

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.