPTCY COURT MATTERS**

9.1. Competing Transaction.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Sellers and the Bankruptcy Court of higher or better competing bids with respect to any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of the Purchased Assets to a purchaser or purchasers other than Purchaser (whether consummated pursuant to a sale, consensual foreclosure, credit bid or chapter 11 plan, a "Competing Transaction"). The Sellers shall promptly, and in all events prior to any Auction, provide counsel to Purchaser with a copy of any agreement and such related documents, not subject to confidential treatment, of any Competing Transaction that is deemed by the Sellers to constitute a Qualified Bid.

(b) Prior to completion of the Auction, nothing contained herein shall be construed to prohibit the Sellers and their representatives or Affiliates from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Competing Transaction.

(c) Following completion of the Auction, the Sellers shall cause their representatives or Affiliates not to initiate contact with, solicit or encourage submission or any inquiries, proposals or offers by, any Person in connection with any sale or other disposition of the Purchased Assets. In addition, unless otherwise directed by the Bankruptcy Court, the Sellers shall not, after completion of the Auction, respond to any inquiries or offers from prospective purchasers to purchase all or part of the Purchased Assets, or perform any other acts related thereto, including supplying information relating to the business and assets of the Sellers to prospective purchasers. The restrictions imposed on the Sellers pursuant to this Section 9.1(c) shall terminate: (i) upon the termination of this Agreement, (ii) upon a Bankruptcy Court determination that the winning bidder announced at the Auction shall not be approved by the Bankruptcy Court, or (iii) upon order of the Bankruptcy Court relieving the Sellers of such restrictions.

#### 9.2. Bidding Procedures Order.

The Bidding Procedures Order shall be in form and substance reasonably acceptable to Purchaser and F3 Brands and shall contain provisions approving the Break-Up Fee consistent with Section 9.4 of this Agreement. The Seller shall not change or modify, or request that the Bankruptcy Court change or modify, any of the dates or procedures set forth in the Bidding Procedures Order, including, without limitation, the dates of the hearing on the Sale Motion and Closing Date, without prior written consent of Purchaser, which consent shall not be unreasonably withheld. The purchase and sale of the Purchased Assets will be in accordance with the Bidding Procedures Order.

#### 9.3. Cooperation in Bankruptcy Court Matters.

(a) The Sellers shall promptly provide Purchaser with the proposed final drafts ("Draft Transaction Filings") of any and all motions, applications, pleadings, schedules, statements, reports and other papers (including exhibits and supporting documentation) to be filed by or on behalf of the Sellers related to the Purchased Assets, the Purchased Contracts and Leases, this Agreement or the consummation of the Transactions or any provision thereof or herein, so as to provide Purchaser and its counsel with a reasonable opportunity to review and comment on such motions, applications, pleadings, schedules, statements, reports and other papers prior to filing with the Bankruptcy Court, and inasmuch as is consistent with the Sellers' fiduciary duties, consider such comments in good faith; provided, however, that such provision to Purchaser of any such Draft Transaction Filings shall (i) not operate as a waiver of any applicable privileges (including, but not limited to the Attorney Work Product Doctrine) attendant to such documents and the subject matter thereof, (ii) shall be maintained as strictly confidential by the Purchaser and may not be disclosed to any person for any reason without the prior written consent by the Sellers, and (iii) may not be used as evidence by the Purchaser in any court proceeding without the prior written consent of the Sellers. Purchaser may file a notice of appearance in the Bankruptcy Case and the Sellers acknowledge and agree that Purchaser shall have standing to appear in connection with all proceedings regarding the sale of the Purchased Assets in the Bankruptcy Case.

(b) The Sellers shall pursue diligently the entry of the Bidding Procedures Order and the Sale Order. The Sellers shall use commercially reasonable efforts to comply with

all requirements under the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules in connection with obtaining approval of the Bidding Procedures Order and the Sale Order.

#### 9.4. Break-Up Fee.

(a) The Sellers acknowledges and agrees that Purchaser has expended considerable time and expense in connection with this Agreement, and the negotiation thereof, and the identification and quantification of assets to be included in the Purchased Assets, and that the entry into this Agreement provides value to the Sellers' chapter 11 estate by, among other things, inducing other parties to submit higher or better offers for the Purchased Assets. Therefore, only if a Competing Transaction closes within six (6) months of the date of the Auction, the Sellers shall cause Purchaser to be paid a break-up fee in the amount of Four Hundred Thirty-Eight Thousand Five Hundred Dollars (\$438,500) (the "Break-Up Fee"). The Sellers and Purchaser agree that the Break-Up Fee is a material and necessary inducement to Purchaser to enter into this Agreement and to consummate the Transactions contemplated in this Agreement.

(b) Any Break-Up Fee payable pursuant to this Agreement shall be paid in full directly to Purchaser, out of the purchase price paid by the Successful Bidder in any Competing Transaction, at the time of and as a condition to the closing of any Competing Transaction. The Sellers shall cause such payment to be included as a term of any Competing Transaction. The Sellers shall cause the Break-Up Fee to be paid to Purchaser in immediately available funds and without need for further Order of the Bankruptcy Court (other than the Bidding Procedures Order or other Order approving the Break-Up Fee), and any order approving the Break-Up Fee shall provide that the Break-Up Fee shall be paid as provided herein as a carve-out from the liens and superpriority claims of the lenders to the proceeds of such Competing Transaction, under the Credit Agreement, the DIP Credit Agreement and any orders relating to the same. In the event that the DIP Lenders, the Prepetition Lenders or their nominee submits a credit bid for the Purchased Assets, the Break-Up Fee shall be paid to Purchaser by the DIP Lender or the Prepetition Lenders at the closing of any Competing Transaction involving such credit bid. Notwithstanding anything in this Agreement to the contrary, the Parties hereby agree that Purchaser shall only be entitled to the Break-Up Fee if a Competing Transaction closes within six (6) months of the date of the Auction and that the payment of such Break-Up Fee shall be paid only out of the sources provided in this paragraph.

(c) The Sellers hereby acknowledges, and any order approving the Break-Up Fee shall provide, that the Sellers' obligation to pay the Break-Up Fee shall survive the termination of this Agreement, and that Purchaser's claim for the Break-Up Fee shall have superpriority administrative claim and superpriority lien status against the Sellers and its Affiliates and their respective estates and property thereof under, inter alia, Sections 503 (b) and 507(a) of the Bankruptcy Code and with priority over all other expenses of the kind specified in Sections 503(b) and 507(a) of the Bankruptcy Code and that the Sellers shall not enter into any agreement for a Competing Transaction that does not provide for the payment of the Break-up Fee at the closing of such Competing Transaction.

#### 9.5. Sale Order.

(a) The Sale Order shall contain, without limitation, the following provisions:

(i) finding that notice of the hearing on the Sale Motion and the Auction was proper and sufficient under the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, that the Sellers and Purchaser entered into the Agreement in good faith, the Purchase Price and Assumed Liabilities constitute fair value in consideration for the Purchased Assets and Purchased Contracts and Leases and determining that Purchaser is a “good faith” purchaser entitled to the protections afforded by Section 363(m) of the Bankruptcy Code with respect to the Transactions, the Purchased Assets and the Purchased Contracts and Leases;

(ii) authorizing the Sellers to transfer to Purchaser all of their respective rights, title, privileges and interests in and to the Purchased Assets, and ordering that such transfer is free and clear of any Liens and Claims, with all such Liens and Claims attaching to the net proceeds of sale, if any;

(iii) authorizing the Sellers to assume and sell and assign the Purchased Contracts and Leases to Purchaser pursuant to Sections 363 and 365 of the Bankruptcy Code;

(iv) finding that Purchaser is not a successor to the Sellers or their estates by reason of any theory of Law or equity, whether with respect to any Liens and Claims against the Sellers, the Purchased Assets or otherwise; and

(v) establishing 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 assumption 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 pursuant to Section 365 of the Bankruptcy Code with respect to the Purchased Contracts and Leases.

(b) Subject to any Competing Transaction, (i) the Sellers agree that they will promptly take such actions as are reasonably necessary or appropriate to obtain prompt entry of the Sale Order, (ii) Purchaser agrees that it will promptly take such actions as are reasonably requested by the Sellers and are reasonably necessary or appropriate to assist the Sellers in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court or live testimony for the purposes of, among other things, providing necessary assurances of future performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code and that the Purchase Price was not controlled by an agreement in violation of Section 363(n) of the Bankruptcy Code; and (iii) if the entry of the Sale Order shall be appealed or collaterally attacked, the Sellers and Purchaser shall use their respective reasonable efforts to defend such appeal or collateral attack of the Sale Order after its entry. To the extent commercially reasonable, the Sellers shall promptly respond to objections to the entry of the Sale Order, conduct discovery proceedings, schedule and attend hearings and oppose any actions taken by the parties objecting to, appealing, or seeking a stay of the consummation of the sale of the

Purchased Assets provided by this Agreement. The Sellers shall use commercially reasonable efforts to take all actions, including without limitation, the defense of motions and actions filed by third parties required in the Bankruptcy Case reasonably required to retain possession and ownership of the Purchased Assets pending Closing; provided, however, the Sellers' obligations in connection with any such efforts shall terminate upon Closing. Notwithstanding any provision to the contrary herein, the Sellers shall not seek or agree to amend, vacate or modify any provision of the Sale Order without the prior written consent of Purchaser.

(c) The Sellers agree and the Sale Order shall provide that, after the entry of the Sale Order, the terms of any reorganization or liquidation plan submitted by the Sellers to the Bankruptcy Court or any other court for confirmation or sanction, shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the Transactions contemplated by this Agreement.

#### 9.6. Notice to the Notice Parties.

Adequate notice of the hearing on the Sale Motion, and request for entry of the Sale Order and the objection deadline shall be served by the Sellers in accordance with the Bankruptcy Code and Bankruptcy Rules, including Bankruptcy Rules 2002, 6004, 6006 and 9014, any applicable local rules of the Bankruptcy Court and any orders of the Bankruptcy Court on all Persons required to receive notice, including, but not limited to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Official Committee of Unsecured Creditors; (iii) 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; (iv) all counterparties to any executory contracts or leases; (v) all parties with Liens and Claims on or against any of the Purchased Assets; (vi) each affected Governmental Body, including the Internal Revenue Service and any Governmental Body that collects property Taxes; (vii) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (viii) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002, (ix) all known holders of claims against or equity interests in any Sellers; (x) all insurers of any Sellers; (xi) all other Persons listed on the Sellers' creditor matrix and (xii) all parties to actual or threatened Legal Proceedings that are listed on Schedule 5.15. (collectively, the "Notice Parties"). The Sellers shall provide notice to the Notice Parties that all responses or objections to the Sale Motion shall be served on, among others, counsel to Purchaser.

## ARTICLE X COVENANTS

#### 10.1. Access to Information.

(a) The Sellers agree that, prior to the Closing Date, Purchaser shall be entitled, through its officers, employees and representatives (including its legal advisors and accountants), to make such investigation of the properties, businesses and operations of the Business and such examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities as it reasonably requests and to make extracts and copies of such

books and records, including environmental investigations of the properties. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. The Sellers shall cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of the Sellers to cooperate with Purchaser and Purchaser's representatives in connection with such investigation and examination, and Purchaser and its representatives shall cooperate with the Sellers and their representatives and shall use their reasonable efforts to minimize any disruption to the Business. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require the Sellers to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which the Sellers are bound. All information derived during Purchaser's investigations shall be used only for the purposes intended herein, and Purchaser shall (and Purchaser shall cause its agents to) maintain the confidentiality of such information, and if Purchaser subsequently elects to terminate this Agreement, Purchaser shall, upon written request from the Sellers, return or destroy (at Purchaser's sole discretion) all information received from the Sellers or third parties (other than information relating to the Purchased Assets, Purchased Contracts and Leases, and information that is not subject to the Confidentiality Agreement) with regard to the Business and any Real Property.

(b) Prior to the Closing Date, Purchaser shall be entitled to conduct interviews with the customers of F3 Brands, via telephone, with no more than two (2) representatives of Purchaser, upon one (1) Business Day prior written notice to F3 Brands, the top eight (8) customers of F3 Brands set forth on Schedule 10.1(b) (the "Customer Calls"). F3 Brands shall have the option to participate on any of the Customer Calls. The Customer Calls shall be for the purpose of inquiring about the current status of, and proposed post-Closing relationship between, the Business and the applicable customer.

#### 10.2. Environmental Investigations.

Purchaser shall be entitled to conduct, at Purchaser's sole cost and expense and after providing written notice to the Sellers, a Phase 1 environmental study on or under any Real Property. Subject to the conditions set forth in Section 12.1 and 12.3, failure to complete any Phase 1 environmental study conducted pursuant to this Agreement by March 30, 2012 shall not provide Purchaser a right to delay the Closing beyond March 30, 2012. Except as specified in the immediately preceding sentence, Purchaser shall not conduct or allow any physically invasive or intrusive testing of, on or under any Real Property, including soil borings, without first obtaining the Sellers' written consent, which shall not be unreasonably withheld, conditioned or delayed. Purchaser represents, warrants and agrees that, in making any physical or environmental inspections of the Business or any real property and/or otherwise accessing real property as permitted herein, Purchaser and Purchaser's agents (1) will not reveal to any third party not approved by the Sellers, other than Purchaser's members, attorneys, lenders, representatives, agents or contractors, the results of its inspections unless legally compelled to do so, and (2) will restore promptly any physical damage caused by the inspections. The Sellers reserves the right to have a representative present during any inspections performed by or on behalf of Purchaser. Any and all inspections shall be at Purchaser's expense.

### 10.3. Conduct of the Business Pending the Closing.

(a) Prior to the Closing, except (1) as set forth on Schedule 10.3(a), (2) as required by applicable Law or by order of the Bankruptcy Court, (3) as otherwise expressly contemplated by this Agreement or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), the Sellers shall:

(i) conduct the Business only in the Ordinary Course of Business; and

(ii) use its commercially reasonable efforts to (A) preserve the present business operations, organization and goodwill of the Business, (B) preserve the present relationships with customers and suppliers of such F3 Brands, (C) preserve the present relationships with and employment of the Employees, and (D) maintain the Purchased Real Property in the same state of repair, order and conditions as it is on the Effective Date, reasonable wear and tear excepted.

(b) Except (1) as set forth on Schedule 10.3(b), (2) as required by applicable Law or by order of the Bankruptcy Court, (3) as otherwise contemplated by this Agreement or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), the Sellers shall not, solely as it relates to the Business:

(i) (A) increase the annual level of compensation of any current or former director, consultant, officer or Employee of F3 Brands except for increases in compensation to Employees other than directors or officers in the Ordinary Course of Business, (B) grant any additional compensation to any current or former director, consultant, officer or Employee of F3 Brands, or (C) enter into any employment, change in control, deferred compensation, severance or similar agreement (or amend or terminate any such agreement) with any current or former director, consultant, officer or Employee of F3 Brands (other than the SPIP);

(ii) enter into, modify, amend or terminate any Purchased Contracts and Leases or waive, release, compromise or assign any material rights or claims under any Purchased Contracts and Leases, provided, however, that this Section 10.3(b)(ii) shall not prohibit F3 Brands from entering into, renewing, modifying, amending or terminating any Purchased Contracts and Leases in the Ordinary Course of Business so long as such new Purchased Contracts and Leases, renewal, modification, amendment or termination is not reasonably expected to be materially adverse to the Business, in the manner such Business is currently conducted, after the Closing;

(iii) other than as required by applicable Law (A) enter into, terminate, adopt or amend in any material respect any Employee Benefit Plan or (B) fail to make contributions to any Employee Benefit Plans in accordance with past practice;

(iv) subject any of the Purchased Assets to any Lien, except for Existing Liens and any Lien securing the DIP Credit Agreement;

(v) acquire any material properties or assets that would be Purchased Assets or sell, assign, license, transfer, convey, lease or otherwise dispose of any of the

Purchased Assets (except pursuant to an existing Contract entered into in the Ordinary Course of Business or for the purpose of disposing of obsolete or worthless assets);

(vi) cancel or compromise any material debt or claim or waive or release any material right of the Sellers that constitutes a Purchased Asset;

(vii) enter into any commitment for capital expenditures;

(viii) enter into, modify or terminate any labor or collective bargaining agreement;

(ix) make any change in any Tax or accounting methods or systems of internal accounting controls of the Sellers, in each case, except as may be required to conform to Laws relating to Taxes or regulatory accounting requirements or GAAP, make, change or revoke any Tax election, or enter into any closing or other agreement or arrangement in respect of Taxes;

(x) take any action which would adversely affect the ability of any Party to (i) obtain any Consents required to consummate the transactions contemplated hereby, or (ii) perform its covenants and agreements under this Agreement; or

(xi) agree to do anything prohibited by this Section 10.3.

#### 10.4. Consents.

F3 Brands shall use its commercially reasonable efforts, and Purchaser shall reasonably cooperate with F3 Brands, to obtain at the earliest practicable date all consents and approvals required to transfer the Purchased Assets; provided, however, that F3 Brands shall not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any Legal Proceedings to obtain any such consent or approval (except any administrative proceeding that may be required to obtain approval of the Parcel Split and Bankruptcy Court proceedings to obtain approval of this Agreement).

#### 10.5. Use of Certain Names.

Within three (3) months after the Closing, Purchaser shall and shall cause its Affiliates to revise product literature and labeling (including stickering), change packaging and stationary, and otherwise discontinue use of the name “Blitz” and variations thereof (collectively, the “Names”). With respect to product inventory manufactured prior to or after the Closing, Purchaser may continue to sell such inventory, notwithstanding that it bears the Names, and use the Name in manufacturing of products (pending replacement of all transferred molds engraved with the Names), for a reasonable time after the Closing (not to exceed three (3) months).

#### 10.6. Change of Corporate Name.

Within two (2) Business Days of the Closing, F3 Brands shall file with the appropriate state office the documents appropriate to change its name to a name which is not the same as or similar to its current name or any trade or business name used in connection with the



Business (i.e., “F3”, “F3 Brands” or variations thereof) and/or to reflect that it no longer uses any fictitious names used in the Business. Notwithstanding the preceding sentence, nothing contained herein shall require Parent or any of its Affiliates to cease using the Names.

10.7. Parent Assignment of Rights.

(a) Upon request from Purchaser, Parent and F3 Brands shall (and shall cause their Affiliates to) execute, acknowledge and deliver all and every further act, deed, conveyance, transfer and assurance reasonably necessary to comply with the terms, provisions, purposes and intent of this Agreement, and the effectiveness of the rights, benefits and remedies provided for hereby, including without limitation, as necessary to further evidence or effectuate the Parent Transfer.

(b) Prior to Closing, Parent shall execute in favor of F3 Brands, assignments in a form suitable for recording in the U. S. Patent and Trademark Office, Mexican Institute of Industrial Property, Canadian Intellectual Property Office, and/or any other national or international patent or trademark office, each effective as of the date of the Parent Transfer, assigning all remaining patent and trademark registrations and applications included in the Purchased Intellectual Property that are not currently recorded in the name of F3 Brands including the intellectual property listed on Schedule 2.1(e) which are in the name of Parent (all such property listed on such schedule, the “Parent Transferred Intellectual Property”). Patent and Trademark Assignments duly executed by Parent to F3 Brands are attached hereto as Exhibit G. Parent has engaged in no activity that may inhibit or encumber the validity or enforceability of any of the Purchased Intellectual Property, and has engaged in no activity to interfere with F3 Brands’ exclusive right of ownership or F3 Brands’ right of alienability in the Purchased Intellectual Property.

10.8. Purchased Real Property.

(a) Blitz RE shall provide Purchaser with a copy of the survey dated August 2007 that includes the Purchased Real Property, together with the survey that is being prepared of the portion of Tract 2 that is being excluded from the Purchased Real Property. Any additional survey work shall be at Purchaser’s discretion and expense.

