

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

In re: : Chapter 11
: :
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-____ ()
: (Joint Administration Requested)
Debtors. :

**DEBTORS' MOTION FOR ENTRY OF AN ORDER UNDER
SECTION 365(a) OF THE BANKRUPTCY CODE AUTHORIZING,
TO THE EXTENT NECESSARY, THE DEBTORS TO REJECT CERTAIN
NONRESIDENTIAL REAL PROPERTY LEASES**

Alset Owners, LLC, a Delaware limited liability company, and certain of its direct and indirect subsidiaries, debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), by and through their undersigned counsel, hereby move this Court (the "Motion") for entry of an order under Section 365(a) of the Bankruptcy Code authorizing, to the extent necessary, the Debtors to reject certain nonresidential real property leases. In an abundance of caution, the Debtors file this motion (the "Motion") seeking entry of an order pursuant to § 365(a) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing, to the extent necessary, rejection of the leases (the "Rejected Leases") associated with the Closed Restaurants (defined below) effective as of the Petition Date. In support of the Motion, the Debtors respectfully represent:

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016).

JURISDICTION AND VENUE

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

2. The statutory predicates for the relief sought herein are section 365(a) of the Bankruptcy Code, and Rules 2002(a)(7), 3002, 3003(c)(3), 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

3. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors jointly filed this Motion along with other motions or applications seeking certain typical "first day" relief, including the Debtors' request to have these cases jointly administered.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in these chapter 11 cases, and no official committee of unsecured creditors has been established to date.

6. The events leading up to the Petition Date and additional facts and circumstances supporting the relief requested herein are set forth in the Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief (the "Levitsky Declaration"), which is fully incorporated herein by reference.²

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Levitsky Declaration.

THE REJECTED LEASES

7. Prior to the Petition Date, the Debtors operated certain Rally's and Checkers stores in several states (collectively the "Restaurants"). Due to significant operational losses and performance related issues at certain Restaurants, the Debtors began the process of identifying and closing certain underperforming Restaurants (the "Closed Restaurants"). When a Restaurant was closed, the Debtors vacated and surrendered the Closed Restaurants to the respective landlords of the Closed Restaurants prior to the Petition Date. A full and complete list identifying the Closed Restaurants and respective landlords is attached hereto as Exhibit A.

8. The aggregate monthly rent under the Rejected Leases for the Closed Restaurants was approximately \$105,000.

RELIEF REQUESTED

9. The Debtors have vacated and abandoned the premises of each of the Rejected Leases and surrendered the premises to the landlord prior to the Petition Date. Nevertheless, to the extent it could be argued or determined that some or all of the Rejected Leases were not in fact terminated or surrendered prior to the Petition Date, the Debtors submit that the appropriate effective date of rejection of the Rejected Leases should be the Petition Date.

10. The relief requested does not impair or limit any claim for damages a landlord may assert for the pre-petition termination of their Rejected Lease nor does it preclude the Debtors from arguing the rejection occurred prior to the Petition Date.

BASIS FOR RELIEF

11. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may . . . reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). *See also University Med. Ctr. v. Sullivan (In re*

University Med. Ctr.), 973 F.2d 1065, 1075 (3d Cir. 1992). “This provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic Nat’l Title Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Muerexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cr. 1994)).

12. The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. See *NLRB v. Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”); *In re Taylor*, 913 F.2d 102, 107 (3d Cir. 1990); see also *In re Federal Mogul Global, Inc.* 293 BR. 124, 126 (CD. Del. 2003); *In re HQ Global Holdings*, 290 BR. 507, 511 (Bankr. D. Del. 2003). The business judgment standard mandates that a court approve a debtor’s business decision unless the decision is the product of bad faith, whim or caprice. See *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001); see also *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

13. Rejection of an executory contract or unexpired lease is appropriate where rejection of the lease would benefit the estate. See *Sharon Steel Corp. v. National Fuel Gas Distribution Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989). The standard for rejection is satisfied when a debtor has made a business determination that rejection will benefit the estate. See *Commercial Fin. Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.)*, 47 B.R. 425, 427 (D. Haw. 1985) (“under the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate”).

