# Form 5500

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

# Annual Return/Report of Employee Benefit Plan

This form is required to be filed for employee benefit plans under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6047(e), and 6058(a) of the Internal Revenue Code (the Code).

▶ **Complete all entries in accordance with the instructions to the Form 5500.**

OMB Nos. 1210-0110
1210-0089

**2009**

**This Form is Open to Public Inspection**

## Part I Annual Report Identification Information

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** This return/report is for:
- [ ] a multiemployer plan;
- [ ] a multiple-employer plan; or
- [X] a single-employer plan;
- [ ] a DFE (specify) ____

**B** This return/report is:
- [ ] the first return/report;
- [ ] the final return/report;
- [ ] an amended return/report;
- [ ] a short plan year return/report (less than 12 months).

**C** If the plan is a collectively-bargained plan, check here. . . . . ▶ [ ]

**D** Check box if filing under:
- [X] Form 5558;
- [ ] automatic extension;
- [ ] the DFVC program;
- [ ] special extension (enter description)

## Part II Basic Plan Information—enter all requested information

**1a** Name of plan
THE FOURTH WALL RESTAURANTS, LLC 401(K) PLAN

**1b** Three-digit plan number (PN) ▶ 001

**1c** Effective date of plan 08/28/2007

**2a** Plan sponsor's name and address (employer, if for a single-employer plan) (Address should include room or suite no.)
THE FOURTH WALL RESTAURANTS, LLC

880 THIRD AVENUE, 4TH FLOOR
NEW YORK, NY 10022

880 THIRD AVENUE
4TH FLOOR
NEW YORK, NY 10022

**2b** Employer Identification Number (EIN)
26-0544482

**2c** Sponsor's telephone number
212-838-2061

**2d** Business code (see instructions)
722110

**Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.**

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements and attachments, as well as the electronic version of this return/report, and to the best of my knowledge and belief, it is true, correct, and complete.

| | | | |
|---|---|---|---|
| **SIGN HERE** | Filed with authorized/valid electronic signature. | 10/15/2010 | STEVEN JOLTON |
| | **Signature of plan administrator** | Date | Enter name of individual signing as plan administrator |
| **SIGN HERE** | Filed with authorized/valid electronic signature. | 10/15/2010 | STEVEN JOLTON |
| | **Signature of employer/plan sponsor** | Date | Enter name of individual signing as employer or plan sponsor |
| **SIGN HERE** | | | |
| | **Signature of DFE** | Date | Enter name of individual signing as DFE |

**3a** Plan administrator's name and address (if same as plan sponsor, enter "Same")
THE FOURTH WALL RESTAURANTS, LLC

880 THIRD AVENUE, 4TH FLOOR
NEW YORK, NY 10022

**3b** Administrator's EIN
26-0544482

**3c** Administrator's telephone number
212-838-2061

**4** If the name and/or EIN of the plan sponsor has changed since the last return/report filed for this plan, enter the name, EIN and the plan number from the last return/report:
**a** Sponsor's name

**4b** EIN

**4c** PN

| | | | |
|---|---|---|---|
| **5** | Total number of participants at the beginning of the plan year | **5** | 529 |
| **6** | Number of participants as of the end of the plan year (welfare plans complete only lines **6a, 6b, 6c,** and **6d**). | | |
| **a** | Active participants | **6a** | 339 |
| **b** | Retired or separated participants receiving benefits | **6b** | |
| **c** | Other retired or separated participants entitled to future benefits | **6c** | 8 |
| **d** | Subtotal. Add lines **6a**, **6b**, and **6c** | **6d** | 347 |
| **e** | Deceased participants whose beneficiaries are receiving or are entitled to receive benefits | **6e** | |
| **f** | Total. Add lines **6d** and **6e** | **6f** | 347 |
| **g** | Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item) | **6g** | 45 |
| **h** | Number of participants that terminated employment during the plan year with accrued benefits that were less than 100% vested | **6h** | 1 |
| **7** | Enter the total number of employers obligated to contribute to the plan (only multiemployer plans complete this item) | **7** | |

**8a** If the plan provides pension benefits, enter the applicable pension feature codes from the List of Plan Characteristic Codes in the instructions:
2E 2F 2G 2J 2K

**b** If the plan provides welfare benefits, enter the applicable welfare feature codes from the List of Plan Characteristic Codes in the instructions:

**9a** Plan funding arrangement (check all that apply)

| | | |
|---|---|---|
| **(1)** | X | Insurance |
| **(2)** | | Code section 412(e)(3) insurance contracts |
| **(3)** | X | Trust |
| **(4)** | | General assets of the sponsor |

**9b** Plan benefit arrangement (check all that apply)

| | | |
|---|---|---|
| **(1)** | X | Insurance |
| **(2)** | | Code section 412(e)(3) insurance contracts |
| **(3)** | X | Trust |
| **(4)** | | General assets of the sponsor |

**10** Check all applicable boxes in 10a and 10b to indicate which schedules are attached, and, where indicated, enter the number attached. (See instructions)

**a Pension Schedules**

| | | |
|---|---|---|
| **(1)** | X | **R** (Retirement Plan Information) |
| **(2)** | | **MB** (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) - signed by the plan actuary |
| **(3)** | | **SB** (Single-Employer Defined Benefit Plan Actuarial Information) - signed by the plan actuary |

**b General Schedules**

| | | | |
|---|---|---|---|
| **(1)** | X | | **H** (Financial Information) |
| **(2)** | | | **I** (Financial Information – Small Plan) |
| **(3)** | X | 1 | **A** (Insurance Information) |
| **(4)** | X | | **C** (Service Provider Information) |
| **(5)** | X | | **D** (DFE/Participating Plan Information) |
| **(6)** | | | **G** (Financial Transaction Schedules) |

# SCHEDULE A (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

# Insurance Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).

▶ **File as an attachment to Form 5500.**

▶ Insurance companies are required to provide the information pursuant to ERISA section 103(a)(2).

OMB No. 1210-0110

**2009**

**This Form is Open to Public Inspection**

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** Name of plan
THE FOURTH WALL RESTAURANTS, LLC 401(K) PLAN

**B** Three-digit plan number (PN) ▶ 001

**C** Plan sponsor's name as shown on line 2a of Form 5500.
THE FOURTH WALL RESTAURANTS, LLC

**D** Employer Identification Number (EIN)
26-0544482

## Part I Information Concerning Insurance Contract Coverage, Fees, and Commissions

Provide information for each contract on a separate Schedule A. Individual contracts grouped as a unit in Parts II and III can be reported on a single Schedule A.

**1** Coverage Information:

**(a)** Name of insurance carrier
GREAT WEST RETIREMENT SERVICES

| (b) EIN | (c) NAIC code | (d) Contract or identification number | (e) Approximate number of persons covered at end of policy or contract year | Policy or contract year | |
|---|---|---|---|---|---|
| | | | | (f) From | (g) To |
| 93-1225432 | 65978 | 380089-01 | 45 | 08/28/2009 | 12/31/2009 |

**2** Insurance fee and commission information. Enter the total fees and total commissions paid. List in item 3 the agents, brokers, and other persons in descending order of the amount paid.

| (a) Total amount of commissions paid | (b) Total amount of fees paid |
|---|---|
| 0 | 0 |

**3** Persons receiving commissions and fees. (Complete as many entries as needed to report all persons).

**(a)** Name and address of the agent, broker, or other person to whom commissions or fees were paid

| (b) Amount of sales and base commissions paid | Fees and other commissions paid | | (e) Organization code |
|---|---|---|---|
| | (c) Amount | (d) Purpose | |
| | | | |

**(a)** Name and address of the agent, broker, or other person to whom commissions or fees were paid

| (b) Amount of sales and base commissions paid | Fees and other commissions paid | | (e) Organization code |
|---|---|---|---|
| | (c) Amount | (d) Purpose | |
| | | | |

**(a)** Name and address of the agent, broker, or other person to whom commissions or fees were paid

| **(b)** Amount of sales and base commissions paid | Fees and other commissions paid | | **(e)** Organization code |
|---|---|---|---|
| | **(c)** Amount | **(d)** Purpose | |
| | | | |