(b) Blitz RE shall take all steps reasonably necessary to permit it to convey only the portion of the contiguous real property owned by it that constitutes Purchased Real Property (the “Parcel Split”), including but not limited to producing a legal description of the Purchased Real Property and obtaining a survey to support the legal description (i.e. a survey of the portion of Tract 2 containing a parking lot that is to be carved out of Tract 2) and obtaining any necessary approvals and consents (including but not limited to complying with any land division requirements and confirming that the resulting configuration of the Purchased Real Property parcel will be in compliance with zoning and land use requirements).

10.9. Further Assurances.

The Sellers and Purchaser shall use their commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the Transaction and (b) cause the

fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transaction.

10.10. Confidentiality.

Purchaser acknowledges that the Evaluation Material (as defined in the Confidentiality Agreement) provided to it in connection with this Agreement, including under Section 10.1, and the consummation of the Transaction, is subject to the terms of the confidentiality agreement between Purchaser and F3 Brands, dated January 30, 2012 (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference.

10.11. Preservation of Records.

The Sellers and Purchaser agree to preserve and keep the records held by it or their respective Affiliates relating to the Business for a period of six (6) years from the Closing Date and shall make such records and personnel available to the other as may be reasonably required by such Party in connection with, among other things, any insurance claims by, Legal Proceedings or Tax audits against or governmental investigations of the Sellers or Purchaser or any of their respective Affiliates or in order to enable the Sellers or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. Notwithstanding the preceding sentence, in the event the Sellers or Purchaser wishes to destroy such records before or after that time, such Party shall first give ninety (90) days prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within such ninety (90) day period, to take possession of the records within ninety (90) days after the date of such notice.

10.12. Publicity.

Neither the Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the Transaction without obtaining the prior written approval of the other Parties, which approval will not be unreasonably withheld or delayed, unless, in the judgment of the Sellers or Purchaser, disclosure is otherwise required by applicable Law or by Order of the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement; provided, that the Party intending to make such release shall use its commercially reasonable efforts consistent with such applicable Law or Order of the Bankruptcy Court to consult with the other Parties with respect to the text thereof.

10.13. Supplementation, Amendment of Seller Disclosure Schedules, Update Information.

The Sellers shall be permitted, by written notice to Purchaser, to supplement the Seller Disclosure Schedules prior to the Closing Date in order to disclose to Purchaser those items which arise after the Effective Date and which are not prohibited by Section 10.3 and which would have been required to be disclosed on the Seller Disclosure Schedules if they had existed on the Effective Date. No such written notice by the Sellers shall be deemed to cure any breach of representation or warranty made by the Sellers as of the Closing; provided, however, such written notice will be deemed to cure any alleged breach by the Sellers or the Sellers'

representations or warranties made as of the Effective Date and as of Closing (i) to the extent such written notice identifies only events or developments not material to the Business, Purchased Assets or Assumed Liabilities, or (ii) if the event or development identified in such written notice has been consented to in writing by the Purchaser.

10.14. Forwarding of Collected Payments.

From and after the Closing, F3 Brands will promptly forward to Purchaser any payments that F3 Brands receives which are the property of Purchaser consistent with the terms of this Agreement. From and after the Closing, Purchaser will promptly forward to the F3 Brands any payments that Purchaser receives which are the property of F3 Brands consistent with the terms of this Agreement.

10.15. Lease of Warehouse.

The Real Property Lease, which will be terminated at Closing, includes a lease of warehouse space to F3 Brands of approximately 70,000 square feet (the "Finished Goods Space"), which is not included in or part of the Purchased Real Property and is located on the Retained Real Property. Blitz RE shall lease the Finished Goods Space to Purchaser (the "Warehouse Lease") commencing on the Closing Date on the following terms and conditions: (a) the term of the Warehouse Lease shall end on December 31, 2012, provided that in the event that Purchaser shall not have completed the construction of an operational warehouse storage space to be constructed on the Purchased Real Property (the "New Warehouse") on or before December 31, 2012, Purchaser shall have the right, upon written notice to Blitz RE, to extend the term to the sooner to occur of (i) May 1, 2013 or (ii) the date on which the New Warehouse is operational, (b) the total rent payable under the Warehouse Lease shall be Six Thousand One Hundred Thirty Six Dollars and 26/100 (\$6,136.26) per month, (c) Purchaser shall have the right to terminate the Warehouse Lease upon thirty (30) days' prior written notice, and (d) such other terms and conditions as agreed to by Blitz RE and Purchaser.

10.16. Title Insurance.

(a) Within fifteen (15) days after the Effective Date, Blitz RE shall furnish to Purchaser a current American Land Title Association ("ALTA") form of title binder or commitment ("Commitment") issued by a national reputable title insurance company satisfactory to Blitz RE, setting forth the current state of the title to the Purchased Real Property.

(b) The owner's policy of title insurance to be issued pursuant to the Commitment shall be in an amount equal to the price allocated to the Purchased Real Property as set forth in Schedule 14.2 showing Purchaser to have fee simple absolute title to the Purchased Real Property free of all Liens and Claims except (i) Permitted Exceptions and (ii) the preprinted exceptions and exclusions customarily contained in an ALTA form of owner's policy as provided to Purchaser ("Standard Exceptions"). The existence of the Standard Exceptions shall not be deemed to adversely affect Purchaser's title to the Purchased Real Property, and shall not be regarded as title defects. Notwithstanding the forgoing, Blitz RE and Purchaser shall use commercially reasonable efforts to cause the title company to remove Standard Exceptions identified by Purchaser, including the standard exception for liens for services, labor or material

and the standard exception for matters affecting title that would be disclosed by a survey (provided that Purchaser at its cost provides a survey satisfactory to the title insurance company).

(c) All utility or other public easements and rights of way shown as special exceptions in the Commitment shall be deemed to be "Permitted Exceptions."

(d) All exceptions and requirements (other than the Permitted Exceptions, the Standard Exceptions, and the requirement that Purchaser pay to or for the account of Blitz RE the full consideration for the estate or interest to the insured, collectively the "Authorized Items") contained in the Commitment shall be satisfied by Blitz RE at Blitz RE's sole cost and expense at or prior to the Closing.

(e) Purchaser shall have the right to waive at Closing or at any time prior to Closing any requirements or exceptions contained in the Commitment (other than the Permitted Exceptions) provided that any such waiver to be binding upon Purchaser must be in writing duly dated and executed by Purchaser.

(f) If for any reason Blitz RE is unable or unwilling to cure or satisfy all exceptions and requirements (other than the Authorized Items or liens that can be satisfied by the payment of money) contained in the Commitment at or prior to the Closing and if all such unsatisfied requirements and exceptions (other than the Permitted Exceptions) are not waived by Purchaser in writing at or prior to Closing, as above set forth, then Blitz RE or Purchaser may terminate this Agreement by written notice.

(g) The cost of the Commitment and owner's policy issued pursuant thereto (including any abstracting fees of charges, all insurance premiums for the owner's policy and all title search report fees) shall be paid by Purchaser and Blitz RE held harmless therefrom. The attorney's title examination fees associated with the issuance of the Commitment and all expenses and fees (including attorney's fees) incurred in removing or eliminating any exceptions or exclusions contained in the Commitment (other than the Permitted Exceptions) shall be paid by Blitz RE and Purchaser held harmless therefrom.

## **ARTICLE XI**

### **EMPLOYEES AND EMPLOYEE BENEFITS**

#### **11.1. Employment.**

(a) Transferred Employees. At least ten (10) days prior to the Closing Date, Purchaser shall provide F3 Brands with a list of the Employees that Purchaser, in its sole discretion intends to offer employment. Effective as of the Closing Date, F3 Brands shall cause the employment of each such listed Employee to be terminated in accordance with applicable Law. Effective as of the Closing Date, Purchaser or one of its Affiliates shall extend offers of employment to all of the Employees terminated in accordance with the preceding sentence. Such offers of employment shall be on such terms and conditions as determined in the sole discretion of Purchaser, provided, however, that (i) employment shall be offered by Purchaser to a number of Employees and on sufficient terms and conditions so that F3 Brands shall not be required to issue a notice under the Worker Adjustment and Training Notification Act (the "WARN Act") and (ii) Purchaser shall not take any action Post-Closing such that F3 Brands will incur Liability

under the WARN Act. All Employees who accept an offer of employment described above are hereinafter referred to as the “Transferred Employees.”

(b) Standard Procedure. Pursuant to the “Standard Procedure” provided in Section 4 of Revenue Procedure 2004-53, 2004-2 CB 320, (i) Purchaser and F3 Brands shall report on a predecessor/successor basis as set forth therein, (ii) F3 Brands will not be relieved from filing a Form W-2 with respect to any Transferred Employees, and (iii) Purchaser will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee with respect to the portion of the year during which such Employees are employed by Purchaser that includes the Closing Date, excluding the portion of such year that such Employee was employed by F3 Brands.

#### 11.2. Employee Benefits.

(a) For purposes of eligibility and vesting (but not benefit accrual) under the employee benefit plans of Purchaser providing benefits to Transferred Employees (the “Purchaser Plans”), Purchaser shall credit each Transferred Employee with all service with F3 Brands, and any predecessor entities, to the same extent as such Transferred Employee was entitled immediately prior to the Closing to credit for such service under any similar Employee Benefit Plan, except for credit under any Purchaser Plan (W) subject to Title IV of ERISA, (X) which is an equity compensation or equity incentive plan, (Y) which provides retiree health or life benefits, or (Z) that would result in a duplication of benefits. Purchaser shall use commercially reasonable efforts to (i) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Transferred Employees under such plan, except to the extent that such conditions, exclusions or waiting periods would apply under an applicable Employee Benefit Plan and (ii) provide each Transferred Employee with credit for any co-payments and deductibles paid prior to any such change in coverage in satisfying any applicable deductible or out-of-pocket requirements under such plan with respect to the plan year in which a Transferred Employee is first eligible to participate in such Purchaser Plan.

(b) Except as required by applicable Law, Purchaser shall be responsible for all Liabilities with respect to Transferred Employees attributable to (i) their accrued and unpaid salary or wages and (ii) their accrued and unused vacation, sick days, personal days or other salary continuation, in each case, through the Closing Date. Furthermore, Purchaser shall be solely responsible for all Liabilities under the F3 Brands’ Employee Bonus Incentive Plan (revised October 19, 2011) with respect to Transferred Employees.

(c) The active participation of each Transferred Employee in each Employee Benefit Plan intended to qualify under Section 401(a) of the Code (each, a “Qualified Plan”) shall cease as of the Closing Date and the Sellers shall retain the sponsorship of each Qualified Plan and shall retain any and all liabilities thereunder.

(d) Purchaser shall, or shall cause its Affiliates to, assume all obligations to provide continuation health care coverage in accordance with COBRA, to all Transferred Employees and their qualified beneficiaries who incur or incurred a qualifying event prior to, on or after the Closing Date. The Sellers shall retain all obligations to provide (or to continue to

provide) continuation health care coverage in accordance with COBRA to all other employees and former employees of the Sellers and their Affiliates (including their respective qualified beneficiaries) regardless of when such individual's qualifying event occurs or occurred.

(e) Nothing contained in this Section 11.2 or elsewhere in this Agreement shall confer upon any Transferred Employee any right with respect to employment by Purchaser or its Affiliates, nor shall anything herein interfere with the right of Purchaser or its Affiliates, following any employment of any Transferred Employee, to terminate the employment of any such Transferred Employee at any time, with or without cause, or restrict Purchaser or its Affiliates in the exercise of their independent business judgment in modifying any of the terms and conditions of the employment of any such Transferred Employee.

(f) The Parties acknowledge and agree that all provisions contained in this Section 11.2 are included for the sole benefit of Parties and that nothing in this Agreement, whether express or implied, (i) shall be treated as an amendment or other modification of any Employee Benefit Plan or other benefit plan, agreement or other arrangement, (ii) shall limit the right of Purchaser or any of its Affiliates to amend, terminate or otherwise modify any Employee Benefit Plan or other benefit plan, agreement or other arrangement following the Closing Date.

## **ARTICLE XII**

### **CONDITIONS TO CLOSING**

#### **12.1. Conditions Precedent to Obligations of Purchaser.**

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

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

(b) the Sellers shall have performed and complied with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date; provided that the condition set forth in this Section 12.1(b) shall be deemed satisfied unless such failures to so perform or comply taken together would be reasonably likely to result in a Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized signatory of each of the Sellers, dated the Closing Date, to the foregoing effect;

(c) the absence of the occurrence of a Material Adverse Effect;

(d) to the extent Purchaser obtains a Phase 1 environmental report in connection with the Purchased Real Property, such report shall not be materially different from the Phase I Environmental Site Assessment and Limited Compliance Review as prepared by ENVIRON International Corporation, dated June 2007; provided that if such report is not completed by the Closing Date, this Section 12.1(d) shall not be a condition precedent to Closing;

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

(f) the Sellers shall have delivered, or caused to be delivered, to Purchaser such assignments as necessary to effect the assignment of rights set forth Section 10.7 in a form suitable for recording in the U.S. Patent and Trademark Office, Mexican Institute of Industrial Property, and Canadian Intellectual Property Office;

(g) the Landlord Real Property Leases that as of the Closing Date affect the Purchased Real Property shall have been rejected by both landlord and tenant and terminated (including the purchase option of F3 Brands contained in the Landlord Real Estate Lease between F3 Brands and Blitz RE); and

(h) the deed conveying the Purchased Real Property shall be entitled to recordation upon delivery at Closing.

#### 12.2. Conditions Precedent to Obligations of the Sellers.

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

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

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

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

### 12.3. Conditions Precedent to Obligations of Purchaser and the Sellers.

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

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

(b) The Bankruptcy Court shall have entered the Bidding Procedures Order and the Sale Order substantially in the forms affixed hereto as Exhibits B and C, respectively (subject to non-material changes only), and provided such other relief as may be necessary or appropriate to allow the consummation of the transactions contemplated by this Agreement. The Sale Order shall have become a final and non-appealable Order, unless this condition has been waived in writing by Purchaser in its sole discretion.

(c) There shall not be in effect, at the Closing Date, any injunction or other binding Order of any court or other tribunal having jurisdiction over Purchaser that prohibits the purchase of the Purchased Assets by Purchaser. The Sale Order shall not have been reversed or vacated, and shall not be subject to a stay pending appeal. The stay provided for in Fed.R.Bankr.P. 6004(h) shall have expired or been waived by the Bankruptcy Court.

### 12.4. Frustration of Closing Conditions.

Neither Purchaser nor the Sellers may rely on the failure of any condition set forth in Sections 12.1, 12.2 or 12.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

## **ARTICLE XIII NO SURVIVAL**

### 13.1. No Survival of Representations and Warranties.

The Parties agree that the representations and warranties contained in this Agreement shall not survive the Closing, and none of the Parties shall have any Liability to each other after the Closing for any breach thereof. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing, and each Party shall be liable to the other after the Closing for any breach thereof.

### 13.2. No Consequential Damages.

Notwithstanding anything to the contrary elsewhere in this Agreement, no Party shall, in any event, be liable to any other Person for any consequential, incidental, indirect, special or punitive damages of such other Person, including loss of future revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to the breach or alleged breach hereof (provided that such limitation with respect to lost profits shall not limit any



Seller's right to recover contract damages in connection with Purchaser's failure to close in violation of this Agreement).

## **ARTICLE XIV TAXES**

### **14.1. Transfer Taxes.**

The Sellers shall be responsible for (and shall indemnify and hold harmless Purchaser and its directors, officers, employees, Affiliates, agents, successors and permitted assigns from and against) any sales, use, stamp, documentary, filing, recording, transfer or similar fees or Taxes or governmental charges (including any real property transfer Taxes, UCC-3 filing fees, real estate, aircraft and motor vehicle registration, title recording or filing fees and other amounts payable in respect of transfer filings, and including any interest and penalty thereon) payable in connection with the Transaction ("Transfer Taxes"). The Sellers shall file and provide Purchaser with reasonable evidence of such filing of all necessary documentation and Tax Returns with respect to such Transfer Taxes.

### **14.2. Purchase Price Allocation.**

The Parties shall allocate the Purchase Price (and any other items required by Tax Law, including, if applicable, any of the Assumed Liabilities) among the Purchased Assets as specified in Schedule 14.2 (which shall be in accordance with Section 1060 of the Code) and, in accordance with such allocation, Purchaser shall prepare and deliver to Parent copies of Form 8594 and any required exhibits thereto (the "Asset Acquisition Statement"). Purchaser shall prepare and deliver to Parent from time to time revised copies of the Asset Acquisition Statement (the "Revised Statements") so as to report any matters on the Asset Acquisition Statement that need updating (including purchase price adjustments, if any) consistent with the allocation. The Parties and their Affiliates shall file all Tax Returns consistently with the Asset Acquisition Statement and the Revised Statements and shall not take any position inconsistent therewith in any administrative or judicial proceeding.

### **14.3. Cooperation.**

The Parties shall, and shall each cause its Affiliates to, provide to the other such cooperation and information as and to the extent reasonably requested in filing any Tax Return, determining a Liability for Taxes, or participating in or conducting any audit or other proceeding in respect of Taxes. Any information obtained under this Section 14.3 shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or in conducting any audit or other proceeding.

## **ARTICLE XV MISCELLANEOUS**

### **15.1. Expenses.**

Except as otherwise provided in this Agreement, the Sellers and Purchaser shall bear their own expenses incurred in connection with the negotiation and execution of this

Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

15.2. Injunctive Relief.

Damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party shall be entitled to injunctive relief with respect to any such breach, including specific performance of such covenants, promises or agreements or an Order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 15.2 shall be in addition to any other rights which a Party may have at Law or in equity pursuant to this Agreement.

15.3. Governing Law.

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

15.4. Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 15.7; provided, however, that if the Bankruptcy Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 15.7.

