



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

### **Preliminary Statement**

1. Since its early beginning in 1966, Blitz U.S.A., Inc. (“Blitz”) and its predecessors have been successfully producing portable fuel containers for consumer use. As of the Petition Date (as defined below), with as many as 150 million units currently in circulation, Blitz accounted for approximately 70% of the market share in the United States in the portable fuel containment and storage industry.

2. For the past 45 years, Blitz has operated profitably with minimal interruption from litigation. Approximately three years ago, Blitz began to experience an increase in litigation with approximately four to seven new personal injury cases filed against Blitz each year. Although Blitz had been able to successfully manage its litigation exposure and associated defense costs during the past several years, following a 2010 Utah State jury verdict and several plaintiff-friendly settlements involving Blitz's insurance carriers, Blitz became the subject of an increased influx of lawsuits. Indeed, between March 2011 and the Petition Date, as many as 22 new cases were filed against Blitz, for a total of 36 pending lawsuits. Though the number of such lawsuits is small in comparison to the millions of portable consumer gasoline containers ("PCGCs") in circulation, which is a testament to the safety of the PCGCs when used properly, with a self-insured retention ("SIR") of \$1 million per occurrence, Blitz was forced to divert virtually all net operating cash flows after debt service to fund SIR payments. Thus, Blitz was forced to commence the Chapter 11 Cases (as defined below) to obtain a much needed breathing spell from its pending litigation.

3. Blitz intended to utilize the chapter 11 process to address the personal injury claims asserted against it and reorganize as a healthy company without the burdensome weight of litigation. Pursuant to that intent, during the Chapter 11 Cases Blitz explored various ways to address the personal injury claims and reorganize its business. Unfortunately, despite the Debtors' best efforts to come up with a solution to reorganize its business, the weight of the personal injury lawsuits proved to be too much.

4. The personal injury litigation claims have significantly affected the Debtors' ability to reorganize in critical ways. First, due to the weight of those claims, the Debtors have been unable to obtain the financing required to continue their operations and work towards a

reorganization. Significantly, the Debtors have been unable to obtain renewal products liability insurance, without which the Debtors are unable to continue manufacturing and selling PCGCs. Many of the customers of Blitz, who are the resellers of Blitz's PCGCs, require that Blitz indemnify the reseller against any personal injury claims related to the sale of the PCGCs and to name such reseller as additional named insureds under the Debtors' product liability insurance policies. Moreover, maintaining product liability insurance is required pursuant to the United States Trustee's Operating Guidelines, for Blitz to continue to manufacture and sell PCGCs. The Debtors' current product liability insurance expires on July 31, 2012.

5. In addition to the cessation of operations as of July 31, 2012 and the sale of the Assets, Blitz intends to continue to manufacture PCGCs and fulfill orders up to July 31. The Debtors believe that continuing to operate through July 31 is in the best interests of their estates because it will allow the Debtors to maximize sales of PCGCs and thereby increase the prospect of recoveries for all parties, including secured creditors and unsecured creditors. By maximizing sales, coupled with the other asset value maximizing measures taken by the Debtors, the likelihood of paying in full the secured debt and administrative claims is increased, as is the prospect of a recovery for general unsecured creditors. Indeed, early indications from Blitz's customers following the announcement of the Debtors' decision to operate through July 31 and thereafter shut down operations and sell the Assets, suggest that the Debtors decision is correct.

6. The Debtors believe they manufacture a safe and useful product that is necessary in the hydrocarbon fuel-based economy in our society. The Debtors believe they are the leaders in the manufacture of PCGCs and currently have the workforce and management to manufacture and develop that product. While the proposed Sale will not be consummated until after operations are shut down and the Debtors' employees have been let go, the Debtors remain

hopeful that potential purchasers of the Assets fully recognize the value of the Assets and the need for the PCGC product in our society.

### **JURISDICTION**

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

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

### **BACKGROUND**

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

9. On November 9, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned chapter 11 cases (the “Chapter 11 Cases”). The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been appointed in the Chapter 11 Cases. On November 21, 2011, the Office of United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in the Chapter 11 Cases. The Committee is comprised of a controlling majority of personal injury claimants who are represented on the Committee by their personal injury lawyers, and a minority of trade vendors. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

**B. General Background**

**i. Blitz's Business Operations and Corporate Structure**

10. As noted above, Blitz and its predecessors have been leading producers of fuel storage and fuel transportation products for more than 20 years. Blitz has a long and storied history in the business, as it is the ultimate successor to U.S. Metal Container, a company that manufactured the traditional, well-known olive-drab jerry can for sale to the U.S. military throughout World War II. In the late 1960s, U.S. Metal Container painted its traditional five-gallon gas can bright red and started selling the product to retailers across the country, including Wal-Mart and Sears. By the mid-1980s, the gas container market had shifted away from metal and towards plastic. In 1987, U.S. Metal Container developed its first line of plastic gas cans for sale to the general public. For the next few years the company sold fewer and fewer metal gas cans until the company's name, U.S. Metal Container, no longer fit its predominant product line. Consequently, in 1992, U.S. Metal Container changed its name to Blitz U.S.A., Inc. Throughout the 1990s, Blitz successfully grew its market share in plastic gas containers. Currently, Blitz is headquartered in Miami, Oklahoma, employs approximately 117 employees, and prior to the Petition Date achieved annual sales of approximately \$80 million and with an annual adjusted EBITDA of approximately \$6 million.

11. Prior to 2007, Blitz was a family-owned company and was owned by Crestwood Holdings, Inc. ("Crestwood"). On September 12, 2007, Blitz Acquisition, LLC, , a Delaware limited liability company ("Blitz Acquisition"), purchased Blitz (the "2007 Transaction")<sup>2</sup>.

12. Pursuant to the 2007 Transaction, Blitz Acquisition purchased all of the outstanding stock of Blitz from the shareholders of Crestwood. Contemporaneously therewith,

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<sup>2</sup> Blitz Acquisition's parent is Blitz Holdings, LLC, which was renamed LAM Holdings, LLC ("LAM") on April 12, 2011. LAM's majority shareholder is Kinderhook Capital Fund II, L.P. ("Kinderhook").

Blitz RE Holdings, LLC (“Blitz RE”), a Delaware limited liability company and wholly-owned subsidiary of Blitz Acquisition, purchased certain parcels of real property and improvements, which house Blitz’s manufacturing facilities and corporate offices, from RELCO, Inc., a company owned by the shareholders of Crestwood. Pursuant to a lease agreement dated as of October 1, 2011, Blitz leases from Blitz RE certain real property and the buildings located on such property.

13. In 2009, in an effort to expand and diversify its product line Blitz acquired the rights to a line of organization and lawn and garden products under the brand name “2x4 Basics.” In early 2011, Blitz began contemplating a spinoff of its non-gas can product lines, which included the 2x4 Basics products as well as certain other automotive maintenance products produced by Blitz. In October, 2011, Blitz formally spun off these additional product lines into F3 Brands LLC (“F3”) which was a wholly-owned Blitz subsidiary and debtor in these cases.<sup>3</sup>

14. In early 2011, to further increase its market reach and diversify its revenue streams, Blitz purchased Reliance Products, Inc. and its affiliates (collectively “Reliance”). Today, the Reliance entities are affiliates of Blitz that are wholly owned by Debtor Blitz Acquisition Holdings, Inc. and are not debtors in these Chapter 11 Cases. Reliance manufactures two core product lines, a line of consumer camping hydration and sanitation products (representing approximately 1/3 of Reliance’s business) and a line of specialized bottles used for the storage of concentrated agricultural chemicals (representing approximately 2/3 of Reliance’s business). Blitz initially acquired Reliance with plans to integrate the manufacturing of certain Reliance products into its product line -- specifically the chemical storage bottles which are

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<sup>3</sup> The F3 Brands assets were sold in these chapter 11 cases, pursuant to section 363 of the Code, by order dated March 28, 2012. Following the asset sale, F3 Brands name was changed to MiamiOK, LLC.

manufactured through a similar process as Blitz gas cans and are subject to similar government regulations and standards. Today, Reliance's management team and manufacturing facilities are primarily located in Winnipeg, Canada and Blitz has halted any plans for integration.

15. Pursuant to the DIP Credit Agreement, the Debtors agreed to market and sell Reliance, and use the proceeds to pay down the Prepetition Secured Debt. Reliance has retained an investment banker to pursue a sale transaction outside of the Chapter 11 Cases, and not subject to any court approval.

16. Blitz's insurance coverage is an essential aspect of Blitz's business and the ability to maintain such insurance coverage throughout the Chapter 11 Cases has been crucial to Blitz's ability to reorganize. In addition to other kinds of insurance policies, Blitz has historically maintained, and continues to maintain, commercial liability coverage. For the current policy year of July 31, 2011 through July 31, 2012, Blitz maintains a total of \$63 million in commercial liability coverage under five insurance policies. Blitz's current commercial liability insurance coverage is subject to the SIR of \$1 million per claim. Over the past five years, Blitz's commercial liability insurance limits have ranged from \$37 million (for policy years 2006-2009) to \$63 million (for policy years 2010-2012). During that same time period, Blitz's primary commercial liability policies have contained deductibles or self-insured retention amounts ranging from \$25,000 to \$1 million. Blitz has not been able to secure commercial liability insurance coverage after July 31, 2012.

