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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re: FILENE'S BASEMENT, INC. and FILENE'S BASEMENT CORP., Debtors.	Chapter 11 Case Nos. 99-16984-WCH and 99-16985-WCH (Jointly Administered)

Certified to be a true and correct copy of the original
James M. Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts
By: [signature] Deputy Clerk
Date: 3-21-00

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AMENDED

ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN OF THE DEBTORS' LEASES AND EXECUTORY CONTRACTS

Filene's Basement Corp. and Filene's Basement, Inc., as debtors and debtors in possession (the "Debtors"), filed their Motion For Authority To Sell Substantially All Of Their Assets To Base Acquisition Corp., Free And Clear Of Liens, And For Approval Of The Assumption And Assignment Of Certain Leases And Executory Contracts, dated February 3, 2000 (the "Sale Motion"), seeking entry of an order pursuant to Sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §101 et seq. (the "Bankruptcy Code") authorizing the sale of substantially all of the Debtors' assets, and the assumption and assignment of certain of the Debtors' executory contract and unexpired leases, free and clear of all liens and encumbrances; and this Court being satisfied that the relief requested in the Sale Motion is in the best interests of the Debtors, their creditors and their estates; and any objections to the Sale Motion having been overruled or withdrawn; and this Court having considered all of the pleadings, memoranda, evidence and the entire record submitted in connection with the Sale Motion; and a hearing on the Sale Motion having been held before this Court on March 2, 2000 (the "Sale Hearing") at

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which time the Court heard the arguments of counsel with respect to the Sale Motion and the evidence in connection therewith.

NOW, THEREFORE, based upon the Sale Motion, the objections raised at the Sale Hearing, the representations and arguments of counsel, the entire record of the Sale Hearing, and after due deliberation thereon, and good cause appearing therefor,

IT IS HEREBY FOUND, CONCLUDED AND DETERMINED THAT:

(a) The Court has jurisdiction to grant the relief requested in the Sale Motion pursuant to 28 U.S.C. §§157 and 1334, and the Sale Motion constitutes a core proceeding within the meaning of 28 U.S.C. §157(b).

(b) Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Asset Purchase Agreement, which is attached to the Sale Motion as Exhibit A.

(c) The Debtors have properly exercised their reasonable business judgment in determining to sell substantially all of their assets and in assuming and assigning certain executory contracts and unexpired leases.

(d) Base Acquisition Corp. (the "Buyer") submitted the highest and best bid at the auction, held at the Sale Hearing. The Debtors received no other bids.

(e) The approval of the Sale Motion and the Asset Purchase Agreement is in the best interests of the Debtors, their estates, their creditors and other parties in interest in that:

(i) the Asset Purchase Agreement was negotiated, proposed and entered into in good faith, from arms-length bargaining positions by the Debtors and the Buyer;

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(ii) the Debtors were free to deal with any other party interested in acquiring the assets to be sold or the executory contracts and unexpired leases to be assumed and assigned pursuant to the Asset Purchase Agreement (collectively, the "Assets");

(iii) The bidding procedures approved in connection with the sale of the Assets enabled the Debtors to solicit higher and better offers for the Assets, and provided for adequate notice and an opportunity to be heard in connection with the sale of the Assets;

(iv) The Buyer is a third-party purchaser unrelated to the Debtors, and is not a continuation of the Debtors' corporations; and

(v) The purchase price for the Assets is fair and reasonably equivalent value for the purchase of the Assets as contemplated by the Bankruptcy Code and the laws of the Commonwealth of Massachusetts.

(f) A reasonable opportunity to object or be heard regarding the Sale Motion and the right of third parties to attend the auction and submit counteroffers thereon, has been afforded to all interested persons and entities in accordance with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9006, including, but not limited to (i) all parties who claim interests in or assert liens upon any of the Assets, (ii) all non Debtor parties to the leases and contracts to be assumed and assigned to the Buyer, (iii) all appropriate federal, state and local taxing authorities, (iv) attorneys for the Creditors' Committee, (v) the United States

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Trustee, (vi) attorneys for the Buyer and (vii) all other entities filing a written request for notices in these cases.