**(a)** Name and address of the agent, broker, or other person to whom commissions or fees were paid

| **(b)** Amount of sales and base commissions paid | Fees and other commissions paid | | **(e)** Organization code |
|---|---|---|---|
| | **(c)** Amount | **(d)** Purpose | |
| | | | |

**(a)** Name and address of the agent, broker, or other person to whom commissions or fees were paid

| **(b)** Amount of sales and base commissions paid | Fees and other commissions paid | | **(e)** Organization code |
|---|---|---|---|
| | **(c)** Amount | **(d)** Purpose | |
| | | | |

**(a)** Name and address of the agent, broker, or other person to whom commissions or fees were paid

| **(b)** Amount of sales and base commissions paid | Fees and other commissions paid | | **(e)** Organization code |
|---|---|---|---|
| | **(c)** Amount | **(d)** Purpose | |
| | | | |

**(a)** Name and address of the agent, broker, or other person to whom commissions or fees were paid

| **(b)** Amount of sales and base commissions paid | Fees and other commissions paid | | **(e)** Organization code |
|---|---|---|---|
| | **(c)** Amount | **(d)** Purpose | |
| | | | |

## Part II Investment and Annuity Contract Information

Where individual contracts are provided, the entire group of such individual contracts with each carrier may be treated as a unit for purposes of this report.

| | | | |
|---|---|---|---|
| 4 | Current value of plan's interest under this contract in the general account at year end | 4 | 294908 |
| 5 | Current value of plan's interest under this contract in separate accounts at year end | 5 | 1296962 |

**6** Contracts With Allocated Funds:

**a** State the basis of premium rates ▶

| | | | |
|---|---|---|---|
| **b** | Premiums paid to carrier | 6b | |
| **c** | Premiums due but unpaid at the end of the year | 6c | |
| **d** | If the carrier, service, or other organization incurred any specific costs in connection with the acquisition or retention of the contract or policy, enter amount. | 6d | |

Specify nature of costs ▶

**e** Type of contract: (1) ☐ individual policies (2) ☐ group deferred annuity

(3) ☐ other (specify) ▶

**f** If contract purchased, in whole or in part, to distribute benefits from a terminating plan check here ▶ ☐

**7** Contracts With Unallocated Funds (Do not include portions of these contracts maintained in separate accounts)

**a** Type of contract: (1) ☐ deposit administration (2) ☐ immediate participation guarantee

(3) ☐ guaranteed investment (4) ☒ other ▶ GROUP ANNUITY CONTRACT

| | | | | | |
|---|---|---|---|---|---|
| **b** | Balance at the end of the previous year | | | 7b | 224461 |
| **c** | Additions: (1) Contributions deposited during the year | 7c(1) | 116542 | | |
| | (2) Dividends and credits | 7c(2) | | | |
| | (3) Interest credited during the year | 7c(3) | 9453 | | |
| | (4) Transferred from separate account | 7c(4) | | | |
| | (5) Other (specify below) | 7c(5) | 5952 | | |
| | ▶ LOAN REPAYMENTS | | | | |
| | (6) Total additions | | | 7c(6) | 131947 |
| **d** | Total of balance and additions (add **b** and **c(6)**) | | | 7d | 356408 |
| **e** | Deductions: | | | | |
| | (1) Disbursed from fund to pay benefits or purchase annuities during year | 7e(1) | 20433 | | |
| | (2) Administration charge made by carrier | 7e(2) | 87 | | |
| | (3) Transferred to separate account | 7e(3) | 40980 | | |
| | (4) Other (specify below) | 7e(4) | | | |
| | ▶ | | | | |
| | (5) Total deductions | | | 7e(5) | 61500 |
| **f** | Balance at the end of the current year (subtract **e(5)** from **d**) | | | 7f | 294908 |

## Part III Welfare Benefit Contract Information

If more than one contract covers the same group of employees of the same employer(s) or members of the same employee organization(s), the information may be combined for reporting purposes if such contracts are experience-rated as a unit. Where contracts cover individual employees, the entire group of such individual contracts with each carrier may be treated as a unit for purposes of this report.

**8** Benefit and contract type (check all applicable boxes)

**a** ☐ Health (other than dental or vision) **b** ☐ Dental **c** ☐ Vision **d** ☐ Life insurance
**e** ☐ Temporary disability (accident and sickness) **f** ☐ Long-term disability **g** ☐ Supplemental unemployment **h** ☐ Prescription drug
**i** ☐ Stop loss (large deductible) **j** ☐ HMO contract **k** ☐ PPO contract **l** ☐ Indemnity contract
**m** ☐ Other (specify) ▶

| | | | | |
|---|---|---|---|---|
| **9** Experience-rated contracts: | | | | |
| **a** Premiums: (1) Amount received | **9a(1)** | | | |
| (2) Increase (decrease) in amount due but unpaid | **9a(2)** | | | |
| (3) Increase (decrease) in unearned premium reserve | **9a(3)** | | | |
| (4) Earned (**(1)** + **(2)** - **(3)**) | | | **9a(4)** | |
| **b** Benefit charges (1) Claims paid | **9b(1)** | | | |
| (2) Increase (decrease) in claim reserves | **9b(2)** | | | |
| (3) Incurred claims (add **(1)** and **(2)**) | | | **9b(3)** | |
| (4) Claims charged | | | **9b(4)** | |
| **c** Remainder of premium: (1) Retention charges (on an accrual basis) -- | | | | |
| (A) Commissions | **9c(1)(A)** | | | |
| (B) Administrative service or other fees | **9c(1)(B)** | | | |
| (C) Other specific acquisition costs | **9c(1)(C)** | | | |
| (D) Other expenses | **9c(1)(D)** | | | |
| (E) Taxes | **9c(1)(E)** | | | |
| (F) Charges for risks or other contingencies | **9c(1)(F)** | | | |
| (G) Other retention charges | **9c(1)(G)** | | | |
| (H) Total retention | | | **9c(1)(H)** | |
| (2) Dividends or retroactive rate refunds. (These amounts were ☐ paid in cash, or ☐ credited.) | | | **9c(2)** | |
| **d** Status of policyholder reserves at end of year: (1) Amount held to provide benefits after retirement | | | **9d(1)** | |
| (2) Claim reserves | | | **9d(2)** | |
| (3) Other reserves | | | **9d(3)** | |
| **e** Dividends or retroactive rate refunds due. (Do not include amount entered in **c(2)**.) | | | **9e** | |
| **10** Nonexperience-rated contracts: | | | | |
| **a** Total premiums or subscription charges paid to carrier | | | **10a** | |
| **b** If the carrier, service, or other organization incurred any specific costs in connection with the acquisition or retention of the contract or policy, other than reported in Part I, item 2 above, report amount. | | | **10b** | |

Specify nature of costs ▶

## Part IV Provision of Information

**11** Did the insurance company fail to provide any information necessary to complete Schedule A? ☐ Yes ☐ No

**12** If the answer to line 11 is "Yes," specify the information not provided. ▶

| SCHEDULE C (Form 5500) | Service Provider Information | OMB No. 1210-0110 |
|---|---|---|
| Department of the Treasury<br>Internal Revenue Service<br>Department of Labor<br>Employee Benefits Security Administration<br>Pension Benefit Guaranty Corporation | This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).<br>▶ **File as an attachment to Form 5500.** | **2009**<br>**This Form is Open to Public Inspection.** |

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** Name of plan
THE FOURTH WALL RESTAURANTS, LLC 401(K) PLAN

**B** Three-digit plan number (PN) ▶ 001

**C** Plan sponsor's name as shown on line 2a of Form 5500
THE FOURTH WALL RESTAURANTS, LLC

**D** Employer Identification Number (EIN)
26-0544482

## Part I Service Provider Information (see instructions)

You must complete this Part, in accordance with the instructions, to report the information required for **each person** who received, directly or indirectly, $5,000 or more in total compensation (i.e., money or anything else of monetary value) in connection with services rendered to the plan or the person's position with the plan during the plan year. If a person received **only** eligible indirect compensation for which the plan received the required disclosures, you are required to answer line 1 but are not required to include that person when completing the remainder of this Part.