15.5. WAIVER OF RIGHT TO TRIAL BY JURY.

EACH PARTY HERETO WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING BASED UPON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT, ANY PROVISION HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

15.6. Entire Agreement; Amendments and Waivers.

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

15.7. Notices.

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

If to F3 Brands, to:

F3 Brands LLC  
Grant Kernan  
President  
2400 Northwest Industrial Parkway  
Miami, OK 74354  
Facsimile: (918) 542-6592

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

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

If to Blitz RE, to:

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

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

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

If to Parent, to:

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

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

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

If to Purchaser, to:

Scepter Holdings Inc.  
170 Midwest Road  
Scarborough, Ontario M1P 3A9  
Canada  
Attention: Robert S. Torokvei  
Facsimile: (416) 751-9099  
email: btorokvei@scepter.ca

With copies (which shall not constitute notice) to:

Borden Ladner Gervais LLP  
Scotia Plaza, 44<sup>th</sup> Floor  
40 King Street West  
Toronto, Ontario M5H 3Y4  
Canada  
Attention: James R. Elder  
Facsimile: (416) 361-7081  
email: jelder@blg.com

and

Pepper Hamilton LLP  
Hercules Plaza, Suite 5100  
1313 N. Market Street  
Wilmington, Delaware 19801  
Attention: David M. Fournier  
Facsimile: (302) 421-8390  
email: fournierd@pepperlaw.com

15.8. Severability.

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

15.9. Binding Effect; No Third-Party Beneficiaries; Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or

obligations hereunder may be made by the Sellers or Purchaser (by operation of Law or otherwise) without the prior written consent of the other Parties and any attempted assignment without the required consents shall be void; provided that, prior to the Closing, Purchaser may assign this Agreement to an Affiliate without consent. No assignment of any obligations hereunder shall relieve the Parties of any such obligations. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

15.10. Non-Recourse.

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

15.11. Counterparts.


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

[Signature Page Follows]

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

**SELLER**

F3 BRANDS LLC, a Delaware limited liability company

By:   
Name: Grant Kernan  
Title: President

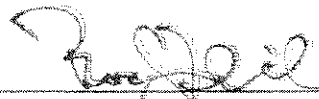
**PARENT**

BLITZ U.S.A., INC., an Oklahoma corporation

By:   
Name: Rocky Flick  
Title: President and CEO

**BLITZ RE**

BLITZ RE HOLDINGS, LLC, a Delaware limited liability company

By:   
Name: Rocky Flick  
Title: President and CEO

**PURCHASER**

SCEPTER HOLDINGS INC., a Canadian corporation

By: \_\_\_\_\_  
Name: Robert S. Torokvei  
Title: President

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

**SELLER**

F3 BRANDS LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: Grant Kernan  
Title: President

**PARENT**

BLITZ U.S.A., INC., an Oklahoma corporation

By: \_\_\_\_\_  
Name: Rocky Flick  
Title: President and CEO

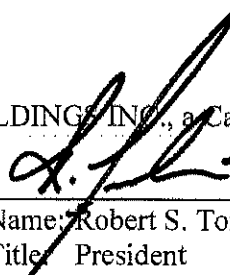
**BLITZ RE**

BLITZ RE HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: Rocky Flick  
Title: President and CEO

**PURCHASER**

SCEPTER HOLDINGS INC., a Canadian corporation

By:  \_\_\_\_\_  
Name: Robert S. Torokvei  
Title: President



Exhibits A  
Schedule of Products

Item #	Description	UPC
05007	SMALL FUNNEL	0 44549 05007 2
05009	Multi-E Funnel	8 17739 01002 2
05015	MEDIUM FUNNEL	8 17739 01003 9
05034	SUPER FUNNEL	8 17739 01004 6
05060	Hand-E Flex Funnel	0 44549 05060 7
05062	Hand-E Quick Fill Funnel	8 17739 01006 0
05063	Hand-E Grip Funnel	0 44549 05063 8
05064	LARGE FUNNEL	0 44549 05064 5
05068	3 Piece Assorted Funnel	0 44549 05068 3
05069	Round Drain Pan - Hopkins	0 25145 14151 3
05070	Round Drain Pan	0 44549 05070 6
05071	Hand E Quick w Ring	8 17739 01097 8
05073	Round Drain Promo	0 44549 05073 7
05075	Triangle Oil Pan	0 44549 05075 1
05080	Less Mess Oil Drain	0 44549 05080 5
05090	Specialty Funnel	8 17739 01014 5
05091	Specialty Funnel Sidekick	0 44549 05090 4
05097	72 Pack All Blue Specialty Funnel	0 44549 05090 4
05103	Fill-A Need Funnel Combo	8 17739 01095 4
06064	Transmission Funnel	0 44549 06064 4
11430	Galvanized Drip Tray	0 44549 11430 9
11432	Galvanized Drip Tray - 12 Pack	0 44549 11432 3
11828	Oil Change Dispos-Kit - 5 Pack	0 44549 11828 4
11837	10 QUART OIL DRAIN	8 17739 01017 6
11838	15 QUART OIL DRAIN	0 44549 11838 3
11843	5 GALLON DRAIN PAN - 2 PACK	8 17739 01019 0
11845	5 GALLON DRAIN PAN	0 44549 11845 1
11848	Oil Change Dispos-Kit	0 44549 11848 2
11849	Dispos-Oil	0 44549 11849 9
11851	Safe Cycle - Oil & Filter Disposal Kit	0 44549 11851 2
11856	Oil Change Center	0 44549 11856 7
11865	Mess Buster - 11 Qt. Oil Drain	8 17739 01056 5
11881	FLEX FUNNEL	0 44549 11881 9
11896	6 QUART OIL DRAIN	0 44549 11896 3
11909	RhinoRamps	0 44549 11909 0
11912	RhinoRamps MAX	0 44549 11912 0

Item #	Description	UPC
11914	RhinoRamp - Wal-Mart	8 17739 01024 4
11930	Wheel Chock - 4 Pack	0 44549 11930 4
11933	TRAILER-SAFE	0 44549 11933 5
11935	EZ Lift Rider Ramp	0 44549 11935 9
11936	EZ Lift Rider Ramp Display - 16 Pack	0 44549 11936 6
11950	Single Wire Rack Set Up	0 44549 11950 2
20003	Mult-E Flex Spout	0 44549 20003 3
41120	BatHook Utility 2pk	0 50267 41120 0
41124	Sidekick 2 pack Utility Hook 18 pack	0 50267 41124 8
41134	BatHook Double 2-Pack	0 50267 41134 7
41144	Shelf Bracket 2 Pack	0 50267 41144 6
42000	4lb Nature's Broom	8 93413 00100 5
42008	58 Quart Crude Control	0 44549 42008 0
50863	6.5 Self Venting Water Can	0 44549 50863 4
80049	Hand-E Hauler 12 Pk Display w/Sleeve	0 44549 80049 3
80050	12 Pack - Hand-E Hauler	0 44549 80050 9
80051	24 Pack Display - Hand-E Hauler	0 44549 80051 6
80052	1 Pack - Hand-E Hauler	0 44549 80052 3
90101	StudTrack	0 44549 90101 5
90103	StudTrack - Hook Only	0 44549 90103 9
90110	Flip Top Bench Table, FTB, (sand)	0 44549 90110 7
90114	Flip Top BenchTable, Sand (catalog)	0 44549 90114 5
90116	Shelf Link, single, (sand)	0 44549 90116 9
90118	Shelf Link,6-pack,(sand),catalog	0 44549 90188 3
90120	Shelf Link, single, (black)	0 44549 90120 6
90124	Shelf Links - 6-Pack Black catalog	0 44549 90124 4
90126	Shelf Link, 6-pack,(sand), retail	0 44549 90126 8
90128	Shelf Link, 6-pack,(black),retail	0 44549 90128 2
90134	AnySize chair, ASC, (sand)	0 44549 90134 3
90140	AnySize table, (sand), AST	0 44549 90140 4
90142	Firewood rack, FWR,(black)	0 44549 90142 8
90143	Firewood Rack - 6 pack	8 17739 01036 7
90144	Firewood rack, (black), catalog	0 44549 90144 2
90152	Patio Table, PAT, (sand)	0 44549 90152 7
90156	Patio Table, Sand (catalog)	0 44549 90156 5
90158	Workbench Kit	0 44549 90158 9
90164	Workbench w/Shelf links - Black Catalog	0 44549 90164 0
90166	Dekmate Bench Bracket, Sand (retail)	0 44549 90166 4

Item #	Description	UPC
90168	Dekmate Bench Bracket, Sand (catalog) 2-Pack	0 44549 90168 8
90170	Dekmate Bench Bracket, Black (retail)	0 44549 90170 1
90172	Dekmate Bench Bracket, Black (catalog) 2-Pack	0 44549 90172 5
90174	Dekmate Bench Bracket, Redwood (retail)	0 44549 90174 9
90176	Dekmate Bench Bracket, Redwood (catalog) 2-Pack	0 44549 90176 3
90182	Picnic Table Kit, PTK,(sand)	0 44549 90182 4
90187	Easy-Up Cover, Clear	0 44549 90187 9
90188	Easy-Up Enclosure Kit	0 44549 90188 6
90190	Shed Kit, barn roof	0 44549 90190 9
90192	Shed Kit, peak roof	0 44549 90192 3
90194	ProBrackets Sawhorse	0 44549 90194 7
90196	ProBrackets Sawhorse, Black (catalog) 2-Pack	0 44549 90196 1
90206	Plan Station	0 44549 90206 7
90207	Project Partner	0 44549 90207 4
90226	Full Pallet AnySize Chair Display - 6	0 44549 90134 3
90228	1/4 Pallet AnySize Chairs - 8	0 44549 90134 3
90230	Full Pallet Workbenches - 20 Units	0 44549 90158 9
90232	Full Pallet ShelfLinks Assembled Display	0 44549 90128 2
90234	1/4 Pallet Shelflink Assembled Display	0 44549 90128 2
90236	1/4 Pallet FlipTop Bench - 8	0 44549 90110 7
90238	Full Pallet FlipTop Benches - 12 units	0 44549 90110 7
90240	Full Pallet FlipTop Bench Pallet Display - 6	0 44549 90110 7
90242	Full Pallet WorkBenches of 12 with Assembled Unit	0 44549 90158 9
90244	1/4 Pallet WorkBench - 5	0 44549 90158 9
91002	Single Blitz Box w/wall mount Display Box	0 44549 91002 4
91003	Blitz Box - 3 Pack	0 44549 91003 1
91004	Single Blitz Box w/wall mount	0 44549 91002 4
91005	Blitz Box - Single	0 44549 91002 4

Exhibits B  
Bidding Procedure 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. 230, 271**

**AMENDED 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 (collectively, the "Assets"), consisting of substantially all of the assets of F3 Brands LLC and certain related real estate and other assets which are owned by the Debtors Blitz RE Holdings, LLC and/or Blitz U.S.A., Inc., free and clear of all claims (as defined in section 101(5) of the Bankruptcy Code) and any other interests, liens, mortgages, pledges, security interests, rights of first refusal, obligations and encumbrances of any kind whatsoever (collectively, the "Interests"), as more fully described and except to the extent identified in the Stalking Horse APA (as defined below)

---

<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 or the Stalking Horse APA.

or the asset purchase agreement of any other Successful Bidder (as defined in the Bidding Procedures), as applicable; (B) approving the proposed bid protections, the break-up fee (the “Break-Up Fee”, as defined in the Stalking Horse APA) and the Initial Overbid Amount (as defined in the Bidding Procedures) (the Break-Up Fee and the Initial Overbid Amount together, the “Bid Protections”), to Scepter Holdings Inc. (the “Stalking Horse Bidder”) in accordance with that certain Asset Purchase Agreement dated March 15, 2012, (the “Stalking Horse APA”) for the purchase of the Assets; (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. The Debtors have demonstrated a compelling and sound business justification for approving the payment of the Break-Up Fee under the circumstances and timing set forth in the Motion and Stalking Horse APA.

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

H. 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.

I. 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 26, 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. The Stalking Horse Bidder is deemed a Qualified Bidder, and the Stalking Horse Bidder's bid for the Assets is deemed a Qualified Bid. In the event there are no other

Qualifying Bids, the Debtors shall accept the Stalking Horse Bid and the Stalking Horse shall be the Successful Bidder.

### **THE BID PROTECTIONS**

7. The Bid Protections set forth in the Bidding Procedures including the Break-Up Fee and the minimum overbid are a reasonable inducement for the Stalking Horse Bidder's offer to purchase the Assets on the terms set forth in the Stalking Horse APA and compensation for the risks and lost opportunity costs incurred by the Stalking Horse Bidder. Solely for the purposes of determining a Successful Bid, any overbid submitted by the Stalking Horse Bidder shall be credited for the full amount of the Break-Up Fee potentially payable by the Debtors.

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

9. Pursuant to sections 105, 363, 364, 503, 506 and 507 of the Bankruptcy Code, the Debtors are hereby authorized to pay, without further order of this Court, the Break-Up Fee pursuant to the terms and conditions set forth in the Stalking Horse APA. In connection therewith, the Debtors' obligation to pay the Break-Up Fee, as provided by the Stalking Horse

APA, shall survive termination of the Stalking Horse APA and, until paid in accordance with the Stalking Horse APA, shall constitute a superpriority administrative expense claim in favor of the Purchaser having superpriority, under section 364(c) of the Bankruptcy Code, payable out of the proceeds of a Competing Transaction (which shall be senior to any and all liens and claims of any creditors of or holders of equity interests in the Debtors, including pre-petition and post-petition amounts owing to the Debtors' pre-petition and post-petition senior secured lenders). To the extent that the Stalking Horse Bidder is not the Successful Bidder, the Successful Bidder is authorized and directed to pay the Break-Up Fee directly to the Stalking Horse Bidder by wire transfer of immediately available good funds to an account specified by the Stalking Horse Bidder at the closing of any transaction involving the Assets with the Successful Bidder. To the extent for any reason the Successful Bidder fails to pay the Break-Up Fee directly to the Stalking Horse Bidders, the Debtors are authorized and directed to pay the Break-Up Fee to the Purchasers without further order of the Court, out of the proceeds received from the Competing Transaction, when and as provided in Section 9.4 of the Stalking Horse APA. In the event that the DIP Lenders and the Prepetition Lenders submit a credit bid for the Assets, the Break-Up Fee shall be paid by the DIP Lender and the Prepetition Lenders, when and as provided in Section 9.4 of the Stalking Horse APA.

10. The Break-Up Fee is hereby approved and shall be paid to the Stalking Horse Bidder as set forth in Section 9.4 of the Stalking Horse APA. The Break-Up Fee shall be paid only if a Competing Transaction occurs and closes within six (6) months of the Auction.

11. The Break-Up Fee shall be the sole remedy of the Stalking Horse Bidder if the Stalking Horse APA is terminated under circumstances where the Break-Up Fee is payable.

### **ADDITIONAL NOTICE PROVISIONS**

12. On February 28, 2012 (the “Mailing Date”) the Debtors (or their agents) served the *Notice of Sale of Certain Assets Free and Clear of Liens, Claims, Encumbrances and Interests* [Docket No. 277] and a copy of *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* [Docket No. 275] (the “Original 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. The Debtors shall serve this Bidding Procedures Order upon all of the foregoing parties by first class mail within two (2) business day following the entry of this Bidding Procedures Order.

### **CURE PROCEDURES**

13. The Cure Procedures are approved.

14. On or before March 21, 2012, the Debtors shall serve upon the Debtors’ master creditor matrix, by first class mail, postage pre-paid, a 2-page supplemental notice of the

Sale Hearing and Objection Deadline, in a form agreed upon by Purchaser and Debtors. In advance of such mailing, \$3,500 shall be paid to the Debtors by Purchaser to defray the copying and postage costs for such mailing; *provided, however*, that such \$3,500 shall be added to the amount of the Break-Up Fee and payable to Purchaser when, if and as the Break-Up Fee is payable.

15. On February 10, 2012, March 9, 2012 and March 13, 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 (together with any subsequent notices identifying 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 or any subsequent Cure Notice, with this Court and served or shall serve 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 or any subsequent Cure Notice.

16. 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.

17. All objections by non-debtor parties to the Cure Amount, must be filed within fourteen (14) days after service of the applicable 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”).

18. 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.

19. 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.

20. 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.

21. 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.

22. 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**

23. 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.

24. 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 28, 2012 at 10:00 a.m. (prevailing Eastern Time), unless otherwise continued upon request by the Debtors.

25. Objections, if any, to any Sale must be filed by March 23, 2012 at 12:00 p.m. (prevailing Eastern Time) (the “Sale Objection Deadline”) and Objections if any, to the selection of the Successful Bidder or Successful Bidders (other than the Stalking Horse Bidder) or the Auction must be filed by March 27, 2012 at 12:00 p.m. (prevailing Eastern Time). Any and all Objections must be served on (i) counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, (Attn: Daniel J. DeFranceschi, Esq. 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 the Stalking Horse Bidder, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, Delaware 19801 (Attn: David M. Fournier); and (v) all other parties that have requested notice in these cases.

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

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

28. 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.

29. 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.

30. Notwithstanding anything to the contrary in the Motion, Bidding Procedures or this Bidding Procedures Order, the DIP Lenders and Prepetition Lenders reserve the right, to the extent permitted by Section 363(K) of the Bankruptcy Code, to submit a credit bid for the Assets. Notwithstanding any credit bid by the DIP Lenders, such credit bid shall not prejudice or impair the rights granted to the Committee in the Final Order Under 11 U.S.C. §§ 105(a), 361, 363 and 364 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors



to Incur Postpetition Secured Indebtedness, (II) Granting Security Interests and Superpriority Claims, and (III) Approving the Use of Cash Collateral entered on December 12, 2011 [Docket No. 132] (the "Final DIP Order").

31. 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, the Stalking Horse APA, the Bidding Procedures and the implementation of this Bidding Procedures Order.

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

---

THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

Exhibits C  
Sale 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) 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

---

<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 28, 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 26, 2012 (the “Auction”) for the consideration of Qualified Bids and the selection of a Successful Bidder (each as defined in the Procedures Order) and Scepter Holdings Inc. (the “Purchaser”) having been selected as the Successful Bidder; and upon the Purchaser, F3 Brands LLC (“F3 Brands”), Blitz and Blitz RE Holdings, LLC (“Blitz RE”) having entered into that certain Asset Purchase Agreement, dated as of March 15, 2012 (attached hereto as Exhibit A, and as may be amended, supplemented or restated, the “Purchase Agreement”)<sup>2</sup> pursuant to which the Purchaser shall acquire the Purchased Assets; 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:**

---

<sup>2</sup> Terms not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

**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 Bankruptcy 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 Bankruptcy 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 all Contracts, Real Property Leases and Personal Property Leases. Such Cure Notices were adequate and sufficient for the assumption and assignment of the Purchased Contracts and Leases to the Purchaser 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 Purchased Contracts and Leases and the Court's determination of 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: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for the DIP Lenders; (iii) counsel to the Official Committee of Unsecured Creditors (the "Committee"); (iv) counsel to the Purchaser; (v) all entities known to have expressed an interest in a transaction with respect to the Purchased Assets or have been identified by the Debtors or their advisors as potential purchasers; (vi) all counterparties to any executory contracts or leases; (vii) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known by the Debtors; (viii) each affected Governmental Body, including the Internal Revenue Service; (ix) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002; (x) all known holders of claims against or equity interests in any Debtors; (xi) all insurers of any Debtors; (xii) all other Persons listed on the Debtors' creditor matrix, and (xiii) all parties to actual or threatened Legal Proceedings that are listed on Schedule 5.15 of the Purchase Agreement (collectively, the "Notice Parties").

**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 Purchase Agreement constitutes the highest and best offer for the Purchased 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 Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

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

(B) No other Person or entity or group of Persons or entities has offered to purchase the Purchased 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 the Purchased Contracts and 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 approval of the Purchase Agreement is therefore justified pursuant to section 365 of the Bankruptcy Code and approval of the sale of the Purchased 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. The Purchase Agreement was negotiated, proposed and entered into by and between the Purchaser and the Debtors without collusion or fraud, in good faith and from arm's length bargaining positions. The Purchaser and its respective Affiliates, partners, principals, shareholders and representatives 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). 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 Purchased Contracts and 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. As soon as practicable after Closing, F3 Brands shall pay all Cure Amounts with respect to the Purchased Contracts and Leases. Accordingly, F3 Brands will have: (i) to the extent necessary, cured any default with respect to the Purchased Contracts and Leases, and (ii) to the extent necessary, provided compensation to any party for any actual pecuniary loss to such party resulting from a default with respect to the Purchased Contracts and Leases, all within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code. The Purchaser's promise to perform the obligations under the Purchased Contracts and Leases arising after their assumption and assignment to the Purchaser 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 Purchased Contracts and Leases. Any objections to any Cure Amount or defaults under any Purchased Contracts and Leases, or the assumption and assignment of any Purchased Contracts and Leases by F3 Brands (and Blitz, to the extent it holds any rights, title or interest in any Purchased Contracts and 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.** F3 Brands, and Blitz to the extent it holds any rights, title or interest in any Purchased Contracts and Leases, have demonstrated that assuming and assigning the Purchased Contracts and Leases to the Purchaser 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 Purchased Contracts and Leases to the Purchaser in connection with the Transactions will maintain the ongoing business of the Debtors, limit the losses of counter parties to the Purchased Contracts and Leases, and maximize the distribution to creditors of the Debtors.

**P. Free and Clear.** The transfer of the Purchased 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 Purchased 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 by F3 Brands (and Blitz, to the extent it holds any rights, title or interest in any Purchased Contracts and Leases) of any Purchased Contracts and Leases is free and clear of all Interests, and all such Interests are 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.

**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 Purchased Assets to the Purchaser, and the assumption and assignment by F3 Brands (and Blitz, to the extent it holds any rights, title or interest in any Purchased Contracts and Leases) of the Purchased Contracts and 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 Purchased 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 Purchased 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 Purchased Assets, the Transactions or the Cure Notices are deemed to have consented to the Motion and sale and assignment of the Purchased 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 Purchased 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 Purchased 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 Purchased Assets and for the Transactions.

