

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

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

**APPLICATION FOR ENTRY OF AN ORDER UNDER
28 U.S.C. § 156(c) APPROVING AGREEMENT WITH
BMC GROUP, INC. AS CLAIMS, NOTICING AND SOLICITATION AGENT**

Alset Owners, LLC, and its direct and indirect subsidiaries, debtors and debtors-in-possession herein (the “Debtors”), in these cases (these “Cases”), file this Application for entry of an order under 11 U.S.C. § 156(c) approving an agreement with BMC Group, Inc. as Claims, Noticing and Solicitation Agent of the Bankruptcy Court.

This Application is supported by the entire record before the Court, the “Declaration of Tinamarie Feil in Support of Application for Entry of an Order Under 28 U.S.C. § 156(c) Approving Agreement with BMC Group, Inc. as Claims, Noticing and Solicitation” (the “Feil Declaration”), filed contemporaneously with this Application, and by the following memorandum of points and authorities.

JURISDICTION AND VENUE

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

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

2. The statutory predicate for the relief requested in this Application is 28 U.S.C. § 156(c), Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1 of the Local Bankruptcy Rules for the District of Delaware.

BACKGROUND

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

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

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

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

RELIEF REQUESTED

7. By this Application, the Debtors seek to retain and employ BMC Group, Inc. (“BMC”) as Claims, Noticing and Solicitation Agent under the terms of that certain Agreement for Services dated as of June 4, 2009 between the Debtors and BMC (the “Agreement”), attached to this Application as Exhibit A, and respectfully request that the Court enter an order under 28 U.S.C. § 156(c) authorizing the Debtors to retain and employ BMC as Claims, Noticing and

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

Solicitation Agent to perform various services that will be necessary in these Cases as described more fully below.

BASIS AND AUTHORITY FOR RELIEF

8. The Debtors have identified approximately 900 creditors, potential creditors and other parties-in-interest to whom certain notices, including notice of the commencement of these Cases must be sent.

9. Pursuant to 28 U.S.C. § 156(c),³ this Court is authorized to utilize agents and facilities other than the office of the Clerk of the Bankruptcy Court (the “Clerk”) for the administration of bankruptcy cases, including such matters as (i) giving notice of the order for relief, the hearings and orders filed in the case, the meeting of creditors pursuant to section 341 of the Bankruptcy Code, and the setting of a claims bar date; (ii) providing record keeping and claims docketing and reconciliation; and (iii) mailing and tabulating ballots for the purposes of voting in chapter 11 cases. In addition, Local Rule 2002-1(f) requires a debtor to file an application to retain a claims and noticing agent within ten (10) days of the Petition Date in all cases with more than 200 creditors.

10. As described more fully in the Levitsky Declaration and as evidenced by the consolidated list of creditors, filed concurrently herewith, the Debtors have more than 900 potential creditors. Accordingly, pursuant to Local Rule 2002-1(f) and for the reasons set forth below, the Debtors submit this Application. Further, upon information and belief, the Clerk is not equipped to efficiently and effectively docket and maintain the extremely large number of proofs of claim that are likely to be filed in these Cases. The Debtors believe that the magnitude

³ 28 U.S.C. § 156(c) provides, in relevant part, that “[a]ny court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States.”

of the Debtors' creditor body makes it impracticable for the Clerk to undertake that task and send notices to the creditors and other parties-in-interest.

11. The Debtors submit that the most effective and efficient manner by which to accomplish the process of receiving, docketing, maintaining, photocopying and transmitting proofs of claim in these Cases is for them to engage an independent third party to act as an agent to the Clerk of the Court.

A. Qualifications of BMC

12. BMC is an information management firm that specializes, among other things, in legal noticing, claims processing, solicitation and administrative tasks in chapter 11 cases. The Debtors wish to engage BMC to send out certain designated notices, receive and maintain claims and prepare the claims register, and act as voting agent in these Cases . The Debtors believe that such assistance will expedite service of Bankruptcy Rule 2002 notices, streamline the plan solicitation and tabulation process, as well as streamline the claims administration process, and permit the Debtors to focus on its reorganization efforts. The Debtors believe that BMC is well-qualified to provide such services, expertise, consultation and assistance.

