

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

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**In re:**

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

**Debtors.**

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)  
) **Chapter 11**  
)  
) **Case No. 11-13603 (PJW)**  
)  
) **(Jointly Administered)**  
)  
) **Re: Docket No. 574 & 618**

**NOTICE OF SELECTION OF “STALKING HORSE” BIDDER AND HEARING  
TO APPROVE PROPOSED BIDDING PROTECTIONS  
WITH RESPECT TO THE STALKING HORSE BIDDER**

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

**PLEASE TAKE FURTHER NOTICE THAT**, on July 17, 2012, the Court entered the *Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to be Assigned; and (E) Granting Certain Related Relief* [Docket No. 618] (the “Original Bidding Procedures Order”), which, among other things, approved the Bidding Procedures.

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



**PLEASE TAKE FURTHER NOTICE THAT**, 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”) 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**, the Original Bidding Procedures Order authorized the Debtors to seek approval of bidding protections upon seven (7) days notice. The Stalking Horse APA provides for certain bidding protections as set forth in the Stalking Horse APA and the Bidding Protections Order (defined below).

**PLEASE TAKE FURTHER NOTICE THAT**, in selecting the Stalking Horse Bidder and in negotiating the Stalking Horse APA, the Debtors have agreed to supplement the Original Bidding Procedures Order as set forth in the proposed order attached hereto as **Exhibit “B”** (the “Bidding Protections Order”) and related amended Bidding Procedures.

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to Section 7.7 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 and expense reimbursement in the amount of \$285,000.00 (the “Break-Up Fee and Expense Reimbursement Amount”). The Bidding Protections Order provides for payment of the Break-Up Fee and Expense Reimbursement Amount (under the conditions outlined in the Stalking Horse APA) and certain additional bid protections (collectively, the “Bid Protections”).

**PLEASE TAKE FURTHER NOTICE THAT**, a hearing is scheduled for **August 30, 2012 at 3:00 p.m. (Eastern Time)** (the “Hearing”) to consider (i) approval of the Bid Protections and (ii) entry of the Bidding Protections 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 **August 29, 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, DE 19801 (Attn: Daniel J. DeFranceschi and Paul N. Heath); (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); (iv) 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 (v) counsel to the Stalking Horse Bidder, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, DE 19801 (Attn: David M. Fournier and Evelyn J. Meltzer)

Dated: August 23, 2012  
Wilmington, Delaware

/s/ Amanda R. Steele

Daniel J. DeFranceschi (No. 2732)

Michael J. Merchant (No. 3854)

Julie A. Finocchiaro (No. 5303)

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*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Stalking Horse APA**

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

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

**BLITZ RE HOLDINGS, LLC**

**AND**

**SCEPTER HOLDINGS INC.**

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Dated as of August 23, 2012

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Exhibits

- |   |  |
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| C | Description of Purchased Real Property |
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## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of August 23, 2012 (the “Effective Date”), by and among Blitz U.S.A., Inc., an Oklahoma corporation (“Blitz USA”), Blitz RE Holdings, LLC, a Delaware limited liability company (“Blitz RE” and together with Blitz USA, each, a “Seller” and jointly, “Sellers”), and Scepter Holdings Inc., a Canadian corporation (“Purchaser”). Sellers 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 shall have the meaning ascribed to them in Section 1.1 of this Agreement.

### W I T N E S S E T H:

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

WHEREAS, Sellers operated the Business until the Business Shutdown Effective Time as debtors in possession and have ceased operations as of the Business Shutdown Effective Time, other than with respect to administrative activities related to human resources, accounting, the Bankruptcy Case and the maintenance and securing of the assets of Sellers;

WHEREAS, each Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Sellers, a limited number of assets of Sellers and certain enumerated contract liabilities of Sellers, in each case as expressly provided herein;

WHEREAS, Purchaser does not desire to acquire any going concern business, customer or vendor relationships, trademark or tradename or any goodwill of Sellers; and

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

### ARTICLE I DEFINITIONS

#### 1.1. Certain Definitions.

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

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

“Avoidance Actions” means any and all claims and causes of action arising under the Bankruptcy Code, including without limitation, sections 544 through 553 thereof, or any similar laws of the United States or any state, territory or possession thereof, or the District of Columbia (including without limitation, any preference or fraudulent conveyance action under such laws).

“Bidding Procedures Order” means that certain order of the Bankruptcy Court entered on July 17, 2012 (Docket No. 618) that, among other things, establishes a date by which Competing Bids must be submitted by bidders and establishes procedures for the auction process.

“Bidding Protections Order” means an order of the Bankruptcy Court that among things approves the Break-Up Fee and Expense Reimbursement Amount.

“Break-Up Fee and Expense Reimbursement Amount” means a break-up fee and expense reimbursement in an amount equal to Two Hundred Eighty Five Thousand Dollars (\$285,000) pursuant to the Bidding Procedures Order and the Bidding Protections Order.

“Business” means the business and operations of the relevant Seller, as applicable, as conducted immediately prior to the Business Shutdown Effective Time.

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

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

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

“Cash and Cash Equivalents” means all of Sellers’ cash (including petty cash and checks and drafts received or in transit, including all checks and drafts that have been submitted, posted or deposited, prior to the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents.

“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, whether now existing or hereafter arising.

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

“Contract” means, with respect to any Person, any contract, agreement, deed, lease, undertaking, license mortgage, note bond, indenture, instrument or other legally binding arrangement or obligation, in each case to which such Person is a party or subject or by which such Person or its assets are bound, whether oral or written.

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

“Cure Notice” means that certain Notice of Executory Contracts and Unexpired Leases Which May Be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, In Connection with the Sale of Substantially all of the Debtors’ Assets and the Proposed Cure Amounts With Respect Thereto filed with the Bankruptcy Court on July 6, 2012 (Docket No. 583) and any amendments or supplements thereto.

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

“DIP Credit Agreement” means that certain Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement dated as of November 28, 2011, among Debtors, each as a debtor-in-possession under Chapter 11 of the Bankruptcy Code and each, jointly and severally, as the Borrower thereunder, the institutions from time to time that become parties thereto as lenders, whether by execution of the DIP Credit Agreement or an assignment agreement pursuant to Section 13.9 thereof, and BOKF, NA d/b/a Bank of Oklahoma, as administrative agent for itself and the other lenders.

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

“Effective Date” has the meaning ascribed to such term in the Preamble.

“Employee Benefit Plan” means each “employee benefit plan” as defined in Section 3(3) of ERISA and each 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 Seller or any ERISA Affiliate for the benefit of any current or former employee, director, officer or independent contractor of Seller or under which Seller or any ERISA Affiliate for the benefit of any current or former employee, director, officer or independent contractor of Seller or under which Seller or any ERISA Affiliate has any liability

with respect to any current or former employee, director, officer or independent contractor of Seller.

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

“Environmental Law” means any applicable Laws relating to: (i) the protection of human health from exposure to regulated substances and employee safety in the workplace; (ii) the environment or natural resources, (iii) 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; (iv) the protection of endangered or threatened species; and (v) the protection of environmentally sensitive areas, including, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.), and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), and the regulations promulgated pursuant thereto.

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

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

“Escrow Agreement” means the Escrow Agreement, dated as of the Effective Date by and among Sellers, Purchaser and the Escrow Holder.

“Excluded Contracts” means the Contracts, Personal Property Leases, Real Property Leases and Intellectual Property Licenses set forth on Schedule 1.1(a) including any Contracts, Personal Property Leases, Real Property Leases or Intellectual Property Licenses added to Schedule 1.1(a) by Purchaser by notice delivered to Sellers at any time during the period from and after the Effective Date until the third (3rd) Business Day prior to the Closing Date.

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

or with respect to Sellers; (v) any matter disclosed on the Schedules or in any filings by Seller with the Bankruptcy Court prior to the Effective Date; (vi) the effect of any change in GAAP; (vii) any effect resulting from the public announcement of this Agreement, compliance with the terms of this Agreement or the consummation of the Transactions; or (viii) any effect resulting from the filing of the Bankruptcy Case.

“Existing Liens” means: (i) all defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in the Special Warranty Deed dated September, 21, 2007 between RELCO, Inc. as grantor and Blitz RE as affecting Tracts Two, Six or Seven; (ii) Liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings and which have been disclosed to Purchaser in Schedule 5.5(a); (iii) mechanics’, carriers’, workers’, warehousemens’, repairers’ and similar Liens arising or incurred prior to the Business Shutdown Effective Time 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 Indebtedness of Sellers; (vi) title of a lessor under an operating or capital lease; and (vii) such other imperfections in title, charges, easements, restrictions and encumbrances which would not be reasonably likely to result in a Material Adverse Effect.

“Final Order” means an order, ruling, judgment, the operation or effect of a judgment or other decree issued and entered by the Bankruptcy Court or by any state, commonwealth or other federal court or other court of competent jurisdiction which has not been reversed, vacated, stayed, modified or amended in any manner and as to which (a) the time to appeal or petition for review, rehearing, certiorari, reargument or retrial has expired and as to which no appeal or petition for review, rehearing certiorari, reargument or retrial is pending or (b) no appeal or petition for review, rehearing, certiorari, reargument or retrial can be taken or granted.

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

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

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

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

“Hazardous Material” means any and all materials (including substances, chemicals, compounds, mixtures, wastes, pollutants and contaminants) (i) to the extent such materials are prohibited, limited or regulated by the Environmental Laws as “hazardous”, “acutely hazardous” or “toxic”; or (ii) gasoline or petroleum, or petroleum products, polychlorinated biphenyls, urea-formaldehyde insulation, or asbestos or asbestos containing materials.

“Indebtedness” of any Person means, without duplication: (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the ordinary course of business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Intellectual Property” means (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto and all patents and applications and disclosures therefor, including continuations, divisionals, continuations-in-part, reissues, revisions, extensions and reexaminations of patent applications and patents issuing thereon, (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, Internet domain names and corporate names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof (collectively, “Marks”), (iii) copyrights and registrations and applications therefor, works of authorship, and mask work rights, in each case used primarily in connection with the Business and (iv) all trade secrets and confidential business information.

“Intellectual Property Licenses” means (i) any grant to a third Person of any right to use any of the Purchased Intellectual Property and (ii) any grant to either of the Sellers of a right to use a third Person’s Intellectual Property.

“IRS” means the Internal Revenue Service.

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

“Law” means any federal, state, local or foreign law, statute, code, ordinance, rule, regulation or administrative pronouncement.

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

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

“Lien” means all liens, claims, 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 Liens 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 Liens 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 kind or nature, if any; (iii) those Liens that are Retained Liabilities; and (iv) those Liens arising in connection with any agreements, acts, or failures to act of any Seller or any of their predecessors, Affiliates, or representatives including, but not limited to, Liens arising under any doctrines of successor liability, de facto merger, substantial continuity or similar theories under applicable state or federal law or otherwise.

“Material Adverse Effect” means a material adverse effect on (i) the Purchased Assets, taken as a whole, or (ii) the ability of Seller to consummate the Transactions or perform its obligations under this Agreement, other than, with respect to clauses (i) and (ii), an effect resulting from an Excluded Matter.

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

“Old Republic Insurance Security Amounts” means any and all amounts drawn under any letter of credit issued by BOKF, NA (or any affiliate thereof) in favor of Old Republic Insurance Company (or any affiliate thereof) in connection with any insurance policy issued to Sellers or their Affiliates.

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

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

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



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

“Permitted Exceptions” means: (i) all defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in Exhibit B to the Special Warranty Deed dated September, 21, 2007 between RELCO, Inc. as grantor and Blitz RE as affecting Tracts Two, Six or Seven; (ii) Liens for current Taxes, assessments or other governmental charges not yet delinquent which have been disclosed to Purchaser in Schedule 5.5(a); (iii) mechanics’, carriers’, workers’, warehousemen’s, 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) the Warehouse Lease; (vi) exceptions that become Permitted Exceptions with respect to the Purchased Real Property; (vii) title of licensor and other grants of rights to intellectual property and technology; and (viii) all Liens set forth on Schedule 1.1(c).

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

“Pre-Closing Environmental Liabilities” means all Liabilities arising out of, relating to or with respect to (a) any actual or alleged violation of, or non-compliance with, any Environmental Laws or environmental Permits by any Seller, in each case, that first existed, arose or occurred on or prior to the Closing Date, that is related to the Real Property or the Business; and (b) the presence, Release, threatened Release, migration of, or exposure of any Person to any Hazardous Materials that first existed, arose or occurred on or prior to the Closing Date, at, from, to, in, on or under the Real Property.

“Products” means any and all products developed, manufactured, marketed or sold by Blitz USA, whether work in progress or in final form other than those products sold to Hopkins Manufacturing Corporation pursuant to that certain Asset Purchase Agreement, dated as of March 28, 2012, among MiamiOK, Blitz USA, Blitz RE and Hopkins Manufacturing Corporation.

“Products Liability Defense Records” shall mean any and all Documents that refer or relate to, arise from, or were produced or withheld from production (including as material subject to the attorney-client privilege, work product doctrine or any other applicable privilege) in, any action, investigation or proceeding (including as part of any subpoena, court order, similar judicial process, administrative proceeding, any governmental agency or other regulatory agency or civil investigatory demand, in each case whether oral or written, or any other legal or regulatory process) arising from or related to the Debtors’ testing, manufacture and/or sale of portable consumer fuel containers or the Debtors’ review, consideration, investigation, defense, settlement or other disposition thereof, and any insurance-related matters associated with or deriving therefrom, in whatever form such Documents might be or become, wherever such Documents are located, whether on-site or at an off-site location, and whether within the Debtors’ direct possession, custody or control or within the possession, custody or

control of others (including but not limited to the Debtors' Affiliates, shareholders, directors, officers, employees and attorneys or any third-party), including but not limited to any document hosting or other service provider or agent of the Debtors.

"Purchased Contracts" means those Contracts, Personal Property Leases, Real Property Leases and Intellectual Property Licenses set forth on Schedule 1.1(d), including any Contracts, Personal Property Leases, Real Property Leases and Intellectual Property Licenses added to Schedule 1.1(d) by Purchaser by notice delivered to Sellers at any time during the period from and after the Effective Date until the third (3rd) Business Day prior to the Closing Date; provided that, Purchaser shall not be permitted to add any Contracts, Personal Property Leases, Real Property Leases and Intellectual Property Licenses previously rejected in the Bankruptcy Case.

"Purchased Furniture and Equipment" means all furniture, fixtures, furnishings, equipment, vehicles, rolling stock, leasehold improvements, and other tangible personal property owned or used by Sellers in the conduct of the Business, including all such machines, molds, tools, desks, chairs, tables, Hardware, copiers, telephones, telephone lines, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies (including the Purchased Equipment listed on Schedule 2.1(c)), but, for greater certainty, excluding any Retained Assets and Equipment.

"Purchased Intellectual Property" means only the Intellectual Property set forth on Schedule 1.1(f), including any Intellectual Property added to Schedule 1.1(f) by Purchaser by notice delivered to Sellers at any time during the period from and after the Effective Date until the third (3rd) Business Day prior to the Closing Date.

"Purchased Real Property" means generally that certain Real Property described in the legal description attached hereto as Exhibit C. The Purchased Real Property includes the land together with any and all improvements, tenements, hereditaments and appurtenances belonging or in any way pertaining thereto, including but not limited to fixtures (to the extent either Seller owns or has rights in such fixtures) and easements for ingress and egress, storm water drainage or otherwise over adjoining property, if any.

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

"Release" means any spill, emission, leaking, pumping, injection, emptying, escaping, deposit, disposal, discharge, dispersal, or leaching 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 normal and appropriate application of fertilizer, and (iii) any discharge in compliance with a Permit.

"Remedial Action" means all actions to (i) clean up, remove, treat or in any other way address any Release of a Hazardous Material into the environment, (ii) prevent, mitigate or minimize the Release of any Hazardous Material so it does not migrate to endanger the public

health or welfare or the indoor or outdoor environment, or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care.

“Retained Assets and Equipment” means all product molds, a list of which is attached hereto as Schedule 1.1(e) (the “Retained Molds”), artwork and telephone numbers owned or used by Sellers in connection with the Business.

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

“Sale Motion” means that certain motion of Sellers seeking approval and entry of the Bidding Procedures Order and Sale Order filed with the Bankruptcy Court on June 29, 2012 (Docket No. 574).

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

“Schedules” means the Schedules prepared in connection with this Agreement.

“Sellers’ Intellectual Property” means all intellectual property rights relating to, arising from or in respect of the Seller’s Products including the Intellectual Property.

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

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

“Successful Bidder” means any party or parties who acquires all, substantially all, or a portion 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 Sellers or any of their 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.

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

“Tax Return” means any return, declaration, report, estimate, 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, and (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.

“Toyota Lease” means the forklifts, machines and related equipment and accessories leased pursuant to that certain Master Lease Agreement, dated May 12, 2011, between Southern Material Handling Company (“Southern”) and Blitz USA, together with (i) Equipment Schedule No. 1 to Master Lease Agreement, dated May 17, 2011, between Southern and Blitz USA; (ii) Rider to Equipment Schedule Purchase Option No. 1 to Equipment Schedule No. 1, dated May 17, 2011, between Southern and Blitz USA; and (iii) Notice of Assignment and Maintenance Collection Agreement for Equipment Schedule, by and among Southern, Blitz USA and Toyota Motor Credit Corporation.

“Transactions” means the transactions contemplated by this Agreement, the Seller Documents, the Purchaser Documents and the Deed.

“Wal-Mart” means Wal-Mart Stores, Inc. and its Affiliates.

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

“Warehouse Lease” means the Warehouse Lease Agreement, dated April 3, 2012, between Blitz RE and Hopkins Manufacturing Corporation.

“WARN Act” means the Worker Adjustment and Training Notification Act.

