

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA

IN THE MATTER OF:

Fountain Powerboat Industries, Inc., et al
Debtors

Case No. 09-7132-8
Consolidated for Administration
Chapter 11

First Amended Joint Plan Of Reorganization Dated November 20, 2009

Fountain Powerboat Industries, Inc., Fountain Powerboats, Inc., Fountain Dealers' Factory Superstore, Inc., and Baja by Fountain, Inc. (collectively the "Debtors"), pursuant to 11 U.S.C. Section 1129 and Rule 3016 of the Federal Rules of Bankruptcy Procedure and together with Liberty Associates, L.C., respectfully propose the following First Amended Joint Plan of Reorganization Dated November 20, 2009 (the "Plan").

1. **INTRODUCTION.** On August 24, 2009 (the "Petition Date"), the Debtors filed voluntary petitions seeking relief under Chapter 11 of the Bankruptcy Code, and operate as debtors-in-possession. Pursuant to various orders entered by the Court in response to the Debtors' motions and after notice and hearing, the Debtors (i) obtained authority for use of cash collateral, (ii) obtained authority for post-petition financing, and (iii) otherwise complied with all requirements for operation and filing of necessary reports with the Court as mandated by the Bankruptcy Code, the Bankruptcy Rules, and Local Rules of the Court.
 - 1.1. Reference is made to the Disclosure Statement submitted for the Plan and filed on the same date herewith (the "Disclosure Statement") for a brief discussion of the Debtor's history, business, results of operations, historical financial information and properties, the results of post-petition operations, and an analysis of the Plan. All creditors entitled to vote on the Plan should review the Disclosure Statement before voting to accept or reject the Plan.
 - 1.2. In addition, there may be other agreements and documents that have been filed which are referenced in the Plan and/or the Disclosure Statement and which are available for review. No solicitation materials, other than the Disclosure Statement, have been authorized by the Court for use in soliciting acceptances or rejections of the Plan.

2. **DEFINITIONS** For purposes of this Plan and accompanying Disclosure Statement, the following definitions shall apply and, unless otherwise indicated, the singular shall include the plural:

- 2.1. **Allowed Claim or Interest:** Any claim against or interest in the Debtors (a) for which a proof of claim or interest was filed on or before the date designated by the Court as the last day on which to file such proofs of claim or interest in this proceeding, or (b) which is listed in the Schedules filed by the Debtors (unless listed as unliquidated, disputed or contingent) and, in either case, to which (i) no objection has been filed within the applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or Order of this Court, or (ii) an objection has been timely filed and determined by Final Order, and then only to the extent the Order allows such claim or interest.
- 2.2. **Baja Engine Supply Agreement:** The Baja Engine Supply Agreement dated May 28, 2008 among Baja By Fountain, Inc., and Mercury Marine division of Brunswick Corporation.
- 2.3. **Bankruptcy Administrator:** The United States Bankruptcy Administrator for the Eastern District of North Carolina.
- 2.4. **Bankruptcy Causes of Action:** Any claim or cause of action which may be asserted by or on behalf of a trustee or a debtor-in-possession under Sections 541, 542, 543, 544, 546, 547, 548, 549, 550, or 553 of the Bankruptcy Code.
- 2.5. **Bankruptcy Code:** Provisions of Title 11, United States Code, as amended from time to time and applicable to this case.
- 2.6. **Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure, as amended from time to time and applicable to this case.
- 2.7. **Claim:** Any right to payment, or any right to an equitable remedy for breach or performance if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- 2.8. **Claims Bar Date:** The date by which a proof of claim must be filed with the Court, which shall be, as applicable, (i) December 28, 2009 with respect to all creditors except a governmental unit, (ii) February 20, 2010 with respect to a

governmental unit, and (iii) with respect to claims arising from the rejection of any lease or executory contract, sixty (60) days after the Confirmation Date, or such other (whether earlier or later) deadline as may be set by the Court generally or with respect to any specific lease or contract rejected.

