

**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)
: :

Re: Docket No. 43

CERTIFICATION OF COUNSEL

The undersigned hereby certifies as follows:

1. On June 19, 2009, counsel to Alset Owners, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”), filed the **Motion of the Debtors for Entry of Orders under 11 U.S.C. Sections 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014 (I) (A) Approving Bidding and Action Procedures, and Bidding Incentives for the Stalking Horse Bidder; (B) Approving Notice Procedures for the Solicitation of Bids, an Action, 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 Debtors' Assets and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief** (the “Motion”) (Docket No. 43).

2. On July 2, 2009, the United States Trustee (“Trustee”) filed an objection (“Objection”) to the Break-Up Fee requested by the Motion (Docket No. 57).

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). The Debtors’ service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Suite 111-B, Boca Raton, FL 33432-2813.

3. On July 7 2009, the Court held a hearing on the approval of the bidding procedures (the "Bidding Procedures") and the Break-Up Fee. As the hearing, the Court approved the Bidding Procedures and an expense reimbursement of up to \$150,000 (the "Expense Reimbursement") to Checkerco, Inc., the proposed buyer (the "Buyer").

4. Subsequent to the hearing, on July 8, 2009, the undersigned counsel circulated the proposed form of order attached hereto as Exhibit A (the "Proposed Order") upon (i) counsel to the Buyer, (ii) counsel to the Official Committee of Unsecured Creditors, (iii) the Office of the United States Trustee, and (iv) counsel to Textron Financial Corporation. Each of the foregoing parties has reviewed and consented to the Proposed Order.

WHEREFORE, the undersigned respectfully requests that the Court enter the attached Proposed Order at its earliest convenience.

Dated: July 8, 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
Wilmington, DE 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464

-and-

Michael Z. Brownstein
Rocco A. Cavaliere
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
Telephone: (212) 885-5000
Facsimile: (212) 885-5001

*Attorneys for Debtors and
Debtors in Possession*

EXHIBIT A

**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. :

Re: Dkt. No. 43

**ORDER UNDER 11 U.S.C. §§ 105(a), 363, AND 365 AND
FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002,
6004, 6006 AND 9014 (A) APPROVING (i) BIDDING AND AUCTION PROCEDURES,
AND (ii) AN EXPENSE REIMBURSEMENT FOR THE STALKING HORSE BIDDER
AND (B) APPROVING NOTICE PROCEDURES FOR (i) THE SOLICITATION
OF BIDS, (ii) AN AUCTION AND (iii) THE ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (C) SCHEDULING
HEARING ON APPROVAL OF A SALE OF SUBSTANTIALLY ALL OF
DEBTORS' ASSETS; AND (D) GRANTING RELATED RELIEF**

Upon the Motion (the “Motion”)² of the above-captioned Debtors and Debtors In Possession (the “Debtors”), pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order, *inter alia*, (i) approving bidding and auction procedures and related bidding incentives; (ii) approving the form and manner of notice of the sale(s) of substantially all of the Debtors’ assets; (iii) approving the form and manner of notice of the proposed assumption and assignment, including cure amounts, of certain executory contracts and unexpired leases; (iv) establishing a date for an auction; (v)

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). The Debtors’ service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, Florida 33432.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the Purchase Agreement, as applicable.

establishing a date for a sale hearing; and (vi) granting related relief [Dkt. No. 43]; and the Court having found that this matter constitutes a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N), and (O); and no other or further notice hereof being necessary or required; and the Court having found that the Debtors have articulated good and sufficient reasons in support of the relief requested in the Sale Motion regarding the sale process, including without limitation, (i) approval of the Bidding Procedures and Overbid Amount, the Expense Reimbursement (defined below) and the overbid amount of \$250,000 (the “Overbid Amount”) and (ii) approval and authorization to serve the Sale Notice and the Assignment Notice (each as defined below); and it appearing to the Court that based upon the representations contained in the Motion, the issuance of this Order is in the best interest of the Debtors, their estates and creditors, and after due deliberation and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. All objections to the Motion or the relief requested therein (and all reservations of rights included therein), as they pertain to the relief granted by entry of this Order, are overruled to the extent they have not been withdrawn, waived or otherwise resolved.
3. The bidding procedures attached hereto as Exhibit 1 (the “Bidding Procedures”), are fair and reasonable, are reasonably calculated to produce the best and highest offers for the Acquired Assets, and will confer actual benefits upon the Debtors’ estates. Consequently, the Bidding Procedures represent an exercise of sound business judgment and will facilitate a fair sales process. The Bidding Procedures are hereby authorized, approved and made part of this Order as if fully set forth herein. The Debtors are authorized to conduct a sale (the “Sale”) by auction (the “Auction”) of substantially all of the Debtors’ assets (the “Acquired

Assets”), subject to the executed Asset Purchase Agreement dated as of June 5, 2009 between Checkerco, Inc. (“Checkerco” or “Buyer”) and Debtors (as amended to date, together with all schedules and exhibits thereto collectively, the “Purchase Agreement”), including the letter agreement dated June 5, 2009 (the “Letter Agreement”) between the Debtors and Checkers Drive-in Restaurants, Inc., pursuant to the Bidding Procedures and the terms of this Order.