### 1 Information on Persons Receiving Only Eligible Indirect Compensation

**a** Check "Yes" or "No" to indicate whether you are excluding a person from the remainder of this Part because they received only eligible indirect compensation for which the plan received the required disclosures (see instructions for definitions and conditions).. . . . . ☐ Yes ☒ No

**b** If you answered line 1a "Yes," enter the name and EIN or address of each person providing the required disclosures for the service providers who received only eligible indirect compensation. Complete as many entries as needed (see instructions).

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

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**2. Information on Other Service Providers Receiving Direct or Indirect Compensation.** Except for those persons for whom you answered "yes" to line 1a above, complete as many entries as needed to list each person receiving, directly or indirectly, $5,000 or more in total compensation (i.e., money or anything else of value) in connection with services rendered to the plan or their position with the plan during the plan year. (See instructions).

**(a)** Enter name and EIN or address (see instructions)

FIRST GREAT-WEST LIFE & ANNUITY CO.

8515 EAST ORCHARD ROAD
GREENWOOD VILLAGE, CO 80111

93-1225432

| (b) Service Code(s) | (c) Relationship to employer, employee organization, or person known to be a party-in-interest | (d) Enter direct compensation paid by the plan. If none, enter -0-. | (e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | (f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | (g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | (h) Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| 64 | RECORDKEEPER | 275 | Yes [X] No [ ] | Yes [X] No [ ] | 0 | Yes [ ] No [X] |

**(a)** Enter name and EIN or address (see instructions)

THESCO RETIREMENT PLANNING SERV.

320 WEST 57TH STREET
5TH FLOOR
NEW YORK, NY 10019

13-4179390

| (b) Service Code(s) | (c) Relationship to employer, employee organization, or person known to be a party-in-interest | (d) Enter direct compensation paid by the plan. If none, enter -0-. | (e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | (f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | (g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | (h) Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| 13 | CONTRACT ADMINISTRATOR | | Yes [X] No [ ] | Yes [ ] No [X] | 1223 | Yes [ ] No [X] |

**(a)** Enter name and EIN or address (see instructions)

| (b) Service Code(s) | (c) Relationship to employer, employee organization, or person known to be a party-in-interest | (d) Enter direct compensation paid by the plan. If none, enter -0-. | (e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | (f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | (g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | (h) Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes [ ] No [ ] | Yes [ ] No [ ] | | Yes [ ] No [ ] |

**(a)** Enter name and EIN or address (see instructions)

| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes ☐ No ☐ | Yes ☐ No ☐ | | Yes ☐ No ☐ |

**(a)** Enter name and EIN or address (see instructions)

| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes ☐ No ☐ | Yes ☐ No ☐ | | Yes ☐ No ☐ |

**(a)** Enter name and EIN or address (see instructions)

| **(b)** Service Code(s) | **(c)** Relationship to employer, employee organization, or person known to be a party-in-interest | **(d)** Enter direct compensation paid by the plan. If none, enter -0-. | **(e)** Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | **(f)** Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | **(g)** Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | **(h)** Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes ☐ No ☐ | Yes ☐ No ☐ | | Yes ☐ No ☐ |

## Part I Service Provider Information (continued)

**3** If you reported on line 2 receipt of indirect compensation, other than eligible indirect compensation, by a service provider, and the service provider is a fiduciary or provides contract administrator, consulting, custodial, investment advisory, investment management, broker, or recordkeeping services, answer the following questions for (a) each source from whom the service provider received $1,000 or more in indirect compensation and (b) each source for whom the service provider gave you a formula used to determine the indirect compensation instead of an amount or estimated amount of the indirect compensation. Complete as many entries as needed to report the required information for each source.

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| THESCO RETIREMENT PLANNING SERVICES | 13 | 1223 |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| FIRST GREAT WEST LIFE & ANNUITY CO. 8515 EAST ORCHARD ROAD GREENWOOD VILLAGE, CO 80111<br><br>93-1225432 | TPA ALLOWANCE PAYMENT |

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| | | |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| | |

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| | | |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| | |

## Part II Service Providers Who Fail or Refuse to Provide Information

**4** Provide, to the extent possible, the following information for each service provider who failed or refused to provide the information necessary to complete this Schedule.

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

## Part III Termination Information on Accountants and Enrolled Actuaries (see instructions)

(complete as many entries as needed)

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN; |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN; |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

# SCHEDULE D (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

# DFE/Participating Plan Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).

▶ **File as an attachment to Form 5500.**

OMB No. 1210-0110

**2009**

**This Form is Open to Public Inspection.**

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** Name of plan
THE FOURTH WALL RESTAURANTS, LLC 401(K) PLAN

**B** Three-digit plan number (PN) ▶ 001

**C** Plan or DFE sponsor's name as shown on line 2a of Form 5500
THE FOURTH WALL RESTAURANTS, LLC

**D** Employer Identification Number (EIN)
26-0544482

## Part I Information on interests in MTIAs, CCTs, PSAs, and 103-12 IEs (to be completed by plans and DFEs)

(Complete as many entries as needed to report all interests in DFEs)

**a** Name of MTIA, CCT, PSA, or 103-12 IE: FUTUREFUNDS II SERIES ACCOUNT

**b** Name of sponsor of entity listed in (a): GREAT WEST LIFE & ANNUITY INS. CO.

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| 93-1225432-001 | P | 1296962 |

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| | | |

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| | | |

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| | | |

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| | | |

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| | | |

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

**a** Name of MTIA, CCT, PSA, or 103-12 IE:

**b** Name of sponsor of entity listed in (a):

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|

## Part II Information on Participating Plans (to be completed by DFEs)

(Complete as many entries as needed to report all participating plans)

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

# SCHEDULE H (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

# Financial Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 6058(a) of the Internal Revenue Code (the Code).

▶ **File as an attachment to Form 5500.**

OMB No. 1210-0110

**2009**

**This Form is Open to Public Inspection**

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** Name of plan
THE FOURTH WALL RESTAURANTS, LLC 401(K) PLAN

**B** Three-digit plan number (PN) ▶ 001

**C** Plan sponsor's name as shown on line 2a of Form 5500
THE FOURTH WALL RESTAURANTS, LLC

**D** Employer Identification Number (EIN)
26-0544482

## Part I Asset and Liability Statement

**1** Current value of plan assets and liabilities at the beginning and end of the plan year. Combine the value of plan assets held in more than one trust. Report the value of the plan's interest in a commingled fund containing the assets of more than one plan on a line-by-line basis unless the value is reportable on lines 1c(9) through 1c(14). Do not enter the value of that portion of an insurance contract which guarantees, during this plan year, to pay a specific dollar benefit at a future date. **Round off amounts to the nearest dollar.** MTIAs, CCTs, PSAs, and 103-12 IEs do not complete lines 1b(1), 1b(2), 1c(8), 1g, 1h, and 1i. CCTs, PSAs, and 103-12 IEs also do not complete lines 1d and 1e. See instructions.

| Assets | | (a) Beginning of Year | (b) End of Year |
|---|---|---|---|
| **a** Total noninterest-bearing cash | 1a | | |
| **b** Receivables (less allowance for doubtful accounts): | | | |
| **(1)** Employer contributions | 1b(1) | 778 | 977 |
| **(2)** Participant contributions | 1b(2) | 4550 | 5461 |
| **(3)** Other | 1b(3) | | |
| **c** General investments: | | | |
| **(1)** Interest-bearing cash (include money market accounts & certificates of deposit) | 1c(1) | | |
| **(2)** U.S. Government securities | 1c(2) | | |
| **(3)** Corporate debt instruments (other than employer securities): | | | |
| **(A)** Preferred | 1c(3)(A) | | |
| **(B)** All other | 1c(3)(B) | | |
| **(4)** Corporate stocks (other than employer securities): | | | |
| **(A)** Preferred | 1c(4)(A) | | |
| **(B)** Common | 1c(4)(B) | | |
| **(5)** Partnership/joint venture interests | 1c(5) | | |
| **(6)** Real estate (other than employer real property) | 1c(6) | | |
| **(7)** Loans (other than to participants) | 1c(7) | | |
| **(8)** Participant loans | 1c(8) | 27415 | 22339 |
| **(9)** Value of interest in common/collective trusts | 1c(9) | | |
| **(10)** Value of interest in pooled separate accounts | 1c(10) | 729086 | 1296962 |
| **(11)** Value of interest in master trust investment accounts | 1c(11) | | |
| **(12)** Value of interest in 103-12 investment entities | 1c(12) | | |
| **(13)** Value of interest in registered investment companies (e.g., mutual funds) | 1c(13) | | |
| **(14)** Value of funds held in insurance company general account (unallocated contracts) | 1c(14) | 224461 | 294908 |
| **(15)** Other | 1c(15) | | |

