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.	:	

MOTION OF DEBTORS PURSUANT TO SECTIONS 1125, 1126, 1128 AND 105 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 3017, 3018 AND 3020, AND LOCAL RULE 3017-1 FOR ORDER (A) APPROVING ADEQUACY OF DISCLOSURE STATEMENT, (B) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, (C) FIXING A RECORD DATE FOR DISTRIBUTION AND (D) FIXING DATE, TIME AND PLACE FOR CONFIRMATION HEARING

Alset Owners, LLC and its affiliates, debtors and debtors in possession (the "Debtors") in these Chapter 11 cases hereby file this motion (the "Motion") for entry of an order pursuant to sections 1125, 1126, 1128 and 105 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), Rules 2002, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3017-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules") (a) approving the adequacy of the disclosure statement with respect to the Debtors' joint plan of liquidation, pursuant to section 1125 of the Bankruptcy Code, (b) establishing procedures for solicitation and tabulation of votes to accept or reject the proposed chapter 11 plan (as may be amended, the "Plan"), (c) fixing a record date for voting, and (d) fixing the date, time, and place to consider approval of the Plan, and respectfully state as follows:

[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

PRELIMINARY STATEMENT[2]

1. The Debtors have sold substantially all of their assets to the Debtors' franchisor, Checkers Drive-In Restaurants, Inc., as assignee of Checkerco, Inc., an affiliate of the Debtors' franchisor (collectively, the "Buyer" or "Franchisor"), and other non-core assets on terms that have enabled the Debtors to propose a joint plan of liquidation (the "Plan"). The Debtors believe that this Plan not only comports with the requirements of the Bankruptcy Code, but is fair and reasonable to all constituents.

2. The Plan contemplates that the Debtors' estates should be substantively consolidated and that the Debtors' remaining assets will be transferred to a Liquidation Trust for liquidation and distribution. The proceeds of the sale of substantially all of the Debtors' assets to the Buyer, the proceeds of other non-core assets, along with certain causes of action, represent the remaining significant assets of the Debtors' estates. The Liquidation Trust will be overseen by a Liquidation Trustee. The Liquidation Trustee will, among other things, have the responsibility for objecting to and settling disputed claims, pursuing causes of action held by the Debtors and making distributions to creditors.

3. The purpose of this Motion is to, among other things, obtain approval of the Disclosure Statement, and the procedures for voting and tabulation and to set a timeline for voting on and confirming the Plan. The Debtors believe that the Disclosure Statement contains adequate information, and that the procedures and the proposed timeline are consistent with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and are fair, reasonable, and sufficient.

JURISDICTION

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limited liability company (8016). The Debtors' service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, FL 33432.

[2] Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Plan.

4. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (0).

5. Venue of the Debtors' cases are proper in this district pursuant to 28 U.S.C. §§ 1408(1) and (2). The statutory predicates for the relief requested herein are §§ 105, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3017, 3018, 3020, and Rule 3017-1 of the Local Rules.

Background

A. The Chapter 11 Filing

6. On June 5, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code

7. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. On July 31, 2009, each of the Debtors filed their schedules and statements of financial affairs (collectively, the "Schedules") with the Court.

9. The bar date for filing proofs of claim and motions for administrative expense claims is December 15, 2009 (the "Bar Date").

B. The Debtors And Debtors In Possession

10. Four separate Debtor entities filed for chapter 11 relief before this Court. Alset Owners, LLC ("Alset") is a holding company for the operating Debtors, Altes, LLC ("Altes") and Setla, LLC ("Setla"). Checkers Michigan, LLC ("Checkers Michigan") is a wholly owned subsidiary of Altes.

11. As of the Petition Date, Altes, a franchisee of the Rally's restaurant chain, operated several restaurants in various states, while Setla, also a franchisee of the Rally's restaurant chain, operated several restaurants in Ohio. Altes and Setla are wholly owned

subsidiaries of Alset. Checkers Michigan, a franchisee of the Checker's restaurant chain, operated several restaurants in Michigan but ceased operations at its locations prior to the Petition Date. None of the Debtors are publicly traded companies, nor have they issued any public debt.