(g) The executory contracts and unexpired leases to be assumed and assigned by the Debtors to the Buyer pursuant to the Asset Purchase Agreement are and continue to be in full force and effect and are not in default, or if in default, such default will be cured as required by Section 365(b) of the Bankruptcy Code at the time such executory contracts and unexpired leases are assumed by the Debtors and assigned to the Buyer.

(h) As set forth in the Affidavit of Robert M. Wysinski in Support of Adequate Assurance of Future Performance as Required By Section 365(f) of the Bankruptcy Code, dated February 29, 2000, which is incorporated into this finding, the Buyer has demonstrated adequate assurance of future performance within the meaning of sections 365(b) and 365(f) of the Bankruptcy Code with respect to all executory contracts and unexpired leases to be assumed and assigned to the Buyer.

(i) With respect to any and all entities asserting an interest in the Assets, either (i) such entity has consented to the sale, or assumption and assignment, free and clear of its interest, with such interest to attach to the proceeds of the sale, or (ii) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest, so that the conditions of section 363(f) of the Bankruptcy Code have been met.

(j) Unless a sale to the Buyer is concluded expeditiously as provided for in the Sale Motion and under the Asset Purchase Agreement, (i) the value of the Assets may decline and (ii) the Debtors, their estates and their creditors may realize less value for such Assets.

(k) All other findings made by the Court during the Sale Hearing are incorporated herein by reference.

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(I) The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the foregoing findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED THAT:

1. The Sale Motion is granted and approved in all respects, and all objections thereto are overruled.

2. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are hereby authorized to sell the Assets to the Buyer on the terms of, and in accordance with, the Asset Purchase Agreement, to enter into and perform under the Asset Purchase Agreement, to execute any and all additional conveyances, assignments, agreements, instruments, amendments, schedules and other documents, and to do all other things and take all further actions as may be necessary or appropriate for the purpose of performing its obligations under the Asset Purchase Agreement.

3. All persons, landlords, utilities and corporations are hereby prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer all of the Debtors' right, title and interest in the Assets to the Buyer as contemplated by the Asset Purchase Agreement.

4. Pursuant to sections 105(a) and 363 of the Bankruptcy Code, other than with respect to the Assumed Liabilities, all entities are hereby enjoined from taking any action against the Buyer or the Buyer's affiliates to recover any claim which such entity has solely against the Debtors or their affiliates (as they exist immediately following the Closing Date).

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5. The Buyer shall not be liable for any claims against the Debtors except as specifically set forth in the Asset Purchase Agreement, and the transfers of the Assets by the Debtors to the Buyer pursuant to the Asset Purchase Agreement do not and will not subject the Buyer to any liability as a successor to the Debtors.

6. The transfers of the Assets by Seller to Buyer under the Asset Purchase Agreement vest or will vest Buyer with good title to the Assets (including good and marketable title to the Assigned Leases).

7. All entities who are presently, or on the Closing Date may be, in possession of some or all of the Assets are hereby directed to surrender possession of said Assets to the Buyer on the Closing Date.

8. Pursuant to section 363(n) of the Bankruptcy Code, the consideration paid by Buyer under the Asset Purchase Agreement was not controlled by an agreement among potential bidders at the Sale Hearing.

9. Except as expressly set forth in the Asset Purchase Agreement, Buyer in its sole discretion is authorized, but not obligated, to employ such of Debtors' employees as Buyer deems appropriate. In no event will Buyer be deemed a successor employer for any purpose.

10. No section of any Assigned Lease and/or Assumed Contract that purports to prohibit, restrict or condition the Debtors' assignment of such Assigned Lease and/or Assumed Contract to Buyer, or has such effect, shall have any force or effect with respect to any assignment authorized by this Order, and the non-Debtor parties to such Assumed Contract and/or Assigned Leases may not terminate or cancel the Assumed Contract and/or Assigned Leases, increase the payments thereunder (including, without limitation, any rent), impose any penalty or seek damages or other relief by reason of such assignment.