| | | (a) Beginning of Year | (b) End of Year |
|---|---|---|---|
| **1d** Employer-related investments: | | | |
| **(1)** Employer securities | 1d(1) | | |
| **(2)** Employer real property | 1d(2) | | |
| **e** Buildings and other property used in plan operation | 1e | | |
| **f** Total assets (add all amounts in lines 1a through 1e) | 1f | 986290 | 1620647 |
| **Liabilities** | | | |
| **g** Benefit claims payable | 1g | | |
| **h** Operating payables | 1h | | |
| **i** Acquisition indebtedness | 1i | | |
| **j** Other liabilities | 1j | | |
| **k** Total liabilities (add all amounts in lines 1g through1j) | 1k | 0 | 0 |
| **Net Assets** | | | |
| **l** Net assets (subtract line 1k from line 1f) | 1l | 986290 | 1620647 |

## Part II Income and Expense Statement

**2** Plan income, expenses, and changes in net assets for the year. Include all income and expenses of the plan, including any trust(s) or separately maintained fund(s) and any payments/receipts to/from insurance carriers. Round off amounts to the nearest dollar. MTIAs, CCTs, PSAs, and 103-12 IEs do not complete lines 2a, 2b(1)(E), 2e, 2f, and 2g.

| Income | | (a) Amount | (b) Total |
|---|---|---|---|
| **a Contributions:** | | | |
| **(1)** Received or receivable in cash from: **(A)** Employers | 2a(1)(A) | 20884 | |
| **(B)** Participants | 2a(1)(B) | 130666 | |
| **(C)** Others (including rollovers) | 2a(1)(C) | 237029 | |
| **(2)** Noncash contributions | 2a(2) | | |
| **(3)** Total contributions. Add lines **2a(1)(A), (B), (C),** and line **2a(2)** | 2a(3) | | 388579 |
| **b Earnings on investments:** | | | |
| **(1)** Interest: | | | |
| **(A)** Interest-bearing cash (including money market accounts and certificates of deposit) | 2b(1)(A) | | |
| **(B)** U.S. Government securities | 2b(1)(B) | | |
| **(C)** Corporate debt instruments | 2b(1)(C) | | |
| **(D)** Loans (other than to participants) | 2b(1)(D) | | |
| **(E)** Participant loans | 2b(1)(E) | 1506 | |
| **(F)** Other | 2b(1)(F) | | |
| **(G)** Total interest. Add lines **2b(1)(A)** through **(F)** | 2b(1)(G) | | 1506 |
| **(2)** Dividends: **(A)** Preferred stock | 2b(2)(A) | | |
| **(B)** Common stock | 2b(2)(B) | | |
| **(C)** Registered investment company shares (e.g. mutual funds) | 2b(2)(C) | | |
| **(D)** Total dividends. Add lines **2b(2)(A)**, **(B)**, and **(C)** | 2b(2)(D) | | 0 |
| **(3)** Rents | 2b(3) | | |
| **(4)** Net gain (loss) on sale of assets: **(A)** Aggregate proceeds | 2b(4)(A) | | |
| **(B)** Aggregate carrying amount (see instructions) | 2b(4)(B) | | |
| **(C)** Subtract line **2b(4)(B)** from line **2b(4)(A)** and enter result | 2b(4)(C) | | 0 |

| | | (a) Amount | (b) Total |
|---|---|---|---|
| **2b** (5) Unrealized appreciation (depreciation) of assets: (A) Real estate | 2b(5)(A) | | |
| (B) Other | 2b(5)(B) | | |
| (C) Total unrealized appreciation of assets. Add lines 2b(5)(A) and (B) | 2b(5)(C) | | 0 |
| (6) Net investment gain (loss) from common/collective trusts | 2b(6) | | |
| (7) Net investment gain (loss) from pooled separate accounts | 2b(7) | | 282218 |
| (8) Net investment gain (loss) from master trust investment accounts | 2b(8) | | |
| (9) Net investment gain (loss) from 103-12 investment entities | 2b(9) | | |
| (10) Net investment gain (loss) from registered investment companies (e.g., mutual funds) | 2b(10) | | |
| **c** Other income | 2c | | 9453 |
| **d** Total income. Add all **income** amounts in column (b) and enter total | 2d | | 681756 |
| **Expenses** | | | |
| **e** Benefit payment and payments to provide benefits: | | | |
| (1) Directly to participants or beneficiaries, including direct rollovers | 2e(1) | 45894 | |
| (2) To insurance carriers for the provision of benefits | 2e(2) | | |
| (3) Other | 2e(3) | | |
| (4) Total benefit payments. Add lines 2e(1) through (3) | 2e(4) | | 45894 |
| **f** Corrective distributions (see instructions) | 2f | | |
| **g** Certain deemed distributions of participant loans (see instructions) | 2g | | 1285 |
| **h** Interest expense | 2h | | |
| **i** Administrative expenses: (1) Professional fees | 2i(1) | | |
| (2) Contract administrator fees | 2i(2) | | |
| (3) Investment advisory and management fees | 2i(3) | | |
| (4) Other | 2i(4) | 220 | |
| (5) Total administrative expenses. Add lines 2i(1) through (4) | 2i(5) | | 220 |
| **j** Total expenses. Add all **expense** amounts in column (b) and enter total | 2j | | 47399 |
| **Net Income and Reconciliation** | | | |
| **k** Net income (loss). Subtract line 2j from line 2d | 2k | | 634357 |
| **l** Transfers of assets: | | | |
| (1) To this plan | 2l(1) | | |
| (2) From this plan | 2l(2) | | |

## Part III Accountant's Opinion

**3** Complete lines 3a through 3c if the opinion of an independent qualified public accountant is attached to this Form 5500. Complete line 3d if an opinion is not attached.

**a** The attached opinion of an independent qualified public accountant for this plan is (see instructions):

(1) [ ] Unqualified (2) [ ] Qualified (3) [X] Disclaimer (4) [ ] Adverse

**b** Did the accountant perform a limited scope audit pursuant to 29 CFR 2520.103-8 and/or 103-12(d)? [X] Yes [ ] No

**c** Enter the name and EIN of the accountant (or accounting firm) below:

(1) Name: BDO USA, LLP (2) EIN: 13-5381590

**d** The opinion of an independent qualified public accountant is **not attached** because:

(1) [ ] This form is filed for a CCT, PSA, or MTIA. (2) [ ] It will be attached to the next Form 5500 pursuant to 29 CFR 2520.104-50.

## Part IV Compliance Questions

**4** CCTs and PSAs do not complete Part IV. MTIAs, 103-12 IEs, and GIAs do not complete 4a, 4e, 4f, 4g, 4h, 4k, 4m, 4n, or 5. 103-12 IEs also do not complete 4j and 4l. MTIAs also do not complete 4l.