C. Overview Of The Debtors' Business

12. Prior to the sale of substantially all of their assets, the Debtors were the largest franchisee of Checkers Drive-In Restaurants, Inc. the national Franchisor of the Rally's and Checkers' restaurant chains. Specifically, Debtors Altes and Setla operated Rally's restaurants in Arkansas, Missouri, Illinois, and Ohio. Checkers Michigan operated Checkers restaurants in Michigan but ceased operations there as of the Petition Date. Each of the Debtors' franchise locations was 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.

13. 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.

14. 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.

15. 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. 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 77 restaurants, down from their peak of about 120 restaurants in 2007.

D. Events Leading To Bankruptcy

16. The Debtors began exploring strategic alternatives for addressing their financial and operational challenges prior to the Petition Date as they 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.

17. Commencing approximately four months prior to the Petition Date, 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.

18. 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 entered 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.

19. 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, on June 5, 2009, the Debtors and the Buyer, an affiliate of the Franchisor, executed an asset purchase agreement pursuant to which the Buyer was to 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 of real property.

E. The Sale Of The Debtor's Assets Pursuant To Section 363 Of The Bankruptcy Code

20. On June 19, 2009, the Debtors filed the Motion For Entry Of Orders Under 11 U.S.C. §§ 105(a), 363, And 365 And Federal Rules Of Bankruptcy Procedure 2002, 6004, 6006 And 9014 (I) (A) Approving Bidding And Auction Procedures, And Bidding Incentives For The Stalking Horse Bidder; (B) Approving Notice Procedures For The Solicitation Of Bids, An Auction, And The Assumption And Assignment Of Executory Contracts And Unexpired Leases; And (C) Scheduling An Auction And Sale Hearing For The Sale Of Substantially All Of Debtors' Assets; (II) Approving The Sale Of Substantially All Of The Debtors' Assets And Approving The Assumption And Assignment Of Executory Contracts And Unexpired Leases; And (III) Granting Related Relief (the "Sale Motion").

21. On July 7, 2009, the Court entered an order approving the Bidding Procedures Motion and scheduled an auction for August 24, 2009. The hearing to consider the Sale Motion was scheduled for August 26, 2009.

22. Praetorian Group, the Debtors sales advisor, marketed the Debtors' assets for sale to prospective purchasers. However, no qualified competing bids were received by the Debtors by the bid deadline and therefore no auction was held. The Committee filed an objection to the

sale and after discussions between the Debtors, the Committee, and the Buyer, the Buyer agreed to provide additional consideration to the Debtors' estates. On August 31, 2009, the Court entered an order authorizing the sale of assets to Buyer pursuant to the terms of the Asset Purchase Agreement.

23. The sale closed on August 31, 2009, under the following terms: (i) Buyer paid $1.8 million of Cash Consideration to the Debtors, and (ii) certain of the Debtors' real property leases and executory contracts were assumed and assigned to Buyer, with Buyer assuming all liabilities, including cure costs, with respect to assumed real property leases and executory contracts.

24. Also, the Debtors sold the Textron Collateral to the Buyer for $500,000 in full and final satisfaction of the Textron Loans. In addition, Textron agreed to waive their claims against the Debtors' estates. The purchase of the Textron Collateral was accomplished by a Stipulation between the parties which was approved on August 27, 2009. Similarly, the Debtors sold certain equipment of Leaf Funding to the Buyer pursuant to a letter agreement approved by the Sale Order.

RELIEF REQUESTED

25. By this Motion, the Debtors seek entry of an order substantially in the form attached hereto (the "Disclosure Statement Order") that:

(a) approves the Debtors' proposed disclosure statement under section 1125 of the Bankruptcy Code (the "Proposed Disclosure Statement"), the form of which is annexed to this Motion as Exhibit A, for the Debtors' Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of December 2, 2009, and annexed as an exhibit to the Proposed Disclosure Statement (as the same may be amended or modified, the "Plan");

(b) approves the form of notice of the disclosure statement hearing (the "Disclosure Statement Notice") that was transmitted to parties in interest in the form annexed to this Motion as Exhibit B;

(c) fixes a voting record date (the "Voting Record Date") for purposes of determining the holders of claims against, and interests in, the Debtors;

(d) approves the form of notice and objection procedures in respect of confirmation of the Plan (the "Confirmation Hearing Notice") in the form annexed to this Motion as Exhibit C, and sets the date for the hearing on confirmation of the Plan;

(e) approves the Solicitation Packages (as defined below) and procedures for distribution thereof;

(f) approves the forms of notices to non-voting classes under the Plan, annexed as Exhibit D to this Motion;

(g) approves the form of ballot, annexed as Exhibit E to this Motion, and establishes procedures for voting on the Plan;

(h) fixes the voting deadline for creditors to accept or reject the Plan (the "Voting Deadline"); and

(i) approves voting procedures and procedures for tabulating creditor votes.

