

**THIS DISCLOSURE STATEMENT HAS
NOT YET BEEN APPROVED BY THE COURT**

This proposed Disclosure Statement is not a solicitation of acceptance or rejection of the Chapter 11 Plan of FB Liquidating Estates, et al. Acceptances or rejections may not be solicited until the Bankruptcy Court has approved this Disclosure Statement under Bankruptcy Code § 1125. This proposed Disclosure Statement is being submitted for approval only, and it has not yet been approved by the Bankruptcy Court.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
FB Liquidating Estate, <i>et al.</i> , ¹)	Case No. 09-11525 (MFW)
)	(Jointly Administered)
Debtors.)	
_____)	

Objection Deadline: December 14, 2009, at 4:00 p.m.
Hearing Date: December 17, 2009, at 10:30 a.m.

**DISCLOSURE STATEMENT IN RESPECT OF
JOINT PLAN OF LIQUIDATION OF FB LIQUIDATING ESTATE,
ET AL., AND THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

IMPORTANT DATES

- Date by which Ballots must be received: _____, 2010 at 4:00 p.m.
- Date by which objections to Confirmation of the Plan must be filed and served:
_____, 2010 at 4:00 p.m.
- Hearing on Confirmation of the Plan: _____, 2010 at ____ a.m./p.m.

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¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Filene's Basement, Inc. (now known as FB Liquidating Estate) (8237); FB Services LLC (7224) and FB Leasing Services LLC (7226). The address for all Debtors is 25 Corporate Drive, Burlington, MA 01803.

I.

PREFATORY STATEMENT AND DEFINITIONS

Pursuant to Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), FB Liquidating Estate (formerly known as Filene’s Basement, Inc. (“Filene’s Basement”)), FB Services LLC (“FB Services”) and FB Leasing Services LLC (“FB Leasing”), the debtors and debtors in possession in the above-captioned cases (the “Debtors”), hereby submit this disclosure statement (the “Disclosure Statement”) in support of the Joint Plan of Liquidation of FB Liquidating Estate, *et al.*, and the Official Committee of Unsecured Creditors Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”). The definitions contained in the Bankruptcy Code are incorporated herein by this reference. The definitions set forth in Article I of the Plan shall also apply to capitalized terms used herein that are not otherwise defined.

II.

INTRODUCTION AND OVERVIEW

A. Introduction

On May 4, 2009 (the “Petition Date”), the Debtors commenced the above-referenced bankruptcy cases (the “Chapter 11 Cases”) by each filing a voluntary petition under Chapter 11 of the Bankruptcy Code.

This Disclosure Statement, submitted in accordance with section 1125 of the Bankruptcy Code, contains information regarding the Plan proposed by the Debtors and the Official Committee of Unsecured Creditors. A copy of the Plan accompanies this Disclosure Statement. The Disclosure Statement is being distributed to you for the purpose of enabling you to make an informed judgment about the Plan.

The Disclosure Statement describes the Plan and contains information concerning, among other matters: (1) the history, business, results of operations, management, properties and liabilities of and pending litigation of and against the Debtors; (2) the assets available for distribution under the Plan; and (3) a summary of the Plan. The Debtors strongly urge you to carefully review the contents of this Disclosure Statement and the Plan (including the exhibits to each) before making a decision to accept or reject the Plan. Particular attention should be paid to the provisions affecting or impairing your rights as a Creditor.

On or about _____, 2009, the Bankruptcy Court approved this Disclosure Statement as containing sufficient information to enable a hypothetical reasonable investor to make an informed judgment about the Plan. Under section 1125 of the Bankruptcy Code, this approval enabled the Debtors to send you this Disclosure Statement and solicit your acceptance of the Plan. The Bankruptcy Court has not passed on the Plan itself or conducted a detailed investigation into the contents of this Disclosure Statement.

Your vote on the Plan is important. Absent acceptance of the Plan, there may be protracted delays or a liquidation under Chapter 7 of the Bankruptcy Code. These alternatives may not provide for distribution of as much value to Holders of Allowed Claims as does the Plan. Accordingly, the Debtors urge you to accept the Plan by completing and returning the enclosed ballot(s) no later than _____, 2009, at 4:00 p.m. Eastern Time.

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IS A PLAN PROPONENT, SUPPORTS CONFIRMATION OF THE PLAN, AND URGES CREDITORS TO VOTE IN FAVOR OF THE PLAN.

B. Disclaimers

THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE DEBTORS' PROPOSED PLAN. PLEASE READ THIS DOCUMENT WITH CARE. THE PURPOSE OF THE DISCLOSURE STATEMENT IS TO PROVIDE "ADEQUATE INFORMATION" OF A KIND, AND IN SUFFICIENT DETAIL, AS FAR AS IS REASONABLY PRACTICABLE IN LIGHT OF THE NATURE AND HISTORY OF THE DEBTORS AND THE CONDITION OF THE DEBTORS' BOOKS AND RECORDS, THAT WOULD ENABLE A HYPOTHETICAL REASONABLE INVESTOR TYPICAL OF HOLDERS OF CLAIMS OR INTERESTS OF THE RELEVANT CLASS TO MAKE AN INFORMED JUDGMENT CONCERNING THE PLAN. SEE 11 U.S.C. § 1125(a).

FOR THE CONVENIENCE OF CREDITORS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ANY SUMMARY. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN CONTROL.

NO REPRESENTATIONS CONCERNING THE DEBTORS' FINANCIAL CONDITION OR ANY ASPECT OF THE PLAN ARE AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION THAT ARE OTHER THAN AS CONTAINED IN OR INCLUDED WITH THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION.

THE FINANCIAL INFORMATION CONTAINED HEREIN, UNLESS OTHERWISE INDICATED, IS UNAUDITED. MOREOVER, BECAUSE OF THE DEBTORS' FINANCIAL DIFFICULTIES, AS WELL AS THE COMPLEXITY OF THE DEBTORS' FINANCIAL MATTERS, THE BOOKS AND RECORDS OF THE DEBTORS, UPON WHICH THIS DISCLOSURE STATEMENT IN PART IS BASED, MAY BE INCOMPLETE OR INACCURATE. REASONABLE EFFORT HAS BEEN MADE, HOWEVER, TO ENSURE THAT ALL SUCH INFORMATION IS FAIRLY PRESENTED.

PACHULSKI STANG ZIEHL & JONES LLP ("PSZ&J") IS GENERAL INSOLVENCY COUNSEL TO THE DEBTORS. PSZ&J HAS RELIED UPON INFORMATION PROVIDED BY THE DEBTORS IN CONNECTION WITH PREPARATION

OF THIS DISCLOSURE STATEMENT. ALTHOUGH PSZ&J HAS PERFORMED CERTAIN LIMITED DUE DILIGENCE IN CONNECTION WITH THE PREPARATION OF THIS DISCLOSURE STATEMENT, COUNSEL HAS NOT INDEPENDENTLY VERIFIED ALL OF THE INFORMATION CONTAINED HEREIN.

THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS LEGAL, BUSINESS, OR TAX ADVICE. EACH CREDITOR OR INTEREST HOLDER SHOULD CONSULT HIS OR HER OWN LEGAL COUNSEL AND ACCOUNTANT AS TO LEGAL, TAX, AND OTHER MATTERS CONCERNING HIS OR HER CLAIM.

C. An Overview of the Chapter 11 Process

Chapter 11 of the Bankruptcy Code contains numerous provisions, the general effect of which is to provide the debtor with “breathing space” within which to propose a restructuring of its obligations to third parties. The filing of a Chapter 11 bankruptcy petition creates a bankruptcy estate comprising all of the property interests of the debtor. Unless a trustee is appointed by the Bankruptcy Court for cause (no trustee has been appointed in these Chapter 11 Cases), a debtor remains in possession and control of all its assets as a “debtor in possession.” The debtor may continue to operate its business in the ordinary course on a day-to-day basis without Bankruptcy Court approval. Bankruptcy Court approval is only required for various enumerated kinds of transactions (such as certain financing transactions) and transactions out of the ordinary course of a debtor’s business. The filing of the bankruptcy petition gives rise to what is known as the “automatic stay” which, generally, enjoins creditors from taking any action to collect or recover obligations owed by a debtor prior to the commencement of a Chapter 11 case. The Bankruptcy Court can grant relief from the automatic stay under certain specified conditions or for cause.

The Bankruptcy Code authorizes the creation of one or more official committees to protect the interests of some or all creditors or interest holders. The fees and expenses of counsel and other professionals employed by such official committees and approved by the Bankruptcy Court are generally borne by a bankruptcy estate. One official committee has been appointed in these Chapter 11 Cases, which represents the collective interests of general unsecured creditors (the “Committee”).

A Chapter 11 debtor may emerge from bankruptcy by successfully confirming a plan of reorganization. Alternatively, the assets of a debtor may be sold and the proceeds distributed to creditors through a plan of liquidation, such as the Plan. A plan may be either consensual or non-consensual and may provide, among other things, for the treatment of the claims of creditors and the interests of equity holders and the holders of options or warrants. The provisions of the Debtors’ Plan are summarized below.

D. Plan Overview

The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by reference to the full text of the Plan. The Plan is a plan of liquidation and provides for the distribution of the proceeds from the liquidation of the Debtors’ assets (as discussed

below). The Plan proposes to substantively consolidate the Debtors' Estates for voting and for distribution purposes only and, after the Effective Date of the Plan, for the Debtors to continue for the purpose of winding up their affairs, liquidating their remaining assets, administering the Plan, enforcing and prosecuting claims and Litigation, resolving Claims, and filing appropriate tax returns. Post Effective Date, the Debtors' Assets shall be held by the Debtors and by a Corporate Representative for Creditors and shall be distributed in accordance with the terms of the Plan.

The Plan provides for the classification and treatment of Claims against and Equity Interests in the Debtors, and it separates those Claims and Equity Interests into Classes. The classification of Claims and Equity Interests and their treatment under the Plan take into account the differing nature and priority of the various Claims and Equity Interests under the Bankruptcy Code. The Plan contemplates that the Debtors will ultimately be dissolved and all existing equity interests in the Debtors (including all issued and outstanding preferred and common stock and/or limited liability company membership interests) will be extinguished and cancelled.

1. Summary of Classification and Treatment of Claims and Interests under the Plan.

The following chart² briefly summarizes the treatment of Creditors and Equity Interest Holders under the Plan. Amounts listed below are estimated. Actual Claims and Distributions will vary depending upon, among other things, the outcome of objections to Claims and recoveries on any Litigation.

a. Unclassified Claims

CLASS NO.	DESCRIPTION	ESTIMATE OF CLAIM AMOUNTS ULTIMATELY ALLOWABLE	TREATMENT
N/A	Administrative Claims Estimated Recovery: 100%	\$2,300,000	The Debtors shall pay each Holder of an Allowed Administrative Claim in full in the amount of its Allowed Claim, without interest, in Cash (a) on or as soon as practicable after the later of (i) the Effective Date, or (ii) the date upon which the Bankruptcy Court enters a Final Order determining or approving such Allowed Administrative Claim; (b) in accordance with the terms and conditions of agreements between the Holders of such Allowed Administrative Claims and the Debtors or the Debtors, as the case may be; (c) with respect to any Allowed Administrative Claims representing obligations incurred in the ordinary course of the Debtors' business, upon such regular and customary

² This chart is only a summary of the classification and treatment of Claims and Equity Interests under the Plan and the claim amounts and recoveries are only estimates of the claims asserted against the Debtors. The total amount of Allowed Claims and recoveries may differ from the estimated amounts set forth in this Disclosure Statement. References should be made to the entire Disclosure Statement and the Plan for a complete description of the classification and treatment of Claims and Interests.

CLASS NO.	DESCRIPTION	ESTIMATE OF CLAIM AMOUNTS ULTIMATELY ALLOWABLE	TREATMENT
			payment or performance terms as may exist in the ordinary course of the Debtors' business or as otherwise provided in the Plan; or (d) with respect to statutory fees due pursuant to 28 U.S.C. § 1930(a)(6), until the entry of a final decree or an order converting or dismissing the case.
N/A	Priority Tax Claims Estimated Recovery: 100%	\$2,200,000	On the later to occur of: (i) the Effective Date or (ii) the date on which such Claim shall become an Allowed Claim, the Debtors shall pay to each Holder of an Allowed Priority Tax Claim the Allowed amount of such Allowed Priority Tax Claim without interest from the Net Proceeds.
N/A	Professional Fee Claims Estimated Recovery: 100%	\$5,000,000	The Debtors shall pay Professionals all of their respective accrued and Allowed fees and reimburse all of their accrued and Allowed expenses arising prior to the Effective Date, plus reasonable fees for services rendered, and actual and necessary costs incurred, in connection with the filing, service and prosecution of any applications for allowance of Professional Fee Claims pending on the Effective Date or filed and/or served after the Effective Date, plus post-Effective Date fees.

b. Classified Claims

1	Priority Claims Estimated Recovery: 100%	\$1,000,000	Class 1 consists of Priority Claims (other than Priority Tax Claims). The Debtors shall pay from the Net Proceeds the Allowed amount of each Class 1 Priority Claim to each Entity holding a Class 1 Priority Claim as soon as practicable following the later of: (a) the Effective Date and (b) the date such Class 1 Priority Claim becomes an Allowed Claim (or as otherwise permitted by law). The Debtors shall pay each Entity holding a Class 1 Priority Claim in Cash in full in respect of such Allowed Claim without interest from the Petition Date; <i>provided, however</i> , that such Entity may be treated on such less favorable terms as may be agreed to in writing by such Entity. Class 1 is an Unimpaired Class and is not entitled to vote on the Plan.
2	Secured Claims (if any) Estimated Recovery: 100%	None	Class 2 consists of any Secured Claims. Each Holder of a Class 2 Claim constitutes a separate subclass under the Plan. To the extent any Secured Claims exist, at the option of the Debtors, one of the following treatments shall be provided: (i) the Holder of such Claim shall retain its Lien on its collateral until such collateral is sold, and the proceeds of such sale, less costs and expenses of disposing of such collateral, shall be paid to such Holder in full satisfaction, release, and discharge of such Allowed

			Secured Claim; (ii) on or as soon as practicable after the later of (a) the Effective Date, or (b) the date upon which the Bankruptcy Court enters a Final Order determining or allowing such Claim, or as otherwise agreed between the holder of such Claim and the Debtors, the Holder of such Allowed Secured Claim will receive a Cash payment equal to the amount of its Allowed Secured Claim in full satisfaction, release, and discharge of such Secured Claim; or (iii) the collateral securing the Creditor's Secured Claim shall be abandoned to such Creditor, in full satisfaction, release, and discharge of such Secured Claim. Class 2 is an Unimpaired Class and is not entitled to vote on the Plan.
3	General Unsecured Claims Estimated Recovery: 75% or more	\$57,000,000	Each Holder of an Allowed General Unsecured Claim shall receive a Pro Rata share of the Net Proceeds. Class 3 General Unsecured Claims are subject to all statutory, equitable and contractual subordination claims, rights and grounds available to the Debtors, the Estates and pursuant to the Plan, the Corporate Representative, which subordination claims, rights and grounds are fully enforceable prior to, on and after the Effective Date. Class 3 is an Impaired Class and Holders of Class 3 Claims are entitled to vote to accept or reject the Plan.
4	Convenience Claims Estimated Recovery: 100%	\$500,000	On or as soon as practicable after the Effective Date, each Holder of an Allowed Convenience Claim shall receive, in all and final satisfaction of its claim, cash equal to 100% of the Allowed amount of such Claim, as calculated without interest from the Petition Date, and no such Holder will be entitled to any further distribution. Class 4 is an Unimpaired Class and Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan on the Plan.
5	Equity Interests Estimated Recovery: 0%	\$0.00	There shall be no distribution on account of Class 5 Equity Interests. Upon the Effective Date, the Equity Interests will be deemed cancelled and will cease to exist. Holders of Class 5 Equity Interests will receive no distribution under the Plan and therefore are deemed to have rejected the Plan. Accordingly, Class 5 Equity Interests are not entitled to vote on the Plan.