During the plan year:

| | | Yes | No | Amount |
|---|---|---|---|---|
| **a** | Was there a failure to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102? Continue to answer "Yes" for any prior year failures until fully corrected. (See instructions and DOL's Voluntary Fiduciary Correction Program.) | 4a | X | | 432 |
| **b** | Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectible? Disregard participant loans secured by participant's account balance. (Attach Schedule G (Form 5500) Part I if "Yes" is checked.) | 4b | | X | |
| **c** | Were any leases to which the plan was a party in default or classified during the year as uncollectible? (Attach Schedule G (Form 5500) Part II if "Yes" is checked.) | 4c | | X | |
| **d** | Were there any nonexempt transactions with any party-in-interest? (Do not include transactions reported on line 4a. Attach Schedule G (Form 5500) Part III if "Yes" is checked.) | 4d | | X | |
| **e** | Was this plan covered by a fidelity bond? | 4e | X | | 1000000 |
| **f** | Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond, that was caused by fraud or dishonesty? | 4f | | X | |
| **g** | Did the plan hold any assets whose current value was neither readily determinable on an established market nor set by an independent third party appraiser? | 4g | | X | |
| **h** | Did the plan receive any noncash contributions whose value was neither readily determinable on an established market nor set by an independent third party appraiser? | 4h | | X | |
| **i** | Did the plan have assets held for investment? (Attach schedule(s) of assets if "Yes" is checked, and see instructions for format requirements.) | 4i | X | | |
| **j** | Were any plan transactions or series of transactions in excess of 5% of the current value of plan assets? (Attach schedule of transactions if "Yes" is checked, and see instructions for format requirements.) | 4j | | X | |
| **k** | Were all the plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of the PBGC? | 4k | | X | |
| **l** | Has the plan failed to provide any benefit when due under the plan? | 4l | | X | |
| **m** | If this is an individual account plan, was there a blackout period? (See instructions and 29 CFR 2520.101-3.) | 4m | | X | |
| **n** | If 4m was answered "Yes," check the "Yes" box if you either provided the required notice or one of the exceptions to providing the notice applied under 29 CFR 2520.101-3. | 4n | | | |

**5a** Has a resolution to terminate the plan been adopted during the plan year or any prior plan year? If yes, enter the amount of any plan assets that reverted to the employer this year ☐ **Yes** ☒ **No** **Amount:**

**5b** If, during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)

| **5b(1)** Name of plan(s) | **5b(2)** EIN(s) | **5b(3)** PN(s) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

# SCHEDULE R (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

# Retirement Plan Information

This schedule is required to be filed under section 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 6058(a) of the Internal Revenue Code (the Code).

▶ **File as an attachment to Form 5500.**

OMB No. 1210-0110

**2009**

**This Form is Open to Public Inspection.**

For calendar plan year 2009 or fiscal plan year beginning 01/01/2009 and ending 12/31/2009

**A** Name of plan
THE FOURTH WALL RESTAURANTS, LLC 401(K) PLAN

**B** Three-digit plan number (PN) ▶ 001

**C** Plan sponsor's name as shown on line 2a of Form 5500
THE FOURTH WALL RESTAURANTS, LLC

**D** Employer Identification Number (EIN)
26-0544482

## Part I Distributions

**All references to distributions relate only to payments of benefits during the plan year.**

**1** Total value of distributions paid in property other than in cash or the forms of property specified in the instructions ..... **1**

**2** Enter the EIN(s) of payor(s) who paid benefits on behalf of the plan to participants or beneficiaries during the year (if more than two, enter EINs of the two payors who paid the greatest dollar amounts of benefits):

EIN(s): 93-1225432

**Profit-sharing plans, ESOPs, and stock bonus plans, skip line 3.**

**3** Number of participants (living or deceased) whose benefits were distributed in a single sum, during the plan year. ..... **3**

## Part II Funding Information (If the plan is not subject to the minimum funding requirements of section of 412 of the Internal Revenue Code or ERISA section 302, skip this Part)

**4** Is the plan administrator making an election under Code section 412(d)(2) or ERISA section 302(d)(2)? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

**If the plan is a defined benefit plan, go to line 8.**

**5** If a waiver of the minimum funding standard for a prior year is being amortized in this plan year, see instructions and enter the date of the ruling letter granting the waiver. **Date:** Month _____ Day _____ Year _____

**If you completed line 5, complete lines 3, 9, and 10 of Schedule MB and do not complete the remainder of this schedule.**

**6** **a** Enter the minimum required contribution for this plan year ..... **6a**

**b** Enter the amount contributed by the employer to the plan for this plan year ..... **6b**

**c** Subtract the amount in line 6b from the amount in line 6a. Enter the result (enter a minus sign to the left of a negative amount) ..... **6c**

**If you completed line 6c, skip lines 8 and 9.**

**7** Will the minimum funding amount reported on line 6c be met by the funding deadline? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

**8** If a change in actuarial cost method was made for this plan year pursuant to a revenue procedure providing automatic approval for the change or a class ruling letter, does the plan sponsor or plan administrator agree with the change? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

## Part III Amendments

**9** If this is a defined benefit pension plan, were any amendments adopted during this plan year that increased or decreased the value of benefits? If yes, check the appropriate box(es). If no, check the "No" box. ..... ☐ **Increase** ☐ **Decrease** ☐ **Both** ☐ **No**

## Part IV ESOPs (see instructions). If this is not a plan described under Section 409(a) or 4975(e)(7) of the Internal Revenue Code, skip this Part.

**10** Were unallocated employer securities or proceeds from the sale of unallocated securities used to repay any exempt loan? ..... ☐ **Yes** ☐ **No**

**11** **a** Does the ESOP hold any preferred stock? ..... ☐ **Yes** ☐ **No**

**b** If the ESOP has an outstanding exempt loan with the employer as lender, is such loan part of a "back-to-back" loan? (See instructions for definition of "back-to-back" loan.) ..... ☐ **Yes** ☐ **No**

**12** Does the ESOP hold any stock that is not readily tradable on an established securities market? ..... ☐ **Yes** ☐ **No**

## Part V Additional Information for Multiemployer Defined Benefit Pension Plans

**13** Enter the following information for each employer that contributed more than 5% of total contributions to the plan during the plan year (measured in dollars). See instructions. *Complete as many entries as needed to report all applicable employers.*

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box ☐ and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box ☐ and see instructions regarding required attachment. Otherwise, complete items 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

**14** Enter the number of participants on whose behalf no contributions were made by an employer as an employer of the participant for:

| | | |
|---|---|---|
| **a** The current year | **14a** | |
| **b** The plan year immediately preceding the current plan year | **14b** | |
| **c** The second preceding plan year | **14c** | |

**15** Enter the ratio of the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during the current plan year to:

| | | |
|---|---|---|
| **a** The corresponding number for the plan year immediately preceding the current plan year | **15a** | |
| **b** The corresponding number for the second preceding plan year | **15b** | |

**16** Information with respect to any employers who withdrew from the plan during the preceding plan year:

| | | |
|---|---|---|
| **a** Enter the number of employers who withdrew during the preceding plan year | **16a** | |
| **b** If item 16a is greater than 0, enter the aggregate amount of withdrawal liability assessed or estimated to be assessed against such withdrawn employers | **16b** | |

**17** If assets and liabilities from another plan have been transferred to or merged with this plan during the plan year, check box and see instructions regarding supplemental information to be included as an attachment. ☐

## Part VI Additional Information for Single-Employer and Multiemployer Defined Benefit Pension Plans

**18** If any liabilities to participants or their beneficiaries under the plan as of the end of the plan year consist (in whole or in part) of liabilities to such participants and beneficiaries under two or more pension plans as of immediately before such plan year, check box and see instructions regarding supplemental information to be included as an attachment ☐

**19** If the total number of participants is 1,000 or more, complete items (a) through (c)

**a** Enter the percentage of plan assets held as:
Stock: _____% Investment-Grade Debt: _____% High-Yield Debt: _____% Real Estate: _____% Other: _____%

**b** Provide the average duration of the combined investment-grade and high-yield debt:
☐ 0-3 years ☐ 3-6 years ☐ 6-9 years ☐ 9-12 years ☐ 12-15 years ☐ 15-18 years ☐ 18-21 years ☐ 21 years or more

**c** What duration measure was used to calculate item 19(b)?
☐ Effective duration ☐ Macaulay duration ☐ Modified duration ☐ Other (specify):

# The Fourth Wall Restaurants, LLC
# 401(k) Plan

## Financial Statements
## and Supplemental Schedules
**Years Ended December 31, 2009 and 2008**

The report accompanying these financial statemetns was issued by
BDO USA, LLP, a New York limited liability partnership, is the U.S. member
of BDO International Limited, a UK company limited by guarantee.