BASIS FOR RELIEF REQUESTED

I. THE DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION AND SHOULD BE APPROVED

26. Pursuant to section 1125 of the Bankruptcy Code, a plan proponent must provide holders of impaired claims with "adequate information" regarding a debtor's proposed plan of reorganization. Section 1125(a)(1) of the Bankruptcy Code provides:

> "[A]dequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1). Thus, a debtor's disclosure statement must provide information that is "reasonably practicable" to permit an "informed judgment" by impaired creditors entitled to vote on the plan. *See In re Zenith Electronics Corp.*, 241 B.R. 92, 99-100 (Bankr. D. Del. 1999); *See*

In re Dakota Rail, Inc., 104 B.R. 138, 142 (Bankr. D. Minn. 1989). A disclosure statement "must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

27. The bankruptcy court has broad discretion to determine the adequacy of the information contained in a disclosure statement. *See Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Corp.),* 150 F.3d 503, 518 (5th Cir. 1998), *cert. denied,* 119 S. Ct. 2019 (1999); *In re Oxford Homes*, 204 B.R. 264 (Bankr. D. Me. 1997). Congress granted the courts discretion in order to facilitate effective reorganization of a debtor in the broad range of businesses in which chapter 11 debtors engage and the broad range of circumstances that accompany chapter 11 cases. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 408-09 (1977); *see also In re Copy Crafters Quickprint Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (adequacy of disclosure statement "is to be determined on a case-specific basis under a flexible standard that can promote the policy of chapter 11 towards fair settlement through a negotiation process between informed interested parties"). As such, the determination of whether a disclosure statement contains adequate information is to be made on a case-by-case basis, focusing on the unique facts and circumstances of each case. *See In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001).

28. The Proposed Disclosure Statement annexed to this Motion as Exhibit A contains adequate information with respect to various topics, including, among other things, information with respect to: (a) the terms of the Plan; (b) certain events preceding the Debtors' cases; (c) the operation of the Debtors' business during the course of the cases; (d) estimates of the claims asserted or to be asserted against the Debtors' estates and the value of distributions to be received

by holders of such claims; (e) the risk factors affecting the Plan, (f) the method and timing of distributions under the Plan; (g) financial information that would be relevant to creditors' determinations of whether to accept or reject the Plan; (h) a liquidation analysis identifying the estimated return that creditors would receive if the Debtors' bankruptcy cases were cases under chapter 7 of the Bankruptcy Code; (i) the federal tax consequences of the Plan; and (j) appropriate disclaimers regarding the Court's approval of information only as contained in the Proposed Disclosure Statement.

29. Accordingly, the Debtors believe that the Proposed Disclosure Statement contains all or substantially all of the information typically considered by bankruptcy courts in order to meet the "adequacy requirements" and respectfully requests that the Court approve the Proposed Disclosure Statement as meeting the requirements of section 1125 of the Bankruptcy Code.

II. THE NOTICE OF THE HEARING TO CONSIDER THE PROPOSED DISCLOSURE STATEMENT SHOULD BE DEEMED ADEQUATE

A. Approval of the Notice of Disclosure Statement Hearing

30. Rule 3017(a) of the Bankruptcy Rules provides that:

> [A]fter a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 25 days' notice to the Debtors, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the Debtors, any trustee or committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan.

Fed. R. Bank. P. 3017(a).

31. Bankruptcy Rules 2002(b) and (d) require notice to all creditors, indenture trustees, and shareholders of the time set for filing objections to, and the hearing to consider the approval of, a disclosure statement. On or before December 4, 2009, the Debtors shall serve the

Disclosure Statement Notice, annexed to the Motion as Exhibit B and incorporated herein by reference, by electronic and/or first class mail to: (i) the United States Trustee for the District of Delaware (the "U.S. Trustee"), (ii) counsel to the Committee, (iii) the Internal Revenue Service, (iv) all persons or entities listed in the Schedules, (v) any other known holders of claims against or equity interests in the Debtors, and (vi) all parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002.