4. The Debtors are authorized and empowered to take such steps, expend such sums of money, and do such other things as may be reasonable or necessary to implement and effect the terms of this Order and the Bidding Procedures.

5. In the event that (a) the Debtors pursue an Alternative Transaction (as defined in the Purchase Agreement), or (b) the Purchase Agreement is terminated by Checkerco as permitted in Section 9.1(e) of the Purchase Agreement, the Debtors shall reimburse the Buyer for all out-of-pocket costs and expenses incurred by Buyer, including reasonable attorney’s fees and expenses, in connection with the negotiation, documentation and consummation of the Purchase Agreement and the transactions contemplated thereby in an amount not to exceed \$150,000 (the “Expense Reimbursement”); provided that the Debtors shall provide copies of all invoices and other documents evidencing the Expense Reimbursement to the Objection Notice Parties (defined below) at least five (5) days prior to the payment thereof. For the avoidance of doubt, Buyer shall only be entitled to payment from Debtors collectively in the amounts set forth in the preceding sentence and shall not be entitled to multiple payments of the full amount from each Debtor.

6. The Court finds that the Expense Reimbursement is fair and reasonable, was negotiated by the parties in good faith and at arms length, and is: (a) an actual and necessary cost and expense of preserving the Debtors’ estates, within the meaning of 11 U.S.C. § 503(b);

(b) commensurate to the real and substantial benefit that Buyer as stalking horse bidder in the Auction has conferred upon the Debtors' estates; (c) reasonable and appropriate, in light of the size and nature of the proposed sale and comparable transactions, the commitments that have been made, and the efforts that Buyer has made and will continue to make; (d) necessary to induce Buyer to continue to pursue the Sale and be bound by the Purchase Agreement; and (e) a necessary cost of the Sale and a sound and appropriate exercise of the Debtors' business judgment. The Expense Reimbursement has induced Buyer to submit a bid that will serve as a minimum bid upon which the Debtors, their creditors, and other bidders can rely. Buyer has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible purchase price for the Acquired Assets will be received. Accordingly, the Bidding Procedures and Expense Reimbursement are reasonable and appropriate and consistent with maximizing value for the benefit of the Debtors' estates.

7. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

8. Subject to the final determination of this Court, the Debtors are authorized, in accordance with the Bidding Procedures, to (a) determine which of the Initial Bids submitted prior to the Auction and the bids made at the Auction constitute the highest or otherwise best offer(s), and (b) properly reject any and all Initial Bids or bids at the Auction that are (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, or the terms and conditions of the Sale, or the terms of this Order and the Bidding Procedures, or (iii) contrary to the best interests of the Debtors, their estates and creditors.

9. As further described in the Bidding Procedures, in the event that the Debtors receive one or more qualifying bids ("Qualifying Bids") by the Bid Deadline, the

Debtors shall conduct the Auction on **August 25, 2009 at 11:00 a.m. (EDT)** (the "Auction Date") at the offices of Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174. Each bidder participating at the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale. The Auction shall be conducted openly and any creditor shall be permitted to attend, so long as such creditor provides written notice of its plan to attend to counsel for the Debtors at least two business days prior to the Auction so that appropriate arrangements can be made. The bidding at any Auction will be transcribed by a court reporter. In the event the Debtors do not receive any Qualified Bids other than the Purchase Agreement, the Debtors may cancel the Auction.

10. On **August 26, 2009 at 12:00 p.m. (EDT)** or as soon thereafter as counsel may be heard, the Sale Hearing will be held before the Honorable Brendan L. Shannon, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, DE 19801, to consider the issuance and entry of an order, *inter alia*, approving the sale(s) of substantially all of the Acquired Assets free and clear of all liens, claims, encumbrances, and interests (collectively, the "Liens"), with the same to attach to the sale proceeds in the same order of priority, and to the same extent as such Liens were valid, perfected and enforceable prior to such Sale. The Debtors may adjourn the Sale Hearing one or more times without further notice by making an announcement in open Court or by the filing of a hearing agenda announcing the adjournment, provided however, that to the extent the Debtors seek an adjournment of the Sale Hearing for more than 10 days, the Debtors will obtain the consent of Buyer, if applicable. The Debtors shall file a proposed form of sale order reasonably acceptable to Buyer or Successful Bidder upon conclusion of the Auction and prior to the Sale Hearing.