**ii. Product Liability Litigation**

17. As mentioned above, Blitz currently is a defendant in 36 personal injury lawsuits alleging, among other things, certain product deficiencies. The allegations in these cases are generally that a Blitz brand PCGC exploded when the claimant poured gasoline on a fire or on embers to start a fire. Claimants allege that when gasoline is poured from the container on or



near a flame, gasoline vapors outside the PCGC ignite and the flame follows the vapor trail back inside the container causing it to explode. Claimants allege that these explosions would be eliminated through the use of a metal flame arrestor,<sup>4</sup> and they also allege that the plastic resins used in Blitz's containers are substandard, and that quality control testing is inadequate, thereby weakening the can and making an explosion more likely. In addition, other cases concern individuals who were injured when a Blitz fuel container was opened around flames or other combustion sources. Blitz denies all of these allegations and strenuously defends its PCGCs as safe when properly used.

18. The consequences of these lawsuits have been disastrous for Blitz's business. To date, Blitz has tried two cases to verdict, one of which resulted in a verdict for the defense, and one of which resulted in a multi-million dollar verdict against Blitz. Both of these cases are on appeal. Additionally, in recent years, Blitz's insurance carriers settled several lawsuits in excess of \$1 million each. These settlements forced Blitz to shop for new insurance, ultimately requiring it to pay higher deductibles. Today, Blitz carries a \$1 million deductible, or self insured retention, on each of the approximately 36 lawsuits pending against the company.

19. Of the 36 pending lawsuits, 11 also name Wal-Mart, among Blitz's largest customers, as a defendant. Blitz has an obligation to indemnify Wal-Mart for certain claims pursuant to certain Supplier Agreements entered into between the parties. In addition, Wal-Mart is an insured under Blitz's commercial liability insurance policies. Wal-Mart has also been named as a defendant in 3 personal injury cases allegedly involving Blitz's PCGCs in which Blitz is not a defendant. Kinderhook, which is the majority stockholder of debtor LAM, has also been named as a defendant in 6 suits allegedly involving the Blitz PCGCs.

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<sup>4</sup> No other manufacturer of similar fuel containment products in the United States use metal flame arrestors in their products. Metal flame arrestors pose various risks of their own.

20. Although the Debtors' business model is sound and the PCGC product is a market leading safe product, and, under normal circumstances, the business is profitable, the Debtors were unable to support the enormous costs associated with defending against the products liability lawsuits. Indeed, the Debtors were spending more than \$1 million a month on defense costs prior to the Petition Date.

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

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

**i. Prepetition Senior Secured Credit Facility**

22. The Debtors' first lien secured debt obligations arise under that certain First Amended and Restated Credit Agreement, dated February 4, 2011, among Blitz Acquisition, LLC, Blitz U.S.A., Inc. and Blitz RE Holdings, LLC as borrowers (collectively, the "Prepetition Borrowers"), Blitz Acquisition Holdings, Inc. as guarantor (the "Prepetition Guarantor"), F3 Brands LLC as guarantor (the "Additional Guarantor" and together with the Prepetition Guarantor, the "Prepetition Guarantors"), LAM 2011 Holdings, LLC (f/k/a Blitz Holdings, LLC) as parent, the Lenders party thereto (the "Prepetition Lenders") and BOKF, NA d/b/a Bank of Oklahoma as administrative agent ("BOK") (as amended, supplemented, restated or otherwise modified from time to time, collectively "Prepetition Credit Facility"). The Prepetition Credit Facility consists of approximately \$22 million outstanding under a prepetition term loan facility (including outstanding letters of credit) (the "Prepetition Term Loan") and approximately \$19 million outstanding under a prepetition revolver facility (the "Prepetition Revolver"). All obligations under the Prepetition Credit Facility were secured by a first priority security interest

in substantially all of the Prepetition Borrowers' and Prepetition Guarantors' assets. Absent acceleration, amounts due under the Prepetition Term Loan and Prepetition Revolver are due by February 4, 2016, while portions of the Prepetition Term Loan are due in 2013 and the remainder in 2014.

**ii. DIP Credit Facility**

23. On December 12, 2011, pursuant to *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 Post-Petition Secured Indebtedness, (II) Granting Security Interests and Superpriority Claims, (III) Approving Use of Cash Collateral* [Docket No. 132] (the "Final DIP Order"), the Court authorized the Debtors to obtain up to \$5,000,000.00 in principal amount of postpetition financing under a revolving credit facility (the "DIP Credit Facility"), on the terms and conditions set forth in the Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of November 28, 2011 (as amended, supplemented or otherwise modified, the "DIP Credit Agreement") among the Debtors, BOK, as agent (the "DIP Agent"), and the lenders identified therein (the "DIP Lenders"). The Final DIP Order also authorized the Debtors to use cash collateral of the Prepetition Lenders. The DIP Credit Facility and authorization to use cash collateral was intended to provide the Debtors with sufficient liquidity to meet their obligations as same came due and to pay certain prepetition obligations which they were authorized to pay pursuant to Court order.

**iii. Current Status of Financing**

24. The Debtors' DIP Credit Facility expires on June 30, 2012. Pursuant to the Final DIP Order, the Debtors' authorization to use cash collateral was also set to expire on June 30, 2012. The Debtors and the Prepetition Lenders have stipulated to permit the Debtors continued

use of cash collateral through the earlier of September 30, 2012 or the consummation of the sale of the Assets (the “Cash Collateral Stipulation”). On June 26, 2012, the Debtors filed an emergency motion [Docket No. 553] (the “Cash Collateral Motion”) to approve the Cash Collateral Stipulation. At a hearing on June 29, 2012, the court approved, on an interim basis, the Cash Collateral Stipulation [Docket No. 570]. A final hearing on the Cash Collateral Motion is scheduled for July 17, 2012.

25. The Debtors have made substantial progress already in these Chapter 11 Cases in paying down the secured debt owing under the Prepetition Credit Facility, a necessary prerequisite to achieving a recovery for general unsecured creditors. From the proceeds of the sale of F3 Brands earlier in these Chapter 11 Cases, the Debtors have paid to the Prepetition Lenders \$14 million on account of borrowings under the Prepetition Credit Facility. The Debtors have also paid to the Prepetition Lenders approximately \$40,000 out of the proceeds of certain miscellaneous asset sales. As part of the Cash Collateral Stipulation, the Debtors will pay \$5,000,000 of cash collateral that has been generated from sales in these Chapter 11 Cases, to the Prepetition Lenders. As a result of the payments made from the proceeds of these sales, and the anticipated \$5,000,000 payment of cash collateral, the outstanding balance owed by the Debtors on the Prepetition Credit Facility will be approximately \$22.6 million. Additionally, the Debtors expect proceeds from the sale of the Assets, and the sale of Reliance, will reduce this amount substantially. Currently, the Debtors are holding approximately \$13 million of cash collateral in their bank accounts.<sup>5</sup>

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<sup>5</sup> This amount includes the \$5 million of cash collateral the Debtors will pay to the Prepetition Lenders pursuant to the Cash Collateral Stipulation.

## **BACKGROUND ON THE SALE**

### **A. The Debtors' Marketing and Sales Efforts**

26. The Debtors have determined that it is in the best interest of their estates to sell the Assets. The Debtors have attempted to reorganize their business. However, the crushing impact of the product liability litigation against the Debtors have made it untenable for the Debtors to stay in business. The Debtors commercial liability insurance coverage expires on July 31, 2012, and despite best efforts, the Debtors have been unable to obtain renewal coverage. The Debtors have also attempted to obtain the financing needed to reorganize their business, but despite best efforts, have been unable to do so. As a result, the Debtors have determined they must cease production and sale of PCGCs by July 31, 2012. The Sale proceeds will allow the Debtors to further pay down the secured debt obligations, and hopefully, when coupled with the other aspects of the Debtors' sale and wind down efforts, will yield a return for unsecured creditors as well. The Debtors believe the Sale will preserve and maximize the value of their estates and accordingly, is in the best interests of their estates and creditors.

27. In June 2012, the Debtors engaged SSG Capital Advisors, LLC ("SSG") as investment banker to assist in the marketing and Sale of the Assets. During the course of the marketing effort, SSG will contact prospective parties to solicit interest in the purchase of the Assets, including financial and strategic purchasers. To facilitate the due diligence process, SSG has prepared an electronic dataroom with information related to the Assets (the "Dataroom").

28. In addition, SSG will distribute a form asset purchase agreement (the "Form APA") for the Sale of the Assets to prospective purchasers who express their interest in purchasing the Assets. The Debtors and their advisor, SSG, have not yet determined if the best opportunity to maximize value from the Sale will involve entering into a stalking horse asset purchase agreement (the "Stalking Horse APA") or not. SSG intends to promptly test the market



for the Assets to determine whether a stalking horse bidder ("Stalking Horse Bidder") is available under circumstances which will maximize value. As such, this Motion contemplates the possibility of entering into a Stalking Horse APA and coming back to Court for a subsequent hearing to approve bid protections should that be necessary. The Motion also provides for the event that no Stalking Horse Bidder is selected.

29. If the Debtors, with the advice of SSG, determine it to be in the best interests of their estates and will maximize value and recoveries, then the Debtors intend to execute a Stalking Horse APA with the party presenting the most favorable offer. Following the execution of the Stalking Horse APA, other potential qualified bidders may continue to perform detailed due diligence.