13. BMC has assisted and advised numerous chapter 11 Debtors in connection with noticing, claims administration and reconciliation, and the solicitation, tabulation and administration of plan votes. BMC has provided identical or substantially similar services in other chapter 11 cases in a variety of jurisdictions such as *In re GI Joe's Holding Corporation, et al.*, Case No. 09-10713 (Bankr. D. Del. 2009); *In re Metaldyne Corporation*, Case No. 09-13412 (Bankr. S.D.N.Y. 2009); *In re Triad Resources, Inc.*, Case No. 08-62733 (Bankr. S.D. Ohio 2008); *In re SN Liquidation, Inc. (f/k/a InPhonic), et al.*, Case No. 07-11666 (Bankr. D. Del. 2007); *In re PT Holdings Company, Inc., et al.*, Case No. 07-10340 (Bankr. W.D. Wash. 2007);

In re Chi-Chi's, Inc., et al., Case No. 03-13063 (Bankr. D. Del. 2003); *In re Exide Technologies, Inc.*, Case No. 02-11125 (Bankr. D. Del. 2002); and *In re WR Grace & Co., et al.*, Case No. 01-01139 (Bankr. D. Del. 2001).

B. Services to Be Provided

14. The Debtors anticipate that BMC will perform the following services as Claims, Noticing and Solicitation Agent, at the request of the Debtors or the Clerk's Office:

- (a) prepare and serve those notices required in these Cases, including but not limited to:
 - (i) notice of the commencement of these Cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code;
 - (ii) notice of the claims bar dates;
 - (iii) notices of objections to claims;
 - (iv) notices of any hearings on a disclosure statement and confirmation of a plan of reorganization; and
 - (v) such other miscellaneous documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these Cases;
- (b) receive, record and maintain copies of all proofs of claim and proofs of interest filed in these Cases;
- (c) maintain official claims registers in these Cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:
 - (i) the name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
 - (ii) the date the proof of claim or proof of interest was received by the Claims, Noticing and Solicitation Agent and/or the Court;
 - (iii) the claim number assigned to the proof of claim or proof of interest; and
 - (iv) the asserted amount and classification of the claims;

- (d) maintain an up-to-date mailing list for all entities that have filed proofs of claim, proofs of interest and/or requests for notices in these Cases and make such list available upon request to the Clerk's Office or any party-in-interest;
- (e) implement necessary security measures to ensure the completeness and integrity of the claims registers;
- (f) record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide notice of such transfers as required by Bankruptcy Rule 3001(e), if directed to do so by the Court;
- (g) assist the Debtors and their counsel with the administrative management, reconciliation and resolution of claims;
- (h) print, mail and tabulate ballots for purposes of plan voting;
- (i) assist with the preparation and maintenance of Debtors' Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities;
- (j) assist with the production of reports, exhibits and schedules of information or use by the Debtors, their counsel or to be delivered the Court, the Clerk's Office, the Office of the U.S. Trustee or third parties;
- (k) provide other technical and document management services of a similar nature requested by Debtors, their counsel or the Clerk's office;
- (l) facilitate or perform plan distributions; and
- (m) assist the Debtors with all analyses and/or collections of avoidance actions pursuant to chapter 5 of the Bankruptcy Code.

15. BMC represents, among other things, that:

- (a) BMC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Claims, Noticing and Solicitation Agent in these Cases;
- (b) By accepting employment in these Cases, BMC waives any rights to receive compensation from the United States government;
- (c) In its capacity as Claims, Noticing and Solicitation Agent in these Cases, BMC will not be an agent of the United States and will not act on behalf of the United States;
- (d) BMC will not intentionally misrepresent any fact to the public; and

- (e) BMC will not employ any past or present employees of the Debtors in connection with its work as Claims, Noticing and Solicitation Agent in these Cases.

C. Compensation

16. The Debtors respectfully submit that BMC's rates for notice, claims processing and other services are competitive and comparable to the rates BMC's competitors charge for similar services and comparable to the rates that BMC has charged in similar chapter 11 cases.

17. The nature and extent of the fee structure that BMC proposes for services rendered to the Debtors under the Agreement, are as follows:

- (a) BMC's consulting service hourly rates per person include:
 - (i) Data Entry / Administrative Support \$25 - \$45 per hour
 - (ii) Analysts \$80 - \$110 per hour
 - (iii) Consultants \$110 - \$140 per hour
 - (iv) Project Managers \$175 - \$225 per hour
 - (v) Principal / Director \$250 per hour

- (b) BMC will seek reimbursement from the Debtors for reasonable direct expenses in accordance with the terms of the Agreement.

