

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

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In re: : Chapter 11  
: :  
ALSET OWNERS, LLC, *et al.*,<sup>1</sup> : Case No. 09-11960  
: (Joint Administered)  
Debtors. :  
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**Re: Docket No. 9**

**ORDER GRANTING MOTION OF THE DEBTORS FOR AN ORDER  
AUTHORIZING, ON AN EMERGENCY BASIS, THE PAYMENT  
OF PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order authorizing, on an emergency basis, the Debtors to pay, in their discretion, certain prepetition claims of critical vendors; and upon consideration of the Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances; and upon the record herein; and it appearing that the relief requested by the Motion is in the best interest of the Debtors, their estates and creditors; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, *nunc pro tunc* to the Petition Date.

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<sup>1</sup> The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors' service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Suite 111-B, Boca Raton, FL 33432-2813.

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

2. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to pay, in the ordinary course, the prepetition claims of Critical Vendors (the "Critical Vendor Claims") subject to the conditions set forth in this Order.

3. The Debtors' payment of Critical Vendor Claims shall not exceed \$1.05 million in the aggregate unless otherwise ordered by the Court.

4. After the date hereof, the Debtors shall determine who is a Critical Vendor by considering, among other things, whether failure to pay such creditor's prepetition claims will have a material impact on the Debtors' operations.

5. The Debtors shall undertake all appropriate efforts to cause each Critical Vendor to enter into an agreement with the Debtors (the "Trade Agreement"), including, but not limited to, the following terms:

- (a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Trade Agreement and this Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The amount and timing of any payment agreed to be paid in satisfaction of such estimated prepetition claim by the Debtors, subject to the terms and conditions as set forth in this Order;
- (c) The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), or such other favorable trade terms as mutually agreed to by the Debtors and such Critical Vendor, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- (d) The Critical Vendor's agreement not to file or otherwise assert against the Debtors, their estates or any of their assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining

prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;

- (e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of this Order and consents to be bound thereby;
- (f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims and section 503(b)(9) claims; and
- (g) If a Critical Vendor who has received payment of a prepetition claim subsequently refuses to supply goods to the Debtors on Customary Trade Terms or other favorable trade terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

6. The Debtors may, in their discretion, enter into a Trade Agreement with an individual Critical Vendor and the terms of any such Trade Agreement are hereby incorporated by reference and approved.

7. The Debtors shall condition the payment of Critical Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and services to the Debtors on terms that are as or more favorable to the Debtors as the most favorable trade terms, practices, and programs in effect between the Critical Vendors and the Debtors in the six months prior to the Petition Date (the "Customary Trade Terms), or such other trade terms as are agreed to by the Debtors and the Critical Vendor.

8. To the extent applicable, unless otherwise agreed to by the Debtors, in their sole discretion, any payment of Critical Vendor Claims under this Order shall be applied first to the Critical Vendor's claims for goods received by the Debtors within twenty days of the Petition

Date with the remainder, if any, being applied to the Critical Vendor's claims for goods received by the Debtors prior to the twenty days before the Petition Date.

9. Any such Trade Agreement entered into by the Debtors with an individual Critical Vendor and hereby incorporated by reference and approved shall not automatically terminate upon confirmation of a chapter 11 plan (the "Confirmation Date").

10. The Debtors may, in their discretion, terminate a Trade Agreement with an individual Critical Vendor (a "Terminated Critical Vendor"), together with the other benefits to the Terminated Critical Vendor as contained in this Order, provided, however, that in the event the Debtors terminate a Trade Agreement with a Critical Vendor they shall provide notice of such termination to the Office of the United States Trustee and any official committee of unsecured creditors appointed in these cases.

11. If the Debtors choose not to immediately terminate a Trade Agreement upon a refusal by the participating Critical Vendor party to provide goods in accordance with such Trade Agreement, the Debtors shall not be deemed to have waived their right to terminate such Trade Agreement.

12. If a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods or services to the Debtors on Customary Trade Terms (or such other terms agreed to by the Debtors) during the pendency of these chapter 11 cases, the Debtors may, in their discretion, deem provisional payments made to the Critical Vendor on account of prepetition Critical Vendor Claims to have been in payment of then outstanding postpetition amounts owed to such Terminated Critical Vendor without further order of the Court or action by any person or entity. Such Terminated Critical Vendor shall then immediately repay to the Debtors any payments made to it on account

of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation.

13. Upon termination of a Trade Agreement by the Debtors, and any related recovery by the Debtors from the Terminated Critical Vendor of amounts paid by the Debtors to the Terminated Critical Vendor, the claim for which such payment initially was made shall be reinstated as a prepetition claim in the amount disgorged as a result of the termination, subject to objection by the Debtors and other parties-in-interest and the claims allowance process.

14. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other causes of action, including avoidance actions, that may be held by the Debtors.

15. Nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the prepetition amounts authorized to be paid hereunder.

16. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order to the extent the Debtors have good funds standing to their credit with such bank or other financial institution without any duty of further inquiry and without liability for following the Debtors' instructions.

17. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is it intended to constitute, the assumption or adoption of any contract or agreement under 11 U.S.C. § 365.

18. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

19. The requirements of Rule 6003 have been satisfied and the ten-day stay under Bankruptcy Rule 6004(h) is hereby waived with respect to this Order and the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June 9, 2009



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United States Bankruptcy Judge