30. On August 23, 2012, the Debtors intend to conduct a public auction for the purposes of selling the Assets to the highest bidder. Qualified Bidders, as defined in the Bidding Procedures, may participate in the Auction.

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

31. Accordingly, the Debtors have proposed the following timeline for the Sale of the Assets:<sup>6</sup>

<b><u>Action</u></b>	<b><u>Deadline</u></b>
Bidding Procedures Hearing	July 17, 2012
Submission of Qualified Bids	August 20, 2012
Auction	August 23, 2012
Sale Hearing	August 29, 2012
Consummation of Sale	September 5, 2012

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<sup>6</sup> The Debtors, in the exercise of their business judgment and in consultation with the Committee and the Secured Lenders (as defined below), reserve the right to change these sale-related dates in order to achieve the maximum value for the Assets.

**C. The Asset Purchase Agreement**

32. The Debtors, after consultation with the Committee and BOK as the agent for the Debtors' DIP Lenders and Prepetition Lenders (the "Secured Lenders"), may enter into the Stalking Horse APA with a Stalking Horse Bidder. The Debtors may determine, after consultation with the Committee and the Secured Lenders, not to enter into a Stalking Horse APA. If the Debtors do pick on a Stalking Horse and execute a Stalking Horse APA, the Debtors shall file (and serve on the Secured Lenders, the Committee, the U.S. Trustee, and all parties known by the Debtors to be interested in purchasing the Assets) a notice of selection of stalking horse (the "Notice of Stalking Horse Determination"). The Notice of Stalking Horse Determination will provide a summary of the principal terms of the Stalking Horse APA, including, but not limited to, the purchase price, deposit amount, acquired assets, assumed liabilities, and proposed bid protections, if any. The Bidding Procedures shall apply whether or not the Debtors ultimately decide to enter into a Stalking Horse APA

**RELIEF REQUESTED**

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

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

35. The Debtors also request that this Court set a Sale Hearing on or about August 29, 2012. At the Sale Hearing, pending the outcome of the Auction, consistent with the Bidding

Procedures, the Debtors intend to seek entry of a Sale Order (A) approving the Sale, free and clear of all Interests; and (B) authorizing the assumption and assignment of certain Executory Contracts and Real Property Leases.

### **BASIS FOR RELIEF**

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

36. As set forth above, after July 31, 2012, the Debtors will no longer have any product liability insurance and will no longer manufacture and sell PCGCs. Despite their best efforts, the Debtors have been unable to obtain the financing necessary to work towards a reorganization. Further, the Debtors have been unable to secure the necessary insurance and as a result have been forced to liquidate their Assets. The Debtors have arranged with the Prepetition Lenders to use cash collateral to consummate the sale of the Assets. The Debtors believe the proposed sale of the Assets is the best way to maximize the value of the estate and recoveries for all creditors. Accordingly, the Debtors believe they must be permitted to conduct the process in the manner and on the timetable set forth in this Motion.

#### **B. The Bidding Procedures<sup>7</sup>**

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

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<sup>7</sup> Terms used but not otherwise defined in this section of this Motion shall have the meanings ascribed to them in the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order.



38. As described more fully in the Bidding Procedures, which should be consulted for a full statement of the Bidding Procedures, the Debtors propose that competing bids for the Assets are governed by the following:<sup>8</sup>

- Submission of Proposed Stalking Horse APA. Potentially interested purchasers must submit to the Debtors a proposed asset purchase agreement marked to reflect changes from the Form APA. As soon as practicable after submission by any potential stalking horse of its marked Form APA, the Debtors will select the Stalking Horse APA that, in the Debtors' business judgment, is the highest and otherwise best offer for the Assets. If the Debtors do pick a Stalking Horse Bidder and execute a Stalking Horse APA, the Debtors shall file and serve the Notice of Stalking Horse Determination which will, among other things, identify whether the Debtors have selected a Stalking Horse Bidder and entered into a Stalking Horse APA, and, if so, the principal terms of such agreement.
- Due Diligence. Potential Bidders who were not selected as the Stalking Horse Bidder may continue to conduct due diligence through and including August 17, 2012.
- Bid Deadline. A Potential Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Materials not later than 5:00 p.m. (prevailing Eastern Time) on August 20, 2012 (the "Bid Deadline").
- Required Bid Materials. All bids, other than the Stalking Horse Bid, must include, among other things:
  - (i) Identification of Potential Bidder. Identification of the Potential Bidder and any equity holders, in the case of a Potential Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
  - (ii) 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 Form APA, as may be applicable (the "Marked Agreement"). All Qualified Bids must provide (a) a commitment to close within seven (7)

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<sup>8</sup> The following description of the Bidding Procedures is only a summary of the terms set forth in the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. The following summary is qualified in its entirety by reference to the provisions of the Bidding Procedures. In the event of any inconsistencies between the provisions of the Bidding Procedures and the terms herein, the terms of the Bidding Procedures shall control.

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' advisors, to allow the Debtors' advisors 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 any Bid Protection plus amounts necessary to meet the Initial Overbid Amount (as defined below) (collectively, the "Minimum Bid Amount"). In the event the Debtors have not entered into a Stalking Horse APA, the Debtors, in consultation with the Committee and the Secured Lenders, will determine whether the total consideration offered in a Potential Bidder's proposed asset purchase agreement is satisfactory to be considered a Qualified Bid.

(v) Irrevocability of Bid: A letter stating that the bidder's offer is irrevocable until the first business day after the Assets for which the Qualified Bidder is submitting a bid have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court.

(vi) Bid Deposit: A cash deposit in the amount of 10% of the total consideration offered in the bid (the "Bid Deposit") (as set forth in the Bidding Procedures).

(vii) Identification of Executory Contracts and Unexpired Real Property Leases: The bid shall identify with particularity the Debtors'

executory contracts and unexpired leases with respect to which the bidder seeks to receive an assignment.

- (viii) No Financing or Diligence Constituencies: The bid shall not contain any due diligence, financing or regulatory contingencies of any kind, though the bid may be subject to the satisfaction of specific conditions in all material respects at Closing.
- (ix) Consent to Jurisdiction: The bid shall state that the offering party consents to the jurisdiction of the Bankruptcy Court.
- (x) Corporate Authority: The bid shall include evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted purchase agreement of the bidder.

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

A "Qualified Bidder" is a potential bidder (a "Potential Bidder") that delivers the documents described in subparagraphs (i)-(x) above, and that the Debtors, in consultation with the Committee and the 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. Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder. Promptly after a Potential Bidder delivers all of the materials required by subparagraph (i)-(x) above, the Secured Lenders, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. A bid from a Qualified Bidder is a "Qualified Bid."

Initial Overbid Amount. There shall be an initial overbid amount that a Potential Bidder must bid to exceed the Stalking Horse Bid ("Initial Overbid Amount") in order to be deemed a Qualified Bidder eligible to participate in the Auction. The Initial Overbid Amount shall be at least the amount of consideration provided for in the Stalking Horse APA plus the amount necessary to pay any Court approved Bid Protections plus \$100,000. In the event the Debtors have not selected a Stalking Horse Bidder, or entered into a Stalking Horse APA, then the Debtors, in consultation with the Committee and the Secured Lenders, shall determine at the Auction, which of the Qualified Bids received by the Debtors constitutes the highest or best bid, and will constitute the opening bid at the Auction, and shall provide notice thereof to the other Qualified Bidders at the Auction.

- Auction. If a Qualified Bid, other than that submitted by the Stalking Horse Bidder, has been received by the Debtors, the Debtors may conduct the Auction with respect to the Assets. The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, 3rd Floor, Wilmington, Delaware 19801 (the "Auction Site") at 10:00 a.m. (prevailing Eastern time) on August 23, 2012 (the "Auction Date"), or such other place and time as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. Bidding at the Auction shall be transcribed or videotaped.

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

39. As noted above, the Debtors, with the advice of SSG, have not yet determined if it is in the best interests of the Debtors' estates, and will maximize value, to enter into a Stalking Horse APA. However, the Debtors and SSG are exploring this option. In order to provide an incentive and to compensate a potential Stalking Horse Bidder for entering into a Stalking Horse APA, the Debtors may need to seek approval of bid protections, including a break-up fee ("Break-Up Fee") and expense reimbursement ("Expense Reimbursement") and together with the Break-Up Fee, the "Bid Protections"). In the event the Debtors, with the advice of SSG, find it necessary to seek approval of Bid Protections, no later than three (3) days after selection of the Stalking Horse APA, the Debtors will file and serve notice of the proposed Bid Protections on all interested parties. The notice shall include the amount of any Break-Up Fee and Expense Reimbursement and in no event shall the Break-Up Fee exceed three percent (3%) of the cash purchase price for the Assets. The Debtors will request that the Court set a hearing to approve the Bid Protections no later than seven (7) days after the execution of the Stalking Horse APA. The Debtors will file and serve notice of such hearing on all interested parties.