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11. The assignment of the Assigned Leases and/or Assumed Contracts shall be effective notwithstanding any provisions of the Assigned Leases and/or Assumed Contracts having the effect of precluding or impairing the rights of the Debtors to assign the Assigned Leases and/or Assumed Contracts to Buyer or preventing or restricting Buyer from operating retail stores under the trade names being acquired under the Asset Purchase Agreement, all of which shall be of no force or effect. Nothing in this paragraph 11 shall limit the rights otherwise available to Buyer under the Assigned Leases.

12. Each Assumed Contract and/or Assigned Leases is valid and binding, in full force and effect, except as provided herein, and enforceable by Buyer in accordance with its terms, including any right to exercise an option to extend the term of such Assigned Lease granted therein.

13. The Assigned Leases are hereby assumed by the Debtors and assigned to the Buyer, subject to the closing of the sale on the Closing Date; provided, however, the Buyer shall have the right, after notice to the Debtors, the Creditors Committee and the affected landlord on or before the Closing Date, to specifically exclude any Assigned Lease on the Closing Date as provided in the Asset Purchase Agreement. No assumption of any Assigned Lease shall be effective absent assignment of such Assigned Lease.

14. Pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall have no liability for breach of any Assigned Lease occurring after the Closing Date and the landlords are hereby enjoined from asserting any such claims against the Debtors.

15. In the event that any party to an Assumed Contract to be assigned to the Buyer has filed a timely objection asserting that a monetary default must be cured (the "Cure Amount") under such contract or lease pursuant to section 365(b) of the Bankruptcy Code (a "Cure

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Objection"), then, at or prior to the Closing Date (or such latter date as is applicable for assignment of a Deferred Contract which becomes an Assumed Contract), the Debtors shall pay (except as otherwise expressly provided for in the Asset Purchase Agreement) all undisputed Cure Amounts to each non-Debtor party to such Assumed Contract as required by the Bankruptcy Code or the Court, provided that if the Debtors dispute the Cure Amount, the Debtors will set aside and segregate sufficient funds to pay the disputed Cure Amount asserted by such non-Debtor party to such Assumed Contract (or such lesser amount as ordered by the Court) to be held by the Debtors subject to further order of the Court or agreement of the parties, which deposit shall fully satisfy the right of such non-Debtor party to such Assumed Contract to the cure of all outstanding defaults. The validity and effectiveness of the assumption and assignment shall not be affected by any dispute between the Debtors and any such non-Debtor party to such Assumed Contract concerning the proper Cure Amount.

16. Within two (2) business days after the entry of this Order, the Debtors shall serve by overnight delivery on each landlord of an Assigned Lease, the Buyer and the Creditors Committee a notice stating the Cure Amount reflected in the Debtors' books and records for each Assigned Lease. Each landlord of an Assigned Lease shall have 7 days from the date of service of such notice to file and serve an objection the Cure Amount. Landlord objections filed and served prior to the date hereof shall be deemed timely filed without necessity of further objection by such landlords. Any such objection shall be served upon (i) Debtors' Counsel c/o Kevin J. Walsh, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, telecopy (617) 542-2241; (ii) Creditors' Committee counsel c/o Cathy Hershcopf, Esq., Kronish, Lieb, Weiner & Hellman LLP, 1114 Avenue of the Americas, New York, New York 10036-7798, telecopy (212) 479-6275; and (iii) Adam C. Rogoff, Esq., Weil,