E. Voting on the Plan

1. Who May Vote.

Each Holder of an Allowed Claim in Class 3 is entitled to vote either to accept or to reject the Plan. Only those votes cast by Holders of Allowed Claims shall be counted in determining whether acceptances have been received sufficient in number and amount to obtain Confirmation. An Impaired Class of Claims shall have accepted the Plan if: (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-

thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. The Holders of Class 5 Equity Interests shall not receive any distributions under the Plan and are therefore deemed to reject the Plan and are not entitled to vote. Because Class 5 is deemed to reject the Plan by operation of law, the Debtors will request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code. Without limiting the foregoing, in the event that any Class of Claims entitled to vote on the Plan fails to accept the Plan as required by section 1129(a) of the Bankruptcy Code, the Plan may be amended and, in any event, the Debtors reserve the right to seek confirmation of the Plan over such rejection pursuant to section 1129(b) of the Bankruptcy Code.

2. How to Vote.

All votes to accept or to reject the Plan must be cast by using the appropriate form of Ballot. No votes other than ones using such Ballots will be counted except to the extent ordered otherwise by the Bankruptcy Court. A form of Ballot is being provided to Creditors in Class 3 by which Creditors in such Classes may vote their acceptance or rejection of the Plan. The Ballot for voting on the Plan gives Holders of Class 3 Claims one important choice to make with respect to the Plan – you can vote for or against the Plan. To vote on the Plan, after carefully reviewing the Plan and this Disclosure Statement, please complete the Ballot, as indicated thereon, (1) by indicating on the enclosed Ballot that (a) you accept the Plan or (b) reject the Plan and (2) by signing your name and mailing the Ballot in the envelope provided for this purpose. Epiq Bankruptcy Solutions, LLC (“Epiq”), as the Voting Tabulator and Balloting Agent, will count the Ballots.

IN ORDER TO BE COUNTED, BALLOTS MUST BE COMPLETED, SIGNED AND RECEIVED BY THE DEBTORS’ BALLOTING AGENT, EPIQ, NO LATER THAN 4:00 P.M. EASTERN TIME ON [_____], 2009 AT THE FOLLOWING ADDRESS:

If by first class mail:

FB Liquidating Estate (f/k/a/ Filene’s Basement, Inc.) Ballot Processing Center
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 5014
New York, NY 10150-5014

If by overnight mail or hand delivery:

FB Liquidating Estate (f/k/a/ Filene’s Basement, Inc.) Ballot Processing Center
c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue, 3rd Floor
New York, NY 10017

DO NOT SEND YOUR BALLOT VIA FACSIMILE OR E-MAIL.

IF YOUR BALLOT IS NOT PROPERLY COMPLETED, SIGNED AND RECEIVED AS DESCRIBED, IT WILL NOT BE COUNTED. IF YOUR BALLOT IS DAMAGED OR LOST, YOU MAY REQUEST A REPLACEMENT BY MAKING A WRITTEN REQUEST TO THE ADDRESS SHOWN ABOVE. FACSIMILE OR ELECTRONICALLY TRANSMITTED BALLOTS WILL NOT BE COUNTED.

F. Confirmation of the Plan

1. Generally.

“Confirmation” is the technical term for the Bankruptcy Court’s approval of a plan of reorganization or liquidation. The timing, standards and factors considered by the Bankruptcy Court in deciding whether to confirm a plan of reorganization are discussed in detail below.

2. Objections to Confirmation.

Any objections to Confirmation of the Plan must be in writing, conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Delaware, and must be filed with the Clerk of the Bankruptcy Court and served on counsel for the Debtors, the Committee and the United States Trustee on or before the date set forth in the notice of the hearing on Plan Confirmation sent to you with this Disclosure Statement and the Plan.

Counsel on whom objections must be served are:

Counsel for the Debtors

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Counsel for the Committee

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The Grace Building
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New York, New York 10036

United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19801
Attn: Jane Leamy, Esq.

3. Hearing on Confirmation.

The Court has set _____, 2010 at _____ a.m./p.m. for a hearing (the “Confirmation Hearing”) to determine whether the Plan has been accepted by the requisite number of Creditors and whether the other requirements for confirmation of the Plan have been satisfied. The Confirmation Hearing will be held in Courtroom 4 of the United States Bankruptcy Court, 824 Market Street, Fifth Floor, Wilmington, DE 19801, before the Honorable Mary F. Walrath, United States Bankruptcy Judge. The Confirmation Hearing may be continued from time to time and day to day without further notice. If the Court confirms the Plan, it will enter the Confirmation Order.

III.

**HISTORY, ORGANIZATION
AND ACTIVITIES OF THE DEBTORS**

A. Overview of the Debtors and Their Operations

1. Introduction.

Prior to filing these Chapter 11 Cases, the Debtors operated a value-priced fashion retailer carrying men’s and women’s apparel, accessories, jewelry, shoes and home fashions, with fine jewelry, shoes and cosmetics operating as leased departments. They operated 26 stores, located primarily in the metropolitan markets of Boston, New York, Baltimore/Washington, Chicago, Atlanta, Cleveland, Columbus and Miami and employed approximately 1,900 full and part-time U.S. employees in hourly, salaried, supervisory, management, sales, retail and administrative positions. The Debtors also operated a leased 457,000 square foot distribution center in Auburn, Massachusetts, and conducted their main corporate operations out of a leased headquarters in Burlington, Massachusetts, with financial operations centered in Columbus, Ohio. For the year ending January 31, 2009, the Debtors recorded net sales of approximately \$422,098,758 and incurred operating losses (before interest and taxes) of \$53,095,433.

As is more fully discussed below in Article III, Section A (4) below, many factors caused the Debtors to decide it was in their best interest to seek protection under the United States Bankruptcy Code. These include disappointing sales in their suburban locations, the closure of their downtown Boston flagship store in September 2007 due to a redevelopment of the site, a change in corporate ownership that left Filene’s Basement with additional cumbersome corporate overhead and a smaller, less flexible line of credit, and a global economic recession that has been particularly severe in the fashion retail sector.

During the difficult times leading up to the commencement of the Chapter 11 Cases, the Debtors closed underperforming stores and looked at several strategic options for the remainder of the company. One of these options was to sell the company as a going concern. Tightness in the credit markets, current economic conditions and the condition of Filene's Basement made finding a suitor difficult. Accordingly, the Debtors, along with their advisors, began searching for someone to buy the Debtors' assets, and in April 2009, the Debtors obtained a bid from Crown FB Acquisition LLC ("Crown"), for the sale and purchase of sixteen of the Debtors' real property leases and for certain other contracts, fixtures and equipment, intellectual property, and related assets (the "Crown Assets") for the base purchase price of twenty-two million dollars. Shortly thereafter, the Debtors commenced these Chapter 11 Cases to avail themselves of the provisions of the Bankruptcy Code and preserve the status quo while seeking a sale of their assets to one or more buyers, including the sale to Crown (or any potential overbidder that the Debtors might be able to attract through the Chapter 11 auction process).

2. History of the Company.

The first Filene's Basement store was opened in Boston in 1909 by Edward A. Filene as a mechanism for selling excess merchandise from his father's full-price department store, Filene's Department Store, located upstairs. Mr. Filene developed the revolutionary "Automatic Mark Down System," pursuant to which the price tag on each item was marked with the date that the item was made available for sale. The longer an item remained unsold, the more the price would automatically be reduced, first 25%, then 50%, and finally 75%. Before long, other retailers and manufacturers were bringing their unsold goods to the store for sale, and the concept of the "off-price" store was born.

In 1978, Filene's Basement first began to expand beyond the original flagship store by building a branch location in the Boston suburb of Saugus. More locations followed, and by 1984 Filene's Basement included twenty-two retail locations.

The business has changed ownership several times since its founding. In 1929, Filene's Basement and Filene's Department Store were both purchased by Federated Department Stores, Inc. In 1988, the Filene's Basement business was spun-off from its association with Filene's Department Store and Federated Department Stores, and it became a privately-held venture, incorporated as Filene's Basement, Inc.

In 1991, the owners of Filene's Basement took the company public, and a period of rapid expansion followed. By the mid-1990's, there were fifty-six Filene's Basement stores located from New England to Philadelphia and as far west as Minneapolis. This rapid expansion into markets in which the Filene's Basement brand was unknown, however, combined with increased competitive pressure and increased debt, created a period of financial difficulty.

In 1991, in an effort to revitalize the firm, the company experimented with a new weekend warehouse store concept, called Aisle 3. The Aisle 3 stores, averaging 60,000 square feet, operated only Friday through Sunday and were located near major metropolitan areas. The Aisle 3 experiment had disappointing results, which contributed to a Chapter 11 bankruptcy filing for Filene's Basement, Inc. and Filene's Basement Corp. on August 28, 1999. At the time

of the first Filene's bankruptcy filing, there were fifty-one Filene's Basement Stores and four Aisle 3 stores.

In March 2000, Value City Department Stores, Inc. ("Value City") acquired substantially all of the assets and assumed certain liabilities of Filene's Basement Corp. and Filene's Basement, Inc. from their pending bankruptcy cases. In October 2003, Value City reorganized its corporate structure and Value City became a wholly-owned subsidiary of Retail Ventures, Inc. ("RVI"). Filene's Basement, Inc. was a wholly-owned subsidiary of RVI from that time until it was sold to FB II Acquisition Corp. on April 21, 2009.

3. Capital Structure.

Filene's Basement is 100% owned by FB II Acquisition Corp. Filene's Basement owns 100% of the limited liability company interests of debtor FB Services, and FB Services owns 100% of the limited liability company interests of debtor FB Leasing.

Effective January 23, 2008, Filene's Basement entered into a \$100 million secured revolving credit facility (the "Revolving Loan") through an amendment and restatement of its indebtedness and obligations as a co-borrower under a revolving loan as to which Value City Department Stores LLC ("Value City LLC") was also a party. This action was taken in order to create a separate loan agreement for Filene's Basement, necessitated by the disposition of 81% ownership in Value City LLC by RVI. Under the Revolving Loan, Filene's Basement was the borrower, National City Business Credit, Inc. ("National City") was the administrative and collateral agent, and Wells Fargo Retail Finance, LLC, and Wachovia Capital Finance Corporation (Central) were co-documentation agents and revolving credit lenders (the "Lenders"). The payment and performance of the Revolving Loan was the subject of a primary guarantee by RVI and certain of its wholly-owned subsidiaries. Debtors FB Services and FB Leasing joined and guaranteed the Revolving Loan on or about April 21, 2009, in connection with the sale transaction described more fully below.

The Revolving Loan had borrowing base restrictions and provided for borrowings at variable interest rates based on LIBOR, the prime rate, or the Federal Funds effective rate, at the option of Filene's Basement, plus a margin. In addition to the borrowing base restrictions, 10% of the facility was deemed an "excess reserve" and was not available for borrowing. Obligations under the Revolving Loan were secured by a lien on substantially all of the assets of Filene's Basement, and the guarantees were secured by the assets of each of the guarantors with the exception of certain excluded assets. The maturity date of the Revolving Loan was January 23, 2013.

As of the Petition Date, the balance owed on the Revolving Loan was approximately \$16.9 million, including approximately \$1.7 million face amount of issued and outstanding letters of credit and banker's acceptances, and the borrowing availability was approximately \$7 million. As is more fully described in Article III, Section C (15) and (16) below, the Revolving Loan was paid off during the first months of these Chapter 11 Cases.

In addition, at the inception of these cases, the Debtors owed RVI approximately \$52.6 million pursuant to two unsecured Subordinated Promissory Notes (the "RVI Notes"). As is

more fully described below, the Debtors entered into a settlement agreement with RVI relating to the RVI Notes and certain other claims that RVI asserted against the Debtors.

Furthermore, as of October 31, 2009, the Debtors estimate that they will owe on the Effective Date approximately \$57.5 million for accounts payable to trade vendors, accrued expenses, and other unsecured claims, approximately \$2.2 million for accrued taxes (including real estates, sales and business taxes), approximately \$1.0 million for other priority claims, and approximately \$7.3 million for postpetition obligations, including professional fees (a portion of which will have been paid out of available cash prior to the Effective Date in the ordinary course of the Debtors' postpetition business). In total, as of October 31, 2009, the Debtors estimate that the fair market value of their assets (most of which is in the form of cash) is approximately \$55.5 million.

4. Events Leading to Bankruptcy.

Prior to filing these Chapter 11 Cases, the Debtors were operating in an increasingly competitive discount retail market that included intense competition from both value-oriented retailers such as Loehmann's, TJ Maxx, and Century 21, as well as traditional department store chains, like Macy's. The retail reaction to the recent economic downturn narrowed the price differential between department stores and the value retailers and substantially reduced consumer buying. More specifically, the Debtors' pre-petition current liquidity problem was occasioned by a number of factors.

First, many of the stores that were opened in recent years had disappointing sales. In retrospect, the Debtors determined that certain suburban locations, particularly in areas away from the historical core markets, did not work well for the Debtors' retail concept.

Second, in September 2007, the downtown Boston flagship store (the second biggest tourist attraction in Boston) was temporarily closed as part of a major redevelopment of the site. The loss of the flagship location eliminated some volume efficiencies and took away an efficient location for clearing out older inventory. For a time, the Debtors received \$500,000 per month from the redevelopers to compensate for the closing, but payments were halted without notice on January 1, 2009.

Third, RVI divested itself of 81% ownership of the Value City LLC in January 2008, and Filene's Basement, in the absence of any other entity with which to share fixed corporate overhead, ended up paying an increased amount for such fixed costs. In addition, the divestiture of Value City LLC by RVI meant that Filene's Basement could no longer share the same revolving credit agreement with Value City LLC. By placing Filene's Basement on its own revolving credit agreement, there was less flexibility in how that line of credit could be managed. This smaller, less flexible line of credit made Filene's Basement more vulnerable to default.

Fourth, the current economic recession has been particularly severe in the fashion retail sector. The loss of sales and margin due to the recession has put significant negative pressure on cash flow, making a difficult situation much worse.

Finally, in the months prior to the Petition Date, the Lenders for the Revolving Loan increased reserves under the borrowing base formula and placed the Debtors in a cash control

operating status. Due to the limited ability to borrow additional operating funds under the Revolving Loan, merchandise vendors became more reluctant to ship goods, and many required cash payment before shipping merchandise. The inability to purchase inventory placed additional pressure on cash availability, since the borrowing base under the Revolving Loan was predominantly dependent on inventory as collateral.

Accordingly, on January 29, 2009, the Debtors made a final determination to close 11 underperforming stores. The determination to close these underperforming stores was due to decreased sales and operating profit during the fourth fiscal quarter of 2008 as well as the continued negative economic outlook for the United States retail segment generally and Filene's Basement in particular. The Debtors also commenced an effort to aggressively renegotiate certain of the remaining 26 operating store leases as well as the leases for their corporate office and warehouse.

As much as the Debtors would have preferred to avoid a bankruptcy, when it became apparent that more drastic measures would be needed to save the company, they retained Alan Cohen of Abacus Advisors as Filene's Basement's Chief Restructuring Officer to advise and assist in a potential Chapter 11 filing.

On or about April 21, 2009, with the consent of National City and the Lenders, RVI and FB II Acquisition Corp. (the "Purchaser"), a newly formed affiliate of Buxbaum Holdings, Inc. (the "Sponsor"), completed a sale (the "Stock Sale") by RVI to the Purchaser of 100% of the issued and outstanding shares of capital stock of Filene's Basement and all of the limited liability company interests of FB Services. Shortly prior to the Stock Sale, RVI formed FB Services as a wholly owned direct subsidiary of RVI, and FB Services formed FB Leasing as a wholly owned direct subsidiary of FB Services. Filene's Basement then assigned certain leases to FB Leasing. After the Stock Sale, the Purchaser transferred its interest in FB Services to Filene's Basement.

Before the Stock Sale, Filene's Basement received, among other things, general corporate and financial services support from its former affiliate, DSW Inc. ("DSW"). Prior to the Petition Date, and under the terms of that certain Amended and Restated Shared Services Agreement, dated as of October 26, 2008, as amended (the "SSA"), by and between DSW and RVI, DSW provided, among other things, corporate administrative services to Filene's Basement, including intellectual technology services, payroll administration and processing services, payroll financial reporting services, accounts payable, sales audit, tax, and human resources services (collectively, the "Shared Services"). Prepetition, FBI paid approximately \$475,000 per month to DSW in consideration of the Shared Services.

Upon the Stock Sale, Filene's Basement and DSW entered into a Transitional Services Agreement (the "TSA"), dated as of April 21, 2009 (the "TSA Effective Date"), pursuant to which DSW agreed to continue to provide the Shared Services previously provided under the SSA (at a substantially reduced cost) for a period of ninety days from the TSA Effective Date. In addition, RVI entered into a letter agreement, dated April 21, 2009, with Filene's Basement regarding certain employee benefits (the "Post-Closing Benefits Agreement"). The Transition Services Agreement and the Post-Closing Benefits Agreement were calculated to ensure orderly transition of services previously provided under the Servicing Agreement.