40. The Debtors believe that offering Bid Protections in the range customarily acceptable in this jurisdiction to a Stalking Horse Bidder may benefit the Debtors' estates by establishing a floor for the Assets and promoting more competitive bidding. The Bid

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

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

41. Notice of Sale Hearing. The Debtors (or their agents) shall serve notice of this Motion by first-class mail, postage prepaid, upon (a) the U.S. Trustee; (b) counsel for the Committee; (c) counsel for the agent for the Debtors' Secured Lenders; (d) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (e) each of the Debtors' landlords, if any, for nonresidential real property leases; (f) various federal, state, county and city tax and regulatory authorities; (g) all entities known to have expressed an interest in a transaction with respect to the Assets or that have been indentified by the Debtors or their advisors as a potential purchaser of the Assets; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

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



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

**E. The Cure Notice Procedures**

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

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

46. The Cure Notice shall state the cure amounts that the Debtors believe are necessary to assume such Executory Contracts and Real Property Leases pursuant to section 365 of the Bankruptcy Code (the “Cure Amount”) and notify the non-debtor party that such party’s Executory Contract or Real Property Lease may be assumed and assigned to a purchaser of the Assets to be identified at the conclusion of the Auction.<sup>9</sup> The Cure Notice shall set a deadline by which the non-debtor party may file an objection to the Cure Amount. The Debtors request that this Court set the deadline to object to any Cure Amount as fourteen (14) days after service of the

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<sup>9</sup> In the event a Stalking Horse Bidder is selected, no later than five (5) business days after selection the Debtors shall provide notice to all Contract Notice Parties regarding such Stalking Horse Bidder’s proposed adequate assurance of future performance and information regarding how a non-debtor party to an Executory Contract or Real Property Lease may obtain additional information regarding the Stalking Horse Bidder (the “Stalking Horse Adequate Assurance Information”). The notice shall set the deadline for filing any objections to the adequate assurance information.

Cure Notice. The Debtors propose that if they file an amended Cure Notice setting forth amended Cure Amounts, any parties affected by the amendment shall have until the earlier of (i) fourteen (14) days after service of the amended Cure Notice or (ii) three (3) business days before the Sale Hearing to object to the amended Cure Amount. The Cure Notice shall also provide that objections to any Cure Amount will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors in consultation with the Court.

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

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

#### **APPLICABLE AUTHORITY**

49. “Under Delaware law, the business judgment rule operates as a presumption ‘that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation’s best interest.’” Continuing Creditors’ Committee of Star Telecomms., Inc. v. Edgecomb, 385 F. Supp. 2d 449, 462 (D. Del. 2004) (quoting Grobow v. Perot, 539 A.2d 180, 187 (Del. 1988)); see also Ad Hoc Committee of Equity Holders of Tectonic Network, Inc. v. Wolford, 554 F. Supp. 2d 538, 555



n.111 (D. Del. 2008). Thus, this Court should grant the relief requested in this Motion if the Debtors demonstrate a sound business justification therefore. See In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

50. The Debtors have sound business justifications for selling the Assets at this time. The Debtors have determined that they are unable to continue in business as they have not been able to obtain the financing needed to continue their operations as a going concern and work towards a reorganized, despite their best efforts. Also, the Debtors have been unable to obtain commercial liability insurance coverage after July 31, 2012, and therefore Blitz can no longer manufacture PCGCs. Moreover, the Debtors believe the best opportunity to maximize value and recoveries for the estate is to sell the Assets pursuant to a section 363 sale, as contemplated by this Motion.

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

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



of the Assets as determined by the Debtors, in consultation with the Committee and the Secured Lenders.

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

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

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

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

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

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a "sales configuration mode" to attract other bidders to the auction;
- e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;
- f. the correlation of the fee to a maximum of value of the debtor's estate;
- g. the support of the principal secured creditors and creditors committees of the break-up fee;
- h. the benefits of the safeguards to the debtor's estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

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

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

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

58. “The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable.” The Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 660 (S.D.N.Y. 1992). As is customary, the Bid Protections serve as compensation for a stalking horse bidder’s investment of considerable time and expense in negotiating and entering into a stalking horse asset purchase agreement. The Debtors believe that, should an auction be held, the Bid Protections may be necessary to encourage bidding by serving “any of three possible useful functions: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow; or (3) to attract additional bidders.” Id. at 662. If the Assets are sold to a competing bidder, the Sale likely will be the result of a Stalking Horse Bidder’s crucial role as an initial bidder generating interest in the Assets and establishing a minimum acceptable price and offer against which other parties can bid.

59. In addition, “[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder’s efforts and to the magnitude of the transaction, break-up fees are generally permissible.” Id. The Debtors will not agree to a Break-Up Fee in excess of three percent (3%) of the cash purchase price, an amount within the range of break-up fees typically paid in sales transactions that have been approved by this Court. See, e.g., In re Maxide Acquisition, Inc., No. 05-10429 (MFW) (Bankr. D. Del. Mar. 15, 2005) (approving break-up fee of 3%, or \$2.5 million, in connection with a \$75 million sale); In re Ameriserve Food Distrib., Inc., No. 00-00358 (PJW) (Bankr. D. Del. June 15, 2000) (approving break-up fee of 3.6%, or \$4 million, in connection with \$110 million sale). As noted above, the Debtors have not determined to enter into a Stalking Horse APA, but do believe it is

necessary to explore the opportunity to enter into such an agreement if the Debtors, with the advice of SSG, believe doing so will maximize value for the estate and recoveries for creditors. As such, the Debtors reserve the right to seek Bid Protections in accordance with the procedures outlined herein.

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

60. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts in this district and elsewhere have found that a debtor’s sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. See, e.g., In re Eagle Picher Holdings, Inc., 2005 Bankr. LEXIS 2894, at ¶ 3 (Bankr. S.D. Ohio 2005); In re Martin, 91 F.3d 389, 395 (3d Cir. 1996); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983). Once the Debtors articulate a valid business justification, “[t]he business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” In re S.N.A. Nut Co., 186 B.R. 98 (Bankr. N.D. Ill. 1995); see also In re Integrated Res., Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a Debtor’s management decisions”).

61. The sale of a debtor’s assets is appropriate where there are sound business reasons behind such a determination. See Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir.

1996); see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (Bankr. D. Del. 1999); In re Del. & Hudson Ry. Co., 124 B.R. 169, 176 (D.D.C. 1991); Stephens Indus., Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986) (sale of substantially all assets of estate authorized where “a sound business purpose dictates such action”). The Debtors have a sound business justification for selling the Assets at this time. Despite their best efforts, the Debtors are not able to obtain commercial liability insurance coverage after July 31, 2012. Further, despite the Debtors’ best efforts, they have been unable to obtain the financing necessary to continue in business as a going concern and to work towards a reorganization of the business. As a result, the Debtors will be unable to sell PCGC’s after that time, or otherwise continue as a going concern.

62. Based on careful consideration of the Debtors’ liquidity constraints and their ongoing and future business prospects, the Debtors’ have concluded that a sale of the Assets in accordance with the procedures set forth in the Bidding Procedures is the best method to maximize recoveries to the estates. Maximization of the Assets’ value is a sound business purpose warranting authorization of any proposed sale.

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

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

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

65. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to section 363(b), it is only necessary to meet one of the five conditions of section 363(f). Citicorp Homeowners Servs., Inc. v. Elliot, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (stating that section 363(f) of the Bankruptcy Code is written in the disjunctive; holding that if any of the five conditions of section 363(f) are met, the trustee has the authority to conduct the sale free and clear of all liens). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

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



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

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

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

69. It is the Debtors' expectation that any asset purchase agreement entered into with any Successful Bidder will be negotiated at arm's length, with both parties represented by their own counsel. Additionally, the Debtors will adduce facts at the Sale Hearing demonstrating same.

70. Accordingly, the Sale Order will include a provision that the Successful Bidder for the Assets, is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors believe that providing any Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Assets and that closing of the Sale will occur promptly.

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

71. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession "subject to the court's approval, may assume or reject any executory contract or [unexpired] lease of the debtor." 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. See, e.g.,

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

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

73. Section 365(f) of the Bankruptcy Code provides that the "trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of



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

74. Adequate assurance of future performance with respect to any Successful Bidder shall be presented at the Sale Hearing. The Debtors will adduce facts at the Sale Hearing demonstrating the financial wherewithal of any Successful Bidder, and their willingness and ability to perform under the Executory Contracts and Real Property Leases to be assumed and assigned to them. The Sale Hearing therefore will provide this Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of any Successful Bidder to provide adequate assurance of future performance under the Executory Contracts and Real Property Leases that it seeks to assume.

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

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

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

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

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

**NOTICE**

79. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors served notice of this Motion by first class mail upon: (a) the U.S. Trustee; (b) counsel for the Committee; (c) counsel for the agent for the Debtors' Secured Lenders; (d) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (e) each of the Debtors' landlords for any nonresidential real property leases related to the Debtors' business; (f) various federal, state, county and city tax and regulatory authorities;

(g) all entities known to have expressed an interest in a transaction with respect to the Assets or that has been indentified by the Debtors or their advisors as a potential purchaser of the Assets; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

**NO PRIOR REQUEST**

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

*[Remainder of page intentionally left blank.]*

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

Dated: June 29, 2012  
Wilmington, Delaware



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

In re:

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

### Debtors.

) **Chapter 11**  
)  
) **Case No. 11-13603 (PJW)**  
)  
) **(Jointly Administered)**  
)  
) **Objection Deadline for Proposed Bidding Procedures:**  
) **July 10, 2012 at 4:00 p.m. (EDT)**  
)  
) **Hearing Date for Proposed Bidding Procedures:**  
) **July 17, 2012 at 9:30 a.m. (EDT)**

## NOTICE OF MOTION AND HEARING

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 (the “Motion”) with the**

<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.