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

<u>Term</u>	<u>Section</u>
Agreement	Preamble

<u>Term</u>	<u>Section</u>
ALTA	8.4(a)
Assumed Contract Liabilities	2.3
ASTM	10.2(b)
Auction	7.6
Authorized Items	8.4(d)
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Blitz RE	Recitals
Blitz USA	Recitals
Causes of Actions	2.1(k)
Closing	4.1
Closing Cash Payment	3.3(a)
Closing Date	4.1
Commitment	8.4(a)
Competing Bid	7.1
Confidentiality Agreement	8.9
Deed	4.2(d)
Draft Transaction Filings	7.4(a)
Escrow Holder	3.2
Escrowed Funds	3.2
Marks	1.1 (in Intellectual Property definition)
New Spout Design	5.8(a)
Noticing Party	8.10(b)
Original Notice	8.10(b)
Owned Real Property	5.6
Party or Parties	Preamble
Personal Property Leases	5.7
Petition Date	Recitals
Prepetition Lenders	1.1 (in Credit Agreement definition)
Privileged Confidential Information	2.1(g)
Purchased Assets	2.1
Purchased Equipment	2.1(c)
Purchase Price	3.1
Purchaser	Preamble
Purchaser Documents	6.2
Real Property Lease	5.6
Retained Assets	2.2
Retained Molds	1.1 (in Retained Assets and Equipment definition)
Retained Liabilities	2.4
Seller / Sellers	Preamble
Seller Documents	5.2
Standard Exceptions	8.4(b)
Termination Date	4.4(a)
Third Party IP	5.8(a)

<u>Term</u>	<u>Section</u>
Transfer Taxes	12.1

1.3. Other Definitional and Interpretive Matters.

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

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

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

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

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

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

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

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

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

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

2.1. Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, all of and only Sellers' right, title and interest in, to and under the Purchased Assets, free and clear of any and all Liens and Claims pursuant to the Sale Order. Notwithstanding anything to the contrary in this Agreement, "Purchased Assets" shall mean only the following assets of Sellers (and not any of the Retained Assets) as of the Closing:

(a) all deposits (including security deposits for rent, electricity, telephone or otherwise) and prepaid charges and expenses of Sellers relating to the Purchased Contracts and the Purchased Real Property;

(b) the Purchased Real Property, together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof and all related rights, including all Documents primarily related to the Purchased Real Property;

(c) all of the equipment listed on Schedule 2.1(c) attached hereto and all spare parts and supplies used in the maintenance and operation of such equipment (collectively, the "Purchased Equipment");

(d) the Purchased Intellectual Property;

(e) to the extent assignable to Purchaser pursuant to the Sale Order, the Purchased Contracts;

(f) all Purchased Furniture and Equipment;

(g) all Documents relating to the Purchased Assets, all files, records, literature and correspondence relating to the Purchased Assets, and, for greater certainty excluding (i) personnel files for Employees, (ii) such files as may be required under applicable Law regarding privacy, (iii) Documents which Sellers are not permitted to transfer pursuant to any contractual confidentiality obligation owed to any third party, (iv) any Documents primarily related to, or are required to realize the benefits, if any, of any Retained Assets or Retained Liabilities, and (v) Documents that are Products Liability Defense Records; provided that Sellers shall retain for its records copies of such Documents included in the Purchased Assets; provided; further, that, to the extent that any such Documents may include material subject to the attorney-client privilege, work product doctrine or any other applicable privilege including concerning pending or threatened legal proceedings or governmental investigations (the "Privileged Confidential Information"), the Parties hereby agree (a) that the disclosure, receipt and/or review of such Privileged Confidential Information is entirely inadvertent and shall not waive, modify, limit or impair in any form or fashion the protected nature of the Privileged Confidential Information, (b) it is their desire, intention and mutual understanding that the sharing of such Privileged Confidential Information is not intended to, and shall not, waive or diminish in any way the confidentiality of such Privileged Confidential Information or its continued protection under the attorney-client privilege, work product doctrine or other applicable privilege, (c) that

any Documents delivered to Purchaser as contemplated by the Transactions and that are entitled to protection under the attorney-client privilege, work product doctrine or other applicable privilege shall remain entitled to such protection under any and all applicable privileges, immunities and/or agreements, and (d) that, to the extent any Documents include Privileged Confidential Information, Sellers shall have the right in their sole discretion and at any time for a period of six (6) years after the Effective Date, upon reasonable prior notice to Purchaser, to identify such Documents as Privileged Confidential Information and to require their return and/or destruction at the election of Purchaser;

(h) all Permits used by Sellers in connection with ownership or operation of the Purchased Real Property and other Purchased Assets to the extent assignable;

(i) all supplies owned by Sellers (other than plastics and raw materials inventory excluded as part of the Retained Assets);

(j) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to the Purchased Assets, to the extent assignable;

(k) all known and unknown, liquidated or unliquidated, contingent or fixed, claims, rights and causes of action, including Avoidance Actions, which Sellers have or may have against any third party related to the Purchased Assets (the “Causes of Actions”); provided, however, that Purchaser hereby covenants not to commence any Legal Proceedings to recover on any of the Causes of Actions and, effective as of the Closing, Purchaser hereby forever releases the parties against whom Purchaser may pursue the Causes of Actions from any and all liability related to such Causes of Actions ; and

(l) all rights to insurance proceeds to the extent related to the Purchased Assets, including but not limited to the Purchased Real Property.

2.2. Retained Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Retained Assets to Purchaser, and Sellers (or the applicable party) shall retain all right, title and interest to, in and under the Retained Assets. “Retained Assets” shall mean all of the assets, properties, interests and rights related to the Business (other than those expressly listed in Section 2.1 as Purchased Assets). The Retained Assets shall include each of the following:

(a) all customers and customer lists, suppliers and supplier lists, and any other business relationships related to the Business;

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

(c) all accounts receivable of Sellers;

(d) the Wal-Mart Adequate Protection;

(e) all Retained Assets and Equipment;



(f) all inventory (raw materials, work-in-progress, finished goods, or otherwise) used or initially held for use in connection with the Business;

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

(h) all Sellers' Intellectual Property (other than the Purchased Intellectual Property)

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

(j) all plastics and raw materials supplies owned by Sellers;

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

(l) any claim, right or interest of Sellers in or to any refund, rebate, abatement or other recovery for Taxes that are Retained Liabilities;

(m) all insurance policies or rights to proceeds thereof relating to the assets, properties, business or operations of Sellers, except as provided in Section 2.1(l);

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

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

(p) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to Products sold, or services provided, to any Seller (other than those primarily related to the Purchased Assets), to the extent assignable;

(q) goodwill and other intangible assets associated with the Business;

(r) all ownership interests in MiamiOK;

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

(t) the Green Escrow;

(u) RLI Insurance Company Bond Security Amounts;

(v) Old Republic Insurance Security Amounts; and

(w) those assets listed on Schedule 2.2.

2.3. Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume, effective as of the Closing Date, and shall timely perform and discharge in accordance with their respective terms, all Liabilities of Sellers under the Purchased Contracts arising on or after the Closing Date (collectively, the "Assumed Contract Liabilities").

2.4. Retained Liabilities. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not assume and shall be deemed not to have assumed, and Sellers shall be solely and exclusively liable with respect to, any Liabilities of Sellers other than the Assumed Contract Liabilities (collectively, the "Retained Liabilities"). For the avoidance of doubt, the Retained Liabilities include the following:

(a) all Liabilities arising out of or related to the Retained Assets;

(b) all Liabilities arising prior to the Closing under the Purchased Contracts;

(c) all Liabilities arising from the sale, manufacture or distribution of Products or the provision of services in the Ordinary Course of Business, including all Liabilities pursuant to product warranties, product returns and rebates (including Liabilities in connection with past, present and future product liability claims);

(d) all Liabilities for Taxes (i) of Sellers or any of their Affiliates, or (ii) with respect to the Purchased Assets 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);

(e) all WARN Act Liabilities as a result of the Business Shutdown;

(f) all Liabilities relating to the disclosures on Schedule 5.5(a);

(g) all Liabilities for Cure Amounts and Excluded Contracts;

- (h) all Liabilities of Sellers under the Credit Agreement;
- (i) all Liabilities relating to amounts required to be paid by Sellers hereunder;
- (j) all Pre-Closing Environmental Liabilities; and
- (k) all Liabilities arising out of, relating to or with respect to the employment or performance of services for Sellers, or termination of employment or services by Sellers of any individual regardless of when such Liabilities would arise and every Employee Benefit Plan regardless of when such Liabilities would arise.

2.5. Cure Amounts. At the Closing, pursuant to and in accordance with Section 365 of the Bankruptcy Code and the Sale Order, Sellers shall assume and assign to Purchaser, and Purchaser shall assume from Sellers, the Purchased Contracts. The cure amounts shall be determined by the Bankruptcy Court pursuant to Section 365 of the Bankruptcy Code with respect to the Purchased Contracts (collectively, the “Cure Amounts”), and shall be paid by Sellers, on or before the Closing, and not by Purchaser, and Purchaser shall have no liability therefor.

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

2.7. Bulk Sales Laws. The Sale Order shall waive compliance by 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 pursuant to the Sale Order, 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 aggregate consideration for the Purchased Assets shall be (a) an amount in cash equal to Nine Million Five Hundred Thousand Dollars (\$9,500,000) (the "Purchase Price"), and (b) the assumption of the Assumed Contract Liabilities.

3.2. Purchase Price Deposit. Upon the execution of this Agreement, pursuant to the terms of the Escrow Agreement, Purchaser shall immediately deposit with Richards, Layton & Finger, P.A., in its capacity as escrow holder (the "Escrow Holder"), Nine Hundred Fifty Thousand Dollars (\$950,000) by wire transfer of immediately available funds (the "Escrowed Funds"), to be released by the Escrow Holder and delivered to either Purchaser or 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 and all accrued investment income thereon shall be applied towards the Purchase Price payable by Purchaser to Sellers under Section 3.3;

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

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

3.3. Payment of Purchase Price.

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

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

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

4.1. Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Contract 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 Sellers and Purchaser may designate in writing) at 10:00 a.m. (eastern time) on the date that is one (1) Business Day following the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by Sellers and Purchaser. The date on which the Closing shall be held is referred to in this Agreement as the “Closing Date.” Unless otherwise agreed by Sellers and Purchaser in writing, the Closing shall be deemed effective and all right, title and interest of Sellers in and to the Purchased Assets and Assumed Contract Liabilities shall be considered to have passed to Purchaser as of 11:59 p.m. (Eastern Time) on the Closing Date.

4.2. Deliveries by Sellers. At the Closing or prior to the Closing (to the extent required or feasible), Sellers shall deliver, or cause to be delivered, to Purchaser:

(a) a duly executed bill of sale in substantially the form attached hereto as Exhibit A;

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

(c) a certified copy of the Sale Order, which order shall be a Final Order;

(d) special warranty deed in a form reasonably acceptable to Purchaser duly executed and acknowledged by Blitz RE in a form that is recordable with the County Clerk of Ottawa County, State of Oklahoma (the “Deed”);

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

(f) the officer’s certificate required to be delivered pursuant to Sections 10.1(a) and 10.2(b);

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

(h) a certification, in a form reasonably acceptable to Purchaser and Sellers, pursuant to Section 1.1445-2(b)(2)(iv)(B) of the Treasury regulations certifying that Blitz Acquisition Holdings, Inc., a Delaware corporation, is not a foreign Person;

(i) using commercially reasonable efforts, releases, pay-off letters and/or final invoices issued to and for the accounts of Sellers, in each case as necessary to terminate, release or assign, as the case may be, all Liens and Claims with respect to Purchased Equipment that is subject to the Toyota Lease as set forth on Schedule 1.1(d) attached hereto;

provided that, if Sellers are unable to deliver (or cause to be delivered) to Purchaser such releases, pay-off letters or final invoices prior to the Closing, Purchaser shall be entitled to reject the Toyota Lease;

(j) at Sellers' sole expense and to the sole satisfaction of the Purchaser no later than twenty-one (21) days prior to the Closing, an environmental assessment of the Real Property meeting the All Appropriate Inquiry requirements of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), including a Phase I Environmental Site Assessment in compliance with the American Society of Testing and Materials standard E1527-05;

(k) a fee owner's title insurance policy as provided pursuant to Section 8.4 hereof, and such other documents, instruments and certificates as may be reasonably requested for the issuance of the title policy; and

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

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

(a) the Closing Cash Payment;

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

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

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

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

(a) by Purchaser, if the Bankruptcy Court has not entered the Bidding Protections Order, approving the Break-Up Fee and Expense Reimbursement Amount, by August 31, 2012;

(b) by Sellers or Purchaser, if the Closing shall not have occurred by the close of business on September 28, 2012 (the "Termination Date"); provided, however, that, if the Closing shall not have occurred due to the failure of the Bankruptcy Court to enter the Sale Order or the condition to the Closing set forth in Section 10.3(b), if applicable, remains unsatisfied or not waived and if all other conditions to the respective obligations of the Parties to close hereunder that are capable of being fulfilled by the Termination Date shall have been so fulfilled or waived, then no Party may terminate this Agreement prior to September 30, 2012; provided, further, that, if the Closing shall not have occurred on or before the Termination Date

due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or either Seller, then the breaching Party (Sellers, in the event of such a breach by a Seller) may not terminate this Agreement pursuant to this Section 4.4(b);

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

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

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

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

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

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

(i) by Sellers or Purchaser, if (i) Sellers enters into a definitive agreement with respect to a Competing Bid and the Bankruptcy Court enters an order approving a Competing Bid or (ii) the Bankruptcy Court enters an order that otherwise precludes the consummation of the Transactions on the terms and conditions set forth in this Agreement, subject to any limitations set forth in the Bidding Procedures Order and Section 7.5 hereof.

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

#### 4.6. Effect of Termination.

(a) In the event that this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or Seller; provided, however, that the obligations of the Parties set forth in Section 3.2, Section 7.5 and Article XIII shall survive any such termination and shall be enforceable in accordance with and subject to the provisions of such Sections and Article.

(b) Nothing in this Section 4.6 shall relieve Purchaser or Sellers of any liability for a breach of this Agreement prior to the date of termination; provided that Sellers' liability hereunder for any and all such breaches shall be capped at the Break-Up Fee and Expense Reimbursement Amount. The damages recoverable by the non-breaching Party shall include all attorneys' fees reasonably incurred by such Party in connection with the Transactions, provided that in no event shall Purchaser be entitled to recover damages (including any attorneys' fees reasonably incurred by Purchaser) in excess of the Break-Up Fee and Expense Reimbursement Amount.

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

### **ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers hereby represent and warrant to Purchaser that, except as set forth in the Schedules:

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

5.2. Authorization of Agreement. Except for such authorization as is required by the Bankruptcy Court (as hereinafter provided for), each Seller has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to which it is a party or to be executed by either Seller in connection with the consummation of the Transactions (the "Seller Documents"), to perform its obligations hereunder and thereunder and to consummate the transaction contemplated hereby and thereby. The execution, delivery and performance by each Seller of this Agreement and the Seller Documents to which it is a party and the consummation of the Transactions have been duly authorized by all requisite corporate or limited liability



company action on the part of each Seller. This Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by the relevant Seller and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order and the entry of the Bidding Procedures Order and Bidding Protections Order) this Agreement constitutes, and the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of the applicable Sellers, enforceable against each Seller 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 Sellers of this Agreement or the Seller Documents, the consummation of the transaction contemplated hereby or thereby, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Sellers; (ii) subject to entry of the Sale Order, any Contract or Permit to which either Seller is a party or by which either Seller or any of its properties or assets is bound; (iii) subject to entry of the Sale Order, any Order of any Governmental Body applicable to either Seller or any of the properties or assets of either Seller as of the 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 either Seller in connection with the execution and delivery of this Agreement or the Seller Documents, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by Sellers or of any other action contemplated hereby or thereby, except for (i) the entry of the Bidding Procedures Order, Bidding Protections Order and 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.

5.4. Title to Purchased Assets. As of the Effective Date, other than the Existing Liens, real property subject to the Real Property Leases, intellectual property licensed to either Seller under Intellectual Property Licenses and the personal property subject to the Personal Property Leases, the relevant Seller has good and transferable title to the Purchased Assets, and as of the Closing Date, Purchaser will be vested with good and transferable title to such Purchased Assets, free and clear of any and all Liens and Claims, other than Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code and as provided for in the Sale Order.

## 5.5. Taxes.

(a) Except as set forth on Schedule 5.5(a), all Tax Returns required to have been filed with respect to the Purchased Assets have been duly and timely filed (taking into account any extensions of time to file validly granted or obtained) and each such Tax Return is true, correct and complete in all material respects. Except as set forth on Schedule 5.5(a), all Taxes owed with respect to the Purchased Assets (whether or not shown on any Tax Return) have been timely paid. Except as set forth on Schedule 5.5(a), 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.

(b) There is no action, dispute, Claim or audit now pending or, to the Knowledge of Sellers, proposed or threatened against, or with respect to any of the Purchased Assets or in respect of any Taxes. No Claim has been made by an authority in a jurisdiction where any of Sellers does not file Tax Returns that any of them is or may be subject to taxation by that jurisdiction. Except as set forth on Schedule 5.5(a), 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) None of 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 that relates to the Purchased Assets.

5.6. Real Property. Schedule 5.6 sets forth a complete list of (i) all material real property and interests in real property owned in fee by either Seller (individually, an “Owned Real Property” and collectively, the “Owned Real Properties”), and (ii) all material real property and interests in real property leased by either Seller, as lessee (individually, a “Real Property Lease” and collectively, the “Real Property Leases”). The relevant Seller has good and valid fee title to all Owned Real Property, free and clear of any and all Liens and Claims except for Permitted Exceptions. To the Knowledge of Sellers, no Seller has received any written notice of any default or event that with notice or lapse of time, or both, would constitute a material default by either Seller under any of the Real Property Leases. With respect to the Purchased Real Property:

(a) (i) As of the Effective Date, Blitz RE has good and marketable title to the Purchased Real Property free and clear of all Liens and Claims except for Existing Liens, and (ii) as of the Closing Date, 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, in each case, none of which impairs the use of such Purchased Real Property for manufacturing and warehouse operations as conducted by Sellers prior to the Business Shutdown.

(b) The legal description for the Purchased Real Property set forth on Exhibit C describes the property fully and accurately.

(c) Sellers have provided to Purchaser (i) copies of the deeds and other instruments (as recorded) by which Blitz RE acquired the Purchased Real Property, (ii) copies of

all title insurance policies, opinions, abstracts and surveys in the possession of the Sellers with respect to such parcel (including any surveys of the entire property acquired by Blitz RE in 2007), and (iii) copies of exception documents identified in any such policies, opinions, or abstracts.

(d) The uses for which the buildings, facilities and other improvements located on the Purchased Real Property are zoned do not restrict, or impair the use of the Purchased Real Property for manufacturing and warehouse operations as conducted by Sellers prior to the Business Shutdown.

(e) No Governmental Body having the power of eminent domain over the Purchased Real Property has commenced or, to the Knowledge of Sellers, intends to exercise the power of eminent domain or a similar power with respect to all or any part of the Purchased Real Property. There are no pending or, to the Knowledge of Sellers, threatened condemnation, fire, health, safety, building, zoning or other land use regulatory proceedings, lawsuits or administrative actions relating to any portion of the Purchased 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 Purchased Real Property.

