

**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 (BLS)  
: (Jointly Administered)  
Debtors. : Hearing: July 22, 2009 at 10:00 a.m. (ET)  
----- : Objections: July 15, 2009 @ 4:00 p.m. (ET)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER  
AUTHORIZING THE ABANDONMENT OF CERTAIN PERSONAL  
PROPERTY OF THE DEBTORS AND APPROVING CERTAIN PROCEDURES  
FOR THE SALE, TRANSFER OR ABANDONMENT OF DE MINIMIS ASSETS**

Alset Owners, LLC and its debtor affiliates (collectively, the “Debtors”), debtors and debtors in possession in the above-captioned cases, hereby move this Court (the “Motion”) for entry of an order, pursuant to sections 105, 363 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order (i) authorizing the Debtors to abandon certain personal property and (ii) approving certain procedures for the sale, transfer or abandonment of De Minimis Assets (as defined below). In support of the Motion, the Debtors respectfully represent:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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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.

2. The predicates for the relief requested herein are sections 105, 363 and 554 of the Bankruptcy Code and Bankruptcy Rule 6004.

### **BACKGROUND**

3. On June 5, 2009 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases are being jointly administered. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. On June 24, 2009, the Office of the United States Trustee filed a notice of appointment of an official committee of unsecured creditors (the "Committee"). No trustee or examiner has been appointed in these chapter 11 cases.

5. A thorough description of the Debtors and the events leading up to the Petition Date are set forth in the Amended Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief (the "Declaration") [Dkt. No. 34].

6. The Debtors are the largest franchisee of Checkers Drive-In Restaurants, Inc., the national franchisor of the Rally's and Checkers' restaurant chains. Specifically, Debtors Altes, LLC and Setla, LLC operate Rally's restaurants in Arkansas, Missouri, Illinois, and Ohio. Checkers Michigan, LLC operated Checkers restaurants in Michigan but has recently ceased operations there.

7. 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. 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.

8. On the Petition Date, among other motions, the Debtors filed a motion seeking, to the extent necessary, an order authorizing the rejection of certain non-residential real property leases (the “Lease Rejection Motion”) [Docket No. 11]. The leases subject to the Lease Rejection Motion concern 33 of the Debtors’ closed restaurants (the “Closed Restaurants”) that were surrendered and vacated to the landlords of the Closed Restaurants prior to the Petition Date. A list of the Closed Restaurants is attached hereto as Exhibit “A”.

### **RELIEF REQUESTED**

9. As the Debtors continue their reorganization efforts, they will identify certain assets that are not a part of the Debtors’ strategic plans. Many of these assets are likely to be surplus, obsolete or non-core assets of a relatively *de minimis* value compared to the Debtors’ total and primary asset base.

10. Pursuant to this Motion, the Debtors first seek the entry of an order (i) authorizing the Debtors to abandon any personal property of the Debtors remaining at the Closed Restaurants (the “Inconsequential Property”).

11. Second, the Debtors seek a separate order implementing certain Sale Procedures (defined below) and Abandonment Procedures (defined below) that would authorize the Debtors, without the need for any further approval from this Court, to (a) effectuate, from time to time, sales, transfers, and other dispositions of surplus, obsolete, non-core, burdensome, non-performing or under-performing assets (collectively, the “De Minimis Assets”) (b) abandon a De Minimis Asset to the extent that a Sale of such De Minimis Asset cannot be consummated on a profitable and efficient basis; and (c) pay any necessary and reasonable fees and expenses incurred in connection with any such Sale.