During the difficult times leading up to the commencement of the Chapter 11 Cases, the Debtors looked at several strategic options. One of these options was to sell the company. Tightness in the credit markets, current economic conditions, and the current condition of Filene's Basement made finding a suitor difficult. Commencing in March of 2009, RVI sought to sell Filene's Basement, Inc. and, with the assistance of its advisor, Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan"), sought to identify a possible purchaser for the Debtors' assets. Commencing on or about March 19, 2009, Houlihan contacted approximately thirteen (13) potential strategic and financial buyers through telephone calls, emails and/or other correspondence.

Of the approximately thirteen (13) parties contacted by Houlihan, six (6) parties signed and returned confidentiality agreements and were provided varying levels of additional information, including a detailed confidential information memorandum. Of the six (6) parties that signed and returned confidentiality agreements, one (1) party expressed definite interest and engaged in more extensive due diligence. One additional party, the Purchaser, also learned of the availability of the Debtors' assets and expressed interest.

The Debtors' advisors worked with each of these interested parties and, as a result, at the conclusion of the initial effort, the Debtors had two competing bids for various groups of the Debtors' assets (the "Competing Bids"). During the approximately two weeks immediately prior to the Petition Date, the Debtors and their advisors worked with the potential purchasers to develop the Competing Bids. In addition, an informal committee of certain unsecured creditors (the "Ad Hoc Committee") formed and was briefed by the Debtors and their professionals on the sale process to date and the terms of the Competing Bids.

With the advice and assistance of their advisors, and after reviewing and negotiating with the potential purchasers, the Debtors determined in late April 2009 that a combination of the proposed acquisition of the Assets by the Purchaser, together with continuing to examine other avenues of disposing of the Debtors' remaining assets (the "Remaining Assets"), were the best options for the Debtors in order to maximize the value of their assets and business.

On May 1, 2009, after extensive negotiations, Filene's Basement and FB Services entered into an Asset Purchase Agreement (the "Agreement" or the "APA") with Crown FB Acquisition LLC ("Crown"), for the sale and purchase of sixteen of the Debtors' real property leases and for certain other contracts, fixtures and equipment, intellectual property, and related assets (the "Crown Assets") for the base purchase price of twenty-two million dollars. Pursuant to the terms of the Agreement, Filene's Basement and FB Services, subject to an auction and sale process, intended to sell the Crown Assets to Crown (or a designated affiliate) and in connection therewith, assign to Crown certain leases, with such sale to be free and clear of all liens, claims and encumbrances pursuant to Bankruptcy Code section 363(f). The Debtors intended, through the bankruptcy process, to solicit higher and better bids for the Crown Assets and also for the remainder of the Debtors' assets in the hopes of further maximizing recovery for creditors in these cases. As is set forth in Article III, Section C (16), below, the Debtors were ultimately able, through a competitive auction, to sell the Crown Assets as well as substantially all of the Remaining Assets for a total of \$64,392,120.00.

B. The Commencement of the Chapter 11 Cases

In order to liquidate in an orderly manner, the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for District of Delaware on May 4, 2009. No trustee or examiner has been appointed in the Chapter 11 Cases. The Committee was appointed on May 12, 2009, to represent the interests of Debtors' general unsecured creditors. The Debtors continue to operate as debtors in possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code.

C. First Day Motions and Other Relief

On the Petition Date, the Debtors sought approval from the Bankruptcy Court of certain motions and applications (collectively, the "First Day Motions"), which the Debtors filed simultaneously with, or around the same time as, their voluntary petitions. The Debtors sought this relief to minimize disruption of the Debtors' business operations as a result of the chapter 11 filings, to establish procedures in the Chapter 11 Cases regarding the administration of the Chapter 11 Cases and interim compensation for professionals, and to facilitate reorganization efforts. Specifically, the First Day Motions and other critical motions during the Chapter 11 Cases addressed the following issues, among others:

1. Employees.

On the Petition Date, the Debtors filed their *Motion Pursuant to Bankruptcy Code Sections 105(a), 363 and 507(a) for an Order Authorizing the Debtor to: (I) Pay Prepetition Wage and Salaries; (II) Remit Withholding Obligations; (III) Maintain Certain Employee Benefits Programs and Pay Related Administrative Obligations; and (IV) Authorize Applicable Banks and Other Financial Institutions to Receive, Process, Honor and Pay Certain Checks Presented for Payment and Honor Certain Fund Transfer Requests* [Docket No. 4] (the "Employee Wage Motion"), by which motion the Debtors sought an order authorizing them to pay and/or honor certain prepetition claims for, among other items, wages, salaries and other compensation, as well as to honor paid time off, fixed holidays, medical benefits, contributions to employee benefit plans, and other employee benefits that the Debtors historically paid in the ordinary course of business, to reimburse certain reimbursable unpaid employee reimbursement obligations, and to pay all costs incident to the foregoing. On May 5, 2009, the Court entered its order granting the Employee Wage Motion [Docket No. 39].

2. Cash Management.

On the Petition Date, the Debtors filed their *Motion for Order Under 11 U.S.C. Sections 105, 363, 1107 and 1108 Authorizing (I) Maintenance of Certain Existing Bank Accounts, (II) Continued Use of Existing Business Forms, (III) Continued Use of Existing Cash Management System; and (IV) Waiver of Section 345(b) Deposit and Investment Requirements* [Docket No. 9] (the "Cash Management Motion") by which motion the Debtors sought an order authorizing them to maintain their existing cash management system, bank accounts and business forms in order to minimize disruptions and make the transition to Chapter 11 smoother and more orderly. The Debtors further requested that they be excused from compliance with certain aspects of section 345(b) of the Bankruptcy Code, requiring certain deposit or investment procedures. The Court entered its order granting the relief requested by the Cash Management Motion on May 5, 2009 [Docket No. 38].

3. Taxes.

On the Petition Date, the Debtors filed their *Motion for an Order (I) Authorizing the Debtors to Pay Prepetition Sales and Use and Similar Taxes and Regulatory Fees in the Ordinary Course of Business and (II) Authorizing Banks and Financial Institutions to Honor and Process Checks and Transfers Related Thereto* [Docket No. 10] (the “Tax Motion”), by which motion the Debtors sought authority to pay, in the Debtors’ sole discretion, prepetition taxes and regulatory fees, in an aggregate amount not to exceed \$2,032,000 (excluding amounts paid prepetition by checks that had not yet cleared on the Petition Date). The Court granted the Tax Motion by order entered on May 5, 2009 [Docket No. 40].

4. Utilities.

On the Petition Date, the Debtors filed their *Motion for Entry of Interim and Final Orders Under Section 366 of the Bankruptcy Code (A) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment* [Docket No. 11] (the “Utility Motion”), by which motion the Debtors sought an order establishing “adequate assurance” procedures for efficient administration of the Debtors’ responsibilities under section 366 of the Bankruptcy Code. On May 5, 2009, the Court entered its interim order implementing the procedures proposed by the Debtors to ensure adequate assurance of future payment to utility service providers [Docket No. 43]. A final order was entered on May 27, 2009 [Docket No. 193].

5. Interim Compensation for Professionals.

On the Petition Date, the Debtors filed their *Motion for an Order Establishing Procedures for Interim Compensation Pursuant to Section 331 of the Bankruptcy Code* [Docket No. 17] (the “Interim Compensation Motion”), by which motion the Debtors sought authority to implement procedures for the application, interim allowance, and payment of the Estates’ Professionals on a monthly basis. On May 26, 2009, the Court entered its order approving the monthly compensation procedures proposed by the Debtors [Docket No. 188].

6. Lease Rejection.

On the Petition Date, the Debtors filed their *Motion for Order Under Sections 365(a) and 554(a) of the Bankruptcy Code Authorizing the Debtor to (1) Reject Certain Unexpired Lease of Nonresidential Real Property, and (2) Abandon any Personal Property Located at Such Premises Nunc Pro Tunc to the Petition Date* [Docket No. 16], by which motion the Debtors sought an order rejecting numerous leases on stores that the Debtors had closed. The Bankruptcy Court entered an order granting the relief requested on June 8, 2009 [Docket No. 272]. Since May 4, 2009, the Debtors have filed several motions seeking similar relief with respect to real property leases. Orders have been entered granting the relief requested in these motions.

7. Rejection of Executory Contracts.

On the Petition Date, the Debtors filed their *Motion for the Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts Pursuant to 11 U.S.C. § 365* [Docket No. 13],

by which motion the Debtors sought the entry of an order authorizing and approving the Debtors' rejection of numerous executory contracts that were a burden to the Estates. The Court entered an order granting the relief requested on May 27, 2008 [Docket No. 194]. During the course of the Chapter 11 Cases, as the Debtors' operations continued to wind down and additional executory contracts became unnecessary, the Debtors obtained similar relief.

8. Retention of Customer Programs.

On the Petition Date, the Debtors filed their *Motion for Entry of an Order Pursuant to Sections 105(a), 363(c), 1107(a) and 1108 of the Bankruptcy Code Authorizing the Debtors to Honor Prepetition Obligations to Customers and to Otherwise Continue Customer Practices and Programs in the Ordinary Course of Business* [Docket No. 15], by which motion the Debtors sought authorization to continue to honor certain programs or practices to maximize sales, engender customer loyalty, and develop and sustain brand loyalty and a positive reputation in the marketplace. These practices included, but were not limited to, the following: (a) a gift card program, (b) a product exchange and returns program, and (c) an advertising and promotional coupon programs (the "Customer Programs"). The Court entered an order granting the relief requested on May 5, 2009 [Docket No. 44].

9. Access to Confidential Information.

On the Petition Date, the Debtors filed their *Motion for an Order Providing that Creditors' Committees are Not Authorized or Required to Provide Access to Confidential or Privileged Information to Creditors* [Docket No. 14] (the "Confidential Information Motion"), by which motion the Debtors sought an order clarifying that any creditors committee appointed in the Chapter 11 Cases would not be authorized or required to provide confidential information about the Debtors or privileged information to any creditor whom the committee represented. On May 29, 2009, the Court entered an order granting the relief requested [Docket No. 211].

10. Prepetition Shipper, Freight Forwarder, and Related Obligations.

On the Petition Date, the Debtors filed their *Motion for an Order Authorizing, But Not Directing, Debtors to Pay Prepetition Claims of Shippers and Warehousemen and Granting Related Relief* [Docket No. 12] (the "Shipping Motion"), by which motion the Debtors sought authority, in their discretion, to pay certain essential prepetition shipper, freight forwarder, and related obligations in the ordinary course of business up to an aggregate cap of \$150,000. The Court entered an interim order granting the relief requested on May 5, 2009 [Docket No. 41].

11. Retention of Key Professionals.

On the Petition Date, the Debtors filed their *Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date* [Docket No. 19] (the "PSZ&J Application"). Pursuant to the PSZ&J Application, the debtors sought to retain PSZ&J as their bankruptcy counsel with regard to the filing and prosecution of their Chapter 11 Cases. An order was entered authorizing that retention, effective as of the Petition Date, on June 10, 2009 [Docket No. 297].

Pursuant to the *Debtors' Motion to Employ and Retain Alan Cohen as Chief Restructuring Officer of the Debtors and for Authority to Utilize Staffing Personnel from Abacus Advisors in Connection Therewith Nunc Pro Tunc to the Petition Date* [Docket No. 5] (the "Cohen Application"), the Debtors also sought to employ Alan Cohen as Chief Restructuring Officer. The Bankruptcy Court authorized this retention on May 26, 2009 [Docket No. 187].

Pursuant to the Debtors' *Application to Employ and Retain Epiq Bankruptcy Solutions, LLC as Notice, Claims and Solicitations Agent to the Debtors and Debtors in Possession* [Docket No. 6] (the "Epiq Application"), the Debtors also sought to employ Epiq Bankruptcy Solutions, LLC "(Epiq)" as noticing, claims and balloting agent. The Bankruptcy Court authorized this retention on May 5, 2009 [Docket No. 37].

12. Ordinary Course Professionals.

On the Petition Date, the Debtors filed their *Motion of the Debtors Pursuant to Sections 105(a), 327, 328 and 330 of the Bankruptcy Code for an Order Authorizing the Debtors to Retain, Employ and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business* [Docket No. 7] (the "Ordinary Course Professionals Motion"). Pursuant to the Ordinary Course Professionals Motion, the Debtors sought to employ certain professionals that it utilized in the ordinary course of business without having to file applications to employment and compensation with respect to such professionals. The "Ordinary Course Professionals" consisted primarily of different professional firms that provided, among other things, various ongoing legal, actuarial and employee benefit consulting services. On May 26, 2009, the Court entered its order granting the Ordinary Course Professionals Motion [Docket No. 189].

13. Joint Administration.

On the Petition Date, the Debtors filed their *Motion for an Order Authorizing Joint Administration of Related Chapter 11 Cases* [Docket No. 2] (the "Joint Administration Motion"), pursuant to which the Debtors sought an order directing the joint administration of their Chapter 11 Cases and the consolidation thereof for procedural purposes only. On May 5, 2009, the Court entered an order granting the relief requested [Docket No. 36].

14. Insurance Premiums.

On the Petition Date, the Debtors filed their *Motion for Authority to (1) Make Payments Pursuant to Existing Insurance Premium Finance Agreements, and (2) Enter Into New Premium Financing Agreements* [Docket No. 8] (the "Insurance Finance Motion"), pursuant to which the Debtors sought an order authorizing the Debtors to continue to finance certain of their insurance premiums with Premium Finance Corporation and, in the Debtors' business judgment, to enter into new insurance premium finance agreements in the ordinary course of business and to pay related brokerage fees. On May 5, 2009, the Court entered an order granting the relief requested [Docket No. 36].

15. DIP Financing and Cash Collateral Use.

At the inception of these Cases, the Debtors owed approximately \$16.9 million to

Lenders pursuant to the Revolving Loan, and all of the Debtors' assets, including all of their cash, were encumbered by perfected, first priority security interests in favor of Lenders. The Debtors required the use of the Lenders' cash collateral to operate efficiently as they liquidated their assets. The Debtors and Lenders negotiated and agreed on terms pursuant to which the Debtors could use the Lenders' cash collateral, and on the Petition Date, the Debtors filed their *Motion (A) For Authorization to (I) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Provide Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363, and (B) To Schedule a Final Hearing Pursuant to Bankruptcy Rule 4001* [Docket No. 18]. On May 5, 2009, the Court entered its First Interim Order [Docket No. 45], which authorized the Debtors' use of cash collateral pursuant to the terms of the cash collateral budget, and granted certain adequate protection to the Lenders on an interim basis. The Bankruptcy Court entered three subsequent interim orders extending the Debtors' use of cash collateral on June 6, June 10 and June 18, 2009 [Docket Nos. 260, 299 and 354 respectively] (collectively, the Cash Collateral Orders").

The secured debt owing to Lenders was paid down pursuant to the Cash Collateral Orders. In addition and as is further described below, the Debtors consummated a sale of substantially all of their assets on or about June 18, 2009. Upon closing, the Debtors paid the remaining balance owing to Lenders of \$4,794,154.62.

16. The Sale of Substantially All of the Debtors' Assets.

On the Petition Date, the Debtors filed three motions related to the disposition of substantially all their assets:

- (1) *Debtors' Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of Certain of the Debtors' Assets Outside the Ordinary Course of Business to Crown FB LLC or a Higher and Better Bidder; (II) Authorizing the Sale of Assets Free and Clear of Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(b), (f) and (m) of the Bankruptcy Code; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* [Docket No. 25] (the "Crown Sale Motion");
- (2) *Debtors' Motion for Entry of an Order: (A) Approving Bid Procedures for the Sale of Certain of the Debtors' Assets; (B) Scheduling an Auction and a Hearing to Consider the Sale and Approve the Form and Manner of Notices Thereto; (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Contracts, Including Notice of Proposed Cure Amounts; and (D) Granting Related Relief* [Docket No. 26] (the "Bid Procedures Motion"), and
- (3) *Motion of the Debtors for an Order (A) Approving Sale Procedures Relating to Sale of Assets Not Included in the Sale to Crown FB Acquisition LLC; (B) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Pursuant to 11 U.S.C. § 363(b), (f) and (m); (C) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Authorizing the Assumption and Assignment of*

Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365, and (E) Granting Related Relief [Docket No. 27] (the “Non-Crown Sale Motion”).

As was summarized above, prepetition, the Debtors marketed their assets for sale. On May 1, 2009, the Debtors entered into an Asset Purchase Agreement for the sale of certain of their assets to the initial highest and best bidder for those assets, Crown. By the motions listed above, the Debtors sought entry of orders by the Court authorizing the Debtors to consummate the transaction with the Crown or an overbidder, as well as approval of procedures for overbids, creditor notice procedures, and the scheduling of an auction. The Bankruptcy Court entered an order granting the relief requested in the Bid Procedures Motion on May 15, 2009 [Docket No. 123]. After a competitive auction that took place over three days (June 5, June 12, and June 15) and extensive hearings held on June 10, June 12, and June 17, the Bankruptcy Court approved a sale of substantially all the assets of the Debtors to SYL, LLC “(SYL)”, a wholly-owned subsidiary of Syms Corp., for \$64,392,120.00. The order approving the sale was entered on June 17, 2009 [Docket No., 349]. The sale to SYL included the Assets originally covered by the Asset Purchase Agreement with Crown as well as the assets that were covered by the Non-Crown Motion. The sale to SYL closed on June 18, 2009.

D. Appointment of Committee

On May 12, 2009, the U.S. Trustee appointed the Committee as the representative of the Debtors’ general unsecured creditor constituency in the Chapter 11 Cases. The Committee is composed of Simon Property Group, Inc., Boston Globe, Phillips-Van Heusen Corporation, Warnaco/Calvin Klein Division, Jones Apparel Group, Oxford Industries, Inc., and Polo Ralph Lauren Corp. The Committee retained Cooley Godward Kronish LLP [Docket No. 425] and Morris, Nichols, Arsht & Tunnell LLP. [Docket No. 394] as co-counsel and Loughlin Meghji + Company as financial advisors [Docket No. 406] to assist in the Committee’s involvement in these Chapter 11 Cases.

E. Bar Date for Filing Proofs of Claim

As noted above, the Court entered an order on July 21, 2009 (the “Bar Date Order”) establishing September 28, 2009, as the deadline for filing Proofs of Claim for any claims against the Debtors arising prior to the Petition Date other than the claims of governmental entities, including WARN Act Claims (the “General Bar Date”), November 2, 2009, as the deadline for filing Proofs of Claim for any claims against the Debtors of governmental entities (the “Governmental Entities Bar Date”), and September 28, 2009, as the deadline to file requests for payment of administrative expense claims (other than claims for fees and expenses of professionals retained in the Chapter 11 Cases and members of the Committee) arising between the Petition Date and July 31, 2009 (an “Administrative Claims Bar Date”). A schedule of the filed Proofs of Claims is being maintained by Epiq, the Debtors’ noticing and claims agent.

F. Filing of Statements and Schedules

On June 2, 2009, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs with the Bankruptcy Court, which set forth, *inter alia*, scheduled prepetition claims against the Debtors based on their books and records. In addition, Filene’s

Basement filed an amended Schedule F on or about June 23, 2009.

G. Deadline Extensions

On August 24, 2009, the Debtors' requests for extensions of the removal deadline and the deadline for disposing of nonresidential real property were granted. The former deadline, that being the removal deadline, was extended to November 2, 2009, per the Court's *Order Extending the Period Within Which Debtors May Remove Actions* [Docket No. 609]. Per the Court's *Order Extending Time to Assume, Assume and Assign, or Reject Unexpired Leases of Nonresidential Real Property*, the latter deadline was extended to November 30, 2009 [Docket No. 611].

On October 30, 2009, the Debtors filed a second motion requesting a further extension to the deadline to remove actions through and including February 2, 2010. On December ____, 2009, the Court entered an order granting this motion.

H. Filing of Debtors' Motion to Extend Exclusivity

On August 31, 2009, the Debtors filed their *Motion for an Order Pursuant to 11 U.S.C. Section 1121(d) Extending the Time Periods During Which the Debtors Have the Exclusive Right to File a Plan and Solicit Acceptances Thereto* seeking to extend exclusivity as it pertains to the filing period for ninety days, from September 1, 2009, through and including November 30, 2009, and to extend exclusivity as it pertains to solicitation for ninety days from October 30, 2009, through and including January 28, 2010 (the "Exclusive Periods") [Docket No. 632]. On October 15, 2009 the Court granted the Motion Extending the Exclusive Periods to November 30, 2009 and January 28, 2010, respectively.

I. Other Postpetition Activities

Subsequent to the Petition Date, the Debtors directed substantially all of their efforts, and all of the efforts of their professionals, toward streamlining and reducing operations, reducing costs, and liquidating their hard assets and remaining operations. The Debtors' overarching goal was to maximize the value of such assets while minimizing the expenses associated with maintaining such assets. Specifically, the Debtors have rejected numerous executory contracts and/or unexpired leases, defended and/or settled motions to compel payment of post-petition obligations on executory contracts and unexpired leases, compromised claims, sought a ninety day extension of the exclusive period in which to file a plan and solicit acceptances thereto, and defended and/or settled motions for relief from the automatic stay.

J. Settlement with Retail Ventures Inc. and DSW, Inc.

To the best of the Debtor's knowledge there are no claims between the Debtors. There were, however, numerous claims that were asserted by two former affiliates of the Debtors, RVI and DSW. All such claims have been settled pursuant to the two motions described below.

- (1) *The Debtors' Notice of Motion and Motion for Order Approving The Stipulation and Agreement between the Debtors, the Official Committee of Unsecured Creditors, Retail Ventures, Inc. and DSW, Inc.*

Complex prepetition relationships between the Debtors, RVI and DSW left the parties with numerous potential claims that could arguably have been pursued against each other. These included claims by RVI against the Debtors for, among other things: (a) \$52.6 million relating to certain promissory notes issued by Filene's Basement payable to RVI; (b) \$6.36 million for payments made to factors by RVI on behalf of Filene's Basement; (c) \$3.0 million for payments made to vendors by RVI on behalf of Filene's Basement; (d) \$1.68 million for obligations to landlords; and (e) \$2.0 million for corporate allocations and vendor reimbursements. In addition, the Debtors had a potential exposure of approximately \$13.3 million if the Filene's pension plan was not assumed by RVI, but rather, was terminated pursuant to the provisions of ERISA. Moreover, there were potential claims of up to \$2.0 million or more that could be asserted by RVI against Filene's in pending litigation in which both parties are named as defendants. There were also issues between the parties with respect to collateral allocation, entitlement to settlement proceeds, responsibility for corporate overhead, and the like. On the other hand, the Debtors could have asserted potential claims against RVI for alleged preferences, fraudulent conveyances, and equitable subordination.

The parties reached a settlement of all these issues which was documented in the Stipulation and Agreement dated September 25, 2009, between the Debtors, the Official Committee of Unsecured Creditors, Retail Ventures, Inc. and DSW, Inc. (the "RVI Settlement Agreement"). Among other things, the Settlement Agreement provides for the following:

- RVI's claims against the Debtors predicated on the \$52.6 million of promissory notes, shall be deemed withdrawn, released and expunged with prejudice from the Debtors' claims register.
- The Debtors agree to transfer their rights and obligations under the Filene's defined benefit pension plan (the "Pension Plan") to RVI with respect to (i) the Pension Plan, (ii) the Pension Plan's related trust agreement, (iii) the assets held pursuant to such trust agreement, and (iv) any and all other related agreements. RVI agrees to assume the Pension Rights and Obligations (as defined in the Agreement), and to indemnify Filene's against any claim asserted by any person or entity arising out of, or relating in any way to, the Pension Plan; *provided, however*, that RVI shall not indemnify Filene's for any such claim arising between April 21, 2009, and the date of entry of a final and non-appealable order of the Bankruptcy Court for the District of Delaware approving the RVI Settlement Agreement.
- RVI shall have three allowed general unsecured claims against the Debtors (collectively, the "RVI Claims") for amounts owed by the Debtors to RVI or paid by RVI on account of the Debtors' business: (i) a claim in the amount of \$6.36 million representing amounts actually paid on account of guarantees provided by RVI to factors; (ii) a claim in the amount of \$3.0 million representing amounts owed by the Debtors to RVI for inventory purchased for or provided to the Debtors prior to April 21, 2009; and (iii) a claim in the amount of \$2.3 million representing a negotiated settlement of (w) amounts actually paid (whether prior to, on or after the date of the Agreement) on account of guarantees provided by RVI to landlords of the Debtors, (x) amounts owed by the Debtors to RVI for shared services rendered to the Debtors prior to April 21, 2009; (y) amounts paid or in the future required to be paid by RVI to the plaintiffs in connection with the trademark

action *Fendi Adele S.R.L., Fendi S.R.L. and Fendi North America, Inc. v. Filene's Basement, Inc. and Retail Ventures, Inc.*, Case No. 06 CV 0244 (S.D.N.Y.); and (z) any additional amounts that may be owed by the Debtors to RVI for any reason whatsoever. The RVI Claims will receive the same treatment under the Plan as claims held by other general unsecured creditors.

- The Debtors, their estates, the Committee, and any party that may acquire standing to prosecute estate claims on their behalf (the "Debtor Releasers") shall be deemed to forever release RVI and DSW and their officers, directors, affiliates, agents, attorneys and employees and the Buxbaum Releasees (as defined in the RVI Settlement Agreement) (collectively, the "RVI/DSW Releasees") from any and all claims and causes of action of any nature whatsoever, including, without limitation, any and all claims pursuant to Chapter 5 of the Bankruptcy Code, that the Debtor Releasers may have against the RVI/DSW.
- The RVI/DSW Releasees shall be deemed to forever release the Debtor Releasers from any and all claims and causes of action that the RVI/DSW Releasees may have against the Debtor Releasers, except with respect to those claims allowed in the RVI Settlement Agreement.
- To the extent approved by the Court in the context of a Chapter 11 plan of liquidation or reorganization to be proposed in the Debtors' Chapter 11 cases, to the extent a creditor votes in favor of any Plan, or to the fullest extent permitted by law, such creditor shall be deemed to forever release the RVI/DSW Releasees from any and all claims and causes of action that such creditors may have against the RVI/DSW Releasees related to the prepetition and postpetition conduct of the Debtors' businesses and the Debtors' Chapter 11 cases.
- To the extent approved by this Court in the context of a Plan, the RVI/DSW Releasees and their respective attorneys shall be afforded the benefit of any and all exculpation and limitation of liability provisions afforded under the Plan to the Debtors and the Committee.
- RVI and DSW agreed to support the Plan; not to file any objection to confirmation of the Plan; and not to support any other party in connection with any efforts to defeat the Plan.

The Bankruptcy Court approved the RVI Settlement Agreement by order entered on November 3, 2009.

(2) *The Debtors' Notice of Motion and Motion for Order Approving Extension and Modification Agreement Between The Debtors and DSW, Inc.*

DSW and the Debtors are former affiliates that prior to the Filing Date were both owned by RVI. Their joint status as RVI subsidiaries led to cooperation between the two retailers, and in the process, a number of agreements whereby the Debtors and DSW agreed to share services and back office support. Further, on April 21, 2009, DSW and Filene's Basement, Inc. entered into a Transition Services Agreement (the "TSA") pursuant to which DSW agreed to continue

providing certain support and back office services, including payroll, sales audit, accounts payable, financial reporting, risk management, HR and benefits management (the "Services") for a fee of \$133,333 per month. The TSA expired by its terms on July 20, 2009. The Debtors also undertook a number of obligations to DSW which DSW alleged totaled \$1.5 million.

As a result of extensive negotiations, the parties agreed to resolve all the claims of DSW pursuant to the Extension and Modification Agreement Between the Debtors and DSW, Inc. (the "DSW Settlement Agreement") which provides, among other things:

- DSW shall continue providing Services pursuant to the TSA, except that the Debtors will prepare and file their own tax returns and DSW shall not be obligated to provide any tax services other than to consult with the Debtors regarding tax matters and notify the Debtors of any filing requirements of which DSW are aware. The fee for these Services is \$53,333.33.
- DSW shall have an allowed general unsecured claim of \$446,666.67, without the need to file or amend any proof of claim. The DSW Claim shall receive the same treatment in the Debtors' Cases as claims held by other general unsecured creditors.
- The Debtors will release DSW and its officers, directors, agents, attorneys and employees (collectively the "DSW Releasees") from any and all claims and causes of action of any nature whatsoever, including, without limitation, any and all claims pursuant to Chapter 5 of the Bankruptcy Code, that the Debtors may have against the DSW Releasees; and the DSW Releasees shall be deemed to forever release the Debtors and their officers, directors, agents, attorneys and employees from any and all claims and causes of action that the DSW Releasees may have against them.

The Bankruptcy Court approved the DSW Settlement Agreement by order entered on October 15, 2009.

IV.

DESCRIPTION OF THE PLAN

A DISCUSSION OF THE PRINCIPAL PROVISIONS OF THE PLAN AS THEY RELATE TO THE TREATMENT OF CLASSES OF ALLOWED CLAIMS AND EQUITY INTERESTS IS SET FORTH IN ARTICLES V THROUGH XIII BELOW (IN ADDITION TO THE DISCUSSION OF THE CREDITOR SETTLEMENT DISCUSSIONS IN ARTICLE III ABOVE). THE DISCUSSION OF THE PLAN THAT FOLLOWS CONSTITUTES A SUMMARY ONLY AND SHOULD NOT BE RELIED UPON FOR VOTING PURPOSES. YOU ARE URGED TO READ THE PLAN IN FULL TO EVALUATE WHETHER TO ACCEPT OR REJECT THE DEBTORS' PROPOSED PLAN OF LIQUIDATION. IF ANY INCONSISTENCY EXISTS BETWEEN THIS SUMMARY AND THE PLAN, THE TERMS OF THE PLAN CONTROL. ALL CAPITALIZED TERMS NOT OTHERWISE DEFINED HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.

V.

**UNCLASSIFIED ADMINISTRATIVE CLAIMS,
PROFESSIONAL FEES AND PRIORITY TAX CLAIMS**

A. Introduction

Certain types of Claims are not placed into voting Classes; instead they are unclassified. They are not considered Impaired, and they do not vote on the Plan because they are automatically entitled to the specific treatment provided for them in the Bankruptcy Code. As such, the Debtors have not placed the following Claims in a Class:

B. Administrative Claims

Each Holder of an Allowed Administrative Claim shall receive, from Net Proceeds, without interest, Cash equal to the Allowed amount of such Claim, unless such Holder shall have agreed to different treatment of such Claim: (a) on or as soon as practicable after the later of (i) the Effective Date, or (ii) the date upon which the Bankruptcy Court enters a Final Order determining or approving such Allowed Administrative Claim; (b) in accordance with the terms and conditions of agreements between the Holders of such Claims and the Debtors; (c) with respect to any Allowed Administrative Claims representing obligations incurred in the ordinary course of the Debtors' business, upon such regular and customary payment or performance terms as may exist in the ordinary course of the Debtors' business or as otherwise provided in the Plan; or (d) with respect to statutory fees due pursuant to 28 U.S.C. § 1930(a)(6), until the entry of a final decree or an order converting or dismissing the case.

Holders of Administrative Claims (including, without limitation, Professionals) requesting compensation or reimbursement of such expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code that do not file such requests by the applicable deadline provided for herein shall be forever barred from asserting such claims against the Debtors, their Estates, the Corporate Representative, or their successors or assigns, or their property. Any objection to Professional Fee Claims shall be filed on or before the objection deadline specified in the application for final compensation or order of the Bankruptcy Court.

Notwithstanding any provision in the Plan regarding payment of Administrative Claims to the contrary, and without waiver of any argument available that such Claim is already time-barred by prior orders of the Bankruptcy Court, all Administrative Claims that are required to be Filed and not Filed by the Administrative Claim Bar Date shall be deemed disallowed and discharged. As provided herein, the Claims Reserve Account will include funds sufficient to cover the aggregate asserted amount of all disputed Administrative Claims. Without limiting the foregoing, all fees payable under 28 U.S.C. § 1930 that have not been paid, shall be paid on or before the Effective Date.

All objections to allowance of Administrative Claims (excluding Professional Fee Claims) must be filed by any parties in interest no later than sixty (60) days after (i) the Administrative Claim Bar Date, or (ii) the date on which a request for payment of an Administrative Claim is filed with the Bankruptcy Court (the "Administrative Claim Objection Deadline"). The Administrative Claim Objection Deadline may be extended for one thirty (30)

day period by the Debtors, in consultation with the Post-Effective Committee, by filing a notice of the extended Administrative Claim Objection Deadline with the Bankruptcy Court. Thereafter, the Administrative Claim Objection Deadline may be further extended only by an order of the Bankruptcy Court. If no objection to the applicable Administrative Claim is filed on or before the Administrative Claim Objection Deadline (as extended), such Administrative Claim shall be deemed Allowed as of that date.

C. Professional Fee Claims

The Debtors shall pay Professionals all of their respective accrued and Allowed fees and shall reimburse all accrued and Allowed expenses arising prior to the Effective Date, plus reasonable fees for services rendered, and actual and necessary costs incurred, in connection with the filing, service and prosecution of any applications for allowance of Professional Fees pending on the Effective Date or filed and/or served after the Effective Date, plus post-Effective Date fees approved by the Debtors.

The Bankruptcy Court must rule on and allow all pre-Effective Date Professional Fee Claims before the fees will be owed and paid. Unless otherwise ordered by the Bankruptcy Court, for all pre-Effective Date Professional Fee Claims, except Bankruptcy Clerk's Office fees, the fees and expenses of the Claims Agent, and U.S. Trustee's fees, the Professional in question must file and serve a properly noticed final fee application and the Bankruptcy Court must rule on the application. Only the amount of fees and expenses Allowed by the Bankruptcy Court will be owed and required to be paid under the Plan.

The Debtors and the Post-Effective Committee may retain and compensate professionals for services rendered following the Effective Date without order of the Bankruptcy Court. From and after the Effective Date, the Corporate Representative shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of Professionals, as well as Epiq Bankruptcy Solutions, LLC, thereafter incurred on behalf of the Debtors, the Corporate Representative and the Post-Effective Committee, including, without limitation, those fees and expenses incurred in connection with the implementation and consummation of this Plan. The fees and expenses of such Professionals, as well as Epiq Bankruptcy Solutions, LLC, shall be paid within fifteen (15) business days after submission of a detailed invoice thereof to (i) the Corporate Representative; (ii) counsel for the Post-Effective Committee; and (iii) the Debtors. If any of the parties listed in (i) – (iii) in the previous sentence dispute the reasonableness of any such invoice, the Debtors, the Corporate Representative, the Post-Effective Committee or the affected Professional may submit such dispute to the Bankruptcy Court for determination of reasonableness of such invoice, and the Disputed portion of such invoice shall not be paid until the dispute is resolved.

Professionals requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code or required to file fee applications by order of the Bankruptcy Court for services rendered prior to the Effective Date must File and serve pursuant to the notice provisions of the Interim Fee Order, an application for final allowance of compensation and reimbursement of expenses no later than sixty (60) days after the Effective Date. All such applications for final allowance of compensation and

reimbursement of expenses will be subject to the authorization and approval of the Bankruptcy Court.

D. Priority Tax Claims

On the later to occur of (i) the Effective Date or (ii) the date on which such Claim shall become an Allowed Claim, the Debtors shall pay to each Holder of an Allowed Priority Tax Claim from the Net Proceeds the Allowed amount of such Allowed Priority Tax Claim without interest from the Petition Date.

VI.

CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, Confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. As the Plan provides for substantive consolidation of the Debtors' Estates, there is only a single Class for each category of Claims or Equity Interests into which all such Claims or Equity Interests against any one or more of the Debtors are classified.

B. Classification and Treatment of Claims against the Debtors

The classification of Claims and Equity Interests against the Debtors pursuant to the Plan, is as follows:

Class	Status	Voting Rights
Class 1 – Priority Claims	Unimpaired	Not Entitled to Vote
Class 2 – Secured Claims (if any) ³	Unimpaired	Not Entitled to Vote
Class 3 – General Unsecured Claims	Impaired	Entitled to Vote
Class 4 – Convenience Claims	Unimpaired	Not Entitled to Vote
Class 5 – Equity Interests	Impaired	Not Entitled to Vote

³ Each Holder of a Class 2 Claim constitutes a separate subclass under the Plan.

1. Class 1 – Priority Claims.

a. Classification: Class 1 consists of the Priority Claims against the Debtors.

b. Treatment: The Debtors shall pay from the Net Proceeds the Allowed amount of each Class 1 Priority Claim to each Entity holding a Class 1 Priority Claim as soon as practicable following the later of: (a) the Effective Date and (b) the date such Class 1 Priority Claim becomes an Allowed Claim (or as otherwise permitted by law). The Debtors shall pay each Entity holding a Class 1 Priority Claim in Cash in full in respect of such Allowed Claim without interest from the Petition Date; *provided, however*, that such Entity may be treated on such less favorable terms as may be agreed to in writing by such Entity.

c. Voting: Class 1 is an Unimpaired Class and Holders of Class 1 Claims are not entitled to vote on the Plan.

2. Class 2 – Secured Claims.

a. Classification: Class 2 consists of any Secured Claims. Each Holder of a Class 2 Claim, if any, constitutes a separate subclass under the Plan.

b. Treatment: To the extent any Secured Claims exist, at the option of the Debtors, one of the following treatments shall be provided: (i) the Holder of such Claim shall retain its Lien on its collateral until such collateral is sold, and the proceeds of such sale, less costs and expenses of disposing of such collateral, shall be paid to such Holder in full satisfaction, release, and discharge of such Allowed Secured Claim; (ii) on or as soon as practicable after the later of (a) the Effective Date, or (b) the date upon which the Bankruptcy Court enters a Final Order determining or allowing such Claim, or as otherwise agreed between the holder of such Claim and the Debtors, the Holder of such Secured Claim will receive a Cash payment equal to the amount of its Allowed Secured Claim in full satisfaction, release, and discharge of such Secured Claim; or (iii) the collateral securing the Creditor's Secured Claim shall be abandoned to such Creditor, in full satisfaction, release, and discharge of such Secured Claim.

c. Voting: Class 2 is an Unimpaired Class and Holders of Class 2 Claims are not entitled to vote on the Plan.

3. Class 3 – General Unsecured Claims.

a. Classification: Class 3 consists of the Claims of Holders of General Unsecured Claims.

b. Treatment: Each Holder of an Allowed General Unsecured Claim shall receive a Pro Rata share of the Net Proceeds. Class 3 General Unsecured Claims are subject to all statutory, equitable and contractual subordination claims, rights and grounds available to the Debtors, the Estates and pursuant to the Plan, the Corporate

Representative, which subordination claims, rights and grounds are fully enforceable prior to, on and after the Effective Date.

c. **Voting:** Class 3 is an Impaired Class and Holders of Class 3 Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Convenience Claims.

a. **Classification:** Class 4 consists of all Claims of Holders of Convenience Claims.

b. **Treatment:** On or as soon as practicable after the Effective Date, each Holder of an Allowed Convenience Claim shall receive, in full and final satisfaction of its Claim, Cash equal to 100% of the Allowed amount of such Claim, as calculated without interest from the Petition Date, and no such Holder will be entitled to any future distribution.

c. **Voting:** Class 4 is an Unimpaired Class and Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan.

5. Class 5 – Equity Interests.

a. **Classification:** Class 5 consists of all Equity Interests in the Debtors.

b. **Treatment:** There shall be no distribution on account of Class 5 Equity Interests. Upon the Effective Date, the Equity Interests will be deemed cancelled and will cease to exist.

c. **Voting:** Holders of Class 5 Equity Interests will receive no distribution under the Plan and therefore are deemed to have rejected the Plan. Accordingly, Class 5 Equity Interests are not entitled to vote.

VII.

ACCEPTANCE OR REJECTION OF THE PLAN

A. Voting Classes

Each Holder of an Allowed Claim in Class 3 is entitled to vote either to accept or to reject the Plan. Only those votes cast by Holders of Allowed Claims shall be counted in determining whether acceptances have been received sufficient in number and amount to obtain Confirmation.

B. Acceptance by Impaired Classes

An Impaired Class of Claims shall have accepted the Plan if: (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan, and (b) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy

Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. Classes 1, 2 and 4 are each deemed to have accepted the Plan and are not entitled to vote thereon.

C. Presumed Rejection of Plan

The Holders of Class 5 Equity Interests shall not receive any distributions under the Plan and are therefore deemed to reject the Plan and are not entitled to vote.

D. Nonconsensual Confirmation

Because Class 5 is deemed to reject the Plan by operation of law, the Debtors will request the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code. Without limiting the foregoing, in the event that any Class of Claims entitled to vote on the Plan fails to accept the Plan as required by section 1129(a) of the Bankruptcy Code, the Plan may be amended and, in any event, the Debtors reserve the right to seek confirmation of the Plan over such rejection pursuant to section 1129(b) of the Bankruptcy Code.

E. How to Vote

A form of Ballot is being provided to Creditors in Class 3 by which Creditors in such Class may vote to accept or reject the Plan. The Ballot for voting on the Plan gives you one important choice to make with respect to the Plan – you can vote for or against the Plan. To vote on the Plan, please complete the Ballot, as indicated thereon by, (1) indicating on the enclosed Ballot that (a) you accept the Plan or (b) reject the Plan, and (2) signing your name and mailing the Ballot in the envelope provided for this purpose. The Claims Agent will count the Ballots.

IN ORDER TO BE COUNTED, BALLOTS MUST BE COMPLETED, SIGNED AND RECEIVED NO LATER THAN 4:00 P.M. PREVAILING EASTERN TIME ON _____, 2010 AT THE FOLLOWING ADDRESS:

If by first class mail:

FB Liquidating Estate (f/k/a/ Filene's Basement, Inc.) Ballot Processing Center
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 5014
New York, NY 10150-5014

If by overnight mail or hand delivery:

FB Liquidating Estate (f/k/a/ Filene's Basement, Inc.) Ballot Processing Center
c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue
3rd Floor
New York, NY 10017

DO NOT SEND YOUR BALLOT VIA FACSIMILE OR E-MAIL.

IF YOUR BALLOT IS NOT PROPERLY COMPLETED, SIGNED AND RECEIVED AS DESCRIBED, IT WILL NOT BE COUNTED. IF YOUR BALLOT IS DAMAGED OR LOST, YOU MAY REQUEST A REPLACEMENT BY ADDRESSING A WRITTEN REQUEST TO THE ADDRESS SHOWN ABOVE. FACSIMILE OR ELECTRONICALLY SUBMITTED BALLOTS WILL NOT BE COUNTED.

VIII.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Available Cash

On or as soon as practical following the Effective Date, the Claims Reserve Account shall be opened by the Debtors and funded with the Available Cash to the extent of any unencumbered Cash, which funds shall constitute Assets. Thereafter, from time to time, upon receipt of any Liquidation Proceeds or any Litigation Recovery, the Debtors shall deposit such funds into the Claims Reserve Account and shall become part of the Assets.

B. Handling and Collection of Assets and Distribution of Net Proceeds

From and after the Effective Date, the Debtors shall continue in existence for the purpose of (i) winding up their affairs as expeditiously as reasonably possible, (ii) liquidating, by conversion to Available Cash or other methods, any remaining assets of the Debtors, as expeditiously as reasonably possible, (iii) enforcing and prosecuting claims, interests, rights and privileges of the Debtors, including, without limitation, the prosecution of the Litigation, (iv) having Disputed Claims resolved, (v) administering the Plan, and (vi) filing appropriate tax returns. The Assets shall be held by the Debtors and the Corporate Representative and shall be distributed only in accordance with the Plan. From and after the Effective Date, the Debtors and the Corporate Representative (in consultation with the Post-Effective Committee) shall retain and pursue the Litigation on such terms and conditions as are consistent with the interests of primary beneficiaries of the and the reasonable business judgment of the Debtors, sell or liquidate Debtors' Estates Assets, and collect the accounts receivable, if any, of the Debtors. In addition, from and after the Effective Date, except as otherwise provided in the Plan or in the Confirmation Order, the Debtors and the Corporate Representative shall be free to operate without any limitation or restriction by, and without any requirement to comply with, the Bankruptcy Code, Bankruptcy Rules, or Guidelines of the United States Trustee; notwithstanding the foregoing, the Debtors and the Corporate Representative shall comply with their obligation to pay statutory fees under 28 U.S.C. § 1930(a)(6), and the Debtors shall file all post-Confirmation reports required by the Bankruptcy Rules, the Bankruptcy Court, the Local Bankruptcy Rules, or any applicable Guidelines of the United States Trustee. All Cash, all Liquidation Proceeds, and all Litigation Recoveries realized or obtained by the Debtors shall be deposited into the Claims Reserve Account and such funds shall be held as Assets. All Net Proceeds shall be held by the Debtors and shall be distributed to Creditors in accordance with the Plan and the section 1123 of the Bankruptcy Code.

C. Litigation

Except as otherwise provided in the Plan, all Litigation is retained, vested in the Debtors and preserved pursuant to section 1123(b) of the Bankruptcy Code, including without limitation all Litigation set forth in the applicable schedule to the Plan Supplement, and all Avoidance Actions shall only be commenced upon mutual agreement by the Debtors and the Post-Effective Committee. From and after the Effective Date all Litigation will be prosecuted or settled by the Debtors or the Post-Effective Committee on the Debtors' behalf. To the extent any Litigation is already pending on the Effective Date, the Debtors, or the Committee (in any derivative capacity or as an intervening party), will continue the prosecution of such Litigation. Any Litigation Recovery from the Litigation will be deposited in the Claims Reserve Account as Assets.

D. Payment of Expenses

All Expenses may be paid by the Debtors from the Claims Reserve Account without further notice to Creditors or approval of the Bankruptcy Court. Any disputes concerning the payment of Expenses shall be submitted to the Bankruptcy Court for resolution.

E. Distribution of Proceeds

The Assets shall be used to satisfy the payments required under the Plan, provided that the Debtors shall only distribute Net Proceeds to the Holders of Allowed Claims and partially Allowed Claims in such amounts and at such times as are set forth in the Plan. No payments or distributions shall be made by the Debtors on account of Disputed Claims unless and to the extent such Claims become Allowed Claims, in whole or in part. The Net Proceeds allocated to Disputed Claims will not be distributed but will be reserved in the Claims Reserve Account by the Debtors in accordance with the Plan pending resolution of such Disputed Claims. Nothing contained herein, however shall, be construed to prohibit payment or distribution on account of any undisputed portion of a Claim.

F. Power and Authority of Corporate Representative

As of Effective Date the Debtors will be managed and governed by the Corporate Representative or its successor. The Corporate Representative will be the sole director, officer, and responsible person of the Debtors, and all bylaws, articles, or certificates of incorporation, and related corporate documents will be deemed amended by the Plan to permit and authorize such sole appointment. The Corporate Representative will serve in such capacity through the earlier of the date the Debtors are dissolved in accordance with the Plan and the date the Corporate Representative resigns, is terminated by order of the Bankruptcy Court, or is otherwise unable to serve; *provided, however*, that, in the event that the Corporate Representative resigns, is terminated by Bankruptcy Court order or the Post-Effective Committee, or is unable to serve in such capacity prior to the dissolution of the Debtors, then the Post-Effective Committee shall appoint a successor.

Confirmation of the Plan shall constitute the appointment of the Corporate Representative by the Bankruptcy Court as the representative of the Debtors to: (a) serve as the sole officer and director of the Debtors; (b) exercise the rights, power and authority of the Corporate Representative and the Debtors under applicable provisions of the Plan and bankruptcy and non bankruptcy law; (c) retain professionals to represent the Debtors in performing and implementing the Plan; (d) marshal and liquidate the Assets and to collect the Assets for the benefit of

Creditors; (e) prosecute the Litigation, and otherwise attempt to collect or realize upon the Assets; (f) resolve Disputed Claims and effectuate distributions to Creditors under the Plan; and (g) otherwise implement the Plan, wind up the affairs of the Debtors and close the Chapter 11 Cases, as provided in the Plan.

A summary of the Corporate Representative's compensation arrangements shall be filed with the Plan Supplement prior to the Confirmation Hearing. On the Effective Date, the Corporate Representative will be deemed to have retained the Debtors' and the Committee's Professionals under the arrangements existing on the Effective Date, without any need for further orders of the Bankruptcy Court. The Confirmation Order shall provide that the Corporate Representative shall have no obligation to dissolve the Debtors but is authorized in their sole discretion to execute a certificate of dissolution for each of the Debtors pursuant to applicable non bankruptcy law, in the discretion of the Corporate Representative, which such certificate(s) of dissolution shall be effective without any further shareholder, board or other corporate action by or on behalf of the Debtors. The Corporate Representative shall serve until the Assets have been fully distributed and a final decree is entered closing the Chapter 11 Cases. If the then current Corporate Representative is unable, unavailable or unwilling to serve, or has been earlier removed by the Bankruptcy Court for cause shown the Post-Effective Committee shall appoint a replacement. The Corporate Representative shall be responsible for ensuring that the Debtors comply with the obligation to pay statutory fees under 28 U.S.C. § 1930(a)(6), and the Corporate Representative shall file all post-Confirmation reports required by the Bankruptcy Rules, the Bankruptcy Court, the Local Bankruptcy Rules, or any applicable Guidelines of the United States Trustee.

G. The Committee and Post-Effective Committee

Until the Effective Date, the Committee shall continue in existence; *provided, however*, that as of the Effective Date, the Committee shall be reconstituted as the Post-Effective Committee and shall be comprised of one or more members of the Committee which members shall be designated by the Committee at least three (3) days prior to the commencement of the Confirmation Hearing. The Committee members who are not members of the Post-Effective Committee shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from their service as Committee members. In the event of death or resignation of any member of the Post-Effective Committee, the remaining members of the Post-Effective Committee shall have the right to designate a successor from among the holders of Allowed Class 3 Claims. If a Post-Effective Committee member assigns its Claim in full or releases the Debtors from payment of the balance of its Claim, such act shall constitute a resignation from the Post-Effective Committee. Until a vacancy on the Post-Effective Committee is filled, the Post-Effective Committee shall function in its reduced number. Following all payments being made to the holders of Allowed Unsecured Claims under the Plan, the Post-Effective Committee shall be dissolved and the members thereof shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from their service as Post-Effective Committee members, and the retention or employment of the Committee's attorneys and professionals shall terminate.

The members of the Post-Effective Committee shall undertake their duties as specified in the Plan. In serving as a member of the Post-Effective Committee, such members shall not

assume or be deemed to have assumed any liability to Creditors, the Debtors, or any other parties in interest in the Cases and shall not be liable for any acts or omissions while acting in that capacity, except for bad faith and acts or omissions constituting malfeasance or gross negligence. The Post-Effective Committee shall have the right to retain counsel or other professionals, which shall be paid reasonable fees and expenses by the Debtor. The Bankruptcy Court shall retain jurisdiction to hear any disputes relating to the fees and expenses of the Post-Effective Committee's professionals, which disputes, if any, shall be resolved by the Bankruptcy Court after notice and hearing.

H. Rights and Duties of the Post-Effective Committee.

As of the Effective Date, the Post-Effective Committee shall: have the right to make and file objections to Claims and to withdraw such objections, as set forth in Section 10.2 of the Plan; have the right to review and object to settlements and proposed releases or abandonment of Causes of Action by the Debtors where the amount in controversy exceeds \$25,000. The Corporate Representative shall provide counsel for the Post-Effective Committee with ten (10) days' written notice of any proposed settlement, release or abandonment of Litigation or Claims in excess of \$25,000. If no objection is served on the Corporate Representative within ten (10) days of the date of such notice, the Post-Effective Committee shall be deemed to have consented to such settlement, release or abandonment. If the Post-Effective Committee objects to any settlement, the parties shall bring the matter before the Bankruptcy Court for final resolution after hearing and notice; be vested with authority to remove the Corporate Representative, or any successor Corporate Representative, appointed pursuant to this Plan and, upon removal, appoint the successor Corporate Representative; review and have the opportunity to object to all fees and expenses of the Corporate Representative, the Debtors and their respective professionals in accordance with Section 8.10 of the Plan; perform such additional functions as may be agreed to by the Corporate Representative, are provided for in the Confirmation Order, or provided for by further Order of the Court entered after the Effective Date; and upon agreement with the Corporate Representative, take any and all actions necessary to effectuate the terms of the Plan.

I. Full and Final Satisfaction

Commencing upon the Effective Date, the Debtors shall be authorized and directed to distribute the amounts required under the Plan to the Holders of Allowed Claims according to the provisions of the Plan and the Debtors. Upon the Effective Date, all Debts of the Debtors shall be deemed fixed and adjusted pursuant to the Plan shall have no liability on account of any Claims or Equity Interests except as set forth in the Plan. All payments and all distributions made by the Debtors under the Plan shall be in full and final satisfaction, settlement and release of all Claims against the Debtors and the Corporate Representative; *provided, however*, that nothing contained in the Plan, or in any other provision of the Plan, shall be deemed to constitute or result in a discharge of the Debtors under Bankruptcy Code section 1141(d).

J. Distribution Procedures

Except as otherwise agreed by the Holder of a particular Claim, or as provided in the Plan, all amounts to be paid by the Debtors under the Plan shall be distributed in such amounts and at such times as is reasonably prudent. On the Effective Date, or as soon as practicable thereafter, subject to the Plan, the Debtors shall: (i) marshal all then available Assets; (ii) to the

extent of unencumbered Cash or Cash distributable to the Holders of Allowed Claims, establish and fund the Claims Reserve Account pursuant to the Plan; (iii) promptly pay the Holders of (a) Allowed Administrative Claims, (b) Allowed Professional Fee Claims, (c) Allowed Priority Tax Claims and (d) the Holders of Allowed Claims in Class 1 and Class 2 as provided for under the Plan; (iv) with respect to Class 2 Claimants who did not receive proceeds from the sale of their collateral, arrange for the Debtors to sell such collateral and/or to abandon to such Creditors the collateral securing their respective Claims; and (v) make interim and final distributions of Assets to the Holders of Allowed Class 3 and Class 4 Claims from the Claims Reserve Account in the amounts and according to the priorities set forth in the Plan. Notwithstanding any provision to the contrary in the Plan, distributions may be made in full or on a Pro Rata basis depending on: (x) the amount of the Allowed Claim, (y) the then available Assets in the Claims Reserve Account, and (z) the then anticipated Assets. The Debtors shall make the Cash payments to the Holders of Allowed Claims: (aa) in U.S. dollars by check, draft or warrant, drawn on a domestic bank selected by the Debtors in their sole discretion, or by wire transfer from a domestic bank, at the Debtors' option, and (bb) by first-class mail (or by other equivalent or superior means as determined by the Debtors).

K. Resolution of Disputed Claims

After the Effective Date, the Debtors and the Post-Effective Committee, as the case may be, on behalf of the Debtors and Debtors' Estates, shall have the right to make and file objections to Claims and to withdraw such objections. Subject to the preceding sentence, all objections shall be litigated to Final Order; *provided, however*, that the Debtors (in consultation with the Post-Effective Committee) and the Post-Effective Committee (in consultation with the Debtors) shall have the authority to compromise, settle or otherwise resolve all objections, for any Claim without approval of the Bankruptcy Court; *provided, however*, that the Debtors and the Post-Effective Committee reserve the right to seek relief before the Bankruptcy Court with respect to any Disputed Claim and under no circumstances will any distributions be made on account of Disallowed Claims or the Disputed portion of any Claim.

The Debtors and/or the Post-Effective Committee shall file and serve all objections to Claims upon the holder of the Claim as to which the objection is made no later than ninety (90) days after the later of the Effective Date or the date on which a proof of claim or request for payment is filed with the Bankruptcy Court (the "Objection Deadline"). The Objection Deadline may be extended for one sixty (60) day period by the Debtors (in consultation with the Post-Effective Committee) or the Post-Effective Committee (in consultation with the Debtors) by filing a notice of the extended Objection Deadline with the Bankruptcy Court. Thereafter, the Objection Deadline may be further extended only by an order of the Bankruptcy Court, upon notice and hearing, at the request of the Debtors or Post-Effective Committee.

L. Claims Reserve Account

On or as soon as practicable after the Effective Date, the Debtors shall: (a) to the extent of any Cash or, where applicable, unencumbered Cash, create and fund the Claims Reserve Account; and (b) periodically deposit the Cash from Assets into the Claims Reserve Account to satisfy the obligations created under the Plan. The Claims Reserve Account shall contain the following five sub-accounts: (i) Secured; (ii) Administrative; (iii) Priority Claims; (iv)

Expenses; and (v) Allowed General Unsecured Claims. The sub-accounts within the Claims Reserve Account shall contain an amount of Cash deemed sufficient by the Debtors for the payment of Allowed Claims in accordance with the priorities and amounts set forth in the Plan, all anticipated Expenses, and a reserve for Disputed Claims. The Debtors are authorized to transfer funds among sub-accounts as necessary to replenish any sub-accounts as and when distributions are made to. All Expenses may be deducted and paid from sub-account (iv) without further order of the Bankruptcy Court. Subject to the priorities established under the Bankruptcy Code, the Debtors may periodically transfer all earnings and interest income on the Claims Reserve Account for deposit to and distribution from sub-account (v). Unless otherwise provided in the Confirmation Order, the Claims Reserve Account shall be invested by the Debtors in a manner consistent with the objectives of section 345(a) of the Bankruptcy Code and in their reasonable and prudent exercise of discretion. Neither the Debtors nor the Corporate Representative shall have any obligation or liability to beneficiaries in connection with such investments in the event of any unforeseeable insolvency of any financial institution where such funds are held.

M. Reserve Provisions for Disputed Claims

The Debtors shall implement the following procedures with respect to the allocation and distribution of Cash in the Claims Reserve Account and each sub-account and reserve therein, after payment of all senior Claims, to the Holders of Disputed Claims that become Allowed Claims:

- (i) Cash respecting Disputed Claims shall not be distributed, but, if necessary, shall be withheld by the Debtors in the relevant sub-account as a reserve in an amount equal to the amount of the distributions that would otherwise be made to the Holders of such Claims if such Claims had been Allowed Claims, based on the Disputed Claims Amount.
- (ii) No distributions may be made to the Holders of Allowed Unsecured Claims unless adequate reserves are established for the payment of Disputed Claims, and sufficient funds are also reserved for payment of expected Expenses. Upon the Final Resolution Date after payment of all senior Claims, all amounts (if any) remaining in sub-accounts (i-v) of the Claims Reserve Account, after reservation of an appropriate amount for anticipated Expenses in sub-account iv, shall be transferred to sub-account (v) for final distribution to the Holders of Allowed Class 3 Claims in accordance with the priorities established by the Plan.
- (iii) Where only a portion of a Claim is Disputed, interim or partial distributions may be made with respect to the portion of such Claim that is not Disputed, in the discretion of the Corporate Representative and the Debtors, in consultation with the Post-Effective Committee.
- (iv) Pursuant to the provisions of the Plan, the Bankruptcy Court may estimate the amount of any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, in which event the amounts so fixed or liquidated shall

be deemed to be Allowed Claims pursuant to section 502(c) of the Bankruptcy Code for purposes of distribution under the Plan. In lieu of estimating the amount of any Disputed Claim, the Bankruptcy Court or the Debtors may determine the Disputed Claims Amount to be reserved for such Disputed Claim in the appropriate sub-account of the Claims Reserve Account, or such amount may be fixed by agreement in writing by and between the Debtors and the Holder thereof.

- (v) When a Disputed Claim becomes an Allowed Claim, there shall be distributed to the Holder of such Allowed Claim, in accordance with the provisions of the Plan, Cash equal to a Pro Rata Share of the Cash set aside for Disputed Claims within the applicable sub-account of the Claims Reserve Account, but in no event shall such Holder be paid more than the amount that would otherwise have been paid to such Holder if the Claim (or the Allowed portion of the Claim) had not been a Disputed Claim.
- (vi) Interim distributions may be made from time to time to the Holders of Allowed Claims prior to the resolution by Final Order or otherwise of all Disputed Claims, provided that the aggregate amount of Cash to be distributed at such time from the Claims Reserve Account is practicable in comparison to the anticipated costs of such interim distributions. Notwithstanding the foregoing, subject to the Plan, no interim distribution shall be made to any Creditor whose distribution would be less than \$50.
- (vii) No Holder of a Disputed Claim shall have any Claim against the Cash reserved with respect to such Claim until such Disputed Claim shall become an Allowed Claim. In no event shall any Holder of any Disputed Claim be entitled to receive (under the Plan or otherwise) from the Debtors, or the Claims Reserve Account, any payment (x) which is greater than the amount reserved for such Claim by the Bankruptcy Court pursuant to the Plan, (y) or except as otherwise permitted under the Plan, of interest or other compensation for delays in distribution. In no event shall the Debtors or the Corporate Representative have any responsibility or liability for any loss to or of any amount reserved under the Plan.
- (viii) To the extent a Disputed Claim ultimately becomes an Allowed Claim in an amount less than the Disputed Claim Amount reserved for such Disputed Claim, then the resulting surplus of Cash shall be retained in the Claims Reserve Account and shall be distributed among the Holders of Allowed Claims until such time as each Holder of an Allowed Claim has been paid the Allowed amount of its Claim.

N. Allocation of Distributions

Distributions to any Holder of an Allowed Claim shall be allocated first to the principal amount of any such Allowed Claim, as determined for federal income tax purposes, and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising

interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

O. Rounding

Whenever any payment of a fraction of a cent would otherwise be called for, the actual distribution shall reflect a rounding of such fraction down to the nearest cent.

P. No Interim Cash Payments of Less Than \$50 on Account of Allowed Claims

If an interim distribution to be received by the Holder of an Allowed Claim (other than the Holder of an Allowed Convenience Class Claim) would be less than \$50, notwithstanding any contrary provision in the Plan, at the discretion of the Debtors, no such interim payment will be made to such Holder, and such Cash shall be held for such Holder until the earlier of (i) the next time an interim distribution is made to the Holders of Allowed Claims (unless the distribution would still be less than \$50 in which case Section 5(N) of the Plan shall again apply), or (ii) subject to Section 5(S) of the Plan, the date on which final distributions are made to the Holders of Allowed Claims.

Q. Unclaimed Property

Any entity which fails to claim any Cash within 90 days from the date upon which a distribution is first made to such entity shall forfeit all rights to any distribution under the Plan. Upon forfeiture, such Cash (including any interest thereon) shall be deposited into the Claims Reserve Account to be distributed to the Holders of Allowed Claims in the manner described in the Plan for distribution of excess amounts; provided that such Cash arising in connection with the Claims of Class 3 Claims shall accrue for the benefit of Class 3 only. Entities which fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtors or the Corporate Representative or any Holder of an Allowed Claim to whom distributions are made by the Debtors. Within 45 days of each distribution to Allowed Claims, the Debtors shall file with the Court a notice identifying each entity that, as of the date of filing of such notice, has failed to claim Cash subject to such distribution.

R. Setoffs

Nothing contained in the Plan shall constitute a waiver or release by the Debtors of any right of setoff or recoupment the Debtors may have against any Creditor.

S. No Distributions on Late-Filed Claims

Except as otherwise provided in a Final Order of the Bankruptcy Court, or by agreement between the Debtors, Post-Effective Committee and the affected Holder of such Claim, any Claim as to which a Proof of Claim was first filed after the applicable Bar Date shall be a Disallowed Claim, and the Debtors shall not make any distribution to a Holder of such a Claim; *provided, however*, that to the extent such Claim was listed in the Schedules (other than as contingent, disputed, or unliquidated) and would be an Allowed Claim but for the lack of a timely proof of Claim, the Debtors shall treat such Claim as an Allowed Claim in the amount in which it was so listed.

T. Withholding Taxes

Pursuant to section 346(f) of the Bankruptcy Code, the Debtors shall be entitled to deduct any federal, state, or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. From and as of the Effective Date, the Debtors shall comply with all reporting obligations imposed on it by any Governmental Unit in accordance with applicable law with respect to such Withholding Taxes. As a condition to making any distribution under the Plan, the Debtors may require that the Holder of an Allowed Claim provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Debtors to comply with applicable tax reporting and withholding laws. Any Holder of an Allowed Claim who fails to timely respond to such a request shall forfeit all rights to any distribution under the Plan. Upon forfeiture, such Cash (including any interest thereon) shall be deposited into the Claims Reserve Account to be distributed to Holders of Allowed Claims in the manner described in the Plan distribution of excess amounts; provided that such Cash arising in connection with Claims of Class 3 Claims shall accrue for the benefit of Class 3 only.

U. De Minimis Distributions; Charitable Donation

Notwithstanding anything to the contrary therein, the Debtors shall not be required to make a distribution to any Creditor if the dollar amount of the distribution is so small that the cost of making that distribution exceeds the dollar amount of such distribution. At the Final Distribution Date, the Debtors (upon agreement with the Post-Effective Committee) may make a charitable donation with undistributed funds if, in the reasonable judgment of the Corporate Representative, the cost of calculating and making the final distribution of the remaining funds is excessive in relation to the benefits to the Creditors who would otherwise be entitled to such distributions.