- (c) Prior to the Petition Date, the Debtors paid BMC an initial advance payment of \$5,000 (the "Retainer"). Subject to the terms and conditions of the Agreement, BMC may apply the Retainer to cover postage and other direct expenses incurred in accordance with the terms of the Agreement. At the conclusion of its engagement, BMC may apply any remaining amount of the Retainer to its final invoice. After application of the Retainer to its final invoice, BMC will promptly return any unused and unapplied portion of the Retainer to the Debtors.

18. The Debtors requests that the fees and expenses of BMC incurred in the performance of the above services be treated as an administrative expense of the Debtors' chapter 11 estate and be paid by the Debtors in the ordinary course of business.⁴

D. Disinterestedness

19. The Debtors do not propose to retain BMC under section 327 of the Bankruptcy Code. Nevertheless, to the best of the Debtors' knowledge, neither BMC nor any employee thereof has any material connection with the Debtors, their creditors, or any other party in interest herein, they are "disinterested persons," as that term is defined in § 101(14) of the Bankruptcy Code, and they do not hold or represent any interest adverse to the Debtors' estate.

20. For all of the foregoing reasons, the Debtors believe that the retention of BMC as Claims, Noticing and Solicitation Agent in these Cases is appropriate and in the best interests of the Debtors, their estate, and creditors.

E. Indemnity

21. As part of the overall compensation payable to BMC under the terms of the Agreement, the Debtors have agreed to certain indemnification obligations. The Agreement provides that the Debtors will indemnify BMC to the extent permitted by applicable law for any claim arising from, related to, or in connection with BMC's performance of the services described in the Agreement. The Debtors request the Court's approval of the indemnification provisions in the Agreement, subject to the following clarifications:

- a. Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, BMC, in accordance with the Agreement and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with BMC's performance of the services described in the Agreement;

⁴ As an administrative agent and an adjunct to the Court, the Debtors does not believe that BMC is a "professional" whose retention is subject to approval under section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under sections 330 and 331 of the Bankruptcy Code.

- b. BMC shall not be entitled to indemnification, contribution, or reimbursement for services other than the claims agent services provided under the Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.
- c. Notwithstanding anything to the contrary in the Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of BMC's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Agreement as modified by the Court's Order; and
- d. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, BMC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Agreement, including without limitation the advancement of defense costs, BMC must file an application before this Court, and the Debtors may not pay any such amounts to BMC before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by BMC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify BMC.

NOTICE

22. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) the United States Securities and Exchange Commission; (c) the Office of the United States Attorney for the District of Delaware; (d) the Internal Revenue Service; (e) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (f) Textron Financial Corporation; and (g) counsel to Checkers Drive-In Restaurants, Inc. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

NO PRIOR REQUEST

23. No previous application for the relief sought herein has been made to this Court or to any other court.

WHEREFORE, the Debtors respectfully requests that the Court: (a) enter an order authorizing the Debtors to retain and employ BMC as Claims, Noticing and Solicitation Agent under the terms outlined in this Application; and (b) grant such other relief that is just and proper.

Dated: June 5, 2009

BLANK ROME LLP

By: /s/ Bonnie Glantz Fatell
Bonnie Glantz Fatell (No. 3809)
David W. Carickhoff (No. 3715)
1201 North Market Street, Suite 800
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-and-

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PROPOSED ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION

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

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

**DECLARATION OF TINAMARIE FEIL IN SUPPORT OF APPLICATION FOR
ENTRY OF AN ORDER UNDER 28 U.S.C. § 156(c) APPROVING AGREEMENT
WITH BMC GROUP, INC. AS CLAIMS, NOTICING AND SOLICITATION AGENT**

I, TINAMARIE FEIL, make this Declaration pursuant to 28 U.S.C. § 1746, and state:

1. I am the President of Client Services at BMC Group, Inc. ("BMC"),² a firm whose services include a specialization in the administration of large bankruptcy cases, with offices located at 875 Third Avenue, 5th Floor, New York, NY 10022.