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Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153, telecopy (212) 310-8007. In the event that no objection is filed and served, the Cure Amount stated in the notice shall be the cure amount required under Section 365(b) of the Bankruptcy Code. In the event that the landlord of an Assigned Lease files and serves an objection, then, at or prior to the Closing Date, the Debtors shall pay (except as otherwise expressly provided for in the Asset Purchase Agreement) such undisputed Cure Amount to such landlord as required by the Bankruptcy Code or the Court, and the Debtors will set aside and segregate sufficient funds to pay the disputed Cure Amount asserted by such landlord (or such lesser amount as ordered by the Court) to be held by the Debtors subject to further order of the Court or agreement of the parties, which deposit shall fully satisfy the right of such landlord to the cure of all outstanding defaults. The validity and effectiveness of the assumption and assignment shall not be affected by any dispute between the Debtors and any such landlord concerning the proper Cure Amount.

17. With respect to all defaults, claims or causes of action arising prior to the Closing Date, (i) there shall be no damage claims by any landlord against the Buyer or its interest in the Assigned Leases, or encumbrances on the Assigned Leases, and (ii) the Landlords' sole and exclusive remedy shall be to receive the undisputed Cure Amounts or such other Cure Amount as agreed to by the parties or otherwise ordered by the Court, and the landlords are hereby enjoined from asserting against Buyer any default, claim or cause of action in existence or arising prior to the Closing Date.

18. As of the Closing Date (or such latter date as is applicable for assignment of a Deferred Contract which becomes an Assumed Contract), (i) all Assumed Contracts are hereby assumed by the Debtors and assigned to Buyer, subject to the closing of the sale at the Closing Date, and (ii) with respect to all defaults, claims or causes of action arising prior to the Closing

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Date, there shall be no damage claims by any non-Debtor party to such Assumed Contract against the Buyer or its interest in the Assumed Contracts, or encumbrances on the Assumed Contracts. With respect to all defaults, claims or causes of action arising prior to the Closing Date (or such latter date as is applicable for assignment of a Deferred Contract which becomes an Assumed Contract), the sole and exclusive remedy of the non-Debtor party to such Assumed Contracts shall be to receive the undisputed Cure Amounts or such other Cure Amount as agreed to by the parties or otherwise ordered by the Court, and the non-Debtor parties to such Assumed Contracts are hereby enjoined from asserting against Buyer any default, claim or cause of action in existence or arising prior to the Closing Date. No assumption of any Assumed Contract shall be effective absent assignment of such Assumed Contract.

19. In the event that any of the Debtors' Stores have ceased operations as of the date hereof (such stores, the "Closed Stores"), then the premises covered by the Assigned Leases for the Closed Stores may "go dark" for a period of one hundred and twenty (120) days from the Closing Date to permit Buyer to remodel, restock, refixture and change signage at such premises. All "going dark," tenant remodeling restrictions, minimum sales requirements and/or other similar or related restrictions in such Assigned Leases are unenforceable anti-assignment clauses under sections 365(f)(l) and (3) of the Bankruptcy Code and shall not subject the Debtors or Buyer to any defaults, damages, liabilities, claims for breach, offsets and/or the assertion of remedies at law or in equity. Any provision of any Assigned Lease that permits a landlord to cancel the remaining term of the Assigned Lease if the tenant discontinues the operation of a store or fails to achieve minimum sales is an invalid *ipso facto* clause under section 365(e) of the Bankruptcy Code. No landlord shall have the right to cancel an Assigned Lease or increase the rent or impose or subject the Debtors or Buyer to any defaults, penalty, damages, liabilities,

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claims, offsets and/or the assertion of remedies at law or in equity by reason of such discontinuation or cessation of operations, the assignment of the Assigned Lease to Buyer, the conduct of prior going-out-of-business sales, or the interruption of business activities in order to enable Buyer to perform the remodeling work consistent with Buyer's intended use of the properties. The provisions of this paragraph 19 apply only to the Closed Stores

20. The performance and completion by Buyer of any alterations to the Stores as are necessary to the use and occupancy by Buyer, if performed in accordance with applicable law, and the provisions of the applicable Assigned Lease, may be undertaken without the consent of the respective landlord (except to the extent such consent is required by the terms of the Assigned Lease). Buyer's completion of the remodeling work, consistent with Buyer's intended use of the Stores and the provisions of the applicable Assigned Lease, shall not constitute a default under any provision of any Assigned Lease nor give any Landlord the right to cancel the remaining term of any of the Assigned Leases nor subject the Debtors or Buyer to any default, penalty, damages, liabilities, claims, offsets and/or the assertion of remedies at law or in equity.