(f) The Purchased Real Property and all present uses and operations of the Purchased Real Property comply with all Laws, covenants, conditions, restrictions, easements, disposition agreements and similar matters affecting the Purchased Real Property. The Purchased Real Property and its use for manufacturing and warehouse operations as conducted by Sellers prior to the Business Shutdown do not constitute a non-conforming use and is not the subject of a special use permit under any Law.

(g) The Purchased Real Property is in suitable condition for use in manufacturing and warehouse operations as conducted by Sellers prior to the Business Shutdown. Blitz RE has good and valid rights of ingress and egress to and from all Purchased Real Property from and to the public street systems for all usual street, road and utility purposes.

(h) Except for the Permitted Exceptions, no Person other than Blitz RE is in possession of any of the Purchased 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 Purchased Real Property or any portion thereof, except pursuant to the Warehouse Lease. No easement, utility transmission line or water main located on the Purchased Real Property adversely affects the use of the Purchased Real Property or any improvement on the Purchased Real Property.

(i) All water, sewer, gas, electric, telephone and drainage facilities, and all other utilities required by any Law or by the use and operation of the Purchased Real Property in the conduct of manufacturing and warehouse operations are installed to the property lines of the Purchased 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 Purchased Real Property in connection with manufacturing and warehouse operations as conducted by Sellers prior to the Business Shutdown, and are compliant 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 Purchased Real Property to existing roads or to sewer or other utility services presently serving the Purchased Real Property.

(j) Sellers are not experts regarding the condition of the Purchased Real Property, and no representations, warranties or guarantees regarding the condition of the Purchased Real Property or any structures, fixtures, equipment or appliances situated in or about the Purchased Real Property are herein expressed or implied. Furthermore, Sellers make no representations, warranties or guarantees regarding the boundary lines of the Purchased Real Property relative to existing fences or other improvements, nor regarding the number of acres contained in the Purchased Real Property. Sellers will convey the Purchased Real Property to Buyer "AS IS". Purchaser may, at Purchaser's option and at Purchaser's sole cost and expense, have the Purchased Real Property surveyed by a professional land surveyor or engineer.

5.7. Personal Property Leases. Schedule 5.7 sets forth all leases of personal property ("Personal Property Leases") involving annual payments in excess of \$50,000 relating to personal property used by Sellers in connection with the Purchased Assets or to which either Seller is a party or by which the properties or assets of any Seller is bound. To the Knowledge of Sellers, no Seller has received any written notice of any default or event that with notice or lapse of time or both would constitute a default by any Seller under any of the Personal Property Leases. 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 Sellers, to Sellers' Knowledge, by the other party to such lease. The Retained Molds listed on Schedule 1.1(e) constitute all of Sellers product molds.

5.8. Intellectual Property.

(a) Set forth on Schedule 5.8(a) is a true, correct and complete list of (A) all Purchased Intellectual Property, (B) all Intellectual Property Licenses under which Sellers are granted the right to use any Person's Intellectual Property practiced in or used with the Purchased Intellectual Property and Seller's product known as the "HAND-E FLO" spout (the "New Spout Design") (collectively, "Third Party IP"), and (C) and all Intellectual Property Licenses under which Sellers granted to any third Person the right to use any Purchased Intellectual Property. The Purchased Intellectual Property and the Intellectual Property governed by the Intellectual Property Licenses represent all of the Intellectual Property practiced in or used with the New Spout Design.

(b) Except as set forth on Schedule 5.8(b), Sellers own all right, title and interest in and to the Purchased Intellectual Property and otherwise have the right to use Third Party IP pursuant to valid Intellectual Property Licenses that are transferable to the Purchaser.

(c) No loss or expiration of any rights in Purchased Intellectual Property or Third Party IP is threatened, pending or reasonably foreseeable that would result in a Material Adverse Effect. The Sellers have taken all necessary actions to maintain, protect and enforce the Purchased Intellectual Property. To the Knowledge of Sellers, no Person is

interfering with, infringing upon, misappropriating or violating any Purchased Intellectual Property.

(d) To the Knowledge of Sellers, (i) there have been no claims made against the Sellers asserting the invalidity or unenforceability of, or challenging the title or ownership in, any Purchased Intellectual Property and (ii) there are no grounds for the same. To the Knowledge of Sellers, the New Spout Design has not infringed upon or misappropriated, and does not infringe upon or misappropriate, any Intellectual Property of other Persons.

(e) Except as set forth on Schedule 5.8(e), all Purchased Intellectual Property was conceived and developed by (i) independent contractors of a Seller, or (ii) employees (including former employees) of a Seller within the scope of their employment, pursuant to a written agreement under which such employees or independent contractors assign to a Seller all right, title, and interest in and to the Purchased Intellectual Property.

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

5.10. Employee Benefits.

(a) No Seller 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 no Seller nor any ERISA Affiliate has any liability (contingent or otherwise) relating to the withdrawal or partial withdrawal from a Multiemployer Plan.

(b) No asset of any Seller 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.

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

5.12. Compliance with Laws; Permits.

(a) Immediately prior to the Business Shutdown Effective Time, Sellers were in compliance, in all material respects, with all Laws applicable to the Purchased Assets. No Seller has received any written notice of or been charged with any material violation of any Laws.

(b) Immediately prior to the Business Shutdown Effective Time, each Seller had all Permits which were required for the Purchased Assets, except in each case where the absence of which would not be reasonably likely to result in a Material Adverse Effect. Except as set forth in Schedule 5.12(b), Sellers have all Permits which were required for the Purchased Assets, except in each case where the absence of which would not be reasonably

likely to result in a Material Adverse Effect. Immediately prior to the Business Shutdown Effective Time, no Seller was in default or material violation (and no event had 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 Permit to which it is a party.

5.13. Environmental Matters. The representations and warranties contained in this Section 5.13 are the sole and exclusive representations and warranties of any Seller pertaining or relating to any environmental, health or safety matters, including any arising under any Environmental Laws. Except as set for the on Schedule 5.13:

(a) Each Seller and each of its operations and the Purchased Real Property are in material compliance with all applicable Environmental Laws and all Permits issued pursuant to Environmental Laws;

(b) Each Seller has obtained all Permits required under all applicable Environmental Laws necessary for each of its operations and the use of the Purchased Real Property, and immediately prior to the Business Shutdown Effective Time, all Permits were in good standing and were in full force and effect, and no Permit is threatened to be revoked, revised, modified or not renewed;

(c) Neither any Seller nor the Real Property is 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) No Seller has received any written communication alleging either or both that (i) either Seller may be in violation of any Environmental Law, or any Permit issued pursuant to Environmental Law, or (ii) either Seller may have any Liability under any Environmental Law;

(e) to the Knowledge of Sellers, there are no pending or threatened investigations of or Liability associated with, the Purchased Assets which would reasonably be expected to result in the imposition of any Liability pursuant to any Environmental Law; and

(f) Hazardous Materials are not present at, on, under, in, or about the Purchased Real Property (i) in violation of Environmental Law; (ii) which could reasonably be expected to give rise to Liability under any applicable Environmental Law, or impair the value of the Purchased Real Property; or (iii) reasonably be expected to require Remedial Action.

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

5.15. No Other Representations or Warranties; Schedules. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS Article V (AS MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED), SELLERS DO NOT MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY

WITH RESPECT TO SELLERS, THE PURCHASED ASSETS, THE ASSUMED CONTRACT LIABILITIES OR THE TRANSACTIONS, AND EACH SELLER DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY EITHER SELLER, ANY AFFILIATE OF EITHER SELLER OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS Article V (AS MODIFIED BY THE SCHEDULES). EACH SELLER (I) EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT COMMON LAW, BY STATUTE, OR OTHERWISE, RELATING TO THE CONDITION OF THE PURCHASED ASSETS (INCLUDING ANY IMPLIED OR EXPRESSED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS) AND (II) 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 SELLERS OR ANY OF THEIR AFFILIATES). THE DISCLOSURE OF ANY MATTER OR ITEM IN ANY SCHEDULE SHALL NOT BE DEEMED TO CONSTITUTE AN ACKNOWLEDGMENT THAT ANY SUCH MATTER IS REQUIRED TO BE DISCLOSED OR IS MATERIAL OR THAT SUCH MATTER WOULD BE REASONABLY LIKELY TO RESULT IN A MATERIAL ADVERSE EFFECT.

## **ARTICLE VI**

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

Purchaser hereby represents and warrants to Sellers that:

6.1. Organization and Good Standing. Purchaser is 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.

6.2. Authorization of Agreement. Purchaser has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the Transactions (the "Purchaser Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and the Purchaser Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on behalf of Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to

applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3. Conflicts; Consents of Third Parties.

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

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

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

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

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

6.7. Financial Capability. Purchaser 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 Contract Liabilities.

6.8. No Other Representations or Warranties. Except for the representations and warranties contained in this Agreement and the Purchaser Documents, 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 Sellers by or on behalf of Purchaser in connection with the Transactions 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 Sellers or their Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Sellers or their Affiliates by any director, officer, employee, agent, consultant, or representative of Purchaser or any of their Affiliates).

6.9. 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 and operations of Sellers. 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, WARRANTIES OR GUARANTEES BY SELLERS, THEIR AGENTS, THEIR REPRESENTATIVES OR THEIR ESTATES, WHETHER EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS AND WITHOUT ANY RECOURSE TO SELLERS, OTHER THAN FOR FRAUD OR AS OTHERWISE EXPRESSLY PROVIDED HEREIN. PURCHASER AGREES TO ACCEPT THE PURCHASED ASSETS AND THE ASSUMED CONTRACT 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 SELLERS, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE DEED.

## **ARTICLE VII BANKRUPTCY COURT MATTERS**

### 7.1. Competing Bid.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by 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 any assets of the Sellers to a purchaser or purchasers other than Purchaser (whether consummated pursuant to a sale, consensual foreclosure, liquidation, credit bid or chapter 11 plan, a “Competing Bid”). 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 Bid that is deemed by Sellers to constitute a Qualified Bid.

(b) Prior to completion of the Auction, nothing contained herein shall be construed to prohibit Sellers and their representatives or Affiliates from soliciting,

considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Competing Bid.

(c) If Purchaser is the Successful Bidder, following completion of the Auction, 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, if Purchaser is the Successful Bidder, unless otherwise directed by the Bankruptcy Court, 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 Purchased Assets to prospective purchasers. The restrictions imposed on Sellers pursuant to this Section 7.1(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 Sellers of such restrictions.

7.2. Bidding Procedures Order. The Sellers 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 date of the hearing on the Sale Motion, without prior written consent of Purchaser, which consent shall not be unreasonably withheld.

7.3. Bidding Protections Order. The Bidding Protections Order shall be in form and substance acceptable to Purchaser and shall approve the Break-Up Fee and Expense Reimbursement Amount.

7.4. Cooperation in Bankruptcy Court Matters.

(a) 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 Sellers related to the Bidding Procedures Order, Bidding Protections Order, Sale Order, Purchased Assets, the Purchased Contracts, 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 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 its counsel and may not be disclosed to any person for any reason without the prior written consent by Sellers, and (iii) may not be used as evidence by the Purchaser in any court proceeding without the prior written consent of Sellers. Purchaser may file a notice of appearance in the Bankruptcy Case and 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) Sellers shall pursue diligently the entry of the Bidding Protections Order and the Sale Order. 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 Protections Order.

(c) Purchaser agrees that it will promptly take such actions as are reasonably requested by a Seller to assist in obtaining entry of the Bidding Protections Order. In the event the entry of the Bidding Protections Order shall be appealed, Sellers and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

#### 7.5. 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 Sellers and Purchaser entered into this Agreement in good faith, the Purchase Price and Assumed Contract Liabilities constitute fair value in consideration for the Purchased Assets including the Purchased Contracts 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 and the Purchased Assets including the Purchased Contracts;

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

(iv) finding that Purchaser is not a successor to Sellers or their estates by reason of any theory of Law or equity, whether with respect to any Liens and Claims against Sellers, the Purchased Assets or otherwise and ruling that Purchaser shall not be subject to successor liabilities for products sold prior to the Closing, all as set forth in more detail in the form of Sale Order attached hereto as Exhibit D; and

(v) subject to any cure objections being continued (with Purchaser’s prior consent) to a date after the date of a hearing for the entry of the Sale Order, 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 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. 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.

(b) Subject to any Competing Bid, (i) 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 Sellers and are reasonably necessary or appropriate to assist 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, Sellers and Purchaser shall use their respective reasonable efforts to defend such appeal or collateral attack of the Sale Order after its entry. After consultation with the Purchaser, in Sellers' sole discretion, Sellers may 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. Sellers shall use commercially reasonable efforts to take all actions, including 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 the Closing; provided, however, Sellers' obligations in connection with any such efforts shall terminate upon the Closing. Notwithstanding any provision to the contrary herein, unless a Seller has alleged that the Purchaser has breached this Agreement, 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) 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 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 the Sale Order, or in any way prevent or interfere with the consummation or performance of the Transactions contemplated by this Agreement or the Sale Order.

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

7.7. Break-up Fee and Expense Reimbursement.

(a) In consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Seller, Seller shall pay Purchaser the Break-Up Fee and Expense Reimbursement Amount in accordance with the terms hereof, the Bidding Procedures Order, the Bidding Protections Order and only upon the Bankruptcy Court having approved the Break-Up Fee and Expense Reimbursement Amount. The Break-Up Fee and Expense Reimbursement

Amount shall be paid on the first Business Day following the date of consummation of a Competing Bid if no material breach by Purchaser of this Agreement has occurred and shall be paid in full directly to Purchaser, out of the purchase price paid by the Successful Bidder in any Competing Bid, at the time of and as a condition to the closing of any Competing Bid. Seller shall cause such payment to be included as a term of any Competing Bid. Seller shall cause the Break-Up Fee and Expense Reimbursement Amount 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 and Bidding Protections Order).

(b) Sellers shall seek, pursuant to the Bidding Procedures Order, entry by the Bankruptcy Court of the Bidding Protections Order approving the payment of the Break-Up Fee and Expense Reimbursement Amount. For the avoidance of doubt, the Break-Up Fee and Expense Reimbursement Amount provided for hereunder shall only be paid to the Purchaser if the Purchaser is the Stalking Horse Purchaser, this Agreement is the Stalking Horse Agreement as provided for in the Bidding Procedures Order and Bidding Protections Order and the Bankruptcy Court approves the Break-Up Fee and Expense Reimbursement Amount.

(c) Sellers acknowledge and agree that the entry into this Agreement provides value to the Sellers' chapter 11 estates by, among other things, inducing other parties to submit higher or better offers for the Purchased Assets. Sellers and Purchaser agree that the Break-Up Fee and Expense Reimbursement Amount is a material and necessary inducement to the Purchaser to enter into this Agreement and to consummate the Transactions contemplated in this Agreement.

(d) Sellers hereby acknowledge that their obligation to pay the Break-Up Fee and Expense Reimbursement Amount shall survive the termination of this Agreement, and that Purchaser's claim for the Break-Up Fee and Expense Reimbursement Amount shall have administrative superpriority status against the Sellers and their affiliates and their respective estates under section 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.

7.8. Notice to the Notice Parties. Adequate notice of the hearing on the Bidding Procedures Order, Bidding Protections Order and Sale Motion, and request for entry of the Bidding Procedures Order, Bidding Protections Order and Sale Order and the objection deadlines related thereto shall be served by 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 of Blitz USA, Inc., *et al.*; (iii) all entities known to have expressed an interest in a transaction with respect to the assets of Sellers or that have been identified by the Debtors or their advisors as a potential purchaser of the assets of Sellers; (iv) all counterparties to any executory contracts or unexpired leases related to the Transactions; (v) all parties with Liens and Claims on or against any of the Purchased Assets; (vi) each affected Governmental Body, including the IRS 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 persons who have asserted that they have been injured by a product manufactured by any Seller (collectively, the "Notice Parties"). The Sellers shall provide notice to the Notice Parties that all responses or objections to entry of the Bidding Protections Order or the Sale Order shall be served on, among others, counsel to Purchaser.

## **ARTICLE VIII COVENANTS**

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

### 8.2. Conduct of Sellers Pending the Closing.

(a) Except (1) as set forth on Schedule 8.2, (2) as required by applicable Law or by order of the Bankruptcy Court, (3) as otherwise expressly contemplated by this Agreement or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), Sellers shall not:

(i) subject any of the Purchased Assets to any Lien, except for Permitted Exceptions;

(ii) sell, assign, license, transfer, convey, lease or otherwise dispose of any of the Purchased Assets;

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

(iv) enter into, modify, amend or terminate any of the Purchased Contracts or waive, release, compromise or assign any material rights or claims under any of the Purchased Contracts;

(v) make, change or revoke any Tax election or method of accounting, or enter into any agreement or arrangement with respect to Taxes; or

(vi) agree to do anything prohibited by this Section 8.2(a).

(b) Prior to the Closing, except (1) as set forth on Schedule 8.2, (2) as required by applicable Law or by order of the Bankruptcy Court, (3) as otherwise expressly contemplated by this Agreement or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), Sellers shall:

(i) use its commercially reasonable efforts to maintain the Purchased Real Property in the same state of repair, order and condition as it is on the Effective Date, reasonable wear and tear excepted;

(ii) use its commercially reasonable efforts to maintain the Purchased Equipment in the same state of repair, order and conditions as it existed as of the Business Shutdown Effective Time, reasonable wear and tear excepted; and

(iii) secure the Purchased Assets from damage, destruction or loss pursuant to commercially reasonable methods employed by a prudent owner.

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

#### 8.4. Title Insurance.

(a) No later than five (5) days prior to the Termination Date, Sellers 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 Sellers, 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 12.3 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 Sellers at Sellers’ sole cost and expense at or prior to the Closing.

(e) Purchaser shall have the right to waive at the Closing or at any time prior to the 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 Sellers are 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 the Closing, as above set forth, then Sellers 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 Sellers 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 Sellers and Purchaser held harmless therefrom.

8.5. Inspection of Purchased Equipment; Adjustments to Purchase Price. On or before five (5) Business Days prior to the Closing, Purchaser shall be entitled to conduct, at Purchaser’s sole cost and expense, an onsite inspection of all of the Purchased Equipment.

8.6. Destruction of Retained Molds. Promptly upon the destruction of the Retained Molds being permitted pursuant to Applicable Law, Seller (or its successors in interest) shall destroy, or caused to be destroyed in a manner consistent with applicable Laws, all Retained Molds. Sellers (or their successors in interest) shall provide written notice and evidence of their compliance with this Section 8.6 that is reasonably satisfactory to Purchaser promptly following the destruction of the Retained Molds. Sellers hereby covenant for their own account (and for the account of their successors in interest) that they shall not sell any of the Retained Molds or otherwise cause the Retained Molds to be transferred for use in commerce without the prior written consent of Purchaser, and any attempt to sell any of the Retained Molds or otherwise cause the Retained Molds to be transferred for use in commerce without the prior written consent of Purchaser shall be null and void. For the sake of clarity, notwithstanding



anything to the contrary contained in this Section 8.6 or this Agreement, Purchaser shall not have or assume any right, title or interest in or to the Retained Molds.