11. Notice of the Sale and Auction (the “Sale Notice”) and the notice (the “Assignment Notice”) of the proposed assumption and assignment of executory contracts and unexpired leases (collectively, the “Assigned Contracts”), in substantially the same forms as annexed to the Motion as Exhibits C and D, are sufficient to provide effective notice to all interested parties of the entry of this Order, the Bidding Procedures, the Auction, the Sale and the proposed assumption and assignment of the Assigned Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004, 6006, and 9014, and are hereby approved. The Debtors are authorized but not directed to publish notice of the proposed Sale and Auction in any newspaper or other news media, in furtherance of the marketing and sale of the Acquired Assets.

12. Within three (3) business days after entry of this Order, the Debtors will send (a) the Sale Notice to (i) taxing authorities or recording offices which have a reasonably known interest in the relief requested, (ii) the Office of the United States Trustee for Region 3 (the "OUST"), (iii) counsel to the Official Committee of Unsecured Creditors (the “Committee”); (iv) counsel to Buyer, (v) counsel to Textron Financial Corporation, (vi) all other known parties with liens of record on the Debtors’ assets as of the Petition Date, (vii) federal, state, and local regulatory authorities with jurisdiction over the Debtors, (viii) insurers, (ix) parties who have executed confidentiality agreements with respect to the Assets or parties known to have expressed an interest in the Assets, (x) all known creditors, and (xi) all other parties known to have requested notices pursuant to Bankruptcy Rule 2002 (collectively, the “Service Parties”) and (b) the Assignment Notice to all non-Debtor parties to the Assigned Contracts to Buyer.

13. All objections to the relief requested in the Motion in connection with the actual Sale of the Debtors’ Acquired Assets (including without limitation any objection to the assumption or assignment of the Assigned Contracts or the proposed Cure Amount with respect

thereto) must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) filed with the Clerk of the Bankruptcy Court, 824 Market Street, Wilmington, DE 19801 on or before **August 19, 2009 at 4:00 p.m. (EDT)** (the “Objection Deadline”); and (d) served so as to be received on or before the Objection Deadline by the following (collectively, the “Objection Notice Parties”):

(a) Altes, LLC/Setla LLC, 1200 North Federal Highway, Suite 111B, Boca Raton, FL 33432, Attn: Leonard Levitsky, Fax No: (561) 347-2842;

(b) counsel for the Debtors: Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174, Attn: Michael Z. Brownstein, Esq., Fax (212) 885-5001, and 1201 North Market Street, Suite 800, Wilmington, DE 19899, Attn: Bonnie Glantz Fatell, Esq. Fax: (302) 425-6464;

(c) counsel for the Committee: Klehr, Harrison, Harvey, Branzburg & Ellers, 919 Market Street, Suite 1000, Wilmington, DE 19801, Attn: Joanne B. Wills, Esq., Fax (302) 426-9193;

(d) counsel for Textron Financial Corporation, Armstrong Teasdale LLP, 2345 Grand Blvd., Suite 2000, Kansas City, Missouri 64108, Attn: John W. McClelland, Esq., Fax (816) 221-0786;

(e) the Office of United States Trustee, 844 North King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane Leamy, Esq., Fax (302) 573-6497; and

(f) counsel for Buyer: Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, NY 10019-6064, Attn: Diane Meyers, Esq., Fax (212) 492-0868.

The foregoing requirements are collectively referred to herein as the “General Objection Procedures.” Only those objections made in compliance with the General Objection Procedures will be considered by the Court at the Sale Hearing. The failure of any objecting person or entity to file its objections by the Objection Deadline and in accordance with the General Objection Procedures will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the proposed sale of Acquired Assets, including any objection to the sale of any of the Acquired

Assets free and clear of Liens, with any Liens to attach to the sale proceeds in the same order of priority, and to the same extent as such Liens were valid, perfected and enforceable prior to such sale.