32. The Disclosure Statement Notice provided that objections to the Proposed Disclosure Statement, if any, must (a) be in writing; (b) be in the English language; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (d) state with particularity the basis and nature of any objection to the Disclosure Statement; and (e) be filed, together with proof of service, with the Court and served so that they are actually received by the following parties no later than January 6, 2010 at 4:00 p.m. (prevailing Eastern time): (i) counsel for the Debtors, Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, New York, 10174-0208 (Attn: Michael Z. Brownstein and Rocco A. Cavaliere) and 1201 Market Street, Suite 800, Wilmington, Delaware 19801 (Attn: David W. Carickhoff), (ii) Klehr, Harrison, Harvey, Branzburg & Ellers, 919 Market Street, Suite 1000, Wilmington, Delaware 19801 (Attn: Joanne B. Wills), and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy).

33. The Debtors submit that they provided adequate notice of the Disclosure Statement Hearing and provided sufficient time for objections to the adequacy of the Disclosure Statement, and accordingly, the Debtors request that the Court find that the Disclosure Statement Notice was adequate.

III. ESTABLISHING NOTICE AND OBJECTION PROCEDURES IN RESPECT OF CONFIRMATION OF THE PLAN

A. Setting the Confirmation Hearing

34. Bankruptcy Rule 3017(c) provides:

> On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

Fed. R. Bankr. P. 3017(c). In accordance with Bankruptcy Rules 2002(b) and 3017(c), and in view of the Debtors' proposed solicitation schedule outlined herein, the Debtors request that a hearing on confirmation of the Plan (the "Confirmation Hearing") be scheduled for February 22, 2010, which is 40 days after the Disclosure Statement Hearing. The Debtors also request that the Court order that the Confirmation Hearing may be adjourned or continued from time to time by the Court or the Debtors without further notice other than adjournments announced in open Court or as indicated in any notice of agenda of matters scheduled for hearing filed with the Court. The proposed date for the Confirmation Hearing is in compliance with the Bankruptcy Rules and the Local Rules and will enable the Debtors to pursue confirmation of the Plan in an efficient manner.

B. Establishing Procedures for Notice of the Confirmation Hearing and Filing Objections to Confirmation of the Plan

35. Bankruptcy Rules 2002(b) and (d) require not less than 25 days' notice to all creditors and equity security holders of the time fixed for filing objections and the hearing to consider confirmation of a chapter 11 plan. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served "within a time fixed by the court." Fed. R. Bank. P. 3020(b)(1).

36. In accordance with these rules, by January 16, 2010, the Debtors propose to provide a notice of the Confirmation Hearing (the "Confirmation Hearing Notice") annexed to this Motion as Exhibit C to all parties requesting notice under Bankruptcy Rule 2002, and all creditors and parties in interest listed in the Schedules and claims register.

37. The Confirmation Hearing Notice provides, and the Debtors request that the Court direct that, objections to confirmation of the Plan or proposed modifications to the Plan, if any, must (a) be in writing; (b) be in the English language; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (d) state with particularity the basis and nature of any objection or proposed modification to the Plan; and (e) be filed, together with proof of service, with the Court and served so that they are actually received by the following parties no later than February 15, 2010 at 4:00 p.m. (Prevailing Eastern Time) (the "Confirmation Objection Deadline"): (i) counsel for the Debtors, Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, New York, 10174-0208 (Attn: Michael Z. Brownstein and Rocco A. Cavaliere) and 1201 Market Street, Suite 800, Wilmington, Delaware 19801 (Attn: David W. Carickhoff), (ii) Klehr, Harrison, Harvey, Branzburg & Ellers, 919 Market Street, Suite 1000, Wilmington, Delaware 19801 (Attn: Joanne B. Wills), and (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy).

38. Setting February 15, 2010, as the Confirmation Objection Deadline will provide parties in interest with over 30 days' notice of the Confirmation Objection Deadline and will afford the Debtors and other parties in interest sufficient time to consider the objections and proposed modifications and file any replies, while leaving the Court sufficient time to consider any such objections and replies before the Confirmation Hearing.

IV. FIXING THE VOTING RECORD DATE

39. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan of reorganization, "creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing." Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes.