8.7. Removal of Retained Assets. Purchaser hereby grants to Sellers a right of access to the Purchased Real Property, with no less than two (2) days prior notice for up to 40 calendar days following the Closing Date at Sellers sole expense, to cause all Retained Assets to be removed from the Purchased Real Property. During the right of access period Sellers access shall be limited to reasonable access on Business Days during normal business hours and Sellers shall at all times be accompanied by a representative of Purchaser. Following the right of access period, any Retained Assets remaining at the Purchased Real Property shall be deemed abandoned by the Sellers and Purchaser shall be entitled to remove, or cause the same to be removed or destroy, at Purchaser's discretion and at Sellers sole expense.

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

8.9. Confidentiality. Purchaser acknowledges that the Confidential Information (as defined in the Confidentiality Agreement) provided to it in connection with this Agreement, including under Section 8.1, and the consummation of the Transactions, is subject to the terms of the confidentiality agreement between Purchaser and Sellers, dated July 3, 2012 (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference.

8.10. Preservation of Records.

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

(b) Notwithstanding Section 8.10(a), in the event Sellers wish or Purchaser wishes to destroy records subject to the preservation requirements of Section 8.10(a), such Party (the "Noticing Party") shall be entitled to destroy such records by (i) giving ninety (90) days prior written notice (the "Original Notice") to the other Party and such other Party shall have the right at its option and expense, upon prior written notice given to the Noticing Party within such ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of the Original Notice, or (ii) seeking and obtaining an order of the Bankruptcy Court approving the destruction of such records and complying with such order of the Bankruptcy Court.

(c) If Sellers provide Purchaser an Original Notice as provided for in Section 8.10(b)(i) hereof and the Official Committee of Unsecured Creditors of Blitz USA, Inc., *et al.* remains constituted and has not been disbanded or dissolved, Sellers shall provide to the Supplemental Notice Parties, by one of the notice methods provided for in Section 13.7 hereof, a copy of such Original Notice at the following address:

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

-and-

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

Notwithstanding the foregoing, absent an order of the Bankruptcy Court or an agreement of the Parties and the Official Committee of Unsecured Creditors of Blitz USA, Inc., *et al.*, nothing in this Agreement shall confer upon the Supplemental Notice Parties or the Official Committee of Unsecured Creditors of Blitz USA, Inc., *et al.* the right to take possession of records to be destroyed pursuant to this Section 8.10.

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

8.12. Removal of Oil and Petroleum Products. No later than five (5) Business Days prior to the Closing, Sellers shall ensure that all oil and petroleum products stored in the environmental liquids storage area currently awaiting disposal or recycling, as described in the Phase I Environmental Site Assessment and Limited Compliance Review as prepared by ENVIRON International Corporation, dated August 2012, have been properly handled, stored, managed, and disposed in compliance with all applicable Laws

8.13. Supplementation and Amendment of Schedules. Sellers shall be permitted, by written notice to Purchaser, to supplement the 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 Schedules if they had existed on the Effective Date. No such written notice by Sellers shall be deemed to cure any breach of representation or warranty made by Sellers as of the Closing; provided, however, such written notice will be deemed to cure any alleged breach by Sellers or 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 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.

## **ARTICLE IX RESERVED**

## **ARTICLE X CONDITIONS TO CLOSING**

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

(a) the representations and warranties of Sellers set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall be true and correct at and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date), except for such failures to be true and correct that, 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 Seller, dated the Closing Date, to the foregoing effect;

(b) Sellers shall have performed and complied with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date; provided that the condition set forth in this Section 10.1(b) shall be deemed satisfied unless such failures to so perform or comply taken together would be reasonably likely to result in a Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized signatory of each Seller, dated the Closing Date, to the foregoing effect;

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser, at Sellers' sole expense and to the sole satisfaction of the Purchaser no later than twenty-one (21) days prior to the Closing, an environmental assessment of the Real Property meeting the All Appropriate Inquiry requirements of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), including a Phase I Environmental Site Assessment in compliance with the American Society of Testing and Materials ("ASTM") standard E1527-05;

(d) the Sale Order shall have become a Final Order;

(e) payment of all Taxes (or portions thereof) with respect to the Purchased Assets for any Tax periods ending on or before the Closing Date determined consistently with the allocation methodology set forth in Section 2.4(d); and

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

10.2. Conditions Precedent to Obligations of Seller. The obligation of Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by 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 Seller shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect;

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

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

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

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

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order, the Bidding Protections Order and the Sale Order, substantially in the form attached hereto as Exhibit D (subject to non-material changes only). The Sale Order shall not have been reversed or vacated and any stay period applicable to the Sale Order shall have expired or shall have been waived by the Bankruptcy Court.

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

## **ARTICLE XI NO SURVIVAL**

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

11.2. No Consequential Damages. Notwithstanding anything to the contrary elsewhere in this Agreement, no Party shall, in any event, be liable to any other Person for any consequential, incidental, indirect, special or punitive damages of such other Person, including loss of future revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to the breach or alleged breach hereof (provided that such limitation with respect to lost profits shall not limit any Seller's right to recover contract damages in connection with Purchaser's failure to close in violation of this Agreement).

## **ARTICLE XII TAXES**

12.1. Transfer Taxes. Sellers shall be responsible for (and shall indemnify and hold harmless Purchaser and its directors, members, 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 Transactions ("Transfer Taxes"). 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.

12.2. Tax Payments. Beginning as of 11:59 p.m. (Eastern Time) on the Closing Date, Purchaser shall be responsible for and shall pay all real and personal property Taxes or similar ad valorem obligations payable with respect to the Purchased Assets for any Tax periods (or portions thereof) beginning on the day immediately following the Closing Date and determined consistently with the allocation methodology set forth in Section 2.4(d).

12.3. Purchase Price Allocation (Federal Income Tax). Sellers and Purchaser shall allocate the purchase price (including the Assumed Contract Liabilities) among the Purchased Assets as specified in Schedule 12.3. All Tax Returns filed by Purchaser and Sellers shall be prepared consistently with such allocation, and none of the Parties shall take a position inconsistent therewith in any administrative or judicial proceeding.

12.4. Cooperation. Sellers, on the one hand, and Purchaser, on the other hand, will, and each will cause its Affiliates to, provide each other with such cooperation and information as reasonably may be 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. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings and other determinations by tax authorities. Any information obtained under this Section 12.4 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 XIII MISCELLANEOUS**

13.1. Expenses. Except as otherwise provided in this Agreement, Bidding Procedures Order or the Bidding Protections Order, 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.

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

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

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

(a) Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 13.7; provided, however, that if the Bankruptcy Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in New Castle County or the courts of the State of Delaware sitting

in New Castle County and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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

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

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

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

If to Blitz USA, to:

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

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

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

If to Blitz RE, to:

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

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

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

If to Purchaser, to:

Scepter Holdings Inc.  
170 Midwest Road  
Scarborough, Ontario M1P 3A9  
Canada  
Attention: Robert S. Torokvei  
Facsimile: (416) 751-9099  
email: 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: Anthony Milazzo  
Facsimile: (416) 361-2704  
email: amilazzo@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

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

13.9. Binding Effect; No Third-Party Beneficiaries; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties (by Sellers, in the case of a proposed assignment by Purchaser) and any attempted assignment without the required consents shall be void, provided, however, notwithstanding the foregoing, Sellers are hereby authorized to assign this Agreement or of any their rights or obligations hereunder to any Permitted Assigns without the consent of Purchaser. Notwithstanding the foregoing, prior to the Closing, Purchaser may assign this Agreement or any of the Purchaser Documents or any of its obligations hereunder or thereunder to an Affiliate without consent of Sellers. No assignment of any obligations hereunder shall relieve the Parties of any such obligations. Upon any permitted assignment by Purchaser, as assignor, the references in this Agreement to Purchaser shall also apply to the assignee of Purchaser's rights or obligations unless the context otherwise requires. Upon any permitted assignment by a Party, as

assignor, the references in this Agreement to a Party shall also apply to any assignee of such Party's rights or obligations unless the context otherwise requires.

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

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

[Signature Page Follows]

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

**SELLER**

BLITZ USA, INC.

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

Name: Rocky Flick

Title: President and CEO

BLITZ RE HOLDINGS, LLC

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

Name: Rocky Flick

Title: President and CEO

**PURCHASER**

SCEPTER HOLDINGS INC.

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**

BLITZ USA, INC.

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

BLITZ RE HOLDINGS, LLC

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

**PURCHASER**

SCEPTER HOLDINGS INC.

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

SCHEDULES  
TO THE  
ASSET PURCHASE AGREEMENT  
BY AND AMONG  
BLITZ U.S.A., INC.,  
BLITZ RE HOLDINGS, LLC  
AND  
SCEPTER HOLDINGS INC.  
Dated as of August 23, 2012

This document includes the schedules (the “Schedules”) referred to in the ASSET PURCHASE AGREEMENT (the “Agreement”) dated as of August 23, 2012 by and among Blitz U.S.A., Inc., an Oklahoma corporation (“Blitz”), Blitz RE Holdings, LLC, a Delaware limited liability company (the “Blitz RE” and together with Blitz, “Sellers” and each, “Seller”), and Scepter Holdings Inc., a Canadian corporation (“Purchaser”). Initially capitalized terms used herein and not otherwise defined are used as defined in the Agreement.

The Schedules are qualified in their entirety by reference to specific provisions of the Agreement and the relevant documents themselves, and are not intended to constitute, and shall not be construed as constituting, representations or warranties of any of the Sellers except to the extent expressly provided in the Agreement.

Matters reflected in the Schedules are not necessarily limited to matters required by the Agreement to be reflected in the Schedules. To the extent any such additional matters are included, they are included for informational purposes and do not necessarily include other matters of a similar nature. Headings and subheadings have been inserted herein for convenience of reference only and shall to no extent have the effect of amending or changing the express description hereof as set forth in the Agreement.

Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule to the extent it is reasonably apparent that such disclosed information is applicable thereto.

Neither the specification of any dollar amount in the representations and warranties contained in the Agreement or in any Schedule nor the inclusion of any specific item in any Schedule is intended to imply that such amounts, higher or lower amounts, the items so included or other items, are or are not material or outside the ordinary course of business.

Neither of the Sellers assumes any responsibility to any Person that is not a party to the Agreement for the accuracy of any information herein. The information was not prepared or disclosed with a view to its potential disclosure to others. Subject to applicable Law, this information is disclosed in confidence for the purposes contemplated in the Agreement and is subject to the confidentiality provisions of the Agreement and of any other agreements entered into by the parties.

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**Schedule 1.1(a)**  
Excluded Contracts

1. A A Mini-Storage Agreement, dated March 1, 2008, between A A Mini-Storage and Blitz USA.
2. A A Mini-Storage Agreement, dated October 14, 2010, between A A Mini-Storage and Blitz USA.
3. Anderson Mini Storage #1 – Rental Agreement, dated July 12, 2011, between Anderson Mini Storage #1 and Blitz USA.
4. Anderson Mini Storage #2 – Rental Agreement, dated August 18, 2011, between Anderson Mini Storage #2 and Blitz USA.
5. Workers Compensation Administrative Services Agreement, dated October 1, 2011, between Mutual Assurance Administrators, Inc. and Blitz USA.
6. Lease Agreement, dated October 1, 2011, between Blitz RE and Blitz USA.
7. Third Party Administrator Agreement, dated September 1, 2010, between Gallagher Bassett Services, Inc. and Blitz USA, as amended by that First Amendment to Third Party Administrator Agreement, dated July 25, 2011.
8. Hawkline Addendum, dated August 13, 2010, between Hawkline LLC and Blitz USA.
9. Warehouse Agreement, dated January 29, 2010, between Hawkline LLC and Blitz USA.
10. Premium Finance Agreement, Disclosure Statement and Security Agreement, dated July 7, 2011, between Imperial Credit Corporation and Blitz USA.
11. Supply Agreement, between Alltrista Plastics LLC and Blitz USA, as amended.
12. Lease Agreement, dated May 1, 2007, between Allan Kaspar and Blitz USA.
13. Warehouse Services Contract, dated May 1, 2007, between Miami Warehouse and Blitz USA.
14. Equipment Lease, dated May 18, 2009, between O.M.E. Corporation and Blitz USA.
15. Administrative Services Agreement, dated February 9, 2011, between UMR, Inc. and Blitz USA.
16. Vision Net Contract, dated March 12, 2012, between Vision Net, Inc. and Blitz USA.
17. 2011 Vendor Marketing Assessment, dated January 10, 2011, between ACE Hardware and Blitz USA.
18. AMI Vendor Program Agreement, dated September 29, 2011, between Allied Merchandising Industry and Blitz USA.
19. AutoZone Parts, Inc. Vendor Agreement, dated May 13, 2011, between AutoZone Parts, Inc. and Blitz USA.



20. McLane, Inc./2012 Blitz U.S.A. Program, dated December 16, 2011, between McLane, Inc. and Blitz USA.
21. Vendor Agreement, dated January 6, 2011, between O-Reilly Auto Parts and Blitz USA.
22. Orgill Advertising Agreement, dated October 7, 2010, between Orgill and Blitz USA.
23. Supplier Agreement, dated March 11, 2010, by and among Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, Wal-Mart Stores East, Inc., Wal-Mart Stores Texas, LP, Sam's West, Inc., Sam's East, Inc. and Blitz USA.
24. All Contracts, including all purchase orders and any amendments, supplements, addendums and modifications thereto, with either of the Sellers and the following customers of the Sellers entered into in the ordinary course of business, for the purchase of products or services:
  - a. Ace Hardware Corporation (California)
  - b. Ace Hardware Corporation (Illinois)
  - c. Advance Stores Company Inc.
  - d. Amazon.com Inc.
  - e. AMI / Core-Mark International
  - f. AutoZone, Inc.
  - g. Bass Pro, Inc.
  - h. Blain Supply Inc.
  - i. Bridgestep LLC
  - j. Brookside Studios & Media
  - k. Bunzl USA
  - l. Cabela's
  - m. Carquest Corporation
  - n. Costco Wholesale Corp
  - o. CPI Global Sourcing Inc.
  - p. Cycle Gear Inc
  - q. Do It Best Corp
  - r. Dollar General Corporation
  - s. Dollar Tree Stores Inc
  - t. Donovan Marine
  - u. Family Dollar (Matthews, NC)

- v. Family Dollar (Charlotte, NC)
- w. Federated Co-Man Warehouse LLC
- x. General Parts Distribution
- y. Grant Brothers Sales Limited
- z. Home Depot USA, Inc.
- aa. Home Hardware Stores Limited
- bb. JRD Holding Inc.
- cc. Lowes Companies, Inc.
- dd. McLane Company, Inc.
- ee. Menard, Inc.
- ff. Mills Fleet Farm
- gg. Morris Rothenberg & Sons Inc
- hh. MTA Distributors
- ii. New Pig Corporation
- jj. Northern Tool & Equipment Company
- kk. Orchard Supply Hardware LLC (Hemet, CA)
- ll. Orchard Supply Hardware LLC (San Jose, CA)
- mm. O'Reilly Automotive Inc.
- nn. Orgill Inc.
- oo. Orscheln Farm & Home LLC
- pp. Pep Boys
- qq. Portable Fuel Container Manufacturing Association
- rr. Safeway Inc.
- ss. Sears
- tt. Shriners Hospitals for Children
- uu. Southern Material Handling Company
- vv. Southern States Cooperative Inc
- ww. Stewart's Shops Corporation
- xx. Strauss Auto
- yy. The Andersons Inc.

- zz. The Kroger Company
  - aaa. Tractor Supply Company
  - bbb. Transamerica Auto Parts Company
  - ccc. Transamerican Auto Parts Co
  - ddd. True Value (Illinois)
  - eee. True Value (California)
  - fff. United Hardware Distributing Co
  - ggg. United Natural Foods Inc.
  - hhh. Valero Retail Distribution Center
  - iii. Wal-Mart Stores
  - jjj. Wal-Mart Transportation LCC
- 25. Bill Murray & Associates – Agency Commission Agreement.
  - 26. Grant Brothers – Agency Commission Agreement.
  - 27. Kitchin & Sons - Agency Commission Agreement
  - 28. Marc Alan Associates - Agency Commission Agreement.
  - 29. Nation Sales - Agency Commission Agreement.
  - 30. RPS Marketing - Agency Commission Agreement.
  - 31. Schnair Sales - Agency Commission Agreement.
  - 32. S&S Sales - Agency Commission Agreement.
  - 33. Employee Bonus Incentive Plan.
  - 34. All other Contracts of Sellers, other than the Contracts acquired by Purchaser pursuant to Section 2.1 of the Agreement.
  - 35. The Transition Services Agreement, dated as of April 3, 2012, among MiamiOK LLC (formerly known as F3 Brands LLC), Blitz USA and Hopkins Manufacturing Corporation.

**Schedule 1.1(b)**  
Knowledge of Sellers

1. Rocky Flick, President and CEO.
2. Miriam George, Vice President of Risk Management and HR.
3. Charles Evans, Plant Manager
4. Mark Daniels, Director of Product Development and Quality
5. Perry Franks, Process Engineer

**Schedule 1.1(c)**  
Permitted Exceptions

1. The Easement Agreement, dated as of August 3, 2012, between Blitz RE and Hopkins Manufacturing Corporation.

**Schedule 1.1(d)**  
Purchased Contracts

1. The Warehouse Lease Agreement, dated April 3, 2012, between Blitz RE and Hopkins Manufacturing Corporation.
2. Easement Agreement, dated August 3, 2012, between Blitz RE and Hopkins Manufacturing Corporation.
3. BNSF Railway Company Lease for Land and Track, dated August 16, 2010, between BNSF Railway Company and Blitz USA.
4. Software Maintenance and Support Agreement, dated October 29, 2006, between Accellos, Inc. (Radio Beacon Inc.) and Blitz USA.
5. End User License Agreement, between Acronis International GMBH (Data Backup) and Blitz USA.
6. End User License Agreement, dated on or around November 27, 2010, between Dell Appassure Software, Inc. and Blitz USA.
7. Empower Terms and Conditions of Sale, dated June 30, 2010, between Empower Software Solutions, Inc. and Blitz USA, together with the Addendum to Empower Conditions of Sale Agreement, dated June 30, 2010, between Empower Software Solutions, LLC and Blitz USA.
8. End-User License Agreement, dated September 16, 2011, between InfinityQS Solutions International, Inc. and Blitz USA.
9. Symantec Software License Agreement, between Symantec Corporation (Veritas Backup) and Blitz USA.