14. 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 e.g., See NLRB v. Bildisco v. Bildisco*, 465 U.S. 513, 523 (1984); *In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003).

15. Pursuant to section 365(a) of the Bankruptcy Code and to the extent that the Rejected Leases were not terminated or surrendered prior to the Petition Date, the Debtors, out of an abundance of caution, seek to reject the Rejected Leases effective as of the Petition Date in order to avoid any administrative liability to the landlords of the Rejected Leases. *See Bildisco*, 465 U.S. at 530 (stating that rejection relates back to the petition date). As set forth above, the Debtors vacated the Closed Restaurants prior to the Petition Date. The Debtors no longer operate the Closed Restaurants, focusing their efforts on maintaining the value of their other locations. Similarly, the Debtors, in the exercise of their business judgment, have determined that the Rejected Leases are not necessary and do not provide any value to the Debtors' estates and their creditors. Thus, the Debtors believe that it is an exercise of their sound business judgment to authorize the rejection of the Rejected Leases, effective as of the Petition Date.

16. Although courts generally recognize that the effective date of rejection is the date in which the order is entered, *see In re National Record Mart, Inc.*, 272 BR. 131, 133 (Bankr. W.D.Pa. 2002), courts have allowed rejection on a *nunc pro tunc* basis. *See In re O'Neil Theaters, Inc.*, 257 .B.R. 806, 807 (Bankr. E.D.La. 2000) (permitting *nunc pro tunc* rejection as of the petition date); *In re Amber's Stores*, 193 B.R. 819, 827 (Bankr. N.D.Tex. 1996) (finding that rejection of lease retroactive to the petition date was warranted as debtor turned over the keys and vacated the premises pre-petition).

17. In the instant matter, if this Court determines that a Rejected Lease was not terminated prepetition or was not deemed to have expired prepetition, rejection of the Rejected Lease effective as of the Petition Date is proper. The Debtors vacated the premises at each of the Closed Restaurants prior to the Petition Date. This Motion will be filed and served on the landlords. The Debtors acknowledge that they will not have the right to withdraw this Motion prior to the hearing on the Motion.

18. Finally, the Debtors may have claims against a contract counterparty arising under, or independent of, the Rejected Leases. The Debtors do not waive such claims by the filing of this Motion or the rejection of any such Rejected Leases.

NOTICE

19. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) the United States Securities and Exchange Commission; (c) the Office of the United States Attorney for the District of Delaware; (d) the Internal Revenue Service; (e) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (f) Textron Financial Corporation; (g) counsel to Checkers Drive-In Restaurants, Inc.; (h) landlords that are parties to the Rejected Leases; and (i) all known equipment lessors with property that may be at the Closed Restaurants. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

NO PRIOR REQUEST

20. No prior request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court. enter an order, substantially in the form attached hereto: (i) authorizing rejection of the Rejected Leases

listed on **Exhibit A** effective as of the Petition Date, to the extent that such Rejected Leases were not deemed terminated or surrendered prior to the Petition Date, and (ii) granting such other relief as is just and proper.

Dated: June __, 2009

BLANK ROME LLP

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-and-

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**PROPOSED ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION**

EXHIBIT "A"