United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the proposed undersigned counsel for the Debtors on or before **July 10, 2012 at 4:00 p.m. (Eastern Daylight Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise resolved, a hearing to consider such objection and the Motion will be held before The Honorable Peter J. Walsh at the Bankruptcy Court, 824 Market Street, 6<sup>th</sup> Floor, Courtroom 2, Wilmington, Delaware 19801 on **July 17, 2012 at 9:30 a.m. (Eastern Daylight Time)**.

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

Dated: June 29, 2012  
Wilmington, Delaware



Daniel J. DeFranceschi (No. 2732)

Michael J. Merchant (No. 3854)

Paul N. Heath (No. 3704)

Amanda R. Steele (No. 5530)

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

One Rodney Square

920 North King Street

Wilmington, Delaware 19801

Telephone: (302) 651-7700

Facsimile: (302) 651-7701

Email: DeFranceschi@rlf.com

Merchant@rlf.com

Heath@rlf.com

Steele@rlf.com

*Counsel to the Debtors and Debtors in Possession*

# **Exhibit A**

## **Form of Bidding Procedures Order**



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

**In re:**

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

**Debtors.**

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

**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**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an order (the "Bidding Procedures Order") (A) establishing bidding and auction procedures (the "Bidding Procedures"), substantially in the form attached hereto as Exhibit 1, in connection with the sale (the "Sale") of substantially all of the Debtors' assets (the "Assets") free and clear of all claims (as defined in section 101(5) of the Bankruptcy Code) and any other interests, liens, mortgages, pledges, security interests, rights of first refusal, obligations and encumbrances of any kind whatsoever (collectively, the "Interests"), as more fully described and except to the extent identified in any Stalking Horse APA or the asset purchase agreement of any other Successful Bidder (as defined in the Bidding Procedures), as applicable; (B) establishing procedures for approval of bid protections, if any; (C) scheduling an auction (the "Auction") and

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

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

sale hearing (the “Sale Hearing”) for the Sale of the Assets and approving the form and manner of notice thereof; (D) establishing certain notice procedures for determining cure amounts (the “Cure Amounts”) for executory contracts (the “Executory Contracts”) and unexpired nonresidential real property leases (the “Real Property Leases”) that may be assigned (the “Cure Procedures”); and (E) granting certain related relief; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties-in-interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been given, with no objections having been filed, or all objections having been overruled, as the case may be; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefore, it is hereby:

FOUND AND DETERMINED THAT:

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

B. Notice of the Motion, including the proposed entry of the Bidding Procedures Order, the Bidding Procedures, the Cure Procedures, and the hearing to consider entry of this Bidding Procedures Order (the “Bidding Procedures Hearing”) has been provided as set forth in the Motion. The Debtors’ notice of the Motion, the proposed entry of the Bidding Procedures Order, the Bidding Procedures, the Cure Procedures, and Bidding Procedures Hearing is appropriate and reasonably calculated to provide all interested parties with timely and

proper notice under Bankruptcy Rules 2002, 4001, 6004 and 6006, and no other or further notice of, or hearing on, the Motion or this Bidding Procedures Order is required.

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

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

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

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

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

1. The (i) Bidding Procedures and (ii) Cure Procedures, are hereby APPROVED, and fully incorporated into this Bidding Procedures Order, and shall apply with respect to the proposed Sale of the Assets and assumption and assignment of Executory Contracts and unexpired Real Property Leases contemplated by the Motion. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

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

### **AUCTION AND BIDDING PROCEDURES**

3. The Debtors are authorized to conduct the Auction. The Auction, if any, shall be conducted at Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (the "Auction Site") at 10:00 a.m. (prevailing Eastern time) on August 23, 2012 (the "Auction Date"), or at such other place and time or later date as determined by the Debtors. The Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth in the Bidding Procedures. The Debtors are authorized, subject to the terms of this Bidding Procedures Order, to take all actions necessary, in the discretion of the Debtors, to conduct and implement such Auction.

4. The Debtors shall select a Stalking Horse Bidder and a Stalking Horse Bid, after consultation with BOKF, N.A. d/b/a Bank of Oklahoma as agent for the Debtors' prepetition and post-petition secured under (the "Secured Lenders") and the official committee of unsecured creditors (the "Committee").

5. The Debtors, in consultation with the Secured Lenders and the Committee, may (i) select, in their business judgment, pursuant to the Bidding Procedures the highest or otherwise best offer(s) and the Successful Bidder or Bidders, and (ii) reject any bid that, in the Debtors' business judgment, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules or the Bidding Procedures, or

(c) contrary to the best interests of the Debtors and their estates, creditors, interest holders or parties-in-interest.

6. The failure to specifically include or reference any particular provision, section or article of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

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

#### **THE BID PROTECTIONS PROCEDURES**

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

#### **ADDITIONAL NOTICE PROVISIONS**

9. Within two (2) days after the entry of this Bidding Procedures Order (the "Mailing Date") or as soon thereafter as practicable, the Debtors (or their agents) shall serve the

Sale Notice and a copy of this Bidding Procedures Order by first-class mail, postage prepaid, upon (a) the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) counsel to the agent for the Debtors' prepetition and post-petition secured lender; (e) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (f) each of the Debtors' landlords and each of the notice parties identified in the real property leases, to the extent possible; (i) various federal, state, county and city tax and regulatory authorities; (j) all entities known to have expressed an interest in a transaction with respect to the Assets or that has been indentified by the Debtors or their advisors as a potential purchaser of the Assets; and (k) all parties requesting notice pursuant to Bankruptcy Rule 2002.

#### **CURE PROCEDURES**

10. The Cure Procedures are approved.

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

12. The Cure Notice stated the Cure Amounts that the Debtors believe are necessary to assume such Executory Contracts and Real Property Leases pursuant to section 365 of the Bankruptcy Code and notified the non-debtor party that such party's Executory Contract



or Real Property Lease may be assumed and assigned to a purchaser of the Assets to be identified at the conclusion of the Auction. The Cure Notice also provided that objections to any Cure Amount will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors.

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

14. The Debtors may amend the Cure Notice with respect to any Cure Amount. If the Debtors amend the Cure Notice, any non-debtor parties affected by the amendment must file any objection to the amended Cure Amount by the earlier of (i) fourteen (14) days after service of the amended Cure Notice or (ii) three (3) business days before the Sale Hearing and serve such objection on the Cure Objection Notice Parties.

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

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

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

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

#### **ADDITIONAL PROVISIONS**

19. The Debtors are authorized and empowered to take such actions as may be necessary to implement and effect the terms and requirements established under this Bidding Procedures Order.

20. A Sale Hearing to approve the sale of substantially all of the Assets to any Successful Bidder and authorizing the assumption and assignment of certain executory contracts and unexpired leases shall be held on August 29, 2012 at 9:30 a.m. (prevailing Eastern Time), unless otherwise continued upon request by the Debtors.

21. 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 August 24, 2012 at 4:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline"). Any and all Objections must be served on (i) counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, (Attn: Daniel J. DeFranceschi, Esq.); (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 any Stalking Horse Bidder; and (vi) all other parties that have requested notice in these cases.

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

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

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

25. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, this Court, for good cause shown, orders that the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

26. Notwithstanding anything to the contrary in the Motion, Bidding Procedures or this 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").

27. Notwithstanding anything to the contrary in the Motion, Bidding Procedures or this Order, the Secured Lenders, the Committee, and the U.S. Trustee reserve the right to object to any application or request for approval of Bid Protections.

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

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

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THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit 1**

## **Bidding Procedures**

## **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). The Debtors seek to sell all or substantially all of their Assets (the "Assets") pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Sale").

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

The Debtors, 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"), may enter into an asset purchase agreement (the "Stalking Horse APA") with a stalking horse bidder (the "Stalking Horse Bidder"). The Debtors may determine, after consultation with the Committee and the Secured Lenders, not to enter into a Stalking Horse APA. If the Debtors do pick a stalking horse and execute a Stalking Horse APA, the Debtors shall file (and serve on the Secured Lenders, the Committee, and all parties known by the Debtors to be interested in purchasing the Assets) a notice of selection of stalking horse (the "Notice of Stalking Horse Determination"). The Notice of Stalking Horse Determination will provide a summary of the principal terms of the Stalking Horse APA, including, but not limited to, the purchase price, deposit amount, acquired assets, assumed liabilities, and proposed bid protections, if any. The Bidding Procedures shall apply whether or not the Debtors ultimately decide to enter into a Stalking Horse APA.

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 [ ], 2012, the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the "Bidding Procedures Order"). The Bidding Procedures Order also set August 29, 2012 as the date the Bankruptcy Court will conduct the Sale Hearing. At the Sale Hearing, the Debtors shall seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets of the Debtors to the Stalking Horse Bidder or the Successful Bidder at the Auction.



### **Assets to be Sold**

The Debtors are offering for sale substantially all of 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 Bidding Procedures Order approving these bidding procedures may do so by contacting the Debtors' counsel at Richards, Layton & Finger, PA, 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi, Esq. 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 any of the Bid Deposit Requirement (as defined below).

