

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____	x	Chapter 11
In re	:	Case No. 06-12737 (SMB)
	:	(Jointly Administered)
M. FABRIKANT & SONS, INC. and	:	
FABRIKANT – LEER INTERNATIONAL, LTD.	:	
	:	
Debtors.	:	
	:	
_____	x	

**THIRD AMENDED DISCLOSURE
STATEMENT FOR JOINT PLAN OF LIQUIDATION UNDER
CHAPTER 11 OF THE BANKRUPTCY CODE OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS, THE DEBTORS' CURRENT LENDERS, WILMINGTON
TRUST COMPANY, AS AGENT TO THE CURRENT LENDERS, AND THE DEBTORS**

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Dated: New York, New York
November 7, 2007

*****NOTICE*****

This Disclosure Statement and its related documents are the only documents authorized by the Court to be used in connection with the solicitation of votes to accept the Plan. No representations have been authorized by the Court concerning the Debtors, their business operations or the value of their assets, except as explicitly set forth in this Disclosure Statement. Accordingly, creditors and interest holders should not rely on representations other than those set forth in this Disclosure Statement in considering whether to accept or reject the Plan. The Required Plan Proponents reserve the right to file a further amended Plan and Disclosure Statement from time to time.

The Plan Proponents urge you to read this Disclosure Statement because it contains a summary of the Plan and important information concerning the Debtors' history and operations. The Disclosure Statement also provides information regarding alternatives to the Plan. A copy of the Plan accompanies this Disclosure Statement. The description of the Plan in this Disclosure Statement summarizes only certain provisions of the Plan and is not, nor is it intended to be, a complete description of the Plan. The Plan should be read carefully and independently of this Disclosure Statement. You should consult your own counsel and/or financial advisor in connection with your Claim(s) against or Interest(s) in the Debtor(s) and the treatment accorded your Claim(s) or Interest(s) under the Plan.

The information contained herein regarding the Debtors' businesses and related financial information has been provided to the Plan Proponents and their advisors by the Debtors and their advisors, is available from the Debtors' public filings, or has been developed from information provided by the Debtors and their advisors or publicly available information. As such, neither the Creditor Proponents nor their respective professionals can warrant or represent that the information contained herein and therein is without inaccuracies or errors. Nothing contained herein will constitute an admission of any fact or liability by any party or be admissible in any proceeding involving Wilmington, the Current Lenders, the Committee, the Debtors, or their respective advisors. No representations by any person concerning the Debtors (particularly as to their business operations, or the value of their properties) are authorized by the Plan Proponents other than as set forth in this Disclosure Statement and should not be relied on by you in arriving at your decision.

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I.

Introduction

The Plan Proponents are soliciting votes to accept or reject the Plan. A copy of the Plan is attached as Exhibit A to this Disclosure Statement. *Unless otherwise defined in this Disclosure Statement, all capitalized terms used herein but not defined herein will have the meanings ascribed to them in the Plan.*

The purpose of the Disclosure Statement is to provide sufficient information to enable the creditors of the Debtors who are entitled to vote to make an informed decision on whether to accept or reject the Plan. The Disclosure Statement describes:

- how the Plan treats creditors and shareholders of the Debtors (Section II);
- how to submit a vote on the Plan and who is entitled to vote (Section III);
- the businesses of the Debtors and the reasons why they commenced their chapter 11 cases (Section IV);
- significant events that have occurred in the Debtors' chapter 11 cases (Section V);
- the creation of the liquidating trusts under the Plan, how distributions will be made and the manner in which Disputed Claims are to be resolved (Section VI);
- other issues dealt with under the Plan (Section VII);
- certain factors creditors should consider before voting (Section VIII);
- the procedure for confirming the Plan (Section IX);
- alternatives to confirmation of the Plan (Section X); and
- certain tax consequences of the Plan (Section XI).

If there is any inconsistency between the Plan and the descriptions in the Disclosure Statement, the terms of the Plan will govern.

This Disclosure Statement and the Plan are the only materials creditors should use to determine whether to vote to accept or reject the Plan.

The deadline for Ballots casting votes to accept or reject the Plan is December 7, 2007 at 4:00 p.m. (prevailing Eastern Time). To be counted, your Ballot must be actually *received* by the Voting Agent by this date and time

The *record holder* date for determining which creditors may vote on the Plan is November 7, 2007.

The Plan was developed over the course of several months and through extensive negotiations among the Plan Proponents. The Plan Proponents believe that confirmation of the Plan is in the best interests of the Debtors and their creditors.

RECOMMENDATION: THE PLAN PROPONENTS SUPPORT CONFIRMATION OF THE PLAN AND, ACCORDINGLY, THE PLAN PROPONENTS URGE HOLDERS OF CLASS 2 CLAIMS (THE CLAIMS OF THE CURRENT LENDERS), CLASS 3 CLAIMS (OTHER SECURED CLAIMS), CLASS 4 CLAIMS (UNSECURED CLAIMS AGAINST MFS), AND CLASS 5 CLAIMS (UNSECURED CLAIMS AGAINST FLI) TO VOTE TO ACCEPT THE PLAN.

Additional copies of this Disclosure Statement can be obtained by visiting the following internet website: www.gardencitygroup.com/cases/fab. Additional copies of the Disclosure Statement are also available upon written request made to the Voting Agent at the following address: The Garden City Group, Inc., Re: M. Fabrikant & Sons, Inc., PO Box 9000 #6492, Merrick, NY 11566-9000, or by calling the Voting Agent at (631) 470-5000 and asking for Karen Petriano, Jeff Stein, Ken Freda, or Craig Johnson. The summaries of the Plan and other documents related to the restructuring of the Debtors are qualified in their entirety by the Plan, its exhibits, and the Plan Supplement. The financial and other information included in this Disclosure Statement are for purposes of soliciting acceptances of the Plan.

The Code provides that only creditors who actually vote on the Plan will be counted for purposes of determining whether the requisite acceptances have been attained. Failure to timely deliver a properly completed Ballot by the Voting Deadline will constitute an abstention (i.e., will not be counted as either an acceptance or a rejection), and any improperly completed or late Ballot will not be counted.

II.

Treatment of Creditors and Interest Holders Under the Plan

The Plan governs the treatment of Claims against and Interests in each of the Debtors in the Cases. The table in section II.B. below summarizes the Plan's treatment for each Class. The table is followed by a description of the types of Claims or Interests in each Class and a description of the property to be distributed under the Plan.

A. Outline of the Plan

The Plan provides for the liquidation of the assets of the Estates, including the investigation and prosecution of certain Causes of Action, by two liquidating trusts to be formed pursuant to the Plan and related liquidating trust agreements. The first of these trusts is the Shared Assets Trust, which shall contain the Trust Assets. The second of these trusts is the GUC Trust, which shall contain the GUC Trust Assets. The beneficiaries of the Shared Assets Trust are the Current Lenders and the GUC Trust. The beneficiaries of the GUC Trust are the GUC Trust Beneficiaries, who are holders of the GUC Trust Interests.

The Shared Assets Trust is charged with liquidating the Trust Assets.¹ The proceeds of the Trust Assets will be distributed to the holders of Allowed Class 2 Claims and the GUC Trust (the ultimate beneficiaries of which are holders of Allowed Class 4 Claims and Allowed Class 5 Claims on account of their Claims against MFS and FLI, respectively) in the manner set forth in the Plan and described herein. The Shared Assets Trust will also make distributions on account of Allowed Administrative/Priority Claims and be charged with reconciling Disputed Administrative/Priority Claims. The Shared Assets Trust will be managed by the Shared Assets Trustee, as well as a five-member Shared Assets Trust Beneficiary Committee, three of whose members will be selected by the Current Lenders and two of whose members will be selected by the Committee.

The GUC Trust is charged with (i) liquidating the Original Lender Litigation Claims, (ii) receiving distributions on account of the Shared Assets Trust Class B Interests, and (iii) making distributions in respect of (a) any distributions to the GUC Trust on account of the Shared Assets Trust Class B Interests and (b) proceeds, if any, of the Original Lender Litigation Claims to the holders of Allowed Class 4 Claims on account of their Unsecured Claims against MFS and the holders of Allowed Class 5 Claims on account of their Unsecured Claims against FLI. The GUC Trust shall also be responsible for objecting to and reconciling Disputed Class 4 Claims and Disputed Class 5 Claims.

B. Summary of Classification and Treatment

The following table divides the Claims against and Interests in the Debtors into separate Classes and summarizes the treatment for each Class. The table also identifies which Classes are entitled to vote on the Plan based on rules set forth in the Code. Finally, the table indicates an estimated recovery for each Class. **Important Note:** Because the Assets of the Estates consist primarily of Causes of Action, which are, in essence, litigation claims arising from the Code or applicable federal and/or state nonbankruptcy law, it is not possible for the Plan Proponents at this time to determine a value for the Net Proceeds of such Causes of Action that will be distributed to holders of Class 2, Class 4 and Class 5 Claims.

Class	Description	Treatment	Entitled to Vote	Estimated Recovery
--	Administrative Expense Claims	Cash in an amount equal to such Allowed Administrative Claim on or as soon as reasonably practicable after the later of the Effective Date and the date on which such Claim becomes Allowed.	No	100%

¹ As described in the Plan, the Trust Assets consist of (i) any and all Claims or Causes of Action of the Debtors, the Estates, and/or the Committee, against third parties, excluding (a) the Original Lender Litigation Claims and (b) Claims and Causes of Action against the Current Lenders, Wilmington, and their respective affiliates, successors, and assigns; (ii) any and all Claims or Causes of Action of the Current Lenders, Wilmington, or any of their respective predecessors in interest arising from the Fortgang Guaranties; (iii) the Other Lender Collateral; (iv) any unencumbered assets of the Estates not otherwise identified in this definition; (v) the Remaining Cash; and (vi) the Other Lender Assets.

Class	Description	Treatment	Entitled to Vote	Estimated Recovery
--	Priority Tax Claims	At the option of the Shared Assets Trust, (i) payment in Cash in an amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of the Effective Date and the date on which such Claim becomes Allowed, or (ii) deferred Cash payments in an aggregate principal amount equal to the amount of the Allowed Claim plus interest on the unpaid portion thereof at the applicable rate under non-bankruptcy law from the Effective Date through the date of payment thereof, which payments will be made in equal annual installments through the fifth (5 th) anniversary of the Petition Date.	No	100%
--	Professional Fee Claims	Cash in an amount equal to such Allowed Professional Fee Claim on or as soon as reasonably practicable after the first Business Day following the date upon which such Claim becomes Allowed by Final Order.	No	100%
--	U.S. Trustee Fees	Any outstanding U.S. Trustee Fees owing to the U.S. Trustee for fees incurred by the Estates prior to the Effective Date shall be paid by the Shared Assets Trust on the Effective Date in accordance with the applicable schedule for payment of such fees. Until each of the Cases is closed by entry of a final decree of the Court, the Shared Asset Trust and the GUC Trust shall pay all U.S. Trustee Fees in accordance with the applicable schedule for the payment of such fees.	No	100%
1	Other Priority Claims	Payment in full in Cash on the later of the Effective Date and the date on which such Claim becomes Allowed.	No	100%
2	Current Lender Claims	Receipt of (a) a pro rata share of the Shared Assets Trust Class A Interests, which will entitle the holder to distributions from the Shared Assets Trust as and to the extent set forth in this Plan and in the Shared Assets Trust Agreement and (b) payment in full in Cash of all fees of Wilmington incurred in connection with the Cases.	Yes	See below

3	Other Secured Claims	At the sole option of the Shared Assets Trustee, each holder of an Other Secured Claim will receive (i) payment in full in Cash on or as soon as reasonably practicable after the later of the Effective Date and the date on which such Claim becomes Allowed; (ii) the legal, equitable and contractual rights to which such Claim entitles the holder, unaltered by the Plan; (iii) the treatment described in section 1124(2) of the Code; or (iv) all collateral securing such Claim, without representation or warranty by or recourse against the Debtors, the Shared Assets Trust, or the GUC Trust.	Yes	100%
4	General Unsecured Claims Against MFS	A pro rata share of MFS GUC Trust Interests, which will be distributed to holders of Allowed Class 4 Claims, based upon such holder's Unsecured Claim(s) against MFS. The MFS GUC Trust Interests will entitle such holder to distributions from the GUC Trust as and to the extent set forth in this Plan and in the GUC Trust Agreement.	Yes	7.5% - 100%
5	General Unsecured Claims Against FLI	A pro rata share of FLI GUC Trust Interests, which will be distributed to holders of Allowed Class 5 Claims based upon such holder's Unsecured Claim(s) against FLI. The FLI GUC Trust Interests will entitle such holder to distributions from the GUC Trust as and to the extent set forth in this Plan and in the GUC Trust Agreement.	Yes	7.5% - 100%
6	Interests	All of the Interests will be discharged, cancelled, and terminated on the Effective Date.	No (deemed to reject)	0%

C. Description of Classes under the Plan

1. *Class 1: Other Priority Claims.*

Class 1 consists of Other Priority Claims. Class 1 is unimpaired by the Plan and, therefore, each holder of an Allowed Class 1 Claim is deemed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

Each holder of an Allowed Class 1 Claim will be paid in full in Cash from the Remaining Cash or the Shared Assets Trust in an amount equal to its Allowed Class 1 Claim on or as soon as reasonably practicable after the later of the Effective Date and the date on which such Claim becomes Allowed, unless such holder will agree to a different treatment of such Claim (including without limitation any different treatment that may be provided for in the documentation governing such Claim).

It is currently estimated that Other Priority Claims for MFS and FLI will be approximately \$310,000 and \$4,700 respectively or, in the aggregate, approximately \$314,700;² however, Indian tax authorities have filed tax claims against MFS's India office on the grounds that the office is an operating entity that generates income. If legitimate, these claims may increase the Other Priority Claims against MFS by over \$1,000,000.

2. *Class 2: Current Lender Claims.*

Class 2 consists of Current Lender Claims. Class 2 is impaired by the Plan and, therefore, each holder of an Allowed Class 2 Claim is entitled to vote to accept or reject the Plan.

All Class 2 Current Lender Claims will be deemed Allowed under this Plan. Each holder of an Allowed Class 2 Claim will receive its pro rata share of the Shared Assets Trust Class A Interests, which will entitle such holder to distributions from the Shared Assets Trust as and to the extent set forth in this Plan and in the Shared Assets Trust Agreement.

As of the Petition Date, the principal amount of the Current Lender Claims was approximately \$161.9 million. Since the Petition Date, the Current Lenders have received approximately \$36.3 million in pay downs from the liquidation of Current Lenders' collateral (comprised mainly of the sale proceeds of the 363 Surya Sale Assets and proceeds of accounts receivable). In addition, the Current Lenders purchased the 363 Sale Assets for an aggregate credit bid (after application of a purchase price adjustment as set forth in the 363 Sale Asset Purchase Agreement) of approximately \$35 million.³ Accordingly, the total remaining principal amount of the Current Lender Claims is approximately \$90.6 million.

Under the Plan Settlement described in subsection I. of Article V hereof, and as further described in Article V of the Plan, each holder of Allowed Class 2 Claims will receive (a) its pro rata share of the Shared Assets Trust Class A Interests, which will entitle such holder to distributions in the priority described in Section VI.C. below, and (b) the Releases to be provided under the Plan to the Current Lenders (as discussed in VII.G.5 below).

The Current Lenders believe that approximately \$20 million of their current \$90.6 million claim is in respect of the adequate protection claim granted to the Current Lenders under the Final C/C Order. As a result, according to the Current Lenders, \$20 million of the Current Lenders' \$90.6 million claim is entitled to super-priority and is secured by all of the assets of the Estates, including without limitation all of the Estate Causes of Action. The Committee would likely argue that the amount of the adequate protection claim would be less. The adequate protection claim may not exist at all if the Current Lenders' liens are avoided. In connection with the Plan Settlement the Adequate Protection Claim has been settled at \$12.5 million.

Wilmington has incurred fees and expenses of counsel and financial advisors in connection with these Cases. Under the Final C/C Order entered by the Court, Wilmington is entitled to have these fees and expenses paid directly by the Estates as part of adequate protection for use of the

² These estimates are derived from the Schedule E filed by each of the Debtors with the Court on January 16, 2007, and adjusted based on postpetition payments made by the Debtors to holders of certain Other Priority Claims.

³ The purchase price adjustment calculation used for this estimate is the adjustment as calculated by the Debtors. Absent this Plan Settlement, the Current Lenders would likely argue that the downward purchase price adjustment should be greater.

Current Lenders' collateral, including cash collateral. The Plan Settlement requires that the fees of the professionals representing Wilmington in these Cases that have been incurred but not yet paid be paid prior to the Effective Date of the Plan.

3. *Class 3: Other Secured Claims.*

Class 3 consists of Other Secured Claims. Class 3 is impaired by the Plan and, therefore, each holder of an Allowed Class 3 Claim is entitled to vote to accept or reject the Plan.

Other Secured Claims are the Secured Claims asserted against the Debtors other than the Current Lender Claims, such as any Secured Claim asserted by a taxing authority. Based on the claims register maintained by the Debtors, there have been approximately \$650,000 of Other Secured Claims filed against the Debtors. The Plan Proponents believe that the actual liability for claims in this class will be *de minimis* in that, among other things, the alleged collateral for these claims consists in large part of rights of setoff which may reduce amounts otherwise owed by the claimants to the Debtors but would not entitle the claimants to any payment or other consideration under the Plan.

Unless the holder thereof will agree to a different treatment of such Claim, each holder of an Allowed Class 3 Claim will receive one of the following alternative treatments, at the election of the Shared Assets Trustee:

- a) such Claim will be paid in full in Cash from the Remaining Cash or the Shared Assets Trust on or as soon as reasonably practicable after the later of the Effective Date and the date on which such Claim becomes Allowed;
- b) the legal, equitable and contractual rights to which such Claim entitles the holder thereof will be unaltered by the Plan;
- c) such Claim will receive the treatment described in section 1124(2) of the Code; or
- d) all collateral securing such Claim will be transferred and surrendered to such holder, without representation or warranty by or recourse against the Debtors, the Shared Assets Trust, or the GUC Trust.

With respect to any Class 3 Claim which receives the treatment described in clause (b) or (c) above, the failure of the Debtors, the Committee, or the Shared Assets Trust to object to such Claim will be without prejudice to the Shared Assets Trust's right to contest or otherwise defend against such Claim in an applicable non-bankruptcy forum when and if such Claim is sought to be enforced by the holder thereof after the Effective Date.

4. *Class 4: Unsecured Claims Against MFS.*

Class 4 consists of Unsecured Claims. Class 4 is impaired by the Plan and, therefore, each holder of an Allowed Class 4 Claim is entitled to vote to accept or reject the Plan.

Each holder of an Allowed Class 4 Claim will receive its pro rata share of the GUC Trust Interests in accordance with Section 6.02 of the Plan on account of such holder's Unsecured Claim(s) against MFS, which will entitle such holder to distributions from the GUC Trust⁴ as and to the extent set

⁴ The GUC Trust is further described in Article VI of the Plan and in Section VI.D. hereof.

forth in the Plan and in the GUC Trust Agreement. Additionally, the Shared Assets Trust will transfer the Shared Assets Trust Class B Interests to the GUC Trust, to be held by the GUC Trust on behalf of the holders of Class 4 Claims. The GUC Trust Assets will consist of the Shared Assets Trust Class B Interests and the Original Lender Litigation Claims.⁵ In partial consideration for the release provided to them in Section 7.08 of the Plan, the Current Lenders will waive any right to receive GUC Trust Interests pursuant to Section 4.04 of the Plan and any distributions from the GUC Trust.

The GUC Trust, as holder of the Shared Assets Trust Class B Interests on behalf of the holders of Allowed Class 4 Claims, will receive distributions from the Net Proceeds (as such term is defined in the Plan) of the Shared Assets Trust in accordance with the waterfall structure of the Shared Assets Trust, as further described in Section VI.C.3 hereof and Article V of the Plan.

See Section II.C.7 below for a discussion of the Unsecured Claims asserted against MFS.

5. *Class 5: Unsecured Claims Against FLI.*

Class 5 consists of Unsecured Claims against FLI. Class 5 is impaired by the Plan and, therefore, each holder of an Allowed Class 5 Claim is entitled to vote to accept or reject the Plan.

Each holder of an Allowed Class 5 Claim will receive its pro rata share of the GUC Trust Interests in accordance with Section 6.02 of the Plan on account of such holder's Unsecured Claim(s) against FLI, which will entitle such holder to distributions from the GUC Trust as and to the extent set forth in this Plan and in the GUC Trust Agreement. Additionally, the Shared Assets Trust will transfer the Shared Assets Trust Class B Interests to the GUC Trust, to be held by the GUC Trust on behalf of the holders of Class 5 Claims. The GUC Trust Assets will consist of the Shared Assets Trust Class B Interests and the Original Lender Litigation Claims.⁶ In partial consideration for the release provided to them in Section 7.08 of the Plan, the Current Lenders will waive any right to receive GUC Trust Interests pursuant to Section 4.04 of the Plan and any distributions from the GUC Trust.

The GUC Trust, as holder of the Shared Assets Trust Class B Interests on behalf of the holders of Allowed Class 5 Claims, will receive distributions from the Net Proceeds (as such term is defined in the Plan) of the Shared Assets Trust in accordance with the waterfall structure of the Shared Assets Trust, as further described in Section VI.C.3 hereof and Article V of the Plan.

See Section II.C.7 below for a discussion of the Unsecured Claims asserted against FLI.

6. *Class 6: Interests.*

Class 6 consists of all Interests in any of the Debtors, and all Claims arising from rescission of a purchase or sale of such Interests, or for damages arising from such a purchase or sale. Each holder of Claims and/or Interests in Class 6 will not receive or retain any property under the Plan and, therefore, is deemed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

No distributions will be made in respect of any Interests. All Claims and Interests in Class 6 will be discharged and cancelled upon the Effective Date.

⁵ The Original Lender Litigation Claims are described in Section V.K. hereof.