21. In the event the Buyer exercises its right under the Asset Purchase Agreement to designate within 90 days after the Closing whether the Debtors' Services Agreement, dated as of April 1, 1999 (the "Agreement"), with Andersen Consulting LLP ("Andersen Consulting") shall be assumed or rejected, Andersen Consulting shall retain its right, pursuant to section 365(d)(2) of the Bankruptcy Code, to seek entry of an order of this Court compelling the Debtors to assume (or assume and assign) or reject the Agreement at any time after the Closing and prior to such date. If any such request is made by Andersen Consulting, the Debtors, the Buyer and the Creditors Committee and any other party with the right to do so may contest such request.

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22. In the event the Buyer exercises its right under the Asset Purchase Agreement to take an assignment of a Deferred Contract, the Debtors shall send a notice by overnight delivery to the non-Debtor party to such Deferred Contract, which notice shall contain the date on which such assignment shall be effective (in no event shall any such assignment be effective sooner than 7 days from service of such notice) and shall state the monetary default the Debtors believe is due based on their books and records ("Alleged Cure"). The non-Debtor party to such contract shall have 7 days from the date of service of such notice to file and serve an objection to either the assumption and assignment of the Deferred Contract or the Alleged Cure. Any such objection shall be served upon (i) Debtors' Counsel c/o Kevin J. Walsh, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, telecopy (617) 542-2241; (ii) Creditors' Committee counsel c/o Cathy Hershcopf, Esq., Kronish, Lieb, Weiner & Hellman LLP, 1114 Avenue of the Americas, New York, New York 10036-7798, telecopy (212) 479-6275; and (iii) Buyer's Counsel, Adam C. Rogoff, Esq., Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153, telecopy (212) 310-8007. In the event that no objection is timely filed and actually received, then, without necessity of any further order of the Court, the assumption and assignment of such Deferred Contract shall be effective as stated in the notice and the Alleged Cure shall be the cure amount required under section 365(b) of the Bankruptcy Code. In the event that the non-Debtor to such contract party files and serves an objection to the Alleged Cure, then, the assumption and assignment of such Deferred Contract shall be effective without necessity of further order of the Court and at or prior to the effective date of such assumption and assignment of the Deferred Contract, the Debtors shall pay (except as otherwise expressly provided for in the Asset Purchase Agreement) such undisputed Alleged Cure to such non-Debtor party as required by the Bankruptcy Code or the Court, and the Debtors will set aside

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and segregate sufficient funds to pay the disputed Alleged Cure asserted by such non-Debtor party (or such lesser amount as ordered by the Court) to be held by the Debtors subject to further order of the Court or agreement of the parties, which deposit shall fully satisfy the right of such non-Debtor party to the cure of all outstanding defaults. The validity and effectiveness of the assumption and assignment shall not be affected by any dispute between the Debtors and any such non-Debtor party concerning the proper cure under section 365(b) of the Bankruptcy Code and the assumption and assignment of such contract shall be effective as set forth in the notice. In the event that the non-Debtor party timely files and serves an objection to the assumption and assignment to the Buyer for reasons other than the Alleged Cure amount, the Court will schedule a hearing at its earliest convenience to address such objection, and such Deferred Contract shall not be assumed and assigned until such objection is resolved between the parties or by further order of the Court. In the event that such notice is served within the 90-day period following the Closing Date, the time to assume such Deferred Contracts shall be extended to a time sufficient to allow for (i) the assignment and assumption of such Deferred Contracts to become effective, or (ii) the resolution of any objections to such notice by the non-Debtor party.