2. I submit this declaration in support of the above-captioned Debtor "Application for Entry of an Order Under 28 U.S.C. § 156(c) Approving Agreement with BMC Group, Inc. as Claims, Noticing and Solicitation Agent" (the "Application"), pursuant to the terms and conditions set forth in the Application and the Agreement for Services dated as of June 3, 2009 between the Debtor and BMC (the "Agreement"), which is attached to the Application as Exhibit A. Except as otherwise indicated, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto.³

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016).
² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Application.
³ Certain of the disclosures in this Declaration relate to matters within the knowledge of other professionals at BMC and are based on information provided by them.

3. BMC is one of the country's leading chapter 11 administrators with vast experience in legal noticing, claims processing, claims reconciliation, plan balloting and making distributions. In particular, BMC has acted or currently is acting as notice agent, claims agent, and/or balloting agent in the following cases: *In re GI Joe's Holding Corporation, et al.*, Case No. 09-10713 (Bankr. D. Del. 2009); *In re Metaldyne Corporation*, Case No. 09-13412 (Bankr. S.D.N.Y. 2009); *In re Triad Resources, Inc.*, Case No. 08-62733 (Bankr. S.D. Ohio 2008); *In re SN Liquidation, Inc. (f/k/a InPhonic), et al.*, Case No. 07-11666 (Bankr. D. Del. 2007); *In re PT Holdings Company, Inc., et al.*, Case No. 07-10340 (Bankr. W.D. Wash. 2007); *In re Chi-Chi's, Inc., et al.*, Case No. 03-13063 (Bankr. D. Del. 2003); *In re Exide Technologies, Inc.*, Case No. 02-11125 (Bankr. D. Del. 2002); and *In re WR Grace & Co., et al.*, Case No. 01-01139 (Bankr. D. Del. 2001). Thus, BMC is well qualified to provide experienced services as Claims, Noticing and Solicitation Agent in these chapter 11 cases (these "Cases").

4. As Claims, Noticing and Solicitation Agent of the Bankruptcy Court, BMC proposes, to render to the Debtors and the office of the Clerk of the Bankruptcy Court for the District of Delaware (the "Clerk's Office") the services described in the Application and the Agreement, including:

- a. prepare and serve those notices required in these Cases, including but not limited to:
 - i. notice of the commencement of these Cases and the initial meeting of creditors under § 341(a) of the United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*, the "Bankruptcy Code");
 - ii. notice of the claims bar dates;
 - iii. notices of objections to claims;
 - iv. notices of any hearings on a disclosure statement and confirmation of a plan of reorganization; and

- v. such other miscellaneous documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these Cases;
- b. receive, record and maintain copies of all proofs of claim and proofs of interest filed in these Cases;
- c. maintain official claims registers in these Cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:
 - i. the name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
 - ii. the date the proof of claim or proof of interest was received by the Claims, Noticing and Solicitation Agent and/or the Court;
 - iii. the claim number assigned to the proof of claim or proof of interest; and
 - iv. the asserted amount and classification of the claims;
- d. maintain an up-to-date mailing list for all entities that have filed proofs of claim, proofs of interest and/or requests for notices in these Cases and make such list available upon request to the Clerk's Office or any party-in-interest;
- e. implement necessary security measures to ensure the completeness and integrity of the claims registers;
- f. record all transfers of claims pursuant to Rule 3001(e) of the Federal Rules of Bankruptcy Procedure and provide notice of such transfers as required by Rule 3001(e), if directed to do so by the Court;
- g. assist the Debtors and it's counsel with the administrative management, reconciliation and resolution of claims;
- h. print, mail and tabulate ballots for purposes of plan voting;
- i. assist with the preparation and maintenance of Debtors' Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities;
- j. assist with the production of reports, exhibits and schedules of information or use by the Debtors, it's counsel or to be delivered the Court, the Clerk's Office, the Office of the U.S. Trustee or third parties;

- k. provide other technical and document management services of a similar nature requested by Debtors, its counsel or the Clerk's office;
- l. facilitate or perform plan distributions; and
- m. assist the Debtors with all analyses and/or collections of avoidance actions pursuant to chapter 5 of the Bankruptcy Code.