⁶ The Original Lender Litigation Claims are described in Section V.K. hereof.

7. *Unsecured Claims Asserted Against the Debtors and Assets Available for Distribution*

The Bar Date was September 26, 2007. Based on the claims register being maintained by the Debtors' claims agent and the Debtors' schedules, approximately \$155 million⁷ in amount of timely claims have been asserted against MFS and \$102 million in amount of timely claims have been asserted against FLI. These amounts include all inter-company claims filed by Non-Debtor Affiliates against the Debtors. The Committee has begun reconciling these claims, but has not completed the claims reconciliation process. Nevertheless, the Committee estimates that the amount of Allowed Unsecured Claims asserted against MFS will be approximately \$36 million to \$110 million and the Allowed Unsecured Claims asserted against FLI will be approximately \$13 million to \$60 million. Note that to the extent that the Committee's estimate of Allowed Claims is too high, there will be a greater recovery for holders of GUC Trust Interests; if the estimates are too low, there will be a lesser recovery for holders of GUC Trust Interests.

The GUC Trust contains the Shared Assets Trust Class B Interests and Original Lender Litigation Claims. The Shared Assets Trust Class B Interests entitles the GUC Trust to receive distributions from the Shared Assets Trust in accordance with the waterfall set forth in Section VI.C of the Disclosure Statement, which includes, among other things, a \$5 million payment priority. A description of the Shared Assets, a portion of the proceeds of which will be available to the GUC Trust Beneficiaries (i.e., the holders of allowed general unsecured claims) is set forth in Section VI.C.16 below. Based on the analysis set forth in Section VI.C.16 below, it is estimated that the Shared Assets are worth from approximately \$20 million to more than \$65 million. Applying the waterfall set forth in Section VI.C. hereof, the GUC Trust could receive from approximately \$5 million to more than \$15 million from the Shared Assets Trust, depending upon the success of liquidating the Shared Assets Trust. Further, based on the analysis set forth in Section V.K., the Original Lender Litigation Claims are valued from approximately \$7.5 million to \$75 million. Accordingly, depending on the amount of Allowed Unsecured Claims against the Debtors, a holder of a general unsecured claim could receive from approximately 7.5% to a 100% on account of its Claim. If the Shared Assets are less than the estimates set forth above, if the Original Lender Litigation Claims are less than the estimates set forth above, and/or the Allowed Unsecured Claims are higher than those estimated above, the recovery to holders of general unsecured claims could be less than what is currently estimated herein.

Prior to the sale of substantially all of the operating assets of the Debtors (as described in Section V.F hereof), MFS was a diamond manufacturer and wholesaler, and FLI was a jewelry manufacturer and wholesaler. The Debtors' primary assets were inventory (diamonds and jewelry), receivables, and intellectual property. These assets were sold to Wilmington and the Surya. Wilmington purchased substantially all of the third party receivables of the Debtors, the large bulk of intellectual property, and MFS's diamond inventory. Surya purchased FLI's jewelry inventory and some related intangibles. After the consummation of these sales, MFS's assets consist primarily of certain Affiliate Receivables, Subsidiary Equity, receivables from insiders/employees of MFS, furniture, fixtures, and

⁷ This sum includes approximately \$18 million of claims also asserted against FLI, but which are not included in the amount of FLI claims. It is possible that such claims should not be included in the claims against MFS but only against FLI. If that were to occur, the claims against MFS would be reduced to \$137 million and the claims against FLI increased to \$120 million.

equipment, and Estate Causes of Action, while FLI's assets consists primarily of certain Affiliate Receivables and Estate Causes of Action.⁸

The Current Lenders assert security interests in all of the Affiliate Receivables, the Subsidiary Equity, and the furniture, fixtures, and equipment, as applicable, of each of the Debtors. The Current Lenders also believe that they have a senior secured, super-priority claim on account of their adequate protection claim in the Estate Causes of Action, which the Current Lenders believe to be approximately \$20 million. Given the illiquid nature of the assets remaining at MFS and FLI and the fact that these assets are encumbered by the Current Lenders' liens, it would be extremely difficult and perhaps fruitless to endeavor to allocate the value of the remaining post-sale assets of the Debtors between MFS and FLI.

The Committee, whose members include creditors of both MFS and FLI, has determined that the most equitable and appropriate method of allocating recoveries among creditors of the two Debtors is to allocate such recoveries pro-rata. This represents a compromise between the two Estates. The Committee believes that any attempt to allocate recoveries between the two Estates by litigation would be extremely protracted and inordinately expensive, and would almost certainly result in creditors of both Estates receiving substantially smaller recoveries than under the Plan. The Committee also believes that the outcome of any such litigation would be impossible to predict and could well be highly arbitrary. Among other things, any such litigation would need to determine the appropriate allocation between the two Estates of all recoveries and other relief (e.g., voiding of liens) obtained on account of each of the Estates' many causes of action against the Original Lenders, the Current Lenders, the Debtors' former directors and officers, the recipients of avoidable transfers by the Debtors and the Affiliates, and other defendants – a task that would require the resolution of numerous complex legal and factual issues, and that would be enormously expensive and uncertain of outcome. In addition, a litigation to determine the appropriate allocation of recoveries between the two Estates would also require a reconstruction of the Debtors' prepetition books and records and an attempt to determine the amount and validity of the Intercompany Claims between the Debtors. This task, too, would be very time consuming, expensive and uncertain of outcome, given the manner in which the Debtors and Affiliates were operated prepetition.

In these circumstances, the Committee believes that the compromise effectuated by the Plan is fair and equitable, and that it will result in creditors of both Debtors receiving higher recoveries than they would were the proper allocation of recoveries among creditors of the Debtors to be determined through litigation.

D. Administrative Expenses and Priority Claims

1. Administrative Expense Claims.

Each holder of an Allowed Administrative Claim will receive Cash from the Remaining Cash or the Shared Assets Trust in an amount equal to such Allowed Administrative Claim on or as soon thereafter as is practicable on the later of the Effective Date and the date on which such Claim becomes Allowed, unless such holder will agree to a different treatment of such Claim. After the Effective Date, the Shared Assets Trust may satisfy, in the ordinary course of business, any liabilities, expenses and other Claims incurred by the Shared Assets Trust in the ordinary course of business. As of the date hereof, approximately \$45,000 of Administrative Expense Claims have been asserted against the Debtors.

⁸ Certain third party receivables, defined as 363 Remaining Sale Assets and discussed in Section C.III.16, were purchased by Wilmington but remained in the Estates.

2. *U.S. Trustee Fees*

On or before the Effective Date, the Debtors shall pay all fees under 28 U.S.C. section 1930, as well as all accrued interest, if any, arising under 31 U.S.C. section 3717. The Shared Assets Trust and the GUC Trust shall pay all quarterly fees and accrued interest, if any, under 28 U.S.C. section 1930 and 31 U.S.C. section 3717, respectively, until the entry of a final decree closing the Cases, the dismissal of the Cases, or the conversion of the Cases to cases under chapter 7.

3. *Professional Compensation and Reimbursement Claims*

(a) *Professional Fee Claims Bar Date.* All final applications for payment of Professional Fee Claims will be filed with the Court and served on the Plan Proponents and the Shared Assets Trust on or before the Professional Fee Claims Bar Date, or such later date as may be agreed to by the Shared Assets Trust. Any Professional Fee Claim that is not timely asserted in accordance with Section 2.03 of the Plan will be deemed Disallowed and the holder thereof will be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup or recover such Claim against any of the Estates, the Shared Assets Trust, the GUC Trust or any of their respective assets or property.

(b) *Treatment.* Each holder of an Allowed Professional Fee Claim will be paid in Cash from the Remaining Cash or the Shared Assets Trust in an amount equal to such Allowed Professional Fee Claim on or as soon as reasonably practicable after the first Business Day following the date upon which such Claim becomes Allowed by Final Order, unless such holder will agree to a different treatment of such Claim. The Plan Proponents estimate that Estate professionals will assert approximately \$2.09 million of claims for professional fees and expenses.⁹ This figure represents projected fees from September through December 2007, as well as an estimated amount of fees that have been temporarily disallowed pursuant to the Court's interim compensation procedures but are subject to allowance at the final hearing to approve payment of professional fees by the Estates.

4. *Priority Tax Claims*

Unless such holder will agree to a different treatment, each holder of an Allowed Priority Tax Claim will receive, at the option of the Shared Assets Trust, (i) payment in Cash from the Remaining Cash or the Shared Assets Trust in an amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of the Effective Date and the date on which such Claim becomes Allowed, or (ii) deferred Cash payments from the Remaining Cash or the Shared Assets Trust in an aggregate principal amount equal to the amount of the Allowed Claim plus interest on the unpaid portion thereof at the applicable rate under non-bankruptcy law from the Effective Date through the date of payment thereof, which payments will be made in equal annual installments through the fifth (5th) anniversary of the Petition Date. Any Claim or demand for penalty relating to any Priority Tax Claim (other than a penalty of the type specified in section 507(a)(8)(G) of the Code) will be Disallowed, and the holder of an Allowed Priority Tax Claim will not assess or attempt to collect such penalty from the Estates, the Shared Assets Trust, the GUC Trust, or any of their respective property or assets. Based on the claims register maintained by the Debtors, the aggregate amount of Priority Tax Claims filed against the Debtors is approximately \$410,000.

⁹ Obligations in respect of professional fees incurred by Wilmington in connection with these Cases are not included in this figure.

E. Certain Conditions Precedent to the Confirmation Date

Article X of the Plan sets forth certain conditions to Confirmation. These conditions include entry of the Confirmation Order (in a form acceptable to the Required Plan Proponents) that provides for, among other things,

- a) authorization of the appointment of all parties appointed under or in accordance with the Plan;
- b) approval of the transactions, agreements, and documents to be effected pursuant to the Plan;
- c) authorization of the establishment of the Shared Assets Trust and the GUC Trust consistent with the terms of the Plan, the Shared Assets Trust Agreement, and the GUC Trust Agreement;
- d) authorization of the transfers of the Shared Assets and the GUC Trust Assets to the Shared Assets Trust and the GUC Trust, and finds that such transfers (i) are legal, valid, and effective transfers of property; (ii) vest the Shared Assets Trust and the GUC Trust with good title to such property free and clear of all Liens, Claims, encumbrances, and Interests of any Person, except as expressly provided in the Plan or the Confirmation Order; (iii) do not and shall not constitute avoidable transfers under the Code or under applicable bankruptcy or non-bankruptcy law; (iv) do not and shall not subject the Shared Assets Trust, the GUC Trust, or any holder of a Claim or Interest to any liability by reason of such transfer under the Code or under applicable non-bankruptcy law, including any laws affecting successor or transferee liability or fraudulent conveyance or transfer laws; and (v) are and shall be exempt from any state, city, or other municipality transfer taxes, mortgage recording taxes, and any other stamp or similar taxes pursuant to section 1146(a) of the Code;
- e) authorization of the automatic substitution of the Shared Assets Trust or the GUC Trust, as the case may be, for the Debtors, the Committee, or any other Estate representative as a party to all pending contested matters, adversary proceedings, claims, administrative proceedings and lawsuits;
- f) the exemption of Shared Assets Trust Class A Interests and Shared Assets Trust Class B Interests from any and all federal and state securities registration requirements;
- g) approval of the releases and injunctions granted and created by the Plan;
- h) authorization of and direction to the Debtors to transfer the Shared Assets and the Remaining Cash to the Shared Assets Trust upon the Effective Date;
- i) authorization of and direction to the Debtors to execute all documents reasonably necessary to effect all transfers of Cash and Trust Assets to the Shared Assets Trust;
- j) a finding that the Plan complies with all applicable provisions of the Code, including that the Plan was proposed in good faith; and

- k) a finding that nothing contained in the Plan or in any stipulation filed in the Court or any order of the Court operates as a discharge, release, exculpation, or waiver of, or establishes any defense or limitation of damages to any Claim or Cause of Action belonging to the Estates or to any other Person against any Original Lender.

F. Certain Conditions Precedent to the Effective Date

Article X of the Plan sets forth certain conditions to the occurrence of the Effective Date of the Plan, and provides that the Plan will not become effective unless and until the following conditions will have been satisfied or waived:

- a) the Confirmation Date will have occurred and the Confirmation Order, in a form consistent with Section 10.01 of the Plan, will have become a Final Order;
- b) the Shared Assets Trust Agreement, the GUC Trust Agreement and the Plan Supplement will be in form and substance acceptable to the Required Plan Proponents and will have been executed and delivered by the respective parties thereto;
- c) the Shared Assets Trustee and the Shared Assets Trust Beneficiary Committee will have been appointed;
- d) the GUC Trustee and the GUC Beneficiary Committee will have been appointed;
- e) all actions, documents and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date will be reasonably satisfactory to the Required Plan Proponents, and such actions, documents, and agreements will have been effected or executed and delivered;
- f) all documents to be contained in the Plan Supplement will be completed and in final form and, as applicable, executed by the parties thereto and all conditions precedent contained in any of the foregoing will have been satisfied or waived;
- g) all other actions required by Article V and Article VI of the Plan, which are to occur on or before the Effective Date, will have occurred; and
- h) payment in full of any unpaid professional fees incurred by Wilmington in these Cases.

G. Reservation of “Cram Down” Rights

The Code permits the Court to confirm a chapter 11 plan over the dissent of any class of claims or equity interests as long as the standards in section 1129(b) of the Code are met. This power to confirm a plan over dissenting classes – often referred to as “cram down” – is an important part of the plan process. It assures that no single group (or multiple groups) of claims or interests can block a plan that otherwise meets the requirements of the Code and is in the interests of the other constituents in the case.

The Plan Proponents each reserve the right to seek confirmation of the Plan, notwithstanding the rejection of the Plan by the classes entitled to vote. At the Confirmation Hearing,

the Plan Proponents will seek a ruling that if no holder of a Claim or Interest eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan will be deemed accepted by the holders of such Claims or Interests in such Class for the purposes of 1129(b).

III.

Voting Procedures and Requirements

Detailed voting instructions are provided with the Ballot accompanying this Disclosure Statement. The following Classes are the only Classes entitled to vote to accept or reject the Plan:

Class	Description
2	Current Lender Claims
3	Other Secured Claims
4	Unsecured Claims Against MFS
5	Unsecured Claims Against FLI

If your Claim or Interest is not in any of these Classes, you are not entitled to vote and you will not receive a Ballot with this Disclosure Statement. If your Claim is in one of these Classes, you should read your Ballot and follow the listed instructions carefully. Please use only the Ballot that accompanies this Disclosure Statement.

A. Vote Required for Acceptance by a Class

Under the Code, acceptance of chapter 11 plan by a class of claims is determined by calculating the number and the amount of claims voting to accept, based on the actual total allowed claims voting. Acceptance requires an affirmative vote of more than one-half of the total allowed claims voting and two-thirds in amount of the total allowed claims voting in any given class.

B. Classes Not Entitled to Vote

Under the Code, creditors and equity holders are not entitled to vote if their contractual rights are unimpaired by the Plan or if they will receive no property under the Plan. Based on this standard the holders of Other Priority Claims and Interests are not entitled to vote.

C. Voting

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE SUBMITTED TO THE VOTING AGENT USING EITHER METHOD SET FORTH BELOW, SO THAT IT IS ACTUALLY RECEIVED ON OR BEFORE THE VOTING DEADLINE OF 4:00 P.M., PREVAILING EASTERN TIME, ON DECEMBER 7, 2007:

<p><u>if by mail:</u> The Garden City Group, Inc. Agent for Senior Secured Lenders and Creditors' Committee for M. Fabrikant & Sons, Inc. PO Box 9000 #6492 Merrick, NY 11566-9000</p>	<p><u>if by hand delivery or overnight courier:</u> The Garden City Group, Inc. Agent for Senior Secured Lenders and Creditors' Committee for M. Fabrikant & Sons, Inc. 105 Maxess Road Melville, NY 11747</p>
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If a Ballot is damaged or lost, you may contact the Voting Agent at the number set forth above. Any Ballot that is executed and returned but which does not indicate an acceptance or rejection of the Plan will not be counted.

IV.

Business Description and Reasons for Chapter 11¹⁰

A. The Debtors' Businesses

Established over one hundred years ago in 1895, MFS became one of the world's largest manufacturers and distributors of diamonds, as well as an industry leader in diamond and gemstone jewelry. MFS is a privately held New York corporation and owns eight-one percent (81%) of Debtor FLI, also a New York corporation.

At the time of the commencement of the Cases, MFS's core business was the sale of loose diamonds, solitaires and couture jewelry to all segments of the market; however, until April 2005 MFS was also a wholesaler of diamond and gemstone jewelry. At that time, MFS transitioned substantially all of its jewelry business to FLI, a subsidiary of MFS known as Leer Gem, Ltd., in order to consolidate the Debtors' similar businesses.

The Debtors claim that (i) in the Spring of 2006, they were faced with a lack of liquidity; (ii) such lack of liquidity was caused by the failure of the Debtors' then-secured lenders to continue financing at historical levels; and (iii) this lack of liquidity created an inability to of the Debtors to effectively fulfill customer orders for the upcoming Christmas season. At that time, the Tara Group, a significant India-based jewelry manufacturer and supplier to the Debtors, approached the Debtors about assuming all of FLI's existing and future purchase orders to meet customer needs. As a result, a member of the Tara Group, Tara Jewels Holdings, Inc., and MFS formed a joint venture, Fabrikant-Tara International LLC ("Fab-Tara"), a Delaware limited liability company. Thereafter, MFS owned and controlled twenty-seven percent (27%) of Fab-Tara.

As detailed in Section V F. below, the Debtors held an auction for the sale of substantially all of their assets on May 21, 2007 (the "Auction"), substantially all of the Debtors' assets, other than the FLI Inventory (defined in Section V.F. below) were sold to Wilmington, as the successful bidder at the Auction. As a result of the 363 Asset Sale, MFS sold, among other things, its 27% interest in Fab-Tara to Wilmington.

B. The Debtors' Prepetition Capital Structure

Pursuant to certain prepetition agreements and documents (collectively, the "MFS Loan Agreements") with or between MFS and ABN AMRO Bank N.V.; Antwerpse Diamantbank N.V.; Bank of America, N.A.; HSBC Bank USA, National Association; Israel Discount Bank of New York; JPMorgan Chase Bank, N.A.; and Sovereign Bank, each of these Original Lenders provided separate and bi-lateral financial accommodations (either directly or indirectly) to the Debtors. In addition, pursuant to

¹⁰ The information concerning prepetition events contained in this Section is derived in part from the Affidavit of Matthew Fortgang Pursuant to Local Bankruptcy Rule 1007-2 and in Support of First Day Motions, dated November 17, 2006 (Dkt. No. 3), and from other materials provided by the Debtors. The statements contained herein are not intended as admissions by the Plan Proponents.

certain prepetition agreements and documents (collectively, the “FLI Loan Agreements”) with or between FLI and certain of the Original Lenders, such Original Lenders provided accommodations to FLI.

On January 13, 2006, the Original Lenders and JPMorgan Chase Bank (“JPMorgan”) executed the Second Amended and Restated Intercreditor Agreement (along with all subsequent amendments and modifications thereto, the “Intercreditor Agreement”). Under the Intercreditor Agreement, certain of the Original Lenders agreed, among themselves, that their respective liens and/or security interests in MFS’s assets and the proceeds thereof would rank equally and be shared on a pro rata basis. The Intercreditor Agreement also appointed JPMorgan as collateral agent (the “Collateral Agent”), and provided terms by which the party acting as Agent may resign and a new party be designated in such capacity as successor Collateral Agent. On February 8, 2007, the Resignation, Appointment and Acceptance (the “Appointment Document”) was executed among JPMorgan, Wilmington and the Current Lenders, under which JPMorgan resigned in its capacity as Collateral Agent and Wilmington was appointed as the successor Collateral Agent.

Through a series of agreements and/or modifications between MFS and some or all of the Original Lenders, all executed between 2004 and 2006, MFS, among other things, (i) granted to certain of the Original Lenders security interests in all of its accounts and specified related assets (excluding life insurance policies) to secure the payment and performance of all obligations, liabilities and indebtedness of MFS to such Lenders under the MFS Loan Agreements; (ii) granted to the Collateral Agent, for the Collateral Agent’s benefit and for the ratable benefit of such Original Lenders, a lien and/or security interest in its inventory, specified general intangibles and related assets; (iii) granted to the Collateral Agent, for its benefit and the ratable benefit of the Original Lenders, a lien and/or security interest in, among other things, MFS’s claims, liens and rights against FLI with respect to loans made by MFS to FLI, all monetary obligations of FLI to MFS, certain chattel paper and instruments issued by FLI to MFS and all securities issued by FLI and owned by MFS; and (iv) guaranteed FLI’s obligations to the Lenders under the FLI Loan Agreements (the “MFS Guaranties”).

In 2005, FLI, among other things, (i) entered into guaranties for the benefit of each Original Lender; (ii) granted the Collateral Agent, for its benefit and the ratable benefit of the Original Lenders, a lien and/or security interest in certain collateral, as security for its obligations under the FLI Loan Agreements and the FLI Guaranties.

As a result of the foregoing, the Original Lenders acquired, as a group, a first priority security interest in substantially all of the assets of MFS and FLI, including, among other things, MFS’s accounts and specified related assets, inventory, specified general intangibles and related assets, MFS’s claims, liens and rights against FLI with respect to loans made by MFS to FLI, all monetary obligations of FLI to MFS, certain chattel paper and instruments issued by FLI to MFS, all securities issued by FLI and owned by MFS.¹¹ In addition, as of the date of the filing of the Debtors’ chapter 11 petitions, all proceeds of the Original Lenders’ prepetition collateral were being transmitted by the Debtors to clearing, dominion, lockbox and other accounts maintained with the Collateral Agent and to no other accounts at any other financial institution or third party.

¹¹ As further described in V.D. below, in the Final C/C Order the Debtors conceded that the security interests granted to the Original Lenders were valid, enforceable and properly perfected and agreed not to challenge such liens. Also in the Final C/C Order, the Committee reserved its right to challenge the liens granted to the Original Lenders; however, the Plan Settlement described herein resolves all issues surrounding the Committee’s reservation of rights with respect to the Current Lenders.