**Schedule 1.1(e)**  
Retained Molds

<b>Asset ID</b>	<b>Suf</b>	<b>Asset Description</b>	<b>Place in Service Date</b>	<b>Location ID</b>
1017	1	6 GAL GAS CAN MOLD CAV# 3	10/1/2007	PLASTIC
1022	1	SEKTAM 5 GALLON GAS CAN MOLD CAV #7	10/1/2007	PLASTIC
1029	1	2 PLUS MOLD CAV #7	10/1/2007	PLASTIC
1042	1	CUT MOLD IN TWO	10/1/2007	PLASTIC
1051	1	SURE POUR SPOUT TUBE MOLD	10/1/2007	PLASTIC
1055	1	MOLD FOR CHILD RESISTANT COLLAR 8 CAVITY	10/1/2007	PLASTIC
1070	1	VEMCO 2M SERIES SPOUT - TUBE	10/1/2007	PLASTIC
1079	1	MODIFY BENCH MOLD	10/1/2007	SOUTH
1082	1	NEW STYLE VENTED SPOUT	10/1/2007	PLASTIC
1085	1	CHANGE ANGLE ON 2M SPOUT	10/1/2007	PLASTIC
1086	1	MODIFY PICNA BENCH MOLD	10/1/2007	SOUTH
1098	1	PROTOTYPE/ENGINEERING NEW TYPE	10/1/2007	PLASTIC
1102	1	METAL CAN ADAPTER MOLD	10/1/2007	SOUTH
1107	1	PROTOTYPE MOLD FOR VENTED SPOUT	10/1/2007	PLASTIC
1109	1	CAP & ADAPTER MOLD OVERHAUL	10/1/2007	PLASTIC
1119	1	MODIFY 3000 SERIES SPOUT	10/1/2007	PLASTIC
1148	1	SELF VENTING DUST COVER MOLD	10/1/2007	PLASTIC
1167	1	8 CAVITY SPOUT TUBE MOLD	10/1/2007	PLASTIC
1169	1	SINGLE CAVITY MOLD 3000 SURE POUR SPOUT	10/1/2007	PLASTIC
1178	1	28 SETS OF PINCH-OFFS FOR MOLDS	10/1/2007	PLASTIC
1183	1	8 CAVITY MOLD SELF VENT SPOUT 45 DEGREE	10/1/2007	PLASTIC
1185	1	16-CAVITY MOLD THREAD RING W/CHILD	10/1/2007	PLASTIC
1190	1	MODIFY GAS CAN MOLDS 1,2,5, & 6	10/1/2007	PLASTIC
1195	1	2 CAVITY 1+ GAS CAN MOLD CAV #9 & 10	10/1/2007	PLASTIC
1196	1	SINGLE CAVITY 5 GALLON GAS CAN MOLD	10/1/2007	PLASTIC
1213	1	MOLD REPAIR SELF VENTING SPOUT	10/1/2007	PLASTIC
1216	1	SINGLE CAVITY 5 GAL. GAS CAN MOLD	10/1/2007	PLASTIC
1217	1	SINGLE CAVITY 5 GAL. GAS CAN MOLD	10/1/2007	PLASTIC
1218	1	SINGLE CAVITY 5 GAL. GAS CAN MOLD	10/1/2007	PLASTIC
1257	1	2M SERIES SPOUT TUBE MOLD	10/1/2007	PLASTIC
1258	1	5 GAL CO-EX CONVERTIBLE PINCH-OFF	10/1/2007	PLASTIC
1263	1	MODIFY 16 CAVITY DUST COVER INJECT MOLD	10/1/2007	PLASTIC
1292	1	MANIFOLD REPAIR FOR SPOUT MOLD	10/1/2007	PLASTIC
1305	1	1+ GAS CO-EX CONVERTIBLE PINCH-OFFS	10/1/2007	PLASTIC
1310	1	WATER JACKET FOR SPOUT MOLDS	10/1/2007	PLASTIC
1311	1	CORES & PINS FOR SELF VENTING SPOUT	10/1/2007	PLASTIC
1314	1	2+ GAL. CO-EX CONVERTIBLE PINCH OFF	10/1/2007	PLASTIC
1325	1	SIDE PLATES FOR 2+ MOLDS	10/1/2007	PLASTIC

Asset ID	Suf	Asset Description	Place in Service Date	Location ID
1329	1	MODIFY 2CAVITY 1+ GAS CAN MOLD	10/1/2007	PLASTIC
1332	1	REVISED MOLD PINS FOR SELF VENTING SPOUT	10/1/2007	PLASTIC
1336	1	MODIFY 5 GAL GAS CAN MOLD CAVITY 9	10/1/2007	PLASTIC
1398	1	5 GAL. PM250-1 MOLD CAVITY 1	10/1/2007	PLASTIC
1399	1	1.25 GAL. MOLD PM164 CAVITY 1	10/1/2007	PLASTIC
1400	1	2.5 GAL. MOLD PM165-1 CAVITY 1	10/1/2007	PLASTIC
1401	1	2.5 GAL. MOLD PM 169-1 CAVITY 2	10/1/2007	PLASTIC
1402	1	2.5 GAL. MOLD PM 169 CAVITY 3	10/1/2007	PLASTIC
1403	1	2.5 GAL. MOLD PM 165 CAVITY 4	10/1/2007	PLASTIC
1404	1	1.5 GAL. MOLD PM 170 CAVITY 1	10/1/2007	PLASTIC
1405	1	1.5 GAL. MOLD PM 170-1 CAVITY 2	10/1/2007	PLASTIC
1406	1	5 GAL. MOLD PM 250-2 CAVITY 2	10/1/2007	PLASTIC
1407	1	5.25 GAL. MOLD PM171-1 CAVITY 1	10/1/2007	PLASTIC
1408	1	1 GAL. MOLD PM 229 CAVITY 6	10/1/2007	PLASTIC
1409	1	1 GAL. MOLD PM 229-1 CAVITY 7	10/1/2007	PLASTIC
1410	1	2 GAL. MOLD PM 230-2 CAVITY 6	10/1/2007	PLASTIC
1411	1	2 GAL. MOLD PM 230-1 CAVITY 7	10/1/2007	PLASTIC
1412	1	2 GAL. MOLD PM 230 CAVITY 8	10/1/2007	PLASTIC
1413	1	5 GAL. MOLD PM 163 CAVITY 3	10/1/2007	PLASTIC
1414	1	5 GAL. MOLD PM 171 CAVITY 4	10/1/2007	PLASTIC
1416	1	1 GAL. MOLD CAVITY 4	10/1/2007	PLASTIC
1417	1	1 GAL. MOLD CAVITY 1	10/1/2007	PLASTIC
1418	1	1 GAL. MOLD CAVITY 3	10/1/2007	PLASTIC
1419	1	1 GAL. MOLD CAVITY 5	10/1/2007	PLASTIC
1420	1	1 GAL. MOLD CAVITY 2	10/1/2007	PLASTIC
1421	1	2 GAL. MOLD CAVITY 2	10/1/2007	PLASTIC
1422	1	2 GAL. MOLD CAVITY 5	10/1/2007	PLASTIC
1423	1	2 GAL. MOLD CAVITY 4	10/1/2007	PLASTIC
1424	1	2 GAL. MOLD CAVITY 3	10/1/2007	PLASTIC
1425	1	2 GAL. MOLD CAVITY 1	10/1/2007	PLASTIC
1426	1	1 GAL. MOLD PM 389 CAVITY 8	10/1/2007	PLASTIC
1427	1	2 GAL. MOLD PM 390 CAVITY 9	10/1/2007	PLASTIC
1428	1	5 GAL. MOLD PM 398 CAVITY 5	10/1/2007	PLASTIC
1429	1	6 GAL. MOLD PM 432 CAVITY 1	10/1/2007	PLASTIC
1438	1	P5 MOLD 5 GAL. GAS CAN	10/1/2007	PLASTIC
1442	1	1 CAVITY INSERTS W/1 TOP 2 BOTTOM	10/1/2007	PLASTIC
1448	1	3.3 GAL. MARINE TANK MOLD PM 310	10/1/2007	PLASTIC
1449	1	6 GAL. MARINE TANK MOLD (TOP HALF ONLY)	10/1/2007	PLASTIC
1473	1	8 CAVITY SELF VENTING SPOUT MOLD	10/1/2007	PLASTIC
1475	1	SELF VENTING SPOUT DUST COVER MOLD-NEW	10/1/2007	PLASTIC
1493	1	TL0608 MOLD TANK CAP MOLD	10/1/2007	PLASTIC



Asset ID	Suf	Asset Description	Place in Service Date	Location ID
1508	1	TL0607 TANK CAP MOLD	10/1/2007	PLASTIC
1536	1	16-CAV COOL ONE MANIFOLD FOR NEW DUST	10/1/2007	PLASTIC
1540	1	2 CAVITY 5 GAL BLOWMOLD FOR #11	10/1/2007	PLASTIC
1548	1	MODIFY 2 CAVITY 1+ GAS CAN MOLD	10/1/2007	PLASTIC
1549	1	MODIFY 5 GAL. GAS CAN MOLD CAVITY 10	10/1/2007	PLASTIC
1592	1	CANADIAN SPOUT 1ST SINGLE NEW WATER	10/1/2007	PLASTIC
1594	1	2ND SET RPLMT CORES/PINS - SELF VENT SPT	10/1/2007	PLASTIC
1595	1	10 DEGREE LIFTER SET FOR SPOUT MOLD	10/1/2007	PLASTIC
1596	1	10 DEGREE LIFTER SET FOR SPOUT MOLD	10/1/2007	PLASTIC
1597	1	10 DEGREE LIFTER SET FOR SPOUT MOLD	10/1/2007	PLASTIC
1611	1	2 CAVITY 5 GAL BLOWMOLD FOR #11	10/1/2007	PLASTIC
1612	1	2 CAVITY 1+ MOLD FOR #7	10/1/2007	PLASTIC
1613	1	2 CAVITY 1+ MOLD FOR #7	10/1/2007	PLASTIC
1614	1	2 CAVITY 2+ MOLD FOR #7	10/1/2007	PLASTIC
1615	1	2 CAVITY 2+ MOLD FOR #7	10/1/2007	PLASTIC
1644	1	SELF VENTING COLLAR MOLD	10/1/2007	PLASTIC
1645	1	5 GAL GAS CAN MOLD CAV #2	10/1/2007	PLASTIC
1667	1	5 GAL MOLD SQUATTY CAV #5	10/1/2007	PLASTIC
1668	1	1+ MOLD LC#44	10/1/2007	PLASTIC
1669	1	2 GAL 8 OZ BLOW MOLD LC# 42	10/1/2007	PLASTIC
1671	1	2+ MOLD LC# 49	10/1/2007	PLASTIC
1672	1	5 GAL MOLD CAV #4	10/1/2007	PLASTIC
1673	1	NEW STYLE 2+ MOLD CAV #2	10/1/2007	PLASTIC
1674	1	NEW STYLE 2+ MOLD CAV #3	10/1/2007	PLASTIC
1675	1	NEW STYLE 2+ MOLD CAV #4	10/1/2007	PLASTIC
1676	1	NEW STYLE 1+ MOLD / TW 2 CAV #5 & 6	10/1/2007	PLASTIC
1679	1	NEW STYLE 1+ MOLD / BK CAV #2	10/1/2007	PLASTIC
1680	1	5 GAL MOLD CAV #6	10/1/2007	PLASTIC
1681	1	CAP & ADAPTER MOLD (ADAPTER)	10/1/2007	PLASTIC
1682	1	SEKTAM 5 GAL MOLD CAV #8	10/1/2007	PLASTIC
1683	1	2 PLUS MOLD CAV #8	10/1/2007	PLASTIC
1684	1	SURE POUR SPUT CORE MOLD	10/1/2007	PLASTIC
1685	1	SURE POUR SPOUT SLIDE MOLD	10/1/2007	PLASTIC
1686	1	SURE POUR SPOUT WASHER MOLD	10/1/2007	PLASTIC
1687	1	SURE POUR SPOUT DUST CAP MOLD	10/1/2007	PLASTIC
1688	1	MOLD FOR CHILD RESISTANT DISK - 4 CAV	10/1/2007	PLASTIC
1689	1	8 CAVITY SPOUT TUBE MOLD	10/1/2007	PLASTIC
1709	1	2+ GAS CAN MOLD 2 CAVITY CAV #7 & 8	10/1/2007	PLASTIC
1822	1	2 CAVITY 1+ GAS CAN MOLD CAV #11 & 12	10/1/2007	PLASTIC
1823	1	5 GAL GAS CAN MOLD CAV #9	10/1/2007	PLASTIC
1824	1	5 GAL GAS CAN MOLD CAV #10	10/1/2007	PLASTIC

Asset ID	Suf	Asset Description	Place in Service Date	Location ID
1825	1	2 CAVITY 2+ GAS CAN MOLD CAV #9 & 10	10/1/2007	PLASTIC
1826	1	2 CAVITY 2+ GAS CAN MOLD CAV #11& 12	10/1/2007	PLASTIC
1854	1	VEMCO 2M SERIES SPOUT - SLIDE	10/1/2007	PLASTIC
1855	1	VEMCO 2M SERIES SPOUT - CORE	10/1/2007	PLASTIC
1856	1	VEMCO 2M SERIES SPOUT - WASHER	10/1/2007	PLASTIC
1857	1	2M SERIES SPOUT - SLIDE	10/1/2007	PLASTIC
1858	1	2M SERIES SPOUT - CORE	10/1/2007	PLASTIC
1859	1	2M SERIES SPOUT - WASHER	10/1/2007	PLASTIC
1967	1	SINGLE CAVITY 5 GALLON GAS CAN MOLD	10/1/2007	PLASTIC
1968	1	SINGLE CAVITY 5 GALLON GAS CAN MOLD	10/1/2007	PLASTIC
1987	1	2 CAVITY 5 GALLON GAS CAN MOLD - UNILOY	10/1/2007	PLASTIC
1987	2	2 CAVITY 5 GAL MOLD MODIFICATIONS	9/20/2010	PLASTIC
1988	1	CSA PLUG MOLD-STD RUNNER-8 CAV	10/1/2007	SOUTH
1991	1	2 CAVITY 5 GALLON GAS CAN MOLD - UNILOY	10/1/2007	PLASTIC
1991	2	2 CAVITY 5 GAL MOLD MODIFICATIONS	9/20/2010	PLASTIC
2187	1	4 sets of TSG kero plates 2 plus	8/1/2009	PLASTIC
2213	1	CSA Mold Modifications	8/1/2009	PLASTIC
2223	1	RAISED HANDLE ON 1+ AND 2+	10/1/2007	PLASTIC
2223	2	RAISED HANDLE FOR ENVIRO FLO CANS	6/1/2009	PLASTIC
2228	1	LEVER MOLD - NEW EPA SPOUT	4/1/2008	PLASTIC
2228	2	Spare Parts 16 Cavity Lever	7/1/2009	PLASTIC
2229	1	32 CAVITY PLUNGER CAP - NEW EPA SPOUT	4/1/2008	PLASTIC
2229	2	Sapre Parts 32 Cavity Plunger	7/1/2009	PLASTIC
2230	1	16 CAVITY PLUNDER - NEW EPA SPOUT	4/1/2008	PLASTIC
2230	2	Spare Parts 16 Cavity Plunger Cap	7/1/2009	PLASTIC
2231	1	8 Cavity EPA Spount Mold #1	4/1/2008	PLASTIC
2231	2	Spare Parts 16 Cavity Spout	7/1/2009	PLASTIC
2231	3	Interlocking Cores for Enviro Flow Spout	4/28/2010	PLASTIC
2232	1	8 Cavity EPA Spount Mold #2	4/1/2008	PLASTIC
2232	2	Interlocking Cores for Enviro Flow Spout	4/28/2010	PLASTIC
2233	1	TETHERED CAP MOLD - NEW EPA SPOUT	4/1/2008	PLASTIC
2233	2	Spare Parts 16 Cavity Tethered Cap	7/1/2009	PLASTIC
2233	3	S25826-BLITZde	12/7/2010	PLASTIC
2234	1	TOP CAP MOLD - NEW EPA SPOUT	4/1/2008	PLASTIC
2234	2	Spare Parts 16 Cavity Top Cap	7/1/2009	PLASTIC
2235	1	TRIGGER MOLD - NEW EPA SPOUT	4/1/2008	PLASTIC
2235	2	Trigger Pivot Core Pins	1/1/2009	PLASTIC
2235	3	Spare Parts 16 Cavity Trigger	7/1/2009	PLASTIC
2236	1	THREADED COLLAR MOLD - NEW EPA SPOUT	4/1/2008	PLASTIC
2236	2	Spare Parts 16 Cavity Collar	7/1/2009	PLASTIC
2238	1	ENVIRO-FLO FLEX TUBE EXTENSION	4/1/2008	PLASTIC