5. In connection with its appointment as Claims, Noticing and Solicitation Agent,

BMC represents, among other things, that:

- a. BMC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Claims, Noticing and Solicitation Agent in these Cases;
- b. by accepting employment in these Cases, BMC waives any rights to receive compensation from the United States government;
- c. in its capacity as Claims, Noticing and Solicitation Agent in these Cases, BMC will not be an agent of the United States and will not act on behalf of the United States;
- d. BMC will not intentionally misrepresent any fact to the public; and
- e. BMC will not employ any past or present employees of the Debtors in connection with its work as Claims, Noticing and Solicitation Agent in these Cases.

6. The compensation arrangement provided in the Agreement and the Application, including BMC's hourly rates, is consistent with and typical of arrangements entered into by BMC and other such firms with respect to rendering similar services in other chapter 11 cases. BMC will charge the Debtors the reasonable and customary rates and fees that BMC charges in most chapter 11 cases similar in size and scope to those of the Debtors, including, for example, the following hourly fees:

- a. Data Entry /
Administrative Support \$25 - \$45 per hour
- b. Analysts \$80 - \$110 per hour
- c. Consultants \$110 - \$140 per hour

- d. Project Managers \$175 - \$225 per hour
- e. Principal / Director \$250 per hour

7. Regarding the reimbursement of actual and necessary expenses, it is BMC's policy to charge its clients for direct expenses incurred in connection with providing client services. These expenses and charges typically include postage, long distance telephone charges, hand delivery and other delivery charges, travel expenses, computerized research, transcription costs, and third party photocopying charges.

8. The Debtors have paid BMC an initial advance payment of \$5,000 (the "Retainer"). Subject to the terms and conditions of the Agreement, BMC may apply the Retainer to cover postage and other direct expenses incurred in accordance with the terms of the Agreement. At the conclusion of its engagement, BMC may apply any remaining amount of the Retainer to its final invoice. After application of the Retainer to the final invoice, BMC will promptly return any unused and unapplied portion of the Retainer to the Debtors.

9. Subject to the terms and conditions of the Application and Agreement, the Debtors intend to pay BMC's fees and expenses upon the submission of monthly invoices by BMC summarizing, in reasonable detail, the services for which compensation is sought.

10. To the best of my knowledge, BMC: (i) does not have any adverse connection with the Debtors, the Debtors' creditors or any other party in interest or their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee, and (ii) does not hold or represent an interest adverse to the Debtors' estates.

11. Although the Debtors are not retaining BMC pursuant to §§ 327, 328 or 330 of the Bankruptcy Code, to the best of my knowledge, BMC is a "disinterested person" as that term is defined in § 101(14) of the Bankruptcy Code.

12. To check and clear potential conflicts of interest in these Cases, BMC searched its client database and performed reasonable diligence to determine whether it had any relationships with the entities provided by the Debtors. At this time, BMC is not aware of any relationship that would present a disqualifying conflict of interest. To the extent that BMC discovers any such relationship, it will make appropriate disclosures to the Bankruptcy Court in a supplemental declaration.

13. To the best of my knowledge and belief, and except as described herein, neither I nor BMC, nor any officer or director of BMC, has any connection or relationship with the Debtors, its creditors, or any other parties in interest in these Cases (or their attorneys or accountants) that would conflict with the scope of BMC's retention or would create any interest adverse to the Debtors' estates, any unsecured creditors, or any other party in interest. BMC has and will continue to represent clients that may be parties in interest in these Cases in matters unrelated to these Cases and has had and will continue to have relationships in the ordinary course of the business with certain professionals involved in these Cases in connection with matters unrelated to these Cases.

14. There is no agreement or understanding between BMC and any other person or entity for sharing compensation received or to be received for services rendered by BMC in connection with these Cases.

15. BMC will comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 4th day of June 2009.

Tinamarie Feil

By: Tinamarie Feil
President of Client Services
BMC Group, Inc.

Exhibit A
Agreement for Services

JUN 4 10:08 AM 3:20

AGREEMENT FOR SERVICES

This Agreement dated as of June __, 2009, is entered between Ates LLC and affiliated entities who are signatories hereto (collectively "Customer"), and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth above and will continue until the Agreement is terminated as set forth below.