From 1997 to 2006, Charles Fortgang executed a series of general guaranties and a reaffirmation, each personally guaranteeing the Debtors' obligations under the MFS Loan Agreements and the FLI Loan Agreements to the Original Lenders. To date, no proceeding has been commenced against Charles Fortgang on his guaranties.

On March 1, 2006, Matthew Fortgang executed a general guaranty, personally guaranteeing the Debtors' present and future obligations under the MFS Loan Agreements and the FLI Loan Agreements. By its terms, the guaranty executed by Matthew Fortgang is absolute and unconditional and remains in full force and effect without regard to any bankruptcy, insolvency or other like proceeding relating to either of the Debtors. To date, no proceeding has been commenced against Matthew Fortgang on his guaranty.

As additional security for the Obligations, on or about April 16, 2006, Susan Fortgang granted to JPMorgan Chase Bank, N.A., in its capacity as collateral agent to the Original Lenders, a Three Million (\$3,000,000) Dollar mortgage on the Nantucket Property.

As of the date of the bankruptcy filing, the Debtors were indebted to the Original Lenders in the approximate amount of one hundred sixty one million nine hundred forty five thousand dollars (\$161,945,000). Since the commencement of the Cases, all of the Original Lenders have transferred and assigned all of their interests in the secured indebtedness to the Current Lenders.

C. Events Leading to the Commencement of the Cases

According to the Debtors, the commencement of the Cases was due to several events that occurred over the course of the two years preceding the Petition Date that impacted the business and operations of the Debtors. The Debtors contend that these events include (i) the failure of the Debtors' then-secured lenders to continue financing at historical levels, (ii) the bankruptcies and non-bankruptcy restructurings of certain of the Debtors' larger retail customers; and (iii) decreased customer purchases. Additionally, the Debtors contend that the increase in gold prices, losses on an interest-rate hedging contract, diminished free cash flow due to the competitive environment, and increasing pressure from low cost jewelry manufacturers adversely affected the Debtors.

While these events may have occurred, the Creditor Proponents believe that the Cases were necessitated primarily by other factors. Specifically, the Committee believes that the Debtors were insolvent long before the Petition Date and that the Debtors' principals consistently and wantonly breached their fiduciary duties. These breaches of fiduciary duty include, without limitation, the improper transfer of over \$100 million of the Debtors' assets to non-Debtor affiliates that were owned, either directly or indirectly, by the Debtors' principals. The Debtors' principals deny that any such breaches of duty occurred.

V.

Significant Events During the Cases

A. Bankruptcy Filing and First Day Orders

On November 17, 2006, the Debtors filed their voluntary petitions under chapter 11 of the Code. Thereafter, the Court entered certain orders designed to minimize the disruption of the Debtors' business operations.

These orders facilitated the orderly administration of the Debtors' Cases, as follows: (i) authorizing joint administration of the Cases; (ii) authorizing the Debtors to pay certain prepetition taxes; (iii) enforcing the provisions of sections 362 and 525 of the Code; (iv) confirming the administrative expense priority status of the Debtors' undisputed obligations to suppliers for the postpetition delivery of goods and provision of services; (v) extending the time to file the Debtors' schedules and statements; (vi) approving the interim use of cash collateral; (vii) authorizing the continued maintenance and use of existing bank accounts, authorizing continued use of existing cash management systems, authorizing preservation and exercise of intercompany setoff rights, granting administrative status for postpetition intercompany transactions and authorizing continued use of existing business forms; and (viii) authorizing the Debtors to pay certain claims of temporary agencies, claims of independent contractors, claims relating to the Debtors' self-insured plans and reimbursable business expenses.

B. Appointment of the Committee and Retention of Committee Professionals

On December 1, 2006, the U.S. Trustee, pursuant to its authority under section 1102 of the Code, appointed the Committee. The Committee consists of five members, as set forth below:

Providence Chain Co.
225 Carolina Avenue
Providence, RI 02905
T. 401.781.1330
F. 401.941.7932
Attn: John Ouhrabka, President

M/s. K. Gidharlal International Pvt.
Ltd.
1003, Panchratna
Opera House
Mumbai, India 400004
T. 212.944.4500
F. 212.944.1833
Attn: Pranav Shah, President

Tiger Jewellery (India) Pvt. Ltd.
Unit No. 502
Tower 11 Seepz
Seepz
Mumbai, India 400 096
T. 9122-2361 2323
F. 9122-2368 0241
Attn: Rahil Mehta, President

Union Bank of Israel
6, Ahuzat Bayit St.
Tel Aviv, 61024, Israel
T. 972-3-5191700/1
F. 972-3-5191710
Attn: Racheli Friedman, Adv., Chief
Legal Advisor and Bank Secretary

Kinney & Kinsella
45 West 21st Street 6th Floor
New York, NY 10010
T. 212.620.0356
F. 212.620.0357
Attn: Katie Kinsella, President

The following three Committee members hold Unsecured Claims against MFS: M/s. K. Gidharlal International Pvt. Ltd., Union Bank of Israel and Kinney & Kinsella. The remaining two Committee members – Providence Chain Co. and Tiger Jewellery (India) Pvt. Ltd. – hold Unsecured Claims against FLI.

The Court has approved the Committee's retention of (i) Moses & Singer, LLP as its attorneys; (ii) Halperin Battaglia Raicht, LLP as its conflicts counsel; (iii) Susman Godfrey LLP as its

special litigation counsel to pursue the Original Lender Litigation Claims; and (iv) Consensus Advisors LLC as its financial advisors.

C. Debtors' Retention of Legal Counsel and Financial Advisors

The Court has entered orders authorizing the Debtors to retain the following professionals to assist in the Cases: (i) Troutman Sanders LLP as counsel; (ii) Joel I. Getzler and Peter A. Furman as Chief Restructuring Officers, and Getzler Henrich & Associates LLC as Crisis Manager; (iii) Peter J. Solomon Company as Investment Banker; (iv) Majmudar & Co. as its special counsel (India); and (v) Schain Leifer Guralnick, CPAs as accountants.

Additionally, pursuant to an order entered on December 15, 2006, the Court authorized the Debtors to retain certain professionals in the ordinary course of their business, provided that each such professional file and serve an affidavit of disinterestedness to which the U.S. Trustee, the Committee and the Current Lenders may object and further provided that each such professional does not incur more than \$10,000 per month, or \$150,000 throughout the Cases, in fees.

D. The Final Cash Collateral Order

As explained above, before the Petition Date, the Debtors obtained their principal financing from the Original Lenders pursuant to eight separate bilateral loan agreements, which were secured by substantially all of the assets of the Debtors. In order to maintain the funding of their operations during the pendency of these chapter 11 cases, the Debtors entered into negotiations with the Original Lenders for the use of cash collateral. On December 18, 2006, the Bankruptcy Court entered the Final Order Authorizing Debtors' Use of Cash Collateral and Granting Adequate Protection Claim and Lien (the "Final C/C Order").

The Final C/C Order gave the Debtors authority to use the Cash Collateral (as such term is defined in the Final C/C Order) in accordance with the terms and conditions of the Final C/C Order through and until the close of business on March 16, 2007. It also, among other things, gave the Original Lenders an adequate protection claim, to protect the Original Lenders' interests in their collateral, in the form of a valid, binding, enforceable and automatically perfected first priority lien on all of the Debtors' assets. Finally, as part of the Final C/C Order, the Debtors conceded to, and agreed not to challenge, the validity, extent, priority, perfection, enforceability and non-avoidability of the prepetition liens granted to the Collateral Agent and Original Lenders.

The Final C/C Order did, however, allow the Committee to commence an adversary proceeding within one hundred twenty (120) days of appointment of the Committee to, among other things, challenge the validity, extent, priority, perfection, enforceability and non-avoidability of the prepetition liens granted to the Collateral Agent and the Original Lenders (the "Challenge Period"). Through various stipulations entered into among the Committee, the Original Lenders and the Current Lenders, and approved by the Court, the Challenge Period was extended to October 1, 2007; however, the Plan Settlement described herein and embodied in the Plan now resolves all issues relating to any potential challenge by the Committee against the Current Lenders. Accordingly, the Committee and Wilmington have submitted to the Court a stipulation seeking to extend the Challenge period to the later of (i) October 1, 2007, and (ii) forty-five (45) days after termination of the Settlement Agreement pursuant to section 4(a) (the Court's denial with prejudice of the Settlement Parties' request for approval a disclosure statement relating to the Settlement Plan), 4(b) (the Court's denial with prejudice of the confirmation of the Settlement Plan), or 4(c) (a material breach of the Settlement Agreement by the Agent, on behalf of the Current Lenders, or the Committee) of the Settlement Agreement.

By Order, dated January 22, 2007 (the “Supplemental Order”), the Final C/C Order was supplemented and modified to reflect, among other things: (i) the addition of new events of default, (ii) the implementation of certain protocols relating to the turnover of information to Wilmington and the Current Lenders, and (iii) changes to the “sweep” provisions of the Final C/C Order.

Subsequent to the entry of the Supplemental Order, Wilmington and the Debtors have agreed to modify the Supplemental Order by consensual stipulations, each approved by the Court, to reflect, among other things: (i) extensions of the period during which the Debtors could use the Cash Collateral; (ii) modified budgets governing the use of Cash Collateral during the extension periods; and (iii) modifications of the “sweep” mechanism established in the Supplemental Order. Accordingly, the Agent and the Debtors have entered into five stipulations extending the use of Cash Collateral (the “Extension Stipulations”). The Debtors are currently authorized to use Cash Collateral pursuant to the Fifth Extension Stipulation, which was approved by the Court by Order dated August 10, 2007 (Dkt. No. 368). The Fifth Extension Stipulation, among other things, gives the Debtors the right to use Cash Collateral through October 31, 2007, in accordance with periodic budgets agreed to by the Debtors, Wilmington and the Current Lenders.

Finally, under the “sweep” provisions of the Final C/C Order, as such provisions have been preserved by the Extension Stipulations, Wilmington has received during the Cases certain cash proceeds of the Current Lender collateral aggregating approximately \$36.3 million as described above.

E. Exclusivity

Upon the commencement of the Cases, the Debtors’ exclusive right to file a chapter 11 plan and solicit acceptances thereof expired on March 17, 2007 and May 16, 2007, respectively (collectively, the “Exclusive Periods”). On February 28, 2007, the Debtors filed a motion seeking to extend the Exclusive Periods (the “Exclusivity Motion”), and thereafter circulated a proposed order purporting to extend the Exclusive Periods but also providing Wilmington with the right to file a chapter 11 plan and solicit acceptances thereof on behalf of the Current Lenders during such Exclusive Periods. On March 12, 2007, the Committee filed an objection to the Exclusivity Motion on the basis that Wilmington should not be the only creditor permitted to share exclusivity with the Debtors. On the record at the March 13, 2007 hearing to consider the Exclusivity Motion, the Court extended the Exclusive Periods, as to the Debtors only, through April 19, 2007. Thereafter, on April 18, 2007, the Court entered a Bridge Order extending the Debtors’ Exclusive Periods to file a chapter 11 plan and solicit acceptances thereof through and including May 18, 2007 and July 17, 2007, respectively, and adjourning further consideration of the Exclusivity Motion to May 18, 2007. Thereafter, by Order dated May 18, 2007, the Court granted the Debtors, Wilmington and the Committee co-exclusivity to file a chapter 11 plan through and including July 17, 2007, and to solicit acceptances thereof through and including September 15, 2007.

F. 363 Asset Sales

Prior to the commencement of their Cases, the Debtors retained Peter J. Solomon Company (“PJSC”) as investment bankers to explore various restructuring, refinancing and sale possibilities. Prior to the Petition Date, and continuing thereafter, PJSC marketed and solicited offers from potential purchasers for a sale of substantially all of the Debtors’ operating assets and engaged in discussions and negotiations with parties expressing an interest in such a transaction.

On April 17, 2007, the Debtors filed a motion (the “Sale Motion”) seeking, Inter Alia: (I) An Order Scheduling an Auction for the Sale of Certain Assets of the Debtors; Approving Bidding Procedures and Protections in Connection Therewith; and Approving Form and Manner of Notice; and

(II) A Second Order Approving (A) the Sale of Said Assets Pursuant to Section 363 of the Code and (B) the Assumption and Assignment of Assumed Contracts Pursuant to Section 365 of the Code. On that same date, the Debtors also filed a Motion Pursuant to Section 105 of the Code and Local Rule 9006-1 for Order Shortening Time of Notice with Respect to Initial Hearing on Debtors' Sale Motion. Thereafter, on April, 20, 2007, the Debtors filed a form asset purchase agreement in connection with the Sale Motion. On April 27, 2007, the Court entered an order shortening time with respect to the Sale Motion and granting the relief sought in the Sale Motion (the "Sale Procedures Order").

The bidding procedures approved by the Court in the Sale Procedures Order (the "Bidding Procedures") contemplated a straight auction, with no stalking horse bidder, and categorized the Debtors' assets into seven (7) different lots, ascribing a reserve price (a "Reserve Price") for each as follows: (i) MFS Accounts Receivable (\$8.6 million); (ii) FLI Accounts Receivable (\$1.6 million); (iii) MFS Inventory (\$21.4 million); (iv) FLI Inventory (\$10.0 million); (v) Interest in Fabrikant-Tara International LLC (\$1.4 million); (vi) Other Third-Party Accounts Receivable (\$5.0 million); and (vii) Other Assets (\$0.5 million). The Bidding Procedures set forth certain requirements a bid must meet in order to be considered a "Qualified Bid." These requirements included, among others, that any interested bidder must meet or exceed the Reserve Price for each lot of assets or for the assets as a whole.

On May 16, 2007, the Debtors conducted the first auction pursuant to the Sale Procedures Order. Both throughout and after the auction, there was controversy among the various constituencies involved over whether a particular bid, submitted by Tara Jewels Export Pvt Ltd., was in fact a "Qualified Bid" as defined in the Bidding Procedures. Ultimately, all parties involved agreed to void the May 16, 2007 auction, re-notice the auction and set a new deadline for the submission of Qualified Bids.

At an auction held on May 21, 2007 (the "Auction"), Surya Capital LLC ("Surya") was the successful bidder with respect to the lot of assets designated as "FLI Inventory," agreeing to purchase the FLI Inventory for \$10.4 million (subject to a purchase price adjustment formula). Also at the Auction, Wilmington was determined to be the successful bidder on the remaining six (6) lots of assets, offering to purchase the remaining lots for an aggregate credit bid of \$38.5 million (subject to a purchase price adjustment formula). On May 29, 2007, the Court signed two separate orders approving the respective sales. The sale of the FLI Inventory to Surya closed on June 1, 2007, resulting in net proceeds of \$10.4 million. Thereafter, on July 12, 2007, the sale of the other six lots of assets to Wilmington closed.

G. Sale of Life Insurance Policies

On June 14, 2007, the Debtors filed a Motion For Order Approving Sale of Certain Life Insurance Policies, Free and Clear of Liens, Claims, Encumbrances or Other Interests. Pursuant to the Motion, the Debtors sought to sell two life insurance policies owned by MFS for Charles Fortgang and Marjorie Fortgang. Each policy provided for a payment of four million dollars (\$4 million) to MFS upon the death of each respective insured. MFS paid annual premiums on the Charles Fortgang policy in the amount of \$136,922 per year, and on the Marjorie Fortgang policy in the amount of \$88,087 per year. The surrender value of each policy was zero dollars (\$0) on account of surrender charges that would have to have been paid by the policy holder upon surrender of each policy. In order to capitalize on the policies, the Debtors sought to retain Melville Capital, a life settlement broker, to sell the policies. Melville had estimated their value at approximately \$1.3 million to \$1.75 million in the aggregate. On July 10, 2007, the Court entered an order approving the relief sought in the Motion. The sale of the policies has closed, yielding the Estates approximately \$1.34 million.

H. SHR and Simmons Settlement

On March 14, 2007, the Debtors filed an Application for Order Authorizing Debtors to Deliver Release Regarding Affiliate Transaction. In the Application, the Debtors sought approval to release SHR, Inc. and The Simmons Jewelry Company, LLC, each a non-debtor affiliate of the Debtors, and SHR & Simmons Jewelry Group, LLC, as purchaser of the foregoing entities. The non-debtor affiliates owed MFS a receivable in the amount of \$3,865,729.00 and the Debtors proposed, as consideration for the releases, that the non-debtor affiliates would pay to MFS \$3 million cash and a note in the principal amount of \$865,729.00, providing for payment to MFS in eleven (11) monthly installments of thirty five thousand dollars (\$35,000) with a balloon payment in the twelfth month, plus interest. The note was to be secured by a second priority lien on all of the personal property and fixtures of SHR & Simmons Jewelry Group, LLC. On April 3, 2007, the Court entered an Order approving the relief sought in the Application. The transaction closed on May 18, 2007.

I. Plan Settlement

As mentioned above, the Final C/C Order, the Supplemental Order and the Extension Stipulations provided the Committee with a period of time in which to investigate and challenge the extent, priority, perfection, enforceability, and avoidability of the prepetition liens securing the Current Lender Claims, and to assert, among others, fraudulent conveyance claims and equitable subordination claims against the Original Lenders and the Current Lenders. Currently, this period will not expire as to the Current Lenders until the later of (i) October 1, 2007, and (ii) forty-five (45) days after termination of the Settlement Agreement pursuant to section 4(a) (the Court's denial with prejudice of the Settlement Parties' request for approval a disclosure statement relating to the Settlement Plan), 4(b) (the Court's denial with prejudice of the confirmation of the Settlement Plan), or 4(c) (a material breach of the Settlement Agreement by the Agent, on behalf of the Current Lenders, or the Committee) of the Settlement Agreement. During this time period, the Committee has conducted its investigation and believes that it has, among others, fraudulent conveyance claims and equitable subordination claims against the Original Lenders. The Committee believes that, as successors in interest to the Original Lenders, the Current Lenders could also be liable for these purported claims. The Current Lenders vigorously oppose the Committee's contention that such successor liability exists to reduce the Current Lender Claims, alter the priority of any portion of the Current Lender Claims, or avoid the liens and security interests securing the Current Lender Claims.

To avoid an expensive and time-consuming litigation, the Committee and Wilmington entered into extensive negotiations to resolve any dispute with respect to the Committee's purported claims relative to the Current Lenders and the Current Lender Claims. The result of these negotiations is the Plan Settlement, which the Plan Proponents are seeking to approve in connection with confirmation of the Plan. Pursuant to the Plan Settlement, among other things, (a) the Lenders have agreed (i) to contribute to the Shared Asset Trust the Other Lender Collateral (which assets, absent the Plan Settlement or a successful lien avoidance action by the Committee, would have belonged exclusively to the Current Lenders), (ii) to contribute the Fortgang Guaranties, which belong exclusively to the Current Lenders, (iii) to provide for a \$5 million priority payout of the net proceeds of the Shared Asset Trust for the benefit of the holders of Allowed Class 4 and 5 Claims, and (iv) to waive any share of the proceeds of the Original Lender Litigation Claims to which the Current Lenders may have been entitled by virtue of any deficiency claim (Current Lender Claim remaining after the application of all Current Lender collateral) the Current Lenders may have, and (b) the Committee has agreed to the release of the Releasees as described herein, and (c) the Creditor Proponents have agreed that the holders of Allowed Class 2, 4 and 5 Claims will (through their distribution of Shared Asset Trust Class A and B interests, as applicable) share the Net Proceeds of the Shared Asset Trust in accordance with Section 5.03 of the Plan.

The Plan Settlement provides for the liquidation of the assets of the Estates and the additional assets being contributed by the Current Lenders, including the investigation and prosecution of Causes of Action, by two liquidating trusts to be formed pursuant to the Plan and related liquidating trust agreements. The first of these trusts is the Shared Assets Trust, which will contain the Shared Assets and the Other Lender Assets. The second of these trusts is the GUC Trust, which will contain the Original Lender Litigation Claims and the Shared Assets Trust Class B Interests. The beneficiaries of the Shared Assets Trust are the holders of Allowed Class 2 Claims and the GUC Trust. The beneficiaries of the GUC Trust are the holders of Allowed Class 4 Claims and Allowed Class 5 Claims. The representatives of Class 4 and Class 5 on the Committee have determined that distributing the GUC Trust Assets ratably among holders of Class 4 and Class 5 Claims is appropriate.

The Shared Assets Trust is charged with liquidating the Trust Assets. The proceeds of the Trust Assets will be distributed to the holders of Allowed Class 2 Claims and the GUC Trust (the ultimate beneficiaries of which are holders of Allowed Class 4 Claims and Allowed Class 5 Claims) in the manner set forth in the Plan. The Shared Assets Trust will also make distributions on account of Allowed Administrative/Priority Claims and be charged with reconciling Disputed Administrative/Priority Claims. The Shared Assets Trust will be managed by the Shared Assets Trustee, as well as a five-member Shared Assets Trust Beneficiary Committee, three of whose members will be selected by the Current Lenders and two of whose members shall be selected by the Committee.

The GUC Trust is charged with (i) liquidating the Original Lender Litigation Claims, (ii) receiving distributions on account of the Shared Assets Trust Class B Interests, and (iii) making distributions to the holders of Allowed Class 4 Claims and Allowed Class 5 Claims in respect of (a) any distributions to the GUC Trust on account of the Shared Assets Trust Class B Interests and (b) proceeds, if any, of the Original Lender Litigation Claims. The GUC Trust shall also be responsible for objecting to and reconciling Disputed Class 4 Claims and Disputed Class 5 Claims.

The Plan implements the Plan Settlement, including the administration of the Shared Assets Trust and the GUC Trust. Upon the Effective Date, holders of Allowed Class 2 Claims will receive Shared Assets Trust Class A Interests, and the GUC Trust will receive Shared Assets Trust Class B Interests on behalf of holders of Allowed Class 4 Claims and Allowed Class 5 Claims. Distributions on the Shared Assets Trust Class A Interests and Shared Assets Trust Class B Interests will then be made in accordance with a waterfall structure, as described in Section VI.C. hereof and Article V of the Plan.