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

Any person desiring 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 August 20, 2012, 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 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' advisors, to allow the Debtors' advisors 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 any approved Break-Up Fees and Expenses Reimbursement plus amounts necessary to meet the Initial Overbid Amount (as defined below) (collectively, the "Minimum Bid Amount"). In the event the Debtors have not entered into a Stalking Horse APA, the Debtors,

in consultation with the Committee and the Secured Lenders, will determine whether the total consideration offered in a Potential Bidder's proposed asset purchase agreement is satisfactory to be considered a Qualified Bid.

- v. Irrevocability of Bid: A letter stating that the bidder's offer is irrevocable until the earlier of (a) 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 and (b) fifteen (15) days after the commencement of the Auction.
- 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: if such Potential Bidder is not the Successful Bidder at the Auction, then its Bid Deposit shall be returned to it as set forth herein (subject to the other provisions of these Bid Procedures and the terms of its asset purchase agreement with the Debtors). 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. A bid from a Qualified Bidder is a “Qualified Bid.”

All bids, other than the Stalking Horse Bid, if any, 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, if any, 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. The Debtors and their advisors are under no obligation to share the Potential Bidder’s Qualified Bids with the Stalking Horse Bidder.

#### Access to Due Diligence Materials

Only 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 which 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 available 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 making any such bids; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures.

### Due Diligence From Bidders

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

### **“As Is, With All Faults”**

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

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

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



## **The Auction and Auction Procedures**

If a Qualified Bid, other than that submitted by the Stalking Horse Bidder, has been received by the Debtors, the Debtors may conduct an auction (the "Auction") with respect to all or some of the Assets. If the Debtors have determined not to select a Stalking Horse or enter into a Stalking Horse APA, then the Debtors shall conduct the Auction if the Debtors have determined there are more than one Qualified Bidder.<sup>1</sup> 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 August 23, 2012 (the "Auction Date"), or such other place and time as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. Prior to moving the Auction Date, the Debtors shall consult with the Stalking Horse Bidder, the 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, 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"). 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, if any, 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, if any, 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, the Debtors, in the exercise of their fiduciary duties,

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<sup>1</sup> If the Debtors have not selected a Stalking Horse Bidder, and have not entered into a Stalking Horse APA, and have received only one Qualified Bid, the Debtors reserve the right to proceed directly to the Sale Hearing to seek approval of the Qualified Bid.

may adopt rules for bidding at the Auction that, in their business judgment, will better promote the goals of the Bidding Process, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection herewith.

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

### **Bid Protections**

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

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

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

There shall be an overbid amount that a Potential Bidder must bid to exceed the Stalking Horse Bid ("Initial Overbid Amount") in order to be deemed a Qualified Bidder, and that amount shall be at least the purchase price under the Stalking Horse APA, plus the amount of any Bid Protections, plus \$100,000. In the event the Debtors have not selected a Stalking Horse Bidder, or entered into a Stalking Horse APA, then the Debtors, in consultation with the Committee and the Secured Lenders, shall determine at the Auction, which of the Qualified Bids received by the Debtors constitutes the highest or best bid, and will constitute the opening bid at the Auction, and shall provide notice to the other Qualified Bidders at the auction.

### **Acceptance of Qualified Bids**

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

### **Return of Bid Deposit**

The Bid Deposit of the Successful Bidder shall be applied to the Purchase Price. The Bid Deposit of the Back-up Bidder shall be held by the Escrow Agent in an escrow account until two (2) business days after the Closing of the transaction contemplated by the Successful Bid, and thereafter returned to the Back-up Bidder. Bid Deposits of all other Qualified Bidders shall be

held in an escrow account until no later than two (2) business days after the Sale Hearing, and thereafter returned to the respective bidders.

### **Sale Hearing**

A Sale Hearing is scheduled for August 29, 2012 at 9:30 a.m. (prevailing Eastern Time) in the Bankruptcy Court with Objections to the Sale to be filed on or before August 24, 2012 at 4:00 p.m. (prevailing Eastern Time). Following the approval of the Sale to any Successful Bidder at the Sale Hearing, if the Successful Bidder fails to consummate an approved Sale, the Debtors shall deem the next highest or otherwise best Qualified Bid (the “Back-Up Bid” and the party submitting the Back-Up Bid, the “Back-Up Bidder”), as disclosed at the Sale Hearing. The Debtors in consultation with the Committee and the Secured Lenders shall be authorized to consummate the sale with the Back-Up Bidder submitting such bid without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until the first business day following the consummation of a Sale of the Assets to the Successful Bidder. The Debtors, in the exercise of their business judgment, in consultation with the Secured Lenders and the Committee, reserve their right to the extent consistent with any Stalking Horse APA to change the date of the Sale Hearing in order to achieve the maximum value for the Assets.

### **Modifications**

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

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

## **Exhibit 2**

### **Cure Notice**

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

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

**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**

PLEASE TAKE NOTICE THAT:

1. 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 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 [Docket No. \_\_] (the "Motion")<sup>2</sup>** with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the "Court").

2. Pursuant to the Motion, the Debtors seek the entry of an order (i) establishing bidding and auction procedures in connection with the sale of substantially all of the Debtors' assets (the "Assets"); (ii) establishing procedures for approval of bid protections, if any; (iii) scheduling an auction (the "Auction") and setting a date and time for a sale hearing (the

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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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion. For a copy of the Motion, please contact the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC at (807) - 606 - 7519.

“Sale Hearing”) for the sale of the Assets (the “Sale”), and approving the form and manner of notice thereof; (iv) establishing procedures (the “Proposed Notice Procedures”) for noticing and determining cure amounts for executory contracts (“Executory Contracts”) and unexpired nonresidential real property leases (“Real Property Leases”) to be assumed and assigned in connection with the Sale; and (v) granting certain related relief. By the Motion, the Debtors further request that at the Sale Hearing, subject to the results of the Auction, this Court enter a sale order (i) approving and authorizing the Sale; and (ii) authorizing the assumption and assignment of certain Executory Contracts and Real Property Leases.

3. In accordance with the Proposed Notice Procedures, the Debtors hereby file this notice (the “Cure Notice”) identifying (i) those Executory Contracts and Real Property Leases which may be assumed and assigned to a Stalking Horse Bidder, if any, its designee(s) or such other Successful Bidder, on the Closing Date in connection with the Sale of the Assets and in accordance with the procedures proposed in the Motion; and (ii) the proposed cure amount (the “Cure Amount”) for each Executory Contract and Real Property Lease identified on the Cure Notice.

4. You have been identified as a party to an Executory Contract or Real Property Lease that the Debtors may seek to assume and/or assign. The Executory Contract or Real Property Lease with respect to which you have been identified as a non-Debtor counterparty, and the corresponding proposed Cure Amount for such Executory Contract or Real Property Lease has been set forth on Exhibit 1 attached hereto. The Debtors’ records reflect that other than the Cure Amount, there are no other defaults under the Executory Contract or Real Property Lease.

5. Objections, if any, to the proposed Cure Amount or the Stalking Horse Adequate Assurance Information<sup>3</sup> must be made in writing, filed with the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served so as to be received by the Debtors and counsel for the Debtors on or before **4:00 p.m. (prevailing Eastern Time) on July \_\_, 2012** (the “Cure Objection Deadline”). Service should be made by mail to: (i) the Debtors’ counsel by mail Richards Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, (Attn: Daniel J. DeFranceschi, Esq.), and (ii) the Debtors by mail, Blitz U.S.A., Inc., 404 26th Ave. NW Miami, OK 74354 (Attn: Rocky Flick). The objection must set forth (i) the basis for the objection, (ii) the exact amount the party asserts as the Cure Amount, and (iii) sufficient documentation to support the Cure Amount alleged.

6. If an objection is timely filed, a hearing with respect to the objection will be held before the Honorable Peter J. Walsh, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6<sup>th</sup> Floor,

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<sup>3</sup> Pursuant to the Bidding Procedures the Debtors may enter into a Stalking Horse APA with the Stalking Horse Bidder. Within five (5) business days of the selection of the Stalking Horse Bidder, the Debtors will provide notice of same to all parties in interest and will provide Stalking Horse Adequate Assurance Information to all non-debtor parties to Executory Contracts and Real Property Leases. The notice will establish a deadline for filing any objection to the Adequate Assurance Information. In the event that the Successful Bidder is not the Stalking Horse Bidder, objections regarding adequate assurance of future performance may be raised at the Sale Hearing.



Courtroom 2, Wilmington, Delaware 19801, at the Sale Hearing or at a later hearing, as determined by the Debtors in consultation with the Court.

7. UNLESS YOU FILE AN OBJECTION TO THE PROPOSED CURE AMOUNT SET FORTH ON EXHIBIT 1 HERETO AND SERVE SUCH OBJECTION IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1 AND FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, ANY SUCCESSFUL BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT EXECUTORY CONTRACT OR REAL PROPERTY LEASE.

8. The presence of a contract or agreement listed on Exhibit 1 attached hereto does not constitute an admission that such contract or agreement is an executory contract or unexpired lease or that such contract will be assumed by the Debtors and assigned to any Successful Bidder. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts and agreements listed on Exhibit 1 attached hereto.