# The Fourth Wall Restaurants, LLC
# 401(k) Plan

## Financial Statements
## and Supplemental Schedules
**Years Ended December 31, 2009 and 2008**

# The Fourth Wall Restaurants, LLC
# 401(k) Plan

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BDO

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401 Broadhollow Road, Suite 201
Melville, NY 11747

# Independent Auditors' Report

To the Trustee
The Fourth Wall Restaurants, LLC 401(k) Plan
New York, New York

We were engaged to audit the financial statements and supplemental schedules of The Fourth Wall Restaurants, LLC 401(k) Plan (the "Plan") as of December 31, 2009 and for the year then ended, as listed in the accompanying table of contents. These financial statements and supplemental schedules are the responsibility of the Plan's management. The financial statements of the Plan as of December 31, 2008 were audited by other auditors whose report dated February 19, 2010 expressed a disclaimer opinion on those statements for the reason set forth below.

As permitted by Section 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974, the plan administrator instructed us not to perform, and we did not perform, any auditing procedures with respect to the information summarized in Note 3, which was certified by Great-West Life & Annuity Insurance Company, the custodian of the Plan, except for comparing the information with the related information included in the financial statements and supplemental schedules. We have been informed by the plan administrator that the custodian of the Plan holds the investment assets and executes investment transactions. The plan administrator has obtained a certification from the custodian as of December 31, 2009, and for the year then ended, that the information provided to the plan administrator by the custodian is complete and accurate.

Because of the significance of the information that we did not audit, we are unable to, and do not, express an opinion on the accompanying 2009 financial statements and supplemental schedules taken as a whole. The form and content of the information included in the financial statements and supplemental schedules, other than that derived from the information certified by the custodian, have been audited by us in accordance with auditing standards generally accepted in the United States of America and, in our opinion, are presented in compliance with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.

BDO USA, LLP

Melville, New York
October 15, 2010

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BDO is the brand name for the BDO network and for each of the BDO Member Firms.

# The Fourth Wall Restaurants, LLC
# 401(k) Plan

## Statements of Net Assets Available for Benefits

| *December 31,* | **2009** | 2008 |
|---|---|---|
| **Assets** | | |
| Investments at fair value (Notes 2, 4 and 6): | | |
| Mutual funds | **$1,296,962** | $729,086 |
| Common collective trust (Notes 2 and 5) | **294,908** | 216,493 |
| Participant loans | **22,246** | 27,570 |
| **Total investments** | **1,614,116** | 973,149 |
| **Receivables:** | | |
| Employees' contribution | **5,461** | 4,550 |
| Employers' contribution | **977** | 778 |
| **Total receivables** | **6,438** | 5,328 |
| **Liabilities:** | | |
| Excess employees contributions payable | **15,056** | - |
| **Net assets available for benefits, at fair value** | **1,605,498** | 978,477 |
| Adjustment from fair value to contract value for fully benefit responsive investment contract | - | 7,968 |
| **Net assets available for benefits** | **$1,605,498** | $986,445 |

*See accompanying independent auditors' report and notes to financial statements.*

# The Fourth Wall Restaurants, LLC
# 401(k) Plan

## Statement of Changes in Net Assets Available for Benefits

*Year ended December 31, 2009*

| | |
|---|---|
| **Additions:** | |
| Investment income: | |
| Net appreciation in fair value of mutual funds | $ 282,218 |
| Interest income from participant loans | 1,408 |
| Interest income from common collective trust | 9,453 |
| **Total investment income** | 293,079 |
| **Contributions:** | |
| Employer | 24,746 |
| Employee | 111,748 |
| Rollovers | 237,029 |
| **Total contributions** | 373,523 |
| **Total additions** | 666,602 |
| **Deductions:** | |
| Benefits paid to participants | 47,219 |
| Administrative expenses | 330 |
| **Total deductions** | 47,549 |
| **Net increase** | 619,053 |
| **Net assets available for benefits, beginning of year** | 986,445 |
| **Net assets available for benefits, end of year** | $1,605,498 |

*See accompanying independent auditors' report and notes to financial statements.*

# The Fourth Wall Restaurants, LLC
# 401(k) Plan

## Notes to Financial Statements

**1. Description of the Plan**

The following description of The Fourth Wall Restaurants, LLC 401(k) Plan (the "Plan") provides only general information. Participants should refer to the Plan document for a more complete description of the Plan's provisions.

*General*

The Plan is a defined contribution plan sponsored by Fourth Wall Restaurants, LLC (the "Company") covering all eligible employees of the Company. The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA").

*Eligibility*

Employees of the Company are eligible to participate in the Plan after attaining 21 years of age and having been employed with the Company for at least six months.

*Contributions*

Under the Plan, an employee may make pretax contributions of up to 100% of base compensation, and the Company makes matching contributions up to 50% of the employee's contribution up to 3% of compensation. All contributions are subject to the maximum amount deductible for federal income tax purposes. The participant's annual contribution is limited to the maximum contribution allowable under Section 402(g) of the Internal Revenue Code (the "Code").

*Participants Accounts*

Each participant's account is credited with the participant's contribution. Investment of each participant's account is participant directed and participants may change their investment options at their discretion.

At December 31, 2009, there were seventeen mutual funds and one common collective trust as investment options for participants.

*Vesting*

Participants are 100% vested in all salary reductions credited to their accounts and any earnings thereon. Vesting by each participant in employer matching contributions is based on years of continuous service as follows:

| *Years of service* | Vesting percentage |
|---|---|
| Less than 1 | 0% |
| 1 | 20% |
| 2 | 40% |
| 3 | 60% |
| 4 | 80% |
| 5 or more | 100% |

*Payment of Benefits*

Participants reaching age 59½, the normal retirement age, may elect to receive their benefits payable in a single sum. Upon the death or disability of a participant, a benefit in the amount of the participant's account will become payable to the beneficiary.

*Forfeitures*

Forfeitures resulting from the nonvested portions of participants' accounts who terminate prior to being fully vested may be used to reduce the employer's contribution. In 2009 there were no forfeitures used to reduce the Company's contributions.

*Participant Loans*

The Plan includes provisions that entitle a participant to request a loan not to exceed the lesser of 50% of the total value of the participant's vested account balance or $50,000. The maximum term for repayment is five years, unless it is for the purpose of purchasing a primary residence. The fixed interest rate is based on the prime rate plus 1% at time of the loan. The minimum permitted loan is $1,000. The loans are re-paid through payroll deductions. Interest rates on loans outstanding on December 31, 2009 ranged from 4.25% to 6.25%.

*Administrative Expenses*

Expenses of the Plan may be paid by the Plan or the Company.

**2. Significant Accounting Policies**

*Basis of Accounting*

The financial statements of the Plan are prepared under the accrual method of accounting.

*Investment Valuation and Income Recognition*

Investments are reported at fair value in the financial statements in compliance with the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Fair value has been determined by the use of quoted market values. The Plan's interest in the common collective trust is valued at contract value, which approximates fair value (see Note 5). Participants' loans receivable are valued at cost, which approximates fair value. Purchases and sales of securities are recorded on a trade-date basis. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

*Risk and Uncertainties*

The Plan provides for various investment options including any combination of mutual funds and a common collective trust. The underlying investment securities are exposed to various risks, such as interest rate, market and credit risks. Due to the level of risk associated with certain investment securities and the level of uncertainty related to changes in the value of investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect the amounts reported in the statements of net assets available for benefits and participants' individual account balances.

*Use of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make certain estimates and assumptions that affect the reported amounts of assets, liabilities and changes therein. Actual results may differ from those estimates.

*Payment of Benefits*

Benefits are recorded when paid.

*Subsequent Events*

In preparing the financial statements in accordance with FASB's ASC 855 "Subsequent Events", events were reviewed that have occurred after December 31, 2009 through the date of this issuance of the financial statements on October 15, 2010. During this period, there were no material subsequent events.