In order to solidify support for the Plan Settlement, the Creditor Plan Proponents entered into the Creditor Support Agreement, pursuant to which the signatories agreed to, among other things, support the terms of the Plan Settlement and further agreed, among other things, that any and all of their successors and assigns shall be bound to agree to the support the Plan Settlement. The Creditor Support Agreement was executed by (i) the Committee, (ii) Counsel to the Committee, (iii) certain members of the Committee, (iv) Wilmington, in its capacity as agent to the Current Lenders, (v) Counsel to Wilmington, and (vi) over half of the Current Lenders holding over two-thirds in amount of the Current Lender Claims.

The Committee has investigated potential claims against the Original Lenders and the Current Lenders. Based on this investigation, the Committee believes that the Estates have colorable claims against the Original Lenders that also may be asserted against the Current Lenders, as their successors. On October 1, 2007, the Committee commenced an adversary proceeding against the Original Lenders to pursue these claims. [Adversary Proceeding #: 07-02780-smb (Docket No. 1)]. The complaint sets forth the type of claims the Committee believes the Estates have against the Original Lenders. These claims and the litigation against the Original Lenders are summarized herein at Section V.K below. The Committee believes the claims against the Current Lenders are similar in nature.

In settling with the Current Lenders, the Committee has given up the right to seek judgment avoiding the secured claims asserted by the Current Lenders, equitably subordinating their unsecured claims and recovering the \$36.3 million paid to the Current Lenders during the Cases. In the event that the Committee successfully litigated against the Current Lenders, the Current Lender Claims could be disallowed or equitably subordinated, and the distribution to unsecured creditors would be increased accordingly. There is no assurance the Committee could have obtained this relief, and the Committee believes that the Current Lenders would have asserted numerous defenses to these claims that are not available to the Original Lenders, including defenses arising from the Current Lenders' status as subsequent transferees or purchasers of the claims arising from the Loan Documents. These defenses raise a number of complex and unsettled legal issues, the outcome of which, if litigated, would be uncertain. If these defenses were to be litigated and resolved in favor of the Current Lenders, such a result could be disastrous for holders of general unsecured claims relative to their ability to receive any distribution from the Estates. Specifically, if the Current Lenders successfully defended against the Committee's claims, the Current Lenders would be able to enforce their prepetition liens on substantially all of the Debtors' assets and their adequate protection lien arising from the Final C/C Order. In that event, it is doubtful that holders of general unsecured claims would receive any recovery from the Estates, as most of the Estates' remaining assets would be encumbered by these liens. Moreover, absent the Plan Settlement, it is doubtful the Creditors' Committee could obtain sufficient financing to confirm a chapter 11 plan. Furthermore, given the interest the Current Lenders would have in claims against the Original Lenders, it is unclear — absent the Plan Settlement — how the Committee could fund litigation against the Original Lenders without the consent of the Current Lenders.

The Plan Settlement eliminates these risks so that the Committee can confirm a chapter 11 plan and pursue its claims against the Original Lenders for the benefit of holders of general unsecured claims, without the need to share those proceeds with the Current Lenders. Additionally, the Plan Settlement provides the holders of general unsecured claims an expected recovery from other Estate assets of at least \$5 million, and the prospect of substantially greater recoveries, from sources that may not otherwise have been available to holders of general unsecured claims, including the Fortgang Guaranties (which belong exclusively to the Current Lenders) and the property that is claimed as collateral by the Current Lenders.

Furthermore, the Committee believes that the Plan Settlement does not give up much, if any, value because to the extent the released claims against the Current Lenders had value, that value can be collected from the Original Lenders. The value to the general unsecured creditors of the Original Lender Litigation Claims is further enhanced by the waiver by the Current Lenders of any share to which the Current Lenders may have been entitled by virtue of any Current Lender deficiency claim. On the other hand, failure to settle with the Current Lenders would expose the general unsecured creditors to the risk of receiving no recoveries at all. Although the Plan Settlement releases claims against the Current Lenders, the Plan provides for the GUC Trust to retain and prosecute virtually identical claims against the Original Lenders that are subject to fewer defenses. The Committee believes that if the suit against the Original Lenders is successful, it will potentially enable the GUC Trust to make distributions sufficient to satisfy the great bulk of the allowed claims of general unsecured creditors.

J. Claims Process and Bar Date

1. Schedules and Statements

On January 16, 2007, the Debtors filed with the Court their schedules of assets and liabilities. On August 16, 2007, the Debtors each filed an amended schedule F.

2. Bar Date

By order dated August 10, 2007, the Court fixed September 26, 2007 at 5:00 p.m. prevailing Eastern Time as the date and time by which proofs of claim are required to be filed in the Cases. In accordance with instructions from the Court, on or about August 17, 2007, notices informing creditors of the last date to timely file proofs of claims, and both “personalized” and “non-personalized” proof of claim forms were mailed to all creditors listed on the Schedules. In further accordance with the Order, on a date at least twenty (20) days prior to the Bar Date, the Debtors caused notice of the last date to timely file proofs of claim to be published in *The Wall Street Journal (National Edition)* and *Women’s Wear Daily*.

K. Original Lender Litigation Claims

The Committee has commenced an adversary proceeding against the Original Lenders in the Court. The complaint, which asserts claims arising under Code §§ 544 and 548, seeks (a) to recover the value of various transfers made by the Debtors directly and indirectly to the Original Lenders on the grounds that they were actual and constructive fraudulent transfers and (b) to obtain related relief. The complaint alleges that the value of the avoidable transfers exceeds \$118 million. The theory of the complaint is that the Original Lenders made over \$150 million of loans to MFS knowing that the proceeds would be used to fund improper transfers to companies in which MFS had no ownership but that were owned by members of the Fortgang family and/or trusts they controlled and that the Original Lenders received collateral for those loans having a value of at least \$80 million and repayments of debts from those affiliates in an additional amount of about \$37 million.

The adversary proceeding is being prosecuted against the Original Lenders on a contingent fee basis by the firm of Susman Godfrey LLP, which has a reputation for aggressively and successfully pursuing claims on a contingent fee basis. Susman Godfrey has also agreed to advance the expenses incurred in prosecuting the claims.

As evidenced by Susman Godfrey's willingness to pursue the claim and advance expenses on a contingent fee basis, the Committee believes that the complaint has substantial merit. Furthermore, there would be no collection difficulty in enforcing any judgment obtained. The Committee estimates that, unless the case is settled before trial, prosecution of the claims could take two to three years. Under its fee arrangement, Susman Godfrey would receive 30% of any recovery obtained until sixty (60) days prior to a trial on the merits (or an arbitration) and 35% of any recovery obtained thereafter.

Determining the value of any litigation is an inherently difficult process. The ultimate value of a cause of action depends on many factors that cannot be known at the early stages of litigation, including, without limitation, the facts that may be developed in discovery, the disposition of preliminary motions and their effect on the case, the court's view of the controlling rules of law, the persuasiveness of counsel, the manner in which evidence is marshaled at trial and the reaction of the trier of fact to that evidence.

Given these uncertainties, the Committee estimates that the range of potential recoveries to the GUC Trust on the Original Lender Litigation Claims could be between \$7.5 million and \$75 million (net of fees and expenses).

VI.

Implementation of the Plan

A. Cancellation of Existing Securities, Instruments and Agreements

On the Effective Date, except as otherwise provided for in the Plan, all securities, instruments, and agreements governing any Claims or Interests impaired by the Plan except for the Credit Documents will be deemed cancelled and terminated, and the obligations of the Debtors relating to, arising under, in respect of or in connection with such securities, instruments, or agreements will be deemed released and/or satisfied as to the Debtors; *provided, however*, anything to the contrary set forth in the Plan notwithstanding, nothing provided in the Plan will affect the rights that Wilmington and/or the Current Lenders may have against any third parties (including without limitation with respect to the Nantucket Mortgage and any Claims against Matthew Fortgang and Charles Fortgang with respect to the Fortgang Guaranties) with respect to Obligations under the Loan Documents and/or any matter arising out of, or in any way related to, the Credit Documents; *provided further, however*, that except as otherwise provided herein, notes and other evidences of Claims against the Debtors will, effective upon the Effective Date, represent the right to participate in the distributions contemplated by the Plan.

B. Plan Settlement

Entry of the Confirmation Order will be deemed entry of an Order approving the Plan Settlement pursuant to Bankruptcy Rule 9019. On the Effective Date, the Plan will authorize the Plan Proponents to consummate and perform their obligations thereunder. Upon the occurrence of the Effective Date, under the Plan, all issues related to the Plan Settlement will be deemed fully settled and compromised in accordance with the terms and conditions of the Plan and the Plan Settlement.

C. Shared Assets Trust

1. *Establishment of the Shared Assets Trust.*

(a) On the Effective Date, pursuant to the Plan: (i) in partial consideration for the releases being provided to them under this Plan, the Current Lenders and Wilmington will be deemed to (x) to release all of their security interests and liens in and on the Shared Assets and (y) to transfer, assign, and deliver to the Shared Assets Trust all of their respective right, title, and interest in and to the Other Lender Assets and the Fortgang Guaranties (and all Causes of Action of the Current Lenders, Wilmington, or any of their respective predecessors in interest arising therefrom or relating thereto); (ii) the Debtors will transfer, assign, and deliver (or, to the extent necessary, be deemed to transfer, assign, or deliver) to the Shared Assets Trust all of their respective right, title, and interest in and to the Shared Assets, in each case free and clear of any interest in such Assets of any other Person; (iii) the Shared Assets Trust will be deemed created and effective pursuant to the terms of the Shared Assets Trust Agreement without any further action by the Court or any Person; and (iv) the Shared Assets Trustee will begin serving in accordance with the Shared Assets Trust Agreement. Each of the foregoing transfers and releases shall be deemed to have occurred without any further action.

(b) For federal income tax purposes, it is intended that the Shared Assets Trust be classified as a liquidating trust under Section 301.7701-4 of the Treasury regulations and that the Shared Assets Trust be owned by the Shared Assets Trust Beneficiaries. Accordingly, for federal income tax purposes, the Debtors, the Shared Assets Trustee and the Shared Assets Trust Beneficiaries will, under the Plan and Shared Assets Trust Agreement, be deemed to agree to treat the Shared Assets Trust Beneficiaries as the grantors of the Shared Assets Trust, and the transfer of the Shared Assets (other than

the Fortgang Guaranties and the related Claims and Causes of Action) to the Shared Assets Trust will be treated as a deemed distribution by the Debtors to the Shared Assets Trust Beneficiaries of an undivided interest in each of the Shared Assets followed by a deemed transfer of such Shared Assets by the Shared Assets Trust Beneficiaries to the Shared Assets Trust. In addition, in order to prevent the Shared Asset Trust from being taxed as a corporation in the event that the trust were classified as a business entity for federal income tax purposes, the Shared Asset Trust will provide that the Shared Asset Trust cannot have more than 100 beneficiaries, as determined for applicable federal income tax purposes. As of the Effective Date, it is expected that there will be less than twenty (20) Shared Assets Trust Beneficiaries (the GUC Trust and the Current Lenders).

2. *Interests in the Shared Assets Trust.*

There will be two classes of interests in the Shared Assets Trust. The Current Lenders will be the beneficiaries of all Shared Assets Trust Class A Interests, which interests will be distributed pro rata by claim amount to the Current Lenders by the Shared Assets Trust. The holders of all Allowed Class 4 Claims and Allowed Class 5 Claims against the Debtors, excluding the Current Lenders' deficiency claims, will be the beneficiaries of Shared Assets Trust Class B Interests, which will be transferred by the Shared Assets Trust to and held by the GUC Trust for the benefit of the holders of Allowed Class 4 Claims and Allowed Class 5 Claims.

3. *Distributions of Proceeds of the Shared Assets by the Shared Assets Trust.*

Net Proceeds recovered by the Shared Assets Trust with respect to the Shared Assets will be allocated between the Shared Assets Trust Class A Interests and the Shared Assets Trust Class B Interests in accordance with the following:

(a) the first \$5,000,000 of any Net Proceeds of the Shared Assets shall be first used to satisfy any Claims Reconciliation Reserve Reimbursement Obligation, and then distributed to the GUC Trust for the benefit of the GUC Trust Beneficiaries;

(b) after satisfaction of (a) hereof, the next \$12,500,000 of Net Proceeds recovered by the Shared Assets Trust with respect to the Shared Assets will be distributed to the holders of Shared Assets Trust Class A Interests;

(c) after satisfaction of (a) and (b) hereof, the next \$15,000,000 of Net Proceeds recovered by the Shared Assets Trust with respect to the Shared Assets will be allocated as follows: (i) 90% to the holders of Shared Assets Trust Class A Interests; and (ii) 10% to the GUC Trust for the benefit of the GUC Trust Beneficiaries;

(d) after satisfaction of (a) through (c) hereof, the next \$10,000,000 of Net Proceeds recovered by the Shared Assets Trust with respect to the Shared Assets will be allocated as follows: (i) 80% to the holders of Shared Assets Trust Class A Interests; and (ii) 20% to the GUC Trust for the benefit of the GUC Trust Beneficiaries; and

(e) after satisfaction of (a) through (d) hereof, any additional Net Proceeds recovered by the Shared Assets Trust with respect to the Shared Assets will be allocated as follows: (i) 70% to the holders of Shared Assets Trust Class A Interests; and (ii) 30% to the GUC Trust for the benefit of the GUC Trust Beneficiaries.

4. *Distribution of Other Lender Assets by the Shared Assets Trust.*

In addition to the foregoing, the holders of Shared Assets Trust Class A Interests shall receive 100% of the Net Proceeds recovered by the Shared Assets Trust with respect to the Other Lender Assets.

5. *Purposes of the Shared Assets Trust.*

(a) The Shared Assets Trust shall be established for the sole purposes of (i) liquidating the Trust Assets; (ii) making distributions to holders of Administrative/Priority Claims; and (iii) making distributions to the Shared Assets Trust Beneficiaries, with no objective or authority to continue or engage in the conduct of a trade or business.

6. *Powers and Obligations of the Shared Assets Trust.*

(a) The Shared Assets Trust will: (i) issue Shared Assets Trust Class A Interests and Shared Assets Trust Class B Interests to holders of Allowed Class 2 Claims and the GUC Trust, respectively, as provided for in the Plan; (ii) investigate, enforce, abandon, prosecute, and resolve (by litigation, settlement, or otherwise) all Claims against the Debtors and all Claims and Causes of Action of the Estates and/or the Current Lenders against non-Debtor third parties vested in or transferred to the Shared Assets Trust, except for Disputed Class 4 Claims and Disputed Class 5 Claims and all objections related thereto; (iii) maintain, sell, abandon, liquidate, collect, and reduce to Cash the Trust Assets; (iv) distribute Cash to the Shared Assets Trust Beneficiaries in accordance with the terms of the Plan and the Shared Assets Trust Agreement; (v) reconcile and resolve all Administrative/Priority Claims, and make distributions to holders of Allowed Administrative/Priority Claims; and (vi) take such steps as are reasonably necessary or appropriate to accomplish such purposes, all as more fully provided in, and subject to the terms and provisions of, the Plan and the Shared Assets Trust Agreement.

(b) On the Effective Date, the Shared Assets Trust will succeed to all of the rights of (i) the Debtors and the Committee with respect to the Trust Assets, and (ii) Wilmington and the Current Lenders with respect to the Other Lender Assets and those Shared Assets that are contributed to the Shared Assets Trust by the Current Lenders and Wilmington, as necessary to protect, conserve, and liquidate all Trust Assets as quickly as reasonably practicable, which liquidation will conclude prior to the fifth anniversary of the Effective Date unless extended by the Court for cause. The Shared Assets Trust will have the exclusive power, on behalf and in the name of the Estates, to prosecute, defend, compromise, settle, and otherwise deal with all Trust Assets subject to the restrictions of the Plan and the Shared Assets Trust Agreement, including that the Shared Assets Trustee will have no right to use the Trust Assets to conduct a trade or business.

7. *Issuance of Shared Assets Trust Class A Interests and Shared Assets Trust Class B Interests.*

(a) On or before the Effective Date, Wilmington will deliver to the Shared Assets Trustee a list of each Person to receive Shared Assets Trust Class A Interests as of the Effective Date pursuant to the Plan and the Shared Assets Trust Agreement and the amount of such Shared Assets Trust Class A Interests to be issued to each such Person.

(b) The Shared Assets Trust Class B Interests shall be issued to the GUC Trustee for the benefit of the GUC Trust Beneficiaries.

(c) Shared Assets Trust Class A Interests and Shared Assets Trust Class B Interests will be uncertificated. The Shared Assets Trust Beneficiaries will be bound by the Shared Assets Trust Agreement.

8. *Shared Assets Trustee.*

(a) Prior to the Effective Date, the Current Lenders, in consultation with the Committee, and thereafter, the Shared Assets Trust Beneficiary Committee, will designate a Shared Assets Trustee. The identity of and compensation structure for the Shared Assets Trustee will be filed with the Court no later than November 13, 2007. In the event that the Shared Assets Trustee resigns or is removed, the Shared Assets Trust Beneficiary Committee will select a new Shared Assets Trustee in accordance with the Shared Assets Trust Agreement.

(b) The Shared Assets Trustee will be the exclusive trustee of the Trust Assets and will administer the Shared Assets Trust in accordance with the Plan and the Shared Assets Trust Agreement. The powers, rights, and responsibilities of the Shared Assets Trustee will be specified in the Shared Assets Trust Agreement and, subject to the supervision of the Shared Assets Trust Beneficiary Committee, will include the authority and responsibility to: (a) receive, manage, invest, supervise, and protect the Shared Assets; (b) pay taxes or other obligations incurred by the Shared Assets; (c) retain and compensate, without further order of the Court, employees, professionals, and consultants to advise and assist in the administration, prosecution, and distribution of the Shared Assets; (d) calculate and implement distributions of Shared Assets and the proceeds thereof pursuant to the terms of the Plan and the Shared Assets Trust Agreement; (e) prosecute, compromise, and settle, in accordance with the specific terms of the Shared Assets Trust Agreement, all Claims against the Debtors and all Claims and Causes of Action vested in or otherwise transferred to the Shared Assets Trust, except for Disputed Class 4 Claims and Disputed Class 5 Claims and all objections related thereto; (f) resolve issues involving Claims against the Debtors pursuant to Section 9.03 of the Plan; and (g) undertake all administrative functions of the Cases, including the ultimate closing of the Cases.

9. *Shared Assets Trust Beneficiary Committee.*

(a) On or before the Effective Date, the Shared Assets Trust Beneficiary Committee will be formed pursuant to the Shared Assets Trust Agreement. The Shared Assets Trust Beneficiary Committee will be comprised of five members, three of whom will be selected by the Current Lenders and will be Shared Assets Trust Class A Designees, and two of whom will be selected by the Committee and will be Shared Assets Trust Class B Designees. The identity of the Shared Asset Trust Beneficiary Committee members will be filed with the Court no later than November 13, 2007. As set forth in the Shared Assets Trust Agreement, if (a) a Shared Assets Trust Class A Designee resigns or is removed, a replacement will be appointed by the remaining Shared Assets Trust Class A Designees and (b) a Shared Assets Trust Class B Designee resigns or is removed, a replacement will be appointed based upon a vote of the majority of the Committee or, after the Committee has been dissolved, a majority of the GUC Trust Beneficiary Committee.

(b) As and to the extent set forth in the Shared Assets Trust Agreement, the Shared Assets Trustee will report all material matters to and seek approval for all material decisions from the Shared Assets Trust Beneficiary Committee. Without limiting the foregoing, and as set forth in the Shared Assets Trust Agreement, the Shared Assets Trustee may not commence, abandon, settle, or elect not to pursue, any litigation, without the approval of the Shared Assets Trust Beneficiary Committee. The Shared Assets Trust Beneficiary Committee will be deemed to have given its approval if

any such commencement, abandonment, settlement, or election is approved by a majority vote of the Shared Assets Trust Beneficiary Committee, except with regard to the Other Lender Assets, in respect of which a majority of the Shared Assets Trust Class A Designees will have the sole discretion to approve any such commencement, abandonment, settlement, or election.

10. *Funding of the Shared Assets Trust.*

(a) The Shared Assets Trust Funding Amount will be determined by the Shared Assets Trust Beneficiary Committee. Twenty-five (25%) percent of the Shared Assets Trust Funding Amount (up to Five Hundred Thousand (\$500,000) Dollars) will be distributed to the GUC Trust to fund the Claims Reconciliation Reserve, which funds will be used solely for the purpose of reconciling and resolving Class 4 and Class 5 Claims and for other administrative purposes (other than pursuing the Original Lender Litigation Claims). None of the Shared Assets Trust Funding Amount and no other funds or assets of the Shared Assets Trust may be used to fund any expenses incurred in connection with any Cause of Action against any Original Lender and the Shared Assets Trustee is prohibited from incurring any such expenses on behalf of the Shared Assets Trust. In the event that the Claims Reconciliation Reserve is funded, in whole or in part, with funds borrowed by the Shared Assets Trust, the principal amount of any Claims Reconciliation Reserve funding in excess of \$250,000 that has been so borrowed will be reimbursed to the Shared Assets Trust by the GUC Trust as described in Section 5.03 of the Plan.

(b) The Shared Assets Trust Beneficiary Committee may make a Trust Funding Replenishment; provided, however, that if the aggregate Shared Assets Trust Funding Amount (excluding any Claims Reconciliation Reserve funding) reaches Two Million, Five Hundred Thousand (\$2,500,000) Dollars, each subsequent Trust Funding Replenishment will be limited to 50% of any Net Proceeds of the Shared Assets not yet distributed to holders of Shared Assets Trust Class A and Class B Interests, unless the Shared Assets Trust Beneficiary Committee will determine otherwise by a consenting vote of no less than four (4) members. The GUC Trust may determine to reserve in the Claims Reconciliation Reserve additional amounts that would otherwise be distributed to the GUC Trust, or to use any such amounts to replenish the Claims Reconciliation Reserve.