- 2.9. Class: A group of Claims or Equity Interests which are substantially similar to each other, as classified under the Plan.
- 2.10. Collateral: Property of the Debtors which has been duly and properly pledged to a creditor to secure indebtedness, and which pledge (of whatever nature) has not been avoided or subordinated.
- 2.11. Committee: The Official Committee of Unsecured Creditors.
- 2.12. Confirmation Date: The date on which the clerk enters on the Court's docket the Confirmation Order confirming the Plan.
- 2.13. Confirmation Order: The Order of the Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code.
- 2.14. Consummation, Final: The consummation of all things contained in or provided for in this Plan, and the entry of a Final Decree finally dismissing this reorganization case.
- 2.15. Consummation, Substantial: The date on which the Debtors have substantially completed all requirements of this Plan, as determined in accordance with § 1101(2) of the Bankruptcy Code or an Order of Substantial Consummation entered by this Court.
- 2.16. Convenience Claims: Allowed Unsecured Claims in an amount equal to or less than the sum of \$5,000.00.
- 2.17. Court: The United States Bankruptcy Court for the Eastern District of North Carolina, and any appellate court that exercises jurisdiction over this case.
- 2.18. Debtors: Fountain Powerboat Industries, Inc., Fountain Powerboats, Inc., Fountain Dealers' Factory Superstore, Inc., and Baja by Fountain, Inc.
- 2.19. Debtors, Reorganized: The Debtors, after Substantial Consummation has occurred.
- 2.20. Disputed Claim: Any Claim which is not an Allowed Claim and with respect to which (i) an objection has been interposed and has not been resolved

by agreement or Final Order, (ii) the Debtors have scheduled as disputed, contingent or unliquidated, or (iii) the claim is set forth in an improper proof of claim or a proof of claim untimely filed.

- 2.21. Distribution Date: Any date on which distributions are to be made to creditors pursuant to terms and provisions of this Plan or upon approval of this Court.
- 2.22. Effective Date: The first day of the month next following the Confirmation Date, provided that the Confirmation Order is a Final Order as of such day.
- 2.23. Engine Supply Agreement: The Engine Supply Agreement dated July 17, 2003, as amended, among Brunswick Corporation, Fountain Powerboat Industries, Inc., Fountain Powerboats, Inc., and Reginald M. Fountain, Jr.
- 2.24. Equity Interest: Any ownership interest (common or preferred stock, options or warrants) in the Debtors.
- 2.25. Estate: The property belonging to the Debtors on the date this case was commenced and as defined by Section 541 of the Bankruptcy Code and other applicable law.
- 2.26. Final Decree: The final decree entered by the Court pursuant to Bankruptcy Rule 3022.
- 2.27. Final Order: An order (i) as to which the time to appeal or seek review or rehearing has expired and as to which no motion or petition for review or rehearing is pending, or (ii) if an appeal, motion or petition for review or rehearing is pending, the operation or effect of which order has not been stayed, reversed, or amended.
- 2.28. Final Report: A report to be filed by the Debtors with the Court upon and after completion of all acts required to achieve Final Consummation of the Plan, which report shall include, but not be limited to, all information necessary to meet the reporting requirements of the Court, the Bankruptcy Administrator, and the Plan.
- 2.29. Guaranty Claims: A claim against the Debtors based on a guaranty of payment of obligations of any person or entity other than the Debtors.
- 2.30. Liberty: Liberty Associates, L.C.
- 2.31. Lien: A deed of trust, mortgage, judgment lien, materialman's lien, statutory lien, security interest, pledge, charging order, or other encumbrance on the Debtors'

property, effective under applicable laws as of the Petition Date or thereafter as authorized by Order of the Court.

- 2.32. Notice and Hearing: Notice and hearing as defined by Section 102 of the Bankruptcy Code.
- 2.33. Petition Date: August 24, 2009.
- 2.34. Plan: This plan of reorganization and any modification thereof as approved by the Court.
- 2.35. Priority Claim: An allowed claim that is unsecured and is entitled to priority under Section 507 or Section 364 of the Bankruptcy Code, excluding Priority Tax Claims.
- 2.36. Priority Creditor: A creditor with an Unsecured Priority Claim.
- 2.37. Priority Tax Claim: An allowed claim for federal, state or local taxes that is unsecured and is entitled to priority under Section 507 or Section 364 of the Bankruptcy Code.
- 2.38. Priority Tax Creditor: A creditor with an Unsecured Priority Tax Claim.
- 2.39. Pro Rata: The proportion that each allowed claim in a particular class of creditors or interests bears to the aggregate of all allowed claims or interests in that Class on the relevant date.
- 2.40. Record Date: For purposes of fixing the rights of the holders of Equity Interests, the Record Date shall be December 31, 2009.
- 2.41. Secured Claim: An allowed claim that is secured by a Lien which has not been or is not subsequently avoided, to the extent of the value of the Collateral subject to such Lien as determined under Section 506 of the Bankruptcy Code.
- 2.42. Secured Creditor: A creditor with a Secured Claim.
- 2.43. Unsecured Claim: An allowed claim that is unsecured and is not entitled to be treated as a Priority Claim, a State Escrow Claim or a State Penalty Claim.
- 2.44. Unsecured Creditor: A creditor with an Unsecured Claim.

