

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

In re : Chapter 11
ALSET OWNERS, LLC, *et al.*,¹ :
 : Case No. 09-11960 (BLS)
 :
 : (Jointly Administered)
Debtors. :

Hearing Date: October 28, 2009 @ 12:00 p.m. (ET)
Objections Due: October 21, 2009 @ 4:00 p.m. (ET)

**MOTION OF DEBTORS FOR AN ORDER PURSUANT TO 11 U.S.C. § 1121(d)
EXTENDING THE EXCLUSIVE PERIODS WITHIN WHICH THE DEBTORS
MAY FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

The above-captioned debtors and debtors in possession (each a “Debtor” and collectively, the “Debtors”) hereby move this Court (the “Motion”) for entry of an order, pursuant to section 1121(d) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), extending the exclusive periods during which only the Debtors may (i) file a chapter 11 plan and (ii) solicit acceptances thereof. In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. § 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The predicates for the relief requested herein are section 1121(d) of the Bankruptcy Code and Bankruptcy Rule 9006(b).

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). The Debtors’ service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, FL 33432.

BACKGROUND

4. On June 5, 2009 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered. 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. An official committee of unsecured creditors (the “Creditors Committee”) was appointed on June 24, 2009.

6. The general circumstances and events leading to the commencement of the Debtors’ cases are described in the Amended Declaration of Leonard Levitsky in Support of the Debtors’ Chapter 11 Petitions and First Day Relief (the “Levitsky Declaration”) [Dkt. No. 34], filed on June 18, 2009. The Levitsky Declaration is incorporated by reference herein.

7. The Debtors filed their respective schedules of assets and liabilities and statements of financial affairs (collectively, the “Schedules and SOFAs”) in each of the Debtors’ cases on July 31, 2009. The Schedules and/or SOFAs may be amended from time to time.

8. On August 31, 2009, the Court entered an Order under 11 U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014 (A) Approving the Sale of the Purchased Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. § 363, (B) Authorizing and Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief (the “Sale Order”) [Dkt. No. 149]. Pursuant to the Sale Order, the Debtors sold substantially all of their assets to Checkerco, Inc., an affiliate of the Debtors’ franchisor (the “Buyer”). The sale to the Buyer closed immediately upon entry of the Sale Order on August 31,

2009 (the “Sale Closing Date”). As a result of the sale, and a resolution of the Committee’s objection to the sale, the Debtors’ estates received \$1.8 million in cash from the Buyer. In addition, the Buyer also assumed certain liabilities, including cure costs related to assumed contracts and leases. Shortly prior to the Sale Closing Date, a dispute arose concerning whether the Buyer or the Debtors were liable for certain taxes aggregating approximately \$185,000 relating to real property leases that were assumed and assigned as part of the sale. Such monies are presently in an escrow account, pending a resolution (the “Tax Escrow Monies”).

RELIEF REQUESTED

9. Pursuant to Section 1121(b) of the Bankruptcy Code, the Debtors currently have the exclusive right to file a chapter 11 plan of reorganization or liquidation through and including October 3, 2009 (the “Exclusive Filing Period”). Furthermore, pursuant to section 1121(c) of the Bankruptcy Code, the Debtors currently have the exclusive right to solicit and obtain acceptances for a chapter 11 plan through and including December 2, 2009 (the “Exclusive Solicitation Period,” and together with the Exclusive Filing Period, the “Exclusive Periods”).

10. By this Motion, the Debtors request that (i) the Exclusive Filing Period be extended by sixty (60) days, through and including December 2, 2009,² and (ii) the Exclusive Solicitation Period also be extended by sixty (60) days, through and including January 31, 2010, pursuant to section 1121(d). The Debtors further request that such extensions be without prejudice to the Debtors’ right to seek additional extensions of the Exclusive Periods. For the reasons set forth herein, ample cause exists to grant such extensions.

² Notwithstanding the request for a 60 day extension of the Exclusive Filing Period, the Debtors will utilize their best efforts to file a motion for approval of the disclosure statement with a plan within the next four to six weeks, assuming that the Debtors can finalize the terms of a plan with the Committee in such time period.