(c) The Shared Assets Trust Funding and Trust Funding Replenishment(s) will be used to fund the expenses of the Shared Asset Trust, including without limitation, compensation to the Shared Assets Trustee, payment of the fees and expenses of the Shared Assets Trust with respect to administrative functions and payment of the professional fees and expenses related to pursuing Causes of Action of the Shared Asset Trust. While total costs of the Shared Asset Trust, which may exist for as long as five years, are hard to predict with any level of certainty, it is expected that the total expenses of the Shared Asset Trust, will be in the \$2 to 6 million range. Of these amounts, it is expected that ten percent or less will be spent on matters related to the Other Lender Assets. Further, it is expected that the compensation payable to the Shared Asset Trustee will be less, in the aggregate, than the commissions payable to a Chapter 7 trustee.

11. *Remaining Cash.*

On the Effective Date, the Debtors will transfer the Remaining Cash to the Shared Assets Trust to be allocated to the Shared Assets Trust Funding Amount, as determined by the Shared Assets Trust Beneficiary Committee, and thereafter to be distributed to the holders of Allowed Administrative/Priority Claims (except as provided in Section II.D herein) and the Shared Assets Trust Beneficiaries in accordance with Section 5.03 of the Plan.

In the event that the Shared Assets Trust Beneficiary Committee determines that it is advisable to supplement the Shared Assets Trust Funding Amount, the Shared Assets Trust will use commercially reasonable efforts on or after the Effective Date to obtain financing. Twenty-five (25%) percent of any such financing shall be applied to the Claims Reconciliation Reserve until such Reserve is funded in the aggregate with Five Hundred Thousand (\$500,000) Dollars.

The Plan Proponents believe that there will be sufficient Remaining Cash on the Effective Date to satisfy all Allowed Administrative/Senior Claims (see Expected Source and Use of Cash below).

EXPECTED SOURCES OF CASH		EXPECTED USES OF CASH¹²	
Estimated Cash on Hand at the Effective Date:	\$826,000	Estimated Accrued Professional Fees: ¹³	\$1,111,000
Available Affiliate A/R:	\$1,450,000	Other Estate Obligations:	\$79,000
Insurance Receivables Proceeds:	\$1,300,000	Estimated Deferred Portion of Accrued Professional Fees:	\$1,435,000
		Estimated Other Priority Claims: ¹⁴	\$315,000
		Estimated Cash Surplus Available: ¹⁵	\$636,000
Total Sources:	\$3,576,000	Total Uses:	\$3,576,000

In addition to these sources of Cash, there are certain amounts due from the LLCs created by the Current Lenders to hold the 363 Sale Assets to the Estate in respect of shared employee costs, the

¹² This amount does not include Other Secured Claims, as described in Section II.C.3. The Plan Proponents believe that many of the Other Secured Claims will be recharacterized and actual liability will be de minimis.

¹³ This amount includes the estimated amount of Wilmington's professional fees of approximately \$450,000, from November 2007 through year-end.

¹⁴ These obligations do not include the potential liability for a \$1 million claim filed by the Indian taxing authorities disclosed in Section II.C.1 above.

¹⁵ The filed amount of Priority Tax Claims is not included in this Expected Sources and Uses of Cash analysis. Because of the treatment provided to Priority Tax Claims under the Plan, liabilities on account of these Claims are not necessarily payable on the Effective Date payment; rather, to the extent that there is liability for Priority Tax Claims, such liabilities are expenses of the Shared Assets Trust.

amount of which is currently being reconciled between the LLCs and the Estates. Subject to final approval by the Current Lenders, these amounts could equal up to \$405,000. Wilmington, as Agent of the Current Lenders and the LLCs, is currently holding Cash sufficient to satisfy any such obligations.

While it is currently expected that there will be sufficient Cash to satisfy all expected Cash required to consummate the Plan, there are several risks of which to be aware. There may be a Cash shortfall if one of more of the following occurs: (a) the use of Cash between the date hereof and the Effective Date is more than expected, (b) additional currently unexpected Claims entitled to payment in Cash are asserted and/or Allowed, or (c) payments with respect to the Available Affiliate A/R are delayed. Wilmington as Agent of the Current Lenders and the LLCs is currently holding approximately \$2.5 million in Cash which could be made available as a loan to fund any Cash shortfall. The Plan Proponents expect that the Cash shortfall, if any, will not exceed \$2.5 million. If this loan (or a similar loan from another party) is made, it is anticipated that the loan would be secured by a first priority lien in the Shared Assets, which would be paid in full in cash prior to any distribution to the holders of Shared Asset Trust Class A or B Interests. Further, it is anticipated that such loan would bear interest at a rate appropriate for a loan of this type (likely at interest rates in the 10 to 20% range). The term of such a loan would likely be tied to the expected date(s) of receipt of proceeds sufficient to satisfy the loan. Finally, the loan would be subjected to other terms and conditions to be mutually agreed upon by the Committee and the Current Lenders. If such a loan were to be made, there would be a risk upon default that the lender could foreclose on some or all of the Shared Assets and seize control of the liquidation of such assets until the loan was paid in full. It is expected that the Shared Asset Trust would be provided with an opportunity to seek Court intervention prior to any such exercise of remedies. If a loan is required and an agreement cannot be reached among the Committee and the Current Lenders (or an alternative lending source) with respect to the terms and conditions of the loan, the Plan Proponents may not be able to consummate the Plan.

12. *Shared Assets Trust Professionals.*

(a) The Shared Assets Trustee may (but will not be obligated to) retain the law firms of Moses & Singer LLP, Kramer Levin Naftalis & Frankel LLP, and/or Halperin Battaglia Raicht, LLP to advise on matters to be allocated among the firms on a basis acceptable to the Shared Assets Trust Beneficiary Committee. The Shared Assets Trustee may (but will not be obligated to) retain the firms of FTI Consulting Inc. and/or Consensus Advisors to advise on matters to be allocated between such firms on a basis acceptable to the Shared Assets Trust Beneficiary Committee.

(b) The Shared Assets Trustee will retain other professionals and/or advisors, including tax advisors, in his or her reasonable discretion; provided, however, that the Shared Assets Trustee will seek approval from the Shared Assets Beneficiary Committee before retaining any such professional/advisor whose fees and expenses are expected to exceed \$50,000. The past or current retention of any firm listed above by any of the Committee, Wilmington and/or the Current Lenders or by either the Shared Assets Trust and/or the GUC Trust will not be asserted by any of the Committee, Wilmington, the Current Lenders, the Shared Assets Trust, or the GUC Trust as a basis to disqualify such firm from being retained by the other Trust.

13. *Abandoned Trust Assets.*

If the Shared Assets Beneficiary Committee determines to abandon any Claims included among the Trust Assets, the GUC Trust will have the option to pursue such Claims at its own expense. Upon the election of the GUC Trust to pursue such abandoned Claims, such abandoned Claims will cease to be Trust Assets and one hundred (100%) percent of the recoveries from such abandoned Claims will become GUC Trust Assets.

14. *Amendment of Shared Assets Trust Agreement.*

After the Effective Date, and without Court approval, the Shared Assets Trust Agreement may be amended in accordance with its terms; provided, however, that the Shared Assets Trust Agreement may not be amended in any way that would change the priority of Claims or distribution scheme of the Plan.

15. *Wind Up of the Shared Assets Trust.*

After repayment of any outstanding Claims Reconciliation Reserve Reimbursement Obligation, any additional funds in the Claims Reconciliation Reserve that are not spent in connection with the reconciliation of Class 4 Claims, Class 5 Claims and other administrative purposes (other than pursuing the Original Lender Litigation Claims) will be distributed to the GUC Trust. All other Shared Assets Trust Funding Amounts remaining in the Shared Assets Trust will be distributed to the Shared Assets Trust Beneficiaries as set forth in Section 5.03 of the Plan.

16. *Description of Shared Assets.*

The major assets to be contributed to the Shared Assets Trust are described below. These assets are primarily litigation claims, which by their nature are difficult to quantify, and a precise valuation of these assets is therefore not possible. The estimates of likely recoveries provided below are necessarily subject to a good deal of uncertainty. Further, such estimates of recoveries are prior to the expenses of the Shared Asset Trust as described above.

- Fortgang Guaranties: Under the Fortgang Guaranties, two of the Debtors' principals, Matthew Fortgang and Charles Fortgang, gave unlimited personal guaranties of the Obligations under the Loan Documents, and Susan Fortgang gave a non-recourse personal guaranty secured by her home in Nantucket, Massachusetts. As of the Petition Date, the face amount of the claims owing under the Loan Documents was approximately \$161.9 million. The Current Lenders believe that the claims against the guarantors under the Fortgang Guaranties are strong and are not subject to any meritorious defenses. There is substantial uncertainty, however, concerning the aggregate value of the assets that would be available to satisfy judgments obtained on account of these three guaranties. Subject to these uncertainties, it is currently estimated that the total recovery on account of the Matthew and Charles Fortgang guaranties will be between \$5 million and \$20 million. In addition, there is a likely recovery of approximately \$3 million on account of the Susan Fortgang guaranty. The Susan Fortgang guaranty, unlike the guaranties given by Matthew and Charles Fortgang, is not a Shared Asset, and consequently will not inure to the benefit of general unsecured creditors under the Plan. Matthew and Charles Fortgang disagree with the allegations raised by the Current Lenders in respect of the Fortgang Guaranties.
- Breach of Fiduciary Duty Claims Against the Debtors' Directors and Officers: These are potential claims against Charles, Matthew, Susan and Marjorie Fortgang, as well as others who served as directors and/or officers of the Debtors, including without limitation Philip Hahn (now the Hahn Estate), Irving Rosenzweig, and Michael Shaffet. These claims, if successful, could result in judgments in the tens of millions of dollars. However, the ability to collect on these judgments, and consequently the

extent to which these judgments will result in recoveries in addition to those discussed in the preceding paragraph, is unknown at the present time. Charles, Matthew, Susan and Marjorie Fortgang and Michael Shaffet, Irving Rosenzweig and the Hahn Estate as former directors (or the estate of a former director) and/or officers of the Debtors, deny engaging in any wrongful conduct and dispute any liability based on the claims raised therein. The Plan Proponents expect that other current and former directors and officers will deny any liability for these claims as well.

- Other Estate Causes of Action: These causes of action consist primarily of potential fraudulent conveyance and preference claims against a variety of transferees, including without limitation the Hahn Estate, Tara Jewels Export Pvt Ltd and various Affiliates. While the aggregate eventual recovery on account of such causes of action cannot be predicted with any confidence at the present time, the Plan Proponents estimate a likely total recovery between \$10 million and \$25 million on account of these claims.
- Other Lender Collateral: These assets consist principally of the receivable claims of the Debtors against the Non-Debtor Affiliates; these assets also include, without limitation, the Subsidiary Equity, certain insurance receivables, certain loans receivable, and furniture, fixtures and equipment. Currently, there is approximately \$100 million face amount of receivable claims against the Non-Debtor Affiliates. There is substantial uncertainty, however, regarding the extent to which these Affiliate Receivables are collectible. Subject to these uncertainties, the Plan Proponents estimate a likely total recovery between \$5 million and \$20 million on account of the Other Lender Collateral. The Non-Debtor Affiliates dispute the liability and amount asserted against them in respect of the Affiliated Receivables and allege to have defenses to these claims.
- Other Lender Assets: These assets consist of the Nantucket Mortgage, discussed above, and the 363 Sale Remaining Assets. The 363 Sale Remaining Assets are limited to eight non-affiliate receivable actions, which are the subject of pending litigation. Each of these receivables was part of the 363 Sale Assets and was purchased by Wilmington in the 363 Sale. Pursuant to the 363 Sale Asset Purchase Agreement, Wilmington had the option to leave certain assets at the Debtors. As discussed above, it is expected that the Nantucket Mortgage is worth approximately \$3 million, less the cost of collection, and the 363 Sale Remaining Assets are worth between \$700,000 and \$1.3 million. The Nantucket Mortgage is currently the subject of a foreclosure proceeding. Pursuant to the Plan Settlement, all of the proceeds of these actions will be paid to the Shared Asset Class A Beneficiaries.

17. *Shared Assets Trust Agreement*

The Shared Assets Trust Agreement shall be consistent with the terms of the Plan. A substantially final form of the Shared Assets Trust Agreement will be filed with the Court and be available for review no later than November 13, 2007.

D. GUC Trust

1. *Establishment of the GUC Trust.*

(a) On the Effective Date, pursuant to the Plan: (i) the Shared Assets Trust will be deemed to transfer, assign, and deliver to the GUC Trust all of their respective right, title, and interest in and to the Shared Assets Trust Class B Interests; (ii) each Debtor (and the Committee as its representative) will transfer, assign, and deliver (or, to the extent necessary, be deemed to transfer, assign, or deliver) to the GUC Trust all of its respective right, title, and interest in and to the Original Lender Litigation Claims, in each case free and clear of any interest in such Assets of any other Person in consideration of the agreement of the GUC Trust and the other Debtor to make the distributions to Class 4 and Class 5 claims as provided in the Plan; (iii) the GUC Trust will be deemed created and effective pursuant to the terms of the GUC Trust Agreement without any further action by the Court or any Person; and (iv) the GUC Trustee will begin serving in accordance with the GUC Trust Agreement. Each of the foregoing transfers and releases shall be deemed to have occurred without any further action.

(b) For federal income tax purposes, it is intended that the GUC Trust be classified as a liquidating trust under Section 301.7701-4 of the Treasury regulations and that the GUC Trust be owned by the GUC Trust Beneficiaries. Accordingly, for federal income tax purposes, the Debtors, the GUC Trustee, and the GUC Trust Beneficiaries agree to treat the GUC Trust Beneficiaries as the grantors of the GUC Trust Assets, and the transfer of the GUC Trust Assets to the GUC Trust will be treated as a deemed distribution by the Debtors to the GUC Trust Beneficiaries of an undivided interest in each of such GUC Trust Assets followed by a deemed transfer of such GUC Trust Assets by the GUC Trust Beneficiaries to the GUC Trust.

2. *Interests in the GUC Trust.*

(a) There will be one class of interests in the GUC Trust. The GUC Trust Interests will be issued to the holders of Allowed Class 4 Claims and Allowed Class 5 Claims by the GUC Trust so that each such holder will receive a percentage interest in the GUC Trust equal to such holder's Allowed Claim divided by the sum of all Allowed Claims in Classes 4 and 5.

(b) GUC Trust Interests will be uncertificated and will not be transferable. The GUC Trust Beneficiaries shall be bound by the GUC Trust Agreement.

3. *Distributions of Net Proceeds of the GUC Trust Assets by the GUC Trust.*

The Net Proceeds of the GUC Trust shall be distributed ratably to the GUC Trust Beneficiaries on account of their GUC Trust Interests.

4. *Purposes of the GUC Trust.*

The GUC Trust will be established for the sole purposes of (i) liquidating and distributing the GUC Trust Assets; and (ii) resolving Disputed Class 4 and Class 5 Claims, with no objective or authority to continue or engage in the conduct of a trade or business.

5. *Powers and Obligations of the GUC Trust.*

(a) The GUC Trust will: (i) issue GUC Trust Interests to the GUC Beneficiaries, as provided in the Plan and the GUC Trust Agreement; (ii) investigate, enforce, abandon, prosecute, and resolve (by litigation, settlement, or otherwise) the Original Lender Litigation Claims; (iii) maintain, sell, abandon, liquidate, collect, and reduce to Cash the GUC Trust Assets; (iv) distribute Cash to the GUC Trust Beneficiaries in accordance with the terms of the Plan and the GUC Trust Agreement; (v) reconcile and resolve all Disputed Class 4 and Class 5 Claims, and make distributions to holders of Allowed Class 4 or Class 5 Claims; and (vi) take such steps and incur and pay such expenses as are

reasonably necessary or appropriate to accomplish such purposes, all as more fully provided in, and subject to the terms and provisions of, the Plan and the GUC Trust Agreement.

(b) On the Effective Date, the GUC Trust will succeed to all of the rights of the Debtors and the Committee with respect to the GUC Trust Assets necessary to protect, conserve, and liquidate all GUC Trust Assets as quickly as reasonably practicable, which liquidation shall conclude prior to the fifth (5th) anniversary of the Effective Date unless extended by the Court for cause. The GUC Trust will have the exclusive power, on behalf of and in the name of the Estates, to prosecute, defend, compromise, settle, and otherwise deal with all GUC Trust Assets subject to the restrictions of the Plan and the GUC Trust Agreement, including that the GUC Trustee will have no right to use the GUC Trust Assets to conduct a trade or business.

6. *GUC Trustee.*

(a) Prior to the Effective Date, the Committee, and thereafter, the GUC Trust Beneficiary Committee, will designate a GUC Trustee. The identity of and proposed compensation structure for the GUC Trustee will be filed with the Court no later than November 13, 2007. In the event that the GUC Trustee resigns or is removed, the GUC Trust Beneficiary Committee will select a new GUC Trustee in accordance with the GUC Trust Agreement.

(b) The GUC Trustee will be the exclusive trustee of the GUC Trust Assets and will administer the GUC Trust in accordance with the Plan and the GUC Trust Agreement. The powers, rights, and responsibilities of the GUC Trustee will be specified in the GUC Trust Agreement and, subject to the supervision of the GUC Trust Beneficiary Committee, will include the authority and responsibility to: (a) receive, manage, invest, supervise, and protect the GUC Trust Assets; (b) pay taxes or other obligations incurred by the GUC Trust Assets; (c) retain and compensate, without further order of the Court, employees, professionals, and consultants to advise and assist in the administration, prosecution, and distribution of GUC Trust Assets; (d) calculate and implement distributions of GUC Trust Assets and the proceeds thereof pursuant to the terms of the Plan and the GUC Trust Agreement; (e) prosecute, compromise, and settle, in accordance with the specific terms of the GUC Trust Agreement, all Class 4 and Class 5 Claims against the Debtors and all Claims and Causes of Action vested in or otherwise transferred to the GUC Trust, and all objections related thereto; and (f) resolve issues involving Claims against the Debtors pursuant to Article IX of the Plan.

7. *GUC Trust Beneficiary Committee.*

(a) On or before the Effective Date, the GUC Trust Beneficiary Committee will be formed pursuant to the GUC Trust Agreement. The GUC Trust Beneficiary Committee will be comprised of three members selected by the Committee. The identities of the GUC Trust Beneficiary Committee members will be filed with the Court no later than November 13, 2007. As set forth in the GUC Trust Agreement, if a member of the GUC Trust Beneficiary Committee resigns or is removed, a replacement will be appointed by the remaining members of the GUC Trust Beneficiary Committee.

(b) As and to the extent set forth in the GUC Trust Agreement, the GUC Trustee will report all material matters to and seek approval for all material decisions from the GUC Trust Beneficiary Committee. Without limiting the foregoing, and as set forth in the GUC Trust Agreement, the GUC Trustee will not be permitted to commence, abandon, settle, or elect not to pursue, any litigation, without the approval of the GUC Trust Beneficiary Committee. The GUC Trust Beneficiary Committee will be deemed to have given its approval if any such commencement, abandonment, settlement, or election is approved by a majority vote of the GUC Trust Beneficiary Committee.

8. *Funding of the GUC Trust.*

The GUC Trust will be funded initially by the Claims Reconciliation Reserve. Additional funding will be approved by the GUC Trust Beneficiary Committee and may utilize the proceeds of borrowings or the cash proceeds of GUC Trust Assets.

9. *GUC Trust Professionals.*

(a) The GUC Trustee may (but shall not be obligated to) retain the law firms of Moses & Singer LLP, Susman Godfrey L.L.P. and/or Halperin Battaglia Raicht, LLP to advise on matters to be allocated among the firms on a basis acceptable to the GUC Trust Beneficiary Committee. The GUC Trustee may (but shall not be obligated to) retain the firm of Consensus Advisors as determined by the GUC Trust Beneficiary Committee.

(b) The GUC Trustee may retain other professionals and/or advisors, including tax advisors, in his or her reasonable discretion; *provided, however*, that the GUC Trustee must seek approval from the GUC Beneficiary Committee before retaining any such professional/advisor whose fees and expenses are expected to exceed \$50,000. The past or current retention of any firm listed above by the Committee or the GUC Trust may not be asserted by any of the Committee or the GUC Trust as a basis to disqualify such firm from being retained by the other Trust.

10. *Abandoned Trust Assets.*

Upon the election of the GUC Trust Beneficiary Committee to abandon any claims including among the GUC Trust Assets, such claims will cease to be GUC Trust Assets.

11. *Amendment of GUC Trust Agreement.*

After the Effective Date, and without Court approval, the GUC Trust Agreement may be amended in accordance with its terms; *provided, however*, that the GUC Trust Agreement may not be amended in any way that would change the priority of Claims or distribution scheme of this Plan.

12. *Cancellation of Intercompany Claims*

Upon the Effective Date, all Intercompany Claims will be cancelled and neither the GUC Trust nor the GUC Trust Beneficiaries will have any right to prosecute an Intercompany Claim of one Debtor against another Debtor for any purpose including, without limitation, altering the allocation of GUC Trust Interests among the GUC Trust Beneficiaries.

13. *Wind Up of the GUC Trust.*

After repayment of any outstanding Claims Reconciliation Reserve Reimbursement Obligation, any additional funds in the Claims Reconciliation Reserve that are not spent in connection with the reconciliation of Class 4 Claims, Class 5 Claims and other administrative purposes (other than pursuing the Original Lender Litigation Claims) and all other monies in the GUC Trust will be distributed to the GUC Trust Beneficiaries as set forth in Section 6.03 of the Plan.

14. *GUC Trust Agreement*

A substantially final form of the GUC Trust Agreement will be filed with the Court and be available for review no later than November 13, 2007.

VII.

Other Aspects of the Plan

A. Voting of Claims

Each holder of an Allowed Claim in an impaired Class of Claims that is entitled to vote on the Plan pursuant to Article IV of the Plan will be entitled to vote separately to accept or reject the Plan as provided in such order as is entered by the Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Court. A copy of the notice of order establishing procedures for voting to accept or reject the Plan is annexed hereto as Exhibit B.