40. In accordance with these rules, the Debtors request that this Court set January 13, 2010, which is the date of the Disclosure Statement Hearing, as the "Record Date" for purposes of determining which creditors are entitled to vote on the Plan. In addition, the Debtors request that the Court establish the "Record Date" as the date for determining which creditors and equity interest holders in non-voting classes are entitled to receive an appropriate Notice of Non-Voting Status (as defined below).[3]

41. The Debtors believe that the Record Date (*i.e.*, January 13, 2010) is appropriate as such date exists in the determination of which creditors are entitled to vote on the Plan or, in the case of non-voting classes of creditors and equity interest holders, to receive the Notice of Non-Voting Status.

V. APPROVING SOLICITATION PACKAGES AND NOTICES OF NON-VOTING CLASSES AND PROCEDURES FOR DISTRIBUTION THEREOF

A. Distribution Of The Disclosure Statement And Solicitation Materials

[3] For purposes of Bankruptcy Rule 3002(e)(2), any transferor of a claim shall be deemed the holder of a transferred claim unless the 20 day period referenced in said Rule has expired by the Record Date with no timely objection having been filed.

42. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan of reorganization:

> Upon approval of a disclosure statement, — except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders — the debtors in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,
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> > (1) the plan or a court-approved summary of the plan;
> >
> > (2) the disclosure statement approved by the court;
> >
> > (3) notice of the time within which acceptances and rejections of the plan may be filed; and
> >
> > (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.
>
> In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.

Fed. R. Bankr. P. 3017(d).

43. After the Court has approved the Proposed Disclosure Statement (as approved, the "Disclosure Statement") as containing adequate information under section 1125 of the Bankruptcy Code, the Debtors propose to mail or cause to be mailed solicitation packages (the "Solicitation Packages") by no later than January 16, 2010 (the "Solicitation Date") to (i) the U.S. Trustee, (ii) counsel for the Committee, (iii) all parties requesting notice pursuant to Bankruptcy Rule 2002, and (iv) the Internal Revenue Service. In addition, the Debtors propose to distribute the Solicitation Packages to the holders of all unsecured claims in Class 2 provided

that such holders' claims (a) are listed in the Debtor's Schedules as not contingent, unliquidated or disputed (excluding scheduled claims that have been superseded by filed claims) or (b) are the subject of a filed proof of claim that has not been objected to prior to the Record Date and that is not the subject of a pending objection on the Record Date, provided further that with respect to a holder of claims that has timely filed multiple proofs of claim on account of a single claim, the Debtor will provide such holder with only one set of Solicitation Packages.

44. The Solicitation Packages will contain a copy of (i) the Disclosure Statement Order (excluding the exhibits thereto); (ii) the Confirmation Hearing Notice; (iii) the form of ballot to accept or reject the Plan, in substantially the form set forth in Exhibit E to this Motion (the "Ballot"), with instructions and with a return envelope; (iv) the Disclosure Statement (together with the Plan annexed thereto as Exhibit A); and (v) such other materials as the Court may direct.

45. The Debtors propose not to send Solicitation Packages to creditors that have claims that have already been paid in full; provided, however, that if, and to the extent that, any such creditor would be entitled to receive a Solicitation Package for any reason other than by virtue of the fact that such claim had been paid by the Debtors, then such creditor will be sent a Solicitation Package in accordance with the procedures set forth above.

46. It is possible that some Solicitation Packages may be returned as undeliverable by the United States Postal Service. The Debtors believe that it would be uneconomical to mail Solicitation Packages to the same addresses to which undeliverable Disclosure Statement Notices were mailed. Therefore, the Debtors seek the Court's approval for a departure from the strict notice rule, excusing the Debtors from mailing Solicitation Packages to those entities listed at

such addresses unless the Debtors are provided with accurate addresses for such entities before the Solicitation Date.

47. Further, although the Debtors have made, and will make, every effort to ensure that the Solicitation Packages described herein are in final form, the Debtors nonetheless request that they be authorized to make nonsubstantive/non-material changes to the Disclosure Statement, the Plan, and related documents without further order of the Court, including ministerial changes to correct typographical and grammatical errors, and to make conforming changes among the Disclosure Statement, the Plan and any other materials in the Solicitation Packages prior to mailing.

48. The proposed notice of the Solicitation Packages comport with due process and the requirements of Bankruptcy Rule 3017 and section 1125 of the Bankruptcy Code. The Debtors submit that they have shown good cause for implementing the proposed notice and service procedures set forth herein.

B. Notice of Non-Voting Status to Holders of Claims Deemed to Accept the Plan

49. Bankruptcy Rule 3017(d) further provides, in relevant part, as follows:

> If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation.