**3. Information Certified by the Plan's Custodian**

The plan administrator has elected the method of annual reporting compliance permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Accordingly, Great-West Life & Annuity Insurance Company, the custodian has certified that the following data included in the accompanying financial statements and supplemental schedule is complete and accurate.

| *December 31,* | **2009** | 2008 |
|---|---|---|
| Statements of net assets available for benefits: | | |
| Mutual funds | **$1,296,962** | $729,086 |
| Common Collective trust | **294,908** | 216,493 |
| Total investments | **1,591,870** | 945,579 |
| Adjustment from fair value to contract value for fully benefit responsive investment contract | - | 7,968 |
| | **$1,591,870** | $953,547 |

| *Year ended December 31, 2009* | |
|---|---|
| Statements of changes in net assets available for benefits: | |
| Interest and dividends | **$ 9,453** |
| Net appreciation in fair value of investments | **282,218** |

The Plan's independent auditors did not perform auditing procedures with respect to this information, except for comparing such information with the related information included in the financial statements and supplemental schedule.

**4. Investments**

The fair value of individual investments that represent 5% or more of the Plan's net assets at December 31, 2009 and 2008 is as follows:

| *December 31,* | 2009 | 2008 |
|---|---|---|
| Description | | |
| American Funds Capital World G/I R3 | **$388,021** | $101,970 |
| First GWL&A Key Guaranteed Portfolio Fund | **294,908** | 216,493 |
| American Funds Growth Fund of Amer R3 | **243,390** | 162,831 |
| Columbia Mid Cap Value A | **103,284** | 64,284 |
| RidgeWorth International Equity Index I | **96,003** | 64,211 |
| American Funds Bond Fund of Amer R3 | **95,296** | 92,533 |
| American Funds Fundamental Inv R3 | **94,574** | 70,060 |
| Fidelity Advisor Small Cap T | * | 57,285 |

* Represents less than 5% of net assets available for benefits in the respective year.

**5. Common Collective Trust**

The Plan entered into a benefit-responsive investment contract with Great-West Life & Annuity Insurance Company ("GWL&A"). The account is credited with earnings on the underlying investments and charged for participant withdrawals and administrative expenses. The contract is included in the financial statements at contract value as reported to the Plan by GWL&A. Contract value represents contributions made under the contract, plus earnings, less participant withdrawals and administrative expenses. As described in FASB ASC 962, "Defined Contribution Pension Plans" (formerly FSP AAG-INV-1 and SOP 94-4-1), investment contracts held by defined contribution plan are required to be reported at fair value. Accordingly, contract value, which represents net contributions plus interest at the contract rate, approximates fair value. The contracts are fully benefit responsive. Participants may ordinarily direct the withdrawal or transfer of all or a portion of their investment at contract value.

There are no reserves against contract value for credit risk of the contract issuer or otherwise. Interest income credited to the accounts in 2009 amounted to $9,453 and approximated a 2.4% interest rate.

Certain events limit the ability of the Plan to transact at contract value with the issuer. Such events include the following: (1) amendment to the Plan documents (including complete or partial Plan termination or merger with another plan), (2) changes to the Plan's prohibition on competing investment options or deletion of equity wash provisions, (3) bankruptcy of the Sponsor or other Sponsor events (for example, divestitures or spin-offs of a subsidiary) that cause a significant withdrawal from the Plan, or (4) the failure of the trust to qualify for exemption from federal income taxes or any prohibited transaction exemption under ERISA. The Plan Administrator does not believe that the occurrence of any such value event, which would limit the Plan's ability to transact at contract value with participants, is probable.

**6. Fair Value Measurements**

The Plan follows the provisions of FASB ASC 820 "Fair Value Measurements and Disclosures" which establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy under FASB ASC 820 are described below:

Level 1 — Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has the ability to access.

| | |
|---|---|
| Level 2 | Inputs to the valuation methodology include:<br>▪ Quoted prices for similar assets or liabilities in active markets;<br>▪ Quoted prices for identical or similar assets or liabilities in inactive markets;<br>▪ Inputs other than quoted prices that are observable for the asset or liability;<br>▪ Inputs that are derived principally from or corroborated by observable market data by correlation or other means.<br><br>If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability. |
| Level 3 | Inputs to the valuation methodology are unobservable and significant to the fair value measurement. |

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation methodologies used for assets measured at fair value. There have been no changes in the methodologies used as of December 31, 2009.

*Mutual Funds*

Valued at the net asset value of shares held by the Plan at year end.

*Common Collective Trust*

Contract value is the amount plan participants or sponsors would receive currently if they were to withdraw or transfer funds within the plan prior to their maturing. Contract value represents net contributions plus interest at the contract rate which approximates fair value.

*Participants Loans*

Valued at amortized cost, which approximates fair value.

The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Plan believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement as of the reporting date.

The following tables set forth by level, within the fair value hierarchy, the Plan's assets measured at fair value on a recurring basis as of December 31, 2009 and 2008.

*December 31, 2009*

| | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|
| Mutual Funds | $1,296,962 | $ - | $ - | $1,296,962 |
| Common Collective Trust | - | - | 294,908 | 294,908 |
| Participants loans | - | - | 22,246 | 22,246 |
| | $1,296,962 | $ - | $317,154 | $1,614,116 |

*December 31, 2008*

| | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|
| Mutual Funds | $729,086 | $ - | $ - | $729,086 |
| Common Collective Trust | - | - | 216,493 | 216,493 |
| Participants loans | - | - | 27,570 | 27,570 |
| | $729,086 | $ - | $244,063 | $973,149 |

The table below sets forth a summary of changes in the fair value of the Plan's level 3 assets for the years ended December 31, 2009 and 2008:

| | Common Collective Trust | Participant Loans |
|---|---|---|
| Fair value at January 1, 2008 | $ 14,360 | $ - |
| Interest credited | 2,864 | - |
| Issuances, repayments and settlements, net | 199,269 | 27,570 |
| Fair value at December 31, 2008 | 216,493 | 27,570 |
| Interest credited | 9,453 | - |
| Issuances, repayments and settlements, net | 68,962 | (5,324) |
| Fair value at December 31, 2009 | $294,908 | $22,246 |

**7. Tax Status**

The Plan has received a determination letter from the Internal Revenue Service dated March 31, 2008, stating that the Plan was qualified under Section 401(a) of the Code and, therefore, the related trust was exempt from taxation. The Plan has been amended and restated since receiving this determination letter. Once qualified, the Plan is required to operate in conformity with the Code to maintain its qualification. The Plan Administrator believes the Plan is designed and being operated in compliance with the applicable requirements of the Code and, therefore, believes that the Plan, as amended, is qualified and the related trust is tax exempt.

The Company has become aware of an error in the calculation of certain employee contributions. It was noted that the incorrect definition of compensation was used and the Company is in process of evaluating the impact and will voluntarily any necessary corrections.

| | | |
|---|---|---|
| 8. | **Plan Termination** | Although it has not expressed any intent to do so, the Company has the right under the Plan to discontinue its contributions at any time and to terminate the Plan subject to the provisions of ERISA. In the event of Plan termination, participants will become 100% vested in their accounts. |
| 9. | **Party-In-Interest Transactions** | Certain Plan investments are shares of a common collective trust managed by GWL&A. GWL&A is the custodian of the Plan and therefore, these transactions qualify as party-in-interest. Participant loans also qualify as party-in-interest transactions. |
| 10. | **Excess Employee Contributions** | The Plan did not pass the Actual Deferral Percentage ("ADP") test for the plan year ended December 31, 2009. Excess contributions of $15,056 at December 31, 2009 were reimbursed to its participants during 2010 and were accounted for as an excess contributions payable. |
| 11. | **Reconciliation of Financial Statements to Form 5500** | The accompanying financial statements have been prepared under the accrual basis of accounting which differs from the modified cash basis of accounting used to prepare the Plan's Form 5500. The differences principally represent the timing of the accounting recognition of transactions and other miscellaneous adjustments. Accordingly, reconciliations are presented below for the year ended December 31, 2009. |

| Reconciliation of Statement of Net Assets Available for Benefits | |
|---|---|
| *Year ended December 31,* | **2009** |
| Net assets available for benefits, per the financial statements | **$1,605,498** |
| Refund of participant contributions | **15,056** |
| Participants loans | **93** |
| Changes in net assets available for benefits, per Form 5500 | **$1,620,647** |

| Reconciliation of Statement of Changes in Net Assets Available for Benefits | |
|---|---|
| *Year ended December 31,* | **2009** |
| Changes in net assets available for benefits, per the financial statements | **$619,053** |
| Refund of participant contributions | **15,056** |
| Other | **248** |
| Changes in net assets available for benefits, per Form 5500 | **$634,357** |

**12. Nonexempt transactions**

During the plan year ended December 31, 2009, employee withholdings in the amount of $432 were not remitted within the appropriate time period by the Company. These transactions constitute prohibited transactions as defined by ERISA and have subsequently been corrected.