**T. Excluded Liabilities.** Except for the Assumed Liabilities set forth in the Purchase Agreement, the transfer of the Purchased Assets to the Purchaser under the Purchase Agreement shall not result in the Purchaser having any liability or responsibility for, or any Purchased Assets being recourse for, (i) any Interest asserted against the Debtors or against an insider of Debtors or against any of the Purchased 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 Purchased Assets or otherwise, of any Interest or Excluded Liabilities, or (iii) otherwise to third parties or the Debtors, except, with respect to the Debtors, as is expressly set forth in the Purchase Agreement. The Debtors and their estates at Closing release and forever discharge the Purchaser, its successors and assigns, and the Purchased Assets 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 Purchased 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 Purchased 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 Purchased Assets) to any liability for Interests against the

Debtors or the Debtors' Interests in such Purchased 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 Purchase Agreement 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 Purchase Agreement, 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, or reservation of rights regarding, the relief requested in the Motion, the entry of this Sale Order or the relief granted herein that have not been withdrawn, waived, or settled, or that have not otherwise been resolved pursuant to the terms hereof hereby are denied and overruled on the merits with prejudice. Any entities who did not object, or who withdrew their objections, to the Motion or this Sale Order, are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. 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 sale of the Purchased Assets to the Purchaser on the terms and conditions contemplated by the Purchase Agreement and Ancillary Documents, including, without limitation, the Closing of the Transactions contemplated by the Purchase Agreement, are hereby approved pursuant to sections 105(a), 363(b) and (f), and 365 of the Bankruptcy Code. Pursuant to section 365 of the Bankruptcy Code, entry by the Debtors into 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) assume and assign the Purchased Contracts and Leases to the Purchaser; 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 until all conditions precedent to its 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 Purchased Assets to the Purchaser 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 Purchased Assets to the Purchaser and the Purchaser shall take title to and possession of the Purchased 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 Purchased 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 Purchased Assets or their proceeds, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

6. **Release of Interests.** If any Person or entity that has filed financing statements, mortgages, mechanics' liens, *lis pendens*, or other documents or agreements evidencing Interests against or in the Purchased Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests that the Person or entity has with respect to the Purchased Assets, other than Permitted Exceptions, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the Person or entity with respect to the Purchased Assets (provided, however, that with respect to any such filings related to Liens of the Prepetition Lenders or the DIP Lenders, such filing shall be in a form approved by BOKF, NA, such approval not to be unreasonably withheld, or by the Court on notice to BOKF, NA), and (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Sale Order (attaching a legal description of the Purchased Real Property, as applicable), which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests of any kind or nature against or in the Purchased Assets.

7. **Surrender of Purchased Assets.** All Persons and entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the Purchaser at the Closing of the Transactions. All Persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely

affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to the Purchaser in accordance with the terms of the Purchase Agreement and this Sale Order.

**8. 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 of any kind or nature whatsoever against or in the Debtors or the Purchased 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 Purchased Assets, the operation of the Debtors' businesses before the Closing or the transfer of the Debtors' interests in the Purchased 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 Purchased 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 Purchased 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 Purchased 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.

9. **General Assignment.** As of the Closing, 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 Purchased Assets and/or a bill of sale or assignment transferring indefeasible title and interest in the Purchased Assets, including the Purchased Contracts and 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.

10. **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 Purchased Assets to the Purchaser under the Purchase Agreement shall not result in (i) the Purchaser, its Affiliates, partners, principals or shareholders, or the Purchased 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 Purchased 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 Purchased Assets, having any liability or responsibility to the Debtors except as is expressly set forth in the Purchase Agreement.

11. **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 Purchased 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

12. **Cure Notices.** The Debtors served the Cure Notice by first class mail on all non-debtor counterparties to Contracts, Real Property Leases and Personal Property Leases, which notice included (i) the title of Contract, Real Property Lease or Personal Property Lease, (ii) the name of the counterparty to the Contract, Real Property Lease or Personal Property Lease, (iii) the Cure Amounts, and (iv) the deadline by which any such Contract, Real Property Lease or Personal Property Lease counterparty needed to file an objection (the “Objection”) to the proposed assumption and assignment and/or cure, and the procedures relating thereto.

13. **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.

14. **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, Real Property Leases and Personal 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, irrespective of the terms and conditions of such Contracts, Real Property Leases and Personal Property Leases. Cure Amounts shall otherwise be those determined by the Bankruptcy Court after notice and a hearing. Each counterparty to a Purchased Contract or Assumed 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 or claim 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 F3 Brands' (and Blitz's, to the extent it holds any rights, title or interest in any Purchased Contracts and Leases) assumption and assignment or assumption and sublease to the Purchaser of the Purchased Contract or Assumed 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 any Purchased Contract or Assumed 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 or claims that may arise or have arisen prior to or as of the Closing Date.

**15. Payment of Cure Amounts.** With respect to the Purchased Contracts and Leases, to the extent there are any Cure Amounts unpaid as of the Closing Date, F3 Brands 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 perform its obligations under the Purchased Contracts and Leases arising 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. On the Closing Date, the Purchaser shall be deemed to be substituted for F3 Brands (and Blitz, to the extent it holds any rights, title or interest in any Purchased Contracts and Leases) as a party to the applicable Purchased Contracts and Leases.

**16. Landlord Real Property Leases.** Effective as of the Closing, the Landlord Real Property Leases are rejected by the Debtors and conclusively shall be deemed terminated. The Debtors, their Affiliates, any tenant and any party claiming an interest in the Landlord Real Property Leases shall hold no rights pursuant to section 365(h) of the Bankruptcy Code with respect to any Landlord Real Property Lease or any real property or improvements thereon that is the subject of any Landlord Real Property Lease.

**17. Warehouse Lease.** Subject to Purchaser's right to terminate the Warehouse Lease upon 30 days' prior written notice, the Warehouse Lease shall not be terminated without the written consent of Purchaser prior to the termination date stated in Section 10.15 of the Purchase Agreement. During the term of the Warehouse Lease, Purchaser shall retain all rights of tenancy thereunder as against the Debtors, their Affiliates, and any other Person holding,



claiming or acquiring any lien, fee or other interest in the Retained Real Property. No order shall be entered in these cases permitting the rejection of the Warehouse Lease or the transfer of the Retained Real Property free and clear of the Warehouse Lease.

**18. Ipsa Facto Clauses Ineffective.** Upon F3 Brands' (and Blitz's, to the extent it holds any rights, title or interest in any Purchased Contracts and Leases) assumption and assignment of the Purchased Contracts and Leases to the Purchaser under the provisions of this Sale Order and F3 Brands' payment of the Cure Amounts in accordance with this Sale Order and the Purchase Agreement, no default shall exist under any Purchased Contract or Lease and no counterparty to any such Purchased Contract or Lease shall be permitted to declare or enforce a default by F3 Brands (and Blitz, to the extent it holds any rights, title or interest in any Purchased Contracts and Leases) 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, Real Property Lease or Personal Property Lease. Any provision in a Purchased Contract or Lease that prohibits or conditions the assignment of such Purchased Contract or 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 F3 Brands (or Blitz, to the extent it holds any rights, title or interest in any Purchased Contracts and Leases) or the Purchaser to enforce at any time one or more terms or conditions of any Purchased Contract or Assumed Lease shall not be a waiver of such terms or conditions, or of F3 Brands' (or Blitz's, to the extent it holds any rights, title or interest in any

Purchased Contracts and Leases) and the Purchaser's rights to enforce every term and condition of the Purchased Contract or Assumed Lease.

**19. 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 Purchased 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.

**20. 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 Purchased 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 Purchased Assets. On the Closing, the Debtors and Persons holding an Interest in the Purchased 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 Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist.

21. **Proceeds.** Any and all valid and perfected Interests in the Purchased Assets of the Debtors shall attach to any proceeds of such Purchased 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 Purchased Assets.

22. **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.

23. **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 the Purchased 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.

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

25. **Personally Identifiable Information.** The sale of the Purchased Assets is consistent with the Debtors' policy concerning the transfer of personally identifiable information and no consumer privacy ombudsman is necessary, as set forth in section 363(b)(1) of the Bankruptcy Code.

26. **Automatic Stay.** The automatic stay pursuant to section 362 is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Bankruptcy Court, to (i) allow the Purchaser to deliver any notice provided for in the Purchase Agreement and Ancillary Documents and (ii) allow the Purchaser to take any and all actions permitted under the Purchase Agreement and Ancillary Documents in accordance with the terms and conditions thereof.

### **General Provisions**

27. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Bankruptcy 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.

**28. 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.

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

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

**31.** 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.

**32.** 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

---

THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

Exhibits D  
Form of Escrow Agreement

## ESCROW AGREEMENT

This Escrow Agreement (this "Escrow Agreement") dated this 15th day of March, 2012, is entered into by and among F3 Brands LLC, a Delaware limited liability company ("Seller"), Blitz U.S.A., Inc., an Oklahoma corporation ("Parent"), Blitz RE Holdings, LLC, a Delaware limited liability company ("Blitz RE" and together with Seller and Parent, the "Seller Parties") and Scepter Holdings Inc., a Canadian corporation ("Purchaser" and together with the Seller Parties, the "Parties" and each individually, a "Party"), and Wells Fargo Bank, National Association, as escrow agent ("Escrow Agent").

### RECITALS

A. This Escrow Agreement is executed pursuant to the terms of that certain Asset Purchase Agreement (the "Purchase Agreement"), dated as of March 15, 2012 by and among Seller, Parent, Blitz RE and Purchaser, pursuant to which Purchaser will acquire certain assets and assume certain liabilities related to the Business. Terms used and not defined herein shall have the meanings ascribed to them in the Purchase Agreement attached hereto as Exhibit C-3.

B. The Parties have agreed to place in escrow certain funds and the Escrow Agent agrees to hold and distribute such funds solely in accordance with the terms of this Escrow Agreement.

C. Pursuant to the terms of the Purchase Agreement and as part of the transactions contemplated thereby, the Parties agreed to enter into this Escrow Agreement and deposit a portion of the Purchase Price into two separate escrow accounts to be maintained by an escrow agent.

D. The Parties have agreed to create separate escrow accounts for the Deposit Escrow Funds (as defined below) and the Working Capital Escrow Funds (as defined below) and appoint the Escrow Agent as the escrow agent for such accounts upon the terms and conditions set forth herein.

E. The Parties acknowledge that the Escrow Agent is not a party to, is not bound by, and has no duties or obligations under the Purchase Agreement, that all references in this Escrow Agreement to the Purchase Agreement are for convenience, and that the Escrow Agent shall not have implied duties beyond those set forth in this Escrow Agreement.

In consideration of the promises and agreements of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and the Escrow Agent agree as follows:

### ARTICLE 1 ESCROW DEPOSIT

#### Section 1.1. Receipt of Escrow Amounts.

(a) Upon execution hereof, Purchaser shall deliver to the Escrow Agent cash in the amount of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000) for the Deposit

Escrow Fund (the "Deposit Escrow Amount"), and at the Closing, Purchaser shall deliver to the Escrow Agent cash in the amount of Six Hundred Thousand Dollars (\$600,000) for the Working Capital Escrow Fund (the "Working Capital Escrow Amount," and together with the Deposit Escrow Amount, the "Escrow Amounts") in accordance with the terms of the Purchase Agreement. The Escrow Agent hereby acknowledges receipt of the Escrow Amounts and agrees (i) to hold the Deposit Escrow Amount, together with all products and proceeds thereof (including all interest, dividends, gains and other income earned with respect thereto (the "Deposit Escrow Funds")) in a separate and distinct account (the "Deposit Escrow Account"), and (ii) to hold the Working Capital Escrow Amount, together with all products and proceeds thereof (including all interest, dividends, gains and other income earned with respect thereto (the "Working Capital Escrow Funds," and together with the Deposit Escrow Funds, the "Escrow Funds")) in a separate and distinct account (the "Working Capital Escrow Account," and together with the Deposit Escrow Account, the "Escrow Accounts"). The Escrow Accounts shall be as designated in Exhibit A hereto. The Escrow Agent shall not distribute or release the Escrow Funds except in accordance with the express terms and conditions of this Agreement.

(b) Promptly after its receipt of each of the Deposit Escrow Amounts and the Working Capital Escrow Amount, the Escrow Agent shall notify the Parties via e-mail at the addresses listed in Section 4.4 that the Escrow Agent has received the Escrow Amounts, as applicable. The Escrow Agent agrees to (and the Parties agree that the Escrow Agent shall) hold, administer and disburse the Escrow Amounts pursuant to and in accordance with this Escrow Agreement.

(c) No Escrow Funds or beneficial interest therein may be pledged, encumbered, sold, assigned or transferred (including any transfer by operation of law) (except as contemplated by Section 3.4 hereto), by a Seller Party or be taken or reached by any legal or equitable process in satisfaction of any debt or other liability of such Seller Party, prior to the distribution to the Seller Parties.

## Section 1.2. Investments.

(a) The Escrow Agent is authorized and directed to deposit, transfer, hold and invest the Escrow Amounts and any investment income thereon as set forth in Exhibit A hereto, or as set forth in any subsequent written instruction signed by the Parties. Any investment earnings and income on the Escrow Amounts shall become part of the Escrow Funds, and shall be disbursed in accordance with Section 1.3 or Section 1.5 of this Escrow Agreement.

(b) The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it is so directed in writing by the Parties hereto to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss to principal or income which may result from any investment or sale of investment made pursuant to this Escrow Agreement, unless such loss results from the gross negligence or willful misconduct of the Escrow Agent. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or



dealing as principal for its own account. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

Section 1.3. Disbursements.

(a) At Closing, the Parties shall provide the Escrow Agent with joint written instructions to disburse the Deposit Escrow Funds to the Seller Parties in accordance with the distribution percentages outline in Exhibit B hereto.

(b) Upon determination of the Final Working Capital in accordance with the provisions of Section 3.5 of the Purchase Agreement, if the Final Working Capital is less than the Estimated Working Capital, then the Seller Parties and Purchaser shall deliver joint written instructions to the Escrow Agent to deliver from the Working Capital Escrow Funds (i) to Purchaser, an amount equal to the difference between the Final Working Capital and the Estimated Working Capital (together with all interest, dividends, gains and other income earned on such amount from the Closing Date to the date of payment), which amount shall be specified in such joint written instruction and, (ii) to the extent amounts remain in the Working Capital Escrow Account after delivery of the amounts described in clause (i), to the Seller Parties in accordance with the distributions percentages on Exhibit B, such amounts remaining in the Working Capital Escrow Account. The instructions delivered hereunder shall state that all conditions precedent to such distribution have been met.

(c) If the Final Working Capital is greater than the Estimated Working Capital, then the Seller Parties and Purchaser shall deliver joint written instructions to the Escrow Agent to deliver the entire Working Capital Escrow Funds to the Seller Parties.

(d) In the event that the Parties jointly instruct in writing the Escrow Agent to disburse the Escrow Amount to any party, the Escrow Agent shall comply with such instructions, any provision herein to the contrary notwithstanding.

Section 1.4. Income Tax Allocation and Reporting.

(a) The Parties agree that, for tax reporting purposes, all interest and other income from investment of the Escrow Amounts shall be reported by the Party receiving such interest and other income.

(b) Upon execution hereof, the Parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and such other forms and documents that the Escrow Agent may request. The Parties understand that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of the Escrow Amounts.

(c) To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Amounts, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Amounts. The Parties, jointly and severally, shall indemnify, defend and hold the Escrow Agent harmless from and against any

tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Amounts and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 1.4(c) is in addition to the indemnification provided in Section 3.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 1.5. Termination. Upon the disbursement of all of the Escrow Funds, this Escrow Agreement shall terminate and be of no further force and effect except that the provisions of Sections 1.4(c), 3.1 and 3.2 hereof shall survive termination.

## ARTICLE 2 DUTIES OF THE ESCROW AGENT

Section 2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to any Party or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

Section 2.2. Attorneys and Agents. The Escrow Agent shall be entitled to conclusively rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent shall be reimbursed as set forth in Section 3.1 for any and all compensation (reasonable fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees.

Section 2.3. Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the Parties or their respective agents, representatives, successors, or assigns. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority. Concurrent with the execution of this Escrow Agreement, the Parties shall

deliver to the Escrow Agent authorized signers' forms in the form of Exhibit C-1 and Exhibit C-2 to this Escrow Agreement.

Section 2.4. Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

Section 2.5. No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

### ARTICLE 3 PROVISIONS CONCERNING THE ESCROW AGENT

Section 3.1. Indemnification. The Parties, jointly and severally, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, attorneys' fees and expenses or other professional fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates, unless such loss, liability, cost, damage or expense shall have been finally adjudicated to have been directly caused by the willful misconduct or gross negligence of the Escrow Agent. The provisions of this Section 3.1 shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 3.2. Limitation of Liability. THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION OR (III) INVESTMENT OR REINVESTMENT OF ANY ESCROW PROPERTY, OR ANY LIQUIDATION OF SUCH INVESTMENT OR REINVESTMENT, EXECUTED IN ACCORDANCE WITH THE TERMS OF THE ESCROW AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR ANY DELAYS (NOT RESULTING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS ADJUDICATED BY A COURT OF COMPETENT JURISDICTION) IN THE INVESTMENT OR REINVESTMENT OF THE ESCROW PROPERTY, ANY LOSS OF INTEREST INCIDENT TO ANY SUCH DELAYS, OR ANY LOSS OR PENALTY AS A RESULT OF THE LIQUIDATION OF ANY INVESTMENT BEFORE ITS STATED MATURITY DATE.

Section 3.3. Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Amounts and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

Section 3.4. Compensation. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit D, which compensation shall be paid by Purchaser. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event. If any amount due to the Escrow Agent hereunder is not paid within thirty (30) days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Amounts with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Funds and the Escrow Agent shall not be obligated to take any legal or other action hereunder which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification.

Section 3.5. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, retain the Escrow Funds until the Escrow Agent (i) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrow Funds, (ii) receives a written agreement executed by each of the parties involved in such disagreement or dispute directing delivery of the Escrow Funds, in which event the Escrow Agent shall be authorized to disburse the Escrow Amounts in accordance with such final court order, arbitration decision, or agreement, or (iii) files an interpleader action in any court of

competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Amounts and shall be entitled to recover reasonable attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Escrow Agent shall be entitled to act on any such agreement, court order, or arbitration decision without further question, inquiry, or consent.

Section 3.6. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 3.7. Attachment of Escrow Funds; Compliance with Legal Orders. In the event that any Escrow Funds shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Funds including the disbursement thereof, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 3.8 Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

Section 3.9 Standard of Care. The Escrow Agent shall be under no duty to afford the Escrow Property any greater degree of care than it gives its own similar property. The Escrow Agent shall not be liable for any damage, loss or injury resulting from any action taken or omitted in the absence of gross negligence or willful misconduct

#### ARTICLE 4 MISCELLANEOUS

Section 4.1. Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of

the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld). Notwithstanding the foregoing, Purchaser shall be permitted to assign its interest without prior written notice and without the prior written consent of the Seller Parties in connection with a merger, acquisition, consolidation, sale of all or substantially all of its assets or other change of control transaction.

Section 4.2. Failure to Appoint Successor. If a successor escrow agent has not been appointed within 30 calendar days after the effective date of the predecessor Escrow Agent's resignation or removal, for any reason whatsoever, the predecessor Escrow Agent shall deliver the Deposit and any Escrow Earnings to the U.S. Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), or if delivery to the Bankruptcy Court is not possible, to the county in which the Deposit and any Escrow Earnings are then being held and immediately give written notice of the same to the Parties.

Section 4.3. Escheat. The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Amounts escheat by operation of law.