BASIS FOR RELIEF REQUESTED

(i) **Section 1121(d) of the Bankruptcy Code Authorizes the Court to Extend the Exclusive Periods “For Cause”**

11. A primary objective of a chapter 11 case is the formulation, negotiation, confirmation and consummation of a chapter 11 plan of reorganization or liquidation, and it remains the intention of the Debtors to achieve that objective, on a consensual basis. The exclusive periods under section 1121(b) and (c) are intended to afford a debtor a full and fair opportunity to formulate and propose a confirmable chapter 11 plan and to solicit acceptances thereof without the disruption that might be caused by the filing of competing plans by non-debtor parties. In order to provide a debtor with a full and fair opportunity, section 1121(d) allows the court to extend a debtor’s exclusive periods for “cause”:

(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121(d).

12. It is well established that the decision to extend a debtor’s exclusive periods is committed to the sound discretion of the Court and should be based upon the facts and circumstances of a particular case. *See First Am. Bank of New York v. Southwest Gloves and Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986). Although the Bankruptcy Code does not define “cause” for purposes of an extension request under section 1121(d), courts have looked to the legislative history of section 1121(d) for guidance. *See In re Gibson & Cushman Dredging*

(ii) Cause Exists to Extend the Exclusive Periods in These Chapter 11 Cases

13. When determining whether cause exists for an extension of a debtor's exclusive periods, courts rely on a variety of factors, each of which may provide sufficient grounds for extending the Exclusive Periods in these cases. Factors considered by the courts in making such a determination include: (a) the size and complexity of the case; (b) the necessity of sufficient time to negotiate and prepare adequate information; (c) the length of time the case has been pending; (d) the existence of good faith progress toward reorganization; (e) whether the debtor has made progress in negotiating with creditors; (f) whether the debtor is seeking the extension to pressure creditors; (g) whether the debtor is paying its debts as they come due; (h) whether the debtor has demonstrated reasonable prospects for filing a viable plan; and (i) whether unresolved contingencies exist. *See, e.g., In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 487 (Bankr. D. Conn. 2007); *In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); *In re Central Jersey Airport Servs., LLC*, 282 B.R. 176, 184 (Bankr. D.N.J. 2002). Each factor that is relevant to these cases supports the relief requested herein.

14. The Size and Complexity of the Cases Justify An Extension. The Debtors' chapter 11 cases qualify as "large and complex." These jointly administered cases

consist of four (4) separate Debtors. The Debtors were the largest franchisors of the Rally's and Checkers' restaurant businesses prior to the Petition Date and until the sale of 77 restaurants to the Buyer on August 31, 2009. From the Petition Date through the Sale Closing Date, the Debtors and their professionals spent substantial time and efforts on, among other things, sustaining business operations and managing the sale process. Since the Sale Closing Date, the Debtors have been in the process of winding down their affairs and addressing various post-closing issues. As a result of such pressing obligations, the Debtors and their professionals have not had an opportunity to finalize a plan of liquidation; however, a plan has been drafted and circulated to the Committee for their review and comment. In sum, the size and complexity of the Debtors' chapter 11 cases justify a further brief extension of the Exclusive Periods.

15. The Necessity of Sufficient Time to Negotiate and Prepare Adequate Information And the Length of the Case Justify An Extension. The Debtors have not been dilatory in these cases. Rather, the Debtors have worked expeditiously to address critical issues and move these cases forward. The Debtors have successfully addressed and have been addressing (i) the considerable demands of preparing for the filing of these chapter 11 cases, (ii) the burdens of complying with all of the other administrative requirements in chapter 11 cases, (iii) the burdens associated with responding to numerous and time-consuming document requests of the Committee for information relating to the Sale Motion and other matters, (iv) the pre-existing, ongoing responsibilities of operating the Debtors' businesses day-to-day through the Sale Closing Date, (v) the burdens and time demands associated with the Debtors' sale process and ultimately, the closing on the sale of substantially all of the Debtors' assets to the Buyer, and now, (vi) post-closing liquidation matters as well as transition issues relating to the sale of the Debtors. All of the aforementioned responsibilities have placed a tremendous strain on the

Debtors' limited personnel throughout these cases and have, in turn, impacted the Debtors' ability to finalize a plan of liquidation. The Debtors' cases are less than four months old and this is the Debtors' first request for an extension of the Exclusive Periods.