23. The failure specifically to include any particular provisions of the Asset Purchase Agreement in this Order shall not diminish or impair the efficiency of such provisions, it being the intent of the Court that the Asset Purchase Agreement be approved in its entirety.

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24. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the Closing Date, the Assets shall be transferred to the Buyer free and clear of all mortgages, security interests, pledges, liens, judgments, demands, encumbrances, or charges of any kind or nature, if any (the foregoing collectively referred to as "Liens" herein) and all debts arising in any way in connection with any acts of the Debtors, claims (as that term in defined in the Bankruptcy Code),

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obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, arising prior to the Closing Date or relating to acts occurring prior to the Closing Date, and whether imposed by agreement, understanding, law, equity or otherwise (the foregoing collectively referred to as "Claims" herein), with all such Liens to attach to the net proceeds of the sale transaction contemplated by the Asset Purchase Agreement in the order of their priority with the same validity, force and effect which they now have as against the Assets, subject to the rights, claims, defenses and objections, if any, of the Debtors and all interested parties with respect to such Liens and Claims; provided, however, that Buyer shall remain liable for only the Assumed Liabilities as provided in the Asset Purchase Agreement, which (including the assumed indebtedness under the DIP Facility) shall be paid as provided for in the Asset Purchase Agreement.

25. If any person or entity that has filed financing statements or other documents or agreements evidencing Liens on or interests in the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens or other interests which the person or entity has with respect to the Assets, the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets.

26. Except as expressly permitted by the Asset Purchase Agreement, all persons and entities holding Liens or Claims against the Debtors arising on or before the Closing Date, or out of events occurring prior to the Closing Date, of any kind and nature with respect to the Assets hereby are barred from asserting such Liens and Claims of any kind and nature against the Buyer, its successors or assigns, or the Assets.

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27. EXCEPT AS PROVIDED IN THE ASSET PURCHASE AGREEMENT, THE BUYER IS NOT ASSUMING NOR SHALL IT IN ANY WAY WHATSOEVER BE LIABLE OR RESPONSIBLE, AS A SUCCESSOR OR OTHERWISE, FOR ANY LIABILITIES, DEBTS OR OBLIGATIONS OF THE DEBTORS OR ANY LIABILITIES, DEBTS OR OBLIGATIONS IN ANY WAY WHATSOEVER RELATING TO OR ARISING FROM THE ASSETS OR THE DEBTORS' OPERATIONS OR THE DEBTORS' EMPLOYEES OR USE OF THE ASSETS PRIOR TO CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THE ASSET PURCHASE AGREEMENT, OR ANY LIABILITIES CALCULABLE BY REFERENCE TO THE DEBTORS OR THEIR ASSETS OR OPERATIONS OR THE DEBTORS' EMPLOYEES, OR RELATING TO CONTINUING CONDITIONS EXISTING ON OR PRIOR TO CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THE ASSET PURCHASE AGREEMENT, WHICH LIABILITIES, DEBTS AND OBLIGATIONS ARE HEREBY EXTINGUISHED INSOFAR AS THEY MAY GIVE RISE TO SUCCESSOR LIABILITY, WITHOUT REGARD TO WHETHER THE CLAIMANT ASSERTING ANY SUCH LIABILITIES, DEBTS OR OBLIGATIONS HAS DELIVERED TO BUYER A RELEASE THEREOF.

28. Pursuant to section 1146(c) of the Bankruptcy Code, the transactions contemplated by the Asset Purchase Agreement are determined to be under or in contemplation of a plan to be confirmed under section 1129 of the Bankruptcy Code in that the net proceeds of the sale of the Assets are essential and required to fund a chapter 11 plan for the Debtors' estates, and therefore, are exempt from any transfer, stamp or similar tax arising as a result of or in connection with the Debtors' sale and transfer of the Assets to the Buyer.