## THE DE MINIMIS ASSET SALE/TRANSFER AND ABANDONMENT PROCEDURES

12. The Debtors propose to dispose of each of the De Minimis Assets for the highest and best offer received, taking into consideration the exigencies and circumstances of each such Sale, in accordance with the following procedures (the "Sale Procedures"):

- a. With regard to each Sale of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a single or combined selling price<sup>2</sup> equal to or less than \$50,000:
  - i. The Debtors shall be authorized to consummate such Sale, with the consent of any lienholder of the subject De Minimis Asset(s), and upon consultation with the Committee, without providing any notice to interested parties and without the need for any further authorization from this Court, so long as the Debtors determine in the reasonable exercise of their business judgment that such Sale is in the best interests of their estates and otherwise complies with the Sale Procedures set forth herein;
  - ii. Any such Sale of De Minimis Assets shall be free and clear of all liens, claims, encumbrances, and interests (the "Liens") with such Liens attaching to the Sale proceeds with the same validity, extent and priority as had attached to the De Minimis Assets immediately prior to such Sale<sup>3</sup>;
  - iii. To the extent any Sales are consummated, the Debtors shall provide a written report (the "Quarterly Report") to the Court, the U.S. Trustee, counsel to the Committee, and those parties requesting notice pursuant to Bankruptcy Rule 2002, no later than 30 days after the end of each calendar quarter beginning with the calendar quarter ending on August 31, 2009, describing the material terms of any Sales that were consummated during the preceding calendar quarter pursuant hereto and listing the names of the purchasing parties and the total consideration received by the Debtors from each Sale.
- b. With regard to each Sale of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a single or combined selling price greater than \$50,000 but less than or equal to \$200,000:

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<sup>2</sup> For purposes of the Sale Procedures, the term "selling price" shall refer to the Debtors' good faith estimate of the gross transaction value that the Debtors expect to realize from any proposed Sale.

<sup>3</sup> Upon information and belief, the Debtors do not believe that there will be any Liens on the De Minimis Assets.

- i. The Debtors, with the consent of any lienholder of the subject De Minimis Asset(s), shall be authorized to consummate such Sale without the need for any further authorization from this Court, so long as the Debtors determine in the reasonable exercise of their business judgment that such Sale is in the best interests of their estates and otherwise complies with the Sale Procedures set forth herein;
- ii. Any such Sale of De Minimis Assets shall be free and clear of all Liens, with such Liens attaching to the Sale proceeds with the same validity, extent and priority as had attached to the De Minimis Assets immediately prior to such Sale;
- iii. The Debtors shall provide prior written notice of each such proposed Sale (a "Sale Notice") to (a) the U.S. Trustee; (b) counsel to the Committee; and (c) any creditor(s) known by the Debtors to assert a Lien on any of the De Minimis Asset(s) that are the subject of such Sale Notice (collectively, the "Notice Parties") at least five (5) business days prior to the closing of such Sale. The Sale Notice shall identify and describe (i) the De Minimis Assets being sold or transferred by the Debtors, (ii) the proposed purchaser(s) of the assets, (iii) the Debtors' relationship, if any, to the proposed purchaser(s) of the assets, (iv) the purchase price, and (v) the material terms of the sale or transfer agreement;
- iv. If no written objections from any of the Notice Parties are filed within five (5) business days after the date of receipt of such Sale Notice, then the Debtors shall be authorized to immediately consummate such Sale after entry of an order approving such Sale under certification of counsel;
- v. If any Notice Party files a written objection to any such Sale with the Court within five (5) business days after receipt of such Sale Notice, then the relevant De Minimis Asset shall only be sold or transferred upon either the consensual resolution of the objection by the parties in question or further order of the Court after notice and a hearing; and
- vi. The Debtors shall describe in the Quarterly Report the material terms of any Sales that were consummated during the preceding calendar quarter in accordance with the foregoing procedures.

13. To the extent the Debtors determine, in the reasonable exercise of their business judgment, that (a) any De Minimis Assets cannot be sold or otherwise transferred for value and (b) such De Minimis Assets are no longer necessary to the Debtors' business operations, the

Debtors seek authority to abandon such De Minimis Assets in accordance with the following procedures (the “Abandonment Procedures”):

- a. The Debtors shall provide written notice of the proposed abandonment (the “Abandonment Notice”) to the Notice Parties;
- b. The Abandonment Notice shall describe in reasonable detail the De Minimis Assets to be abandoned by the Debtors and the Debtors’ reasons for such abandonment;
- c. If no written objections from any of the Notice Parties are filed with the Court within five (5) business days after the date of receipt of such Abandonment Notice, then the Debtors shall be authorized to immediately proceed with the abandonment; and
- d. If a written objection from any Notice Party is filed with the Court within five (5) business days after receipt of such Abandonment Notice, then the relevant De Minimis Asset shall only be abandoned by the Debtors upon either the consensual resolution of the objection by the parties in question or further order of the Court after notice and a hearing.