V. United States Trustee Fees

All outstanding amounts due under 28 U.S.C. § 1930 that have not been paid shall be paid by the Debtors on or before the Effective Date. Thereafter, the Debtors shall pay any statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) and such fees shall be paid until entry of a final decree or an order converting or dismissing the case.

IX.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejection of Executory Contracts and Unexpired Leases

Except with respect to executory contracts or unexpired leases that: (i) were previously assumed or rejected by order of the Bankruptcy Court, or (ii) are the subject of a pending motion to assume or reject, pursuant to section 365 of the Bankruptcy Code, on the Effective Date, each executory contract and unexpired lease entered into by Debtors prior to the Petition Date that has not previously expired or terminated pursuant to its own terms shall be deemed rejected pursuant to section 365 of the Bankruptcy Code; *provided, however*, that nothing in the Plan shall cause the rejection, breach or termination of any contract of insurance benefiting the Debtors and their Estates. Nothing in the Plan shall be construed as an acknowledgement that a particular contract or agreement is executory or is properly characterized as a lease. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. The non-Debtor parties to any rejected personal property leases shall be responsible for taking all steps necessary to retrieve the personal property that is the subject of such executory contracts and leases and the Debtors shall bear no liability for costs associated with such matters.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to Confirmation of the Plan, if any, must be Filed with the Claims Agent within thirty (30) days after the earlier of the Effective Date or an order of the Bankruptcy Court approving such rejection. Any Claims arising from the rejection of an executory contract or unexpired lease pursuant to Confirmation of the Plan that is not Filed within such times will be forever barred from assertion against the Debtors and their property. All such Claims for which Proofs of Claim are timely and properly Filed and ultimately Allowed will be treated as Unsecured Claims subject to the Plan.

X.

CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN AND TO THE EFFECTIVE DATE

A. Conditions to Confirmation of the Plan

Confirmation of the Plan is conditioned upon the satisfaction of each of the following conditions precedent, any one or more of which may be waived by the Debtors: (i) the Bankruptcy Court shall have approved a disclosure statement to the Plan in form and substance acceptable to the Debtors and (ii) the Bankruptcy Court shall have signed the Confirmation Order and entered it on the docket of the Chapter 11 Cases, which Confirmation Order shall be in form and substance acceptable to the Debtors and the Committee; and (iii) all actions, documents and agreements necessary to implement the Plan have been effected or executed.

B. Effect of Failure of Conditions to Confirmation

If any one or more of the conditions in the Plan is not met, the Debtors may withdraw the Plan and, if withdrawn, the Plan shall be of no further force or effect.

C. Conditions to Effective Date

The occurrence of the Effective Date is conditioned upon the satisfaction of each of the following conditions precedent, any one or more may be waived by the Debtors: (i) the Confirmation Order shall have become a Final Order which is not subject to any stay of effectiveness; (ii) the Confirmation Date shall have occurred; and (iii) the appointment of the Corporate Representative shall have been confirmed by order of the Bankruptcy Court, which may be the Confirmation Order.

D. Substantive Consolidation of the Chapter 11 Cases

1. Substantive Consolidation Order.

The Plan shall serve as a motion seeking entry of an order substantively consolidating these Chapter 11 Cases for distribution and voting purposes. Unless an objection to substantive consolidation is made in writing by any Creditor affected by the Plan as herein provided on or before the Plan Objection Deadline, an order substantively consolidating these Chapter 11 Cases, for distribution and voting purposes, may be entered by the Bankruptcy Court, which order may be the Confirmation Order. In the event any such objections are timely filed, a hearing with respect thereto shall be scheduled by the Bankruptcy Court, which hearing may, but need not, coincide with the Confirmation Hearing.

2. Effect/Extent of Substantive Consolidation.

In effectuation of such substantive consolidation, on the Effective Date: (a) no Distributions will be made under the Plan on account of the Intercompany Claims; (b) the guarantees of the Debtors will be deemed eliminated so that any Claim against the Debtors and any guarantee thereof executed by any Debtor and any joint and several liability of the Debtors with one another will be deemed to be one obligation of these Debtors; and (c) each and every Claim against the Debtors will be deemed asserted as a single Claim against the Debtors as a whole, and will be treated in the same Class regardless of the Debtor. Additionally, notwithstanding the substantive consolidation herein, substantive consolidation shall not affect the obligation of each and every one of the Debtors under 28 U.S.C. § 1930(a)(6) until a particular case is closed, converted or dismissed.

3. Reservation of Rights.

The Debtors reserve the right at any time up to the conclusion of the Confirmation Hearing to withdraw their request for substantive consolidation of these Chapter 11 Cases, to seek Confirmation of the Plan as if there were no substantive consolidation, and to seek Confirmation of the Plan with respect to one Debtor even if Confirmation with respect to the other Debtors is denied.

E. Effective Date

Provided the above-referenced conditions to the occurrence of the Effective Date are satisfied, the Plan shall become effective on the Effective Date.

XI.

EFFECTS OF CONFIRMATION

A. Binding Effect of Plan

The provisions of the confirmed Plan shall bind the Debtors, the Corporate Representative, any Entity acquiring property under the Plan, and any Creditor or Equity Interest Holder, whether or not such Creditor or Equity Interest Holder has filed a Proof of Claim or Equity Interest in the Chapter 11 Cases, whether or not the Claim of such Creditor or the Equity Interest of such Equity Interest Holder is impaired under the Plan, and whether or not such Creditor or Equity Interest Holder has accepted or rejected the Plan. All Claims and Debts shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing authority, recorder of deeds or similar official for any county, state, or governmental unit or parish in which any instrument related to under the Plan or related to any transaction contemplated under the Plan is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

B. Property Free and Clear

Except as otherwise provided in the Plan or the Confirmation Order, from and after the Effective Date, all the Debtors' property shall be free and clear of all Claims, Equity Interests, Liens, interests, charges or other encumbrances of Creditors or Equity Interest Holders, other than as set forth herein, and in relevant documents, agreements and instruments contained in the Plan Supplement, which Plan Supplement documents, agreements and instruments shall be in form and substance acceptable to the Debtors. Following the Effective Date, the Debtors may transfer and dispose of any such property free of any restrictions imposed by the Bankruptcy Code or the Bankruptcy Rules and without further approval of the Bankruptcy Court or notice to Creditors, except as may otherwise be required under the Plan or the Confirmation Order.

C. Limitation of Liability

The Debtors, the Committee and their respective officers, directors, shareholders, members, managers, employees, agents, advisors, accountants, attorneys and representatives and their respective property and the RVI/DSW Releasees (collectively, the "Exculpated Parties"), will neither have nor incur any liability to any entity for any action in good faith taken or omitted to be taken after the Petition Date in connection with or related to the Chapter 11 Cases or the formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure Statement, or any agreement created or entered into in connection with the Plan; *provided, however*, that this limitation will not affect or modify the obligations created under the Plan, or the rights of any Holder of an Allowed Claim to enforce its rights under the Plan and shall not release any action (or inaction) constituting willful misconduct, fraud or gross negligence (in each case subject to determination of such by final order of a court of competent jurisdiction); provided that any Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities (if any) under the Plan and such

reasonable reliance shall form an absolute defense to any such claim, cause of action, or liability. Without limiting the generality of the foregoing, each Exculpated Party shall be entitled to and granted the protections of section 1125(e) of the Bankruptcy Code. Except as specifically set forth in the Plan, no provision of the Plan or the Disclosure Statement shall be deemed to act to or release any claims, Litigation claims or rights, or liabilities that the Debtors or the Estates may have against any Entity or person for any act, omission, or failure to act that occurred prior to the Petition Date, nor shall any provision of the Plan be deemed to act to release any Litigation or Litigation claims.

D. Releases

As part of the Plan, the releases set forth below shall be granted pursuant to the Plan and the Confirmation Order:

1. Debtors' Release.

On the Effective Date, subject to the Preserved Setoff Rights, each of the Debtors shall release and be permanently enjoined from any prosecution or attempted prosecution of any and all Litigation or potential Litigation which it has or may have against any of their officers or directors holding such a position as of the Confirmation Date, financial advisors, attorneys, partners, representatives and their respective property; *provided, however*, that the foregoing shall not operate as a waiver of or release from any Litigation or potential Litigation arising out of (i) any express contractual obligation owing by any such directors, officers, agents, financial advisors, attorneys, employees, partners, affiliates or representatives, or (ii) the willful misconduct or gross negligence of such directors, officers, agents, financial advisors, attorneys, employees, partners, affiliates, or representatives in connection with, related to, or arising out of the Chapter 11 Cases, the pursuit of Confirmation of the Plan, the Consummation of the Plan, the administration of the Plan, or the property to be distributed under the Plan.

2. Third Party Releases.

Each person or entity who votes to accept the Plan, for itself and its respective successors, assigns, transferees, current and former officers, directors, agents, financial advisors, attorneys, employees, partners, affiliates, representatives, in each case in their capacity as such, shall, by virtue of sections 1126(c) and 1141(a) of the Bankruptcy Code, be deemed to have released any and all Claims and causes of action against (A) the Debtors and their respective officers, directors, shareholders, members, managers, employees, agents, advisors, accountants, attorneys and representatives and their respective property, (B) the RVI/DSW Releasees related to the prepetition and postpetition conduct of the Debtors' business and the Debtors' chapter 11 cases, and (C) the members of the Committee in their capacity as such, and their respective officers, directors, managers, employees, agents, advisors, accountants, attorneys and representatives and their respective property, arising prior to the Effective Date.

E. Injunction

In implementation of the Plan, except as otherwise expressly provided in the Confirmation Order or the Plan, and except in connection with the enforcement of the terms of the Plan or any documents provided for or contemplated in the Plan, all entities who have held,

hold or may hold Claims against or Equity Interests in the Debtors or the Estates that arose prior to the Effective Date are permanently enjoined from: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind against the Debtors, the Estates, the Debtors or the Estates with respect to any such Claim or Equity Interest; (b) the enforcement, attachment, collection or recovery by any manner or means, directly or indirectly, of any judgment, award, decree, or order against the Debtors, the Estates or any property of the Debtors, or the Estates with respect to any such Claim or Equity Interest; (c) creating, perfecting or enforcing, directly or indirectly, any Lien or encumbrance of any kind against the Debtors, the Estates, or any property of the Debtors or the Estates with respect to any such Claim or Equity Interest; (d) asserting, directly or indirectly, any setoff, right of subrogation, or recoupment of any kind against any obligation due the Debtors, the Estates, or any property of the Debtors, or the Estates, with respect to any such Claim or Equity Interest; and (e) any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan with respect to such Claim or Equity Interest. Nothing contained in the Plan shall prohibit the Holder of a timely-filed Proof of Claim from litigating its right to seek to have such Claim declared an Allowed Claim and paid in accordance with the distribution provisions of the Plan, or enjoin or prohibit the interpretation or enforcement by the Claimant of any of the obligations of the Debtors under the Plan.

F. Post-Confirmation Liability of the Debtors, Corporate Representative and Post-Effective Committee

The Corporate Representative, the Debtors, and the Post-Effective Committee, together with their consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives and the professionals engaged by the foregoing (collectively, the “Indemnified Parties”) shall not be liable for any and all liabilities, losses, damages, claims, causes of action, costs and expenses, including but not limited to attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, to the Holders of Claims or Equity Interests for any action or inaction taken in good faith in connection with the performance or discharge of their duties under the Plan, except the Indemnified Parties will be liable for actions or inactions that are grossly negligent, fraudulent, or which constitute willful misconduct (in each case, liability shall be subject to determination by final order of a court of competent jurisdiction). However, any act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence, fraud or willful misconduct. In addition, the Debtors and their Estates shall, to the fullest extent permitted by the laws of the State of Delaware, indemnify and hold harmless the Indemnified Parties from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Debtors and the Estates or the implementation or administration of the Plan if the Indemnified Party acted in good faith and in a manner reasonably believed to be in or not opposed to the best interest of the Debtors and the Estates. To the extent the Debtors indemnify and holds harmless the Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the Debtors in monitoring and participating in the defense of such claims giving rise to the right of indemnification shall be paid as Expenses. All rights of the persons exculpated and indemnified pursuant hereto shall survive confirmation of the Plan.

G. Insurance

On or as soon as practicable after the Effective Date, the Debtors and the Corporate Representative shall obtain a fidelity bond or similar insurance in the estimated amount of the Assets on the Effective Date. In addition, the Corporate Representative may obtain (if available) directors' and officers' liability insurance or errors and omission insurance (or equivalent insurance), provided that such insurance is available at a reasonable price. The cost of any fidelity bond or insurance obtained under this section shall be an Expense.

XII.

RETENTION OF JURISDICTION

From and after the Confirmation Date, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, but not limited to, for the following purposes:

- 1) To hear and determine any and all objections to the allowance of a Claim, actions to equitably subordinate a Claim, approval of any necessary claims reconciliation protocols, or any controversy as to the classification of a Claim in a particular Class under the Plan;
- 2) To administer the Plan, the Assets and the Proceeds;
- 3) To liquidate any Disputed Claims;
- 4) To hear and determine any and all adversary proceedings, contested matters or applications pending on the Effective Date or otherwise relating to, arising from, or in connection with the Litigation;
- 5) To hear and determine any and all motions and/or objections to fix and allow any Claims arising therefrom;
- 6) To hear and determine any and all applications by Professionals for an award of Professional Fees;
- 7) To enable the Debtors, the Corporate Representative or Post-Effective Committee to commence and prosecute any Litigation which may be brought after the Effective Date;
- 8) To interpret and/or enforce the provisions of the Plan and the injunction provided for in the Plan and to determine any and all disputes arising under or regarding interpretation of the Plan or any agreement, document or instrument contemplated by the Plan, including without limitation the Settlement Agreement;
- 9) To enter and implement such orders as may be appropriate in the event Confirmation is for any reason stayed, reversed, revoked, modified or vacated;

- 10) To modify any provision of the Plan to the extent permitted by the Bankruptcy Code and to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;
- 11) To enter such orders as may be necessary or appropriate in furtherance of Confirmation and the successful implementation of the Plan and to determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code; and
- 12) To close the Chapter 11 Cases when administration of the cases has been completed.

XIII.

MISCELLANEOUS

A. Revocation of Plan of Liquidation

The Debtors reserve the right to revoke and withdraw the Plan at any time on or before the Confirmation Date. If the Debtors revoke or withdraw the Plan pursuant to the Plan, or if Confirmation or the Effective Date does not occur, then the Plan shall be deemed null and void and, in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any entity in any further proceedings involving the Debtors.

B. Severability of Plan Provisions

In the event that, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall, with the consent of the Debtors, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision hereof, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

C. Governing Law

Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware.

D. Exhibits

All exhibits attached to the Plan, the Plan Supplement, or the Disclosure Statement, and the Settlement Agreement, are, by this reference, hereby incorporated into the Plan. The final version of all Exhibits to the Plan, the Plan Supplement, and the Disclosure Statement will be substantially in the forms attached hereto or thereto. The Debtors reserve the right to make nonsubstantive changes and corrections to such Exhibits in advance of the Confirmation Hearing. If any Exhibits are changed or corrected, the replacement Exhibits will be filed with the Bankruptcy Court prior to the commencement of the Confirmation Hearing.

E. Notices

All notices required or permitted to be made in accordance with the Plan shall be in writing and shall be delivered personally or by nationally recognized overnight or next-day courier service, first class mail or via facsimile with electronic confirmation of receipt as follows:

If to the Debtors
(By Mail or Facsimile)

Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: 302-652-4100
Facsimile: 302-652-4400
Attn: Laura Davis Jones, Esquire
David M. Bertenthal, Esquire
Joshua M. Fried, Esquire

If to the Corporate Representative
(By Mail)

Alan Cohen, Corporate Representative, FB Liquidating Estate
c/o Abacus Advisors
10 Reuten Drive
Closter, NJ 07624
Telephone: 201-784-4480
Facsimile: 201-784-4490

If to the Committee and/or Post-Effective Committee:

Cooley Godward Kronish LLP
Lawrence C. Gottlieb, Esquire
Cathy R. Hershkopf, Esquire
Jeffrey L. Cohen, Esquire
1114 Avenue of the Americas
New York, NY 10036
Telephone: 212-479-6000
Facsimile: 212- 479-6275

-and-

Morris Nichols Arsht & Tunnel LLP
Robert Dehney, Esquire
Eric Schwartz, Esquire
1201 North Market Street, 18th Floor
P.O. Box 1347
Wilmington, DE 19899-1347 (Deliveries 19801)
Telephone: 302-658-9200
Facsimile: 302-658-3989

F. Reservation of Rights

Neither the filing of the Plan nor any statement or provision contained in the Plan or in the Disclosure Statement, nor the taking by any party in interest of any action with respect to the Plan, shall: (a) be or be deemed to be an admission against interest, and (b) until the Effective Date, be or be deemed to be a waiver of any rights any party in interest may have (i) against any other party in interest, or (ii) in any of the assets of any other party in interest, and, until the Effective Date, all such rights are specifically reserved. In the event that the Plan is not confirmed or fails to become effective, neither the Plan nor the Disclosure Statement nor any statement contained in the Plan or in the Disclosure Statement may be used or relied upon in any manner in any suit, action, proceeding or controversy within or without these Chapter 11 Cases involving the Debtors, except with respect to Confirmation of the Plan.