Asset ID	Suf	Asset Description	Place in Service Date	Location ID
2239	1	Injection Mold Bending Latch Metal Can	7/1/2008	METAL
2240	1	Modify Metal Can Neck & Flange Inj Mold	7/1/2008	METAL
2271	1	VERBIAGE & MARKING CHANGES	6/1/2009	PLASTIC
3001	1	12 Cavity Enviro Flo Spout'	4/1/2009	PLASTIC
3001	2	12 Cavity Enviro Flo Spout'	4/1/2009	PLASTIC
3002	1	16 Cavity Enviro Flo Collar Mold'	4/1/2009	PLASTIC
3002	2	16 cavity Enviro Flo Collar Mold'	4/28/2009	PLASTIC
3003	1	4 sets of TSG Diesel side plates 5 gal.	7/29/2008	PLASTIC
3004	1	TSG side plates 5 gal gas can	7/29/2008	PLASTIC
3004	2	TSG Side Plates for 5 Gallon Gas Can	2/1/2009	PLASTIC
3005	1	Make 6 ea. sets of TSG Kerosen side plate	7/29/2008	PLASTIC
320	1	PROGRESSIVE BOTTOM	10/1/2007	METAL
363	1	2.5 GAL GAS CAN MOLD	10/1/2007	PLASTIC
584	1	5 GA RECT. GAS MOLD	10/1/2007	PLASTIC
585	1	1+ PLASTIC GAS MOLD	10/1/2007	PLASTIC
587	1	5 GA PL JERRYCAN MLD	10/1/2007	PLASTIC
636	1	8 CAV. CAP & ADAPTER	10/1/2007	PLASTIC
652	1	PULL N POUR SPOUT	10/1/2007	PLASTIC
667	1	5 GA PL GAS CAN MOLD	10/1/2007	PLASTIC
699	1	5 GAL MOLD CAVITY #4	10/1/2007	PLASTIC
704	1	1+ MOLD	10/1/2007	PLASTIC
753	1	16CAV. PULL-N-POUR	10/1/2007	PLASTIC
754	1	2GAL 8OZ BLOW MOLD	10/1/2007	PLASTIC
802	1	2+ MOLD	10/1/2007	PLASTIC
852	1	5GAL MOLD SINGLE CAV #1	10/1/2007	PLASTIC
880	1	5 GAL. MOLD CAV. #3	10/1/2007	PLASTIC
890	1	NEW STYLE 2+ MOLD CAV #1	10/1/2007	PLASTIC
891	1	2 CAVITY NEW STYLE 1+ MOLD/TW CAV.#3 & 4	10/1/2007	PLASTIC
892	1	NEW STYLE 1+ MOLD/BK CAV. #1	10/1/2007	PLASTIC
957	1	5 GALLON MOLD CAV. #5	10/1/2007	PLASTIC
973	1	CAP & ADAPTER MOLD	10/1/2007	PLASTIC
998	1	2 CAVITY 2 GAL MOLD & TOOLING CAV# 5 & 6	10/1/2007	PLASTIC

**Schedule 1.1(f)**  
Purchased Intellectual Property

<i><b>Docket No.</b></i>	<i><b>Country</b></i>	<i><b>Title</b></i>	<i><b>Status</b></i>	<i><b>Application No./Patent No.</b></i>	<i><b>Status Next Action</b></i>
42434	U.S.	Self-Venting Spout	Pending	Ser. No. 13/551,371 Filed: 07-17-2012	Awaiting first action
42434-CA	Canada	Self-Venting Spout	Pending	Ser. No. 2,783,832 Filed: 07-18-2012	Deadline to Request Exam 6/18/2017
44396-PRO	U.S.	Outlet Filter Screen For a Portable Fuel Container	Pending	Ser. No. 61/674,050 Filed: 07-20-2012	Utility and Foreign Filing Deadline 7/20/2013

**Schedule 2.1(c)**  
Purchased Equipment

**Purchased Machinery**

1. Single Parison, Six Layer Coextrusion Blow Molding Machine (Bekum BM-705D)
2. Twin Parison, Six Layer Coextrusion Blow Molding Machine (Bekum BM-704 DS)
3. Single Parison, Six Layer Coextrusion Blow Molding Machine (Bekum BM-504DE)
4. Single Parison, Six Layer Coextrusion Blow Molding Machine (Bekum BM-705D)
5. Twin Parison, Six Layer Coextrusion Blow Molding Machine (Bekum BM-705D)
6. Twin Parison, Six Layer Coextrusion Blow Molding Machine (B&W F24DS)
7. Single Parison, Six Layer Coextrusion Blow Molding Machine (Bekum BM-705D)
8. Single Parison, Six Layer Coextrusion Blow Molding Machine (Bekum BM-705D)
9. Twin Parison, Single Layer, Blow Molding Machine (B&W 8000DE)
10. Twin Parison, Six Layer Coextrusion Blow Molding Machine (B&W UMS35.D)
11. Single Parison, Single Layer Blow Molding Machine (Bekum Bm-504D)
12. Twin Parison, Six Layer Coextrusion Blow Molding Machine (Bekum BM-704 DS)

**Purchased Servers**

Sellers shall deliver the following servers and/or virtual data storage space to Purchaser at Closing, which servers shall be scrubbed to ensure that all information that are not related to the Purchased Assets have been removed.

<i><b>Computer</b></i>	<i><b>Model</b></i>	<i><b>Function</b></i>
04vserv3	Dell Small Tower	Security Server (security system and badge door readers)
PARTSCAGE	Dell Small Tower	Machine Parts Inventory
TASKE	HP Small Tower	Voice Mail system\ server
TOLVM	Dell Small Tower	Voice Mail application server
BTZPDC1	Dell 2950 Server	
ACCPULSE	Dell 2950 Server	
07srvr3	Dell 2950 Server	
HP - VM1	HP DL380G6 Server	
HP - VM2	HP DL380G6 Server	
Equallogic SAN	Dell Equallogic 4000 Storage Unit	

**Schedule 2.2**  
Retained Assets

**Retained Accounts**

1. Operating Account - Bank of Oklahoma.
2. Medical Fund Account - Bank of Oklahoma.
3. Disbursement Account - Bank of Oklahoma.
4. Flex Spending Account - Bank of Oklahoma.
5. General Account - Security Bank & Trust Co.
6. Worker's Compensation Account - Security Bank & Trust Co.

**Retained Servers**

Sellers shall retain the following servers and/or virtual data storage space containing the corresponding applications, documents and products information:

<i>Application</i>	<i>Server</i>	<i>Virtual</i>	<i>Physical</i>	<i>Notes</i>
Great Plains (2 user)	GPSRVR	VM		VM = 1 Dell 2950 + 1 HP SAN
Payroll Data (2006 - 3/15/2012)	GPSRVR	VM		
Acctg Support Docs (scanned to Great Plains)	GPSRVR -PaperSave	VM		
Financial Reporting SRS				
Financial Reporting FRX	IMAGESRVR	VM		
Production Information Databases (Infinity QS)	IMAGESRVR	VM		
Production Information Databases (Access)	DataSrvr1		Physical	Dell 2950
Business Documents	SharepointSRVR		Physical	Dell 2950
Business Processes / Work Instructions (Qsolve)	06srvr2		Physical	Dell 2950
Email Exchange Server	07srvr2		Physical	Dell 2950
Email Archive	Message Labs	Cloud		Download to external Drive.
Payroll Data (post March 15, 2012)	PAYCHEX	Cloud		Data -available after cancellation
Domain Controller	07srvr1	VM		Computer login control
Backup Server & backup storage			Physical	HP DL360G6 + 2 Cisco NAS

**Schedule 5.5(a)**  
**Tax Exceptions**

1. Sellers have not filed a federal income Tax Return for fiscal year ended September 30, 2011. The final date for filing such Tax Return was June 15, 2012. Sellers are in the process of preparing such Tax Return for filing with the IRS. Sellers will ensure that all federal Tax Returns relating to the Purchased Assets are filed and that all Taxes owed therewith are paid prior to the Closing.

2. Certain of Sellers state Tax Returns for the year ended 2011 have not been filed. Such state Tax Returns were due on July 15, 2012. Sellers are in the process of preparing such Tax Returns for filing with the appropriate state taxing authorities. Sellers will ensure that all state Tax Returns relating to the Purchased Assets are filed and that all Taxes owed therewith are paid prior to the Closing.

3. Property tax due to the Ottawa County Treasurer for 2011 is estimated to be \$190,962.74 as of July 31, 2012. Sellers will ensure that all such property taxes due with respect to the Purchased Assets are paid prior to the Closing consistent with the methodology set forth in Section 2.4(d) of the Purchase Agreement.

4. Property tax due to the Greene County Treasurer for 2011 is estimated to be \$10,889.29 as of July 31, 2012. Sellers will ensure that all such property taxes due with respect to the Purchased Assets are paid prior to the Closing consistent with the methodology set forth in Section 2.4(d) of the Purchase Agreement.

5. Accrued property taxes for 2012 are estimated to be \$111,537.00 as of July 31, 2012. Sellers will ensure that all such property taxes due with respect to the Purchased Assets are paid prior to the Closing consistent with the methodology set forth in Section 2.4(d) of the Purchase Agreement.

**Schedule 5.6**  
Real Property

(i) Owned Property

- a. 404 26th Avenue NW, Miami, OK 74354 - Owned by Blitz RE.

(ii) Leased Property

- a. Lease Agreement, dated as of October 1, 2011, between Blitz RE and Blitz USA, as amended.
- b. A A Mini-Storage Agreement, dated March 1, 2008, between A A Mini-Storage and Blitz USA.
- c. A A Mini-Storage Agreement, dated October 14, 2010, between A A Mini-Storage and Blitz USA.
- d. Anderson Mini Storage #1 – Rental Agreement, dated July 12, 2011, between Anderson Mini Storage #1 and Blitz USA.
- e. Anderson Mini Storage #2 – Rental Agreement, dated August 18, 2011, between Anderson Mini Storage #2 and Blitz USA.
- f. BNSF Railway Company Lease for Land and Track, dated August 16, 2010, between BNSF Railway Company and Blitz USA.



**Schedule 5.7**  
Personal Property Leases

1. Master Lease Agreement, dated May 12, 2011, between Southern Material Handling Company and Blitz U.S.A., Inc., together with (i) Equipment Schedule No. 1 to Master Lease Agreement, dated May 17, 2011, between Southern Material Handling Company and Blitz U.S.A., Inc.; (ii) Rider to Equipment Schedule Purchase Option No. 1 to Equipment Schedule No. 1, dated May 17, 2011, between Southern Material Handling Company and Blitz U.S.A., Inc.; and (iii) Notice of Assignment and Maintenance Collection Agreement for Equipment Schedule, by and among Southern Material Handling Company, Blitz U.S.A., Inc. and Toyota Motor Credit Corporation.

2. Equipment Lease, dated May 18, 2009, between O.M.E. Corporation and Blitz USA.

**Schedule 5.8(a)**  
List of Intellectual Property

<i><b>Docket No.</b></i>	<i><b>Country</b></i>	<i><b>Title</b></i>	<i><b>Status</b></i>	<i><b>Application No./Patent No.</b></i>	<i><b>Status Next Action</b></i>
27244-DSG	U.S.	Fuel Container	Issued	Ser. No. 29/104,948 Filed: 11/14/2000 Reg. No. D433,635 Issued: 11/14/2000	Expires 11/14/2014
27245-DSG	U.S.	Fuel Container	Issued	Ser. No. 29/104,952 Filed: 05/17/1999 Reg. No. D434,328 Issued: 11/28/2000	Expires 11/28/2014
27249-DSG	U.S.	Rotating Spout For Liquid Containers	Issued	Ser. No. 29/106,243 Filed: 06/14/1999 Reg. No. D423,357 Issued: 04/25/2000	Expires 4/25/2014
33246	U.S.	Self-Venting Spout	Issued	Ser. No. 10/250,077 Filed: 06-02-2003 Pat.. No. 7,089,975 Issued: 08-15-2006	7.5 Yr. Maintenance Fee Due 2/15/2014
33246-DIV1	U.S.	Self-Venting Spout	Issued	Ser. No. 10/708,088 Filed: 02-06-2004 Reg. No. 6,863,098 Issued: March 8, 2005	7.5 Yr. Maintenance Fee Due 09/08/12
33246-CA	Canada	Self-Venting Spout	Issued	Ser. No. 2,455,150 Filed: 01-14-2004 Reg. No. 2,455,150 Issued: 07-27-2010	Renewal Due January 14, 2013
37827	U.S.	Fuel Can Spout	Issued	Ser. No. 11/868,817 Filed: 10-08-2007 Reg. No. 8,038,035 Issued: 10-18-2011	3.5 Yr. Maintenance Fee Due 4/18/15
42434	U.S.	Self-Venting Spout	Pending	Ser. No. 13/551,371 Filed: 07-17-2012	Awaiting first action
42434-CA	Canada	Self-Venting Spout	Pending	Ser. No. 2,783,832 Filed: 07-18-2012	Deadline to Request Exam 6/18/2017
44396-PRO	U.S.	Outlet Filter Screen For a Portable Fuel Container	Pending	Ser. No. 61/674,050 Filed: 07-20-2012	Utility and Foreign Filing Deadline 7/20/2013

**Schedule 5.8(b)**  
Intellectual Property Ownership Exceptions

None.

**Schedule 5.8(e)**  
Intellectual Property Development Exceptions

None.

**Schedule 5.12(b)**  
Permits

See Schedule 5.13 in connection with certain environmental permits.

**Schedule 5.13**  
Environmental Matters

(a) (i) See Soil and Ground Water Conditions set forth in Section 3.7. (pgs. 14 to 16) of the Phase I Environmental Site Assessment and Limited Compliance Review of Blitz U.S.A., Inc. 404 26<sup>th</sup> Avenue NW, Miami, Oklahoma prepared by ENVIRON International Corporation in August 2012 (“2012 Phase I”)

(ii) See Summary of Regulatory Compliance Matters set forth in Table 4.1 (pgs. 20 to 23) of the 2012 Phase I, Compliance Areas: Air Emissions, Greenhouse Gas (GHG) Reporting, Storm Water Discharges, Hazardous Waste Management, Spill Prevention Control and Countermeasure (SPCC), Emergency Planning and Community Right to Know Act (EPCRA), and Occupational Safety and Health

▪ Air Emissions Compliance: Sellers do not currently hold any environmental permits. In Table 4.1 of the 2012 Phase I, it is recommended that if plastics manufacturing operations are restarted at the site, the facility should evaluate its potential emissions to determine if operations require an air permit.

▪ SPCC Plan Compliance: Sellers may be required to have a Spill Prevention Control and Countermeasure (SPCC) plan; however, a SPCC plan has not been prepared at this time.

▪ EPCRA Compliance: Sellers may be required to prepare and submit Tier II chemical inventory reports for certain chemicals in forklift batteries at the site.

(b) Sellers do not currently hold any environmental permits. See Summary of Regulatory Compliance Matters set forth in Table 4.1 (pgs. 20 to 23) of the 2012 Phase I, Compliance Areas: Air Emissions, Greenhouse Gas (GHG) Reporting, Storm Water Discharges, Hazardous Waste Management, Spill Prevention Control and Countermeasure (SPCC), Emergency Planning and Community Right to Know Act (EPCRA), and Occupational Safety and Health

(c) None.

(d) See Schedule 5.13(a) above.

(e) See Schedule 5.13(a) above.

(f) See Schedule 5.13(a)(i) above.

**Schedule 8.2**  
Exceptions to Conduct of Business

None.

**Schedule 12.3**  
Purchase Price Allocation (Federal Income Tax)

Asset	Purchase Price
Furniture and Equipment	\$7,500,000
Purchased Real Property	
Land	250,000
Buildings	<u>1,750,000</u>
	2,000,000
Inventory other than finished goods	-
Total	<u><u>\$ 9,500,000</u></u>



## **Exhibit A**

## **FORM OF BILL OF SALE**

THIS BILL OF SALE (this “**Bill of Sale**”) is made and entered into as of \_\_\_\_\_, 2012 (the “**Effective Date**”), by and among Blitz U.S.A., Inc. and Blitz RE Holdings, LLC, each a debtor and debtor-in-possession under sections 1107 and 1108 of chapter 11 of the Bankruptcy Code under the cases pending in the Bankruptcy Court (jointly, the “**Sellers**”), and Scepter Holdings, Inc. (“**Purchaser**”).

### **RECITALS**

A. Sellers and Purchaser entered into an Asset Purchase Agreement dated as of August 23, 2012 (the “**Agreement**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings given to them in the Agreement.

B. Pursuant to Section 4.2(a) of the Agreement, Sellers are delivering this Bill of Sale to sell, transfer, assign and deliver to Purchaser all of their respective rights, title and interests in and to the Purchased Assets.

C. Notwithstanding anything to the contrary herein, Sellers are executing and delivering this Bill of Sale in accordance with and subject to all of the terms and provisions of the Agreement (including, without limitation, the exclusions set forth in Section 2.2 of the Agreement and the acknowledgement and disclaimer set forth in Section 6.9 of the Agreement).

NOW, THEREFORE, in consideration of the Purchase Price and other good and valuable consideration described in the Agreement, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Transfer of Assets. Pursuant to and in accordance with the Agreement, Sellers hereby sell, transfer, assign, convey and deliver all of and only Sellers' right, title and interest in, to and under the Purchased Assets to Purchaser and its successors and assigns. Purchaser hereby purchases, acquires, accepts and assumes the Purchased Assets upon the terms and conditions set forth in the Agreement, to have and to hold all of the Purchased Assets hereby conveyed to Purchaser, its successors and assigns, for its and their own use and benefit forever, free and clear of all liens, encumbrances and security interests pursuant to the Sale Order.

2. Conflicts. This Bill of Sale is intended only to effect the sale and transfer of the Purchased Assets by Sellers to Purchaser pursuant to the Agreement. This Bill of Sale is subject in all events to the terms and conditions of the Agreement. Nothing in this Bill of Sale shall limit, expand or otherwise affect the representations, warranties, agreements or covenants contained in the Agreement or the survival thereof. In the event of a conflict or inconsistency between this Bill of Sale and the Agreement, the terms of the Agreement shall prevail.

3. Governing Law. This Bill of Sale shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to conflicts of laws principles thereof or of any other jurisdiction.

4. Counterparts. This Bill of Sale may be executed in counterparts, including by facsimile, .pdf or other electronic signature, each of which shall be deemed to be an original but which together shall constitute one and the same instrument.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, Sellers and Purchaser have caused this Bill of Sale to be executed as of the Effective Date.

**SELLERS:**

BLITZ U.S.A., INC.

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

BLITZ RE HOLDINGS, LLC

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

**PURCHASER:**

SCEPTER HOLDINGS, INC.

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

## **Exhibit B**

## **FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (this “**Assignment**”) is entered into as of this \_\_\_\_ day of August, 2012 (the “**Effective Date**”), by and among Blitz U.S.A., Inc., an Oklahoma corporation, and Blitz RE Holdings, LLC, a Delaware limited liability company, each a debtor and debtor-in-possession under sections 1107 and 1108 of chapter 11 of the Bankruptcy Code under the cases pending in the Bankruptcy Court (jointly, the “**Assignor**”), on the one hand, and Scepter Holdings, Inc., a Canadian corporation (the “**Assignee**”), on the other hand, with respect to the following facts and circumstances:

### **RECITALS**

A. Assignor, as Seller, and Assignee, as Purchaser, have heretofore entered into that certain Asset Purchase Agreement dated August 23, 2012 (the “**Agreement**”) pursuant to which the Assignor agreed to sell, transfer and assign to Assignee, and Assignee agreed to purchase, acquire and assume from Assignor, a limited number of assets of Assignor and certain enumerated contract liabilities of Assignor. Except for terms specifically defined herein, the capitalized terms used in this Assignment shall have the same meanings as capitalized terms used in the Agreement.