#### **BASIS FOR RELIEF REQUESTED**

##### **I. Abandonment of the Inconsequential Property at the Closed Restaurants Is Appropriate and Reasonable**

14. This Court has the authority to authorize the Debtors to abandon the Inconsequential Property pursuant to sections 105 and 554 of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order . . . that is necessary or appropriate to carry out the provision of this title.” Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a).

15. The Debtors have determined that the Inconsequential Property is no longer needed in their businesses and operations, that such property is burdensome, and that such property is of inconsequential value and benefit to the estate. Most of the Debtors’ leased and

owned equipment has been removed from the Closed Restaurants. However, certain other Inconsequential Property has remained. The cost to move and store the Inconsequential Property would exceed its value. Based upon the foregoing, the Debtors request that the Court authorize them to abandon the Inconsequential Property. The Debtors further request that any landlords of the Closed Restaurants be directed to reasonably cooperate with equipment lessors whose property is part of the Inconsequential Property being abandoned, so that such equipment lessors can remove their equipment, if they so desire.

**II. The Sale Procedures and Abandonment Procedures Are Reasonable, Appropriate and In the Best Interests of the Estate**

**A. The Sale Procedures Are Reasonable And Appropriate Under §§ 105(a) and 363(b)**

16. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Whether a sale of assets pursuant to section 363(b) of the Bankruptcy Code should be approved in a particular case is a matter addressed to the Court’s discretion, giving due consideration to the sound business judgment of the proponent of the sale. *See Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Delaware & Hudson Rv. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

17. Additionally, section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its equitable power under section 105(a) is proper. *See In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr.

S.D.N.Y. 2002). Pursuant to section 105(a), the court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code"); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that the bankruptcy court is "one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws").

18. The Debtors anticipate selling various De Minimis Assets to third parties during the course of their chapter 11 cases because such De Minimis Assets may no longer be necessary for the operation of their businesses or their rehabilitation efforts. Such De Minimis Assets may include, without limitation, surplus or obsolete equipment, furniture, and inventory. Given the relatively insignificant monetary value of such De Minimis Assets in relation to the magnitude of the Debtors' overall operations and asset base, the Debtors believe that it would not be an efficient use of estate resources to seek specific Court approval each time the Debtors have an opportunity to sell such assets.

19. The Debtors submit that the Sale Procedures will provide an orderly and efficient mechanism for the disposition of De Minimis Assets while minimizing the professional fees that would otherwise be incurred by the Debtors, either directly or indirectly. The Sale Procedures will also defray any carrying, moving, maintenance, storage or additional costs the Debtors may incur in connection with the De Minimis Assets. Additionally, the Sale Procedures will reduce the burden on the Court's docket while protecting the interests of creditors through the notice and objection procedures. Thus, the Debtors respectfully request that the Court enter an order



authorizing the Debtors to engage in Sales of De Minimis Assets from time to time in these chapter 11 cases in accordance with the Sale Procedures set forth herein.

**B. The Shortened Notice Procedures Are Appropriate**

20. The notice and hearing requirements of section 363(b)(1) of the Bankruptcy Code are satisfied if appropriate notice and an opportunity for a hearing are given in light of the particular circumstances. *See* 11 U.S.C. § 102(1)(A) (defining “after notice and a hearing” to mean such notice and an opportunity for hearing “as [are] appropriate in the particular circumstances”). Generally, Bankruptcy Rules 2002(a)(2) and 2002(i) require that a minimum of 20 days’ notice of proposed sales of property outside the ordinary course of business be provided by mail to “the debtor, the trustee, all creditors and indenture trustees” and any committee appointed under section 1102 of the Bankruptcy Code.