3. **PROVISION FOR PAYMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS**

3.1. Administrative Claims shall be allowed upon due request or application and in such amounts as may be determined by the Court after notice and hearing.

3.1.1. Attorneys, accountants and other professionals retained by the Debtors or by the Committee shall be compensated for services rendered in such capacity and reasonably necessary to the administration of this estate, upon (i) an hourly basis and at their customary hourly rates or (ii) in such amounts as may be determined by the Court, as applicable, not to exceed reasonable compensation for such services.

3.1.2. The holders of Allowed Administrative Claims shall be paid in cash on the Effective Date or as soon thereafter as the same can be determined and, if necessary, allowed by the Court.

3.2. The holders of Allowed Priority Tax Claims shall be paid in cash, with interest at the applicable statutory rate, and either (i) in quarterly or more frequent installments over a period not exceeding five (5) years from and after the Petition Date, or (ii) with respect to ad valorem property taxes, on or before the date such taxes are due and payable without penalty.

4. **DESIGNATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS** For purposes of the Plan, Claims and Equity Interests are classified as follows:

4.1. **Class 1** shall consist of the Claims of **FB Investments, LLC ("FB Investments")** as successor in interest to Regions Bank with respect to its Floor Plan, Term Loan and Revolver (the "Regions Bank Indebtedness").

4.2. **Class 2** shall consist of the Claims of **Avaya Financial Services ("Avaya Financial")** pursuant to equipment lease agreement #X063742 for an Avaya Telephone System (the "Avaya Indebtedness").

4.3. **Class 3** shall consist of the Claims of **Executive Leasing** pursuant to equipment lease #BT-3621 for 8 Savin and Konica copiers (the "Executive Leasing Indebtedness").

- 4.4. **Class 4** shall consist of the Claims of **Marlin Leasing Corp. ("Marlin Leasing")** pursuant to equipment finance agreement #403-1200222-001 for video camera and lighting equipment (the "Marlin Leasing Indebtedness").
- 4.5. **Class 5** shall consist of the Claims of **National City** pursuant to equipment lease agreements (i) #76917000 for an Accu-Router, (ii) #77171000 for a Cutting Table and associated equipment, and (iii) #81378000 for an Accu-Router Tool Changer (collectively, the "National City Indebtedness").
- 4.6. **Class 6** shall consist of the Claims of **Baja Marine Corporation, a division of Brunswick Corp. ("Baja")** evidenced by a purchase money promissory note secured by a second lien upon certain molds and tooling (the "Baja Indebtedness").
- 4.7. **Class 7** shall consist of the **Guaranty Claims**.
- 4.8. **Class 8** shall consist of the **Allowed Unsecured Claims** (i) including the unsecured portion of any claims listed herein as secured but which are determined to be unsecured by order of the Court or applicable law after (a) valuation or liquidation of property serving as Collateral to said claimant, or (b) avoidance of any Lien securing such claim, and (ii) excluding the Class 1 FB Investments Claim, the Class 6 Baja Claim, and the Class 7 Guaranty Claims.
- 4.9. **Class 9** shall consist of the **Equity Interests**.
5. **TREATMENT OF CLASSES IMPAIRED UNDER THE PLAN** Claims and Interests shall receive the following treatment under the Plan. Except to the extent otherwise provided below, the Reorganized Debtors may prepay any Allowed Claim, in part or in full, at any time and without penalty.
 - 5.1. **Class 1: Claim of FB Investments**
 - 5.1.1. At the Effective Date, the Class 1 FB Investments Claim shall be bifurcated into (i) an Allowed Secured Claim in the amount of \$8,000,000 (the "FB_Secured Claim"), and (ii) an Allowed Unsecured Claim in the amount of \$11,829,522.23, the unpaid balance of the Regions Bank Indebtedness as of the Petition Date (the "FB Unsecured Claim"). Neither the FB Secured Claim nor the FB Unsecured Claim shall be subject to objection.
 - 5.1.2. The FB Secured Claim shall bear interest at the fixed rate of 8.0% per annum from and after the Effective Date.