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29. Nothing contained in any chapter 11 plan confirmed in these cases or the order of confirmation confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order.

30. The provisions of this Order are non-severable and mutually dependent.

31. This Order and the Asset Purchase Agreement shall be binding on any subsequent Chapter 11 or Chapter 7 trustee who may be appointed or elected in these cases or any succeeding Chapter 7 case.

32. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material or has no material adverse effects on the lenders under the DIP Facility or is to reflect the terms and provisions of this Order.

33. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

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34. The Buyer shall be entitled to all of the benefits and protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code in the event of a reversal or modification on appeal of this Order.

35. Any assignment to Buyer of the Debtors' rights in the License Agreement, dated April 30, 1988, between The May Department Stores Company and Federated Department Stores shall be subject to all the provisions thereof (except as expressly provided for herein), including but not limited to paragraphs 3 and 4 thereof, which read as follows:

> "3. Federated agrees that the quality of the goods and services it offers for sale or sells under the Filene's Basement name and the Marks will be no less than the quality of the goods and services offered for sale as of the date hereof by Federated under the Filene's Basement name and the Marks."

> "4. To insure that Federated maintains the quality standards set forth hereunder with respect to the use of the Filene's Basement name and the Marks, May shall have the right upon (2) weeks' prior written notice to Federated to inspect any Filene's Basement stores of Federated. In the event that May reasonably believes Federated is failing to maintain the quality standards set forth under this Agreement, May promptly shall provide written notice to Federated specifying the alleged failures and Federated shall take such actions as it determines to be reasonably necessary to comply with the requirements of this Agreement."

The foregoing provisions of the License have been quoted in this Order for informational purposes and nothing in this Order shall modify the actual terms and provisions of the License (except as expressly provided for herein), and to the extent that any legally enforceable modification or amendment has been entered into subsequent to the execution of the License but before the date of this Order, the language of such modification or amendment and not the language quoted in this paragraph shall govern.

36. Any assignment of the Debtors' rights in the Lease between The May Department Stores Company and Federated Department Stores, dated April 30, 1988, shall be subject to all

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the provisions thereof (except as expressly provided for herein), including but not limited to Section 5.1 thereof, which reads as follows:

> "Section 5.1. Operation of the Demised Premises. Except as permitted in Article 14 hereof, the Demised Premises shall be used only as a so-called Filene's Basement store, or such other name as is used by a majority of Tenant's stores conducting business as a "Filene's Basement" store in eastern Massachusetts, in a manner consistent with then current operation under that name and for no other purpose during the entire term."

The foregoing provision of the Lease has been quoted in this Order for informational purposes and nothing in this Order shall modify the actual terms and provisions of the Lease (except as expressly provided for herein), and to the extent that any legally enforceable modification or amendment has been entered into subsequent to the execution of the Lease but before the date of this Order, the language of such modification or amendment and not the language quoted in this paragraph shall govern.

37. The provisions of Fed. R. Bankr. P. 6004(g) and 6006(d) staying the effectiveness of this Order for 10 days are hereby waived, and this Order shall be effective immediately upon entry thereof.

38. This Court shall retain jurisdiction (i) to interpret, enforce and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto, and any waivers and consents thereunder, and (ii) to resolve any disputes arising under, or related to, the Asset Purchase Agreement.

39. Nothing contained in this Order shall be deemed to constitute a determination by this Court as to whether inventory held by the Debtors and fixtures at the Debtors' premises pursuant to the terms of that certain licensing agreement dated as of February 1, 1998 by and among Filene's Basement, Inc. and Model Imperial, Inc. is included in the Purchased Assets.

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Unless consensually resolved by the parties prior thereto, the Court shall hold an evidentiary hearing on March 10, 2000 at 10:00 a.m. in the Court's courtroom in the Hyannis courthouse to resolve the issue.

Dated: March 3, 2000

Honorable William C. Hillman
Chief Judge, United States Bankruptcy Court

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