Dated: July [ ], 2012  
Wilmington, Delaware

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Daniel J. DeFranceschi (No. 2732)  
Michael J. Merchant (No. 3854)  
Paul N. Heath (No. 3704)  
Amanda R. Steele (No. 5530)  
**RICHARDS, LAYTON & FINGER, P.A.**  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
Email: DeFranceschi@rlf.com  
Merchant@rlf.com  
Heath@rlf.com  
Steele@rlf.com

*Counsel to the Debtors and Debtors in Possession*

# **Exhibit 1**

## **SCHEDULE OF EXECUTORY CONTRACT CURE AMOUNTS**

**(TO BE FILED)**

## **Exhibit B**

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

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

**In re:**

) **Chapter 11**

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

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

**Debtors.**

) **(Jointly Administered)**

) **Re: Docket Nos.**

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

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

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

3. Any person that wishes to participate in the bidding process must deliver (unless previously delivered) the Required Bid Materials set forth in the Bidding Procedures to the Debtors at the following addresses: (i) the Debtors, Blitz U.S.A., Inc., 404 26th Ave. NW Miami, OK 74354 (Attn: Rocky Flick); (ii) counsel to the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Daniel J. DeFranceschi, Esq.); (iii) investment bankers to the Debtors, SSG Capital Advisors, L.P., Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428 (Attn: J. Scott Victor); (iv) counsel to the agent for the Debtors’ prepetition lenders and post-petition lenders, Frederick Dorwart Lawyers, Old City Hall, 124 East Fourth Street, Tulsa, OK 74103-5027 (Attn: Samuel S. Ory, Esq.) and Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801 (Attn: Margaret M. Manning, Esq.); and (v) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, NJ 07068 (Attn: Jeffrey Prol, Esq. and Mary A. Seymour, Esq.) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, Delaware 19801 (Attn: Francis A. Monaco, Jr., Esq.) not later than **5:00 p.m. (prevailing Eastern Time) on August 20, 2012** (the “Bid Deadline”).

<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.

4. If a Qualified Bid, other than that submitted by the Stalking Horse Bidder, has been received by the Debtors, the Debtors may conduct an auction (the "Auction") with respect to all or some of the Assets. The Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 at **10:00 a.m. (prevailing Eastern Time) on August 23, 2012**, or such other place and time as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above.

5. A hearing to approve the Sale (the "Sale Hearing") to any Successful Bidder will be held at **9:30 a.m. (prevailing Eastern Time) on August 29, 2012** unless otherwise continued pursuant to the terms of the Bidding Procedures. The Sale Hearing will be held before the Honorable Peter J. Walsh, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6<sup>th</sup> Floor, Courtroom 2, Wilmington, Delaware 19801. Objections, if any, to any Sale, including objections to the Auction and selection of any Successful Bidder or Successful Bidders, must be filed by **August 24, 2012 at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). At the same time, copies of any objections must be served, so as to be received by the Objection Deadlines, on: (i) counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801, (Attn: Daniel J. DeFranceschi, Esq. and Paul N. Heath, Esq.); (ii) the Debtors, Blitz U.S.A., Inc., 404 26th Ave. NW Miami, OK 74354 (Attn: Rocky Flick); (iii) counsel to the Official Committee of Unsecured Creditors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, NJ 07068 (Attn: Jeffrey Prol, Esq. and Mary A. Seymour, Esq.) and Womble Carlyle Sandridge & Rice, LLP, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Francis A. Monaco, Jr., Esq.); (iv) counsel to the agent for the Debtors' prepetition lenders and post-petition lenders, Frederick Dorwart Lawyers, Old City Hall, 124 East Fourth Street, Tulsa, OK 74103-5027 (Attn: Samuel S. Ory, Esq.) and Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801 (Attn: Margaret M. Manning, Esq.); and (v) counsel to any Stalking Horse Bidder.

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

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

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Daniel J. DeFranceschi (No. 2732)  
Michael J. Merchant (No. 3854)  
Paul N. Heath (No. 3704)  
Amanda R. Steele (No. 5530)  
**RICHARDS, LAYTON & FINGER, P.A.**  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
Email: DeFranceschi@rlf.com  
Merchant@rlf.com  
Heath@rlf.com  
Steele@rlf.com

*Counsel to the Debtors and Debtors in Possession*

## **Exhibit C**

### **Proposed Sale Order**



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

**In re:**

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

**Debtors.**

)  
) **Chapter 11**  
)  
) **Case No. 11-13603 (P JW)**  
)  
) **(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 Court having entered an Order, dated July [ ], 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 "Procedures Order")<sup>2</sup> based on the evidence presented at the hearing held on July 17, 2012 (the "Procedures Hearing"), and an auction having been held on August 23, 2012 (the "Auction") for the consideration of Qualified Bids and the selection of a Successful Bidder (each as defined in the Procedures Order) and [ ] (the "Purchaser") having been selected as the Successful Bidder; and upon the Purchaser and the Debtors having entered into that certain Asset Purchase Agreement, dated as of August [ ], 2012 (attached hereto as **Exhibit A**, as may be amended, supplemented or restated, the "Purchase Agreement"), pursuant to which the Purchaser shall acquire the Assets; and the Bankruptcy Court having conducted a hearing on the Motion on August 29, 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 Procedures Orders, and all objections thereto (such filed objections, if any, being referred to as the "Filed Objections"), and the arguments of counsel made, and the evidence adduced, at the Procedures Hearing and the Sale Approval Hearing; and upon the record of the Procedures Hearing, the Sale Approval Hearing, and these Chapter 11 Cases; and after due deliberation thereon, and good cause appearing therefor;

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Procedures Order or if not defined in the Procedures Order, shall have the meaning ascribed to them in the Purchase Agreement (defined below).

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

**A. Jurisdiction and Venue.** This Court has jurisdiction over the Motion and the transactions contemplated therein (the “Transactions”), including, but not limited to, the sale of substantially all of the Assets free and clear of all Liens, Claims, encumbrances and Interests. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District and in this 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 Court and based upon the representations of counsel at the Sale Approval Hearing and as approved under the Procedures Order: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Approval Hearing, and the Transactions contemplated therein has been provided to all parties in interest; (ii) such notice was and is good, sufficient, and appropriate under the circumstances 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 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 Procedures Order, the Debtors filed with this Court a notice identifying all Contracts, Real Property Leases, and Personal Property Leases

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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.

that may be assumed and assigned in connection with the Sale and the related Cure Amounts for each such Contract, Real Property Lease or Personal Property Lease (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, and Personal Property Leases 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 Assumed Contracts and Leases and the establishment of Cure Amounts for such Assumed Contracts and Leases.

**E. Opportunity to Object.** A reasonable opportunity to object and to be heard with respect to the Sale of the Assets, the assumption and assignment of the Assumed Contracts and Leases 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 Procedures Order afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase the Assets. The Auction was conducted fairly and in good faith, without collusion and in accordance with the Procedures 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 Assets and participate in the Auction.

The Debtors and their professionals adequately marketed the Assets to all potential purchasers in accordance with the Procedures Order. At the Auction, the Purchaser was selected as the Successful Bidder. The Purchase Agreement constitutes the highest and best offer for the



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 Assets constitutes a valid and sound exercise of the Debtors' business judgment. The Purchaser is the Successful Bidder for the Assets in accordance with the Procedures Order. The Purchaser has complied in all respects with the Procedures Order and any other applicable order of this Court in negotiating and entering into the Purchase Agreement, and the Sale and the Purchase Agreement likewise comply with the Procedures Order and any other applicable order of this 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 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 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 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 Assumed Contracts and Leases. 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 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 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 Debtor 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. 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 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 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 Procedures 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 Procedures 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 Assets constitute property of the selling Debtors' estates and title thereto is vested in the selling Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The selling Debtors have all right, title, and interest in the Assets required to transfer and to convey the Assets to the Purchaser as contemplated by the Purchase Agreement.

**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 Assumed Contracts and Leases is integral to the Purchase Agreement, does not constitute unfair discrimination, and is in the best interests of the Debtors and their estates 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 Assumed Contracts or Leases: (i) to the extent necessary, cured any default that existed prior to the Closing with respect to the Assumed Contracts and Leases; and (ii) to the extent necessary, provided compensation to any party for any actual pecuniary loss to such party resulting from a default that existed prior to the Closing with respect to the Assumed Contracts and Leases, all within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code. The Purchaser's promise to perform the obligations under the Assumed Contracts and Leases arising after their assumption and assignment to the Purchaser shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Assumed Contracts and Leases. Any objections to any Cure Amounts or defaults under any of the Assumed Contracts and Leases or the assumption and assignment of any of the Assumed Contracts and Leases by the Applicable 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 Assumed Contracts and Leases 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 Assumed Contracts and Leases which purports to prohibit, restrict, or condition the use, assumption or assignment of any of the Assumed Contracts and Leases 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 Assumed Contracts and Leases to the Purchaser in connection with the Transactions is an exercise of their sound business judgment, and that such assumption and assignment is in the best interests of the Debtors' estates for the reasons set forth in the Motion and on the record at the Sale Approval Hearing, including, without limitation, because the assumption and assignment of the Assumed Contracts and Leases in connection with the Transactions will maintain the ongoing business of the Debtors, limit the losses of counterparties to the Assumed Contracts and Leases, and maximize the distribution to creditors of the Debtors.