16. The Debtors Have Made Good Faith Progress Toward A Chapter 11 Plan And Are Making Progress In Negotiations With Creditors. The Debtors have made a great deal of progress in these chapter 11 cases, and have done so while working cooperatively with their major creditor constituencies. In the months following the Petition Date, the Debtors managed their businesses in very difficult economic times while also attending to the heightened requirements of the bankruptcy process and interacting on a regular basis with their primary creditor constituencies. The Debtors are not seeking the extensions of the Exclusive Periods to delay administration of the chapter 11 cases or to exert pressure on their creditors. To the contrary, this request is intended to maintain a framework conducive to an orderly, efficient and cost-effective chapter 11 plan process and to foster communications with major creditor constituencies.

17. As discussed above, the Debtors regularly consult with the Committee and desire a cooperative and productive relationship with the Committee and their professionals. Indeed, the Debtors' professionals have, with the assistance of the Debtors, prepared a liquidation budget and identified several open issues which will need to be addressed in the coming months and shared such information with the Committee's professionals. In addition, the Debtors previously discussed the basic framework for a plan with Committee counsel which will contemplate a plan of liquidation with the establishment of a liquidation trust to administer the Debtors' assets. Moreover, prior to the filing of this Motion, the Debtors prepared and circulated a draft of the plan to Committee counsel for their review and comments. The Debtors

anticipate receiving comments from Committee counsel in the near future and hope to be in a position to file the plan and disclosure statement with the Committee's input well in advance of December 2, 2009, the proposed Exclusive Filing Period. The Debtors have no reason to believe that this cooperative framework will not continue as they work with the Committee toward resolving various key issues and formulating a confirmable and consensual chapter 11 plan.

18. The Debtors Are Paying Their Debts as They Come Due And Reasonable Prospects For Filing A Viable Plan Exist. Courts considering whether to extend a debtor's exclusive periods may also assess whether the debtor is paying its debts when they come due. *In re McLean Indus.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). The Debtors have been paying their undisputed postpetition obligations as such obligations come due in the ordinary course during these cases. In addition, the sale proceeds are sufficient to satisfy other postpetition obligations which may accrue in these cases. As such, the Debtors are not administratively insolvent and will be able to satisfy the requirements of 1129(a)(9) of the Bankruptcy Code by paying all of their administrative claims in full at confirmation. As a result of the foregoing, reasonable prospects exist for the filing of a viable and confirmable chapter 11 plan in these cases.

19. Unresolved Contingencies Presently Exist In These Cases. The sale proceeds, together with the excluded assets from the sale, will serve as the funding mechanism for a proposed chapter 11 plan of liquidation. The Debtors have prepared a list of various open items, including a post-closing budget, to advise the Committee of the matters which must be concluded either prior to or in concert with the plan. Further, the Debtors anticipate working with the Committee to review proofs of claim to assess the impact of such claims on the plan

process and distributions to creditors as a whole. The deadline for filing claims is December 15, 2009.

20. Finally, the Debtors await a resolution of the dispute concerning the Tax Escrow Monies. It is anticipated that if the dispute is not settled, the issue will need to be presented to the Court for adjudication. The Committee has relayed to the Buyer their adamant position that such monies belong in the Debtors' estates and should be available for distribution to unsecured creditors. The Buyer disputes this contention. The Debtors are hopeful that this matter can be resolved amicably prior to the filing of the plan.

NOTICE

21. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to the Committee; and (c) parties that have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

CONCLUSION

22. Termination of the Exclusive Periods would likely have an adverse impact on the progress in these cases. If this Court were to deny the Debtors' request for a further extension of the Exclusive Periods, any party in interest would be free to propose a chapter 11 plan for one or more of the Debtors. This would deny the Debtors a fair opportunity to formulate and negotiate a confirmable plan. Such a result would not advance the objectives of the chapter 11 process, but would instead thwart those objectives and unnecessarily increase expense to these estates. Denying the relief requested herein could critically impair the Debtors' ability to successfully negotiate and confirm a chapter 11 plan, with no corresponding benefit to the Debtors' estates, creditors, and other stakeholders.

23. The Debtors respectfully submit that, under all of the relevant facts and circumstances, the requested extension of the Exclusive Periods will not prejudice the legitimate interests of any creditor and will provide the Debtors with a meaningful and reasonable opportunity to negotiate, propose, and confirm a consensual chapter 11 plan. Based upon the foregoing, ample cause exists to further extend the Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

WHEREFORE, the Debtors respectfully request entry of an order, in substantially the form attached hereto (i) extending the Exclusive Filing Period through and including December 2, 2009, (ii) extending the Exclusive Solicitation Period through and including January 31, 2010, and (iii) granting such other relief as is just and proper.

Dated: October 2, 2009

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