5.1.2.1. The FB Secured Claim shall be secured by the existing liens of FB Investments upon the Debtors' assets, and shall be paid in full on or before March 18, 2010; provided however, no additional adequate protection payments shall be due or required pending consummation of the Plan, including any payment otherwise due on or before February 1, 2010. The Debtors may satisfy the FB Secured Claim, including any accrued interest, in full by (i) payment of immediately available funds in the amount of \$6,900,000 on or before March 17, 2010 and (ii) the simultaneous payment of \$500,000 in immediately available funds in full satisfaction of the FB Unsecured Claim on or before March 17, 2010. Upon the timely payment of such amounts (\$6,900,000 and \$500,000) the liens and security interests securing the FB Secured and FB Unsecured Claims shall be deemed automatically cancelled and terminated and FB Investments shall execute such documents as shall be reasonably necessary to cause such liens and security interests to be immediately cancelled of record.

5.1.2.2. Conditioned upon and contemporaneously with full payment of the FB Secured Claim and the FB Unsecured Claim on or before March 17, 2010 as provided herein, the funds in the cash collateral escrow account shall be released to the Reorganized Debtors.

5.1.3. The FB Unsecured Claim shall be paid \$500,000 in immediately available funds on or before March 17, 2010 in full satisfaction of such claim.

5.2. **Class 2: Claim of Avaya Financial Services.**

5.2.1. The Class 2 Claim of Avaya Financial shall be allowed as a Secured Claim in the amount of \$67,600 and shall be paid with interest at the rate of 6.7% per annum in equal monthly installments commencing 30 days after the Effective Date based on an amortization schedule of 36 months, in full satisfaction of such claim.

5.2.2. The existing lease agreement shall be modified or replaced with a conditional sale agreement, transferring title of the Retained Equipment to the Debtors subject to a security interest in favor of such creditor, and upon payment of the Secured

Claim in accordance with the Plan the security interest shall be cancelled and released.

5.3. **Class 3: Claim of Executive Leasing.**

5.3.1. Equipment lease #BT-3621 shall be modified as follows and assumed by the Debtors with the consent of Executive Leasing.

5.3.1.1. The Debtors will retain possession of the (i) Savin 816 MF Copier, (ii) Savin 9025SP Copier, and (iii) Konica Minolta 601 Copier (the "Retained Equipment").

5.3.1.2. The existing lease agreement shall be modified to provide for monthly payments in the amount of \$1,290 for the remaining term of the lease.

5.3.1.3. The Debtors shall surrender the remaining equipment subject to the existing lease agreement within 30 days after the Effective Date, and after credit equal to the value of such equipment in such amount as may be agreed by the parties or determined by the Court, any deficiency balance shall be treated as an Allowed Unsecured Claim.

5.4. **Class 4: Claim of Marlin Leasing.**

5.4.1. The Class 4 Claim of Marlin Leasing shall be allowed as a Secured Claim in the amount of \$34,800 and shall be paid with interest at the rate of 6.7% per annum in equal monthly installments commencing 30 days after the Effective Date based on an amortization schedule of 48 months, in full satisfaction of such claim.

5.4.2. The Debtors shall retain the equipment subject to the security interest in favor of such creditor, and upon payment of the Secured Claim in accordance with the Plan the security interest shall be cancelled and released.

5.5. **Class 5: Claim of National City.**

5.5.1. The Class 5 Claim of National City shall be allowed as a Secured Claim in the amount of \$210,000 and shall be paid with interest at the rate of 6.7% per annum in equal monthly installments commencing 30 days after the Effective Date based on an amortization schedule of 48 months, in full satisfaction of such claim.

5.5.2. The existing lease agreement shall be modified or replaced with a conditional sale agreement, transferring title of the Retained Equipment to the Debtors subject to a security interest in favor of such creditor, and upon payment of the Secured Claim in accordance with the Plan the security interest shall be cancelled and released.

5.6. **Class 6: Secured Claim of Baja.**

5.6.1. The liens and security interests of Baja shall be terminated and extinguished at the Effective Date.

5.6.2. The Debtors shall assume the Baja Engine Supply Agreement and the Engine Supply Agreement, no cure payment shall be due with respect to such assumption, and no payment shall thereafter be due on the Class 10 Claim of Baja and the claim shall be extinguished.