# The Fourth Wall Restaurants, LLC
# 401(k) Plan

## EIN: 26-0544482 Plan Number: 001

## Schedule of Assets (Held at End of Year)

*December 31, 2009*

| (a) | (b) Identity of issue, borrower, lessor or similar party | (c) Description of investment including maturity date, rate of interest, collateral, par or maturity value | (d) Cost | (e) Current value |
|---|---|---|---|---|
| | **Mutual Funds:** | | | |
| | American Funds Capital World G/I R3 | 49,729 mutual fund shares | a | $ 388,021 |
| | American Funds Growth Fund of Amer R3 | 26,088 mutual fund shares | a | 243,390 |
| | Columbia Mid Cap Value A | 12,487 mutual fund shares | a | 103,284 |
| | RidgeWorth International Equity Index I | 13,370 mutual fund shares | a | 96,003 |
| | American Funds Bond Fund of Amer R3 | 9,383 mutual fund shares | a | 95,296 |
| | American Funds Fundamental Inv R3 | 10,070 mutual fund shares | a | 94,574 |
| | Fidelity Advisor Small Cap T | 6,327 mutual fund shares | a | 65,361 |
| | Columbia Small Cap Value I Fund A | 7,536 mutual fund shares | a | 60,636 |
| | Maxim S & P 500 Index | 5,095 mutual fund shares | a | 55,591 |
| | Russell LifePoints 2030 Strategy R3 | 2,773 mutual fund shares | a | 25,050 |
| | T. Rowe Price Growth Stock R | 2,732 mutual fund shares | a | 22,441 |
| | Fidelity Advisor Leveraged Co S&K-T | 2,488 mutual fund shares | a | 18,619 |
| | Janus Forty Class S | 968 mutual fund shares | a | 11,411 |
| | Lazard Emerging Markets Open | 1,012 mutual fund shares | a | 11,310 |
| | RiverSource Diversified Equity Income R3 | 624 mutual fund shares | a | 4,652 |
| | Russell LifePoints 2040 Strategy R3 | 140 mutual fund shares | a | 1,261 |
| | Fidelity Advisor Mid Cap T | 5 mutual fund shares | a | 62 |
| | **Common Collective Trust:** | | | |
| * | First GWL&A Key Guaranteed Portfolio Fund | Interest rate from 3.00% to 3.35% | a | 294,908 |
| * | **Participant loans** | Loans to participants with interest rates ranging from 4.25% to 6.25% | - | 22,246 |
| | | | | $1,614,116 |

*See accompanying independent auditors' report.*

* A party-in-interest as defined by ERISA.
a The cost of participant-directed investments is not required to be disclosed.

# The Fourth Wall Restaurants, LLC
# 401(k) Plan

## Schedule H, line 4a – Schedule of Deliquent Contributions – Year Ended December 31, 2009

**EIN: 26-0544482** **Plan Number: 001**

| (a) | (b) | (c) | (d) |
|---|---|---|---|
| *Year* | *Description* | *Participant Contributions Transferred late to Plan* | ***Total that Constitute Nonexempt Prohibited Transactions*** |
| 2009 | Employee contributions | $432 | $432* |

* The sponsor remitted $432 in employee deferrals untimely during fiscal 2009; the lost earnings have not yet been remitted.

Form **5558**
(Rev. January 2008)
Department of the Treasury
Internal Revenue Service

# Application for Extension of Time To File Certain Employee Plan Returns

► **For Privacy Act and Paperwork Reduction Act Notice, see instructions on page 3.**

OMB No. 1545-0212

**File With IRS Only**

## Part I Identification

**A** Name of filer, plan administrator, or plan sponsor (see instructions)
The Fourth Wall Restaurants, LLC

Number, street, and room or suite no. (If a P.O. box, see instructions.)
880 Third Avenue, 4th Floor

City or town, state and ZIP code
New York NY 10022

**B** [X] **Filer's identifying number (see instructions).** Employer identification number (EIN).
26-0544482

[ ] Social security number (SSN)

| C Plan name | Plan number | Plan year ending-- MM | DD | YYYY |
|---|---|---|---|---|
| 1 The Fourth Wall Restaurants, LLC 401(k) Plan | 001 | 12 | 31 | 2009 |
| 2 | | | | |
| 3 | | | | |

## Part II Extension of Time to File Form 5500 or Form 5500-EZ *(see instructions)*

**1** I request an extension of time until 10 / 15 / 2010 to file Form 5500 or Form 5500-EZ.

The application **is automatically approved** to the date shown on line 1 (above) if: **(a)** the Form 5558 is filed on or before the normal due date of Form 5500 or 5500-EZ for which this extension is requested, and **(b)** the date on line 1 is no more the 2 1/2 months after the normal due date.

**You must attach a copy of this Form 5558 to each Form 5500 and 5500-EZ filed after the due date for the plans listed in C above.**

*** Draft Copy - Do Not File ***

**Note.** A signature is not required if you are requesting an extension to file Form 5500 or Form 5500-EZ.

## Part III Extension of Time to File Form 5330 *(see instructions)*

**2** I request an extension of time until _____ to file Form 5330.
You may be approved for up to a six (6) month extension to file Form 5330, after the normal due date of Form 5330.

**a** Enter the Code section(s) imposing the tax . . . . . ► **a**

**b** Enter the payment amount attached . . . . . ► **b**

**c** For excise taxes under section 4980 or 4980F of the Code, enter the revision/amendment date . . . . ► **c**

**3** **State in detail why you need the extension**

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements made on this form are true, correct, and complete, and that I am authorized to prepare this application.

**Signature** ► **Date** ►

# Schedule H, line 4i
# Schedule of Assets (Held At End of Year)

For the plan year beginning 01/01/2009 and ending 12/31/2009

Name of plan
**The Fourth Wall Restaurants, LLC 401(k) Plan**

Employer Identification Number
**26-0544482**

Three-digit plan number ► 001

| (a) | (b) Identity of issue, borrower, lessor, or similar party | (c) Description of investment including maturity date, rate of interest, collateral, par, or maturity value | (d) Cost | (e) Current value |
|---|---|---|---|---|
| * | First Great West Life & Annuit | First GWL&A Key Guaranteed Por | | 294,508 |
| | First Great West Life & Annuit | AMFDS Bond Fund of America | | 95,296 |
| | First Great West Life & Annuit | AMFDS Capital World G/I R3 | | 388,021 |
| | First Great West Life & Annuit | AMFDS Fundamental Inv. R3 | | 94,574 |
| | First Great West Life & Annuit | AMFDS Growth Fund of America | | 243,390 |
| | First Great West Life & Annuit | Columbia Mid Cap Value A | | 103,284 |
| | First Great West Life & Annuit | Columbia Small Cap Value A | | 60,636 |
| | First Great West Life & Annuit | Fidelity Advisor Leveraged Co. | | 18,619 |
| | First Great West Life & Annuit | Fidelity Advisor Mid Cap T | | 61 |
| | First Great West Life & Annuit | Fidelty Advisor Small Cap T | | 65,361 |
| | First Great West Life & Annuit | Janus Forty Class S | | 11,411 |
| | First Great West Life & Annuit | Lazard Emerging Markets Open | | 11,310 |
| | First Great West Life & Annuit | Maxim S&P 500 Index | | 55,591 |
| | First Great West Life & Annuit | Ridgeworth Intl. Equity Index | | 96,003 |
| | First Great West Life & Annuit | Riversource Diversified Equit | | 4,652 |
| | First Great West Life & Annuit | Russell Lifepoints 2030 R3 | | 25,049 |
| | First Great West Life & Annuit | Russell Lifepoints 2040 R3 | | 1,261 |
| | First Great West Life & Annuit | T. Rowe Price Growth Stock R | | 22,441 |
| * | Loan | | | 22,339 |

*** Draft Copy - Do Not File ***