Section 4.4. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) by overnight delivery with a reputable national overnight delivery service, (iv) by mail or by certified mail, return receipt requested, and postage prepaid, or (v) by electronic mail. If any notice is mailed, it shall be deemed given five business days after the date such notice is deposited in the United States mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to Seller:

F3 Brands LLC  
Grant Kernan  
President  
2400 Northwest Industrial Parkway  
Miami, OK 74354  
Facsimile: (918) 542-6592

*with a copy, which shall not  
constitute notice, to:*

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

If to Parent:

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

*with a copy, which shall not  
constitute notice, to:*

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

If to Blitz RE:

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

*with a copy, which shall not  
constitute notice, to:*

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

If to Purchaser:

Scepter Holdings, Inc.  
170 Midwest Road  
Scarborough, Ontario M1P 3A9  
Canada  
Attention: Robert S. Torokvei  
Facsimile: (416) 751-9099  
email: [btorokvei@scepter.ca](mailto:btorokvei@scepter.ca)

*with a copy, which shall not  
constitute notice, to:*

Borden Ladner Gervais LLP  
Scotia Plaza, 44th Floor  
40 King Street West  
Toronto, Ontario M5H 3Y4  
Canada  
Attention: James R. Elder  
Facsimile: (416) 361-7081  
email: [jelder@blg.com](mailto:jelder@blg.com)

and

Pepper Hamilton LLP  
Hercules Plaza, Suite 5100  
1313 N. Market Street  
Wilmington, Delaware 19801  
Attention: David M. Fournier  
Facsimile: (302) 421-8390  
email: [fournierd@pepperlaw.com](mailto:fournierd@pepperlaw.com)



If to the Escrow Agent:

Wells Fargo Bank, National Association  
45 Broadway, 14th Floor  
New York, NY 10006  
Attention: Julius R. Zamora  
Telephone: (212) 515-1570  
Facsimile: (866) 297-2015

Section 4.5. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Section 4.6. Submission to Jurisdiction of Bankruptcy Court. Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated herein; provided, however, that if the Bankruptcy Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

Section 4.7. Entire Agreement. This Escrow Agreement sets forth the entire agreement and understanding of the parties related to the Escrow Amounts.

Section 4.8. Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent.

Section 4.9. Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

Section 4.10. Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

Section 4.11. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

Section 4.12 U.S.A. Patriot Act. The Parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Escrow Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Escrow Agent. The parties to this Escrow Agreement agree that they will provide the Escrow Agent with such information as it may request in order for the Escrow Agent to satisfy the requirements of the U.S.A. Patriot Act.

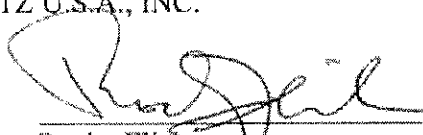
[The remainder of this page left intentionally blank.]

This Escrow Agreement has been duly executed as of the date first written above.


F3 BRANDS LLC

By:   
Name: Grant Kernan  
Title: President

BLITZ U.S.A., INC.

By:   
Name: Rocky Flick  
Title: President and CEO

BLITZ RE HOLDINGS, LLC.

By:   
Name: Rocky Flick  
Title: President and CEO

SCEPTER HOLDINGS INC.

By: \_\_\_\_\_  
Name: Robert S. Torokvei  
Title: President

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Escrow Agent

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

This Escrow Agreement has been duly executed as of the date first written above.

F3 BRANDS LLC

By: \_\_\_\_\_  
Name: Grant Kernan  
Title: President

BLITZ U.S.A., INC.

By: \_\_\_\_\_  
Name: Rocky Flick  
Title: President and CEO

BLITZ RE HOLDINGS, LLC.

By: \_\_\_\_\_  
Name: Rocky Flick  
Title: President and CEO

SCEPTER HOLDINGS INC.

By:  \_\_\_\_\_  
Name: Robert S. Torokvei  
Title: President

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Escrow Agent

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

**EXECUTION VERSION**

This Escrow Agreement has been duly executed as of the date first written above.

F3 BRANDS LLC

By: \_\_\_\_\_  
Name: Grant Kernan  
Title: President

BLITZ U.S.A., INC.

By: \_\_\_\_\_  
Name: Rocky Flick  
Title: President and CEO

BLITZ RE HOLDINGS, LLC.

By: \_\_\_\_\_  
Name: Rocky Flick  
Title: President and CEO

SCEPTER HOLDINGS INC.

By: \_\_\_\_\_  
Name: Robert S. Torokvei  
Title: President

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Escrow Agent


By:  \_\_\_\_\_  
Name: Julius R. Zamora  
Title: Vice President

EXHIBIT A

**Agency and Custody Account Direction  
For Cash Balances  
Wells Fargo Money Market Deposit Accounts**

Direction to use the following Wells Fargo Money Market Deposit Accounts for Cash Balances for the escrow account or accounts (the "Account") established under the Escrow Agreement to which this Exhibit A is attached.

You are hereby directed to deposit, as indicated below, or as I shall direct further in writing from time to time, all cash in the Account in the following money market deposit account of Wells Fargo Bank, National Association:

**Wells Fargo Money Market Deposit Account (MMDA)**

I understand that amounts on deposit in the MMDA are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (FDIC), in the basic FDIC insurance amount of \$250,000 per depositor, per insured bank. This includes principal and accrued interest up to a total of \$250,000.

I acknowledge that I have full power to direct investments of the Account.

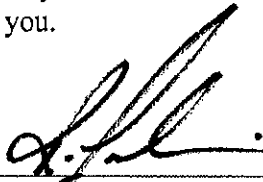
I understand that I may change this direction at any time and that it shall continue in effect until revoked or modified by me by written notice to you.

\_\_\_\_\_  
Authorized Representative  
Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Representative  
Blitz RE

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Authorized Representative  
Purchaser

MARCH 14, 2012  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Representative  
Parent

\_\_\_\_\_  
Date

EXHIBIT A

**Agency and Custody Account Direction  
For Cash Balances  
Wells Fargo Money Market Deposit Accounts**

Direction to use the following Wells Fargo Money Market Deposit Accounts for Cash Balances for the escrow account or accounts (the "Account") established under the Escrow Agreement to which this Exhibit A is attached.

You are hereby directed to deposit, as indicated below, or as I shall direct further in writing from time to time, all cash in the Account in the following money market deposit account of Wells Fargo Bank, National Association:

Wells Fargo Money Market Deposit Account (MMDA)

I understand that amounts on deposit in the MMDA are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (FDIC), in the basic FDIC insurance amount of \$250,000 per depositor, per insured bank. This includes principal and accrued interest up to a total of \$250,000.

I acknowledge that I have full power to direct investments of the Account.

I understand that I may change this direction at any time and that it shall continue in effect until revoked or modified by me by written notice to you.



Authorized Representative  
Seller

3/15/12

Date



Authorized Representative  
Blitz RE

3/15/12

Date

Authorized Representative  
Purchaser

Date



Authorized Representative  
Parent

3/15/12

Date

EXHIBIT B

**Seller Parties Distribution Percentages**



EXHIBIT C-1

**Certificate as to Authorized Signatures**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Purchaser and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit B-1 is attached, on behalf of Purchaser



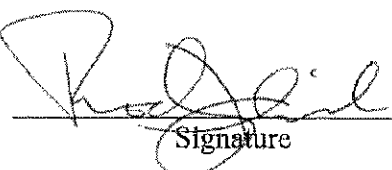
<u>Name / Title</u>	<u>Specimen Signature</u>
<u>Robert S. Torokvei</u> Name	 Signature
<u>President</u> Title	
<u>Christopher C. Luck</u> Name	 Signature
<u>Chief Financial Officer and</u> <u>Vice President of Finance</u> Title	

EXHIBIT C-2

**Certificate as to Authorized Signatures**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Seller Parties and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit B-2 is attached, on behalf of the Seller Parties.

<u>Name / Title</u>	<u>Specimen Signature</u>
<u>Grant Kernan</u> Name	 Signature
<u>President, F3 Brands LLC</u> Title	
<u>Rocky Flick</u> Name	 Signature
<u>President and CEO, Blitz U.S.A. Inc.</u> Title	
<u>Rocky Flick</u> Name	 Signature
<u>President and CEO, Blitz RE Holdings, Inc.</u> Title	

**EXECUTION VERSION**

**EXHIBIT C-3**

**Purchase Agreement**

**EXHIBIT D**

**Fees of Escrow Agent**

Exhibits E  
Form of Transition Services Agreement

## **EXHIBIT E – FORM OF TRANSITION SERVICES AGREEMENT**

This TRANSITION SERVICES AGREEMENT (this “*Agreement*”), effective as of March [ ], 2012, is by and among F3 BRANDS LLC, a Delaware limited liability company (“*Seller*”), BLITZ U.S.A., INC., an Oklahoma corporation and parent company of Seller (“*Parent*”), and SCEPTER HOLDINGS INC., a Canadian corporation (“*Purchaser*”).

### **BACKGROUND**

**WHEREAS**, pursuant to that certain Asset Purchase Agreement dated as of March 15, 2012 (as the same may be amended, supplemented or modified from time to time, the “*Purchase Agreement*”), by and among Seller, Parent, Blitz RE Holdings, LLC, a Delaware limited liability company, and Purchaser, Purchaser is purchasing from Seller of all of Seller’s right, title and interest in and to, and/or the right to use, certain assets of the Business (as defined below) and assuming certain liabilities of the Business, in each solely case upon the terms and subject to the conditions set forth in the Purchase Agreement.

**WHEREAS**, Seller is engaged in the business of providing a comprehensive assortment of automotive oil change accessories and lifting aids through its do-it-yourself business line sold under the RhinoGear™ brand and an assortment of various outdoor products and do-it-yourself kits sold under its 2X4basics™ brand (such business, hereinafter, the “*Business*”).

**WHEREAS**, in order to support the continued and uninterrupted operation of the Business following the Closing Date, Purchaser, Seller and Parent desire to enter into this Agreement, pursuant to which Seller and/or Parent will provide certain services to Purchaser for the time periods and the consideration as more fully described herein.

**NOW THEREFORE**, in consideration of the foregoing and the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

### **ARTICLE I SERVICES PROVIDED**

Section 1.1 Definitions; Construction. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings given to such terms in the Purchase Agreement. Any reference to number of days shall mean calendar days unless otherwise specified. Any rule of construction that permits a court to construe a document more strictly against its author shall not govern the interpretation of this Agreement.

Section 1.2 Transition Services. Upon the terms and subject to the conditions set forth in this Agreement, Seller and/or Parent shall provide, or shall cause to be provided to Purchaser the services described in Exhibit A, which is attached hereto and made a part hereof. Each of the services listed on Exhibit A to be provided are hereinafter referred to individually as a “*Transition Service*,” and collectively as the “*Transition Services*.” The provider(s) of any Transition Service is hereinafter referred to as the “*Provider*.”

Section 1.3 Services Representatives. Each of Seller and Parent, on the one hand, and Purchaser on the other, agrees to: (a) appoint and maintain a representative who shall use commercially Reasonable Efforts (as defined in Section 1.4(c) below) to achieve the overall intent of this Agreement (each, a “**Transition Services Representative**”), and (b) supervise the activities of their respective employees, officers and representatives with respect to the Transition Services. The Transition Services Representative of Seller and Parent shall be \_\_\_\_\_ and the Transition Services Representative of Purchaser shall be \_\_\_\_\_.

Section 1.4 Level of Transition Services.

(a) Notwithstanding the Bankruptcy Case and other provision of this Agreement to the contrary (including any exhibit attached hereto), Provider shall perform the Transition Services in a manner generally consistent with the performance of such services during the one year period prior to the Closing Date, including without limitation, the scope and quality of such services.

(b) Each Provider shall use its Reasonable Efforts (as defined below), in connection with providing the Transition Services, to follow the policies, procedures and practices of Purchaser in effect as of the applicable date, including providing any reasonably necessary documentation and information sufficient for Purchaser, as the case may be, to receive the Transition Services.

(c) To the extent Transition Services are provided to Purchaser by a Provider (other than Seller or Parent), Seller and Parent shall use their Reasonable Efforts to cause such Transition Services to be provided to Purchaser by such Provider in a manner and at a quality consistent with the performance of such services by such Provider for Seller or Parent. As used herein, with respect to any party “**Reasonable Efforts**” means commercially reasonable efforts no less than those efforts that such party would use in obtaining services for or undertaking actions and enforcing its rights with respect to its own business.

Section 1.5 No Obligation to Continue to Use Transition Services. Notwithstanding the Bankruptcy Case, Purchaser shall have no obligation to continue to use any of the Transition Services for which it is receiving and Purchaser may terminate any Transition Service that it is receiving from the Provider by giving the Provider fifteen (15) days prior written notice of its desire to terminate any or all such Transition Services or any portion thereof.

Section 1.6 Modification of Services. Notwithstanding anything to the contrary herein, neither Seller nor Parent shall be obligated to provide any modification of or increase in the nature or scope of the Transition Services that would result in a material increase in the time or cost of performance of any such service unless the Parties otherwise agree in writing.

Section 1.7 Degree of Care. Notwithstanding the Bankruptcy Case, Seller and Parent shall perform their obligations hereunder with the same degree of care, skill, timeliness and prudence customarily exercised by them in respect of their own businesses, operations and affairs, and shall take Reasonable Efforts, and in no case less action than they take to protect their own similar data, to protect Purchaser’s data and prevent the loss, destruction, alteration,

manipulation, and/or theft of Purchaser's data including implementing security safeguards to prevent unauthorized users from gaining entry or access to Purchaser's environment.

Section 1.8 Additional Resources. Notwithstanding anything to the contrary contained herein, in providing the Transition Services, neither Parent nor Seller shall be obligated to (a) hire or train any additional employees or contractors in order to provide Transition Services; (b) maintain the employment or other engagement of any specific employee or contractor; or (c) purchase, lease or license any additional equipment or other personal property in order to provide Transition Services.

## **ARTICLE II COMPENSATION**

### Section 2.1 Consideration for Transition Services.

(a) As consideration for the Transition Services, Purchaser shall pay to the Provider the amount specified for each Transition Service as set forth on the attached Exhibit A and at the times set forth therein. All amounts payable by Purchaser under this Agreement are payable in United States currency.

(b) Upon the termination of any Transition Service in accordance with Section 1.5 above, the compensation to be paid under this Section 2.1 shall be reduced by the amount specified for such terminated Transition Service.

## **ARTICLE III CONFIDENTIALITY**

### Section 3.1 Obligation.

(a) Each of Purchaser, Seller and Parent shall, and shall cause their respective Affiliates to, hold in strict confidence all Confidential Information (as defined below) of the other party hereto; provided that Purchaser, Seller, Parent and their respective Affiliates may each disclose such information (i) to their Affiliates, attorneys, accountants and financial advisors for any purpose reasonably related to the purposes of this Agreement, (ii) to any third party in connection with a legitimate business purpose (including, but not limited to, sources of finance) as is reasonably determined by the disclosing party to be necessary, so long as such Persons are informed by the disclosing party of the confidential nature of such Confidential Information and agree in writing to treat such Confidential Information confidentially and (iii) as is required to be disclosed by law or legal process after complying with the provisions of Section 3.1(c) hereof.

(b) “**Confidential Information**” means, with respect to any party, the terms of this Agreement and any and all non-public, confidential and proprietary information of such party and its business, operations, strategies or prospects that is furnished to the other party or its representatives by or on behalf of such party, including, without limitation, that relating to pricing, customers, methods, processes, financial data, software, applications, research, development, employees, strategic plans or related information. Confidential Information shall not include information that is: (i) already rightfully known to the receiving party at the time it is



obtained by such party, free from any obligation to keep such information confidential; (ii) publicly known through no act of the receiving party; or (iii) rightfully received by the receiving party from a third party without restriction and without breach of this Agreement.

(c) In the event that the receiving party or anyone to whom it discloses Confidential Information receives a request to disclose all or any part of the Confidential Information pursuant to applicable law, statute, regulation, rule, court order, subpoena or judicial process, the receiving party shall (i) as promptly as reasonably practicable inform the disclosing party of the existence, terms and circumstances surrounding such a request, (ii) consult with the disclosing party on the advisability of taking steps to resist or narrow such request, (iii) if disclosure of such Confidential Information is required, furnish only such portion of the Confidential Information as the receiving party is advised by counsel is legally required to be disclosed and (iv) cooperate with the disclosing party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information that is required to be disclosed.

Section 3.2 Return of Confidential Information. Upon termination or expiration of this Agreement, the receiving party shall promptly cease, and not thereafter commence, any and all use of such Confidential Information of the disclosing party. At any time upon the request of the disclosing party, the receiving party shall promptly return all Confidential Information (including any copies, extracts and summaries thereof, in whatever form and medium recorded) to the disclosing party or, at the disclosing party's option and upon such disclosing party's written request, shall promptly destroy or delete it and provide such disclosing party with written certification of such destruction or deletion.

Section 3.3 Specific Performance. Each party hereby acknowledges that any violation of this Article III could cause irreparable harm, the amount of which may be difficult to determine, thus potentially making any remedy at law or in damages inadequate. Each party, therefore, agrees that a party shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Article III and for any other equitable relief which may then be available, without posting any bond or other security. This right shall be in addition to any other remedy available in law or equity.

## ARTICLE IV TERM; TERMINATION

Section 4.1 Term. Except as otherwise provided in Exhibit A, this Agreement shall commence as of the Closing Date and shall remain in effect until the date which is [ ]<sup>1</sup> months after the Closing Date (such date, the "***Termination Date***"), unless earlier terminated with respect to all Transition Services or with respect to any one or more Transition Services, in each case, in accordance with this Agreement. None of Purchaser, Seller or Parent shall have any obligation to renew or extend this Agreement or any Transition Service provided hereunder. Upon the expiration or termination of this Agreement or the earlier termination of any Transition Service(s) hereunder, Purchaser shall be obligated to return to Seller and Parent, and Seller and Parent shall be obligated to return to Purchaser, as soon as is reasonably

---

<sup>1</sup> TBD – Outside Date for Transition Services

practicable, any hardware, equipment, software and related items relating to the Transition Service(s) which is in Purchaser's control or possession (other than Purchased Assets) or Seller's or Parent's control or possession, as applicable.

Section 4.2 Termination by Purchaser. In addition to the termination rights in Section 1.5, Purchaser may terminate this Agreement if Seller or Parent has materially failed to perform or comply with or has materially violated any term or condition of this Agreement, or has materially failed to comply with any of its obligations under this Agreement, and has failed to cure such violation or failure to comply within fifteen (15) days after receipt of notice from Purchaser of such violation or failure to comply.

Section 4.3 Termination by Seller and Parent. Seller and Parent shall have the right to terminate this Agreement prior to the Termination Date, effective immediately upon notice to Purchaser, if Purchaser materially fails to perform or comply with or materially violates any term or condition of this Agreement, or materially fails to comply with any of its obligations under this Agreement, including, without limitation, the payment of any consideration due hereunder, and fails to cure such violation or failure to comply within fifteen (15) days after receiving written notice thereof from Seller or Parent.

## **ARTICLE V MISCELLANEOUS**

Section 5.1 Amendments. This Agreement shall not be amended or modified except in writing signed by the parties, which expresses an intention to modify or amend this Agreement.

Section 5.2 Successors and Assignment. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign any of its rights or duties pursuant to this Agreement (whether by operation of law or otherwise) without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign (whether by operation of law or otherwise) its obligations under this Agreement to any person or entity acquiring substantially all of the assets of the business unit or division to which any of the Transition Services relate.