5.7. **Class 7: Guaranty Claims.**

5.7.1. The Debtors' obligations on the Class 11 Guaranty Claims shall be deemed a guaranty of collection, rather than a guaranty of payment.

5.7.2. The Court shall estimate, after notice and hearing, each Guaranty Claim for purposes of voting, confirmation and distributions, pursuant to § 502(c) of the Bankruptcy Code, after taking into account (i) whether the primary obligor is in default on the payment obligations guaranteed by the Debtors, (ii) value and expected disposition of the collateral, if any, securing the Guaranty Claim, (iii) the ability or expectation that the primary obligor will satisfy the Guaranty Claim, and (iv) any other matters relevant to the estimation of any potential deficiency which the holder of the Guaranty Claim may suffer and be entitled to receive payment from the Debtors in satisfaction thereof. The Court shall retain jurisdiction to further estimate any Guaranty Claim until such time as the Court enters a Final Decree.

5.7.3. Holders of Allowed Guaranty Claims will be paid in cash, *pari passu* with holders of all Allowed Class 8 Unsecured Claims, a pro rata share of \$500,000 (separate and apart from payment of the FB Unsecured Claim) within 90 days after

the Effective Date (subject to the provisions for Disputed Claims), in full satisfaction of such claims.

5.8. **Class 8: Unsecured Claims:** Holders of Allowed Class 8 Unsecured Claims will be paid in cash, *pari passu* with holders of all Allowed Class 7 Guaranty Claims, a pro rata share of \$500,000 (separate and apart from payment of the FB Unsecured Claim) within 90 days after the Effective Date (subject to the provisions for Disputed Claims), in full satisfaction of such claims.

5.9. **Class 9: Equity Interests:** The existing Equity Interests in the Debtors (the "Old Equity") shall be extinguished and no distribution shall be made on account of such Old Equity Interests.

6. **MEANS FOR EXECUTION OF THE PLAN** The Debtors shall execute and consummate the Plan as follows:

6.1. **Vesting of Assets, Continuation of Business Operations:** All tangible and intangible assets of the Debtors shall vest in the Reorganized Debtors as of the Effective Date. The Reorganized Debtors shall continue the business operations and manufacture Fountain and/or Baja boats, which together with the funding provided by Liberty shall be the primary means to consummate the Plan and provide payment to the holders of Allowed Claims as provided in the Plan. The Reorganized Debtors will continue as separate corporate entities, and no substantive consolidation is proposed by the Plan.

6.2. **Funding on and after the Effective Date:** The net revenues from ongoing business operations, together with the required capital infusion by Liberty are expected to generate sufficient funds to fund the payment obligations under the Plan.

6.2.1. The Reorganized Debtors shall issue new equity (the "New Equity") to Liberty in the form of 100,000 shares of common stock at no par value for each corporate Debtor in consideration for (i) waiver and release of one-half (1/2) of the administrative, secured or unsecured claims arising from the post-petition financing provided by Liberty to the Debtors through and including the Effective Date, the balance of which shall be due and payable within 15 days after the Effective Date, \$1,000,000 in cash to be deposited within 15 days after the

Effective Date with counsel for the Debtors for distribution of (x) \$500,000 to FB Investments in satisfaction of the Allowed FB Unsecured Claim, and (y) \$500,000 to holders of the Allowed Class 7 Guaranty Claims and the Allowed Class 8 Unsecured Claims, and additional cash to be deposited within 30 days after the Effective Date with the Debtors in such amount as shall be needed in order to enable the Debtors to timely pay all allowed costs of administration, including but not limited to allowed fees and expenses of the Debtors' and the Committees' professionals.

6.2.2. The Debtors' articles of incorporation and bylaws, as applicable, shall be amended to provide that the issuance of non-voting equity securities is prohibited.

6.3. **Post-Confirmation Litigation:** The Debtors shall retain the exclusive right to bring any cause of action, and may continue, institute, or abandon such legal actions as the Debtors deem necessary unless expressly waived; provided however, in consideration of the agreement by FB Investments to accept this Plan and the treatment of its secured and unsecured claims, the Debtors on behalf of itself, the estate and the Reorganized Debtor waives, releases and shall not pursue any claim or cause of action against FB Investments, its owners, affiliates or agents, including but not limited to any claim pursuant to Section 506(c). All Bankruptcy Causes of Action shall be brought in the Court and shall be governed by Bankruptcy Rules 7001 et seq. Any compromise or other settlement of a controversy by the Debtors shall be approved in accordance with the Bankruptcy Rules.