TERMS AND CONDITIONS**I. SERVICES**

In accordance with the terms and conditions contained in this Agreement and in the Fee Schedule annexed hereto, BMC agrees to provide services as follows: (a) assisting the Customer, Counsel and Office of the Clerk with noticing and claims docketing and (b) assisting Customer with the compilation, administration, evaluation and production of documents and information necessary to support a restructuring effort. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC will (1) prepare and serve those notices required in the bankruptcy cases; (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy cases; (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy cases; (6) assist Customer and Counsel with the administrative management, reconciliation and resolution of claims; (7) print, mail and tabulate ballots for purposes of plan voting; (8) assist with the preparation and maintenance of Customer's Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities; (9) assist with the production of reports, exhibits and schedules of information or use by the Customer, Counsel or to be delivered the Court, the Clerk's Office, the U.S. Trustee or third parties; and (10) provide other technical and document management services of a similar nature requested by Customer or the Clerk's office; (11) facilitate or perform distributions, and (12) assist Customer with all analyses and/or collections of avoidance actions pursuant to chapter 5 of the United States Bankruptcy Code.

II. TECHNOLOGY SUPPORT

BMC agrees to provide computer software support and to educate and train Customer in the use of the support software, provide BMC's standard reports as well as consulting and programming support for Customer requested reports, program modifications, database modification, and/or other features.

III. PRICES, CHARGES AND PAYMENT

- A. BMC agrees to charge, and Customer agrees to pay, BMC's standard prices for its services, expenses and supplies at the rates or prices in effect on the day such services and/or supplies are provided to the Customer, in accordance with the Fee Schedule annexed hereto.
- B. BMC shall be provided with an advance payment retainer of \$5,000. Customer agrees to timely pay for BMC's fees and expenses in accordance with this agreement. Wire transfer information for the transmission of payments is as follows:

Bank Name -	Wells Fargo Bank
Address -	933 3 rd Avenue, Seattle, WA 98104
ABA/Routing # -	121000248

Account Name - BMC Group, Inc.
Account # - 0033022633

- C. BMC raises its rates from time to time and generally does so each January.
- D. Customer agrees to pay BMC for any necessarily incurred out-of-pocket reasonable expenses for transportation, lodging, meals and related items.
- E. In connection with noticing services, upon BMC's request, Customer agrees to prepay BMC estimated postage amounts with respect to each notice or shall authorize BMC to cause the courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier.
- F. BMC agrees to invoice Customer for fees and expenses and Customer agrees that the amount invoiced is due and payable upon its receipt of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Customer further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) interest on the amount unpaid, accruing from the invoice date. In the case of a dispute in the invoice amount, notice shall be given to BMC within twenty (20) days of receipt of the invoice by Customer. Interest shall not accrue on any amounts in dispute. The balance of the invoice amount is due and payable in the normal course.
- G. BMC will look only to the Customer for payment of invoices and in no event shall Counsel be liable for any of BMC's invoices in connections with this Services Agreement.

IV. WARRANTY

The BMC warranty under the Agreement shall be limited to the re-running, at its expense, of any inaccurate reports, provided that such inaccuracies were caused solely as a result of BMC performance hereunder and provided further that BMC shall receive written notice of such inaccuracies within thirty (30) days of delivery of such report. If said notice is not made to BMC within the prescribed time limit Customer is liable for all charges. Customer agrees that the foregoing constitutes the exclusive remedy available with respect to inaccurate reports.

V. RIGHTS OF OWNERSHIP

- A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.
- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed during the course of its Agreement by BMC shall be exclusive property of BMC.
- C. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall immediately deliver to Customer at Customer's sole expense, any or all of the non-proprietary data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer. Any information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this

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Agreement are paid in full, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.

- D. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, BMC reserves the right to dispose of data or media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

VI. NON-SOLICITATION

Customer agrees that it shall not, directly or indirectly, solicit for employment, employ or otherwise retain staff of BMC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement unless mutually agreed upon by both parties.

VII. CONFIDENTIALITY

- A. BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors to, safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section VII "Confidentiality" (the "Confidential Information"). BMC will use the Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agrees to, and will cause its servants, agents, employees, licensees, and subcontractors to, keep all information with respect to BMC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Agreement.

VIII. TERMINATION

- A. This Agreement shall remain in force until terminated by Customer, or, by BMC upon thirty (30) days' prior written notice to the other party.
- B. In the event that this contract is terminated, regardless of the reason for such termination, BMC shall cooperate with Customer to orderly transfer to Customer or its designee (or destroy, at Customer's direction) data, records and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

IX. SYSTEM IMPROVEMENTS

BMC's policy is to provide continuous improvements in the quality of service to the Customer. BMC, therefore, reserves the right to make changes in operations procedures, operating systems, programming languages, general purpose library

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understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may not be modified or altered by written instrument duly executed by both parties. Customer represents that it has the authority to enter into this Agreement, may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer bankruptcy cases, the term of the order shall govern.