B. Nonconsensual Confirmation

If any impaired Class of Claims entitled to vote will not accept the Plan by the requisite statutory majority provided in section 1126(c) of the Code, the Plan Proponents reserve the right to amend the Plan in accordance with Section 11.01 of the Plan or undertake to have the Court confirm the Plan under section 1129(b) of the Code or both. At the Confirmation Hearing, the Plan Proponents will seek a ruling that if no holder of a Claim or Interest eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan will be deemed accepted by the holders of such Claims or Interests in such Class for the purposes of 1129(b).

C. Distributions

One of the key concepts under the Code is that only claims that are “allowed” may receive distributions under a chapter 11 plan. This term is used throughout the Plan and Disclosure Statement, and the descriptions below. In general, an “allowed” claim simply means that the Debtors agree, or if there is a dispute, that the Court determines, that the Claim, and the amount thereof, is in fact a valid obligation of the Debtors.

Any Claim that has been listed by the Debtors in the Schedules, as may be amended from time to time, as liquidated in amount and not disputed or contingent is an Allowed Claim in the amount listed in the Schedules unless an objection to such Claim has been filed. If the holder of such Claim files a proof of claim in an amount different than the amount set forth on the Schedules, the Claim is an Allowed Claim for the amount set forth on the proof of claim, unless an objection to such Claim has been filed. Any Claim that has been listed in the Schedules as disputed, contingent, or not liquidated and for which a proof of claim has been filed is a Disputed Claim. Any Claim for which an objection has been timely interposed is a Disputed Claim.¹⁶

1. *Indefeasibility of Distributions.*

All distributions provided for under the Plan will be indefeasible.

¹⁶ The procedures for determining the claim amount for which a particular vote on the Plan is tabulated are set forth in the notice of order establishing procedures for voting to accept or reject the Plan, a copy of which is annexed hereto as Exhibit B. As described in greater detail therein, a claim’s “temporarily allowed amount” utilized for the purpose of tabulating votes with respect to the Plan may or may not be the same as the allowed amount used in effecting distributions pursuant to the Plan.

2. *Timing of Distributions Under the Shared Assets Trust.*

(a) On the Effective Date, Shared Assets Trust Class A Interests will be issued to each Person entitled to receive such interests pursuant to the Plan and the Shared Assets Trust Agreement. The Shared Assets Trust Class A Interests will be distributed in accordance with the list provided to the Shared Assets Trustee by Wilmington in accordance with Section 5.02(b) of the Plan.

(b) On the Effective Date, Shared Assets Trust Class B Interests will be issued to the GUC Trustee. The Shared Assets Trust Class A Interests will be distributed in accordance with the list provided to the Shared Assets Trustee by the Committee or the GUC Trustee in accordance with Section 5.02(c) of the Plan.

(c) The timing of the receipt of Net Proceeds of the Shared Asset Trust by the Shared Assets Trust Beneficiaries is very difficult to predict. As described above, these assets consist mainly of Causes of Action, which if litigated to conclusion, could take years to resolve. On the other hand, if a settlement is reached, distributions could potentially be available earlier.

3. *Timing of Distributions Under the GUC Trust.*

On the Effective Date, GUC Trust Interests will be issued to the GUC Trustee. The timing of the receipt of Net Proceeds of the GUC Trust Assets by the GUC Trust Beneficiaries is very difficult to predict. The timing of the expected receipt of proceeds by the GUC Trust in respect of the Shared Assets Trust Class B Interests is discussed in the immediately preceding paragraph. Similarly and as described further above, the Original Lender Litigation, if litigated to conclusion, could take years to resolve. On the other hand, if a settlement is reached, distributions could potentially be available earlier.

4. *Disputed Claims Reserve.*

On or before any distribution date, the GUC Trustee shall reserve from any GUC Trust Assets to be distributed an amount equal to the amount that would otherwise be paid to holders of Disputed Claims assuming that such claims are ultimately Allowed at their highest claimed value. In addition, the GUC Trustee shall also reserve from any such distribution an amount reasonably determined by him to be necessary to resolve all such Disputed Claims through litigation or otherwise.

5. *Setoffs.*

The Shared Assets Trustee and the GUC Trustee, as applicable, may, but will not be required to, set off against any Claim asserted against the Shared Assets Trust and/or the GUC Trust, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, any Claims of any nature whatsoever that the Debtors, the Shared Assets Trust, or the GUC Trust may have had against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim against the Debtors hereunder shall constitute a waiver or release of any such Claim any Debtor, the Shared Assets Trust or the GUC Trust may have against such holder.

6. *Waiver of Subordination.*

The distributions under the Plan take into account the relative priority of each class in connection with any contractual subordination provisions relating thereto. Accordingly, the distributions under the Plan shall not be subject to levy, garnishment, attachment or other legal process by any holder of a Claim or Interest purporting to be entitled to the benefits of such contractual subordination.

7. *Surrender of Securities.*

Each holder of a promissory note or other instrument evidencing or securing an Interest or a Claim impaired hereby other than the Credit Documents must surrender the same to the Shared Assets Trustee or the GUC will cause to be distributed to the holders thereof the appropriate distribution of property in accordance with the Plan. No distribution of property under the Plan will be made to or on behalf of any such holder unless and until such promissory note or instrument is received by the Shared Assets Trustee or the GUC Trustee, as applicable, or the unavailability of such note or instrument is established to the satisfaction of the Shared Assets Trustee or the GUC Trustee, as applicable. Any such holder that fails to surrender or cause to be surrendered such promissory note or instrument, or to execute and deliver an affidavit of loss and indemnity satisfactory to the Shared Assets Trustee or the GUC Trustee, as applicable, and, in the event that the Shared Assets Trustee or the GUC Trustee so requests, fails to furnish a bond in form and substance (including, without limitation, with respect to amount) satisfactory to the Shared Assets Trustee or the GUC Trustee, as applicable, within two years after the Confirmation Date, will be deemed to have forfeited all Claims against the Debtors or Interests represented by such note or instrument and will not be allowed to participate in any distribution under the Plan, the Shared Assets Trust Agreement or the GUC Trust Agreement in respect of such note or instrument and all property in respect of such forfeited distribution, including (if applicable) interest accrued thereon, will revert to the Shared Assets Trust. Notwithstanding the foregoing, but subject to Section 7.04 of the Plan, all claims against the Debtors relating to, arising under, in respect of, or in connection with such promissory note or instrument will be released and/or deemed satisfied by this Plan and, all Interests will be terminated to the extent provided for in the Plan regardless of whether and when any surrender, indemnity, or bond required by Section 7.07 of the Plan is provided, and regardless of whether a distribution is made under the Plan in the absence of compliance by any holder of a Claim with the requirements of such Section. The Shared Assets Trustee or the GUC Trustee, as applicable, may waive the requirements of Section 7.07. If the Shared Assets Trustee waives these requirements, it may (but need not), as an alternative to those requirements, make distributions on account of securities solely to holders of record on such date (on or after the Confirmation Date) as the Court may designate for this purpose (in which event transfers of record after that date shall be disregarded for the purpose of making distributions under the Plan).

8. *Distribution of Unclaimed Property.*

Any distribution of property (Cash or otherwise) provided for under the Plan that remains unclaimed after one hundred and eighty (180) days following the Effective Date will irrevocably revert to the Shared Assets Trust or the GUC Trust, as applicable, depending upon which of the trusts was required to make such distribution.

D. Procedures for Treating Disputed Claims Under the Plan

1. *Prosecution of Disputed Class 4 and Class 5 Claims.*

Except as otherwise provided in the Plan, the GUC Trust will have the right to object to all Class 4 Claims and Class 5 Claims on any basis, including those Class 4 and Class 5 Claims that are not listed in the Schedules, that are listed therein as disputed, contingent, and/or unliquidated, or that are listed therein at a lesser amount than asserted by the relevant creditor. Subject to further extension by the Court for cause with or without notice, the GUC Trustee may object to the allowance of Class 4 and Class 5 Claims up to 90 days after the Effective Date. From and after the Effective Date, the GUC Trust will succeed to all of the rights, defenses, offsets, and counterclaims of the Debtors and the Committee in respect of all Class 4 and Class 5 Claims, and in that capacity will have the exclusive power to prosecute, defend, compromise, settle, and otherwise deal with all such objections.

2. *Settlement of Disputed Class 4 and Class 5 Claims.*

(a) Pursuant to Bankruptcy Rule 9019(b), the GUC Trustee may settle any Disputed Class 4 or Class 5 Claim (or aggregate of Claims if held by a single creditor), without notice, a Court hearing or Court approval, provided such Disputed Claim will not be Allowed pursuant to the settlement in an amount exceeding one hundred thousand (\$100,000) dollars.

(b) The GUC Trustee shall give notice to the Settlement Notice Parties of a settlement of any Disputed Class 4 or Class 5 Claim (or aggregate of Claims if held by a single creditor) that results in such Disputed Claim(s) being Allowed in an amount in excess of one hundred thousand (\$100,000) dollars. The Settlement Notice Parties will then have ten (10) days to object to such settlement. Any such objection must be in writing and sent to the GUC Trustee and the settling party. If no written objection is received by the GUC Trustee and the settling party prior to the expiration of such ten (10) day period, the GUC Trustee and the settling party will be authorized to enter into the proposed settlement without a hearing or Court approval. If a written objection is timely received, the GUC Trustee, the settling party and the objecting party will be required to use good faith efforts to consensually resolve the objection. If the objection is consensually resolved, the GUC Trustee and the settling party may enter into the proposed settlement (as and to the extent modified by the resolution of the objection) without further notice or Court approval. Alternatively, the GUC Trustee may seek Court approval of the proposed settlement upon an expedited notice and a hearing.

(c) On or after the Effective Date, any holder of an Allowed or Disputed Class 4 or Class 5 Claim may request notice in writing of any settlement of a Disputed Claim within their class that results in such Disputed Claim being Allowed in an amount in excess of \$100,000 by serving a written request for such notice on the GUC Trustee.

3. *Prosecution of Disputed Administrative/Priority Claims.*

Except as otherwise provided in the Plan, the Shared Assets Trust will have the right to object to all Administrative/Priority Claims (subject to the terms of the Plan Settlement). Subject to further extension by the Court with or without notice, the Shared Assets Trustee may object to the allowance of Administrative/Priority Claims up to the later of (i) 90 days after the Effective Date subject to further extension by the Court for cause with or without notice or (ii) the deadline for filing an objection established by order of the Court. From and after the Effective Date, the Shared Assets Trust will succeed to all of the rights of the Debtors and the Committee in respect of all objections to the Administrative/Priority Claims, and in that capacity will have the exclusive power, subject to approval of the Shared Assets Trust Beneficiary Committee, to prosecute, defend, compromise, settle, and otherwise deal with all such objections.

4. *Settlement of Disputed Administrative/Priority Claims*

(a) Pursuant to Bankruptcy Rule 9019(b), the Shared Assets Trustee may settle any Disputed Administrative/Priority Claim, without notice, a Court hearing or Court approval, provided such Disputed Administrative/Priority Claim will not be Allowed pursuant to the settlement in an amount exceeding \$100,000.

(b) The Shared Assets Trustee must give notice to the Settlement Notice Parties of a settlement of any Disputed Administrative/Priority Claims that results in such Disputed Claim being Allowed in an amount in excess of \$100,000. The Settlement Notice Parties will have ten (10) days to object to such settlement. Any such objection must be in writing and sent to the Shared Assets Trustee and the settling party. If no written objection is received by the Shared Assets Trustee and the settling

party prior to the expiration of such ten (10) day period, the Shared Assets Trustee and the settling party will be authorized to enter into the proposed settlement without a hearing or Court approval. If a written objection is timely received, the Shared Assets Trustee, the settling party, and the objecting party must use good faith efforts to consensually resolve the objection. If the objection is consensually resolved, the Shared Assets Trustee and the settling party may enter into the proposed settlement (as and to the extent modified by the resolution of the objection) without further notice or Court approval. Alternatively, the Shared Assets Trustee may seek Court approval of the proposed settlement upon expedited notice and a hearing.

(c) On or after the Effective Date, any holder of an Allowed or Disputed Class 4 or Class 5 Claim may request notice in writing of any settlement of a Disputed Claim within their class that results in such Disputed Claim being Allowed in an amount in excess of \$100,000 by serving a written request for such notice on the GUC Trustee.

5. *No Distributions Pending Allowance*

Notwithstanding any provision in the Plan to the contrary, no partial payments and no partial distributions will be made by the GUC Trust or the Shared Assets Trust, as applicable, with respect to any portion of any Claim against the Debtors if such Claim or any portion thereof is a Disputed Claim. In the event and to the extent that a Claim against the Debtors becomes an Allowed Claim after the Effective Date, the holder of such Allowed Claim will receive all payments and distributions to which such holder is then entitled under the Plan.

E. Treatment of Executory Contracts and Unexpired Leases

1. *Assumption or Rejection of Executory Contracts*

Effective on and as of the Effective Date, all executory contracts and unexpired leases that exist between a Debtor and any Person are specifically deemed rejected under the Plan, except for any executory contracts and unexpired leases (a) that have been specifically assumed or assumed and assigned by the pertinent Debtor on or before the Effective Date with the approval of the Court, (b) in respect of which a motion for assumption or assumption and assignment has been filed with the Court on or before the Effective Date, or (c) that is specifically designated as a contract to be assumed on Schedule 8.01 to the Plan, which Schedule will be contained in the Plan Supplement.

2. *Approval of Assumption or Rejection of Executory Contracts*

Entry of the Confirmation Order by the Clerk of the Court, but subject to the condition that the Effective Date occur, will constitute (a) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Code, of the assumption or assumption and assignment of the executory contracts or unexpired leases assumed or assumed and assigned pursuant to 8.01 of the Plan and (b) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Code, of the rejection of the executory contracts and unexpired leases pursuant to Section 8.01 of the Plan.

3. *Inclusiveness*

Unless otherwise specified on Schedule 8.01 of the Plan, each executory contract listed or to be listed on Schedule 8.01 of the Plan will include modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract, without regard to whether such agreement, instrument or other document is listed on Schedule 8.01 of the Plan.

4. *Bar Date for Filing Proofs of Claim Relating to Executory Contracts Rejected Pursuant to the Plan*

Claims against the Debtors arising out of the rejection of executory contracts and unexpired leases must be filed with the Court no later than thirty (30) days after the later of (a) notice of entry of an order approving the rejection of such executory contract or unexpired lease and (b) notice of occurrence of the Effective Date. Any such Claims not filed within such time will be forever barred from assertion against the Debtors, the Shared Assets Trust, the GUC Trust, and any and all of their respective properties and assets.

F. Treatment of Employee Compensation and Benefit Programs

All employment and severance agreements and policies, and all employee compensation and benefit plans, policies and programs of any of the Debtors applicable generally to their respective current employees or officers, as in effect on the Effective Date, including, without limitation, all savings plans, retirement plans, health care plans, disability plans, severance benefit plans, incentive plans and life, accidental death and dismemberment insurance plans, will be terminated effective on the Effective Date

G. Effect of Confirmation

1. *Vesting of Assets*

Except as otherwise provided for in the Plan, upon the Effective Date, all property and assets of the Debtors' respective Estates will pass to and vest in the Shared Assets Trust and the GUC Trust, as described in section 7.01 of the Plan, free and clear of all Claims, Liens, encumbrances, charges, Interests and other rights and interests of creditors and equity holders arising on or before the Effective Date, but subject to the terms and provisions of the Plan, the Shared Assets Trust Agreement and the GUC Trust Agreement.

2. *Injunction*

Except as otherwise expressly provided in the Plan, including without limitation the treatment of Claims and Interests under the Plan, the entry of the Confirmation Order will, provided that the Effective Date has occurred, operate to enjoin permanently all Persons that have held, currently hold or may hold a Claim or other debt or liability against one or both of the Debtors, or who have held, currently hold or may hold an Interest that is terminated pursuant to the Plan from taking any of the following actions in respect of such Claim, debt or liability or such terminated Interest: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against any or all of the Debtors, the Shared Assets Trust, the GUC Trust, or their respective property or assets; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order against any or all of the Debtors, the Shared Assets Trust, the GUC Trust, or their respective property or assets; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind against any or all of the Debtors, the Shared Assets Trust, the GUC Trust, or their respective property or assets; (d) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the Shared Assets Trust, the GUC Trust, or their respective property or assets; and (e) proceeding in any manner in any place whatsoever that does not conform to or comply with or is inconsistent with the provisions of the Plan.

3. *Term of Injunctions or Stays*

Unless otherwise provided in the Plan, the Confirmation Order, or a separate order of the Court, all injunctions or stays arising under or entered during the Cases under section 105 or 362 of the Code, or otherwise, and in existence on the Confirmation Date, will remain in full force and effect until the later of the Effective Date and the date indicated in such applicable order.

4. *Exculpation*

None of the Creditor Proponents or any of their respective affiliates, officers, directors, partners, shareholders, employees, agents, attorneys, accountants, or other professionals/advisors, (ii) Troutman Sanders LLP, solely in its capacity as attorneys for the Debtors, (iii) Getzler Henrich & Associates LLC, solely in its capacity as crisis manager, (iv) Joel I. Getzler and Peter A. Furman, solely in their capacities as Chief Restructuring Officers, (v) Chad Shandler, solely in his capacity as a member of the Board of Directors of MFS and FLI, and (vi) any board member of the Debtors, appointed during the pendency of the Cases with the consent of the Creditor Proponents, solely in his or her capacity as a member of the Boards of Directors of MFS and FLI will have or incur any liability for any act or omission in connection with, or arising out of, pursuit of confirmation of the Plan (including without limitation the solicitation of votes in favor thereof), the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence; and in all respects, such Persons will be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan and will be fully protected from liability in acting or in refraining from action in accordance with such advice; provided, however, that Section 13.03 of the Plan will not limit the obligations of the Debtors, the Shared Assets Trust, or the GUC Trust under the Plan.

5. *Releases*

Effective on the Effective Date, and without the necessity of any further act, in partial consideration for (i) the transfer to the Shared Assets Trust by the Current Lenders and Wilmington of their respective right, title and interest in and to the Other Lender Collateral, the Fortgang Guaranties, and all Claims and Causes of Action arising therefrom and relating thereto, and (ii) the agreement by the Current Lenders and Wilmington to waive any right to receive any distributions under Sections 4.04 and 4.05 of the Plan, the adequacy and sufficiency of which is acknowledged by the Committee, the Debtors, the Estates, the Committee, and all holders of Claims against the Debtors that receive a distribution under the Plan, on behalf of themselves and their respective successors, assigns, employees, agents, officers, directors, attorneys, and representatives (in their capacity as such) (collectively, the “Releasers”), shall be deemed to release and waive any and all claims, liabilities, and causes of action, of any kind, nature or description, whether matured or unmatured, contingent or absolute, liquidated or unliquidated, relating to the Debtors or their Estates and/or Cases, that any of the Releasers had, has or may have from the beginning of time through the Effective Date against the Releasees including any fraudulent conveyance, preference, and subordination claims and any challenge or claim as to any and all prior sweeps or payments to the Current Lenders, Wilmington, or their respective predecessors; provided that, the foregoing notwithstanding, the Original Lender Litigation Claims as against any Original Lender shall not be released, impaired, diminished or otherwise affected by reason of such Original Lender also being, having been or, in the future, becoming a Current Lender and no provision of the Plan shall release, impair, diminish or affect the Original Lender Litigation Claims or the Committee’s or GUC Trust’s right to prosecute such Claims against any Original Lender, as provided herein, which Claims shall be preserved for the benefit of the GUC Trust and the GUC Trust Beneficiaries as and to the extent provided in this Plan and the GUC Trust Agreement.

Under the Plan, Releasees are defined as every entity that has held Current Lenders Claims since the Petition Date (including at any future time). As of November 7, 2007, the Releasees are the following entities: Arrow Distressed Securities Fund; Aurelius Capital Master, Ltd.; Aurelius Capital Partners, LP; Banc of America Strategic Capital; Canpartners Investments IV, LLC; CGDO, LLC; Credit Markets Investment Corporation; Deutsche Bank Trust Company Americas; Distressed Securities & Special Situations 1; Epic Distressed Debt Opportunities Master Fund, Ltd.; LL Blue Marlin Funding LLC; Merrill Lynch Credit Products, LLC; Morgan Stanley Senior Funding, Inc.; R6 Opportunity Fund L.P.; R6 Overseas Opportunity Fund Ltd.; Schultze Master Fund; Solitaire Investors, L.L.C.; TPG Credit Opportunity Investors Fund, L.P.; TPG Credit Opportunity Investors, L.P.; TPG Credit Opportunity Strategies Fund, L.P.; and Wilmington.

6. *Rights of Action/Reservation of Rights*

(a) On the Effective Date, any rights or Causes of Action held or inuring to the benefit of the Debtors, including without limitation all Avoidance Actions (but excluding the Original Lenders Litigation Claims and all Causes of Action that are released pursuant to Section 7.08 of the Plan) will be transferred to and vested in the Shared Assets Trust. On the Effective Date, the Original Lenders Litigation Claims will be transferred to and vested in the GUC Trust. In accordance with section 1123(b)(3)(B) of the Code, the Shared Assets Trustee and the GUC Trustee may pursue all reserved rights of action for the benefit of their respective trust beneficiaries. Any distributions provided for in the Plan and the allowance of any Claim for the purpose of voting on the Plan is and will be without prejudice to the rights of the Shared Assets Trustee and the GUC Trustee to pursue and prosecute any reserved rights of action that have been conveyed to the Shared Assets Trust and the GUC Trust as provided for in the Plan.

(b) If the Plan is not confirmed for any reason, the rights of all parties in interest in the Cases are and will be reserved in full. Any concession reflected or provision contained in the Plan, if any, is made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Cases will be bound or deemed prejudiced by such concession.