14. All objections to the assumption or assignment of any Assigned Contract, including without limitation any objection to the Debtors' proposed Cure Amount or the provision of adequate assurance of future performance in connection therewith pursuant to section 365 of the Bankruptcy Code ("Adequate Assurance") must: (a) comply with the General Objection Procedures; (b) identify the Assigned Contract to which the objector is party; (c) describe with particularity any cure the claimant contends is required under section 365 of the Bankruptcy Code (the "Cure Claim") and identify the basis(es) of the alleged Cure Claim; (d) attach all documents supporting or evidencing the Cure Claim or otherwise setting forth the grounds for objection to the proposed assumption and assignment; and (e) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance (collectively with the General Objection Procedures, the "Assigned Contract Objection Procedures").

15. If no objection is timely and properly filed and served in accordance with the Assigned Contract Objection Procedures, (a) the Cure Amount set forth in the Assignment Notice shall be controlling notwithstanding anything to the contrary in any Assigned Contract and the non-debtor party to the Assigned Contract shall be forever barred from asserting any other claim arising prior to the assignment against the Debtors or Purchaser as to such Assigned Contract and (b) the Purchaser's promise to perform under the Assigned Contract shall be deemed Adequate Assurance thereunder. To the extent the Debtors dispute any Cure Claim, such dispute shall be presented to the Court at the Sale Hearing, or such later date and time as the

Debtors, the objector, and (after the Auction) the Successful Bidder, may agree or the Court may order, but such dispute shall not affect in any way the effectiveness of any assumption and assignment of an Assigned Contract. At any time prior to entry of a sale order, the Buyer or Successful Bidder may determine not to assume any Assigned Contract.

16. In the event one or more objections to the relief requested in the Motion is filed, the Debtors are authorized but not required, pursuant to Local Bankruptcy Rule 9006-1(d), to file a consolidated reply to such objection(s) on or before **August 24, 2009 at 4:00 p.m. (EDT)**.

17. To the extent there is any inconsistency between the terms of this Order and the Purchase Agreement, the terms of this Order shall control.

18. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

19. This Order shall be binding upon and inure to the benefit of the Debtors, the Purchaser, and their respective successors and assigns, including any chapter 11 or chapter 7 trustee or other fiduciary appointed in these cases or subsequent cases.

20. The Court shall retain exclusive jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: July ____, 2009

Honorable Brendan L. Shannon
United States Bankruptcy Judge

EXHIBIT 1

Bidding Procedures

EXHIBIT "1"

BIDDING PROCEDURES

Pursuant to the prefixed Order Under 11 U.S.C. §§ 105(a), 363, and 365 And Federal Rules Of Bankruptcy Procedure 2002, 6004, 6006 And 9014 (A) Approving (i) Bidding And Auction Procedures, (ii) An Expense Reimbursement For The Stalking Horse Bidder And (iii) Auction Procedures; (B) Approving Notice Procedures For (i) The Solicitation Of Bids, (ii) An Auction And (iii) The Assumption And Assignment Of Executory Contracts And Unexpired Leases; (C) Scheduling Hearing On Approval Of A Sale Of Substantially All Of The Debtors' Assets; And (D) Granting Related Relief, dated July 8, 2009 (the "Bidding Procedures Order"),¹ the following initial bidding procedures (the "Bidding Procedures") shall govern the Sale and competitive bidding process applicable to the Sale of substantially all of the assets (the "Acquired Assets") of the Debtors as described in the Bidding Procedures Order:

I. Sale Notice

Within three business days of entry of the Bidding Procedures Order, the Debtors will distribute a copy of the Sale Notice to the Service Parties. The Debtors will provide a copy of these Bidding Procedures, the Bidding Procedures Order, and the Purchase Agreement, upon request by any party in interest.

II. Bid Deadline

An Initial Bid (defined below) must be submitted on or before the Bid Deadline which is **August 21, 2009 at 4:00 p.m. (EDT)**, via electronic mail or facsimile, to the following:

(a) Altes, LLC/Setla LLC, 1200 North Federal Highway, Boca Raton, FL 33432, Attn: Leonard Levitsky, Fax: (561) 347-2842;

(b) counsel for the Debtors: Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174, Attn: Michael Z. Brownstein, Esq. and Rocco A. Cavaliere, Esq., Fax (212) 885-5001, and 1201 North Market Street, Suite 800, Wilmington, DE 19899, Attn: Bonnie Glantz Fatell, Esq. Fax: (302) 425-6464;

(c) counsel for the Committee: Klehr, Harrison, Harvey, Branzburg & Ellers, 919 Market Street, Suite 1000, Wilmington, DE 19801, Attn: Joanne B. Wills, Esq., Fax (302) 426-9193;

¹ Capitalized terms not otherwise defined in these Bidding Procedures shall have the meanings ascribed to such terms in the Bidding Procedures Order or the Purchase Agreement, as applicable.