6.4. **Executory Contracts and Leases:**

6.4.1. **Contracts Assumed.** The following executory contracts or leases shall be deemed assumed by the Reorganized Debtors as of the Effective Date and any defaults shall be promptly cured as and to the extent required by Section 365 of the Bankruptcy Code:

6.4.1.1. ABC Moving & Storage: file storage agreement #RS-110.

6.4.1.2. ADP: payroll service agreement #150108.

6.4.1.3. Mercury Marine division of Brunswick Corp: Baja Engine Supply Agreement.

6.4.1.4. Brunswick Corp: Engine Supply Agreement.

6.4.1.5. Executive Leasing: equipment lease #BT-3376 for 3 Savin copiers.

6.4.1.6. Xerox: equipment lease #700452121 for 2 copiers.

6.4.2. **Contracts Rejected.** All other executory contracts or leases which are existing on the Effective Date, which have not been assumed and are not subject to a pending motion to assume, are and shall be deemed rejected by the Reorganized Debtors as of the Effective Date, including but not limited to the following contracts:

6.4.2.1. Channel Blade: two website and web application software and hosting services contracts.

6.4.2.2. CIT Technology: equipment lease #339391 for a Savin copier.

6.4.2.3. GE Capital: equipment lease #7470104-001 for 5 Savin and Konica copiers.

6.4.2.4. Pitney Bowes: equipment lease #6457080 for a Mail Stream Solution-2 letter folder.

6.4.2.5. A Claim for damages arising from the rejection of a executory lease or contract shall be forever barred and shall not be enforceable against the Estate and no holder of any such Claim shall participate in any distribution under the Plan with respect to that Claim unless a Proof of Claim is served on the Debtors and filed with the Court within sixty (60) days from the Confirmation Date, or such other (whether earlier or later) deadline as may be set by the Court generally or with respect to any lease or contract rejected, and said Proof of Claim is determined to be an Allowed Claim, either because no timely objection is filed or because the Court allows the Claim after a timely filed objection.

7. PROVISIONS FOR IMPAIRED CREDITORS NOT ACCEPTING PLAN

7.1. With respect to any Class of Claims impaired by and not accepting this Plan by the requisite majority in number and two-thirds (2/3) in dollar amount of those casting ballots, adequate protection for the realization by them of the value of their claim shall be provided in the Order confirming the Plan by such method as will, in the opinion of the Bankruptcy Judge and consistent with the circumstances of the case, fairly and equitably provide such protection in accordance with the applicable provisions of the Bankruptcy Code.

7.2. To the extent confirmation by "cramdown" is necessary or required, the Debtors by the filing of the Plan request confirmation thereof pursuant to Section 1129(b) without further motion or notice, which request shall be considered at the hearing to consider confirmation of the Plan.

8. **DISCHARGE AND RELEASE.** Except for the liens preserved and obligations imposed by the Plan:

8.1. The distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge and release of all (i) claims against, liabilities of, liens on, and obligations of the Debtors, or the assets and properties of the Debtors and the Reorganized Debtors, whether known or unknown, and (ii) causes of action, directly or derivatively through the Debtors, based on the same subject matter as any Claim.

8.2. All proceedings and court actions seeking to establish or enforce pre-petition liabilities and claims of any nature against property of the estate or priorities received or retained by any creditor with respect to debts and obligations of the Debtors shall be permanently stayed and treated as specifically provided for in this Plan.

9. **PROVISIONS FOR RETENTION OF JURISDICTION AND PROSECUTION AND DEFENSE OF CLAIMS AND CAUSES OF ACTION** The Court shall retain and may exercise its jurisdiction for determination in this proceeding of any objections to claims not disposed of prior to the entry of the Order of confirmation of the Plan, the final determination of any causes of action (including Bankruptcy Causes of Action) belonging to the Debtors, and any other matters regarding the implementation of this Plan.

9.1. **General Jurisdiction:** Until the entry of a Final Decree, the Court shall retain jurisdiction to hear and determine all claims against the Debtors; to hear, determine, and enforce all causes of action (including all Bankruptcy Causes of Action) arising in, arising under, or related to this case and which may exist on behalf of the Debtors; and, to confirm after notice and hearing (except as otherwise provided herein) any proposed compromise of any cause of action (including all Bankruptcy Causes of Action). Nothing contained herein shall prevent the Debtors from taking such action as may be necessary in the enforcement of any cause of action which may exist on its behalf, and nothing contained herein shall prevent any creditor from enforcing any claim it may

have against third parties who may be liable as a result of the Debtor's obligations to such creditor.