H. Miscellaneous Provisions

1. *Management of Debtors.*

On the Effective Date, the operation of each Debtor will become the general responsibility of the Shared Assets Trustee in accordance with applicable law.

On the Effective Date, the authorization of the Shared Assets Trust Agreement, the GUC Trust Agreement, the appointment of the Shared Assets Trustee, the appointment of the GUC Trustee, and any and all other matters provided for under the Plan involving corporate action by the Debtors, their directors, or their shareholders, including without limitation the transfer of the Remaining Cash to the Shared Assets Trust and the transfer of management responsibilities of the Debtors to the Shared Assets Trust, will be deemed to have occurred and will be in effect from and after the Effective Date pursuant to applicable law, in each case without any requirement of further action by the Debtors' directors or shareholders.

2. *Withholding and Reporting Requirements.*

In connection with the Plan and all instruments issued in connection therewith and distributions thereon, the Shared Assets Trust and the GUC Trust shall comply with all withholding, reporting, certification and information requirements imposed by any federal, state, local or foreign taxing authority and all distributions under the Plan will, to the extent applicable, be subject to any such withholding, reporting, certification and information requirements. Persons entitled to receive distributions under the Plan will, as a condition to receiving such distributions, provide such information and take such steps as the Shared Assets Trustee or the GUC Trustee, as applicable, may reasonably require to ensure compliance with such withholding and reporting requirements, and to enable the Shared Assets Trustee or the GUC Trustee to obtain the certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

3. *Exemption from Transfer Taxes.*

Pursuant to section 1146(a) of the Code, the transfer of title to the 363 Sale Assets to Wilmington pursuant to the 363 Sale Asset Purchase Agreement and the 363 Sale Order, the vesting of the Trust Assets in the Shared Assets Trust, the transfer of title to the 363 Surya Sale Assets to Surya pursuant to the 363 Surya Sale Asset Purchase Agreement and the 363 Surya Sale Order, the vesting of the GUC Trust Assets in the GUC Trust, the conveyance by the Current Lenders and Wilmington of their respective right, title, and interest in and to the Other Lender Assets, the Other Lender Collateral, the Fortgang Guaranties, and all of their respective Claims and Causes of Action arising therefrom and relating thereto, the issuance, transfer, or exchange of any security under the Plan, or the execution, delivery, or recording of an instrument of transfer pursuant to, in implementation of or as contemplated by the Plan, or the vesting, transfer, or sale of any real property of any of the Debtors pursuant to, in implementation of, or as contemplated by the Plan, will not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded will, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax, or similar tax.

4. *Payment of Statutory Fees.*

All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Court at the hearing pursuant to section 1128 of the Code, will be paid on or before the Effective Date.

5. *Dissolution of the Committee.*

The appointment and existence of the Committee will terminate on the Effective Date.

6. *Plan Supplement.*

The Shared Assets Trust Agreement, the GUC Trust Agreement, the identity and proposed compensation structure of both the GUC Trustee and the Shared Assets Trustee, and the identity of the members of the Shared Assets Trust Beneficiary Committee and the GUC Trust Beneficiary Committee will be contained in the Plan Supplement and filed with the Clerk of the Bankruptcy Court no later than November 13, 2007. All other documents contained in the Plan Supplement, including Schedule 8.01 referred to in Section 8.01 of the Plan and any other appropriate documents, will be filed at least 5 business days prior to the last day upon which holders of Claims may vote to accept or reject the

Plan; *provided, however*, that the Required Plan Proponents may jointly amend (i) Schedule 8.01 through and including the Confirmation Date and (ii) each of the other documents contained in the Plan Supplement through and including the Effective Date in a manner consistent with the Plan and Disclosure Statement. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal Court hours. Holders of Claims or Interests may obtain a copy of the Plan Supplement at no charge upon written request to the Voting Agent, The Garden City Group, Inc., Re: M. Fabrikant & Sons, Inc., PO Box 9000 #6492, Merrick, NY 11566-9000, by calling the Voting Agent at (631) 470-5000 and asking for Karen Petriano, Jeff Stein, Ken Freda, or Craig Johnson, or by visiting the Voting Agent's website at www.gardencitygroup.com/cases/fab.

7. *Amendment or Modification of the Plan.*

The Required Plan Proponents may jointly alter, amend or modify the Plan pursuant to section 1127 of the Code at any time prior to the Confirmation Date. After such time and prior to the substantial consummation of the Plan, the Required Plan Proponents may, so long as the treatment of holders of Claims against the Debtors or Interests under the Plan is not adversely affected, institute proceedings in Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan; *provided, however*, prior notice of such proceedings will be served in accordance with Bankruptcy Rule 2002 or as the Court will otherwise order. Notwithstanding any reference in the Plan to documents in the forms annexed to this Plan, and without limiting the preceding paragraph (a), the Required Plan Proponents may revise those forms by filing such revised forms with the Court on or prior to the Confirmation Date.

8. *Revocation or Withdrawal of the Plan.*

The Required Plan Proponents reserve the right to jointly revoke or withdraw the Plan at any time prior to the Effective Date. If the Required Plan Proponents revoke or withdraw the Plan prior to the Effective Date, then the Plan will be deemed null and void, and nothing contained in the Plan will be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors.

9. *Withdrawal from the Plan.*

In the event that the Debtors reasonably determine to withhold consent to any authorization, waiver, approval, or any other action required to be provided by the Required Plan Proponents under the Plan, the Debtors shall be authorized to withdraw as a Plan Proponent. Upon such withdrawal, the Plan shall be deemed modified to reflect such withdrawal. Such withdrawal shall not otherwise impact the enforceability of any other provisions of the Plan.

10. *Severability.*

In the event that any provision of the Plan, other than Section 7.08, is determined to be unenforceable, such determination will not limit or affect the enforceability and operative effect of any other provisions of the Plan. To the extent that any provision of the Plan would, by its inclusion in the Plan, prevent or preclude the Court from entering the Confirmation Order, the Court, on the request of the Required Plan Proponents, may modify or amend such provision, in whole or in part, as necessary to cure any defect or remove any impediment to the confirmation of the Plan existing by reason of such provision; *provided, however*, that such modification will not be effected except in compliance with Section 11.01 of the Plan.

11. *Substantial Consummation.*

Upon the Effective Date, the Plan will be deemed substantially consummated under sections 1101 and 1127(b) of the Code.

12. *Governing Law.*

Except to the extent the Code, the Bankruptcy Rules, or other federal laws are applicable, the laws of the State of New York will govern the construction and implementation of the Plan and all rights and obligations arising under the Plan.

13. *Binding Effect.*

The provisions of the Plan will bind all holders of Claims against the Debtors and Interests, whether or not they have accepted the Plan.

VIII.

Certain Factors to Be Considered

A. Certain Bankruptcy Considerations

Although the Plan Proponents believe that the Plan will satisfy all requirements necessary for confirmation by the Court, there can be no assurance that the Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the resolicitation of votes. In addition, although the Plan Proponents believe that the Effective Date will occur on or before December 31, 2007, there can be no assurance as to such timing.

The Court may confirm the Plan if at least one impaired class votes to accept the Plan (with such acceptance being determined without including the vote of any “insider” in such class). Thus, for the Plan to be confirmed with respect to each Debtor, one impaired Class must vote to accept the Plan. As to each impaired class that has not accepted the Plan, the Plan may be confirmed if the Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to these classes. The Plan Proponents believe that the Plan satisfies these requirements.

B. Risks Relating to Recoveries under the Plan

There are various risk factors that may affect recoveries under the Plan. Among such factors are a risk that the Plan might not be consummated, risk associated with an unfavorable outcome of legal matters and risk of recovery dilution by Disputed Claims becoming Allowed Claims.

A significantly large portion of the property to be distributed to creditors pursuant to the Plan will be the Net Proceeds of the Trust Assets and the GUC Trust Assets, which are certain Causes of Action as described herein and in the Plan. In addition to the risks described above, in general, the outcome of such litigation is impossible to predict. It is possible that the Shared Assets Trust and GUC Trust may recover no Cash on account of these Causes of Action. The risks in such litigation include, but are not limited to, those associated with defenses and counterclaims of opposing parties to the litigation; the delay and expense associated with discovery and trial of factually intensive and complex disputes; the additional delay and expense inherent in appellate review; difficulties in pursuing claims pertaining to the Debtors because the Debtors are essentially no longer an operating entity; the diminishing availability of

former employees to serve as witnesses because they have moved from the geographic area or have otherwise become unavailable; the impossibility of predicting judicial outcomes; and the difficulty collecting favorable judgments.

For the Plan to be confirmed, each Impaired Class is given the opportunity to vote to accept or reject the Plan, except for those Classes which will not receive any distribution under the Plan and which are, therefore, presumed to have rejected the Plan. There can be no assurance that the requisite acceptances to confirm the Plan from the holders of Class 4 and Class 5 Claims will be received. Even if the requisite acceptances are received, there can be no assurance that the Court will confirm the Plan.

If one or more of the Impaired Classes vote to reject the Plan, then the Required Plan Proponents may request that the Court confirm the Plan by application of the “cram down” procedures available under section 1129(b) of the Code. There can be assurance, however, that the Plan Proponents will be able to use the cram down provisions of the Code for confirmation of the Plan, especially with respect to the holders of Class 2 Claims.

It is also noteworthy that, in the event there is litigation involving the confirmation of the Plan or otherwise, the Assets of the Estate will be depleted by virtue of any such litigation costs. In such an event, the Plan Proponents may have difficulty finding financing for the Cash required to finance the Shared Assets Trust and the payment of all Administrative and Priority Claims.

In addition, the Plan Settlement contemplates that the Effective Date will occur on or before December 31, 2007. If the Effective Date is delayed as a result of litigation concerning confirmation of the Plan or otherwise, the Debtors will likely incur additional operational expenses as well as professional fees.

IX.

Confirmation of the Plan

A. Confirmation Hearing

Section 1128(a) of the Code requires the Court, after appropriate notice, to hold a hearing on confirmation of a plan of reorganization. **The confirmation hearing is scheduled for 10:00 a.m. (prevailing Eastern Time) on December 19, 2007 before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004.** The confirmation hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the confirmation hearing or any subsequent adjourned confirmation hearing.

Section 1128(b) of the Code provides that any party in interest may object to confirmation of a plan of reorganization. Any objection to confirmation of the Plan must be in writing, must conform to the Federal Rules of Bankruptcy Procedure, must set forth the name of the objector, the nature and amount of claims or interests held or asserted by the objector against the particular Debtor or Debtors, the basis for the objection and the specific grounds therefor, and must be filed with the Court, with a copy to Chambers, together with proof of service thereof, and **served upon and received no later than 4:00 p.m. prevailing Eastern Time on December 7, 2007** by (i) Kramer Levin Naftalis & Frankel LLP, Attorneys for Wilmington Trust Company, 1177 Avenue of the Americas, New York, New York 10036, Attention: David M. Feldman, Esq.; (ii) Moses & Singer LLP, Attorneys for The Official Committee of Unsecured Creditors, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174, Attn: Christopher J. Caruso, Esq.; (iii) Troutman Sanders LLP, Attorneys for the Debtors, The

Chrysler Building, 405 Lexington Avenue, New York, NY 10174, Attn: Mitchel H. Perkiel, Esq. and Eric S. Medina, Esq.; and (iv) The Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Alicia M. Leonhard.

UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE COURT.

B. General Requirements of Section 1129

Section 1129 of the Code sets forth the requirements that must be satisfied in order for the Plan to be confirmed. Among other things, this section requires the Plan to (i) comply with the applicable provisions of the Code; (ii) be proposed in good faith and not by any means forbidden by law; (iii) be accepted by each Impaired Class (subject to the “cram down” provisions in section 1129(b) of the Code; and (iv) not be followed by the liquidation, or the need for further reorganization, of the Debtors.

The Plan Proponents believe that the Plan satisfies, or will satisfy, all of the statutory requirements for confirmation of the Plan. Before the Confirmation Hearing, the Plan Proponents may be required to submit extensive pleadings demonstrating that the Plan complies with all of the provisions set forth above. The following sections discuss some of the requirements set forth in section 1129(a) of the Code.

C. Best Interests Tests/Liquidation Analysis

As described above, section 1129(a)(7)(A) of the Code requires that each holder of an impaired claim or equity interests either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtors were liquidated under chapter 7 of the Code. Chapter 7 is a portion of the Code under which a debtor’s estate is liquidated under the control of an independent trustee. In the typical case, a chapter 7 debtor ceases business operations, and the chapter 7 trustee liquidates the assets of the debtor’s estate.

To determine the value that a holder of a Claim or Interest in an impaired Class would receive if the Debtors were liquidated under chapter 7, the Court must determine the aggregate dollar amount that would be generated from the liquidation of the Debtors’ assets if the Debtors’ Cases were converted to a chapter 7 liquidation case and the Debtors’ assets were liquidated by a chapter 7 trustee (the “Liquidation Value”). The Liquidation Value would consist of the Net Proceeds from the disposition of the Debtors’ assets, augmented by cash held by the Debtors and reduced by certain increased costs and Claims that arise in a chapter 7 liquidation case that do not arise in a chapter 11 case.

As a preliminary matter, the Plan Proponents believe that satisfaction of the “best interests” test can be demonstrated by the fact that the assets to be distributed under the Plan are the same assets that would be administered and distributed in chapter 7, plus certain additional assets, and by the fact that the expenses of administration of two chapter 7 cases, one for each Debtor, would be the same as or greater than the expenses of administration of the two trusts created under the Plan.

However, under chapter 7, the distributions to unsecured creditors would be governed by statute and would require payment in full of the Current Lenders’ adequate protection claim, asserted to be about \$20 million and application of all of the Current Lenders’ collateral, substantially all assets of the Estates other than Avoidance Actions, to satisfaction of the Current Lenders’ claims of more than \$90 million. Those priority rights could be modified only if the chapter 7 estates could successfully pursue claims against the Current Lenders or the Current Lenders agreed to a settlement with the chapter 7 estates. For the reasons described below, the Current Lenders do not believe that the chapter 7 estates

could pursue such claims against them and, therefore, they would have not have incentive to settle such claims for any significant value.

On the other hand, as described above, the Plan seeks to implement the Plan Settlement, which reflects the resolution of that potential dispute between the Committee and the Current Lenders with respect to the Current Lender Claims. The Committee was provided with a period of time in which to investigate and challenge the extent, priority, perfection, enforceability, and avoidability of the prepetition liens securing the Current Lender Claims. As a result of this investigation, the Committee believes that it has, among others, fraudulent conveyance claims and equitable subordination claims against the Original Lenders. However, the Current Lenders do not believe any successor liability exists to reduce the Current Lender Claims, alter the priority of any portion of the Current Lender Claims, or avoid the liens and security interests securing the Current Lender Claims.

In these Cases, substantially all of the Debtors' assets, other than those listed below, have already been sold and liquidated pursuant to the 363 Asset Sale. The Estates now consist primarily of Cash, Avoidance Actions, other Causes of Action (including the Original Lender Litigation Claims), the Affiliate Receivables, and the Subsidiary Equity. The Plan Settlement and Plan provide for the creation of the Shared Assets Trust, into which all remaining assets of the Estates except for the Original Lender Litigation Claims shall be contributed. The Plan contemplates that the Original Lender Litigation Claims will be contributed to the GUC Trust. In addition to these assets of the Estates, the Current Lenders will also contribute their interests in the Fortgang Guaranties and in the Other Lender Collateral to the Shared Assets Trust.

As noted above, the Committee believes that the "best interests" test is satisfied by the facts that the assets being administered under the Plan are greater than those that would be administered in chapter 7 and the expenses of administration will be equal to or less than those that would be incurred in chapter 7. Furthermore, the Committee believes that the distribution scheme provided by the Plan Settlement is preferable to the scheme that would be utilized in chapter 7 cases, and that it is likely to produce greater recoveries to holders of general unsecured claims than they would receive in a chapter 7. The Committee believes that the Plan Settlement must be evaluated, not under the "best interests" test, but under the reasonableness standards applicable to settlements.

The Committee believes that the Plan Settlement is preferable because a chapter 7 trustee may be unable to pursue any claims or causes of action against the Current Lenders or the Original Lenders. Pursuant to the Final C/C Order, the Debtors and the Estates acknowledged their indebtedness to the Current Lenders, the validity of their liens, and have waived all claims, counterclaims, defenses, recoupments, and setoffs. Further, the Final C/C Order bars any person other than the Committee from prosecuting a challenge to the Current Lenders' liens or claims. If the Cases were converted to chapter 7, the Committee would no longer exist, as chapter 7 liquidations do not have creditors' committees. Thus, the lenders would argue that no party – neither the chapter 7 trustee, nor any creditors or equity holders – could bring suit against the Current Lenders or the Original Lenders to attack their claims. The Current Lenders have liens on substantially all of the assets of the Estates. Accordingly, in a chapter 7 case, substantially all of the assets of the Estates would be distributed to the Current Lenders. Unsecured creditors would be entitled only to whatever unencumbered assets were available to them after payment of the Current Lenders' adequate protection claim. Most importantly, holders of unsecured claims would receive no distributions on the Original Lender Litigation Claims, because no entity would exist that would have the right to prosecute such claims.

Even if this hurdle to prosecuting claims against the Original Lenders and the Current Lenders could be surmounted by the chapter 7 trustee, it is highly likely that the holders of general unsecured claims would do better under the Plan than in a chapter 7 liquidation in which claims against

the Current Lenders were being pursued. Because the Shared Assets and the GUC Trust Assets are assets that have not yet been liquidated and are primarily Causes of Action, precise values cannot be ascribed to these Assets for the purpose of determining the amount of distributions to be provided to the holders of Allowed Class 2, Class 4, and Class 5 Claims under the Plan. Nevertheless, the Plan Proponents believe that the Plan Settlement substantially enhances the values likely to be realized by the holders of Class 2, Class 4 and Class 5 Claims. This can be demonstrated by a hypothetical recovery scenario: In the event the Original Lender Litigation Claims proved to be worth \$30 million or less and the Shared Assets proved to be worth \$70 million or less, unsecured creditors would have no recovery whatsoever in chapter 7 unless the claims against the Current Lenders were successfully pursued. This is because approximately \$10 million of the \$30 million recovery from the Original Lenders would go to Susman Godfrey, in respect of their contingency fee, therefore leaving \$20 million left, plus \$70 million from the Shared Assets to satisfy \$90.6 million of Current Lender Claims. However, under the Plan, in that same scenario, the unsecured creditors would recover \$20 million (net of contingent fees) from the Original Lender Litigation Claims and \$16.75 from the Shared Assets. The Committee believes that at the likely levels of asset recovery, the unsecured creditors fare better under the Plan, than they would likely fare in chapter 7 with the need to litigate against the Current Lenders to obtain any recovery.

In the first place, the Plan Settlement resolves disputes between the Current Lenders and the holders of general unsecured claims that, absent settlement, would require protracted and very expensive litigation to resolve. Second, even if the chapter 7 Trustee was able to establish a viable claim against the Original Lenders, such a result would not enhance recoveries beyond the Plan Settlement, unless several additional legal hurdles are surmounted, including, without limitation (a) whether and to what extent the Current Lenders are subject to successor liability, (b) if so, whether and to what extent the Current Lenders' liens should be avoided, and (c) if so, whether and to what extent the remaining unsecured claims may be subordinated. Third and equally important, the Plan Settlement establishes certain baselines for recoveries that would not exist but for a settlement of the inter-creditor dispute. For instance, pursuant the Plan Settlement, the holders of Allowed Class 4 and Class 5 Claims are given a \$5 million distribution priority on the Net Proceeds of the Shared Assets. Absent the Plan Settlement, holders of Class 4 and Class 5 Claims might not be entitled to any recovery from the Shared Assets, inasmuch as the Current Lenders assert first priority liens upon substantially all of the Shared Assets. Fourth, the Plan Settlement requires the Current Lenders to contribute valuable claims and other assets of their own -- namely, the Fortgang Guaranties and the Other Lender Collateral -- to the Shared Assets Trust. Finally, the Plan Settlement entitles holders of Allowed Class 4 and Class 5 Claims to a distribution of 100% of the proceeds of the Original Bank Litigation Claims. Absent a settlement, the holders of Class 4 and Class 5 Claims would be required to share their recoveries with the Current Lenders to the extent of their Current Lender Deficiency Claims, which (depending on the value of the collateral securing the Current Lender Claims) could double the total amount of Unsecured Claims asserted against the Estates. If the Original Lender Litigation Claims are prosecuted successfully, Class 4 and Class 5 holders could receive a substantial recovery regardless of the value of other Trust Assets. If the Committee did not settle with the Current Lenders, the holders of Class 4 Claims and Class 5 Claims could only do better than under the Plan if the Committee was successful in litigation against the Current Lenders. Because the Plan Proponents believe that such an outcome is unlikely, the Plan satisfies the best interests of creditors test.

It is possible, if not likely, that none of these benefits provided by the Plan Settlement would be available in a chapter 7 liquidation. Thus, even if a chapter 7 trustee could pursue litigation against the Current Lenders and the Original Lenders, such litigation would be protracted and expensive. In addition to the very substantial expense and delay that such a litigation would entail, there can be no assurance that the litigation would result in a favorable outcome, let alone an outcome as favorable for general unsecured creditors as the Plan Settlement. To the contrary, the outcome of such a litigation could well be that (a) general unsecured creditors would receive no recovery from the Shared Assets and

(b) any recoveries received by general unsecured creditors from the proceeds of the Original Lender Litigation Claims would be greatly diluted by the need to share such recoveries with the Current Lenders on account of their Deficiency Claims. But even if the chapter 7 estates could obtain the same settlement with the Current Lenders that the Committee obtained under the Plan Settlement, unsecured creditors would receive less in chapter 7 because statutory fees must be paid to the chapter 7 trustee(s) under the Code.

Furthermore, in a chapter 7 case, creditors would not be able to recognize a loss with respect to their claims until resolution of all of the Debtors' causes of action and the complete liquidation of all of the Debtors' assets, which could take several years. In contrast, under the Plan, creditors will recognize gain or loss with respect to their claims on the effective date of the plan. Based on the current estimates of the value of the assets in to be contributed to the Shared Assets Trust and the GUC Trust, it appears likely that all creditors receiving an interest in the Shared Assets Trust or GUC Trust will be recognizing a loss (assuming that such creditor has not acquired its claim at a discount to par).