G. Computation of Time Periods

In computing any period of time prescribed or allowed by the Plan, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in the Bankruptcy Court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

H. Defects, Omissions, and Amendments.

The Debtors may, with the approval of the Bankruptcy Court and without notice to all Holders of Claims or Equity Interests, insofar as it does not materially and adversely affect Holders of Claims, correct any defect, omission, or inconsistency in the Plan in such manner and to such extent as may be necessary or desirable to expedite the execution of the Plan. The Plan may be altered or amended before or after Confirmation as provided in section 1127 of the Bankruptcy Code if, in the opinion of the Bankruptcy Court, the modification does not materially and adversely affect the interests of Holders of Claims, so long as the Plan, as modified, complies with sections 1122 and 1123 of the Bankruptcy Code and the Debtors have complied with section 1125 of the Bankruptcy Code. The Plan may be altered or amended before or after the Confirmation Date but, prior to substantial consummation, in a manner which, in the opinion of the Bankruptcy Court, materially and adversely affects Holders of Claims, so long as the Plan, as modified, complies with Bankruptcy Code sections 1122 and 1123, the Debtors have

complied with Bankruptcy Code section 1125 and, after notice and a hearing, the Bankruptcy Court confirms such Plan, as modified, under Bankruptcy Code section 1129.

I. Filing of Additional Documents

The Debtors shall file with the Bankruptcy Court such agreements, instruments, pleadings, orders, papers or other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

J. Successors and Assigns

The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such entity.

K. Setoffs and Recoupments

The Debtors may, but shall not be required to, set off against or recoup from the payments to be made pursuant to the Plan in respect of a Claim, any claim of any nature whatsoever that the Debtors, or the Estates, as applicable, may have against the Holder of such Claim, but neither the failure to do so or the allowance of any Claim hereunder shall constitute a waiver or release of any such claim by the Debtors, or the Estates, against such Holder.

L. Tax Exemption

Pursuant to section 1146 of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan, or the execution, delivery or recording of an instrument of transfer pursuant to, in implementation of or as contemplated by the Plan, including, without limitation, any transfers to or by the Debtors, of the Debtors' property in implementation of or as contemplated by the Plan (including, without limitation, any subsequent transfer of property by the Debtors) shall not be taxed under any state or local law imposing a stamp tax, transfer tax or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax or similar tax.

M. Securities Exemption

Any rights issued under, pursuant to or in effecting the Plan, and the offering and issuance thereof by any party, including without limitation, the Debtors or the Corporate Representative, shall be exempt from section 5 of the Securities Act of 1933, if applicable, and from any state or federal securities laws requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security, and shall otherwise enjoy all exemptions available for distributions of securities under a plan of reorganization in accordance with all applicable law, including without limitation, section 1145 of the Bankruptcy Code.

N. Plan Interest Rate

If and to the extent it is determined by the Bankruptcy Court that interest is required to be paid on an Allowed Claim other than as set forth in the Plan, the interest rate to be used shall be the Plan Interest Rate as determined by the Bankruptcy Court for such Claim.

O. Implementation

Upon Confirmation, the Debtors shall be authorized to take all steps and execute all documents necessary to effectuate the provisions contained in the Plan.

P. Record Date

To the extent a "Record Date" is required for implementation of the Plan, the record date shall be the voting record date established by the Bankruptcy Court in the order approving the Disclosure Statement or such other date as the Bankruptcy Court may set.

Q. Certain Actions

By reason of entry of the Confirmation Order, prior to, on or after the Effective Date (as appropriate), all matters provided for under the Plan that would otherwise require approval of directors or stockholders of the Debtors under the Plan, including, without limitation, (i) the distribution of Cash pursuant to the Plan, (ii) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements or documents related to the Plan, and (iii) the adoption, execution, and implementation of other matters provided for under the Plan involving the company or organizational structure of the Debtors, shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate), pursuant to the applicable general corporation, limited liability, or partnership law of the state in which the applicable Debtor is chartered, organized or incorporated, without any requirement of further action by the directors and stockholders of the Debtors.

Effective upon the Effective Date, each of the Debtors' formation documents shall each be deemed amended to prohibit the issuance by the Debtors of nonvoting securities to the extent required under section 1123(a)(6) of the Bankruptcy Code.

On or as soon as practicable following the Effective Date, the Debtors shall be authorized to cancel, annul and extinguish all Equity Interests.

R. Waiver of Ten (10) Day Stay

The Debtors request as part of the Confirmation Order a waiver from the Bankruptcy Court of the ten (10) day stay of Bankruptcy Rule 3020(e) and, to the extent applicable, a waiver of the ten (10) day stay of Bankruptcy Rule 6004(g).

S. Substantial Consummation

On the Effective Date, the Plan shall be deemed substantially consummated for voting and distribution purposes under Bankruptcy Code sections 1101 and 1127(b).

XIV.

SUMMARY OF DISTRIBUTABLE ASSETS

A. Non-Litigation Assets

The Debtors estimate that, as of a projected Effective Date of [_____], 2010, the Debtors will have cash on hand of at least \$55.5 million from the liquidation of the Estates' assets. From this amount, the Debtors must pay \$3.2 million in estimated Priority Tax Claims and other Priority Claims and \$7.3 million in Administrative Claims (including professional fees) that the Debtors estimate will ultimately be allowed. The remaining fund would therefore be approximately \$45 million. Any augmentation to this amount for distribution on General Unsecured Claims would only derive from successful Litigation.

B. Litigation

Except as otherwise provided in the Plan, any and all Litigation, Avoidance Actions, Litigation Claims and related causes of action under any theory of law or fact, including, without limitation, under the Bankruptcy Code, accruing to or assertable by the Debtors will remain assets or property of the Estates and on the Effective Date will become Assets. From and after the Effective Date, the Debtors will have the sole right to, and may litigate or settle any such Litigation, Litigation Claims, Avoidance Actions, and related causes of action, *provided, however*, that the Debtors will not commence any Avoidance Actions except upon mutual agreement with the Post-Effective Committee. For obvious reasons of litigation strategy and confidentiality, the Debtors cannot discuss the strengths and weaknesses of individual cases in this Disclosure Statement. Without limitation, those Entities and persons that do not obtain an express release under the Plan or the Settlement Agreement in respect of claims, liabilities, causes of action, conduct, omissions, transfers, or occurrences that arose prior to the Petition Date may be subject to such Litigation, Avoidance Actions, Litigation Claims and related causes of action.

XV.

RISK FACTORS

Because the Plan is essentially a "pot plan," Distributions to Holders of Allowed General Unsecured Claims are subject to the success of the Debtors in administering the Litigation and implementing the Plan efficiently. Notwithstanding the Debtors' best efforts to provide reasonable estimates of the expected return to the Holders of Claims, there is always a possibility that the efforts of the Debtors will be more expensive or less successful than predicted. Additionally, there may be significant delay before any distribution is made on account of Allowed Claims, given the uncertainties of the Litigation.

For the reasons set forth in this Disclosure Statement, the Debtors believe that the very

same risks described herein are present in and significantly greater to Creditors in a chapter 7 case.

XVI.

BEST INTERESTS OF CREDITORS TEST

Confirmation of the Plan requires, among other things, that each holder of a claim in an impaired class and each holder of an interest either: (a) accepts the Plan; or (b) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. This requirement is commonly referred to as the “Best Interests Test.”

A. Chapter 7

To determine the value that the Holders of Impaired Claims and Equity Interests would receive if the Debtors were liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtors’ assets and properties in the context of a chapter 7 liquidation case. Bankruptcy Code section 704 requires a chapter 7 trustee to collect and reduce to money the property of the Estates as expeditiously as is compatible with the best interests of parties in interest.

The Cash available for satisfaction of Allowed Claims would consist of the proceeds resulting from the disposition of the Debtors’ few remaining assets, augmented by the Cash, if any, held by the Debtors at the time of the commencement of the chapter 7 case. Any such Cash amount would then be reduced by the amount of any Allowed Claims secured by such assets, the costs and expenses of the liquidation and such additional Administrative Claims, and other priority claims that may result from the use of chapter 7 for the purposes of liquidation.

The costs of liquidation under chapter 7 would include fees payable to a trustee in bankruptcy, as well as those that might be payable to his or her attorneys and to other professionals that such trustee may engage, plus any unpaid expenses incurred by the Debtors during the Chapter 11 Cases that would be allowed in the chapter 7 case, such as compensation for attorneys, appraisers, accountants or other professionals, and costs and expenses of the Debtors and the Committee. Such Administrative Claims would have to be paid in Cash, in full, from the liquidation proceeds before the balance of those proceeds could be made available to pay other Claims.

B. Liquidation Analysis

Pursuant to Bankruptcy Code section 1129(a)(7), unless there is unanimous acceptance of the Plan by an Impaired Class, the Debtors must demonstrate, and the Bankruptcy Court must determine that with respect to such Class, each Holder of a Claim will receive property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date of the Plan. This requirement is commonly referred to as the “Best Interests of Creditors Test.”

The Plan satisfies the Best Interests of Creditors Test. The Plan provides greater recovery to the Holders of Allowed General Unsecured Claims than such Holders would receive under a liquidation under chapter 7 primarily because the Plan avoids a layer of administrative expense associated with the appointment of a chapter 7 trustee, while increasing the efficiency of administering the Debtors assets for the benefit of their Creditors. Most obviously (with respect to efficiency), the Debtors and the Committee have already completed much of the analysis concerning the Litigation that a Chapter 7 trustee would have to reevaluate before such Litigation would commence.

Moreover, in chapter 7 cases, the chapter 7 trustee would also be entitled to seek a sliding scale commission based upon the funds distributed by such trustee, even though the Debtors have already accumulated much of the funds and have already incurred many of the expenses associated with generating those funds. Accordingly, the Debtors believe that there is a reasonable likelihood that Creditors would “pay again” for the funds accumulated by the Debtors, since the chapter 7 trustee would be entitled to receive a commission in some amount for all funds distributed, including possibly substantial funds handed over to the Liquidating Trust by the Debtors. It is also anticipated that a chapter 7 liquidation would result in delay in the distributions to Creditors. Among other things, a chapter 7 case would trigger a new bar date for filing Claims that would be more than 90 days following conversion of the case to chapter 7. Fed. R. Bankr. P. 3002(c). Hence, a chapter 7 liquidation would not only delay Distributions, but raise the prospect of additional Claims that were not asserted in the Chapter 11 Cases. Based on the foregoing, the Plan provides an opportunity to bring the greatest return to Creditors.

XVII.

CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to Holders of Claims. This discussion is based on the Internal Revenue Code, Treasury Regulations promulgated and proposed thereunder, judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service (“IRS”) as in effect on the date hereof. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Further, legislative, judicial, or administrative changes may occur, perhaps with retroactive effect, that could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Holders of Claims.

This discussion is for general information only and does not purport to address all aspects of U.S. federal income taxation that may be relevant the Holders of Claims in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, brokers and dealers in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies, regulated investment companies). This discussion only addresses the tax consequences to Holders of Claims who have held such Claims as capital assets within the meaning of the Internal Revenue Code. No aspect of foreign, state, local, or estate and gift taxation is addressed.

THE FOLLOWING SUMMARY IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PERSONAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

TO COMPLY WITH THE IRS CIRCULAR 230, IT IS NOTIFIED THAT (1) THE FOLLOWING SUMMARY IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTOR OF THE PLAN, (2) IT CANNOT BE USED BY ANY PERSON FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE ASSERTED AGAINST THE PERSON UNDER THE INTERNAL REVENUE CODE, AND (3) HOLDERS OF CLAIMS OR INTERESTS SHOULD SEEK THEIR OWN ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISER.

A. In General.

The United States federal income tax consequences of the distributions contemplated by the Plan to the Holders of Claims will depend upon a number of factors. The character and amount of income, gain, or loss recognized as a consequence of the Plan and the distributions provided for thereby will depend upon, among other things, (1) the manner in which a Holder acquired a Claim, (2) the length of time the Claim has been held, (3) whether the Claim was acquired at a discount, (4) whether the Holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years, (5) whether the Holder has previously included in income accrued but unpaid interest with respect to the Claim, (6) the method of tax accounting of the Holder, and (7) whether the Claim is an installment obligation for United States federal income tax purposes.

For purposes of the following discussion, a "U.S. Holder" is any person (1) who is a citizen or resident of the United States; (2) that is a corporation or partnership created or organized in or under the laws of the United States or any state thereof or District of Columbia; (3) that is an estate, the income of which is subject to United States federal income taxation regardless of its source or; (4) that is a trust (a) the administration over which a United States person can exercise primary supervision and all of the substantial decisions of which one or more United States persons have the authority to control, or (b) that has elected to continue to be treated as a United States Person for United States federal income tax purposes. A "Non-U.S. Holder" is any person that is not a U.S. Holder. In the case of a partnership, the tax treatment of its partners will depend on the status of the partner and the activities of the partnership. Holders who are partnerships or partners in a partnership should consult their tax advisors.

Certain Holders of Claims (such as foreign persons, S corporations, regulated investment companies, insurance companies, financial institutions, small business investment companies, broker-dealers, and tax-exempt organizations) may be subject to special rules not addressed in this summary of United States federal income tax consequences. There also may be state, local, and/or foreign income or other tax considerations or United States federal estate and gift tax considerations applicable to Holders of Claims, which are not addressed herein. EACH HOLDER OF A CLAIM OR INTEREST AFFECTED BY THE PLAN IS STRONGLY

URGED TO CONSULT ITS TAX ADVISOR WITH RESPECT TO DISTRIBUTIONS RECEIVED UNDER THE PLAN.

1. U.S. Holders of Claims.

A U.S. Holder should generally recognize capital gain or loss for United States income tax purposes in an amount equal to the difference between the amount of Cash (and other consideration received) under the Plan in respect to such Holder's Claim and the Holder's adjusted tax basis in the Claim. However, to the extent a U.S. Holder received any Cash (or other consideration) in satisfaction of any accrued and unpaid interest, such Holder may recognize ordinary income or loss to the extent that such Cash (or other consideration) is allocable to the accrued and unpaid interest, unless such Holder has previously included the accrued interest in such Holder's taxable income.

2. Non-U.S. Holder of Claims.

A Non-U.S. Holder of a Claim generally will not be subject to United States federal income tax with respect to any income or gain recognized upon the exchange of such Holder's Claim with Cash (or other property) pursuant to the Plan, unless (i) such Holder is engaged in a trade or business in the United States to which income, gain from the exchange is "effective connected" for United States federal income tax purposes, or (ii) if such Holder is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange and certain other requirements are met. To the extent any Cash (or other consideration) is distributed for accrued and unpaid interest, however, a Non-U.S. Holder may be subject to United States withholding taxes (at 30%) unless such Holder is qualified for the so-called "portfolio interest exemption" or eligible to claim a reduction or exemption under any applicable treaty and complies with certain required certification procedure.

3. Importance of Obtaining Professional Tax Assistance.

The United States federal income tax consequences to a Holder other than a Holder receiving Cash (or other property) in satisfaction of such Holder's Claim may be different from the tax consequences described above. Holders of each such Claim should consult their tax advisers regarding the potential federal income tax consequences.

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIM HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

XVIII.

CONCLUSION

The Debtors believe that the Plan is in the best interest of Creditors and urge Creditors to vote to accept the Plan.

Dated: November 18, 2009

Respectfully submitted,

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Its: President

FB Services LLC

By: /s/ Alan Cohen
Its: President

FB Leasing Services LLC.

By: /s/ Alan Cohen
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