**R. Free and Clear.** The transfer of the 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 Assets free and clear of all or any (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 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 Excluded 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 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 Applicable Debtors of the Assumed Contracts and Leases is free and clear of all Interests, and all such Interests shall attach to the consideration to be received by the Applicable 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 Assets to the Purchaser will vest the Purchaser with good and marketable title to the 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 Assets to the Purchaser, and the assumption and assignment by the Applicable Debtors of the Assumed Contracts and Leases to the Purchaser, were not free and clear of all Interests of any kind or nature whatsoever, as set forth in this Sale Order, or if the Purchaser would, or in the future could, be liable for any of the Interests. A sale of the 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 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 Assets, the Transactions, or the Cure Notice are deemed to have consented to the Motion, the sale of the Assets, the Transactions, and the assumption and assignment of the Assumed Contracts and Leases 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 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 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 Assets and for the Transactions.

V. **Excluded Liabilities.** Except for the Assumed Liabilities set forth in the Purchase Agreement, the transfer of the Assets to the Purchaser under the Purchase Agreement shall not result in the Purchaser having any liability or responsibility for, or any Assets being recourse for: (i) any Interest asserted against the Debtors or against an insider of Debtors or against any of the Assets or any other assets of the Debtors; (ii) the satisfaction in any manner, whether at law or in equity, whether by payment, setoff, recoupment, or otherwise, directly or indirectly, and whether from the Assets or otherwise, of any Interest or Excluded 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 Assets, except for the Assumed 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 shall not be liable for any claim against any of the Debtors. Without limiting the effect or scope of the foregoing, neither the transfer of the Assets from the Debtors to the Purchaser nor any of the Transactions shall or will subject the Purchaser or its Affiliates, successors, or assigns or respective properties (including the Assets) to any liability for Interests against the Debtors 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, any successor liability or similar theories. The Transactions contemplated by the Purchase Agreement do not amount to a consolidation, merger, or *de facto* merger of the Purchaser and any of the Debtors or their estates, there is no continuity between the Purchaser and any of the Debtors or their estates, the Purchaser is not holding 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, 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.

**X. Prompt Consummation.** The Transactions must be approved by the Court and consummated promptly in order to preserve the viability of the business subject to the sale as a going concern, and to thereby maximize the value of the Debtors' estates, for the reasons set forth in the Motion and on the record at the Sale Approval Hearing. For those reasons, time is of the essence in consummating the Sale. Accordingly, there is cause to lift the stay 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 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 Assumed Contracts and Leases. No appeal, motion to reconsider, or similar pleading has been filed with respect to the Procedures Orders, and the Procedures Orders are final orders of the Bankruptcy Court, have not been vacated, withdrawn, rescinded, or amended and remains in full force and effect.

3. **Approval.** The sale of the Assets to the Purchaser on the terms and conditions contemplated by the Purchase Agreement and the Ancillary Documents, including, without

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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.

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 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) with respect to the Applicable Debtors, assume and assign the Assumed Contracts and Leases to the Purchaser; and (iv) take all other and further actions as may be reasonably necessary to consummate and implement the Transactions and perform all obligations under the Purchase Agreement and the Ancillary Documents and the consummation thereof, without any further corporate action or orders of the Bankruptcy Court. The Purchaser shall not have any obligation to proceed with the Closing under the Purchase Agreement until all conditions precedent to its obligations to do so have been met, satisfied, or waived.

4. **Valid Transfer.** As of the Closing, the consummation of the Transactions shall effect a legal, valid, enforceable, and effective sale and transfer of the Assets to the Purchaser, and shall vest the Purchaser with all legal, equitable, and beneficial right, title, and interest in and to the Assets free and clear of all Interests of any kind whatsoever, except for Assumed 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 Assets to the Purchaser and the Purchaser shall take title to and possession of the Assets, upon the Closing, free and clear of all Interests of any kind or nature whatsoever, with all such Interests to attach to the proceeds ultimately attributable to the Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force, and effect, and in the same order of priority, subject to any security interests granted in these Chapter 11 Cases, that such Interests have against such 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 Interests, *lis pendens* or other documents or agreements evidencing Interests against or in the 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 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 Assets (*provided, however*, that with respect to any such filings related to liens of the Prepetition Lenders or the DIP Lenders, such filing shall be in a form approved by BOKF, NA, such approval not to be unreasonably withheld, or by the Court on notice to BOKF, NA), (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 Assets; and (iii) the Purchaser may seek in this 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 Assets (other than Assumed 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 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 Assets.** All Persons and entities that are in possession of some or all of the Assets on the Closing Date are directed to surrender possession of such 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 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 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 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 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 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 Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the



Debtors, the Assets, the operation of the Debtors' businesses before the Closing, or the transfer of the Debtors' interests in the Assets to the Purchaser, shall be and hereby are forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing Interests against the Purchaser and its property, successors, or assigns, or any of its Affiliates, members, partners, principals, or shareholders, or the interests of the Debtors in such Assets. Following the Closing, no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Debtors' interests in the Assets.

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 Assets and/or a bill of sale or assignment transferring indefeasible title and interest in the Assets, including the Assumed Contracts and Leases, 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: (i) to be a legal successor, or otherwise be deemed a successor, to any of the Debtors or any of the Debtors' estates; (ii) to have, *de facto* or otherwise, merged or consolidated with or into any of the Debtors or any of the Debtors' estates; or (iii) to be an alter ego, a continuation or substantial continuation of any of the Debtors or any enterprise of any of the Debtors. The Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their respective estates including, but not limited to, the provisions of any bulk

sales law. Other than as expressly set forth in the Purchase Agreement with respect to Assumed Liabilities, the transfer of the 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 Assets having any liability or responsibility whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly: (x) any Interest against the Debtors or against an insider of the Debtors, (y) any Interest or Excluded Liabilities, or (z) the Debtors except as expressly set forth in the Purchase Agreement and the Ancillary Documents.

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, 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 Assets prior to the Closing, or any taxes in

connection with, or in any way relating to the cancellation of debt of the Debtors or their Affiliates.

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, and Personal Property Leases identified in the Cure Notice. The Cure Notice informed each recipient that its respective Contract, Real Property Lease, or Personal Property Lease may be assumed and assigned in connection with the Sale and, to the extent applicable, (i) the title of the Contract, Real Property Lease, or Personal Property Lease, (ii) the name of the parties to the Contract, Real Property Lease, or Personal Property Lease, (iii) the proposed Cure Amount, if any, should the Contract, Real Property Lease, or Personal Property Lease 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, or Personal Property Lease, 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 Procedures Order, the Cure Amounts set forth on the applicable Cure Notice shall constitute findings of the Bankruptcy Court and shall be final and binding on parties to such Contracts, Real Property Leases, and Personal Property Leases and their successors and designees 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, or Personal Property Lease. Cure Amounts shall otherwise be those determined by the Bankruptcy Court after notice and a hearing. Each counterparty to a Purchased Contract or Assumed Lease, whether entered before or after the Petition Date, is hereby forever barred, estopped, and permanently enjoined from (i) asserting against the Purchaser or its property (including, without limitation, the 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 Applicable 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 Applicable Debtors' assumption and assignment to the Purchaser of the Assumed Contracts and Leases. To the extent a counterparty to any of the Assumed Contracts and Leases 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, or Personal Property Lease 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 Designation Deadline.

17. **Payment of Cure Amounts.** With respect to the Assumed Contracts and Leases, to the extent there are any Cure Amounts unpaid as of the Closing Date, the Applicable 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 Assumed Contracts and Leases arising after their assumption and assignment to the Purchaser shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1) and 365(f)(2)(B) of the Bankruptcy Code.

18. **Ipsa Facto Clauses Ineffective.** Upon the Debtors' assumption and assignment of the Assumed Contracts and Leases 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 or Assumed Lease and no counterparty to any such Purchased Contract or Assumed Lease 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, or Personal Property Lease. Any provision in a Purchased Contract or Assumed Lease that prohibits or conditions the assignment of such Purchased Contract or Assumed Lease (including without limitation, the granting of a lien therein) or allows the counterparty thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment, constitutes an unenforceable anti-assignment provision that is void and of no force and effect. The failure of the Applicable Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Purchased Contract or Assumed Lease shall not be a waiver of such terms or conditions or of the Debtors' or the Purchaser's right, as applicable, to enforce every term and condition of such Purchased Contract or Assumed Lease.

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

20. **Release, 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 Assets, and that the conveyances described herein have been effected.

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



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

23. **Subsequent Orders and Plan Provisions.** Nothing contained in any subsequent order of this Court or any court of competent jurisdiction in these Chapter 11 Cases (including, without limitation, an order authorizing the sale of the 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, and the provisions of this Sale Order shall survive and remain in full force and effect.

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

#### **General Provisions**

25. 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.

26. 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.

27. 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.

28. This Sale Order, the Purchase Agreement, and the Ancillary Documents shall be binding in all respects upon all creditors of (whether known or unknown), and holders of equity interests in, any Debtor, any holders of Interests in, against or on all or any portion of the Assets, all non-Debtor counterparties to the Assumed Contracts and Leases, 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.

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

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

31. This 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 Court retains jurisdiction to compel delivery of the Assets, to protect the Purchaser and its assets, including the 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 Assets and the Assumed Contracts and Leases to the Purchaser.

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

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THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE