

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

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

**DECLARATION OF LEONARD LEVITSKY IN SUPPORT
OF CHAPTER 11 PETITIONS AND FIRST DAY RELIEF**

I, Leonard Levitsky, do hereby declare, under penalty of perjury, that:

1. I serve as the acting President and Chief Executive Officer (the “President”) of the above-captioned debtors and debtors in possession, each a Delaware limited liability company. I have acted as President of the Debtors since March 5, 2009. In my capacity as President, I have detailed knowledge of and experience with the business and financial affairs of the Debtors. From June 28, 2000 to March 4, 2009, I served as the Chief Operating Officer of one or more of the Debtors.

2. As President of the Debtors, I, together with my management team, am one of the officers of the Debtors responsible for devising and implementing the Debtors’ business plans and strategies and advising and overseeing certain financial, operational and legal affairs of the Debtors. In addition, I have been actively involved in the Debtors’ efforts to develop, negotiate and implement various strategic alternatives to preserve and maximize the value of the Debtors’ assets, including, but not limited to, managing cash, assisting with and responding to due diligence requests, analyzing potential sale, restructuring and liquidation scenarios, and

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

consulting with the Debtors' management, attorneys, and outside professionals with respect to the foregoing.

3. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions (collectively, the "Petitions") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), in an effort to preserve and maximize the value of their assets.

4. The Debtors intend to operate their businesses and to manage their properties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

5. I am advised by counsel that this Court has jurisdiction over these chapter 11 cases pursuant to 28 U.S.C. §§ 157 and 1334 and venue is proper in the United States Bankruptcy Court for the District of Delaware pursuant to 28 U.S.C. §§ 1408 and 1409.

A. The Debtors And Debtors In Possession

6. There are four separate Debtor entities that have filed for chapter 11 relief before this Court. A copy of the Debtors' current organizational chart is attached hereto as Exhibit "A".

7. Alset Owners, LLC ("Alset") is a holding company for the operating Debtors, Altes, LLC ("Altes") and Setla, LLC ("Setla"). Alset has no bank accounts, cash or operations and is essentially a shell company for tax purposes. Its principal office is 1200 North Federal Highway, Suite 111-B, Boca Raton, Florida 33432. The managing members of Alset and their respective ownership interests are Pentland USA, Inc. ("Pentland") (39%), and Rekcoc, LLC ("Rekcoc") (28.475%), Aldor, LLC ("Aldor") (17.275%), and Dorla, LLC ("Dorla") (15.25%).²

8. Altes, a franchisee of the Rally's restaurant chain, operates several restaurants in various states. Altes is a wholly owned subsidiary of Alset. Altes' principal place of business is

² Pentland is a subsidiary of Pentland Group Plc. Rekcoc is owned by me. Aldor and Dorla are owned by Robert Alrod and his wife Doreen.

1200 North Federal Highway, Suite 111-B, Boca Raton, Florida 33432. Altes' managing members and their respective ownership interests are Pentland (39%), Aldor (35.55%) and Rekcoc (25.45%).

9. Setla, a franchisee of the Rally's restaurant chain, operates several restaurants in Ohio. Setla, like Altes, is a wholly owned subsidiary of Alset. Setla's principal place of business is 1200 North Federal Highway, Suite 111-B, Boca Raton, Florida 33432. Setla's managing members and their respective ownership interests are Pentland (39%), Dorla (30.50%), and Rekcoc (30.50%).

10. Checkers Michigan, LLC ("Checkers Michigan"), a franchisee of the Checker's restaurant chain, operated several restaurants in Michigan but no longer has any operations. Checkers Michigan is a wholly owned subsidiary of Altes. Checkers Michigan's principal place of business is 1200 North Federal Highway, Suite 111-B, Boca Raton, Florida 33432. Checkers' Michigan is a wholly owned subsidiary of Altes and its ownership interest is identical to Altes.

11. None of the Debtors are publicly traded companies, nor have they issued any public debt.

B. Overview Of The Debtors' Business

12. The Debtors are the largest franchisee of Checkers Drive-In Restaurants, Inc. (the "Franchisor"), the national franchisor of the Rally's and Checkers' restaurant chains. Specifically, Debtors Altes and Setla operate Rally's restaurants in Arkansas, Missouri, Illinois, and Ohio. Checkers Michigan operated Checkers restaurants in Michigan but has recently ceased operations there.³ Each of the Debtors' franchise locations is governed by the franchise agreements (the "Franchise Agreements") entered into between the Debtors and the Franchisor requiring, among other things, the Debtors to pay monthly royalties to the Franchisor.

³ Debtor Alset Owners, a holding company with no cash or operations, is not a franchisee.

13. The Rally's/Checkers brand is comprised of over 820 restaurants of which approximately 600 are franchised with the balance being owned and operated by the Franchisor. The Rally's/Checkers brand is the nation's largest chain of double drive-thru restaurants in the United States. Nations Restaurant News, the foodservice industry's leading publication, named Rally's/Checkers the "Hot Again" restaurant concept for its sizzling business performance and Rally's/Checkers was named "Best Drive-Thru in America" by QSR magazine, a trade publication. The American Business Awards have recognized the excellence of the Franchisor's leadership team. The Franchisor has embarked on a new development including new sandwiches, beverages, and a distinct "Value Menu" of competitive offerings and launched a new creative campaign under the theme "little place, BIG TASTE".

14. Among its food staples, the Rally's and Checkers enterprise sells the Champ Burger (Checkers), the Rally Burger (Rally's), the "Big Buford" and the signature "Famous Fries" at the Rally's and Checkers locations. In addition, Rally's and Checkers have implemented the "Double Value Menu" which offers its customers numerous dining choices at affordable prices.

15. Altes and Setla were together ranked 95th among the 200 largest multi-unit restaurant operators in the United States by Restaurant Finance Monitor in 2008. The operations and infrastructure at each of the Debtors' restaurants are comprised of double drive-thru, quick service restaurants administered by regional, area, and store managers.

16. Altes began operating on June 28, 2000 by purchasing 52 Rally's restaurant locations in Missouri, Illinois, Arkansas, and Virginia directly from the Franchisor. Six additional stores were opened by Altes from 2002 through 2006. Setla was formed approximately fifteen months later on October 15, 2001, when the owners of Altes decided to

expand to the Ohio market. Setla acquired 64 Rally's locations from Snapp's Restaurants in October 2001. Three additional locations were opened by Setla from 2004 through 2006. Finally, in 2005, Checkers Michigan was formed to operate several stores in Michigan, a new market for the Debtor group. Initially, one Michigan restaurant with the Checkers brand was opened in December 2005, and later five additional Checkers restaurants were opened in 2006 and early 2007.

17. As a result of these various acquisitions and store openings, at their peak, in 2007, the Debtors collectively operated approximately 120 restaurants with the Rally's or Checkers brand in six states, and had over 2,500 employees.

18. The food service industry is highly competitive, with competitors varying in size from very small companies with limited resources to very large companies with significant financial, marketing, and product development resources.

19. As will be explained more fully below, the competitive atmosphere, as well as the rise in food and labor costs, among other things, led the Debtors to restructure their operations starting in late 2007. As of the Petition Date, the Debtors operated 78 restaurants, down from their peak of about 120 restaurants in 2007.

C. Assets And Liabilities

20. On a consolidated basis, as of April 20, 2009, the Debtors had on an unaudited basis total assets of approximately \$19.7 million and total liabilities of approximately \$17.4 million.

21. For the twelve months ended April 20, 2009, the Debtors reported approximately \$63.3 million in net revenues with a net loss of \$600,000 (before interest and depreciation).

22. As of May 29, 2009, the Debtors held approximately \$775,000 in cash, none of which is believed to be encumbered by any liens by any party.

D. Debt Structure

23. As previously described, Altes began operating in June 2000 to operate approximately 52 Rally's stores. The stores were purchased directly from the Franchisor for approximately \$17.2 million. In October 2001, Setla entered into a transaction to purchase 64 stores from Snapp's Restaurants for approximately \$5.6 million. The transactions were funded as follows:

a. In connection with the June 2000 transaction involving Altes, Altes borrowed funds from Textron Financial Corporation ("Textron") in the form of secured loans of \$15,200,000 (the "Textron Loans"). As security, Textron was granted a lien on certain of the Debtors' equipment at approximately fifty restaurants and certain leasehold interests (the "Textron Collateral"), and a mortgage on nine real estate properties owned by Altes. The mortgage on the nine real estate properties was satisfied when Altes subsequently entered into sale and leaseback transactions concerning the nine real estate properties. Approximately \$6 million from such transactions was paid to Textron in satisfaction of its mortgage. At this juncture, approximately, \$1.5 million in principal remains due to Textron on account of the Textron Loans. My understanding is that the current value of the Textron Collateral is estimated to be worth approximately \$300,000.

b. In connection with the June 2000 transaction involving Altes, Altes also received \$2,375,000 from Pentland in exchange for promissory notes in favor of Pentland (the "Pentland-Altes Notes").

c. In connection with the October 2001 transaction involving Setla, Setla received \$2,484,585 from Pentland in exchange for promissory notes in favor of Pentland (the "Pentland-Setla Notes").

d. After the transactions involving Altes and Setla were consummated, Pentland extended additional loans to Altes and Setla at various times in the total amount of approximately \$2 million (the “Pentland Operating Loans”, together with the Pentland-Altes Notes, and the Pentland-Setla Notes, the “Pentland Loans”). Currently, approximately \$5.2 million, including interest, remains outstanding on the Pentland Loans, which, to my understanding, are not secured by any assets of the Debtors, except for the pledge of the membership interests of Alset.

e. Finally, in connection with the October 2001 transaction involving Setla, General Electric Business Asset Funding Corporation (“GE”) extended secured loans in the amount of \$3,833,000, evidenced by a promissory note secured by the assets of Setla. The GE loans were paid in full by October 2008, the maturity date, and any liens by GE on Setla’s assets were simultaneously released.

24. As of the Petition Date, the Debtors estimate that their unsecured debt, including the Pentland Loans, is in the range of approximately \$10 million to \$10.5 million.

E. Recent Events

25. In recent months and in recognition of the extremely challenging economic environment facing their business, the Debtors have taken steps in an attempt to cut costs and stabilize their operations.

26. On March 5, 2009, Robert Alrod, the Debtors’ Chief Executive Officer resigned and I became the President and CEO of the Debtors. After Mr. Alrod’s resignation and in light of various market conditions explained more fully below, I began exploring strategic alternatives for addressing the Debtors’ financial and operational challenges. The Debtors were no longer able to operate at margins sufficient to cover expenses at many of their restaurants and struggled

with liquidity and working capital demands. The Debtors embarked on a plan to evaluate the companies on a store by store basis and began to close down non-performing locations.

27. In March 2009, the Debtors also explored several financing options with various lenders. However, in light of the Debtors' poor EBITDA numbers, none of the prospective lenders issued a commitment for financing. With no refinancing option available, the Debtors entered into discussions with their Franchisor to sell the Debtors' restaurants. While sale discussions ensued, the parties entered into a Management Agreement dated March 5, 2009, which allowed the Franchisor to assist the Debtors in managing and stabilizing their operations. Ultimately, after several months of discussions and due diligence by the Franchisor, the Debtors entered into an asset purchase agreement with the Franchisor to sell substantially all of the Debtors' remaining stores in exchange for cash considerations and the assumption of various liabilities. The Debtors will file, in the near future, a motion to sell substantially all of their assets to the Franchisor, subject to higher and better bids.

F. Events Leading To Bankruptcy

28. As I previously described, at their peak, the Debtors operated about 120 stores in six states. Initially, the Debtors' restaurants operated profitably or broke even. In the early years, each Rally's restaurant generally grossed between \$400,000 to \$1,000,000 in annual sales per year, with an average store yielding \$500,000 to \$600,000 per year in annual sales. As such, from June 2000 when Altes began operations and October 2001 when Setla began operations, through the end of 2004, operations at Altes and Setla were sustainable and Altes and Setla were able to make all of their required monthly royalty payments to the Franchisor.

29. However, in late 2004 to the present, the Debtors encountered significant operational and financial problems. For instance, food costs rose considerably. In 2001, it cost \$1 per pound for beef. That price rose considerably throughout the years until its peak of \$1.75

per pound in late 2007 and early 2008. The cost of tomatoes in 2006 spiked such that tomatoes were as expensive as beef. Soda costs have increased generally 3 to 4 % per year since the Debtors were formed. Further, in November 2006, a constitutional amendment passed by Ohio voters, required the state minimum wage to be adjusted each year based on the rate of inflation. Many of the Debtors' employees are younger individuals that are employed on a minimum wage basis. Thus, an annual increase in the minimum wage tied to inflation led to an increase of at least \$350,000 in direct labor costs in Ohio. Due to the increase in direct labor costs, the workers compensation premium likewise increased by approximately \$55,000 per year. At the same time that cash flow was reduced, the Debtors found themselves paying "above-market" rent at several locations due to the recent real estate market slowdown.

30. In response to an increase in inventory and labor costs, many companies will pass along the higher costs to the customer by increasing the price of their products. Unfortunately, due to the competitive nature of the quick serve business, a significant increase to the consumer in the cost of fast food is not realistic. The Debtors' customers, like customers of other quick serve establishments, have come to expect quality food at reasonably low prices. A significant price increase in the quick service business often leads to angry customers and reduced levels of walk-in and drive-thru business.

31. As a result, in order to meet their financial obligations and sustain operations, the Debtors explored other options. First, from 2003 through 2007, the Debtors engaged in 22 sale-leaseback transactions for properties in Michigan, Missouri, Arkansas, Ohio and Illinois. These transactions generated approximately \$16 million that was utilized in part to pay down the Textron Loans and was otherwise utilized by the Debtors to pay vendors and landlords at various store locations. While the cash obtained from these sale-leaseback transactions allowed the

Debtors to weather some especially difficult operating periods through the years, it was not a permanent fix. Moreover, the rent that was negotiated as part of the sale-leaseback transactions, in many cases, proved to be too costly and became a burden to the Debtors, particularly as the economy declined.

32. Second, in October 2007, due to the poor performance of most of their restaurants in Virginia, the Debtors explored a sale of their 14 Rally's restaurant locations in the Virginia market. An entity called RAD Restaurants, Inc. purchased these 14 stores from Altes for approximately \$1.2 million and entered into a separate franchise agreement with the Franchisor. The cash derived from this transaction helped address the Debtors' cash flow problems at its remaining restaurants in the short term.

33. Finally, in the fall of 2007, the Debtors approached the Franchisor and advised them of their cash flow problems and discussed with the Franchisor a reduction of the 4% royalties obligation under the Franchise Agreement. The Franchisor agreed to accept 2% per month from October 1, 2007 through June 30, 2008. The remaining 2% would be re-paid by a 1% increase in royalties to 5% for the next two annual periods starting in January 2009. However, despite this agreement, the Debtors were still unable to make even the 2% reduced royalty payments to the Franchisor commencing in February 2008. As of the Petition Date, approximately \$3.3 million remains due and owing to the Franchisor for outstanding royalties and other fees under the Franchise Agreement.

34. In light of the continuing slowness in the economy together with increased costs, senior management realized that the Debtors could not sustain operations as a going concern without a substantial infusion of cash or a sale of the enterprise. Having exhausted efforts to raise money, the Debtors determined to enter into serious discussions with the Franchisor and

negotiated a sale of the assets as a going concern to preserve jobs, provide a source of recovery for creditors, and maintain the well-established reputation of the brands in the market place. On [June 4, 2009], the Debtors and the Franchisor executed an asset purchase agreement pursuant to which the Franchisor will purchase substantially all of the Debtors' remaining stores in exchange for cash consideration and the assumption of various liabilities, including under the Franchise Agreement and various leases.

35. The Debtors expect to file a motion in the next few days which will seek authority to sell substantially all of their assets to the Franchisor, assume and assign various contracts and leases associated with the Debtors' assets, and establish bidding procedures in connection with a sale. Also, under the asset purchase agreement, certain postpetition obligations, including any royalty or other obligations under the Franchise Agreement, will be assumed upon assumption and assignment of the Franchise Agreement. The Praetorian Group has been retained by the Debtors to assist in the marketing of the Debtors' assets. The Debtors believe that this course of action will produce the best result for these cases, the Debtors' creditors, its employees, and the various stakeholders.

G. Summary Of First Day Pleadings

36. As a result of my first-hand experience and thorough review of various materials and information, as well as discussions with other of the Debtors' management and employees and with the Debtors' advisors, I have formed opinions as to (a) the desirability and necessity of obtaining the relief sought by the Debtors in their "first-day" applications and motions identified on *Exhibit "B"* annexed hereto (collectively, the "First Day Papers"),⁴ (b) the need for the Debtors to continue to operate their businesses effectively while in bankruptcy with a minimum

⁴ Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the applicable First Day Papers.

of disruption and loss of productivity, (c) the deleterious effects upon the Debtors of not obtaining such relief, and (d) the immediate and irreparable harm to which the Debtors and their stakeholders will be exposed immediately following the Petition Date unless the relief requested in the First Day Papers is granted without delay. A brief description of the relief requested and the facts supporting each of the First Day Papers is set forth below.

37. I (or persons under my supervision) assisted in the preparation of and have reviewed each of the First Day Papers (including the exhibits and schedules attached thereto) and I therefore believe that the facts set forth therein are true and correct. Such representation is based upon current information and my review of various materials and information, as well as my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and would, based on the foregoing, testify competently to the facts set forth herein and in the First Day Papers.

SUMMARY OF FIRST DAY PLEADINGS

A. Motion Of The Debtors For An Order Directing Joint Administration Of Their Chapter 11 Cases

38. The Debtors request the joint administration of their chapter 11 cases. As discussed above, Alset Owners is the ultimate parent of each of the other Debtors. I am informed by counsel that the Debtors are "affiliates" as defined under section 101(2) of the Bankruptcy Code, and accordingly, this Court is authorized to consolidate these chapter 11 cases for procedural purposes.

39. Joint administration of these cases will remove the need to prepare, replicate, file and serve duplicative notices, applications and orders, thereby saving the Debtors and their estates substantial time and expense. Joint administration will also relieve this Court of the need

to enter duplicative orders and maintain duplicative files and dockets. Similarly, the Office of the United States Trustee and other parties in interest will benefit from the joint administration of these chapter 11 cases as they, too, will be spared the time and effort of reviewing duplicative pleadings and papers

B. Application Of The Debtors For Entry Of An Order Authorizing The Debtors To Employ BMC Group, Inc. As Claims, Noticing, And Balloting Agent Pursuant To 28 U.S.C. § 156(c), Rule 2002(f) Of The Federal Rules Of Bankruptcy Procedure And Local Rule 2002-1(f)

40. The Debtors request, pursuant to section 156(c) of title 28 of the United States Code, Bankruptcy Local Rule 2002 and Rule 2002-1(f), authorization to employ BMC Group, Inc. (“BMC”) as claims, noticing, and balloting agent.

41. The number of potential creditors in the Debtors’ chapter 11 cases is more than 300 and I expect many of these potential creditors to file proofs of claim. The Debtors submit that the noticing, receiving, docketing and maintaining of proofs of claim in this volume and noticing the large number of interested parties in these cases would be unduly time-consuming and burdensome for the Clerk’s Office. Additionally, the Debtors will need assistance with balloting in connection with any proposed chapter 11 plan.

42. In my opinion, the retention of BMC is in the best interests of all parties in interest. BMC is a nationally recognized specialist in chapter 11 administration and has vast experience in noticing and claims administration in chapter 11 cases, including in cases filed in this Court. The Debtors selected BMC after a competitive process and believe that BMC’s compensation rates are reasonable and appropriate for services of this nature and comparable to those charged by other providers of similar services. BMC has represented to the Debtors that it will not represent any entities or individuals other than the Debtors in these chapter 11 cases or in connection with any matters that would be adverse to the interests of the Debtors.

C. Motion Of The Debtors For Entry Of An Order Authorizing Debtors To: (I) File (A) Consolidated List Of Creditors And (B) Consolidated List Of Debtors' Thirty Largest Unsecured Creditors; And (II) Provide Notices, Including Notices Of Commencement Of Cases And Section 341 Meeting

43. The Debtors seek entry of an order: (i) authorizing the Debtors to file (a) a consolidated list of creditors and (b) a consolidated list of the Debtors' thirty (30) largest unsecured creditors and (ii) authorizing the Debtors (or their agents) to complete all mailings of notices, including notices of the commencement of these cases and of the meeting of creditors pursuant to section 341 of the Bankruptcy Code.

44. The Debtors have identified hundreds of persons or entities to which notice of certain proceedings in these chapter 11 cases must be provided. Counsel has informed me that Del. Bankr. LR 1007-2 provides that in a voluntary chapter 11 case, the debtor must file "a list containing the name and complete address of each creditor in such format as directed by the Clerk's Office Procedures." The Debtors presently maintain various computerized lists of the names and addresses of their respective creditors that are entitled to receive certain notices and other documents in these cases. I believe that the information, as maintained in computer files (or those of their agents), may be consolidated and utilized efficiently to provide interested parties with notices and other similar documents, as contemplated by Del. Bankr. LR 1007-2. Accordingly, the Debtors seek authority to file the lists on a consolidated basis, identifying their creditors and equity security holders in the format or formats currently maintained in the ordinary course of the Debtors' businesses.

45. Counsel has informed me that, pursuant to Fed. R. Bankr. P. 1007(d), a chapter 11 debtor must file with its voluntary petition a list setting forth the names, addresses, and claim amounts of the creditors, excluding insiders, that hold the twenty (20) largest unsecured claims in the debtor's case (a "Top 20 List"). Counsel has further informed me that this Top 20 List is

primarily used by the Office of the United States Trustee to evaluate the types and amounts of unsecured claims against the debtor and thus identify potential candidates to serve on an official committee of unsecured creditors appointed in the debtor's case pursuant to section 1102 of the Bankruptcy Code. The submission of a single consolidated list of the Debtors' combined thirty (30) largest unsecured creditors in these cases would be more reflective of the body of unsecured creditors that have the greatest stake in these cases. Therefore, the Debtors request authorization to file a single consolidated list of their thirty (30) largest unsecured creditors.

46. In lieu of effecting service through the Office of the Clerk of this Court, the Debtors also request that they (or their agent) be approved and authorized to complete all mailings to creditors and equity holders in these cases, including notice of the commencement of these cases and notice of the meeting of creditors pursuant to section 341 of the Bankruptcy Code. Counsel has informed me that Del. Bankr. LR 2002-1(f) requires the Debtors to file a motion to retain a claims and noticing agent because the Debtors have more than 200 creditors. Allowing the Debtors (or their agent) to complete their own mailings will save significant time, cost and expense.

D. Motion Of The Debtors For Entry Of Interim And Final Orders Pursuant To Sections 105(a) And 366 Of The Bankruptcy Code (I) Prohibiting Utility Providers From Altering, Refusing, Or Discontinuing Utility Services, (II) Deeming Utility Providers Adequately Assured Of Future Performance, And (III) Establishing Procedures For Determining Adequate Assurance Of Payment

47. The Debtors seek entry of an interim order (i) prohibiting utility companies or their brokers (collectively, the "Utility Providers") from altering, refusing, or discontinuing services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors' proposed adequate assurance pending entry of a final order; (ii) approving the Debtors' proposed adequate assurance and procedures for requesting such adequate assurance; and (iii) scheduling a hearing to consider the relief requested on a final

basis; and a final order: (a) approving the Debtors' proposed adequate assurance; (b) resolving any objections by Utility Providers that the proposed adequate assurance is not adequate; and (c) prohibiting the Utility Providers from altering, refusing, or discontinuing service to, or discriminating against, the Debtors solely on the basis of the commencement of chapter 11 cases or a debt that is owed by the Debtors for services rendered before the Petition Date.

48. The Debtors intend to timely pay all postpetition obligations owed to Utility Providers. The Debtors expect that available cash will be more than sufficient to pay all postpetition obligations for utility services. To provide adequate assurance of such payment to the Utility Providers, the Debtors propose to establish a separate, dedicated account with funds on deposit equal to approximately 50% of the Debtors' estimated average monthly cost of anticipated utility services.

49. Accordingly, I believe that the relief requested in this motion is consistent with the practice established in this Court, provides Utility Providers with sufficient adequate assurance of payment, and establishes a fair and orderly procedure for determining requests for additional or different adequate assurance of payment. The requested relief also will avoid disruption of the Debtors' operations, as the impact on the Debtors' business and revenues from such a disruption would be significant. In my opinion, absent these procedures, the Debtors could be forced to address numerous requests by Utility Providers in a disorganized manner at a critical period in these chapter 11 cases and during a time when the Debtors' efforts could be focused more productively on the continuation of their operations for the benefit of all parties in interest.

E. Motion Of The Debtors For Entry Of An Order (I) For Authority To Pay Prepetition Sales, Use And Trust Fund Taxes And (II) To Direct The Debtors' Banks To Honor Prepetition Checks For Payment Of Such Amounts

50. The Debtors seek entry of an order authorizing, but not directing, them to pay prepetition sales, use and other trust fund taxes (collectively, the "Trust Fund Taxes) to various federal, state and local taxing authorities (each a "Taxing Authority," and collectively, the "Taxing Authorities") in the ordinary course of the Debtors' businesses, regardless of whether the debts were incurred prior to or following the Petition Date.

51. Counsel has informed me that "trust fund" taxes or fees are taxes or fees that are collected from third parties and held in trust for payment to the taxing or regulatory authorities or other trust beneficiaries and that such "trust fund" taxes are not property of the Debtors' estates under section 541(d) of the Bankruptcy Code.

52. Moreover, counsel has informed me that certain taxes are afforded priority status under section 507(a)(8) of the Bankruptcy Code and must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Such taxes include the Trust Fund Taxes. I believe the Debtors have sufficient assets to pay all prepetition Trust Fund Taxes in full, in the ordinary course of business. Consequently, the requested relief merely affects the timing of the Debtors' payment of Trust Fund Taxes, not the amount paid in respect thereof.

53. Even if some of the Trust Fund Taxes would not ordinarily be considered "trust fund" taxes in a particular jurisdiction, payment of such taxes should nevertheless be authorized because some Taxing Authorities may audit the Debtors if such taxes are not timely paid. Such audits would needlessly divert the Debtors' attention from their reorganization efforts. In addition, like unpaid property taxes, some Taxing Authorities may also seek to impose liens on the Debtors' assets on account of unpaid "trust fund" taxes, which liens would require time, effort and expense for the Debtors to challenge and remove. An improper lien or the failure to pay Trust Fund Taxes might also affect the Debtors' good standing in a particular state,

potentially affecting the Debtors' ability to continue operating in the ordinary course. Timely payment of the Trust Fund Taxes is necessary to avoid such distractions and is thus in the best interests of the Debtors and their estates.

54. In my opinion, failure to pay Trust Fund Taxes in the first 20 days of these cases may result in Taxing Authorities taking action against the Debtors and cause possible administrative and legal difficulties for the Debtors. Further, failure to pay "trust fund taxes" in the first 20 days of these cases may result in the officers and directors of the Debtors being held personally liable in certain circumstances. The threat of a lawsuit or criminal prosecution, and any ensuing liability, would distract the Debtors and their personnel from important tasks, to the detriment of all parties in interest. The dedicated and active participation of all of the Debtors' employees, especially their directors and officers, is integral to the Debtors' continued operations and essential to the orderly administration of these chapter 11 cases. The possible administrative and legal action, and claims against the officers and directors of the Debtors would divert critical resources of the Debtors away from the administration of the estates and cause immediate and irreparable harm to the Debtors and their estates.