XIV. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by BMC to a wholly owned subsidiary of BMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

<p>BMC Group, Inc.</p> <p><i>Tinamarie Feil</i></p> <p>By: <u>Tinamarie Feil</u> Title: <u>President, Client Services</u></p> <p>Date: June <u>3</u>, 2009</p>	<p>Altes LLC</p> <p><i>[Signature]</i></p> <p>By: <u>[Signature]</u> Name: _____ Title: _____</p> <p>Date: June <u>3</u>, 2009</p>
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<p>Setla LLC</p> <p>By: _____ Name: _____ Title: _____</p> <p>Date: June <u>3</u>, 2009</p>	<p><u>Setla LLC</u></p> <p><i>[Signature]</i></p> <p>By: <u>[Signature]</u> Name: _____ Title: _____</p> <p>Date: June <u>3</u>, 2009</p>
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<p>_____</p> <p>By: _____ Name: _____ Title: _____</p> <p>Date: June <u>3</u>, 2009</p>

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

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

**ORDER AUTHORIZING THE DEBTORS AND DEBTORS-IN-POSSESSION
TO RETAIN AND 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) AS OF THE PETITION DATE**

Upon the Application² of the above-captioned Debtors for entry of an order pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002 and Local Rule 2001-1(f), authorizing the Debtors to retain BMC Group, Inc. (“BMC”), as claims, noticing, and balloting agent (the “Claims Agent”) to the Debtors; and upon the affidavit of Tinamarie Feil, which is annexed to the Application, wherein it appears that BMC does not, by reason of any direct or indirect relationship to, connection with or interest in the Debtors, hold or represent any interest adverse to the Debtors, their estates or any class of creditors or equity interest holders with respect to the matters upon which it is to be engaged, and is not connected with the Debtors, their creditors, other parties-in-interest, the United States Trustee or anyone employed by the Office of the United States Trustee, with respect to the matters upon which BMC is to be engaged; and it appearing that BMC is a “disinterested person” within the meaning of section 101(14) of the

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

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

Bankruptcy Code; and it appearing that the relief requested therein is in the best interests of the Debtors, their estates and creditors; and no notice of the Application need be given pursuant to Local Rule 2002-1(f); and after due deliberation and sufficient cause appearing thereof; it is hereby

ORDERED, that the relief requested in the Application is hereby granted; and it is further

ORDERED, that the Debtors are hereby authorized to employ BMC as Claims Agent in these chapter 11 cases for the purposes set forth in the Application and the Agreement, attached to the Application as Exhibit A, effective as of the date of the commencement of these chapter 11 cases; and it is further

ORDERED, that the indemnification provisions of the Agreement are approved, subject to the following clarifications:

- a. Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, BMC, in accordance with the Agreement and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with BMC's performance of the services described in the Agreement;
- b. BMC shall not be entitled to indemnification, contribution, or reimbursement for services other than the claims agent services provided under the Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.
- c. Notwithstanding anything to the contrary in the Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of BMC's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or

expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Agreement as modified by this Order; and

- d. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, BMC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Agreement, including without limitation the advancement of defense costs, BMC must file an application before this Court, and the Debtors may not pay any such amounts to BMC before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by BMC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify BMC;

and it is further

ORDERED, that BMC shall not cease providing services for any reason including nonpayment, without prior order of this Court authorizing BMC from doing so; and it is further

ORDERED, that the Debtors are hereby authorized to pay, without further order of this Court, the reasonable fees and expenses of BMC incurred in connection with services rendered to the Debtors as Claims Agent, from the assets of the Debtors' estates, upon BMC's submission, on a monthly basis, of reasonably detailed invoices to the Debtors, the Office of the United States Trustee, and any official committee(s) appointed in the Debtors' chapter 11 cases; provided, however, that such parties shall have 15 days from the submission of each such invoice to object thereto, and the Court shall resolve any such objections; and it is further

ORDERED, that this Court retains jurisdiction with respect to all matters arising from or relating to the implementation of this Order.

Dated: June __, 2009

United States Bankruptcy Judge