21. Courts are authorized to shorten the 20-day notice period generally applicable to asset sales, or to direct another method of providing notice, upon a showing of “cause.” *See* Fed. R. Bank. P. 2002(a)(2). The usual process of obtaining court approval of each Sale of De Minimis Assets (a) would create costs to the Debtors’ estates that may undermine or eliminate the economic benefits of the underlying *de minimis* transaction; and (b) may hinder the Debtors’ ability to take advantage of sale opportunities that are available only for a limited period of time. Therefore, the Debtors propose to streamline the process by eliminating the notice period required for Sales with a selling price equal to or less than \$50,000 and shortening the applicable notice period for Sales with a selling price greater than \$50,000 but less than or equal to \$200,000, in order to maximize the net value realized from such Sales. Such shortened notice procedures are reasonable and appropriate under the circumstances.

**C. The Sale Procedures Are Appropriate Under Section 363(f)**

22. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell its property free and clear of Liens in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting a lien, claim or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. See 11 U.S.C. § 363(f); *In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (section 363(f) is written in the disjunctive; the court may approve sale “free and clear” provided at least one of the subsections is met).

23. The Debtors propose to sell or transfer the De Minimis Assets in a commercially reasonable manner, after reasonable investigation and in the exercise of their sound business judgment, and expect that the value of the proceeds from such Sales will fairly reflect the value of the De Minimis Assets that are sold. The Debtors further propose that any party with a Lien on a De Minimis Asset sold or transferred pursuant to this Motion shall have a corresponding lien in the proceeds of such Sale, with the same validity, force, and effect as such lien had prior to such Sale. Moreover, the Debtors propose that no timely objection to a proposed Sale under the Sale Procedures, in each case following the provision of notice, be deemed to constitute “consent” to any proposed Sale within the meaning of 363(f)(2) of the Bankruptcy Code. As such, the requirements of section 363(f) of the Bankruptcy Code would be satisfied for any proposed Sale of a De Minimis Asset free and clear of Liens. To the extent any Notice Party objects to a proposed Sale of a De Minimis Asset, the Debtors reserve the right to demonstrate that such disposition is otherwise authorized under section 363 of the Bankruptcy Code.

**D. The Abandonment Procedures Are Appropriate Under Section 554(a)**

24. Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). The Debtors expect to take all reasonable steps to sell the De Minimis Assets that are not needed for their operations. The costs associated with Sales of certain De Minimis Assets, however, may exceed any possible proceeds thereof. The inability to consummate a commercially reasonable sale of De Minimis Assets would indicate that these De Minimis Assets have no meaningful monetary value to the Debtors’ estates. Further, the costs of storing and maintaining such De Minimis Assets may unnecessarily burden the Debtors’ estates. Accordingly, the Debtors submit that, in such circumstances, the abandonment of a De Minimis Asset pursuant to the Abandonment Procedures would be in the best interest of the Debtors’ estates. The Debtors will provide notice of such proposed abandonment to the Notice Parties, who will have the opportunity to object to the abandonment of a De Minimis Asset as they deem appropriate.

25. In light of the demonstrable benefits of streamlined procedures to sell, transfer or abandon De Minimis Assets, courts in this district have approved similar procedures in other large chapter 11 cases. The Debtors respectfully submit that similar relief is warranted in these chapter 11 cases.

**E. Waiver Of The Stay Period Under Bankruptcy Rule 6004(h)**

26. Bankruptcy Rule 6004(h) provides that an order authorizing the sale of property of the estate “is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Debtors respectfully seek a waiver of the 10-

day stay period in order to be able to consummate the Sales of De Minimis Assets immediately following their compliance with the applicable Sale Procedures.

**NOTICE**

27. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to the Committee, (c) Textron Financial Corporation; (d) counsel for Checkers Drive-In Restaurants, Inc., (e) the landlords of the Closed Restaurants, (f) any known lessors whose equipment may constitute the Inconsequential Property, and (g) any party filing a request for notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

**NO PRIOR REQUEST**

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

WHEREFORE, the Debtors respectfully request entry of two orders substantially in the form attached hereto granting the relief requested herein and such other and further relief as is just and proper.

Dated: June 30, 2009

**BLANK ROME LLP**

By: /s/ David W. Carickhoff

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