Fed. R. Bankr. P. 3017(d).

50. Claims in Class 1 (Secured Claims) (the "Unimpaired Class") under the Plan are unimpaired, and therefore, the holders of claims and interests in such class is conclusively presumed to accept the Plan. *See* 11 U.S.C. § 1126(f).

51. The Debtors propose to send to holders of claims in the Unimpaired Class a notice of non-voting status, substantially in the form annexed to this Motion in Exhibit D (the "Notice of Non-Voting Status -Unimpaired Class"). The proposed Notice of Non-Voting Status - Unimpaired Class identifies the unimpaired class in the Plan. The Debtors will also serve such parties the Confirmation Hearing Notice. Further, the Debtors will provide such parties with copies of the Plan and Disclosure Statement upon request.

C. Notice of Non-Voting Status to Holders of Claims or Interests Deemed to Reject the Plan

52. The holder of interests in Class 3 (Equity Interests) (the "Non-Voting Impaired Class") is not receiving distributions under the Plan; thus, the holders of such interests is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. *See* 11 U.S.C. § 1126(g); *see also In re Walnut Equip. Leasing*, No. 97-19699, 1999 WL 1068448, at *2 (Bankr. E.D. Pa. 1999) ("A class that is to receive nothing under a plan is deemed to reject the plan and is not entitled to vote.") (citation omitted); *Zenith Elec. Corp.*, 241 B.R. at 99 (a class that would receive nothing under the Debtors' proposed plan did not have the right to vote as it was conclusively presumed to have rejected the plan pursuant to 11 U.S.C. § 1126(g)).

53. The Debtors propose to mail to the holders of equity interests in the Non-Voting Impaired Class a notice of non-voting status ("Notice of Non-Voting Status - Impaired Class"), substantially in the form annexed to this Motion in Exhibit D, which informs the holder of interests in such Non-Voting Impaired Class that it will receive no recovery under the Plan, is not entitled to vote, and therefore, is deemed to have rejected the Plan. The Debtors will also serve the Confirmation Hearing Notice on such parties. Further, the Debtors will provide such parties with copies of the Plan and Disclosure Statement upon request.

VI. APPROVING FORM OF BALLOT AND VOTING DEADLINE

54. Bankruptcy Rule 3018(c) requires that "an acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate official form." Further, Bankruptcy Rule 3017(d) requires the Debtors to mail a form of ballot, which substantially conforms to Official Form No. 14, only to "creditors and equity security holders entitled to vote on the plan." Fed. R. Bankr. P. 3017(d).

55. The Debtors propose to distribute the Ballot, substantially in the form[4] annexed to this Motion as Exhibit E, to holders of claims classified in the Plan as Class 2 (General Unsecured Claims), which claims are impaired and the holders of which claims are entitled to vote on the Plan as of the Record Date (collectively, the "Voting Class"). All other classes under the Plan are either unimpaired and conclusively presumed to accept the Plan, or will receive no distribution under the Plan and are therefore deemed to reject the Plan. The Debtors respectfully request approval of the Ballot and the authority to distribute such Ballot to all holders of impaired unsecured claims in Class 2. By this Motion, the Debtors seek approval of the form of the Ballot.

[4] The form for the Ballot is based on Official Form No. 14 but has been modified to address particular issues of these chapter 11 cases and include certain additional information that the Debtors believe are relevant and appropriate for the Voting Class.

56. Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, "the court shall fix a time within which the holders of claims or equity security interests may accept or reject the plan". As stated hereinabove, the Debtors anticipate completing mailing of the Solicitation Packages, including the form of Ballot, by January 16, 2010. Based on such schedule, the Debtors propose that in order to be counted as a vote to accept or reject the Plan, each Ballot must be properly executed, completed, and delivered to BMC Group, Inc. (the "Voting Agent" or "BMC") (i) by first-class mail, in the return envelope provided with each Ballot, (ii) by overnight courier, or (iii) by hand delivery, so that it is actually received by BMC Group, Inc. no later than 4:00 p.m. (prevailing Eastern time) on February 15, 2010 (the "Voting Deadline"), which is more than 25 days after the Solicitation Date. The Debtors submit that such solicitation period is a sufficient period within which creditors can make an informed decision whether to accept or reject the Plan.