(d) counsel for Textron Financial Corporation, Armstrong Teasdale LLP, 2345 Grand Blvd., Suite 2000, Kansas City, Missouri 64108, Attn: John W. McClelland, Esq., Fax (816) 221-0786;

(e) the Office of the United States Trustee, 844 North King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane Leamy, Esq., Fax (302) 573-6497; and

(f) counsel for Buyer: Paul Weiss Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, NY 10019-6064, Attn: Diane Meyers, Esq., Fax (212) 492-0868.

The Debtors may extend the Bid Deadline for one or more bidders but shall not be obligated to do so.

III. Due Diligence and Other Considerations

Upon execution of a confidentiality agreement in form and substance acceptable to the Debtors, the Debtors will provide to bidders reasonable access to its books, records and management for the purpose of conducting due diligence prior to the Auction. By participating in the Auction, all bidders are deemed to acknowledge that they have had sufficient and reasonable access to the Debtors' books, records and management for the purposes of conducting due diligence.

All Parties who submit an Initial Bid shall be deemed to have read, understood, consented to and agreed to be bound by the provisions of the Bidding Procedures Order and these Bidding Procedures.

IV. Determination of Qualified Bid Status

To qualify as a bid (the "Initial Bid") for the Acquired Assets (including the Acquired Textron Assets), the bid must, at a minimum, comply with the following requirements:

- (a) The Initial Bid must be received by the Bid Deadline;
- (b) The Initial Bid must contain a signed definitive asset purchase agreement (together with a copy marked to show changes from the Purchase Agreement) (a "Qualified APA") and identifying the Acquired Assets the party seeks to purchase with, at a minimum, the following requirements: (i) having terms and conditions no less favorable to the Debtors than those of the Purchase Agreement except with higher or better consideration, which can be determined by aggregating bids made on different portions of the Acquired Assets (provided that no Initial Bid shall provide for the payment to such bidder of any breakup fee, topping fee, expense reimbursement, or other

similar arrangement); (ii) provide for a Purchase Price under the Purchase Agreement as follows: (a) \$1,200,000 for all of the Debtors' Acquired Assets, except the Acquired Textron Assets, (b) \$300,000 for the Acquired Textron Assets, (c) cure costs due to the Franchisor in connection with the assumption and assignment of the Franchise Agreements equaling at least approximately \$3,800,000 payable to Franchisor through July 31, 2009 for outstanding royalties and other payment obligations under the Franchise Agreements, and additional royalties and other payment obligations accruing after August 1, 2009 through the closing of a Sale, all as set forth in the Purchase Agreement and related schedules, (d) up to \$500,000 for restructuring costs of estate professionals payable by Buyer and Franchisor in accordance with Section 1.9 of the Purchase Agreement and the Letter Agreement which are to be paid to the Debtors' estates for distribution in accordance with the priority scheme of the Bankruptcy Code, plus (B) the amount of the Expense Reimbursement, plus (C) the Assumed Liabilities including Cure Costs, plus (D) \$250,000 (the "Overbid Amount"); (iii) not being subject to any (w) financing contingency, (x) contingency relating to the completion of unperformed due diligence, (y) contingency relating to the approval of the bidder's board of directors or other internal approvals or consents, or (z) any other conditions precedent to the bidder's obligation to purchase the Assets other than those already included in the Purchase Agreement;

- (c) The Initial Bid(s) must be accompanied by the provision of a certified or bank check, wire transfer, or letter of credit reasonably acceptable to the Debtors in the aggregate amount of at least \$75,000 as a good faith deposit (the "Deposit"), to be held in escrow by Debtors' counsel and credited to the closing payment if the bidder(s) are ultimately determined to be the Successful Bidder(s) (as defined below) or to be returned to the bidder(s) otherwise and a written statement that the bidder(s) agree to be bound by the terms of these Bidding Procedures and the Bidding Procedures Order;
- (d) The Initial Bid must provide for the satisfaction of capital expenditures under the Franchise Agreements within a reasonable period of time after the closing of a Sale and to the reasonable satisfaction of the Franchisor, all as set forth in the Purchase Agreement and related schedules;
- (e) The Initial Bid must identify the Assigned Contracts that the bidder(s) desires be assumed and assigned to bidder(s).