Section 5.3 Entire Agreement. This Agreement and Exhibit A hereto embody the entire agreement and understanding of the parties hereto as to the subject matter hereof and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

Section 5.4 Notices. All notices, requests, claims, demands and other communications under this Agreement must be in writing and will be deemed given if delivered personally, or sent by a nationally recognized overnight courier service (providing proof of delivery) with a courtesy copy via fax or electronic mail to the parties at the following addresses (or at such other address for a party as is specified by like notice):

If to Seller: F3 Brands LLC  
Grant Kernan  
President  
2400 Northwest Industrial Parkway  
Miami, OK 74354  
Facsimile: (918) 542-6592

with a copy to: Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Attention: Daniel J. DeFranceschi  
Facsimile: (302) 651-7701  
email: [defranceschi@rlf.com](mailto:defranceschi@rlf.com)

If to Parent: Blitz U.S.A., Inc.  
404 26th Ave. NW  
Miami, OK 74354  
Attention: Rocky Flick  
Facsimile: (918) 542-7842  
email: [rflick@blitzusa.com](mailto:rflick@blitzusa.com)

with a copy to: Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Attention: Daniel J. DeFranceschi  
Facsimile: (302) 651-7701  
email: [defranceschi@rlf.com](mailto:defranceschi@rlf.com)

If to Purchaser: Scepter Holdings, Inc.  
170 Midwest Road  
Scarborough, Ontario M1P 3A9  
Canada  
Attention: Robert S. Torokvei  
Facsimile: (416) 751-9099  
email: [btorokvei@scepter.ca](mailto:btorokvei@scepter.ca)

with a copy to:

Borden Ladner Gervais LLP  
Scotia Plaza, 44th Floor  
40 King Street West  
Toronto, Ontario M5H 3Y4  
Canada  
Attention: James R. Elder  
Facsimile: (416) 361-7081  
email: [jelder@blg.com](mailto:jelder@blg.com)

Section 5.5 Governing Law. This Agreement is to be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof.

Section 5.6 Headings. The headings set forth in this Agreement are for convenience only and are not intended to control or affect the meaning or construction of the provisions of this Agreement.

Section 5.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect, provided that the severed provision does not frustrate the purpose of this Agreement. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, this Agreement will be modified so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 5.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument and will become effective when such counterparts have been signed by each party and delivered to the other party. Facsimile signatures and electronic signatures (including any signatures contained in a "pdf" file transmitted via electronic mail) on this Agreement will have the same legal effect as manual signatures.

Section 5.9 No Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their permitted successors or permitted assigns and their respective Affiliates referred to herein or on the exhibit hereto, any rights or remedies under or by reason of this Agreement.

Section 5.10 Independent Contractor. Nothing contained in this Agreement shall create or be deemed to create any employment, agency, joint venture or partnership relationship between Seller and Parent, on the one hand, and Purchaser on the other.

Section 5.11 Dealings with Third Parties. Except as expressly provided herein, neither party is, nor shall hold itself out to others to be, vested with any power, authority, or right to bind contractually or to act on behalf of the other party as its broker, agent, or otherwise for

the purpose of committing, selling, conveying, or transferring any of the other party's assets or property, contracting for or in the name of the other party, or making any representation binding upon such other party.

#### Section 5.12 Force Majeure.

(a) Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement, if and to the extent such default or delay is caused, directly or indirectly, by fire, explosion, cable cuts, vandalism, sabotage, power outage, flood, lightning, earthquake, elements of nature or "acts of God," war, riots, any civil or military authority (by national emergency or acts of third parties), civil disorders, rebellions, revolutions, insurrections or threats or acts of terrorism, naturally occurring or man-made obstructions to transmissions, provided the existence of such obstructions is beyond the responsible party's control, lack of or delay in transportation, government obstructions to transmissions, government codes, ordinances, laws, rules, regulations or restrictions (other than the Bankruptcy Case or any subsequent chapter 7 bankruptcy proceeding), provided that such default or delay could not have been prevented by reasonable precautions by the party with the obligation to perform and cannot be reasonably circumvented by the party with the obligation to perform through the use of alternate sources, workaround plans or other means (a "*Force Majeure Event*"). A Force Majeure Event shall not include court process or loss of money.

(b) Upon the occurrence of a Force Majeure Event, the party with the obligation to perform shall, as soon as practicable, give written notice to the other party specifying the nature and anticipated duration of the Force Majeure Event and shall be required to execute any then-existing and applicable business continuity plan. The party to whom performance is owed may terminate only the affected Transition Service(s) or applicable portion of this Agreement upon thirty (30) days' prior written notice if a Force Majeure Event continues for more than thirty (30) days unless the Force Majeure Event goes to the essence of this Agreement. In the event of such a termination, the terminating party shall only be obligated to pay for terminated services properly performed up through the date of termination.

(c) In the event of a Force Majeure Event, the party with the obligation to perform shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use Reasonable Efforts to recommence performance or observance whenever and to whatever extent possible without delay.

Section 5.13 Conflict. In case of conflict between the terms and conditions of this Agreement and Exhibit A hereto, the terms and conditions of such exhibit shall control and govern as it relates to the Transition Service to which those terms and conditions apply.

#### Section 5.14 Dispute Resolution.

(a) In the event a party hereto brings to the attention of the other parties hereto any failure to meet an obligation hereunder, in whole or in part, including any failure by Seller or Parent to provide Transition Services in accordance with the applicable service levels provided herein, the Transition Services Representative of the party so failing to perform, shall

(i) promptly investigate and notify the parties of the cause of the problem, (ii) use Reasonable Efforts to correct the problem and to resume performance as soon as practicable, and (iii) advise the parties of the status of the remedial efforts being undertaken with respect to such problems. To the extent such failure is not remedied within a reasonable time after the occurrence of the failure, any party hereto may give to the other parties notice in writing (the "**Performance Notice**") that a dispute has arisen, and during the next fifteen (15) days after the date of the Performance Notice, the parties will negotiate in good faith to resolve the dispute.

(b) In the event the dispute is still not resolved, within said fifteen (15) days, such dispute shall be settled by mediation at a time and place mutually agreeable to the parties and the mediator within Wilmington, Delaware. The costs of mediation shall be borne fifty percent (50%) by Seller and Parent on the one hand and fifty percent (50%) by Purchaser on the other. If mediation is unsuccessful, the parties shall submit to the exclusive jurisdiction of the United States Bankruptcy Court for the District of Delaware to decide any claims or disputes which may arise or result from, or be connected with, this Agreement; provided, however, that if the Bankruptcy Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

Section 5.15 Indemnification. Purchaser shall indemnify, defend and hold harmless Parent and Seller and their respective Affiliates and directors, officers, managers, employees and agents (the "**Seller Parties**") from, against and in respect of any liability, losses and damages incurred by the Seller Parties in connection with the Transition Services performed by Parent or Seller, relating to liability or claim asserted by third parties for acts or events that occur after the Closing Date (excluding acts or events that occurred, began and are continuing or accrued before the Closing Date and all obligations, liabilities and responsibilities of the Sellers as set forth and described in the Purchase Agreement); provided that Purchaser shall have no obligations under this Section 5.15 for any liability, losses and damages incurred by the Seller Parties as a result of (i) any negligent, reckless or intentionally wrongful act of the Seller Parties, (ii) any breach by Parent or Seller of any of the covenants contained in this Agreement, and (iii) any failure of Parent or Seller to perform the Transition Services in accordance with all applicable laws, rules and regulations; and provided, further, that Purchaser's obligations under this Section 5.15 shall be limited to the total amount of fees payable by Purchaser under this Agreement for the preceding twelve (12) months.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this Transition Services Agreement on the date first set forth above.

**SELLER:**

**F3 BRANDS LLC**

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

Name:

Title:

**PARENT:**

**BLITZ U.S.A., INC.**

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

Name:

Title:

**PURCHASER:**

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

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

Name:

Title:

## EXHIBIT A<sup>2</sup>

1. Shared Business Services. [Additional Details, including cost information, to be provided]
  - a. Software applications
  - b. Telecom/IT network
  - c. Voicemail
  - d. Email
2. [Books and Records
  - a. Full and complete access to all records]
3. [Tax returns - Federal, State, Property, Sales tax, R&D]
4. [Warehousing/Distribution]
5. Employees.

### Scope of Services:

[The below listed employees of Parent, and any other employees of the Parent that the Parent determines are necessary, will provide the Transition Services relating to supporting the Shared Business Services used by Seller and/or Parent prior to the Closing and that are not Purchased Assets.]

- a. [Paul Hale at \$50/hour]
- b. [Jennifer Rickey at \$25/hour]
- c. [Jody Wood at \$25/hour]

---

<sup>2</sup> *Purchaser Note to Draft:* Subject to updates.



Exhibits F

Form of Noncompetition and Nonsolicitation Agreement

**EXHIBIT F – FORM OF NONCOMPETITION AND NONSOLICITATION  
AGREEMENT**

This Noncompetition and Nonsolicitation Agreement (the “Agreement”) is entered into as of March \_\_\_\_, 2012, by and between [\_\_\_\_], a [\_\_\_\_] (“Purchaser”), and [\_\_\_\_], a [\_\_\_\_] (“Seller”).<sup>1</sup>

**RECITALS**

A. Pursuant to the Asset Purchase Agreement, dated as of March 15, 2012 (the “Purchase Agreement”), by and among Seller, Blitz U.S.A., Inc. and Purchaser, Purchaser has agreed to purchase all of Seller’s right, title and interest in and to, and/or the right to use, certain assets of the Business (as defined below) and assume certain liabilities of the Business, in each case solely upon the terms and subject to the conditions set forth in the Purchase Agreement.

B. Seller is engaged in the business of manufacturing and distributing a comprehensive assortment of automotive oil change accessories and lifting aids (through its do-it-yourself business line sold under the RhinoGear™ brand) and an assortment of various outdoor products and do-it-yourself kits (through its do-it-yourself business line sold under its 2X4basics™ brand), which, for certainty, include the Products (as such term is defined in the Purchase Agreement) (collectively, the “Business”).

C. The parties acknowledge that the relevant market for the Business is Canada, the United States and Mexico (the “Territory”).

D. Seller has a material economic interest in the consummation of the transactions contemplated by the Purchase Agreement and, in order to induce Purchaser to consummate these transactions, Seller has agreed to enter into this Agreement.

E. In order to protect trade secrets and other confidential and proprietary information related to the Business, Purchaser and Seller have agreed that Purchaser’s obligation to consummate the transactions contemplated by the Purchase Agreement is subject to the condition, among others, that Seller shall have entered into this Agreement.

F. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements hereinafter set forth, Seller and Purchaser, intending to be legally bound, hereby agree as follows:

---

<sup>1</sup> ***Purchaser Note to Draft:*** Purchaser would expect substantially similar Noncompetes from each Seller parties to the Purchase Agreement.

## ARTICLE 1 NONCOMPETITION

1. Noncompetition. As an inducement for Purchaser to enter into the Purchase Agreement and consummate the transactions contemplated thereby, and in connection with the purchase of certain assets and assumption of certain liabilities of the Business and the other transactions contemplated by the Purchase Agreement, Seller agrees that from and after the Closing Date and until five (5) years following the Closing Date (the "Noncompetition Period"), Seller shall not and will cause its Affiliates (as hereinafter defined) to not, anywhere in the Territory, directly or indirectly, without the express prior written consent of Purchaser, engage in any business or activity, whether in Seller's capacity as an advisor, manager, consultant, partner, principal, agent, representative, equity holder of any Person or in any other corporate or representative capacity (without limitation by specific enumeration of the foregoing), own, contract with or render any services or provide for compensation any advice to any business, activity or Person involving the Business to any entity that provides or performs services that are the same as (or substantially similar to) the Business (collectively, the "Competing Business"), if Seller knows or reasonably should know that such business, activity or Person engages in the Competing Business. Notwithstanding the foregoing, Seller may (a) render any services to any subsidiary, division or other business unit of an entity engaged in the Competing Business as long as (i) such subsidiary, division or other business unit is not engaged in the Competing Business and (ii) Seller does not engage in any business or activity or render any services or provide any advice involving the Competing Business and (b) own, directly or indirectly, up to one percent (1%) of any class of "publicly-traded securities" of any Person which owns or operates a business involving the Competing Business. For the purposes of this Section 1, "publicly-traded securities" shall mean securities that are traded on a national securities exchange of the United States or listed on the NASDAQ Global Market.

2. No Interference with the Competing Business; Nonsolicitation. As an inducement for Purchaser to enter into the Purchase Agreement and consummate the transactions contemplated therein, Seller agrees that during the Noncompetition Period, at any time or for any reason, Seller shall not directly or indirectly, (a) with respect to a Competing Business, solicit, call on or transact, engage or divert any business or clients or customers of the Business as of the date hereof away from Purchaser; and/or its Affiliates (b) induce customers, clients, suppliers, agents or other Persons under contract or otherwise associated or doing business with Purchaser and/or its Affiliates to reduce or alter any such association or business with Purchaser and/or its Affiliates; and/or (c) solicit any Person in the employment of Purchaser and/or its Affiliates (other than via a general advertisement or other solicitation not addressed specifically to such Person) to (i) terminate such employment, and/or (ii) accept employment, or enter into any consulting arrangement, with any Person. For purposes of this Agreement "Affiliate" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, including the Company. For the purposes of this Agreement, the term "Affiliate" does not include Reliance Products Limited Partnership or any other direct or indirect wholly-owned subsidiary of Reliance Products Holdings, Inc. Notwithstanding any provision contained herein to the contrary, in no event shall this Agreement create an obligation or have any effect on a purchaser of any assets or the business of an Affiliate of Seller (the "Affiliate Sale Transaction") and such Purchaser's ability to participate in the Competing Business if such purchaser at the

time of the Affiliate Sale Transaction is, or in the two years proceeding the date of the Affiliate Sale Transaction, was in a Competing Business.

## ARTICLE 2 CONFIDENTIALITY

Seller will hold in strict confidence, unless compelled to disclose by judicial or administrative process, or, in the opinion of its counsel, by other requirements of applicable Law, all documents or information relating to the Purchased Assets including all confidential information pertaining thereto and all documents or information relating to or otherwise made available by inspection, observation or otherwise concerning Purchaser furnished to Seller, whether disclosed in writing, orally, electronically or otherwise, in connection with the transactions contemplated under the Purchase Agreement ("Confidential Information") (except, with respect to documents and information provided by or on behalf of Purchaser to Seller, to the extent that such information can be shown to have been (i) previously known by Seller prior to its disclosure to such Seller by Purchaser, (ii) in the public domain through no fault of Seller, (iii) later lawfully acquired by Seller from other sources that are not under an obligation of confidentiality or (iv) developed by Seller independently and without reference to any confidential information of Purchaser) and will not release or disclose such Confidential Information to any third party, except in connection with the Purchase Agreement to its representatives. If Seller becomes compelled in any Proceeding (other than a Proceeding between or among the parties) or is requested by a Governmental Body having regulatory jurisdiction over the transactions contemplated by the Purchase Agreement to make any disclosure that is prohibited or otherwise constrained by this Article 2, Seller shall provide Purchaser with prompt notice of such compulsion or request so that Purchaser may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article 2. In the absence of a protective order or other remedy, Seller may disclose that portion (and only that portion) of the Confidential Information that, based upon advice of Seller's counsel, Seller is legally compelled to disclose or that has been requested by such Governmental Body; provided, however, that Seller shall use commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed.

## ARTICLE 3 REMEDIES AND CONFLICT RESOLUTION

### 1. Remedies.

A. The parties to this Agreement agree that (i) if Seller breaches Article 1 or Article 2 of this Agreement, the damage to Purchaser may be substantial, although difficult to ascertain, and money damages will not afford Purchaser an adequate remedy, and (ii) if Seller is in material breach of any provision of this Agreement, or threatens a breach of Article 1 or Article 2 of this Agreement, Purchaser shall be entitled, in addition to all other rights and remedies as may be provided by law, to seek specific performance and injunctive and other equitable relief (without prejudice to any of the rights and remedies that Purchaser may have under this Agreement) to prevent or restrain a breach of any provision of this Agreement, notwithstanding Section 3.1 of this Agreement.

B. All of the remedies expressly provided for in this Agreement are cumulative of any and all other remedies that Purchaser might have at law or in equity. In addition to the remedies provided for in this Agreement, Purchaser shall be entitled to avail itself of all such other remedies as might now or hereafter exist at law or in equity for compensation and for the specific enforcement of the covenants and agreements of Seller contained herein. Resort to any remedy provided for in this Agreement or by law shall not prevent the concurrent or subsequent use of any other appropriate remedy or remedies and shall not preclude recovery by Purchaser of monetary damages.

2. Governing Law; Arbitration. This Agreement and any disputes arising out of or related to this Agreement, whether sounding in contract, tort, or otherwise, shall be governed by and construed in accordance with the internal laws of the state of Delaware, excluding any choice of law principles. The parties hereto agree to submit to the exclusive jurisdiction of the United States Bankruptcy Court for the District of Delaware to decide any claims or disputes which may arise or result from, or be connected with, this Agreement; provided, however, that if the Bankruptcy Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

3. Acknowledgment. SELLER HAS READ AND UNDERSTANDS THIS ARTICLE 3, WHICH DISCUSSES REMEDIES AND CONFLICT RESOLUTION. SELLER UNDERSTANDS THAT BY SIGNING THIS NONCOMPETITION AND NONSOLICITATION AGREEMENT, SELLER AGREES TO SUBMIT ANY CLAIMS ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS NONCOMPETITION AND NONSOLICITATION AGREEMENT, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE, BREACH OR TERMINATION THEREOF TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, AND THAT THIS CLAUSE CONSTITUTES A WAIVER OF SELLER'S RIGHT TO A JURY TRIAL.

#### ARTICLE 4 MISCELLANEOUS

1. Entire Agreement. This Agreement (and the agreements referenced herein) between Purchaser and Seller embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein and supersedes all prior agreements and understandings between the parties hereto with respect to the subject matter hereof.

2. Amendment and Modification. This Agreement may be amended or modified only by written agreement of the parties hereto.

3. Waiver. Any failure of Seller to comply with any of its obligations or agreements herein contained may be waived only in writing by Purchaser. Any failure of Purchaser to comply with any of its obligations or agreements herein contained may be waived only in writing by Seller. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of the Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy unless the writing so specifies.

4. Representations and Warranties. Each party represents and warrants that this Agreement is a legal, valid and binding obligation, enforceable against the party in accordance with its terms to the fullest extent permitted under applicable federal, state or local law.

5. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given upon receipt of: hand delivery; certified or registered mail or return receipt requested:

A. If to Seller, to:

With a copy to:

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

B. If to Purchaser, to:

[Scepter Holdings, Inc.]  
170 Midwest Road  
Scarborough, Ontario M1P 3A9  
Canada  
Attention:  
Facsimile:  
email:

With a copy to:

Borden Ladner Gervais LLP  
Scotia Plaza, 44th Floor  
40 King Street West  
Toronto, Ontario M5H 3Y4  
Canada  
Attention: James R. Elder  
Facsimile: (416) 361-7081  
email: jelder@blg.com

Such names and addresses may be changed by written notice to each person listed above. During the Noncompetition Period, upon any change of any contact information for Seller or Purchaser, Seller or Purchaser, as applicable, will provide such other party with such change so that during such period, such other party is at all times in possession of the mailing address, telephone number and facsimile number at which Seller or Purchaser, as applicable, can be reached.

6. Necessity of Restrictions. The parties hereto acknowledge and agree that the covenants and agreements contained in this Agreement have been negotiated in good faith by the parties hereto, and are reasonable and are not more restrictive or broader than necessary to protect the interests of Purchaser and the Business, and would not achieve their intended purpose if they were on different terms or for periods of time shorter than the periods of time provided herein or applied in more restrictive geographical areas than are provided herein. Each party further acknowledges that Purchaser would not enter into the Purchase Agreement (and consummate the transactions contemplated thereby) in the absence of the covenants and agreements contained in this Agreement and that such covenants and agreements are fair and essential to protect the Business.

7. Seller's covenants set forth in this Agreement are independent covenants and the existence of any claim by it against Purchaser will not excuse its breach thereof.

8. Severability. Any provision of this Agreement which is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction. In furtherance of and not in limitation to the foregoing, should the duration or geographical extent of, or business activities covered by any provision of this Agreement be in excess of that which is valid and enforceable under applicable law, then such provisions shall be construed to cover only that duration, extent or activities which may be valid and enforceable. To the extent any provision of this Agreement shall be declared invalid or unenforceable for any reason by any Governmental Body in any jurisdiction, this Agreement (or provision thereof) shall remain valid and enforceable in each other jurisdiction where it applies. Seller acknowledges the uncertainty of the Law in this respect and expressly stipulates that this Agreement shall be given the construction which renders its provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable Law.