- 9.2. **Causes of Action:** Notwithstanding the vesting of assets in the Reorganized Debtors upon confirmation and consummation of the Plan, the Debtors shall retain the right and standing to assert and shall have the sole and exclusive right to commence, pursue, settle, compromise, abandon, waive, or release any claim or cause of action which may exist on behalf of the Debtors (including Bankruptcy Causes of Action) which accrued and were asserted or capable of assertion by the Debtors as a debtor-in-possession as of the Petition Date.
- 9.3. **Specific Retention of Powers:** In addition to the general provisions set forth above, the Court shall retain sole jurisdiction of this case pursuant to the provisions of Chapter 11 of the Bankruptcy Code for the following purposes, *inter alia*:
- 9.3.1. To classify, allow or disallow Claims and Interests, to direct distributions of funds under the Plan, and to hear and determine any controversies pertaining thereto.
- 9.3.2. To hear and determine any and all applications, adversary proceedings or other matters arising out of or related to the Plan.
- 9.3.2. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated.
- 9.3.3. To liquidate or estimate the amount of any claim, or to determine the manner and time for such liquidation or estimation in connection with any contingent or unliquidated claim.
- 9.3.4. To adjudicate all disputes with respect to claims or any lien on any property of the Debtors or proceeds thereof
- 9.3.5. To adjudicate all claims or controversies arising during the pendency of this case.
- 9.3.6. To recover all assets and properties of the Debtors, wherever located, including recoveries on all claims and causes of action brought by the Debtors prior or subsequent to the Effective Date or capable of being brought by the Debtors prior or subsequent to the Effective Date which are not released, settled or otherwise compromised by the terms of this Plan.

9.3.7. To hear and determine matters covering federal, state, and local taxes pursuant to Sections 346, 1146, 505 and 525 of the Bankruptcy Code.

9.3.8. To allow fees and reimbursement of the expenses of professional persons employed during this case or any other person or entity applying for compensation.

9.3.9. To construe or enforce the Plan so as to effectuate payments or to compel performance by any person reasonably necessary to achieve Final Consummation in accordance with the provisions hereof.

9.3.10. To make and enforce such orders as are necessary or appropriate to carry out the provisions of the Plan.

9.3.11. To enter such orders as may be necessary and proper for the orderly administration of the Debtor's affairs.

9.3.12. To protect and preserve the leases and other executory agreements between various third parties and the Debtors or its affiliates or subsidiaries, and to assure that all terms of those agreements are honored to the extent and in the event that such agreements are assumed under this Plan.

9.3.13. To decide such other matters and for such other purposes as may be provided for in the Confirmation Order.

10. **PROVISIONS FOR AMENDMENT OF THE PLAN** The Plan may be modified as follows:

10.1. **Non-material Amendment:** This Plan may be altered or modified by the Debtors after its submission for acceptance and before or after its confirmation, with the written consent of Liberty but without further notice and hearing, if the alteration or modification does not adversely change the treatment of the claim of any creditor as provided in Section 1127 of the Bankruptcy Code and in Bankruptcy Rule 3019.

10.2. **Material Amendment:** This Plan may be altered or modified by the Debtors after submission for acceptance and before or after confirmation in a manner which adversely affects the interests of creditors, only (i) with the written consent of FB Investments and Liberty if the modification alters in any manner the treatment of the claims of FB Investments, and (ii) in all other events, with the written consent of Liberty and (x) after notice and hearing before the Court for the confirmation of such alteration

or modification, as provided in Section 1127 of the Bankruptcy Code, or (y) and of the creditors who are adversely affected.