55. For all of these reasons, I believe that payment of Trust Fund Taxes in the first 20 days of these case is necessary to avoid immediate and irreparable harm to the Debtors' estates.

F. Motion Of The Debtors For Entry Of An Order (A) Authorizing (I) Payment Of Prepetition Wages, Compensation, Employee Benefits, Expense Reimbursement And Related Items, And (II) The Continuation Of Certain Employment Policies And Benefits, And (B) Authorizing And Directing Applicable Banks To Honor Payment Requests With Respect Thereto

56. The Debtors request, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, that the Court (a) authorize, but not require, the Debtors to (i) pay, in their sole discretion, wage, salary and commission obligations, payroll taxes, garnishments, expense

reimbursements, employee benefits, certain severance obligations, and retirement plan and benefit obligations (each as defined below, and collectively, the "Employee Obligations"), and costs incident to the foregoing, and (ii) maintain and continue to honor their practices, programs, and policies for their employees (the "Employee Benefits") as they were in effect on the Petition Date, and as such may be modified, amended, or supplemented from time to time in the ordinary course of business, and (b) authorize the Debtors' banks and financial institutions to receive, honor, process, and pay any and all checks or wire transfers drawn on the Debtors' accounts in satisfaction of Employee Obligations and Employee Benefits.

57. As of the Petition Date, the Debtors employ approximately 1,712 people, of which approximately 112 are full-time salaried employees and 1,600 are full time and part-time hourly employees. Any delay or failure to pay their wages, salaries, expense reimbursements, benefits, and other similar items could irreparably impair the employees' morale, dedication, confidence, and cooperation, and could adversely impact the Debtors' relationship with their employees at a time when the employees' support is critical to the success of the Debtors' chapter 11 cases. Consequently, it is critical that the Debtors be authorized to satisfy their Employee Obligations and continue their ordinary course Employee Benefits in effect as of the Petition Date.

58. Moreover, if the checks issued and fund transfers requested in payment of the Employee Obligations are dishonored, or if such Employee Obligations are not timely paid during the postpetition period, the Debtors' employees could suffer extreme personal hardship, including, in some instances, being unable to pay their daily and monthly living expenses. It would also be inequitable to require the Debtors' employees to bear personally the cost of any

business expenses they in good faith incurred during the prepetition period for the benefit of the Debtors with the understanding that they would be reimbursed.

59. Accordingly, I believe that payment of all Employee Obligations is consistent with the Debtors' prepetition business practices and will enable the Debtors to continue to operate their business in an economic and efficient manner without disruption. Failure to pay such Employee Obligations in a timely manner would likely result in immediate and irreparable harm to the Debtors' business. With the amount of cash on hand as of the Petition Date, I believe the Debtors have sufficient cash to direct all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn or electronic funds transferred to pay Employee Obligations and to continue to pay such amounts as they become due in the ordinary course of the Debtors' business.

G. Motion Of The Debtors For An Order Authorizing The Payment Of Prepetition Claims Of Certain Critical Vendors

60. The Debtors seek entry of an order (i) authorizing the Debtors to pay, in their discretion, certain prepetition claims of critical vendors in an aggregate amount not to exceed \$1 million (the "Critical Vendor Cap") and (ii) authorizing banks and other financial institutions to receive, process, honor, and pay any checks and transfer requests evidencing amounts paid by the Debtors under an order granting the relief requested in the motion.

61. In the course of operating their restaurants, the Debtors rely upon certain vendors (the "Critical Vendors") that are vital to the Debtors' ongoing business. The Critical Vendors are generally (a) food suppliers and (b) service providers relating to the operations of the Debtors' business.

62. Critical Vendors have claims for providing (i) essential goods to the Debtors that were received by the Debtors before the Petition Date and/or (ii) essential services that were

rendered to, or on behalf of the Debtors before the Petition Date (collectively, the “Critical Vendor Claims”). Given the paramount importance of the goods and services provided by the Critical Vendors, and in order to ensure the Debtors continue to receive such goods and services, I believe that it is imperative that the Debtors be authorized to pay the Critical Vendor Claims on an emergency basis.

63. I believe that payment of the Critical Vendor Claims is vital to the Debtors’ ongoing business operations because a failure to pay the Critical Vendor Claims would likely result in many of the Critical Vendors refusing to provide goods and services to the Debtors postpetition, and may force the Debtors to obtain such goods and services elsewhere at a higher price or not of the quantity or quality required by the Debtors or within the time frame necessary.

64. The Debtors consulted with appropriate members of their management team to identify those vendors that are most essential to the Debtors’ operations using the following criteria: (a) whether the vendor or service provider in question is a “sole-source” provider, (b) whether, even if the vendor or service provider in question is not a “sole-source” provider, quality requirements, other specifications, familiarity, or knowledge would prevent the Debtors from obtaining a vendor’s products or services from alternative sources cost effectively and within a reasonable timeframe, and (c) whether a vendor meeting the standards of (a) and (b) is likely to refuse to continue providing goods or services to the Debtors postpetition if its prepetition outstanding balances are not paid.

65. After carefully assessing the universe of vendors against the foregoing criteria, the Debtors estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors following the Petition Date in calculating the Critical Vendor Cap.

66. If the motion is not granted, I believe the Debtors' access to trade credit on a postpetition basis will be severely limited and that many of the Critical Vendors will stop providing goods and services to the Debtors altogether. Such results would cause immediate and irreparable damage to the Debtors and their estates.