- (f) To the extent not previously provided to Debtors, the Initial Bid must be accompanied by evidence satisfactory to Debtors in their commercially reasonable discretion that the bidder is willing, authorized, capable and qualified financially, legally and otherwise, of unconditionally performing all obligations under its Qualified APA (or its equivalent) in the event that it submits a Successful Bid (as defined below) at the Auction and within the timeframe contemplated under the Purchase Agreement;
- (g) Remain open and irrevocable until the earlier of the end of the second business day following the closing of the transaction and fifteen (15) days after the entry of a final order by the Court approving a definitive agreement providing for the Sale of Assets;
- (h) The Initial Bid must clearly state the range of cash consideration, in U.S. dollars, that the bidder(s) are prepared to pay for any or all of Debtors' assets. Only cash consideration will be evaluated for this purpose; the utilization of notes or other instruments to make up a portion of the cash consideration will not be evaluated as cash;
- (i) The Initial Bid must be accompanied by information and assurances satisfactory to the Debtors that the bidder(s) can obtain all required consents, approvals and licenses to fulfill the terms, conditions and obligations under any and all related agreements, including but not limited to, sufficient information to permit the Court, the Debtors and any applicable lessors or counterparties to determine the proposed assignee's ability to comply with the requirements of section 365 of the Bankruptcy Code (to the extent applicable);
- (j) The Initial Bid(s) must state that they have been approved (subject to stated conditions) by all necessary governing bodies or investors (e.g., board of directors or minority partners) and fully disclose the identity of each entity that will be bidding for the Acquired Assets or otherwise participating in connection with such bid, and the complete terms of any such participation;
- (k) The Initial Bid(s) must state that they are made by the principals of the Bidder(s), and not by any person acting as agent for another, whether the principals are disclosed or

undisclosed; however, a bidder(s) may appoint a representative to act on its behalf in connection with the Initial Bid(s); and

- (l) The Initial Bid must state that bidder(s) will purchase the Acquired Assets even in the event the Acquired Textron Assets are sold separately in accordance with the Bidding Procedures.

V. Determination Of Qualified Bid Status Regarding The Acquired Textron Assets.

The Debtors may also sell the Acquired Textron Assets separately to the extent bidders are interested in only the Acquired Textron Assets. To qualify as an Initial Bid for solely the Acquired Textron Assets, the bid must at a minimum, comply with the following requirements:

- (a) All of the requirements under Section IV, except Section IV(b) (c), and (d);
- (b) The Initial Bid must contain a signed definitive asset purchase agreement (together with a copy of the signed agreement that is marked to show changes from the Purchase Agreement) (a “Qualified APA”) and identifying the Acquired Textron Assets the party seeks to purchase with, at a minimum, the following requirements: (i) having terms and conditions no less favorable to the Debtors than those of the Purchase Agreement as it relates to the Acquired Textron Assets, except with higher or better consideration (provided that no Initial Bid shall provide for the payment to such bidder of any breakup fee, topping fee, expense reimbursement, or other similar arrangement); (ii) providing for consideration that is, greater than the sum of (A) the Consideration of \$300,000 provided for in the Purchase Agreement for the Acquired Textron Assets, plus (B) \$14,000; (iii) not being subject to any (w) financing contingency, (x) contingency relating to the completion of unperformed due diligence, (y) contingency relating to the approval of the bidder's board of directors or other internal approvals or consents, or (z) any conditions precedent to the bidder's obligation to purchase the Assets other than those included in the Purchase Agreement;
- (c) The Initial Bid must be accompanied by the provision of a certified or bank check, wire transfer, or letter of creditor reasonably acceptable to the Debtors in the aggregate amount of \$3,500 as a good faith deposit (the “Textron Deposit”) to be held in escrow and credited to the closing payment if the bidder(s) are ultimately determined to be the Successful Bidder(s) (as defined below) or to be returned to the bidder(s) otherwise and a written statement that the bidder(s) agree to be

bound by the terms of these Bidding Procedures and the Bidding Procedures Order; and

- (d) Textron Financial Corporation (“Textron”) shall be permitted to credit bid on the Acquired Textron Assets pursuant to § 363(k) of the Bankruptcy Code, without compliance with paragraphs (a), (b) and (c) of this section. On or prior to the Bid Deadline, which shall be established by the Bidding Procedures Order and may be extended by the Debtors but shall be no earlier than **August 21, 2009 at 4:00 p.m. (EDT)**, Textron shall send notice via electronic mail or facsimile of its intention to credit bid to the parties required to receive an Initial Bid under the Bidding Procedures. A credit bid by Textron is a “Qualified Bid” and Textron is a “Qualified Bidder.”