B. Concurrently with the mutual execution and delivery of this Assignment, Assignor and Assignee are consummating the Transactions. Assignor and Assignee are executing and delivering this Assignment in satisfaction of their respective obligations pursuant to Sections 4.2(b) and 4.3(b) of the Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which Assignor and Assignee hereby acknowledge, Assignor and Assignee hereby agree as follows:

1. Assignment. Effective as of the Closing Date, Assignor hereby sells, transfers, assigns, conveys and delivers to Assignee, and Assignee hereby purchases, accepts and acquires from Assignor, all of Assignor’s respective rights, title and interests in and to the Purchased Assets, and hereby delegates to Assignee all of Assignor’s obligations hereafter arising under or with respect to the Assumed Contract Liabilities and the Purchased Contracts.

2. Assumption of Liabilities. Effective as of the Closing Date, Assignee hereby accepts and assumes the foregoing assignment and delegation and hereby undertakes, assumes and promises to perform the duties, responsibilities and obligations, and to pay and discharge all of the liabilities, of Assignor arising out of the Assumed Contract Liabilities and the Purchased Contracts in the manner and to the extent Assignee has agreed to assume or accept, as applicable, such Assumed Contract Liabilities and Purchased Contracts pursuant to the Agreement.

3. Further Undertaking. Assignor and Assignee will from time to time, at the reasonable request of the other, execute and deliver such other instruments of conveyance, transfer, assignment or assumption and take such other actions as the other may reasonably request, in order to more effectively consummate the Transactions.

4. Amendments. This Assignment may only be amended or modified by an instrument in writing signed by, or on behalf of, both Assignor and Assignee.

5. Execution in Counterparts. This Assignment may be executed in counterparts, including by facsimile, .pdf or other electronic signature, each of which shall be deemed to be an original but which together shall constitute one and the same instrument.

6. Delivery Pursuant to Asset Purchase Agreement. Notwithstanding anything to the contrary herein, Assignor and Assignee are executing and delivering this Assignment in accordance with and subject to all of the terms and provisions of the Agreement (including, without limitation, the exclusions set forth in Section 2.2 of the Agreement and the acknowledgement and disclaimer set forth in Section 6.9 thereof).

7. Governing Law. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment as of the Effective Date.

**ASSIGNOR:**

BLITZ U.S.A., INC.

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

BLITZ RE HOLDINGS, LLC

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

**ASSIGNEE:**

SCEPTER HOLDINGS, INC.

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

## **Exhibit C**



Tract six

A tract of land in the sw1/4 ne1/4 of section 13, township 28 north, range 22 east of the Indian meridian, Ottawa county, Oklahoma, according to the U.S. government survey thereof, more particularly described as follows:

Beginning at a point on the west right-of-way line of the Frisco railroad (also known as Burlington northern railroad) at a point 30.0 feet north and 20.0 feet west of the southeast corner of the sw1/4 ne1/4 of said section 13; thence running westerly (measured south 89°43' west) parallel with the south boundary of said sw1/4 ne1/4 a distance of 300 feet; thence running north (measured north 00°09'30" west) and parallel with east boundary line of the sw1/4 ne1/4 1190.0 feet; thence easterly (measured north 89°43' east) parallel with the south boundary line of the sw1/4 ne1/4 a distance of 300.0 feet; thence southerly (measured south 00°09'30" east) parallel with the east boundary line of the sw1/4 ne1/4 and on the Frisco railroad (also known as Burlington northern railroad) right of way line 1190.0 feet to the point of beginning.

**AND**

Tract seven

A tract of land in the w1/2 ne1/4 of section 13, township 28 north, range 22 east of the Indian meridian, Ottawa county, Oklahoma, according to the U.S. government survey thereof, more particularly described as follows:

Beginning at a point 103.26 feet south and 34.23 feet west of the southeast corner of the nw1/4 ne1/4, thence south 89°45' west (measured south 89°43' west) 285 feet; thence north 00°08'31" west (measured north 00°09'30" west) 40.01 feet; thence south 89°45' west (measured south 89°44' west) along the north property line of tiara furniture company, inc.(now Oklahoma Leather Products), a distance of 316.85 feet; thence north 00°08'15" east (measured north 00°07'16" east) 382.54 feet; thence north 89°25'14" east (measured north 89°24'14" east) 600.00 feet; thence south 00°08'31" east (measured south 00°09'30" east) 425.99 feet to the point of beginning.

**AND**

**(Parking Lot South of 16<sup>th</sup> St. NW; Part of Tract 2)**

A tract of land in the N½ NW¼ SE¼ of Section 13, Township 28 North, Range 22 East of the Indian Meridian, Ottawa County, Oklahoma, according to the U.S. Government Survey thereof, more particularly described as follows to-wit:

Commencing at the NE Corner of the NW¼ SE¼ of said Section 13;

Thence South 89° 43' 00" West, 40.0 feet;

(REC.) South 00° 08' 23" East; Thence (MEAS.) South 00° 06' 55" East, 25.00 feet,

to the **Point of Beginning**,

(REC.) South 00° 08' 23" East; Thence (MEAS.) South 00° 06' 55" East, 270.75 feet;

Thence North 71° 54' 16" West, 228.94 feet;

Thence North 60° 35' 45" West, 142.06 feet;

Thence North 50° 34' 02" West, 39.47 feet;

Thence North 38° 55' 25" West, 63.69 feet;

Thence North 09° 41' 05" West, 53.95 feet;

Thence North 89° 43' 00" East, 420.44 feet to the point of beginning.

## **Exhibit D**

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

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**In re:**

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

**Debtors.**

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)  
) **Chapter 11**  
)  
) **Case No. 11-13603 (PJW)**  
)  
) **(Jointly Administered)**  
)  
) **Re: Docket No.**

**ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE  
DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND INTERESTS; AND (B) AUTHORIZING  
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Upon the motion, dated June 29, 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 Substantially All of the Debtors' Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to Be Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of 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; and this Bankruptcy Court having entered an Order, dated July 17, 2012,

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

(A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing 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 (the "Bidding Procedures Order") based on the evidence presented at the hearing held on July 17, 2012 (the "Procedures Hearing"), and this Bankruptcy Court having entered an Order, dated August \_\_, 2012, supplementing the Bidding Procedures Order approving Bid Protections (the "Bidding Protections Order") based on the evidence presented at the hearing held on August \_\_, 2012 (the "Bidding Protections Hearing"), and an auction having been held on September 6, 2012 (the "Auction") for the consideration of Qualified Bids and the selection of a Successful Bidder and Scepter Holdings, Inc. (the "Purchaser") having been selected as the Successful Bidder; and upon the Purchaser and Blitz USA, Inc. and Blitz Holdings, LLC (collectively, the "Sellers") having entered into that certain Asset Purchase Agreement, dated as of August 23, 2012 (attached hereto as **Exhibit A**, 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 September 11, 2012 (the "Sale Approval Hearing"), at which time all interested parties were offered an opportunity to be heard regarding the Motion, the Purchase Agreement, and the Transactions (defined below); and the Bankruptcy Court having reviewed and considered the Motion, the Purchase Agreement, the Bidding Procedures Order and, the Bidding Protections Order, 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

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement.

the Procedures Hearing, the Bidding Protections Hearing and the Sale Approval Hearing; and upon the record of the Procedures Hearing, the Bidding Protections Hearing, the Sale Approval Hearing, and these Chapter 11 cases (the “Chapter 11 Cases”); and after due deliberation thereon, and good cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

**A. Jurisdiction and Venue.** This Bankruptcy Court has jurisdiction over the Motion and the transactions contemplated therein (the “Transactions”), including, but not limited to, the sale of the Purchased 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 and in this Bankruptcy Court 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 Bankruptcy Court and based upon the representations of counsel at the Sale Approval Hearing and as approved under the Bidding Procedures Order and Bidding Protections 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 and was provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, and 9014, and the applicable Local Bankruptcy Rules; and (iii) no other

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* FED. R. BANKR. P. 7052. All findings and conclusions of law announced by the Bankruptcy Court at the Sale Approval Hearing in relation to the Motion are hereby incorporated to the extent not inconsistent herewith.

or further notice of the Motion, the Auction, the Sale Approval Hearing, the Purchase Agreement, the Transactions contemplated therein or of the entry of this Sale Order is necessary or shall be required.

**D. Cure Notice.** In accordance with the Bidding Procedures Order, the Debtors filed with this Bankruptcy Court a notice identifying all Contracts, Real Property Leases, Personal Property Leases and Intellectual Property Licenses that may be assumed and assigned in connection with the Sale and the related Cure Amounts for each such Contract, Real Property Lease, Personal Property Lease or Intellectual Property Licenses (as amended, modified or otherwise supplemented from time to time, the “Cure Notice”), and served the Cure Notice on all non-Debtor counterparties to the Contracts, Real Property Leases, Personal Property Leases and Intellectual Property Licenses identified therein. The service and provision of the Cure Notice was good, sufficient, and appropriate under the circumstances and no other or further notice need be given in connection with the assumption and assignment of the Purchased Contracts and the establishment of Cure Amounts for such Purchased Contracts.

**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 the 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.

**F. Auction.** The sale process set forth in the Bidding Procedures Order and Bidding Protections Order afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase the Purchased Assets. The Auction was conducted fairly and in good faith, without collusion and in accordance with the Bidding Procedures Order and

Bidding Protections Order. Based upon the evidence proffered or adduced at the Sale Approval Hearing and the representations of counsel made on the record at the Sale Approval Hearing, all potential bidders have been afforded a full, fair, and reasonable opportunity to submit bids for the Purchased Assets and participate in the Auction.

The Debtors and their professionals adequately marketed the Purchased Assets to all potential purchasers in accordance with the Bidding Procedures Order and Bidding Protections 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. The Purchaser is the Successful Bidder for the Purchased Assets in accordance with the Bidding Procedures Order and Bidding Protections Order. The Purchaser has complied in all respects with the Bidding Procedures Order, Bidding Protections Order and any other applicable order of this Bankruptcy Court in negotiating and entering into the Purchase Agreement, and the sale and the Purchase Agreement likewise comply with the Bidding Procedures Order, Bidding Protections Order and any other applicable order of this Bankruptcy Court.

**G. Satisfaction of Section 363(b) Standards.** The Debtors have demonstrated both (i) good, sufficient, and sound business purposes and justifications and (ii) compelling circumstances to consummate the Transactions contemplated by the Purchase Agreement outside 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 fact that: (a) the Debtors have been unable to obtain financing to continue their operations as a going concern or to reorganize, or to obtain products liability insurance coverage past July 31, 2012, and have been forced to cease operations; (b) the Purchase Agreement constitutes the highest or best offer for the Purchased Assets; (c) the Purchase Agreement presents the best opportunity to realize the value of the Debtors; and (d) unless the sale is concluded expeditiously as provided for in the Motion and pursuant to the Purchase Agreement, creditor recoveries may be substantially diminished. To maximize the value of the Purchased Assets, it is essential that the Transactions occur within the timeframe set forth in the Purchase Agreement. Time is of the essence in consummating the Transactions.

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 provided by the Purchaser pursuant to the Purchase Agreement. 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. No alternative to the Transactions exists that would provide a greater value to the Debtors, their creditors, or other parties in interest.

The sale and assignment of the Purchased Assets outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of the Debtors' subsequent Chapter 11 plan. Neither the Purchase Agreement nor the Transactions contemplated thereby constitute a *sub rosa* chapter 11 plan.



The sale of the Purchased Assets is consistent with the Debtors' policy concerning the transfer of personally identifiable information and the Debtors have, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code. Accordingly, appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.

**H. Valid and Binding Contract.** The Purchase Agreement and the Ancillary Documents (defined below) are valid and binding contracts between the Debtors and the Purchaser and shall be enforceable pursuant to their terms. The Purchase Agreement, the Ancillary Documents, and the consummation thereof, and the Transactions themselves are specifically enforceable against and binding upon, and are not subject to rejection or avoidance by, the Debtors, any chapter 7 or chapter 11 trustee appointed in these Chapter 11 Cases, or any other Person or entity.

**I. Sale Order Required by the Purchaser.** Entry of this Sale 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 consideration and 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 and their creditors. The Debtors and their estates have benefited, and will continue to benefit, from the consideration and 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 and the sale of the Purchased Assets in accordance with the Purchase Agreement is justified pursuant to sections 363 and 365 of the Bankruptcy Code.

**J. Consideration.** The total consideration provided by the Purchaser, upon the terms and conditions set forth in the Purchase Agreement (including the form and total consideration to be realized by the Debtors pursuant to the Purchase Agreement), is the highest and best offer received by the Debtors and constitutes fair value, fair, full, and adequate consideration, reasonably equivalent value and reasonable market value for the Purchased Assets for purposes of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and the other laws of the United States, any state, territory, or possession thereof, or the District of Columbia.

**K. Arm's Length.** The sale process conducted by the Debtors, including, without limitation, conducting the Auction pursuant to the bidding procedures set forth in the Bidding Procedures Order and the Bidding Protections Order, was at arms' length, non-collusive, in good faith, and substantively and procedurally fair to all parties. The Purchase Agreement and the documents and instruments identified therein or related to and connected with the Transactions (collectively, the "Ancillary Documents") and the consummation thereof have been 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, officers, directors, members, partners, principals, or shareholders or any of their respective representatives, successors, or assigns 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, nor any of their respective Affiliates, officers, directors, members, partners, principals, or shareholders, nor any of their respective

representatives, successors, or assigns 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 Affiliates, officers, directors, members, partners, principals, shareholders, and any of their respective representatives, successors, or assigns have complied in all respects with the Bidding Procedures Order and Bidding Protections Order and have proceeded in good faith and without collusion in any respect 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 Affiliates, officers, directors, members, partners, principals, shareholders, and any of their respective representatives, successors or assigns 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 and the Ancillary Documents 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. 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 Purchased Assets required to transfer and to convey the Purchased Assets to the Purchaser as contemplated by the Purchase Agreement. The Debtors ceased manufacturing operations on July 31, 2012 and the Purchased Assets do not comprise a going concern.

**N. 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 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 to consummate the Transactions themselves, and (iv) no consents or approvals are required to consummate the Transactions or otherwise perform the obligations under the Purchase Agreement or the Ancillary Documents, except for the closing conditions expressly agreed to therein.

**O. Cure/Adequate Assurance.** The process for assuming and assigning the Purchased Contracts is integral to the Purchase Agreement, does not constitute unfair discrimination, and is in the best interests of the Debtors and their estates and creditors, and all other parties in interest, and is based on the reasonable exercise of sound and prudent business judgment by the Debtors. The Debtors will have as of the assumption and assignment of any

Purchased Contracts: (i) to the extent necessary, cured any default that existed prior to the Closing with respect to the Purchased Contracts; and (ii) to the extent necessary, provided compensation to any party for any actual pecuniary loss to such party resulting from a default that existed prior to the Closing with respect to the Purchased Contracts, 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 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. Any objections to any Cure Amounts or defaults under any of the Purchased Contracts or the assumption and assignment of any of the Purchased Contracts by the Debtors to the Purchaser, including, without limitation, the Filed Objections, are hereby overruled, withdrawn, or otherwise treated as set forth in paragraph 2 below.

**P. No Restriction on Assumption and Assignment.** Pursuant to section 365(f) of the Bankruptcy Code, the Purchased Contracts to be assumed and assigned under the Purchase Agreement shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Purchaser notwithstanding any provision in those contracts or other restrictions prohibiting their assignment or transfer. No section of any of the Purchased Contracts which purports to prohibit, restrict, or condition the use, assumption or assignment of any of the Purchased Contracts in connection with the Transactions shall have any force or effect.

**Q. Contract and Lease Assignments in Best Interests.** The Debtors have demonstrated that assuming and assigning the Purchased Contracts 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 in connection with the Transactions will limit the losses of counterparties to the Purchased Contracts and maximize the distribution to creditors of the Debtors.

**R. Free and Clear.** The transfer of the Purchased Assets to the Purchaser under the Purchase Agreement will be a legal, valid, enforceable, and effective sale and transfer, and will vest the Purchaser with all legal, equitable, and beneficial right, title, and interest in and to the Purchased Assets free and clear of all (collectively, "Interests") Liens, Claims, 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 kind or nature, if any; (iii) those Interests that are Retained Liabilities as 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, de facto merger, substantial continuity 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 the Debtors of the Purchased Contracts is free and clear of all Interests, and all such Interests shall attach to the consideration to be received by the Debtors from the Purchaser in the same priority and subject to the same defenses and avoidability, if any, as of the date hereof. The transfer of the Purchased Assets to the Purchaser will vest the Purchaser with good and marketable title to the Purchased Assets.

**S. Free and Clear Findings Required by the Purchaser.** The Purchaser would not have entered into the Purchase Agreement and would not consummate 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 the Debtors of the Purchased Contracts 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.

**T. 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) of the Bankruptcy Code has been satisfied. Those

holders of Interests who did not object to or withdrew their objections to the Motion, the sale of the Purchased Assets, the Transactions, or the Cure Notice are deemed to have consented to the Motion, the sale of the Purchased Assets, the Transactions, and the assumption and assignment of the Purchased Contracts 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 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 in these Chapter 11 Cases, that such Interests have against such Purchased Assets or their proceeds as of the Closing, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

**U. 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 the Debtors' present or future creditors for purposes of the Bankruptcy Code, or the other laws of the United States, of the laws of any state, territory, or possession thereof, or the District of Columbia. None of the Debtors or the Purchaser entered into the Purchase Agreement or consummated 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.

**V. Retained Liabilities.** Except for the Assumed Contract 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; (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 Retained 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. At Closing, the Debtors and their estates will release and forever discharge the Purchaser and its successors and assigns from any and all claims, causes of action, obligations, liabilities, demands, losses, costs, and expenses of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, relating to the sale and the assumption and assignment of the Purchased Assets, except for the Assumed Contract Liabilities and the other obligations under the Purchase Agreement.