67. The continued availability of trade credit in amounts and on terms consistent with the Debtors' prepetition trade terms is advantageous to the Debtors because it allows the Debtors to preserve working capital while maintaining optimal production levels. The retention or reinstatement of Customary Trade Terms will therefore enable the Debtors to maximize the value of their businesses as a going concern. Conversely, a deterioration of postpetition trade credit available to the Debtors and a disruption or cancellation of deliveries of goods or the provision of services – many of which are not readily replaceable, if at all – would cripple the Debtors' business operations, increase the amount of funding needed by the Debtors postpetition, and ultimately impede the Debtors' ability to service their customers.

68. The Debtors have conducted an extensive analysis and review of the Debtors' immediate trade needs and supplier base and have concluded that there is a significant risk that the Critical Vendors will cease doing business with the Debtors unless their Critical Vendor Claims are paid. Should any Critical Vendor stop supplying goods or services to the Debtors, or choose to significantly downgrade the Debtors' trade terms, their businesses would be adversely affected as a result of, among other things, an adverse impact on the Debtors' ability to timely provide certain products to their customers. This, in turn, could result in lost sales and revenue. As such, the Debtors submit that the amount of the Critical Vendor Cap pales in comparison to the likely damage to the Debtors' businesses and estates should the relief requested herein not be granted. Accordingly, not only will the Debtors' other creditors not be impaired by payment of

the Critical Vendor Claims, such creditors will in fact benefit by this Court's empowering the Debtors to negotiate payment to Critical Vendors to achieve a smooth transition into bankruptcy with minimal disruption to its operations.

69. For the reasons set forth above, satisfying the Critical Vendor Claims in the first twenty days of these chapter 11 cases is essential to avoid immediate and irreparable harm. Without satisfaction of the Critical Vendor Claims, I believe that the Critical Vendors will significantly downgrade trade terms and may stop supplying the Debtors with critical goods and services necessary in their operations, thereby hampering the Debtors' ability to achieve a successful result in these chapter 11 cases and causing immediate and irreparable harm.

H. Motion Of The Debtors For Entry Of An Order: (A) Approving Continued Use Of Existing Cash Management System; (B) Authorizing Use Of Prepetition Bank Accounts And Check Stock; (C) Waiving The Requirements Of 11 U.S.C. § 345(b) On An Interim Basis; And (D) Granting Administrative Expense Status To Postpetition Intercompany Transactions

70. By this motion, the Debtors seek entry of an order, among other things (i) authorizing them to (a) continue their existing cash management system and (b) maintain existing bank accounts and business forms and (ii) granting an extension of time to comply with section 345(b) of the Bankruptcy Code. Without the requested relief, I believe the Debtors would be unable to effectively and efficiently maintain their financial operations. Such a result would cause significant harm to the Debtors' business and their estates.

71. In the ordinary course of business, the Debtors use a cash management system, similar to those used by other large companies, to efficiently collect, transfer, and disburse funds generated by the Debtors' business operations. The Debtors' cash management system has three main components: (i) cash collection, including the collection of payments made to the Debtors by customers, (ii) cash concentration, and (iii) cash disbursements to fund the Debtors'

operations, primarily consisting of payments made to or on behalf of vendors, service providers, taxing authorities, and employees.

72. The Debtors' cash management system constitutes an essential business practice that provides the Debtors with, among other things, the ability to (i) control corporate funds, (ii) ensure the maximum availability of funds when and where necessary, and (iii) reduce administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information. I believe that maintenance of the existing cash management system is therefore in the best interests of the Debtors and their estates.

73. Similarly, the Debtors would be harmed if they were required to undergo the confusion, delay and cost that would result from immediately having to close their existing bank accounts and stop using their current business forms and, instead, open new bank accounts and print new checks and business forms in order to comply with OUST's "Operating Guidelines and Financial Reporting Requirements Required in All Cases Under Chapter 11."

74. By this motion, to the extent necessary, the Debtors also are seeking a sixty (60) day extension of the time to comply with section 345(b) of the Bankruptcy Code. During the extension period, the Debtors propose to discuss with OUST whether any modifications to their current investment program would be necessary under the circumstances. The Debtors believe that the benefits of the requested extension far outweigh any harm from initial non-compliance because the funds held in the Debtors' current bank accounts are safe, even when in an amount in excess of the amounts insured by the Federal Deposit Insurance Corporation. Moreover, the cost of obtaining bonds on short notice to secure those funds, as may be required by section 345(b) of the Bankruptcy Code, is unnecessary and would be detrimental to the Debtors' estates and creditors.

I. 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

75. By this motion, the Debtors seek entry of an order authorizing, to the extent, necessary, the rejection of several nonresidential real property leases (the "Rejected Leases").

76. Prior to the Petition Date, due to significant operational losses and performance related issues at certain of their restaurants, the Debtors began the process of identifying and closing 33 underperforming restaurants (the "Closed Restaurants"). When a restaurant was closed, the Debtors vacated the Closed Restaurants and effectively surrendered the Closed Restaurants to the respective landlords.

77. In order to avoid any administrative rent that may otherwise accrue to the Debtors' estates, to the extent that a landlord at a Closed Restaurant argues that their respective Rejected Lease had not terminated prior to the Petition Date, I believe that it is in the best interests of the Debtors' estates for this Court to authorize the Debtors' rejection of the Rejected Leases as of the Petition Date.