The Debtors and their advisors, and in consultation with the Committee, will evaluate any Initial Bids submitted in accordance with Sections IV and V herein and determine whether to deem any such bid(s) a “Qualified Bid” and invite the “Qualified Bidder” to participate in the Auction. For the avoidance of all doubt, the Purchase Agreement is a “Qualified Bid” and the Buyer is a “Qualified Bidder”. Initial Bids will be evaluated on the basis of factors such as but not limited to (i) the indicated purchase price, (ii) the Qualified Bidder’s financial capacity to consummate a transaction if selected as the Successful Bidder, (iii) the extent and type of requested changes to the Purchase Agreement, (iv) any required government approvals and the perceived timing and difficulty in connection therewith; (v) the Qualified Bidder’s ability to expeditiously consummate the transaction if selected as a Successful Bid, and (vi) other factors deemed appropriate in the Debtors’ discretion after consultation with the Committee. The Debtors will select those Initial Bids that they consider to be Qualified Bids on or before the commencement of the Auction, provided, however, that the Debtors reserve the right to reject any Initial Bid as insufficient, and further provided, however, that, if no other Qualified Bid is received (other than that of Buyer), the Debtors shall have no obligation to conduct an Auction.

VI. The Auction

(A) In the event one or more Qualified Bids are timely received from Qualified Bidders, an auction (the “Auction”) of the Acquired Assets will be held on **August 25, 2009 at 11:00 a.m. (EDT)** at the offices of Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174, at which Auction the Debtors may select as the Successful Bid the highest or best Qualified Bid for the Acquired Assets (including the Acquired Textron Assets) or for solely the Acquired Textron Assets. In the event Qualified Bidders for the Acquired Textron Assets are received, the Debtors will conduct two separate Auctions. Based upon the terms of the bids received, the level of interest expressed as to particular assets, and such other information as the Debtors, after consultation with the Committee, determine is relevant, the Debtors may adopt rules consistent with these Bidding Procedures and conduct the Auction in the manner the Debtors determine will promote the goals of the Auction and achieve the maximum realizable value for the Acquired Assets. **ALL SALE(S) SHALL BE SUBJECT**

TO THE APPROVAL OF THE BANKRUPTCY COURT. The proceedings at the Auction will be transcribed by a court reporter.

(B) Buyer, the Qualified Bidders, Textron, the OUST, the Debtors, and the professionals of the foregoing shall be entitled to attend and be heard at the Auction. Any bidder that the Debtors believe is not reasonably interested in bidding may be excluded from the Auction. Any creditor of the Debtors that wishes to attend the Auction may do so as long as it gives written notice of its planned attendance to Debtors' counsel at least two business days prior to the Auction.

(C) At the outset of the Auction, each Qualified Bidder must confirm on the record that it has not and will not engage in any collusion with respect to the bids submitted at the Auction.

(D) During the Auction, bidding on the Acquired Assets (including the Acquired Textron Assets) shall (i) begin with the highest Qualified Bid(s) and (ii) continue with successive bids in increments of at least \$50,000 over and above the previous highest Qualified Bid(s) (the "Incremental Bid Amount"), and (iii) continue thereafter in minimum increments of at least the Incremental Bid Amount.² Buyer has the right to receive a credit for the Expense Reimbursement as part of any subsequent bid made by Buyer at the Auction for the Acquired Assets. Unless otherwise agreed to by the Debtors, in their discretion, all participating bidders will be permitted sufficient time in which to respond to the previous bid at the Auction.

(E) During the Auction, the Debtors shall (i) review each bid, if any, on the basis of its financial and contractual terms and the factors relevant to the sale process and the best interest of the Debtors' stakeholders, including, without limitation, those factors affecting the speed and certainty of consummating a sale transaction(s) and (ii) after consultation with the Committee, determine and identify the highest or best bid(s) (the "Successful Bid") and the next highest or otherwise best offer(s), if any, after the Successful Bid (the "Next Highest Bid"). The party submitting the highest and best bid(s) for the Acquired Assets shall be referred to as the "Successful Bidder". Any bid submitted after the conclusion of the Auction shall not be considered for any purpose. All bids at the Auction must remain open and irrevocable until the earlier of the end of the second business day following the closing of the transaction and fifteen (15) days after the entry of a final order by the Court approving a definitive agreement(s) providing for the Sale(s) of the Assets.

(F) Upon conclusion of the Auction and prior to the Sale Hearing (unless otherwise agreed to by the Debtors and the Successful Bidder(s)), the bidder or bidders making the Successful Bid or Bids, if any, shall complete and sign all agreements or other documents evidencing and containing the terms and conditions upon which such bid was made, if it has not already done so.