**W. No Successor Liability.** The Purchaser is not a successor to any of the Debtors and their estates and shall not be liable for any Claim against any of the Debtors or their estates, whether now existing or hereafter arising, including, without limitation, any warranty Claims, personal injury tort Claims or all other obligations to any Person or entity relating to the quality, merchantability or safety of, or involving a Claim of breach of warranty, or defect in, any Product or service purchased, manufactured, sold, or performed by the Debtors. Without limiting the effect or scope of the foregoing, neither the transfer of the Purchased Assets from the Debtors to the Purchaser, nor the Purchaser's assumption of the Assumed Contract Liabilities, 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 by reason of such transfer or otherwise under the laws of the United States or

any state, territory, or possession thereof, or the District of Columbia applicable to such Transaction, including, without limitation, under any theory of successor liability, de facto merger, substantial continuity or similar theories, whether based in law or equity. The Transactions contemplated by the Purchase Agreement do not amount to a consolidation, merger, or *de facto* merger of the Purchaser and any of the Debtors or their estates, there is no, and will be no, continuity of enterprise or ownership between the Purchaser and any of the Debtors or their estates (including, but not limited to, no continuation of the Debtors' businesses enterprise through the Debtors' management, operations or customer base). The Purchaser is not holding, and will not hold, itself out to the public as a continuation of any of the Debtors or their estates, there is no common identity between the Purchaser and any of the Debtors or the estates (including no common identity of incorporators, officers, directors or material stockholders between the Purchaser and any of the Debtors or the estates), the Purchaser is not a mere continuation of any of the Debtors or their estates and the Purchaser does not constitute a successor to any of the Debtors or their estates. The Purchase Agreement does not require the Purchaser to hire any of the Debtors' Employees or provide for the Purchaser to assume, nor shall the Purchaser assume or be deemed to assume, either explicitly or implicitly, any of the Debtors' obligations to Employees. Any Employee who is retained by the Purchaser shall be hired under a new employment contract or other employment arrangement. The Purchased Assets include only those limited assets specifically set forth in the Purchase Agreement and do not include any of the Debtors' logos, trademarks or other goodwill, including any intellectual property used at any time to manufacture, produce, distribute or sell the Debtors' Products. The Bankruptcy Court finds that the Purchaser would not have acquired the Purchased Assets but for

the foregoing protections against Claims under any theory of successor liability, de facto merger, substantial continuity or similar theories.

**X. Prompt Consummation.** The Transactions must be approved by the Bankruptcy 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 established by Bankruptcy Rule 6004 with regards to the Transactions.

**Y. Sale in Best Interests.** The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for entry into the Purchase Agreement and consummation of the Transactions contemplated therein. The relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their respective creditors, estates, and all other parties in interest in these Chapter 11 Cases.

**NOW, THEREFORE, IT IS ORDERED THAT:<sup>4</sup>**

**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 are hereby denied and overruled on the merits with prejudice. All Persons and entities that failed to timely object, or withdrew their

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<sup>4</sup> Conclusions of law shall be construed as findings of fact and findings of fact shall be construed as conclusions of law when appropriate. See FED. R. BANKR. P. 7052. All findings and conclusions of law announced by the Bankruptcy Court at the Sale Approval Hearing in relation to the Motion are hereby incorporated to the extent not inconsistent herewith.

objections, to the Motion or this Sale Order are deemed to consent to the relief granted herein for all purposes, including pursuant to section 363(f)(2) of the Bankruptcy Code, including, without limitation, all non-Debtor counterparties to the Purchased Contracts. No appeal, motion to reconsider, or similar pleading has been filed with respect to the Bidding Procedures Order or Bidding Protections Order, and the Bidding Procedures Order and Bidding Protections Order are final orders of the Bankruptcy Court, have not been vacated, withdrawn, rescinded, or amended and remain 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 the Ancillary Documents, including, without limitation, the Closing of the Transactions contemplated by the Purchase Agreement, is hereby approved in all respects 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 and the Ancillary Documents as and when due thereunder without further order of this Bankruptcy Court. The Debtors, the Purchaser, and each of their respective officers, employees, and agents are hereby 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 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, and shall vest the Purchaser with all legal, equitable, and beneficial right, title, and interest in and to the Purchased Assets free and clear of all Interests of any kind whatsoever, except for Assumed Contract Liabilities. The Purchase Agreement and the Ancillary Documents and the consummation thereof, and the Transactions themselves shall be specifically enforceable against and binding upon, and are not subject to rejection or avoidance by, the Debtors, any chapter 7 or chapter 11 trustee appointed in these Chapter 11 Cases, or any other Person or 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 nature 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, subject to any security interests granted in these Chapter 11 Cases, that such Interests have against such Purchased Assets or their proceeds as of the Closing, 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, mechanic's 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, or releases of all Interests that the Person or entity has with respect to the Purchased Assets, other than Permitted Exceptions, then (i) the Debtors are hereby authorized 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 Bankruptcy Court on notice to BOKF, NA), (ii) 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; and (iii) the Purchaser may seek in this Bankruptcy Court or any other court of appropriate jurisdiction to compel the appropriate parties to execute termination statements, instruments of satisfaction, and releases of all Interests with respect to the Purchased Assets (other than Assumed Contract Liabilities). This Sale Order is deemed to be

in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Sale Order authorizing the sale and assignment of the Purchased Assets free and clear of Interests shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order.

**7. Surrender of the Purchased Assets.** All Persons and entities that are in possession of any 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. Continuation of Existing Approvals.** To the maximum extent permitted under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Purchased Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, assigned, or conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 Cases or the consummation of the Transactions.

**9. Injunction.** All Persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the Purchase Agreement and this Sale Order. Except as expressly permitted by the Purchase Agreement as to Assumed Contract Liabilities, all Persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, 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, or assigns, or any of its Affiliates, members, 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.

**10. 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, to the Purchaser. Each and every federal, state, and local governmental agency or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Transactions and to reflect the effectiveness of the Transactions.

11. **No Successor or Transferee Liability.** Neither the Purchaser nor its Affiliates, members, partners, principals, or shareholders nor their respective successors or assigns shall be deemed, as a result of the consummation of the Transactions or the Purchaser's future manufacture of its own distinct line of gas can products using the Purchasing Assets: (i) to be a legal successor, or otherwise be deemed a successor, to any of the Debtors or any of the Debtors' estates by reason of any theory of law or equity; (ii) to have, *de facto* or otherwise, merged or consolidated with or into any of the Debtors or any of the Debtors' estates; (iii) to be an alter ego, a continuation or substantial continuation of any of the Debtors or any enterprise of any of the Debtors or (iv) to have liability under any theory of successor liability, de facto merger, substantial continuity or similar theories for any Claim against or obligations of any Debtors, whether now existing or hereafter arising. The Purchaser has not agreed to assume, either expressly or impliedly, nor shall the Purchaser assume, either expressly or impliedly, or be deemed to assume, either expressly or impliedly, or in any way be responsible for, any liability or obligation of any of the Debtors and/or their respective estates or any Product manufactured or sold by any Debtors including, but not limited to, under the provisions of any bulk sales law or under any theory of successor liability, de facto merger, substantial continuity or similar theories. Other than as expressly set forth in the Purchase Agreement with respect to Assumed Contract Liabilities, the transfer of the Purchased Assets to the Purchaser under the Purchase Agreement shall not result in the Purchaser, its Affiliates, members, partners, principals, or shareholders,

their respective successors or assigns, or the Purchased Assets having any liability or responsibility whatsoever for any liability or other obligations of the Debtors with respect to, or being required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly: (w) any Interest against the Debtors or against an insider of the Debtors, (x) any Interest or Retained Liabilities, (y) any warranty Claims, tort Claims or other obligations to any Person or entity relating to the quality, merchantability or safety of, or involving a Claim of breach of warranty, or defect in, any Product or service purchased, manufactured, sold, or performed by the Debtors or (z) the Debtors except as expressly set forth in the Purchase Agreement and the Ancillary Documents. On the Closing Date, all Persons and entities are permanently and forever barred, restrained, precluded and enjoined from asserting any Claims or enforcing remedies, or commencing or continuing in any manner any action or other proceeding of any kind, against Purchaser or the Purchased Assets on account of any warranty Claims, tort Claims or any other obligation or liability to any Person or entity relating to the quality, merchantability or safety of, or involving a Claim of breach of warranty, or defect in, any Product or service purchased, manufactured, sold, or performed by the Debtors whether under any theory of successor liability, de facto merger, substantial continuity or similar theory or otherwise. On the Closing Date, the Purchaser shall be deemed to have assumed only the Assumed Contract Liabilities expressly assumed in the Purchase Agreement. Except for the Assumed Contract Liabilities, and without limiting any other provision of this Order, the Purchaser's acquisition of the Purchased Assets shall be free and clear of all Interests under any theory of successor liability, de facto merger, substantial continuity or similar theories of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing Date. The Purchaser's operation and use of the Purchased Assets acquired from the

Debtors shall not be deemed a continuation of the Debtors' business. All Person and entities are permanently and forever barred from commencing or continuing in any manner any action or other proceeding of any kind against the Purchaser as alleged successor of the Debtors or their estates or otherwise with respect to any Interests.

**12. 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, tort, labor, 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, the Debtors' design, manufacture or sale of any Product prior to Closing, any taxes in connection with, or in any way relating to the cancellation of debt of the Debtors or their Affiliates or any warranty Claims, tort Claims, or other obligations to any Person or entity relating to the quality, merchantability or safety of, or involving a Claim of breach of warranty, or defect in, any Product or service purchased, manufactured, sold, or performed by the Debtors.

**13. Good Faith of the Purchaser.** The Transactions contemplated by the Purchase Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

**14. Cure Notice.** The Debtors served the Cure Notice by first class mail on all non-Debtor counterparties to Contracts, Real Property Leases, Personal Property Leases and Intellectual Property Licenses. The Cure Notice informed each recipient that its respective Contract, Real Property Lease, Personal Property Lease or Intellectual Property License may be assumed and assigned in connection with the sale and, to the extent applicable, (i) the title of the Contract, Real Property Lease, Personal Property Lease or Intellectual Property License, (ii) the name of the parties to the Contract, Real Property Lease, Personal Property Lease or Intellectual Property Licenses, (iii) the proposed Cure Amount, if any, should the Contract, Real Property Lease, Personal Property Lease or Intellectual Property Licenses be assumed and assigned in connection with the sale, and (iv) the deadline by which any counterparty must file an objection to assumption and assignment of the applicable Contract, Real Property Lease, Personal Property Lease or Intellectual Property License, and/or the stated Cure Amounts (“Cure Notice Objection”).

**15. Cure Notice Objections Overruled.** Any Cure Notice Objection that has not been withdrawn, waived, settled, otherwise resolved pursuant to the terms hereof, or continued to a later hearing by agreement of the parties, is hereby denied and overruled on the merits with prejudice.

**16. Determination of Cure Amounts.** Except as provided in the Bidding Procedures Order, the Cure Amounts set forth on the Cure Notice shall constitute findings of the Bankruptcy Court and shall be final and binding on parties to such Contracts, Real Property Leases, Personal Property Leases and Intellectual Property Licenses and their successors and designees 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 Contract, Real Property Lease, Personal Property Lease or Intellectual Property License. Cure Amounts shall otherwise be those determined by the Bankruptcy Court after notice and a hearing. Each counterparty to a Purchased Contract, whether entered into before or after the Petition Date, is hereby forever barred, estopped, and permanently enjoined from (i) asserting against the Purchaser or its property (including, without limitation, the Purchased Assets) any default arising prior to or existing as of the 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 or charges as a result of the Debtors' assumption and assignment to the Purchaser of the Purchased Contracts. To the extent a counterparty to any of the Purchased Contracts received the Cure Notice and failed to file a Cure Notice Objection by the stated deadline, such party shall be deemed to have (i) consented to the assumption and assignment of the applicable Contract, Real Property Lease, Personal Property Lease or Intellectual Property License and the payment of the Cure Amount provided in the Cure Notice and (ii) waived any right to assert or collect any other cure amount or enforce any default that may arise or have arisen prior to or as of the Closing Date.

**17. Payment of Cure Amounts.** With respect to the Purchased Contracts, to the extent there are any Cure Amounts unpaid as of the Closing Date, the Debtors shall be obligated,

and are hereby directed, to pay or cause to be paid such Cure Amounts in accordance with the terms of the Purchase Agreement. The Purchaser's promise to perform the obligations under the Purchased Contracts arising after their assumption and assignment to the Purchaser 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 the Debtors as a party to the Purchased Contracts.

**18. Ipso Facto Clauses Ineffective.** Upon the Debtors' assumption and assignment of the Purchased Contracts to the Purchaser under the provisions of this Sale Order and the payment of the Cure Amounts in accordance with this Sale Order and the Purchase Agreement, no default shall exist under any Purchased Contract and no counterparty to any such Purchased Contract shall be permitted to declare or enforce a default by the Debtors or the Purchaser thereunder or otherwise take action against the Purchaser as a result of any Debtors' financial condition, change in control, bankruptcy, or failure to perform any of its obligations under the relevant Contract, Real Property Lease, Personal Property Lease or Intellectual Property License. Any provision in a Purchased Contract that prohibits or conditions the assignment of such Purchased Contract (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, constitutes an unenforceable anti-assignment provision that is void and of no force and effect. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Purchased Contract shall not be a waiver of such terms or conditions or of the Debtors' or the Purchaser's right, as applicable, to enforce every term and condition of such Purchased Contract.

**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 Bidding Procedures Order, the Bidding Protections Order and this Sale Order shall be binding in all respects upon the Debtors, the Debtors' estates, all creditors thereof (whether known or unknown, now existing or hereafter arising), 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, Discharge, and Termination of Interests.** This Sale Order shall be effective as a determination that, on the Closing, all Interests of any kind or nature whatsoever existing prior to the Closing have been unconditionally released, discharged, and terminated as to the Purchased Assets, and that the conveyances described herein have been effected.

**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 Bankruptcy 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. 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 Bankruptcy Court or any court of competent jurisdiction in these Chapter 11 Cases (including, without limitation, an order authorizing the sale of the Purchased Assets pursuant to any section 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 change the provisions of this Sale Order or the Purchase Agreement, and the provisions of this Sale Order and Purchase Agreement 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 or the Ancillary Documents in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Bankruptcy Court that the Transactions be authorized and approved in their entirety.



25. **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.

26. **Destruction of Retained Molds.** Promptly upon the destruction of the Retained Molds being permitted pursuant to Applicable Law, the Debtor (or its successors in interest) shall destroy, or caused to be destroyed in a manner consistent with applicable Laws, all Retained Molds. The Debtors (or their successors in interest) shall provide written notice and evidence of their compliance with Section 8.6 of the Purchase Agreement that is reasonably satisfactory to Purchaser promptly following the destruction of the Retained Molds. The Debtors (and for the account of their successors in interest) shall not sell any of the Retained Molds or otherwise cause the Retained Molds to be transferred for use in commerce without the prior written consent of Purchaser, and any attempt to sell any of the Retained Molds or otherwise cause the Retained Molds to be transferred for use in commerce without the prior written consent of Purchaser shall be null and void. For the sake of clarity, notwithstanding anything to the contrary contained in Section 8.6 of the Purchase Agreement or the Purchase Agreement, Purchaser shall not have or assume any right, title or interest in or to the Retained Molds.

### **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 shall not apply to

the Transactions and any actions provided in the Purchase Agreement or the Ancillary Documents. Time is of the essence in closing 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 the Closing, or risk its appeal will be foreclosed as moot.

28. The requirements set forth in Bankruptcy Rules 6003(b), 6004, and 6006 and Local Bankruptcy Rules 6004-1 and 9013-1 have been satisfied or otherwise deemed waived.

29. This Sale Order is binding upon and inures to the benefit of any successors and assigns of the Debtors or the Purchaser, including any trustee appointed in any subsequent case of the Debtors under chapter 7 of the Bankruptcy Code.

30. This Sale Order, the Purchase Agreement, and the Ancillary Documents shall be binding in all respects upon all creditors of (whether known or unknown, now existing or hereafter arising), and holders of equity interests in, any Debtor, any holders of Interests in, against or on all or any portion of the Purchased Assets, all non-Debtor counterparties to the Purchased Contracts, all successors and assigns of the Purchaser, the Debtors and their Affiliates and subsidiaries and any subsequent trustees appointed in these Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code, and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in these Chapter 11 Cases, any order confirming any such chapter 11 plan or any order approving wind-down or dismissal of these Chapter 11 Cases or any subsequent chapter 7 cases shall conflict with or change the provisions of the Purchase Agreement, the Ancillary Documents, or this Sale Order.

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

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

33. This Bankruptcy Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order, the Purchase Agreement, the Ancillary Documents, all amendments thereto and any waivers or consents thereunder, and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transactions. This Bankruptcy Court retains jurisdiction to compel delivery of the Purchased Assets, to protect the Purchaser and its Purchased Assets, including the Purchased Assets against any Interests or successor or transferee liability, and to enter orders, as appropriate, pursuant to sections 105(a), 363, or 365 (or other applicable provisions) of the Bankruptcy Code necessary to transfer the Purchased Assets and the Purchased Contracts to the Purchaser.

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

\_\_\_\_\_  
THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Bidding Protections Order**

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

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**In re:**

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

**Debtors.**

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)  
) **Chapter 11**  
)  
) **Case No. 11-13603 (PJW)**  
)  
) **(Jointly Administered)**  
)  
) **Re: Docket Nos. 574, 618 and \_\_**

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

Upon consideration of the *Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006 for (I) Entry of An Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to be Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances And Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 574] (the "Motion") [Docket No. 574]; and the *Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to be Assigned; and (E) Granting Certain Related Relief* [Docket No. 618]

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

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

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

FOUND AND DETERMINED THAT:

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

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

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

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

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

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

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

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

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

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

### **THE BID PROTECTIONS**

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



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

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

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

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

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

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

#### **ADDITIONAL NOTICE PROVISIONS**

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

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

#### **ADDITIONAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

## **Exhibit A**

## **Bidding Procedures**

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

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

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

On June 29, 2012, the Debtors filed the *Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 for (I) Entry of an Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Establishing Procedures for Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to Be Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (the “Bidding Procedures and Sale Motion”). On July 17, 2012, the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the “Original Bidding Procedures Order”). The Original Bidding Procedures Order also set September 11, 2012 as the date the Bankruptcy Court will conduct the Sale Hearing. On August \_\_, 2012, the Bankruptcy Court entered the Supplemental Order to Bid Procedures Order Approving Bid Protections (the “Bidding Protection Order”) approving the Bid Protections (as defined in the Bidding Protection Order) and these amended Bidding Procedures. At the Sale Hearing, the Debtors shall seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets of the Debtors to the Stalking Horse Bidder or the Successful Bidder at the Auction.

### **Assets to be Sold**

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

### **Communication with the Debtors**

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

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

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

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

### **The Bidding Process**

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

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

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



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

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

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

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

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

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

#### Access to Due Diligence Materials

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

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

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

#### *Due Diligence From Bidders*

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

#### **“As Is, With All Faults”**

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

#### **Free of Any and All Interests**

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

### **The Auction and Auction Procedures**

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

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

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

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

### **Break-Up Fee and Expense Reimbursement Amount**

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

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

### **Overbid Amount; Minimum Bid Increment**

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

### **Acceptance of Qualified Bids**

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

### **Return of Bid Deposit**

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

### **Sale Hearing**

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

### **Credit Bid**

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

### **Modifications**

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

### **Miscellaneous**

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

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