VII. APPROVAL OF VOTING PROCEDURES AND TABULATION PROCEDURES

A. Voting Procedures

57. As mentioned above, only holders of claims in the Voting Class are impaired and entitled to vote on the Plan. For voting purposes only, the Debtors propose the following voting procedures: each voter in the Voting Class shall have an allowed claim, solely for the purpose of voting on the Plan, in an amount equal to the greater of (i) the amount of such claim as set forth in the Debtors' Schedules, and (ii) the amount of such claim as set forth in a timely filed proof of claim, provided, however, that the assignee of a transferred and assigned scheduled or filed claim shall be permitted to vote such claim only if the transfer and assignment has been reflected on the Court's docket as of the close of business on the Record Date, and provided, further, that

(a) if a claim is not listed in the Debtors' Schedules but is the subject of a timely filed proof of claim, such claim shall be allowed for voting

purposes only and not for the purpose of allowance or distribution in the amount set forth in such proof of claim;

(b) if a claim for which a proof of claim has been timely filed is listed on the Debtors' Schedules as contingent, unliquidated or disputed, such claim shall be allowed for voting purposes only and not for the purpose of allowance or distribution, in an amount equal to $1.00;

(c) if a claim in a Voting Class is listed in the Debtors' Schedules as contingent, unliquidated, or disputed and a proof of such claim was not timely filed, such claim shall have no voting rights;

(d) if a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim shall be allowed for voting purposes only in the amount estimated or allowed by the Court, unless, prior to the Voting Deadline, the Court enters an order disallowing such claim;

(e) if a claim is deemed allowed pursuant to the Plan and the holder of the claim is entitled to vote on the Plan, the claim shall be allowed for voting purposes in the amount deemed allowed pursuant to the Plan;

(f) if a holder of claims has timely filed multiple proofs of claims on account of a single claim, such holder shall have only one allowed claim for voting purposes; and

(g) each holder of any claim shall be entitled to vote all of the non-duplicative claims it holds, but may only vote a single ballot as to all claims within a particular class.

58. The Debtors also propose that if an objection to a claim in the Voting Class has been filed at least five (5) days prior to the Voting Deadline, such claim shall be disallowed for voting purposes only and, pending final resolution of such objection, not for the purpose of allowance or distribution; provided that any undisputed portions of such claim shall be allowed for voting purposes.

B. Tabulation Procedures

59. Pursuant to section 105 and 1126 of the Bankruptcy Code, the Debtors request that the Court adopt the following procedures:

(a) only original Ballots returned to the Voting Agent bearing original signatures will be counted;

(b) any unsigned Ballot shall not be counted;

(c) any Ballot that is illegible or contains insufficient information to permit the identification of the holder shall not be counted;

(d) any Ballot cast by a person or entity that does not hold a claim in the Voting Class shall not be counted;

(e) any Ballot that is properly completed, executed and timely returned to the Voting Agent that does not indicate an acceptance or rejection of the Plan shall not be counted;

(f) any Ballot that is properly completed, executed and timely returned to the Voting Agent that indicates both acceptance and rejection of the Plan shall not be counted;

(g) whenever a holder in the Voting Class returns more than one Ballot voting the same claim prior to the Voting Deadline, only the last Ballot timely returned to the Voting Agent shall be counted;

(h) each holder of a claim in the Voting Class shall be deemed to have voted the full amount of its claim;

(i) holders of claims in the Voting Class shall not split their vote within a claim, but shall vote their entire claim within a particular class either to accept or reject the Plan;

(j) any Ballot received by the Voting Agent by telecopier, facsimile or other electronic communication shall not be counted; and

(k) any Ballot received after the Voting Deadline shall not be counted, unless the Debtors shall have granted an extension of the Voting Deadline in writing with respect to such Ballot.

60. None of the Debtors, the Voting Agent or any other person or entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots, nor will any of them incur any liability for failure to provide such notification. Rather, the Debtors and the Voting Agent (after consultation with the Committee) may either disregard, with no further notice, defective Ballots, or it may attempt to have defective Ballots cured.

61. The Debtors submit that establishing the voting and tabulation procedures set forth above is necessary to avert any confusion resulting from incomplete Ballots, will simplify

the voting and tabulation process, and is in the best interests of the Debtors, their estates, creditors, and other parties in interest.

Notice

62. Notice of this Motion has been provided as set forth in paragraph 31 hereof.

63. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: Wilmington, Delaware
December 2, 2009

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