The gain or loss recognized by creditors with respect to their claims will be capital if the claims are capital assets in the creditors' hands. On the other hand, under the Plan, income recognized by the Trusts with respect to the Trust assets (which flows through to the Trust beneficiaries for federal income tax purposes) may be ordinary income for income tax purposes. As a result, a chapter 11 case creates the potential for a character mismatch for creditors whose claims are capital assets for income tax purposes. This could arise if, and to the extent that, the amounts ultimately realized by the Shared Assets Trust and the GUC Trust (collectively, the "Trusts") with respect to the trust assets exceeds the value of such assets on the Effective Date of the Plan (or the value ascribed to such assets as of such date). However, with the exception of the Current Lender Claims, most, if not all, of the claims that will be exchanged for beneficial interests in the Trusts likely are not held as capital assets for federal income tax purposes. Moreover, while a significant portion of the Trusts' income may be ordinary in character, the mismatch would not arise to the extent that the Trusts' income is characterized for federal income tax purposes as capital gain.

Chapter 7 cases raise the possibility (albeit remote) that gain from the disposition of FLI's assets will be subject to a double level of tax to the extent that FLI's net operating losses ("NOLs") and other tax attributes are not sufficient to fully offset the gain.¹⁷ No such risk arises in a chapter 11 case, since the Trust assets no longer reside with FLI.

Finally, in addition to the increased litigation expenses described above, a chapter 7 case would result in increased administrative costs of other sorts as well, which would further reduce the net assets available for distribution. A chapter 7 trustee would be entitled to receive a statutory fee on all distributions made, which the trustees of the Plan Trusts will not be entitled to. Further, a chapter 7 trustee would retain attorneys, financial advisors and other professionals not already active in this case, which would result in a substantial increase in the amount of professional fees that would need to be incurred, given the complexity of the factual and legal issues that such professionals would need to learn. All such fees and costs would be entitled to administrative priority.

For the reasons set forth above, the Plan Proponents believe that, in a chapter 7, the holders of Class 2 Claims, Class 4 Claims and Class 5 Claims would receive distributions in an amount significantly less than provided for in the Plan, and potentially no distributions at all. Accordingly, the Plan meets the Best Interest Test with respect to Class 2 Claims, Class 4 Claims and Class 5 Claims, which will recover more than or the same as they would in chapter 7.

¹⁷ MFS is an S corporation and therefore this risk is inapplicable to MFS.

D. Feasibility

Section 1129(a)(11) of the Code requires that confirmation should not be likely to be followed by the liquidation, or need for further financial reorganization, of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the relevant plan). The Plan proposes the liquidation of the Debtors.

E. Section 1129(b)

Section 1129(b) of the Code provides that a plan can be confirmed even if it has not been accepted by all impaired classes as long as at least one impaired class of Claims has accepted it. The process by which non-accepting classes are forced to be bound by the terms of the plan is commonly referred to as “cram down.” The Court may confirm the Plan at the request of the Plan Proponents notwithstanding the Plan’s rejection (or deemed rejection) by impaired classes as long as the Plan “does not discriminate unfairly” and is “fair and equitable” as to each impaired Class that has not accepted it. A plan does not discriminate unfairly within the meaning of the Code if a dissenting class is treated equally with respect to other classes of equal rank.

A class of claims under a plan accepts the plan if the plan is accepted by creditors that hold at least two-thirds in amount and more than one-half in number of the allowed claims in the class that actually vote on the plan. A class of interests accepts the plan if the plan is accepted by holders of interests that hold at least two-thirds in amount of the allowed interests in the class that actually vote on a plan. A class that is not “impaired” under a plan is conclusively presumed to have accepted the plan. Solicitation of acceptances from such a class is not required. A class is “impaired” unless (i) the legal, equitable and contractual rights to which a claim or interest in the class entitles the holder are not modified or (ii) the effect of any default is cured and the original terms of the obligation are reinstated.

A plan is fair and equitable as to a class of secured claims that rejects such plan if the plan provides (1)(a) that the holders of claims included in the rejecting class retain the liens securing those claims, whether the property subject to those liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims and (b) that each holder of a claim of such class receives on account of that claim deferred cash payments totaling at least the allowed amount of that claim, of a value, as of the effective date of the plan, at least equal to the value of the holder’s interest in the estate’s interest in such property; (2) for the sale, subject to section 363(k) of the Code, of any property that is subject to the liens securing the claims included in the rejecting class, free and clear of the liens, with the liens to attach to the proceeds of the sale, and the treatment of the liens on proceeds under Clause (1) or (2) of this paragraph or (3) for the realization of the indubitable equivalent of such claims.

A plan is fair and equitable as to a class of unsecured claims which rejects a plan if the plan provides (1) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim or (2) that the holder of any claim or interest that is junior to the claims of such rejecting class will not receive or retain on account of such junior claim or interest any property at all.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides: (1) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greater of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (2) that the holder of any interest

that is junior to the interest of such class will not receive or retain under the plan on account of such junior interest any property at all.

Class 1 (Other Priority Claims) is unimpaired under the Plan and, as set forth above, holders of such Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Code.

Class 2 (Current Lender Claims) is impaired under the Plan and their votes will be solicited. Pursuant to the Plan Support Agreement, more than half of the holders of Current Lender Claims holding over two-thirds in amount of such Claims have agreed to vote in favor of the Plan. Accordingly, the Plan Proponents do not expect that the Plan will have to be crammed down upon the holders of Class 2 Claims.

Class 3 (Other Secured Claims) is impaired under the Plan and their votes will be solicited. In the event that Class 3 does not accept the Plan, the Plan Proponents believe that the treatment of Class 3 is fair and equitable because the Plan provides holders of Class 3 claims with, among other options, the indubitable equivalent of their secured claim.

Class 4 (General Unsecured Claims Against MFS) is impaired under the Plan and the votes of the holders of such Claims will be solicited. In the event that Class 4 does not accept the Plan, the Plan Proponents believe the treatment of Class 4 is fair and equitable because the Plan provides that the holder of any claim or interest that is junior to the claims of Class 4 will not receive or retain on account of such junior claim or interest any property at all.

Class 5 (General Unsecured Claims Against FLI) is impaired under the Plan and their votes will be solicited. In the event that Class 5 does not accept the Plan, the Plan Proponents believe the treatment of Class 5 is fair and equitable because the Plan provides that the holder of any claim or interest that is junior to the claims of Class 5 will not receive or retain on account of such junior claim or interest any property at all.

The votes of Class 6 (Interests) are not being solicited because such holders are not entitled to receive or retain under this Plan any interest in property on account of such Claims and Interests. Class 6 is therefore deemed to have rejected the Plan pursuant to section 1126(g) of the Code. The Plan meets the fair and equitable test with respect to Class 6 because there is no junior class.

If Class 4 and/or Class 5 fails to accept the Plan, the Plan Proponents intend to request that the Court confirm the Plan pursuant to section 1129(b) of the Code with respect to those Classes.

X.

Alternatives to Confirmation and Consummation of this Plan

A. Liquidation Under Chapter 7

If no chapter 11 plan can be confirmed, the Cases may be converted to cases under chapter 7 of the Code in which a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Code. A discussion of the effect that a chapter 7 liquidation would have on the recoveries of holders of Claims is set forth in Section IX.C. of this Disclosure Statement. The Plan Proponents believe that liquidation under chapter 7 would result in either no distributions, or in the best case, smaller distributions being made to holders of Allowed Class 2, Class 4 and Class 5 Claims and no distributions to equity holders because (a) the likelihood that

the assets of the Debtors would have to be sold or otherwise disposed of in a less orderly fashion, (b) additional administrative expenses attendant to the appointment of a trustee and the trustee's employment of attorneys and other professionals, and (c) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation.

B. Alternative Plan of Reorganization

If the Plan is not confirmed, the Plan Proponents or any other party in interest could attempt to formulate a different plan or plans of reorganization or liquidation. Due to the 363 Asset Sales, such a plan would necessarily involve an orderly liquidation of the Debtors' assets under chapter 11. The Plan Proponents have concluded that the Plan enables creditors to realize the most value under the circumstances. The Plan is premised upon the Plan Settlement, which resolves a complicated inter-creditor dispute that proposed to make distributions to creditors within a relatively short period of time. By contrast, absent the Plan and the Plan Settlement, the inter-creditor disputes would be litigated, which would be extremely costly and could significantly delay the timing of distributions to creditors. Alternatively, if the Plan and the Plan Settlement are rejected, it is possible that an alternative chapter 11 plan could be proposed; it is likely, however, that such a plan would involve further negotiations and formulation, thereby increasing administrative expenses and reducing creditor distributions. In the event the Plan is not confirmed, the statements contained herein shall not be deemed to have been admissions by any Plan Proponent that may be introduced into evidence against such Plan Proponent.

XI.

Certain Federal Income Tax Consequences of the Plan

A. Introduction

The following discussion summarizes certain material U.S. federal income tax consequences of the Plan to the Debtors and holders of Claims. The summary is provided for informational purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), the treasury regulations promulgated thereunder, judicial authority and current administrative rulings and practice, all as in effect as of the date hereof and all of which are subject to change, possibly with retroactive effect. This summary does not address all aspects of federal income taxation that may be relevant to a particular holder of a Claim in light of its particular facts and circumstances or to particular types of holders of Claims subject to special treatment under the Tax Code (for example, foreign persons, financial institutions, broker-dealers, life insurance companies and tax-exempt organizations) and also does not discuss any aspects of state, local, or foreign taxation. In addition, a substantial amount of time may elapse between the Confirmation Date and the receipt of a final distribution under the Plan. Events subsequent to the date of this Disclosure Statement, such as the enactment of additional tax legislation, court decisions or administrative changes, could affect the federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling will be sought from the Internal Revenue Service (the "Service") with respect to any of the tax aspects of the Plan and no opinion of counsel has heretofore been obtained by the Plan Proponents with respect thereto. **Accordingly, each holder of a Claim is strongly urged to consult with its own tax advisor regarding the federal, state, local and foreign tax consequences of the Plan.**

Circular 230 Disclosure: This tax discussion was written to support the promotion or marketing of the Plan. To ensure compliance with requirements imposed by the Service, we are informing you that this discussion was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding tax-related penalties that may be imposed on the taxpayer

under the Code. Taxpayers should seek advice based on their particular circumstances from an independent tax advisor.

B. Certain Definitions

For purposes of this Article XI, except as expressly otherwise provided or unless the context otherwise requires, all capitalized terms not otherwise defined herein or in the Plan shall have the respective meanings assigned to them in this Article XI.B.

“*AMTI*” shall mean alternative minimum taxable income;

“*COD*” shall mean cancellation of indebtedness income;

“*NOL*” shall mean net operating loss;

“*Trust Beneficiary*” shall mean the Shared Assets Trust Beneficiaries and the GUC Trust Beneficiaries;

“*Trustee*” shall mean the Shared Assets Trustee and/or the GUC Trustee;

“*Trust Interests*” shall mean interests in the Shared Assets Trust and/or the GUC Trust;

“*Trusts*” shall mean the Shared Assets Trust and/or the GUC Trust;

C. Certain Material Federal Income Tax Consequences To the Debtors.

The Debtors may recognize income or gain as a result of the transfer of assets to the Trusts. MFS is a subchapter S corporation. As a result, it is not subject to federal income tax. Rather, its income, gains and losses, as well as tax attributes, flow through to its shareholders. The Debtors (or, in the case of MFS, its shareholders) may be able to offset any such gain with, and to the extent of, NOL carryforwards (and, in the case of MFS shareholders, suspended losses relating to their shares), subject to applicable limitations under the alternative minimum tax.

In general, the Tax Code provides that a debtor in a bankruptcy case must reduce certain of its tax attributes – such as NOLs (or, in the case of an S corporation, suspended losses of its shareholders), tax credits, and tax basis in assets – by the amount of any COD. COD is the amount by which the indebtedness of the Debtors discharged exceeds any consideration given in exchange therefor. Certain statutory or judicial exceptions can apply to limit the amount of COD and attribute reduction (such as where the payment of the cancelled debt would have given rise to a tax deduction). In addition, to the extent the amount of COD exceeds the tax attributes available for reduction, the remaining COD is simply forgiven.

As a result of the implementation of the Plan, the Debtors will have COD, and potential attribute reduction. Since MFS is a subchapter S corporation, and thus is not subject to federal income tax, any such attribute reduction of MFS should not affect MFS. Moreover, because any reduction in tax attributes does not effectively occur until the first day of the taxable year following the taxable year in which the COD is incurred, the resulting COD should not impair the ability of the Debtors (or, in the case of MFS, its shareholders) to use their tax attributes (to the extent otherwise available) to reduce their tax liability, if any, otherwise resulting from the implementation of the Plan.

D. Federal Income Tax Consequences To Holders Of Claims

1. In General

On the exchange of its Claim for cash and/or property (including Trust Interests), each holder of a Claim that does not relate to services provided to a Debtor by an employee or service provider will recognize gain or loss measured by the difference between (i) the aggregate fair market value of the cash and/or property received (including the fair market value of Trust Interests) and (ii) such holder's tax basis in the Claim.

Each holder of a Claim that relates to services provided to a Debtor by an employee or a service provider generally will recognize ordinary income equal to the sum of the amount of cash and the fair market value of the property received in exchange for its Claim.

To the extent that the cash and/or property received by a holder of a Claim is attributable to accrued interest on such Claim, the cash and/or property received will be deemed made in payment of such interest. Conversely, a holder of a Claim will recognize a deductible loss to the extent any accrued interest previously included in its gross income is not paid in full. The allocation for federal income tax purposes between principal and interest of amounts received in exchange for the discharge of a claim at a discount is unclear. However, the Debtors intend to treat any amount received as first allocated to principal.

Where gain or loss is recognized by a holder in respect of its Claim, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including but not limited to: (a) the nature of origin of the Claim; (b) the tax status of the holder; (c) whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held; (d) whether the Claim was acquired at a market discount (discussed below); and (e) whether and to what extent the holder had previously claimed a bad debt deduction with respect to the Claim.

A holder that purchased its Claim from a prior holder at a market discount may be subject to the market discount rules of the Tax Code. Under those rules, assuming that the holder has made no election to amortize the market discount into income on a current basis with respect to any market discount instrument, any gain recognized on the exchange of such Claim (subject to a *de minimis* rule) generally would be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

Any Cash and/or property received by a holder of a Claim after the Effective Date may be subject to the imputed interest provisions of the Tax Code.

2. Class 2, 4 and 5 Claims.

In the case of any holder of a Class 2, 4 or 5 Claim, the following tax consequences will apply in addition to those discussed above.

As discussed above, the amount of property that a holder of an Allowed Class 2, 4 or 5 Claim on the Effective Date will be treated as receiving in respect of its Claim will include the fair market

value of Trust Interests received in respect of its Claim (other than the portion attributable to accrued but unpaid interest). The fair market value of such Trust Interests will equal the holder's pro rata share of the fair market value, as of the Effective Date, of the assets transferred to the Shared Assets Trust or GUC Trust, as applicable (disregarding, with respect to holders of Class 2 Claims, the Fortgang Guaranties, Other Lender Assets and the related Claims and Causes of Action transferred to the Shared Assets Trust). The fair market value of the Shared Assets Trust Class B Interests should not include the value of the Other Lender Assets, given that such holders are not entitled to any of the proceeds of such assets.

As and when any Disputed Claims¹⁸ become disallowed after the Effective Date, a holder of a previously Allowed Class 4 or Class 5 Claim will become entitled to an increased share of the GUC Trust. For federal income tax purposes, the receipt of such increased share may be treated as additional consideration in satisfaction of such holder's Allowed Claim and may be subject to the imputed interest provisions in the Tax Code as discussed above.

As and when any Disputed Claims become Allowed after the Effective Date, each holder of such Claim will recognize gain or loss with respect to its Claim in an amount equal to the difference between (i) the aggregate fair market value of the GUC Trust Interests received in respect of its Claim (other than the portion attributable to accrued but unpaid interest) as of the date such Claim is Allowed and (ii) such holder's adjusted tax basis in the Claim (other than any portion of the Claim representing accrued but unpaid interest).

It is possible (but not likely) that any loss realized by a holder in satisfaction of an Allowed Class 4 or Class 5 Claim may be deferred until all the Disputed Claims are resolved and the holder's beneficial interest in the GUC Trust can no longer increase. It is also possible that any gain realized by such a holder may be recognized under the "installment method" of reporting. Each holder of a Class 4 or Class 5 Claim is urged to consult its own tax advisor regarding the applicability of, and the ability to elect out of, the installment method.

Any amount a holder receives following the Effective Date as a distribution in respect of its Trust Interests (other than as discussed above concerning the disallowance of Disputed Claims) should not be included for federal income tax purposes in the holder's amount realized in respect of its Allowed Claim. See "E. Tax Treatment of the Trusts and Trust Beneficiaries" below for a more detailed discussion.

E. Tax Treatment of the Trusts and Trust Beneficiaries

Upon the Effective Date, the Shared Assets Trust and the GUC Trust shall be established for the benefit of holders of Allowed Class 2, Class 4 and Class 5 Claims, as the case may be, whether Allowed on or after the Effective Date.

(a) Classification of the Trusts

The Trusts are intended to qualify as liquidating trusts for federal income tax purposes. In general, a liquidating trust is not a separate taxable entity but rather is treated for federal income tax purposes as a "grantor" trust (i.e., a pass-through entity). However, merely establishing a trust as a

¹⁸ Because all Class 2 Claims are secured, tax consequences relative to Disputed Claims are relevant only to holders of Class 4 Claims and Class 5 Claims, which are beneficiaries of the GUC Trust. Accordingly, discussion relevant to holders of Disputed Claims that become Allowed are limited to Class 4 Claims and Class 5 Claims.

liquidating trust does not ensure that it will be treated as a grantor trust for federal income tax purposes. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Trusts will be structured with the intention of complying with such general criteria, and the following discussion assumes that the Trusts will be so respected for federal income tax purposes. However, no ruling has been requested from the IRS and no opinion of counsel has been requested concerning the tax status of the Trusts as grantor trusts. Accordingly, there can be no assurance that the IRS would not take a contrary position. If the IRS were successfully to challenge such classification, the federal income tax consequences to the Trusts, the holders of Class 2, 4 and 5 Claims and the Debtors could vary from those discussed herein.

(b) General Tax Reporting by the Trust and Trust Beneficiaries

Pursuant to the Plan, for all federal income tax purposes, all parties (including the Debtors, the Trustee and the holders of Class 2, 4 or 5 Claims, as applicable) agree to treat the transfers of assets to the Trusts as a transfer of such assets directly to the holders, followed by the transfer of such assets by the holders to the Trusts. Consistent therewith, all parties agree to treat the Trusts as grantor trusts of which such holders are the owners and grantors. Thus, such holders (and any subsequent holders of interests in the Trusts) will be treated as the direct owners of an undivided interest in the assets of the Shared Assets Trust or GUC Trust, as applicable, for all federal income tax purposes.

Accordingly, except as discussed below (in connection with pending Disputed Claims), each Trust Beneficiary will be required to report on its federal income tax return its allocable share of any income, gain, loss, deduction or credit recognized or incurred by the Trusts, in accordance with its relative beneficial interest. The character of items of income, deduction and credit to any Trust Beneficiary and the ability of such Trust Beneficiary to benefit from any deductions or losses may depend on the particular situation of such Trust Beneficiary.

The federal income tax reporting obligations of a Trust Beneficiary are not dependent upon the Trusts distributing any cash or other proceeds. Therefore, a Trust Beneficiary may incur a federal income tax liability with respect to its allocable share of the income of a Trust even if the Trust has not made a concurrent distribution to the Trust Beneficiary. In general, other than in respect of Disputed Claims and distributions resulting from unclaimed distributions, a distribution of cash by a Trust to a Trust Beneficiary will not be taxable to the Trust Beneficiary since such Trust Beneficiary is already regarded for federal income tax purposes as owning the underlying assets.

The Trustees will file with the IRS returns for the Trusts as grantor trusts pursuant to Treasury Regulation section 1.671-4(a). The Trustees will also send to each record Trust Beneficiary a separate statement setting forth such Trust Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct the Trust Beneficiary to report such items on its federal income tax return or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns.

The Trustee of the GUC Trust will also file, or cause to be filed, all appropriate tax returns with respect to any GUC Trust Assets allocable to Disputed Claims. Specifically, the Trustee of the GUC Trust shall:

- (i) treat all GUC Trust Assets allocable to, or retained on account of, Disputed Claims as held in a separate taxable entity for federal income tax purposes; and

(ii) report on the basis that any amounts earned by the separate entity and any taxable income of the GUC Trust allocable to it are subject to a separate entity level tax, which shall be paid by the Trustee out of the assets of such separate entity, except to the extent such earnings are distributed during the same taxable year. Any amounts earned by or attributable to such separate entity and distributed to a holder during the same taxable year will be includible in such holder's gross income.

F. Information Reporting And Backup Withholding.

All distributions to holders of Claims under the Plan are subject to any applicable tax information reporting and withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable withholding rate (currently 28%). Backup withholding generally applies if a non-exempt holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails to properly report interest or dividends, or (d) fails to provide certain certifications signed under penalty of perjury. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, generally, corporations and financial institutions.

THE FOREGOING SUMMARY HAS BEEN PROVIDED FOR INFORMATIONAL PURPOSES ONLY. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES APPLICABLE TO THEM UNDER THE PLAN.

XII.

Conclusion

The Committee supports confirmation of the Plan and the Plan Proponents believe the Plan is in the best interests of all creditors and equity holders and urge the holders of impaired claims in Class 2, Class 3, Class 4 and Class 5 to vote to accept the Plan and to evidence such acceptance by returning their Ballots.

Dated: New York, New York
November 7, 2007

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