REJECTED LEASES –

<u>Debtor-Tenant</u>	<u>Store No.</u>	<u>Store Address</u>	<u>Landlord Name(s)</u>	<u>Landlord/Service Address</u>
Setla, LLC	4014	3400 Market Street Youngstown, OH 44507	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4015	14110 Kinsman Cleveland, OH 44120	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4016	5703 Superior Avenue Cleveland, OH 44103	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4017	5125 Northfield Blvd. Cleveland, OH 44137	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4022	8108 Euclid Avenue Cleveland, OH 44103	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4040	186 S. Sandusky Street Delaware, OH 43015	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4046	2285 Morse Road Columbus, OH 43229	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4066	1002 North Broad Street Fairborn, OH 45324	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4069	501 S. Main Street Bellefontaine, OH 43311	Triple R. Associates	6300 NE First Ave., Ste 300 Ft. Lauderdale, FL. 33334
Setla, LLC	4052	4799 Sawmill Road Columbus, OH 43235	Armbruster Bros. R.E. LLC	9115 Moons Place North Dublin, OH 43017
Setla, LLC	4056	6490 Brandt Pike Dayton, OH 45424	Younger Generation International Enterprises	(i) 15915 Ventura Blvd, Penthouse Two Encino, CA 91436 (ii) c/o Michael & Alice Younger 3700 Buchanan Ave. #82 Riverside, CA 92503
Setla, LLC	4059	1438 Keowee Street Dayton, OH 45404	Samco LLC	P.O. Box 593 Vandelia, OH 45377
Setla, LLC	4068	2110 Michigan Avenue Sidney, OH 45365	Selimana Enterprises, Inc.	7 Penn Plaza, Ste 618 New York, NY 10001
Setla, LLC	4126	4902 Airway Road Dayton, OH 45431	Musky Checkers, LLC	15915 Ventura Blvd. Penthouse Two Encino, CA 91436
Checkers Michigan	3130	226 Perry Avenue Big Rapids, MI 49307	John J. Charleston Trust of 1998	2324 Airlands Street Las Vegas, NV 89134

<u>Debtor-Tenant</u>	<u>Store No.</u>	<u>Store Address</u>	<u>Landlord Name(s)</u>	<u>Landlord/Service Address</u>
Checkers Michigan	3131	1212 N. Mitchell St. Cadillac, MI 49601	Marian Patricia Sellers Trust	4102 Pecan Lane Orlando, FL 32812
Checkers Michigan	3155	2315 East Apple Avenue Muskegon, MI	Musky Checkers, LLC	15915 Ventura Blvd. Penthouse 2 Encino, CA 91436
Checkers Michigan	3156	954 West Sherman Blvd. Muskegon, MI	Barry L. Horwitz & Marlene Horwitz Trustees (undivided 90% interest), Musky Checkers LLC (10% interest)	15915 Ventura Blvd. Penthouse 2 Encino, CA 91436
Checkers Michigan	3157	1151 Phoenix Road South Haven, MI	Musky Checkers, LLC	15915 Ventura Blvd. Penthouse 2 Encino, CA 91436
Altes, LLC	4078	3800 East Kiehl Ave. St. Louis, MO 63109	Blackstone Properties, LLC/ Checkers	One Lawrence Square Springfield, IL 62704
Altes, LLC	4112	6994 Chippewa Street St. Louis, MO	(1) John & Magda Rado (2) Agnes Medwed-Konig (3) Michael Rado	3129 Elvido Drive Los Angeles, CA 90049 5062 Orrville Ave Woodland Hills, CA 91367 3652 Golden Leaf Drive Westlake Village, CA 91361
Altes, LLC	8142	1220 Truman Blvd. Crystal City, MO	ERAM, LLC	700 El Atajo St. Los Angeles, CA 90065
Altes, LLC	8145	8106 Manchester Rd. Brentwood, MO 63144	Lenette Realty & Investment / Checkers	2222 Schuetz Rd., #101 St. Louis, MO 63146
Altes, LLC	8147	930 North Kings Highway St. Louis, MO	R & R Capital, LLC	4370 La Jolla Village Drive Suite 850 San Diego, CA 92122
Altes, LLC	8148	6008 North Illinois Fairview Heights, IL	R & R Capital, LLC	4370 La Jolla Village Drive Suite 850 San Diego, CA 92122
Altes, LLC	8154	1501 Troy Road Edwardsville, IL 62025	R & R Capital, LLC	4370 La Jolla Village Drive Suite 850 San Diego, CA 92122
Altes, LLC	Next to 8154	1501 Troy Road Edwardsville, IL 62025	R & R Capital, LLC	4370 La Jolla Village Drive Suite 850 San Diego, CA 92122
Altes, LLC	8157	2182 N. Highway 67 Florissant, MO	2182 North Highway 67, LLC	400 Sundance Hill Soquel, CA 95073