11. **OBJECTIONS TO CLAIMS, RESERVES AND DISTRIBUTIONS**

- 11.1. **Claims:** Except to the extent otherwise provided by separate Orders of the Court, and specifically excluding any objection to the secured and unsecured claims of FB Investment, the Debtors, the Committee or any party in interest may file an objection to any claim within sixty (60) days after entry of the Order confirming the Plan. Objections not filed within such time shall be deemed waived unless the period within which to file objections to claims is extended by Order of this Court in response to one or more motions for such extension filed prior to the expiration of the then existing period for such objections to be filed. The absence of an objection prior to the Confirmation Date., whether as to a scheduled or filed claim, shall not be deemed an acceptance of any Claim nor a waiver of the right to object to any Claim, and the holder of any such Claim shall not be entitled to assert reliance upon any implied acceptance of such Claim when voting to accept or reject the Plan.
- 11.2. **Reserves:** Any claim, or portion thereof, which is to be paid in cash under the Plan and which is challenged, shall be protected by requiring the Reorganized Debtors to segregate and set aside in an escrow account a reserve based on the Court's estimate of such claim and sufficient to treat said claim in the same fashion as though the objection were denied. The reserve so segregated shall be distributed in accordance with the Plan in the event the objection is overruled or a dispute is resolved in favor of the party asserting the claim. In the event the disputed claim is disallowed, the retained cash so segregated shall be retained by the Reorganized Debtors and available for distribution in accordance with the provisions of this Plan, with the disallowed claimant being excluded from the appropriate Class.
- 11.3. **Distributions:** Distributions to holders of Allowed Claims shall be made at the address of each such holder as set forth on the Schedules filed with the Bankruptcy Court unless superseded by the address as set forth on the proof of claim filed by such holders or other subsequent writing notifying the Debtors of a change of address.

- 11.3.1. No interim or final distribution shall be made in an amount less than \$5.00, and any such distributions shall instead be paid over to the U.S. Treasury as provided in Section 347 and Bankruptcy Rule 3010 for small dividends as in a Chapter 7 proceeding.
- 11.3.2. If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Debtors have been notified of such holder's then current address, at which time all missed distributions shall be made to such holder, without interest from the date of the first attempted distribution.
- 11.3.3. All unclaimed distributions which exist as of the date of the final distribution to holders of Allowed Claims shall be paid over to the U.S. Treasury as provided in Section 347 and Bankruptcy Rule 3011 for unclaimed distributions as in a Chapter 7 proceeding.
- 11.3.4. Checks issued by the Debtors in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for re-issuance of any check shall be made to the Debtors by the holder of the Allowed Claim with respect to which such check originally was issued.
- 11.3.5. The Debtors may, in accordance with Section 553 of the Bankruptcy Code and applicable non-bankruptcy law, set off against any Allowed Claim the distributions to be made pursuant to this Plan on account of such Claim (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtors or the Liquidating Trustee, as applicable, on behalf of the Estate, may possess against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Estate of any such claims, rights and causes of action that they may possess against such holder; and provided further, that any claims of the Debtor arising before the Petition Date shall first be set off against Claims against the Debtor arising before the Petition Date.

12. GENERAL PROVISIONS

- 12.1. **Exculpation.** Neither the Debtors, the Reorganized Debtors, the Committee, Liberty, or FB Investments, or any of their respective members, managers, officers, directors, employees, advisors, attorneys, accountants, consultants or agents shall have or incur any liability for or to any holder of a Claim or Interest for any act or omission in connection with, or arising out of, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan except for willful misconduct or gross negligence and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.
- 12.2. **Binding Effect; Termination of Exclusivity.** The Plan shall be binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, holders of Claims, holders of Equity Interests, any trustee subsequently appointed, and their respective successors and assigns. If the Debtors' exclusive right to file and confirm a Plan under Section 1121 has not expired by March 18, 2010, such exclusivity shall terminate as of such date.
- 12.3. **Injunctions or Stays.** Unless otherwise provided in the Plan or in the Order confirming the Plan, all injunctions or stays provided for Chapter 11 cases under Section 105 or 362 of the Bankruptcy Code or otherwise in existence on the date this case is confirmed shall remain in full force and effect until the entry of a Final Decree dismissing the case.
- 12.4. **Notices.** Any notice required to be provided to parties in interest under the Bankruptcy Code or Rules or under the Plan shall be in writing and served by (a) regular mail, postage prepaid, (b) hand delivery, or (c) overnight delivery service, addressed to the appropriate parties and with copies of any such notice to be sent to the Bankruptcy Administrator and to counsel for the Debtors.
- 12.5. **Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules), or, as to corporate matters, the laws of the jurisdiction in which the Debtors is incorporated, the laws of the State of North Carolina shall govern the construction and implementation of the

Plan and any agreements, documents, and instruments executed in connection with the Plan.

Respectfully submitted on behalf of the Debtors, this the 29th day of January, 2010.

/s/ John A. Northen

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