(G) Subject to the terms and provisions of the Purchase Agreement, the Debtors, after consultation with the Committee, reserve the right to reject at any time prior to the entry of

² The Incremental Bid Amount for a bid for only the Acquired Textron Assets will be \$2,800.

an order of the Bankruptcy Court approving a sale of any of the Debtors' Assets, any offer which the Debtors deem to be (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the District of Delaware, or the terms and conditions of the Sale set forth herein, or (iii) contrary to the best interests of the Debtors, their estates, and their creditors. Subject to the terms and provisions of the Purchase Agreement, the Debtors will have no obligation to accept or submit for Bankruptcy Court approval any offer presented prior to or at the Auction.

(H) All bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale of the Acquired Assets and the construction and enforcement of the Successful Bid or the Next Highest Bid.

VII. The Sale Hearing

(A) The Sale Hearing for the approval of the Sale of the Acquired Assets to the Successful Bidder shall be conducted by the Bankruptcy Court on **August 26, 2009 at 12:00 p.m. (EDT)** or at such other time as the Bankruptcy Court permits. The Sale Hearing may be adjourned by the Debtors or by the Bankruptcy Court at any time provided however, that to the extent the Debtors seek an adjournment of the Sale Hearing for more than 10 days, the Debtors will obtain the consent of Buyer, if applicable.

(B) Subject to Bankruptcy Court approval following the Auction and assume the Assigned Contracts, the Successful Bidder(s) seeking to purchase the Acquired Assets, shall purchase the Acquired Assets, free and clear of all Liens, pursuant to the Successful Bid and the corresponding order(s) of the Court approving the Sale.

(C) Following the approval of the Successful Bid, the Debtors will be authorized to take all commercially reasonable and necessary steps to complete and implement the transaction(s) contemplated by the Successful Bid, including but not limited to seeking entry of a sale order.

(D) Following the Sale Hearing approving the sale of the Acquired Assets to the Successful Bidder(s), if any Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid(s), as disclosed at the Sale Hearing, will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not required, to consummate the Sale(s) with the Qualified Bidder(s) submitting such bid(s) without further order of the Bankruptcy Court.

(E) Any sale of the Acquired Assets shall be without representation or warranties of any kind, nature or description by the Debtors, their agents or their estate, except as provided in the purchase agreement between the Debtors and the subject Successful Bidder. All of the Acquired Assets shall be transferred "as is," "where is" and "with all faults." **EXCEPT AS SET FORTH IN THE PURCHASE AGREEMENT, THE DEBTORS EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A**

PARTICULAR PURPOSE AND MAKE NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY ASSET.

VIII. Procedures Governing Deposits

(A) All Deposits shall be returned by the Debtors to the unsuccessful bidders within five (5) business days after the closing of the Sale; provided, however, that if the Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, such Successful Bidder's Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder, except as to Checkerco, in which case the provisions of the Purchase Agreement and the deposit agreement executed by the parties thereto shall control.

(B) All Deposits shall be held, subject to the provisions of the Bidding Procedures Order and these Bidding Procedures (and in the case of Checkerco, the provisions of the Purchase Agreement) by counsel for the Debtors in a segregated non-interest bearing bank account. Subject to the terms of the Purchase Agreement, in the event of a dispute concerning the Debtors' right to retain any Deposit, the bidder's sole remedy shall be to seek relief from the Bankruptcy Court to compel the return of the Deposit.

IX. No Break-Up Fee Or Expense Reimbursement

Except as otherwise provided with respect to Checkerco or as otherwise ordered by the Bankruptcy Court, no bidder shall be entitled to reimbursement of its costs, expenses or professional fees incurred in connection with the Sale and competitive bidding process for the Assets, including formulation and submission of any bid or any due diligence efforts.

X. Reservation of Rights

Subject to the terms and provisions of the Purchase Agreement, and after consultation with the Committee, the Debtors reserve their rights to: (i) impose at or before the Auction such other and additional terms and conditions as may be in the interest of the Debtors, their estates and creditors (so long as such terms are not materially inconsistent with the terms of the Bidding Procedures Order or these Bidding Procedures); (ii) extend the deadlines set forth in the Bidding Procedures Order and/or these Bidding Procedures; (iii) adjourn the Auction at or before the Auction; (iv) adjourn the Sale Hearing without further notice by making an announcement in open Court or by the filing of a hearing agenda pursuant to Bankr. D. Del. L.R. 9029-3; (v) waive the terms and conditions set forth herein; (vi) withdraw from the Auction some or all of the Acquired Assets at any time prior to or during the Auction; and (vii) cancel the Auction, provided however, to the extent that the Debtors seek to extend any deadlines or adjourn any scheduled dates established by the Bidding Procedures Order for more than 10 days, the Debtors will obtain the consent of Buyer, if applicable.