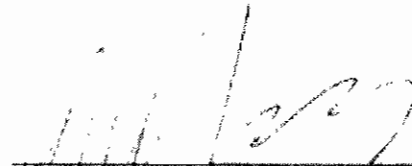
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J. Conclusion

In conclusion, for the reasons stated herein and in each of the First Day Papers filed concurrently or in connection with the commencement of these cases, I respectfully request that the First Day Papers be granted in their entirety, together with such other and further relief as this Court deems just and proper.

I certify under penalty of perjury that, based upon my knowledge, information and belief as set forth in this Declaration, the foregoing is true and correct to the best of my knowledge.

Dated: June 5, 2009



LEONARD LEVITSKY
PRESIDENT AND MANAGING MEMBER

EXHIBIT A

Corporate Organization Chart

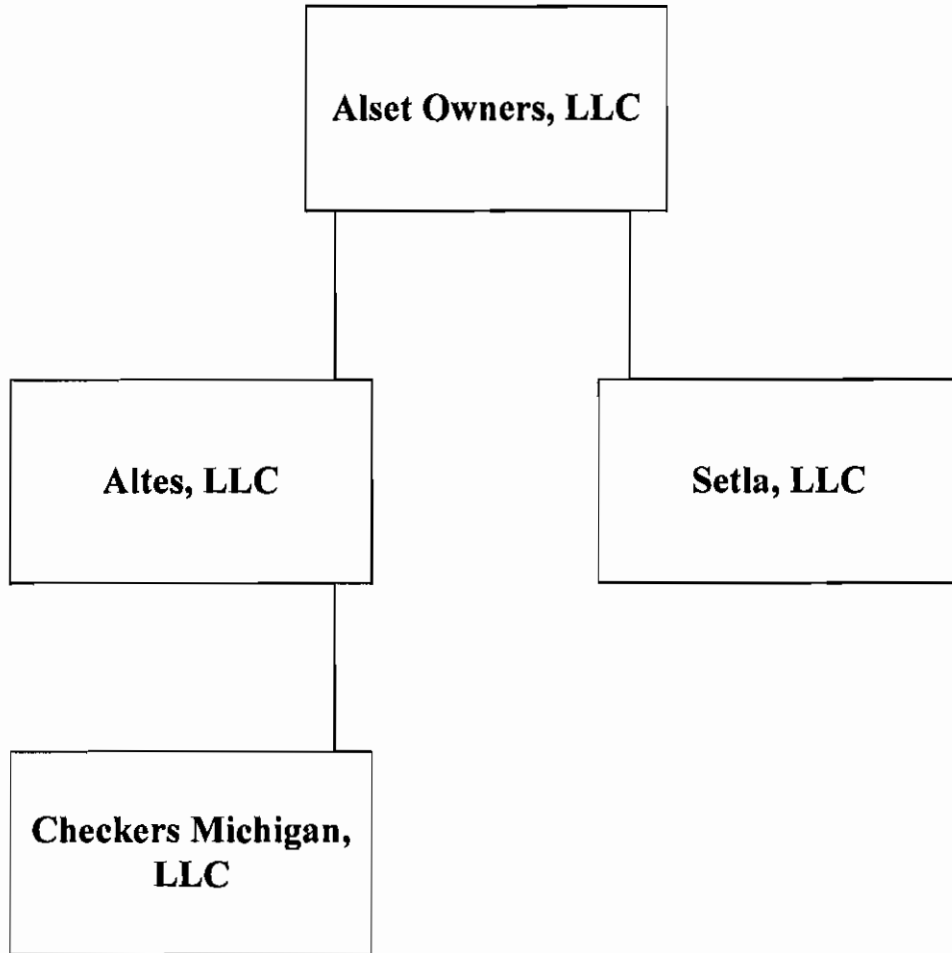


EXHIBIT B

Schedule of First Day Pleadings

- 1. Motion of the Debtors for an Order Directing Joint Administration of their Related Chapter 11 Cases**
- 2. Application of the Debtors for Entry of an Order Authorizing the Debtors to Employ BMC Group, Inc. as Claims, Noticing, and Balloting Agent Pursuant to 28 U.S.C. § 156(c), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure and Local Rule 2002-1(f)**
- 3. Motion of the Debtors for Entry of an Order Authorizing Debtors to: (I) File (A) Consolidated List of Creditors and (B) Consolidated List of Debtors' Thirty Largest Unsecured Creditors; and (II) Provide Notices, Including Notices of Commencement of Cases and Section 341 Meeting**
- 4. Motion of the Debtors for Entry of Interim and Final Orders Pursuant to Sections 105(a) and 366 of the Bankruptcy Code (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment**
- 5. Motion of the Debtors for Entry of an Order (I) for Authority to Pay Prepetition Sales, Use and Trust Fund Taxes and (II) to Direct the Debtors' Banks to Honor Prepetition Checks for Payment of Such Amounts**
- 6. Motion of the Debtors for Entry of an Order (A) Authorizing (I) Payment of Prepetition Wages, Compensation, Employee Benefits, Expense Reimbursement and Related Items, and (II) the Continuation of Certain Employment Policies and Benefits, and (B) Authorizing and Directing Applicable Banks to Honor Payment Requests with Respect Thereto**
- 7. Motion of the Debtors for an Order Authorizing the Payment of Prepetition Claims of Certain Critical Vendors**
- 8. Motion of the Debtors for Entry of an Order: (A) Approving Continued Use of Existing Cash Management System; (B) Authorizing Use of Prepetition Bank Accounts and Check Stock; (C) Waiving the Requirements of 11 U.S.C. § 345(b) on an Interim Basis; and (D) Granting Administrative Expense Status to Postpetition Intercompany Transactions**
- 9. Motion of the Debtors 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**