<u>Debtor-Tenant</u>	<u>Store No.</u>	<u>Store Address</u>	<u>Landlord Name(s)</u>	<u>Landlord/Service Address</u>
Altes, LLC	8160	9701 St. Charles Rock Rd. St. Louis, MO 63114	(i) Breckenridge Hills LLC, as Landlord (ii) Checkers as Sublandlord	104 South Central Ave. Eureka, MO 63205 4300 W. Cypress St. Suite 600 Tampa, FL 33607
Altes, LLC	8161	660 Carlyle Rd. Belleville, IL 62221	(i) THF Belleville Development LP, as Landlord (ii) Checkers as Sublandlord	2127 Innerbelt Business Ctr. Dr., #20 St. Louis, MO 63114 4300 W. Cypress St. Suite 600 Tampa, FL 33607
Altes, LLC	8164	4400 South Kings Hwy St. Louis, MO 63109	(i) Blackstone Properties, LLC, as Landlord (ii) Checkers as Sublandlord	One Lawrence Square Springfield, IL 62704 4300 W. Cypress St. Suite 600 Tampa, FL 33607
Altes, LLC	8170	11406 West Markham Little Rock, AR 72801	(i) Markham West Shopping Ctr. LP, as Landlord (ii) Checkers as Sublandlord (iii) Mexico Chiquito as sub-sub Tenant	600 Edgewood Drive Maumelle, AR 72113 4300 W. Cypress St. Suite 600 Tampa, FL 33607 11406 West Markham Little Rock, AR 72801
Altes, LLC	8175	311 S. Arkansas Avenue Russellville, AR 72801	Sylvia Talkington Trust & A.R. Talkington Share N Trust by Regions Bank, Trustee	Regions Bank 201 S. Denver Ave. Russellville, AR 72811

EXHIBIT "B"

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

In re: : Chapter 11
: :
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-____ (____)
: (Joint Administration Requested)
Debtors. :

**ORDER UNDER SECTION 365(a) OF THE BANKRUPTCY
CODE AUTHORIZING, TO THE EXTENT NECESSARY, THE DEBTORS
TO REJECT CERTAIN NONRESIDENTIAL REAL PROPERTY LEASES**

Upon consideration of the motion (the "Motion")² of the debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the "Debtors"), for entry of an Order under section 365(a) of title 11 of the United States Code (the "Bankruptcy Code") authorizing the Debtors to reject, effective as of the Petition Date, certain nonresidential real property leases between the Debtors and third parties (the "Rejected Leases"), to the extent that such Rejected Leases were not terminated or surrendered prior to the Petition Date; and it appearing that the relief requested is essential to the continued operation of the Debtors' businesses and in the best interests of the Debtors' estates and creditors; 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 proceeding is a core proceeding pursuant to 28 U.S.C. §§1408 and 1409; and adequate

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016).

² Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Motion.

notice of the Motion having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. To the extent that such Rejected Leases were not terminated or surrendered effectively prior to the Petition Date, each of the Rejected Leases listed on Exhibit “1” attached hereto shall be deemed rejected as of the Petition Date.
3. The Debtors reserve all rights to contest any such claims that may be asserted by the counterparties to the Rejected Leases based upon the rejection thereof, including with respect to the characterization of a Rejected Lease as executory or not, “true” contract or not, or otherwise.
4. The Debtors do not waive any claims that they may have against any of the counterparties to a Rejected Lease, whether or not such claims are related to a Rejected Lease.
5. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

6. Notwithstanding the possible applicability of Rules 6004(g), 7062, 9014 of the Federal Rules of Bankruptcy Procedure, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: June __, 2009

United States Bankruptcy Judge

EXHIBIT "1"

REJECTED LEASES

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Altes, LLC	8175	311 S. Arkansas Avenue Russellville, AR 72801	Sylvia Talkington Trust & A.R. Talkington Share N Trust by Regions Bank, Trustee	Regions Bank 201 S. Denver Ave. Russellville, AR 72811