9. Binding Effect; No Third Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; except for Purchaser's designee under the Purchase Agreement, nothing in this Agreement, express or implied, is intended or shall be construed to confer on any Person other than the parties hereto and their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. In no event shall the purchaser in an Affiliate Sale Transaction be deemed a successor or assign of a party hereto

10. Assignability. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of each other party. Any purported transfer in violation of this Section 4.10 shall be void.

11. Independent Review and Advice. Seller represents and warrants that Seller has carefully read this Agreement; that Seller executes this Agreement with full knowledge of the contents of this Agreement, the legal consequences thereof, and any and all rights which each party may have with respect to one another; that Seller has had the opportunity to receive independent legal advice with respect to the matters set forth in this Agreement and with respect to the rights and asserted rights arising out of such matters, and that Seller is entering into this Agreement of Seller's own free will. Seller expressly agrees that there are no exceptions contrary to the Agreement and no usage of trade or regular practice in the industry shall be used to modify the Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The parties hereto agree that this Agreement shall not be construed for or against either party in any interpretation thereof.

12. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13. Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile or electronic signature), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

*[Signature page follows.]*



IN WITNESS WHEREOF, the parties hereto have executed this Noncompetition and Nonsolicitation Agreement effective as of the date first written above.

PURCHASER

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

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

Name:

Title:

SELLER

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

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

Name:

Title:

Exhibits G  
Patent and Trademark Assignments

Exhibits H-1  
Form of Deed

MAILING ADDRESS: \_\_\_\_\_

## GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That Blitz RE Holdings, LLC, a Delaware Limited Liability Company, Party of the First Part, in consideration of the sum of TEN and NO/100 DOLLARS (\$10.00) and other valuable considerations, in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto [\_\_\_\_\_] a [\_\_\_\_\_] Corporation, Party of the Second Part, the following described real property and premises situated in Ottawa County, State of Oklahoma, to-wit:

**[To be determined following a survey]**

together with all the improvements thereon and the appurtenances thereunto belonging, LESS AND EXCEPT any interest in and to oil, gas, coal and other mineral interests previously reserved or conveyed of record, and SUBJECT TO easements and rights-of-way of record or in place, restrictive covenants of record, and to zoning ordinances, and warrants the title to the same.

TO HAVE AND TO HOLD said described premises unto the said Party of the Second Party, its successors and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature, EXCEPT FOR AND SUBJECT TO those matters hereinabove set forth.

Signed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Blitz RE Holdings, LLC, a Delaware Limited Liability Company

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

(Corporation Acknowledgment)

STATE OF OKLAHOMA    )  
                                  ) ss.  
COUNTY OF OTTAWA    )

Before me, a Notary Public in and for said county and state, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012 personally appeared \_\_\_\_\_, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its \_\_\_\_\_, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of Blitz RE Holdings, LLC, for the uses and purposes therein set forth.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
Commission number: \_\_\_\_\_

Exhibits H-2  
Purchaser Real Property Map

Exhibit 2.1(g)

## SECTION 18

إيمان

WYAND, AND ADJACENT TO THE CITY OF MIAMI, OF FLORIDA COUNTY, CALHOUN, WAS NOT BEEN VACATED AND THE STREETS AND BUILDINGS SHOWN ON THE RECORDED PLAT HAVE NOT BEEN DEVELOPED. STILL, DUE TO THEORY AND EFFECTS THIS PROPERTY PLAT BOOK 17 WYND BE THE SEC. 13

**FLOOD STATEMENT**  
THIS PROPERTY IS IN FLOOD ZONE X (UNIMPAVED) AND FLOOD ZONE A IS SHOWN ADJACENT TO FIRM NO. 40055, DATED SEPTEMBER 3, 1957. THE MAJOR IMPROVEMENTS ARE IN FLOOD ZONE A (IMPAVED)

**NOTE:** THE LEGAL DESCRIPTIONS IN PARAGRAPHS 18-19 THROUGH 20-21 OF PG 18 REFLECT THE INTENT OF TRACT 1957-100. LEGAL DESCRIPTIONS THE INTENT OF TRACT 1957-100. LEGAL DESCRIPTIONS TO PARALLEL THE 40 ACRES AS IS DESCRIBED.

NOTE: TABLE A

NO 9 - THERE ARE 177 PARKING STALLS TOTAL  
(4 ARE HANDICAP & MOTORCYCLE, 168 REGULAR SIZE)

NO 16 - THERE IS NO DISAPPEARABLE EVIDENCE OF EARTH MOVING  
WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS  
WITHIN RECENT MONTHS

NO 17 - THERE ARE NO CHANGES IN STREET RIGHT OF WAY LINES  
EITHER COMPLETED OR PROPOSED AND AVAILABLE FOR  
THE CONTROLLING JURISDICTION. THERE ARE NO  
OBSERVABLE EVIDENCE OF RECENT STREET OR SIDEWALK  
CONSTRUCTION OR REPAIRS.

NO 18 - THERE IS NO DISAPPEARABLE EVIDENCE OF SITE U3 AS A

NOTE: NO OBSERVABLE EVIDENCE OF STREET OR  
SIDEWALK CONSTRUCTION

NOTE: NO OBSERVABLE EVIDENCE OF USE AS A  
CEMETERY OR BURIAL GROUNDS

NOTE: REFERENCE TO  
SLAB BUILDINGS HAVE ALL TRUE HEIGHTS AND  
ARE PROVIDED BY CLIENT DUE TO SAFETY AND  
LOGISTICAL PROBLEMS AND THEY ARE  
MEASURED FROM SLAB AND/OR TOP OF FLOOR  
TO THE TOP OF BUILDING AT THE POSITIONS  
SHOWN.

NOTE: 43 2-4 IDEAL ACRES 1,881,792.82 SQ. FT.

NOTE: NORTH PLANT ENCROACHES THE INTERIOR SOUTHERLY CORNER OF TRACT 7 BY 9" AND 2.05'-4" AS SHOWN ON PLAT. ALSO BUILDING ENCROACHES TRACT 8 ON WEST SIDE BY UP TO 3.75'-4" AS SHOWN ON PLAT.

NOTE: THERE IS A SMALL INSIGNIFICANT GAP BETWEEN TRACT 6 AND TRACT 7 OF 0.34'-4". THIS IS A METHUEN TICAL ERROR.

CONC. SLAB/PREPARE STORAGE AREA ENDOACHES  
20' GAS AND UTILITY EXHURMENT ALONG THE EAST SIDE  
TRACT 6 BUT IS INSIDE THE PROPERTY LINE.

HIGHLAND ADDITION TO THE CITY OF WYANDOTT, OTTAWA COUNTY, OKLAHOMA, HAS NOT BEEN VACATED AND THE STREETS AND LOTS ARE NOT SHOWN ON THE RECORDED PLAT HAVING NOT BEEN DEVELOPED. STILL EXIST IN THEORY AND AFFECTS THIS PROPERTY PLAT BOOK 5, PAGE 254 SEC. 13

ALABAMA LAND TITLE SURVEY  
TO  
NATURAL STATE ESTATE HOLDING, INC. & FIDELITY NATIONAL TITLE INSURANCE COMPANY

THIS IS TO CERTIFY THAT THIS MAP ON PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE MINIMUM STANDARDS SET FORTH IN THE ALABAMA LAND TITLE SURVEYS ACT, 12-1-64, AS AMENDED, AND ADOPTED BY THE BOARD OF LAND SURVEYING, AND IN ADDITION, 12-1-64, AS AMENDED, AND RE-17 AND 18 OF TITLE 17, PURSUANT TO THE ACCURACY REQUIREMENTS OF SAID ACT, AND IN FULL COMPLIANCE WITH THE STANDARDS OF THE PROFESSION UNDERSTANDING FURTHER CERTIFIED THAT BY MY PROFESSIONAL OPINION, AS A LAND SURVEYOR REPRESENTING THE STATE OF ALABAMA, THE RELATIVE POSITIONAL ACCURACY OF THE SURVEY DOES NOT EXCEED THAT WHICH IS SPECIFIED THEREIN.

DATE: Aug. 22, 2007

William McKinley Thompson  
WILLIAM MCKINLEY THOMPSON, F. & L. S. 81342

ALABAMA LAND TITLE SURVEY  
FIDELITY NATIONAL TITLE INSURANCE COMPANY  
THIS SURVEYOR CERTIFIES THAT THIS MAP ON PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE MINIMUM STANDARDS SET FORTH IN THE ALABAMA LAND TITLE SURVEYS ACT, 12-1-64, AS AMENDED, AND ADOPTED BY THE BOARD OF LAND SURVEYING, AND IN ADDITION, 12-1-64, AS AMENDED, AND RE-17 AND 18 OF TITLE 17, PURSUANT TO THE ACCURACY REQUIREMENTS OF SAID ACT, AND IN FULL COMPLIANCE WITH THE STANDARDS OF THE PROFESSION UNDERSTANDING FURTHER CERTIFIED THAT BY MY PROFESSIONAL OPINION, AS A LAND SURVEYOR REPRESENTING THE STATE OF ALABAMA, THE RELATIVE POSITIONAL ACCURACY OF THE SURVEY DOES NOT EXCEED THAT WHICH IS SPECIFIED THEREIN.

DATE: Aug. 22, 2007

William McKinley Thompson  
WILLIAM MCKINLEY THOMPSON, F. & L. S. 81342

ALABAMA LAND TITLE SURVEY  
FIDELITY NATIONAL TITLE INSURANCE COMPANY

**FLOOD NOTE:** This graphic is for informational purposes only. This property is in Zone "X" (AE) and is not in the Flood Insurance Rate Map. Community Flood No. 408157 0000 E, which carries an effective date of 10/1/2002, and falls into a Special Flood Hazard area. By telephone you can call the National Flood Insurance Program at (1-800-426-8025) to learn if this community is participating in the program. No field surveying was performed to determine this limit and an elevation certificate may be needed to verify the information or apply for a variance from the Federal Emergency Management Agency.

<b>SURVEY</b> <b>AMERICA, INC.</b> 1750 West 10th Street Suite 400 Minneapolis, MN 55408 Phone 612-338-2200 Fax 612-338-2201 Telex 236421 E-mail: info@surveymark.com	DATE 02/04/97 TIME 4:53 FILE NO. 201001	AS A <u>FOCUS</u> <u>MARKED</u> <u>TEST</u> <u>SURVEY</u> SITE MILCO, U.S.A. MILWAU, WI 53234	
	PROJECT NO. 0000000000 SURVEY NO. 0000000000 REPORT NO. 0000000000	VISITOR'S NAME C/O MILCO, INC. C/O MILCO, INC. C/O MILCO, INC. C/O MILCO, INC.	MAIL-POSTING (YES/NO) YES/NO (PAGE) YES/NO (PAGE) YES/NO (PAGE)

## General depiction of Purchased Real Property

## **Exhibit B**

### **Amended Bidding Procedures Order**

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

---

**In re:**

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

**Debtors.**

---

)  
) **Chapter 11**  
)  
) **Case No. 11-13603 (PJW)**  
)  
) **(Jointly Administered)**  
)  
) **Re: Docket No. 230, 271**

**AMENDED 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 (collectively, the "Assets"), consisting of substantially all of the assets of F3 Brands LLC and certain related real estate and other assets which are owned by the Debtors Blitz RE Holdings, LLC and/or Blitz U.S.A., Inc., free and clear of all claims (as defined in section 101(5) of the Bankruptcy Code) and any other interests, liens, mortgages, pledges, security interests, rights of first refusal, obligations and encumbrances of any kind whatsoever (collectively, the "Interests"), as more fully described and except to the extent identified in the Stalking Horse APA (as defined below)

---

<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 or the Stalking Horse APA.



or the asset purchase agreement of any other Successful Bidder (as defined in the Bidding Procedures), as applicable; (B) approving the proposed bid protections, the break-up fee (the “Break-Up Fee”, as defined in the Stalking Horse APA) and the Initial Overbid Amount (as defined in the Bidding Procedures) (the Break-Up Fee and the Initial Overbid Amount together, the “Bid Protections”), to Scepter Holdings Inc. (the “Stalking Horse Bidder”) in accordance with that certain Asset Purchase Agreement dated March 15, 2012, (the “Stalking Horse APA”) for the purchase of the Assets; (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. The Debtors have demonstrated a compelling and sound business justification for approving the payment of the Break-Up Fee under the circumstances and timing set forth in the Motion and Stalking Horse APA.

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

H. 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.

I. 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 26, 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. The Stalking Horse Bidder is deemed a Qualified Bidder, and the Stalking Horse Bidder's bid for the Assets is deemed a Qualified Bid. In the event there are no other

Qualifying Bids, the Debtors shall accept the Stalking Horse Bid and the Stalking Horse shall be the Successful Bidder.

### **THE BID PROTECTIONS**

7. The Bid Protections set forth in the Bidding Procedures including the Break-Up Fee and the minimum overbid are a reasonable inducement for the Stalking Horse Bidder's offer to purchase the Assets on the terms set forth in the Stalking Horse APA and compensation for the risks and lost opportunity costs incurred by the Stalking Horse Bidder. Solely for the purposes of determining a Successful Bid, any overbid submitted by the Stalking Horse Bidder shall be credited for the full amount of the Break-Up Fee potentially payable by the Debtors.

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

9. Pursuant to sections 105, 363, 364, 503, 506 and 507 of the Bankruptcy Code, the Debtors are hereby authorized to pay, without further order of this Court, the Break-Up Fee pursuant to the terms and conditions set forth in the Stalking Horse APA. In connection therewith, the Debtors' obligation to pay the Break-Up Fee, as provided by the Stalking Horse

APA, shall survive termination of the Stalking Horse APA and, until paid in accordance with the Stalking Horse APA, shall constitute a superpriority administrative expense claim in favor of the Purchaser having superpriority, under section 364(c) of the Bankruptcy Code, payable out of the proceeds of a Competing Transaction (which shall be senior to any and all liens and claims of any creditors of or holders of equity interests in the Debtors, including pre-petition and post-petition amounts owing to the Debtors' pre-petition and post-petition senior secured lenders). To the extent that the Stalking Horse Bidder is not the Successful Bidder, the Successful Bidder is authorized and directed to pay the Break-Up Fee directly to the Stalking Horse Bidder by wire transfer of immediately available good funds to an account specified by the Stalking Horse Bidder at the closing of any transaction involving the Assets with the Successful Bidder. To the extent for any reason the Successful Bidder fails to pay the Break-Up Fee directly to the Stalking Horse Bidders, the Debtors are authorized and directed to pay the Break-Up Fee to the Purchasers without further order of the Court, out of the proceeds received from the Competing Transaction, when and as provided in Section 9.4 of the Stalking Horse APA. In the event that the DIP Lenders and the Prepetition Lenders submit a credit bid for the Assets, the Break-Up Fee shall be paid by the DIP Lender and the Prepetition Lenders, when and as provided in Section 9.4 of the Stalking Horse APA.

10. The Break-Up Fee is hereby approved and shall be paid to the Stalking Horse Bidder as set forth in Section 9.4 of the Stalking Horse APA. The Break-Up Fee shall be paid only if a Competing Transaction occurs and closes within six (6) months of the Auction.

11. The Break-Up Fee shall be the sole remedy of the Stalking Horse Bidder if the Stalking Horse APA is terminated under circumstances where the Break-Up Fee is payable.

### **ADDITIONAL NOTICE PROVISIONS**

12. On February 28, 2012 (the “Mailing Date”) the Debtors (or their agents) served the *Notice of Sale of Certain Assets Free and Clear of Liens, Claims, Encumbrances and Interests* [Docket No. 277] and a copy of *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* [Docket No. 275] (the “Original 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. The Debtors shall serve this Bidding Procedures Order upon all of the foregoing parties by first class mail within two (2) business day following the entry of this Bidding Procedures Order.

### **CURE PROCEDURES**

13. The Cure Procedures are approved.

14. On or before March 21, 2012, the Debtors shall serve upon the Debtors’ master creditor matrix, by first class mail, postage pre-paid, a 2-page supplemental notice of the

Sale Hearing and Objection Deadline, in a form agreed upon by Purchaser and Debtors. In advance of such mailing, \$3,500 shall be paid to the Debtors by Purchaser to defray the copying and postage costs for such mailing; *provided, however*, that such \$3,500 shall be added to the amount of the Break-Up Fee and payable to Purchaser when, if and as the Break-Up Fee is payable.

15. On February 10, 2012, March 9, 2012 and March 13, 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 (together with any subsequent notices identifying 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 or any subsequent Cure Notice, with this Court and served or shall serve 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 or any subsequent Cure Notice.

16. 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.

17. All objections by non-debtor parties to the Cure Amount, must be filed within fourteen (14) days after service of the applicable 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”).

18. 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.

19. 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.

20. 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.

21. 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.

22. 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**

23. 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.

24. 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 28, 2012 at 10:00 a.m. (prevailing Eastern Time), unless otherwise continued upon request by the Debtors.

25. Objections, if any, to any Sale must be filed by March 23, 2012 at 12:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline") and Objections if any, to the selection of the Successful Bidder or Successful Bidders (other than the Stalking Horse Bidder) or the Auction must be filed by March 27, 2012 at 12:00 p.m. (prevailing Eastern Time). Any and all Objections must be served on (i) counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, (Attn: Daniel J. DeFranceschi, Esq. 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 the Stalking Horse Bidder, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, Delaware 19801 (Attn: David M. Fournier); and (v) all other parties that have requested notice in these cases.

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

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

28. 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.

29. 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.

30. Notwithstanding anything to the contrary in the Motion, Bidding Procedures or this Bidding Procedures Order, the DIP Lenders and Prepetition Lenders reserve the right, to the extent permitted by Section 363(K) of the Bankruptcy Code, to submit a credit bid for the Assets. Notwithstanding any credit bid by the DIP Lenders, such credit bid shall not prejudice or impair the rights granted to the Committee in the Final Order Under 11 U.S.C. §§ 105(a), 361, 363 and 364 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors

to Incur Postpetition Secured Indebtedness, (II) Granting Security Interests and Superpriority Claims, and (III) Approving the Use of Cash Collateral entered on December 12, 2011 [Docket No. 132] (the "Final DIP Order").

31. 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, the Stalking Horse APA, the Bidding Procedures and the implementation of this Bidding Procedures Order.

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

---

THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit 1**

## **Bidding Procedures**

## Amended Bidding Procedures

On November 9, 2011, Blitz U.S.A, Inc. ("Blitz"), and 5 of its affiliates (collectively, the "Debtors") filed voluntary petitions under chapter 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Debtors' cases are jointly administered for procedural purposes under Case No. 11-13603 (PJW). As more fully described in the Stalking Horse APA (as defined below), the Debtors F3 Brands LLC, Blitz U.S.A., Inc. and Blitz RE Holdings, LLC seek to sell substantially all of the assets of F3 Brands LLC and certain real estate and other assets relating to the F3 Brands LLC business line (collectively, the "Assets") pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Sale").

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

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

On 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*; (as supplemented by the Debtors on March 15, 2012, the "Bidding Procedures and Sale Motion"). On February 24, 2012, the Bankruptcy Court entered an order approving the Bidding Procedures (the "Original Bidding Procedures Order"). The Original Bidding Procedures Order also set March 28, 2012 as the date the Bankruptcy Court will conduct the Sale Hearing. On March \_\_, 2012, the Bankruptcy Court entered the Amended Bidding Procedures Order amending the Original Bidding Procedures Order and approving the Amended Bidding Procedures as set forth herein. At the Sale Hearing, the Debtors shall seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets of the Debtors to the Stalking Horse Bidder or the Successful Bidder at the Auction.

### **Assets to be Sold**

The Debtors are offering for sale 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 Original Bidding Procedures Order or the Amended 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 Committee and 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 the Stalking Horse APA (including the deadlines therein), (ii) the Bid Deposit Requirement (as defined below), and (iii) the Bid Protections (as defined below) granted to the Stalking Horse Bidder herein.

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

The Stalking Horse Bidder is a Qualified Bidder and entitled to participate in the Bidding Process. Any other person that wishes to participate in the Bidding Process (a "Potential Bidder") must become a "Qualified Bidder." As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver (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 Jeffrey Prol) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Francis A. Monaco, Jr.) not later than 12:00 p.m. on March 23, 2012 (the "Bid Deadline"), 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 Stalking Horse APA (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 (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. The Stalking Horse Bidder also is a Qualified Bidder. A bid from a Qualified Bidder is a “Qualified Bid.”

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

The Debtors, in consultation with the Committee and the 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. As soon as practicable after determination that a bid is a Qualified Bid, and in any event prior to the commencement of the Auction, the Debtors shall provide copies of such Qualified Bidder’s Marked Agreement to the Stalking Horse Bidder and all other Qualified Bidders.

#### Access to Due Diligence Materials

Only the Stalking Horse Bidder and 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 the Bid Deadline; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Amended Bidding Procedures.

### Due Diligence From Bidders

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

### Credit Bid

The DIP Lenders and the Prepetition Lenders reserve the right to the extent permitted by Section 363(k) of the Bankruptcy Code, to submit a credit bid for the Assets. Notwithstanding any credit bid by the Dip Lenders, such credit bid shall not prejudice or impair the rights granted to the Committee in the Final DIP Order Under 11 U.S.C. §§ 105(a), 361, 363 and 364 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors To Incur Postpetition Secured Indebtedness, (II) Granting Security Interests and Superpriority Claims, and (III) Approving the Use of Cash Collateral, entered on December 12, 2011 [Docket No. 132] (the “Final DIP Order”).

### “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 Amended Bidding Procedures or as set forth in a definitive purchase agreement with the Debtors.

### Free of Any and All Interests

Except as otherwise provided in the Stalking Horse APA or another Successful Bidder’s purchase agreement all of the Debtors’ right, title and interest in and to the Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “Interests”) to the maximum extent

permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Interests applied against the Assets.

### **The Auction and Auction Procedures**

If a Qualified Bid, other than that submitted by the Stalking Horse Bidder, has been received by the Debtors, the Debtors may conduct an auction (the "Auction") with respect to all or some of the Assets. The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (the "Auction Site") at 10:00 a.m. (prevailing Eastern time) on March 26, 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.

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" and the Qualified Bidder submitting the Successful Bid, the "Successful Bidder"). 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).

### **Break-Up Fee**

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary and entering into the Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Asset Purchase Agreement, a break-up fee in the amount of \$438,500.00 (the "Break-Up Fee"). The Debtors will take into account the Break-Up Fee in each round of bidding.

The Break-Up Fee was a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse APA. The Break-Up Fee shall be payable as set forth herein and in the Amended Bidding Procedures Order and Section 9.4 of the Stalking Horse APA.

### **Overbid Amount; Minimum Bid Increment**

There shall be an overbid amount that a Potential Bidder must bid to exceed the Stalking Horse Bid ("Initial Overbid Amount") in order to be deemed a Qualified Bidder, and that amount shall be at least the purchase price under the Stalking Horse APA, plus the amount of 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 (less an amount equal to the Bid Protections where such subsequent bid is made by the Stalking Horse Bidder) subject to the Debtors' ability to adjust the bidding increments in accordance with the Amended 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 (as defined below) shall be held by the Escrow Agent in an escrow account until: (a) the earlier of 30 days following May 15, 2012 (the "Termination Date") or two (2) business days after the Closing of the transaction contemplated by the Successful Bid, or (b) such other time as may be agreed to by the Debtors and the Back-Up

Bidder or as ordered by the Court, and thereafter returned to the Back-up Bidder. Bid Deposits of all other Qualified Bidders shall be held in an escrow account until no later than the earlier of fifteen (15) days following the auction or two (2) business days after the Sale Hearing, and thereafter returned to the respective bidders.

### **Sale Hearing**

A Sale Hearing is scheduled for March 28, 2012 at 10:00 a.m. (prevailing Eastern Time) in the Bankruptcy Court with Objections, if any, to any Sale must be filed by March 23, 2012 at 12:00 p.m. (prevailing Eastern Time) and Objections, if any, to the selection of the Successful Bidder or Successful Bidders (other than the Stalking Horse Bidder) or the Auction must be filed by March 27, 2012 at 12:00 p.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: (a) the earlier of 30 days following the Termination Date or the two (2) business days following after the Closing of the transaction contemplated by the Successful Bid, or (b) such other time as may be agreed to by the Debtors and the Back-Up Bidder or as ordered by the Court. The Debtors, in the exercise of their business judgment, in consultation with the DIP Lenders and the Committee, reserve their right to the extent consistent with the Stalking Horse APA 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 Amended 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 Original Bidding Procedures Order, the Amended 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) other than rights specifically inuring to the benefit of the Stalking Horse Bidder.

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

**Exhibit C**

**Blackline of Bidding Procedures Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

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

Debtors.

)  
) Chapter 11  
)  
) Case No. 11-13603 (PJW)  
)  
) (Jointly Administered)  
)  
) Re: Docket No. 230, 271

**AMENDED 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"~~) collectively, the "Assets", consisting of substantially all of the assets of F3 Brands LLC and certain related real estate and other assets which are owned by the Debtors Blitz RE Holdings, LLC and/or Blitz U.S.A., Inc., 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 the~~ Stalking Horse APA (as

<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 or the Stalking Horse APA.



defined below) 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 approving the proposed bid protections, the break-up fee (the “Break-Up Fee”, as defined in the Stalking Horse APA) and the Initial Overbid Amount (as defined in the Bidding Procedures) (the Break-Up Fee and the Initial Overbid Amount together, the “Auction”)~~ and ~~sale hearing Bid Protections”~~), to Scepter Holdings Inc. (the “Sale Hearing”) for the Sale of the Assets and ~~approving the form and manner of notice thereof~~ the “Stalking Horse Bidder”) in accordance with that certain Asset Purchase Agreement dated March 15, 2012, (the “Stalking Horse APA”) for the purchase of the Assets; (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-§§ 157~~ and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. ~~§ 157~~ § 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. The Debtors have demonstrated a compelling and sound business justification for approving the payment of the Break-Up Fee under the circumstances and timing set forth in the Motion and Stalking Horse APA.

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

H. 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.

I. 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~~26~~, 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 shall select a Stalking Horse Bidder and a Stalking Horse Bid, after in~~ consultation with BOKF, N.A. d/b/a Bank of Oklahoma (the "DIP Lenders") and the ~~official committee of unsecured creditors~~ Official Committee of Unsecured Creditors (the "Committee"). ~~The Debtors, in consultation with the DIP Lenders and 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. ~~6.~~ 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. ~~7.~~ Any ~~The~~ Stalking Horse Bidder selected in accordance with the Bid Procedures will be is deemed a Qualified Bidder, and such ~~the~~ Stalking Horse Bidder's bid for the Assets will be is deemed a Qualified Bid. In the event there are no other Qualifying Bids, the Debtors shall accept such ~~the~~ Stalking Horse Bid and the Stalking Horse Bidder shall be the Successful Bidder.

#### **THE BID PROTECTIONS**

**PROCEDURES** ~~8.~~ 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.

7. The Bid Protections set forth in the Bidding Procedures including the Break-Up Fee and the minimum overbid are a reasonable inducement for the Stalking Horse Bidder's offer to purchase the Assets on the terms set forth in the Stalking Horse APA and compensation for the risks and lost opportunity costs incurred by the Stalking Horse Bidder.

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

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

9. Pursuant to sections 105, 363, 364, 503, 506 and 507 of the Bankruptcy Code, the Debtors are hereby authorized to pay, without further order of this Court, the Break-Up Fee pursuant to the terms and conditions set forth in the Stalking Horse APA. In connection therewith, the Debtors' obligation to pay the Break-Up Fee, as provided by the Stalking Horse APA, shall survive termination of the Stalking Horse APA and, until paid in accordance with the Stalking Horse APA, shall constitute a superpriority administrative expense claim in favor of the Purchaser having superpriority, under section 364(c) of the Bankruptcy Code, payable out of the proceeds of a Competing Transaction (which shall be senior to any and all liens and claims of any creditors of or holders of equity interests in the Debtors, including pre-petition and post-petition amounts owing to the Debtors' pre-petition and post-petition senior secured lenders). To the extent that the Stalking Horse Bidder is not the Successful Bidder, the Successful Bidder is

authorized and directed to pay the Break-Up Fee directly to the Stalking Horse Bidder by wire transfer of immediately available good funds to an account specified by the Stalking Horse Bidder at the closing of any transaction involving the Assets with the Successful Bidder. To the extent for any reason the Successful Bidder fails to pay the Break-Up Fee directly to the Stalking Horse Bidders, the Debtors are authorized and directed to pay the Break-Up Fee to the Purchasers without further order of the Court, out of the proceeds received from the Competing Transaction, when and as provided in Section 9.4 of the Stalking Horse APA. In the event that the DIP Lenders and the Prepetition Lenders submit a credit bid for the Assets, the Break-Up Fee shall be paid by the DIP Lender and the Prepetition Lenders, when and as provided in Section 9.4 of the Stalking Horse APA.

10. The Break-Up Fee is hereby approved and shall be paid to the Stalking Horse Bidder as set forth in Section 9.4 of the Stalking Horse APA. The Break-Up Fee shall be paid only if a Competing Transaction occurs and closes within six (6) months of the Auction.

11. The Break-Up Fee shall be the sole remedy of the Stalking Horse Bidder if the Stalking Horse APA is terminated under circumstances where the Break-Up Fee is payable.

### **ADDITIONAL NOTICE PROVISIONS**

12.     ~~9.~~ Within two (2) days after the entry of this Bidding Procedures Order On February 28, 2012 (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 served the Notice of Sale of Certain Assets Free and Clear of Liens, Claims, Encumbrances and Interests [Docket No. 277] and a copy of 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 [Docket No. 275] (the "Original 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. The Debtors shall serve this Bidding Procedures Order upon all of the foregoing parties by first class mail within two (2) business day following the entry of this Bidding Procedures Order.

### **CURE PROCEDURES**

13.     ~~10.~~ The Cure Procedures are approved.



14.     On or before March 21, 2012, the Debtors shall serve upon the Debtors' master creditor matrix, by first class mail, postage pre-paid, a 2-page supplemental notice of the Sale Hearing and Objection Deadline, in a form agreed upon by Purchaser and Debtors. In advance of such mailing, \$3,500 shall be paid to the Debtors by Purchaser to defray the copying and postage costs for such mailing; provided, however, that such \$3,500 shall be added to the amount of the Break-Up Fee and payable to Purchaser when, if and as the Break-Up Fee is payable.

15.     ~~11:~~On February 10, 2012, March 9, 2012 and March 13, 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 ((together with any subsequent notices identifying 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 or any subsequent Cure Notice, with this Court and served or shall serve 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 or any subsequent Cure Notice.

16.     ~~12:~~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.

17. ~~13.~~All objections by non-debtor parties to the Cure Amount, must be filed within fourteen (14) days after service of the applicable 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”).

18. ~~14.~~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.

19. ~~15.~~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.

20. ~~16.~~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.

21. ~~17.~~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.

22. ~~18.~~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**

23. ~~19.~~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.

24. ~~20.~~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 28, 2012 at ~~1:30 p.m.~~10:00 a.m. (prevailing Eastern Time), unless otherwise continued upon request by the Debtors.

25. ~~21.~~Objections, if any, to any Sale must be filed by March 23, 2012 at 12:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline") and Objections if any, to the selection of the Successful Bidder or Successful Bidders (other than the Stalking Horse Bidder) or the Auction must be filed by March ~~26~~27, 2012 at 12:00 p.m. (prevailing Eastern Time). Any and all Objections must be served on (i) counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, (Attn:

Daniel J. DeFranceschi, Esq. 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~~ the Stalking Horse Bidder, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, Delaware 19801 (Attn: David M. Fournier); and (v) all other parties that have requested notice in these cases.

26. ~~22.~~ This Bidding Procedures Order shall be binding on and inure to the benefit of the Debtors, without limitation, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

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

28. ~~24.~~ 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.

29. ~~25.~~ 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.

30. ~~26.~~ Notwithstanding anything to the contrary in the Motion, Bidding Procedures or this Bidding Procedures Order, the DIP Lenders and Prepetition Lenders reserve the right, to the extent permitted by Section 363(K) of the Bankruptcy Code, to submit a credit

bid for the Assets. Notwithstanding any credit bid by the DIP Lenders, such credit bid shall not prejudice or impair the rights granted to the Official Committee of Unsecured Creditors in the Final Order Under 11 U.S.C. §§ 105(a), 361, 363 and 364 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors to Incur Postpetition Secured Indebtedness, (II) Granting Security Interests and Superpriority Claims, and (III) Approving the Use of Cash Collateral entered on December 12, 2011 [Docket No. 132] (the "Final DIP Order").

~~27. Notwithstanding anything to the contrary in the Motion, Bidding Procedures or this Order, the DIP Lenders, Prepetition Lenders, the Committee, and the U.S. Trustee reserve the right to object to any application or request for approval of Bid Protections.~~

31. ~~28.~~ 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~~ the Stalking Horse APA, the Bidding Procedures and the implementation of this Bidding Procedures Order.

Dated: ~~February~~ March, 2012  
Wilmington, Delaware

---

THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit 1**

## **Bidding Procedures**

## Amended 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~~ As more fully described in the Stalking Horse APA (as defined below), the Debtors, F3 Brands LLC seeks, Blitz U.S.A., Inc. and Blitz RE Holdings, LLC seek to sell all or substantially all of its assets (the assets of F3 Brands LLC and certain real estate and other assets relating to the F3 Brands LLC business line (collectively, the "Assets") pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Sale").

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

The Debtors, after consultation with the official committee of unsecured creditors (the "Committee") and BOKF, NA d/b/a Bank of Oklahoma, as the Debtors' pre- and postpetition secured lender (the "DIP Lenders"), ~~expect to enter have entered~~ into an asset purchase agreement (the "Stalking Horse APA") with a ~~stalking horse bidder~~ Scepter Holdings Inc. (the "Stalking Horse Bidder") on or before February 27, 2012 to establish a minimum bidding price for the Debtors' Assets.

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; (as supplemented by the Debtors on March 15, 2012, the "Bidding Procedures and Sale Motion"). On February 23~~24~~, 2012, the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the "Original Bidding Procedures Order"). The Original Bidding Procedures Order also set March 28, 2012 as the date the Bankruptcy Court will conduct the Sale Hearing. On March , 2012, the Bankruptcy Court entered the Amended Bidding Procedures Order amending the Original Bidding Procedures Order and approving the Amended Bidding Procedures as set forth herein. At the Sale Hearing, the Debtors shall seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets of the Debtors to the Stalking Horse Bidder or the Successful Bidder at the Auction.*

### **Assets to be Sold**

The Debtors are offering for sale 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 Original Bidding Procedures Order or the Amended 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 Committee and 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-the~~ the Stalking Horse APA (including the deadlines therein), (ii) the Bid Deposit Requirement (as defined below), and (iii) ~~any-bid-protections-the~~ the Bid Protections (as defined below) granted to the Stalking Horse Bidder herein.

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

~~Any-The~~ The Stalking Horse Bidder is a Qualified Bidder and entitled to participate in the Bidding Process. Any other person that wishes to participate in the Bidding Process (a "Potential Bidder") must become a "Qualified Bidder." As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver (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~~Jeffrey Prol) 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~~ not later than 12:00 p.m. on March 24~~23~~, 2012 (the "Bid Deadline"), 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 Stalking Horse APA (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") ~~pus~~ 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. The Stalking Horse Bidder also is a Qualified Bidder. A bid from a Qualified Bidder is a “Qualified Bid.”

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

The Debtors, in consultation with the Committee and the 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. As soon as practicable after determination that a bid is a Qualified Bid, and in any event prior to the commencement of the Auction, the Debtors shall provide copies of such Qualified Bidder’s Marked Agreement to the Stalking Horse Bidder and all other Qualified Bidders.

#### Access to Due Diligence Materials

Only the Stalking Horse Bidder and 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 bid~~the Bid Deadline; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Amended Bidding Procedures.

### Due Diligence From Bidders

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

### Credit Bid

The DIP Lenders and the Prepetition Lenders reserve the right to the extent permitted by Section 363(k) of the Bankruptcy Code, to submit a credit bid for the Assets. Notwithstanding any credit bid by the Dip Lenders, such credit bid shall not prejudice or impair the rights granted to the Committee in the Final DIP Order Under 11 U.S.C. §§ 105(a), 361, 363 and 364 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors To Incur Postpetition Secured Indebtedness, (II) Granting Security Interests and Superpriority Claims, and (III) Approving the Use of Cash Collateral, entered on December 12, 2011 [Docket No. 132] (the “Final DIP Order”).

### “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 Amended 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 ~~the~~ Stalking Horse APA or another Successful Bidder’s purchase agreement all of the Debtors’ right, title and interest in and to the Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “Interests”) to the maximum

extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Interests applied against the Assets.

### **The Auction and Auction Procedures**

If a Qualified Bid, other than that submitted by the Stalking Horse Bidder, has been received by the Debtors, the Debtors may conduct an auction (the "Auction") with respect to all or some of the Assets. The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (the "Auction Site") at 10:00 a.m. (prevailing Eastern time) on March 23~~26~~, 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" and the Qualified Bidder submitting the Successful Bid, the "Successful Bidder"). 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**

### **Break-Up Fee**

To provide an incentive and to compensate ~~a~~ the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary ~~to enter and entering~~ into the Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed to pay the Stalking Horse Bidder, may seek approval of certain bid protections under the conditions outlined herein and in the Stalking Horse Asset Purchase Agreement, a break-up fee in the amount of \$438,500.00 (the "Bid Protections"). ~~The Debtor shall seek approval of any Bid Protections in accordance with the procedures established in the Bidding Procedures Order Break-Up Fee).~~ The Debtors will take into account ~~any Bid Protections~~ the Break-Up Fee in each round of bidding.

~~Any Bid Protections~~ The Break-Up Fee was a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse APA. The Break-Up Fee shall be payable as set forth in any Court order approving the same, herein and in the Amended Bidding Procedures Order and Section 9.4 of the Stalking Horse APA.

~~The DIP Lenders, the Prepetition Lenders, the Committee and the U.S. Trustee reserve the right to object to any application or request for approval of Bid Protections.~~

### **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 (less an amount equal to the Bid Protections where such subsequent bid is made by the Stalking Horse Bidder) subject to the Debtors' ability to adjust the bidding increments in accordance with the Amended 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 (as defined below) shall be held by the Escrow Agent in an escrow account until: (a) the earlier of 30 days following May 15, 2012 (the "Termination Date") or two (2) business days after the Closing of the transaction contemplated by the Successful Bid, or (b) such other time as may be agreed to by the Debtors and the Back-Up Bidder or as ordered by the Court, and thereafter returned to the Back-up Bidder. Bid Deposits of all other Qualified Bidders shall be held in an escrow account until no later than the earlier of fifteen (15) days following the auction or two (2) business days after the Sale Hearing, and thereafter returned to the respective bidders.

### **Sale Hearing**

A Sale Hearing is scheduled for March 28, 2012 at ~~1:30 p.m.~~10:00 a.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., if any, to any Sale must be filed by March 23, 2012 at 12:00 p.m. (prevailing Eastern Time) and Objections, if any, to the selection of the Successful Bidder or Successful Bidders (other than the Stalking Horse Bidder) or the Auction must be filed by March 27, 2012 at 12:00 p.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;~~ (a) the earlier of 30 days following the Termination Date or the two (2) business days following after the Closing of the transaction contemplated by the Successful Bid, or (b) such other time as may be agreed to by the Debtors and the Back-Up Bidder or as ordered by the Court. The Debtors, in the exercise of their business judgment, in consultation with the DIP Lenders and the Committee, reserve their right to the extent consistent with the Stalking Horse APA 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 Amended 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 Original Bidding Procedures Order, the Amended 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) other than rights specifically inuring to the benefit of the Stalking Horse Bidder.

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